

## Stage 6 & 8 Parramatta Square

Commercial tower & retail space

Clause 4.6 - Variation Request - to clause 7.4 (2) Sun Access



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## 1.0 INTRODUCTION

### Background

- 1.1 Walker lodged a development application (DA – 47/2018) with Parramatta City Council on 19 January 2018 for the construction of a 56 storey commercial premises tower (**6/8PSQ**), plus plant and a function centre on Level 50 including works within Darcy Street, associated landscaping, public domain works and provision and augmentation of physical infrastructure.
- 1.2 DA 47/2018 relates to the following land zoned B4 Mixed Use under Parramatta Local Environmental Plan 2011 (**PLEP 2011**):
  - Lot 2 DP 1234735 – 10 Darcy Street, Parramatta
  - Lot 3 DP 1234735 – 10 Darcy Street, Parramatta
  - Lot 43 DP 1238612 – 5 Macquarie Street, Parramatta
  - PPN. DP 1185643 – Church Street ‘wedge’ (Land)
- 1.3 The consent authority is the Sydney Central City Planning Panel.
- 1.4 At the time of lodgement of DA 47 / 2018, overshadowing of Parramatta Square was referenced in clause 7.4 of PLEP 2011 via an objective and via a reference to controls in Parramatta DCP 2011. The clause read as follows:

#### 7.4 Sun Access

- (1) *The objective of this clause is to protect public open space in Parramatta Square, the Lancer Barracks site and Jubilee Park from overshadowing.*
- (2) *This clause applies if the consent authority considers that development that is the subject of a development application is likely to cause excessive overshadowing of the public open space referred to in subclause (1).*
- (3) *The consent authority, in determining that development application, must take into consideration the relevant sun access plane controls specified for that land in section 4.3.3 of the Parramatta Development Control Plan.*

- 1.5 PLEP 2011 was amended on 7 November 2018 by Parramatta Local Environmental Plan 2011 (Amendment No.29). Ideally, a savings provision should have been inserted to protect DAs already lodged but not determined, such as DA 47/2018. However, this was not done.
- 1.6 Although clause 3 of the Amendment indicates that it (only) applies to certain unrelated land in Church Street and Macquarie Streets, it nevertheless made amendments to clause 7.4 which had the effect of causing the overshadowing of Parramatta Square to become a development standard. Clause 7.4 now reads:

#### 7.4 Sun Access

- (1) *The objective of this clause is to protect public open space in Parramatta Square, the Lancer Barracks site and Jubilee Park from overshadowing.*

- (2) *The consent authority must not grant consent to development on any land if the consent authority is satisfied that the development will result in any additional overshadowing, between 12 noon and 2pm, on Parramatta Square, being the land at Parramatta Square shown with blue hatching on the Sun Access Protection Map.*
- (3) *If the consent authority considers that development that is the subject of a development application is likely to cause excessive overshadowing of the Lancer Barracks site or Jubilee Park, it must take into consideration the relevant sun access plane controls specified for that land in section 4.3.3 of the Parramatta Development Control Plan in determining that development application.*
- (4) *This clause applies despite clause 7.11(2) (f)*

- 1.7** Because the amendment took effect on 7 November 2018, the original development application material did not address clause 7.4(2) in its current form. The development results in minor additional overshadowing between 12pm and 2pm on the land at Parramatta Square shown with blue hatching on the LEP's 'Sun Access Protection Map' mentioned in clause 7.4(2).

### Overview of request for variation

- 1.8** A proposed variation to the development standard contained in Clause 7.4(2), as permitted under Clause 4.6 of PLEP 2011, is requested in the context of DA 47/2018 and the particular characteristics of the site. The principal arguments in favour of this variation are detailed in this request prepared by Walker Corporation.
- 1.9** This request seeks flexibility in the application of clause 7.4(2) to permit additional overshadowing, between 12 noon and 2pm, on Parramatta Square, being the land at Parramatta Square shown with blue hatching on the Sun Access Protection Map. The overshadowing occurs at the margins of the development along its northern elevation and correspondingly to the southern margin of the blue hatching on the Sun Access Protection Map. The extent of overshadowing and its departure from the standard is expressed in numerical terms and outlined at Section 2.
- 1.10** Three architectural elements on the northern elevation of the building result in the additional overshadowing, they are: (1) the colonnade columns and stairs to the terrace, (2) the upper ground terrace and (3) the linear edge on Level 3 of the 8 PSQ tower component of the 6/8 PSQ development.
- 1.11** The request is considered justified in the context of the circumstances of the project, in terms of it satisfying the established tests associated with clause 4.6 variations and in terms of flexibility in the application of the development standard.
- 1.12** The redevelopment of Parramatta Square is a once in a generation intervention in the urban fabric of central Parramatta. The ownership of key parcels of land by the City of Parramatta has created a large redevelopment site equivalent to a city block that would otherwise not have occurred. DA 47/2018 is a place making opportunity and arises from the desire by the City of Parramatta to create a major civic space and commercial hub in the heart of the Parramatta CBD.
- 1.13** The site has the ability to foster a vibrant public domain and achieve desirable ESD principles of minimising overshadowing within the colonnade and outdoor dining precinct in Winter, whilst providing shade in Summer.
- 1.14** It is requested that DA 47/2018 should be enabled to maximise this opportunity to the modest extent requested. The proposed variation is sought in a responsible manner and the assessment of the variation in terms of the control that affects and protects overshadowing within Parramatta Square between 12pm and 2pm, demonstrates the impact of the proposed variation is acceptable.



## Clause 4.6 – Exception to Development Standards

**1.15** Clause 4.6 of Parramatta LEP 2011 enables the consent authority to grant consent to development that departs from a development standard included in the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards, including additional overshadowing, between 12pm and 2pm on Parramatta Square, being the land shown with blue hatching on the 'Sun Access Protection Map'.

**1.16** The provisions of clause 4.6 of PLEP 2011 are provided in the table below together with a compliance summary.

	Clause Provision	Comment	
(1)	the objectives of this clause are as follows:		
(a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development,	Request seeks flexibility in the application of clause 7.4(2) to permit DA 47/2018 to overshadow Parramatta Square between 12pm and 2pm in a minor manner. Justification is provided at Section 3 & 4 of subject report.	✓
(b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	By allowing the flexibility in the application of clause 7.4(2) a better outcome for and from development is achieved. See Section 3 & 4 of subject report.	✓
(2)	Development 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 to a development standard that is expressly excluded from the operation of this clause.	Clause 4.6 does not expressly exclude the development standard imposed by PLEP 2011 for overshadowing of Parramatta Square between 12pm and 2pm from the operation of this clause.	✓
(3)	Development 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:	Subject clause 4.6 request is the written request that the consent authority is required to consider.	✓
(a)	that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	Justification is provided at Section 3 of subject report.	✓
(b)	that there are sufficient environmental planning grounds to justify contravening the development standard.	Justification is provided at Section 3 of subject report.	✓
(4)	Development consent must not be granted for development that contravenes a development standard unless:		
(a)	the consent authority is satisfied that:		
	(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	This is a matter for the consent authority.	☺
	(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	This is a matter for the consent authority.	☺

	Clause Provision	Comment	
(b)	the concurrence of the Secretary has been obtained.	<p>Circular PS 18-003 – issued 21 February 2018 by the NSW Dept. of Planning.</p> <p>The circular advises all consent authorities may assume the Secretary's concurrence under clause 4.6 of an LEP that adopts the Standard Instrument (LEPs) Order 2006 or any other provision of an EPI to the same effect.</p> <p>The assumed concurrence is subject to conditions inter alia as follows:</p> <p><b>"Regionally significant development</b></p> <p>Sydney district &amp; regional planning panels may also assume the Secretary's concurrence where development standards will be contravened. The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff. However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development."</p> <p>The subject DA is a type of development specified in Schedule 7 of SEPP (State &amp; Regional Development) 2011 declared to be Regionally Significant development.</p> <p>As per Circular PS 18-003 the Sydney Central City Planning Panel can assume the concurrence of the Secretary.</p>	NA
(5)	In deciding whether to grant concurrence, the Secretary must consider:		NA
(a)	whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	Not applicable.	NA
(b)	the public benefit of maintaining the development standard, and	Not applicable.	NA
(c)	any other matters required to be taken into consideration by the Secretary before granting concurrence	Not applicable.	NA
(6)	Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:	Not applicable. DA is not for subdivision of land within any of the nominated zones.	NA
(a)	the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or	Not applicable. DA is not for subdivision.	NA
(b)	the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.	Not applicable. DA is not for subdivision.	NA

	Clause Provision	Comment	
(7)	After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).	This is a matter for the consent authority.	☺
(8)	This clause does not allow development consent to be granted for development that would contravene any of the following:		
(a)	a development standard for complying development,	Not applicable.	NA
(b)	a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building, to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for land on which such a building is situated,	Not applicable.	NA
(c)	clause 5.4;	Not applicable. Clause 5.4 relates to 'Controls relating to miscellaneous permissible uses.'	NA
(ca)	a development standard that relates to the height of a building, or a floor space ratio, in Parramatta City Centre (as referred to in clause 7.1 (1)) by more than 5%.	Not applicable.	NA

## 2.0 DEVELOPMENT STANDARD TO BE VARIED

### Parramatta LEP 2011 – Clause 7.4 (2)

- 2.1** Legal advice is provided by Lindsay Taylor Lawyers dated 21 November 2018 and by Mills Oakley dated 22 November 2018 as to whether clause 7.4(2) of PLEP 2011 is a standard or a prohibition (for the purposes of clause 4.6 of PLEP 2011).
- 2.2** Lindsay Taylor Lawyers conclude: “Clause 7.4(2) therefore contains a development standard. It is amenable to flexible application in accordance with an appropriately formulated request under clause 4.6 of PLEP 2011.”
- 2.3** Mills Oakley conclude: “In our opinion (a) Clause 7.4(2) of the LEP is a development standard (for the purposes of clause 4.6 of the LEP). (b) There is potential for this provision to be varied under clause 4.6 of the LEP.”
- 2.4** Clause 7.4(2) of PLEP 2011 reads:

*“The consent authority must not grant consent to development on any land if the consent authority is satisfied that the development will result in any additional overshadowing, between 12 noon and 2pm, on Parramatta Square, being the land at Parramatta Square shown with blue hatching on the Sun Access Protection Map.”*

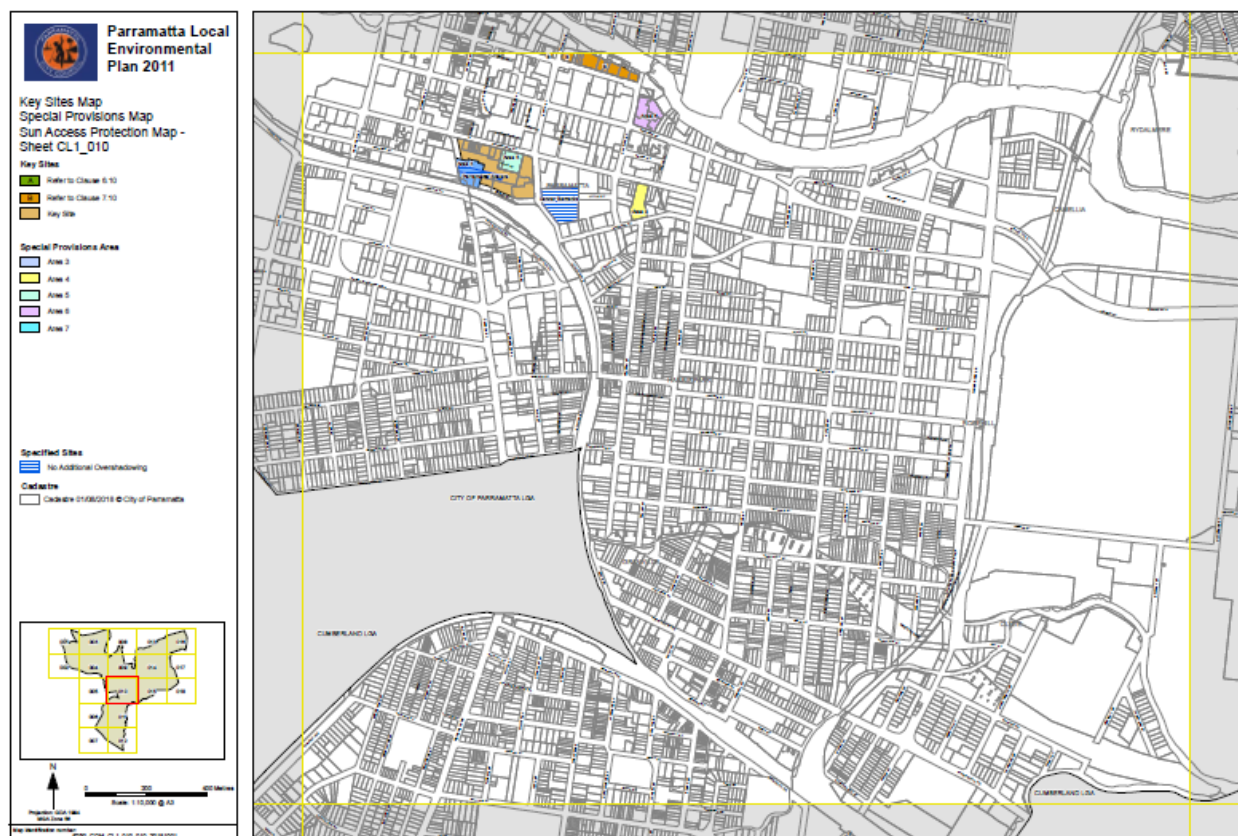
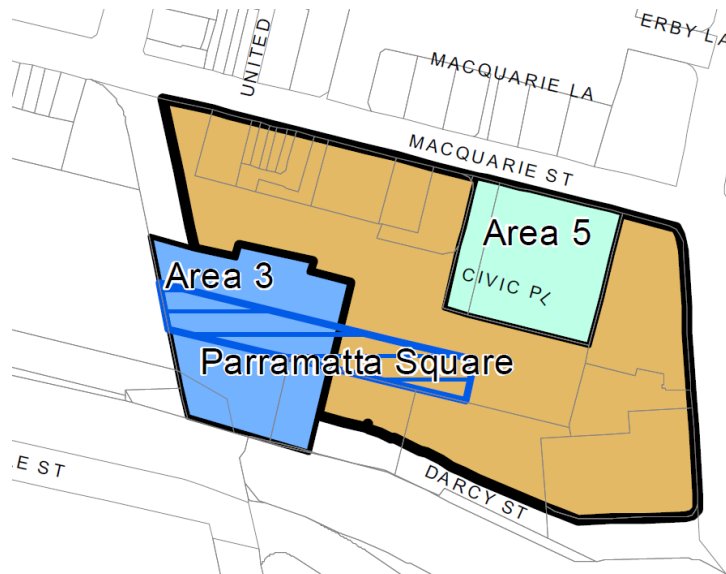


Figure 1 – Key Sites Map, Special Provisions Area Map, Sun Access Protection Map – PLEP 2011





*Figure 2 – Extract from Sun Access Protection Map – PLEP 2011  
(Blue hatched area is subject to no additional overshadowing)*

## The Land Subject to this Variation

- 2.5 This Clause 4.6 request to vary a development standard relates to land referred to as the 6/8 Parramatta Square development (DA 47/2018).
- 2.6 The site is located at the western sector of the Parramatta Square precinct on the corner of Church Street Mall and Darcy Street. The site includes the Church Street Mall reserve to the west, Darcy Street reserve to the south and to the north, the proposed central civic space in Parramatta Square.
- 2.7 The development site is generally rectangular with a total area of 9,785m<sup>2</sup>.
- 2.8 The massing of the building comprises an elongated rectangle on an east west axis, providing three prominent elevations (south, west and north). Due to its orientation, the shadows from the development fall principally to the south and southeast.
- 2.9 The site is affected by the Parramatta to Epping project corridor and includes part of the Parramatta Rail Corridor.
- 2.10 Excavation of the site has commenced in accordance with Development Application No. 46/2018 which is for the construction of the basement car parking to be used in association with the proposed commercial premises tower above (i.e. DA 47/2018).
- 2.11 The site is located in proximity to a number of local and state heritage items. Two key heritage items that adjoin the site are Parramatta Town Hall and St John's Anglican Church.
- 2.12 The landscaping of the public domain adjoining the 6/8 PSQ development is subject to a separate development application which has been lodged to Parramatta City Council for owner's consent. The development application for the public domain works excludes the colonnade along the northern frontage facing Parramatta Square and excludes the stairs onto Church Street Mall. These elements are works under DA 47/2018.

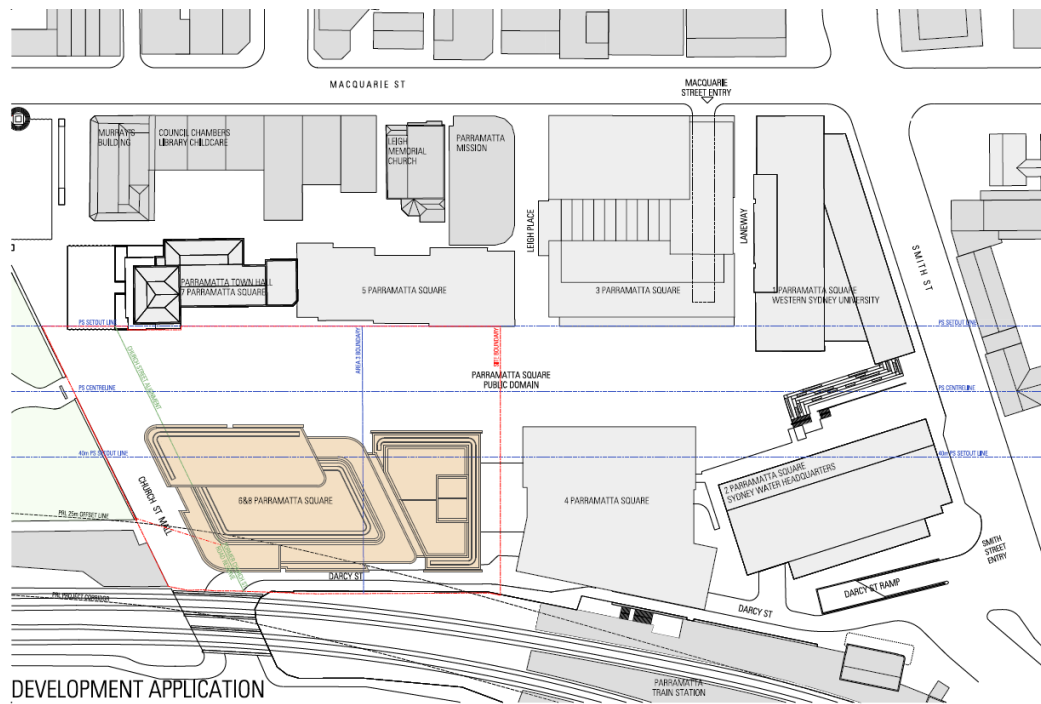




Figure 4 – Context map

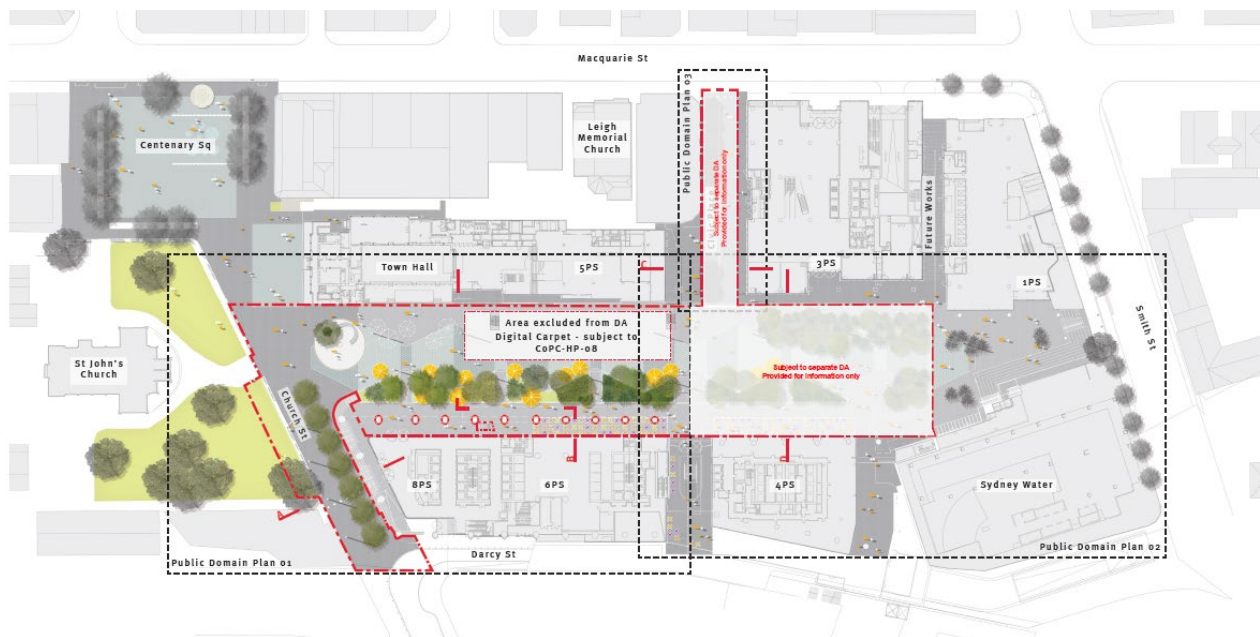


Figure 5 – Public Domain DA (awaiting owner's consent) adjoining 6/8 PSQ development.



## Vision – Parramatta Square

- 2.15** The Parramatta Square precinct is designated by Parramatta Council as a mixed use urban renewal area and is strategically significant. It represents a unique opportunity in time to influence the nature of development in the Parramatta CBD and to reinforce its position as one of the three pre-eminent centres in the greater Sydney Metropolitan Region. A key consideration in the justification of the variation sought to the development standard is the context of the site.
- 2.16** Since the adoption of the Master Plan for a Civic Place in 2003 by Parramatta Council, now superseded by the Parramatta Square Masterplan 2015, the master planning of the precinct has been designed to revitalise the civic and business centre of Parramatta. This is proposed by reconfiguring the existing built form and spatial arrangement to create a central public square, defined by new buildings including commercial, civic and retail uses.
- 2.17** The Parramatta Square precinct will be the location of new Parramatta Council administration and Council Chambers, the Parramatta University of Western Sydney Campus building, 'A' grade office buildings that will attract significant corporate tenants all adjoining a new central public space. It is envisaged that the proposed uses will generate a critical mass of human activity to revitalise the civic heart of Parramatta as a destination for community and ceremonial gatherings and cultural celebration.
- 2.18** The development of Parramatta Square is intended by the Parramatta City Council to demonstrate design excellence and environmental sustainability as well as achieving targets for future employment growth by encouraging development that will generate employment opportunities.
- 2.19** To support the projected 35,000 new residents by 2036 and 83,000 new workers envisaged by 2041, a large public domain transformation is planned of which Parramatta Square will be the centrepiece.
- 2.20** Three differently sized squares are envisaged for Parramatta City.
- 2.21** Centenary Square in the order of 3,000m<sup>2</sup> is the smallest and oldest. It was refurbished in 2015 and acts as the city's Town Square and a focus for outdoor dining.
- 2.22** River Square is approximately 4,000m<sup>2</sup> and will act as the Recreation Square, creating a meeting place alongside the river and is also in the heart of the city's night-time entertainment zone. River Square will enjoy a different character during weekdays, when it may be a quieter retreat near the river than on weekends and nights when it will be a vibrant destination for relaxation and entertainment.
- 2.23** At potentially 8,000m<sup>2</sup> Parramatta Square will be the largest and most urban of the three. It will be a dynamic and a bustling space, and will house the city's largest gatherings and will have strong focus on students and workers during the weekdays, and markets and community events on the weekends.
- 2.24** The protection of Parramatta Square from overshadowing has been a long held planning principle by Council and a number of planning proposals and planned developments to the north of Parramatta Square have sought to challenge this protection by introducing the concept of fast moving shadows between the hours of 12 noon and 2pm in midwinter. Amendment No.29 to PLEP 2011 sought to remove any ambiguity regarding overshadowing of Parramatta Square. The purpose was to protect Parramatta Square from overshadowing from developments to the north as they had the greatest potential to excessively overshadow the public domain.



	Hardscape area		Softscape Area		Total Area
	Area	%	Area	%	
Stage 1	2,756 m²	93.3%	199 m²	6.7%	2,955 m²
Stage 2	582 m²	100%	-	-	582 m²
TOTAL	3,338 m²		199 m²	-	3,537 m²

**2.26** The public domain DA for works adjacent to the 6/8 Parramatta Square development has been lodged to Parramatta City Council for owner's consent and seeks approval to carry out works across 5,073m<sup>2</sup> of public space within Parramatta Square comprising:

	Hardscape area		Softscape Area		Total Area
	Area	%	Area	%	
Stage 3 – Lot 43	3,951 m <sup>2</sup>	89.5%	465 m <sup>2</sup>	10.5%	4,416 m <sup>2</sup>
Stage 3 - Other	NA	NA	NA	NA	657 m <sup>2</sup>
TOTAL	3,951 m <sup>2</sup>		465 m <sup>2</sup>	-	5,073 m <sup>2</sup>



*Figure 6– Development stages for public domain DA works.*

## Surrounding Development

**2.27** Land use in the vicinity of the site is primarily retail and office, as follows:

- To the north of the site is Parramatta Town Hall and 5 Parramatta Square the site of the future Parramatta library, Heritage and Visitor Centre, and Experience and Discovery Centres.
- To the north and north-east, interspersed with the existing building stock in Macquarie Street east on the southern side is 1 Parramatta Square, the site of University of Western Sydney 15 storey campus and now completed, and 3 Parramatta Square, the site of a future commercial office building.
- The site adjoins 4 Parramatta Square to the east, the site of a commercial office tower and for which development consent has been granted;
- Further to the east of the site, adjoining 4 Parramatta Square, is the Sydney Water building a multi-storey commercial office building consisting of some 14 levels;
- To the west is Church Street Mall and St John's Anglican Cathedral; and
- To the south, the site adjoins Darcy Street and the Parramatta transport interchange including Parramatta Railway Station and concourse, and the Parramatta Railway line viaduct. The Westfield Regional Shopping Centre is located to the south of interchange.

## Nature of Variation Sought

**2.28** Three architectural elements on the northern elevation of the building result in additional overshadowing, between 12 noon and 2pm, on Parramatta Square, being the land at Parramatta Square shown with blue hatching on the Sun Access Protection Map. These elements are shown on Figure 7. The elements are:

- (1) the colonnade columns and stair to the terrace,
- (2) the upper ground terrace and
- (3) the linear edge on Level 3 of the 8 tower component of the 6/8 PSQ development.

**2.29** The colonnade columns support the terrace at Podium 1 (Lobby) Level along the northern frontage of the 6/8 PSQ development. The columns also provide support for awnings along this frontage for outdoor dining onto Parramatta Square.

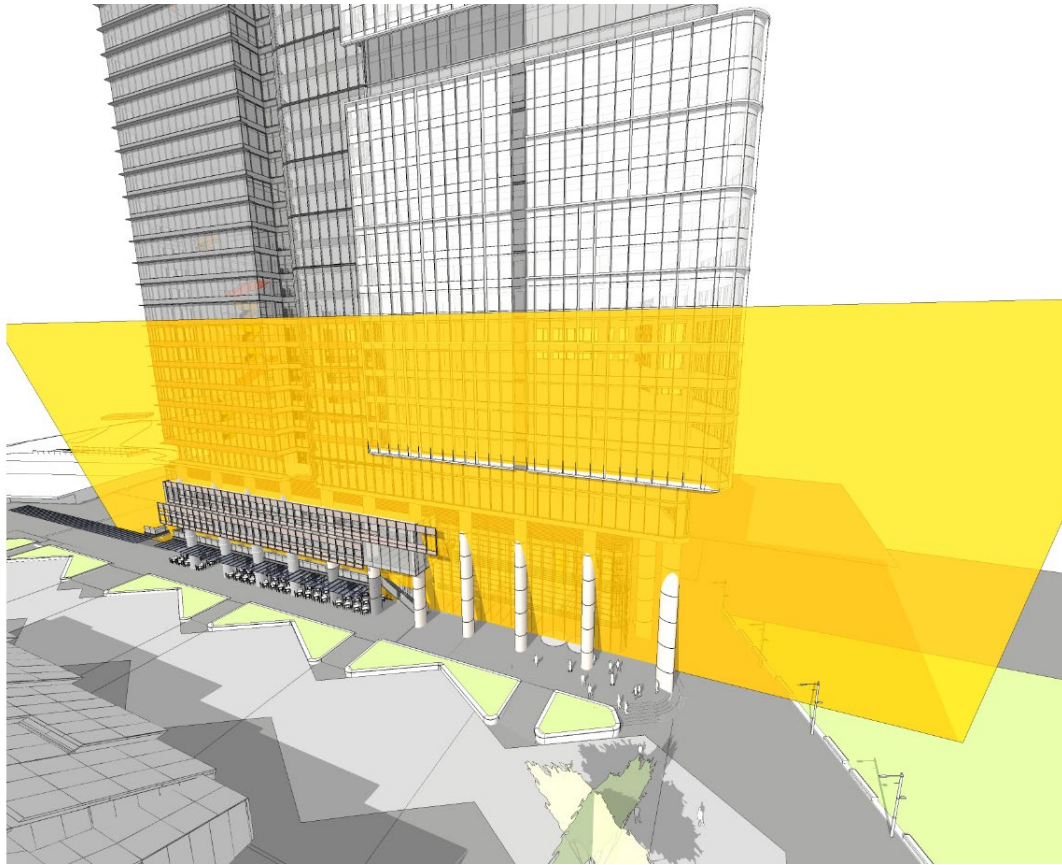


Figure 7 – The yellow shaded area is the sun angle on 22 December. It shows those elements (projections within yellow shaded area) that result in overshadowing of the Sun Access Protected Area

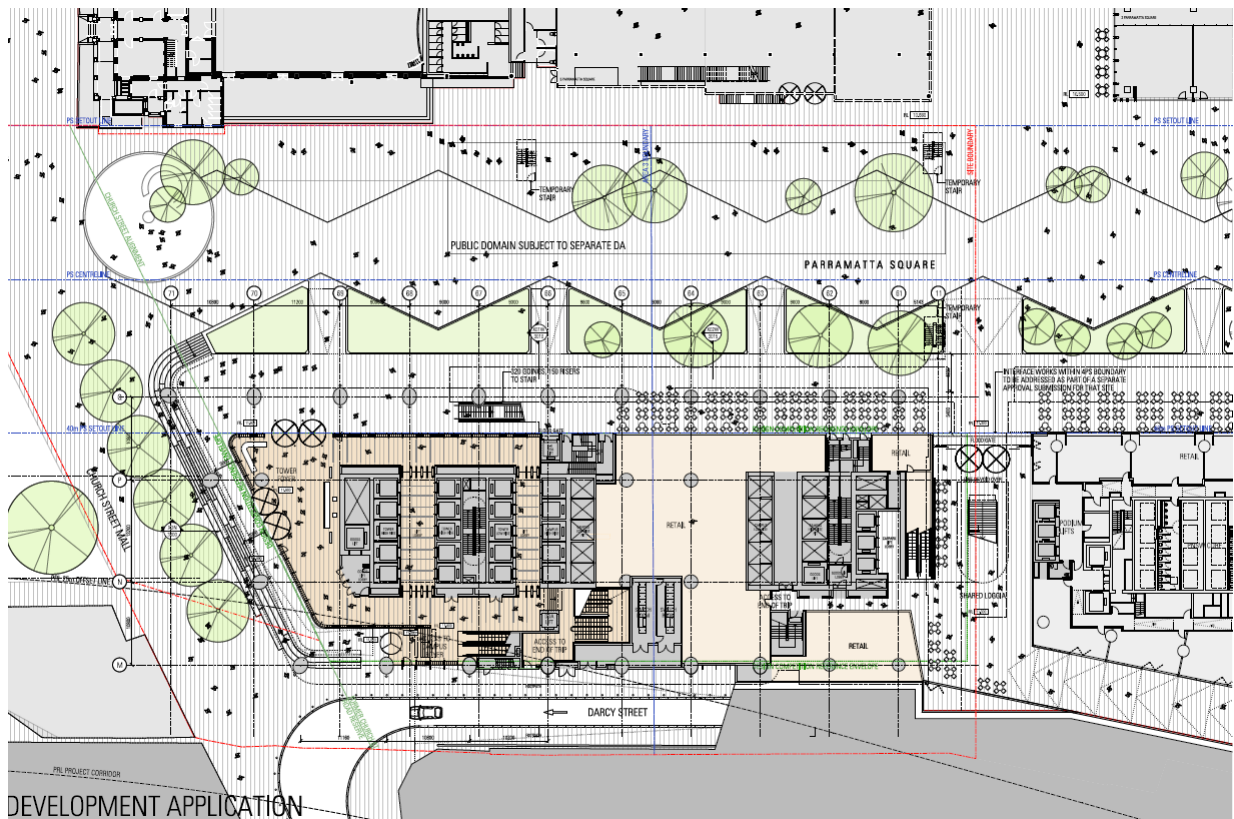


Figure 8 – Colonnade and columns of 6/8 PSQ along the northern frontage of Parramatta Square

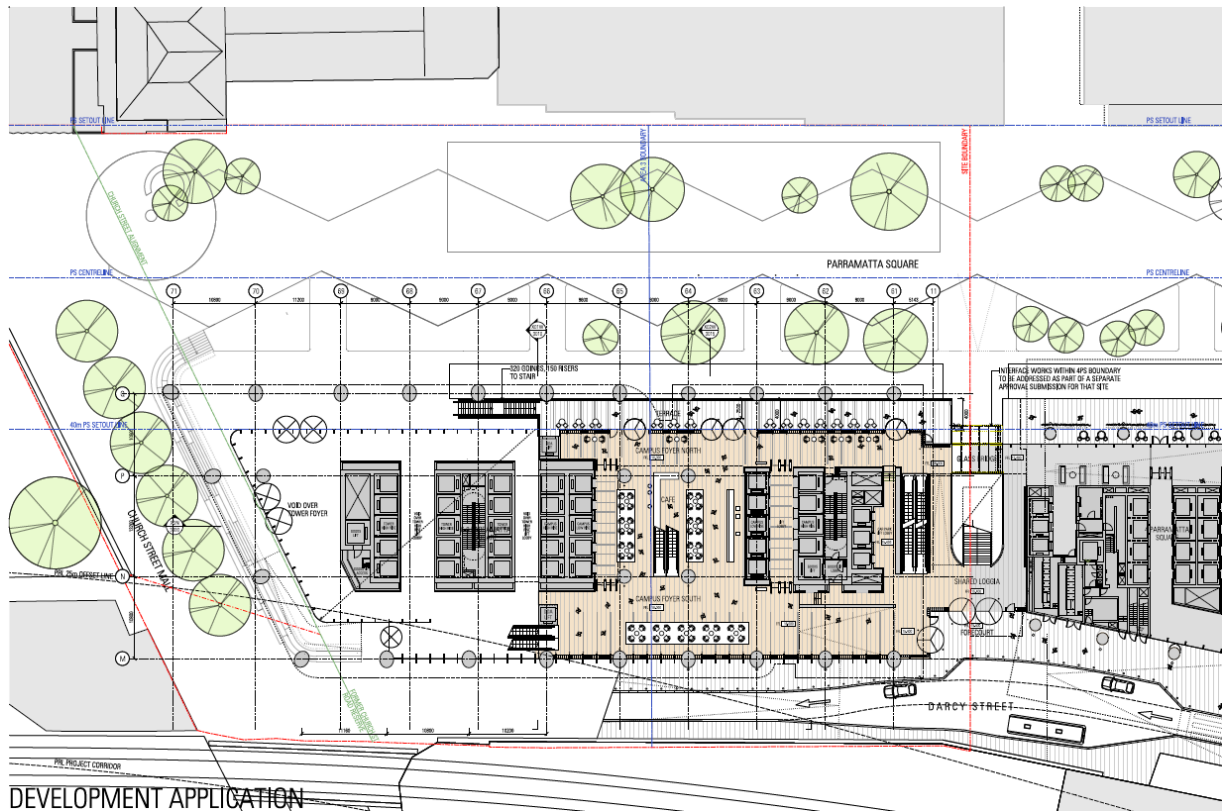


Figure 9 – Terrace and stairs – Upper Ground (Lobby)

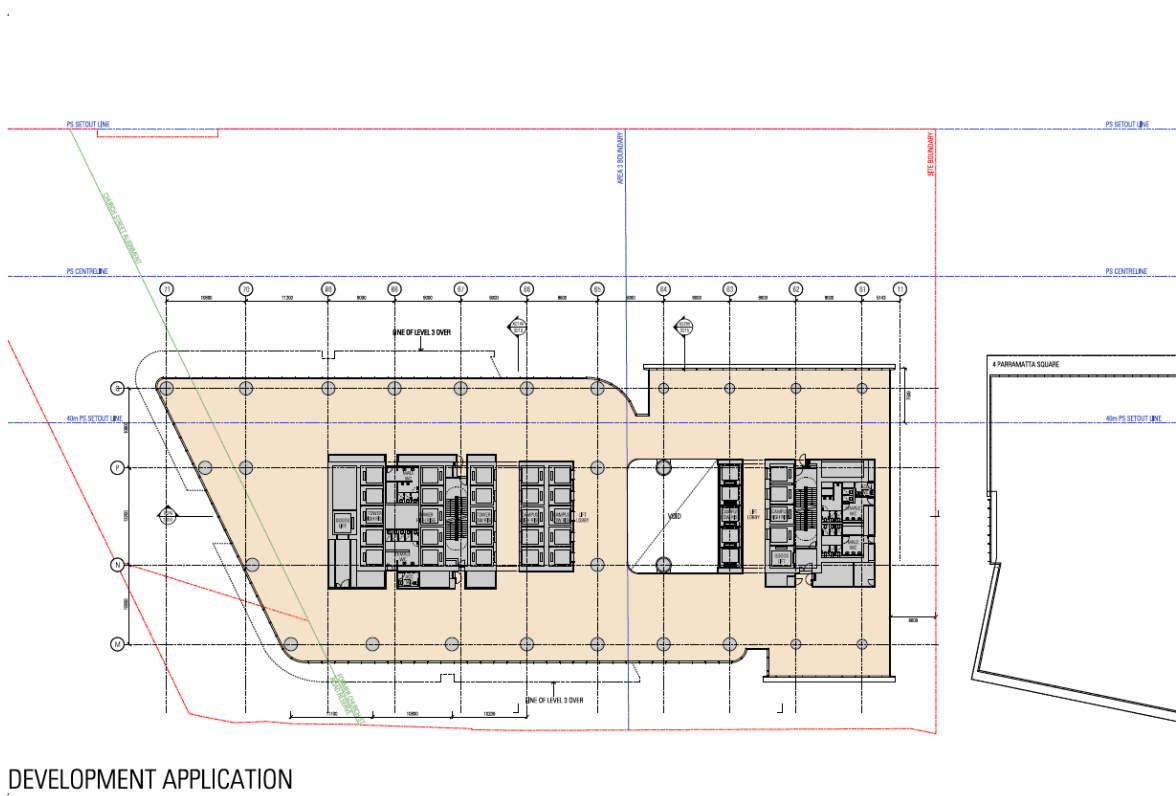
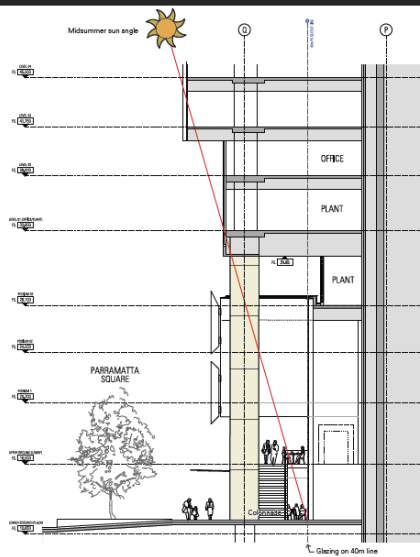


Figure 10 – Campus Floor (Level 3) – showing linear edge on level 3 of the 8PSQ component



Podium Section  
22 December



Podium Section  
22 December

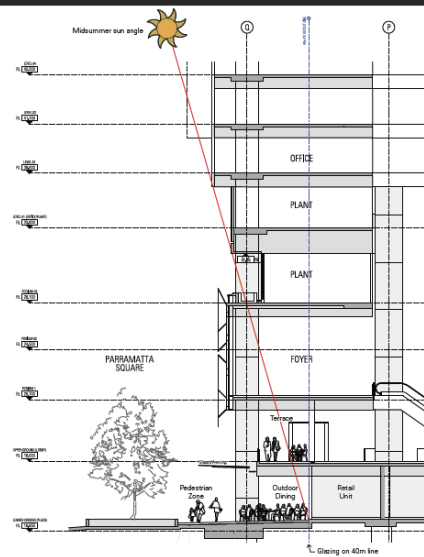
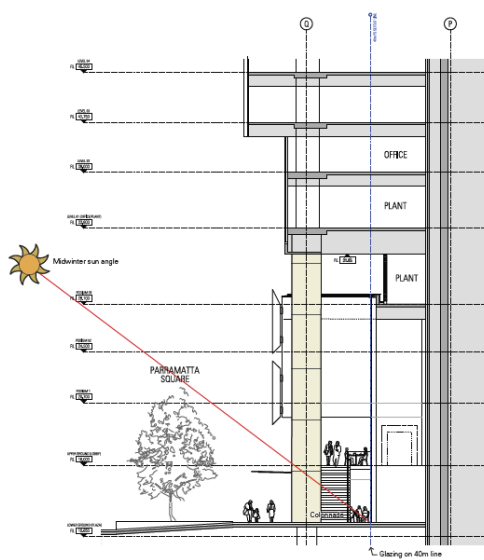


Figure 11 – Mid Summer sun angle.

Podium Section  
22 June



Podium Section  
22 June

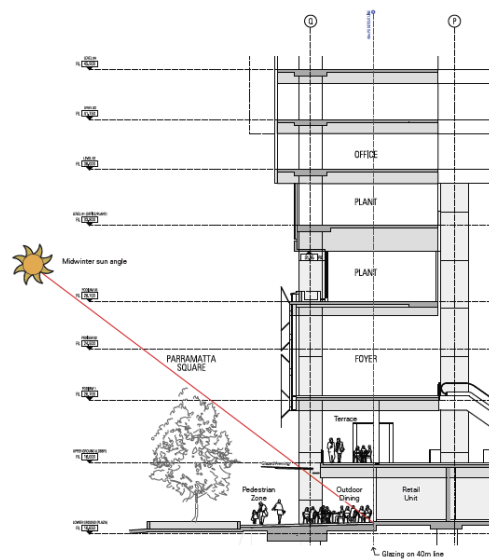
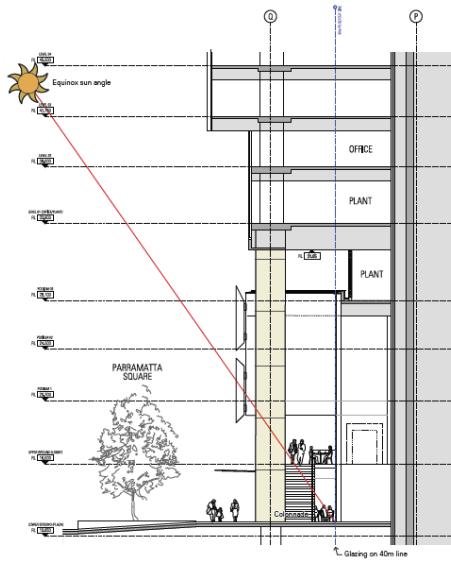


Figure 12 – Mid Winter sun angle.

Podium Section  
22 March & September



Podium Section  
22 March & September

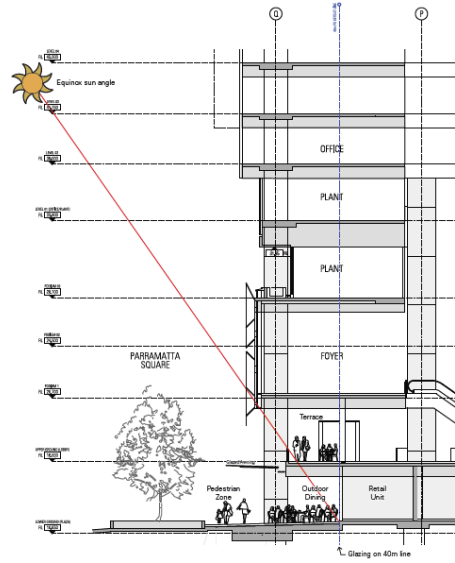
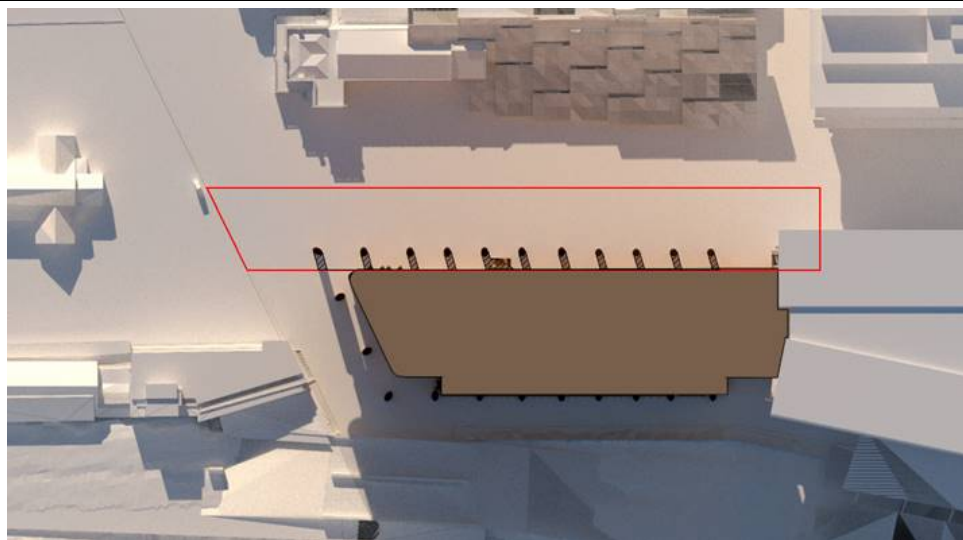


Figure 13 – Equinox sun angle.

**2.30** This request seeks flexibility in the application of clause 7.4(2) to permit additional overshadowing between 12 noon and 2pm, on Parramatta Square, being the land at Parramatta Square shown with blue hatching on the Sun Access Protection Map. The sun access protection zone is an area of 2,808.5m<sup>2</sup>. The extent of variation requested is detailed hereunder:

- Midwinter on 22 June
  - At 12pm - 3.4% (96.58m<sup>2</sup>) of the sun access protection zone to be overshadowed
  - At 1pm - 4.2% (116.8m<sup>2</sup>) of the sun access protection zone to be overshadowed
  - At 2pm - 5.5% (153.3m<sup>2</sup>) of the sun access protection zone to be overshadowed

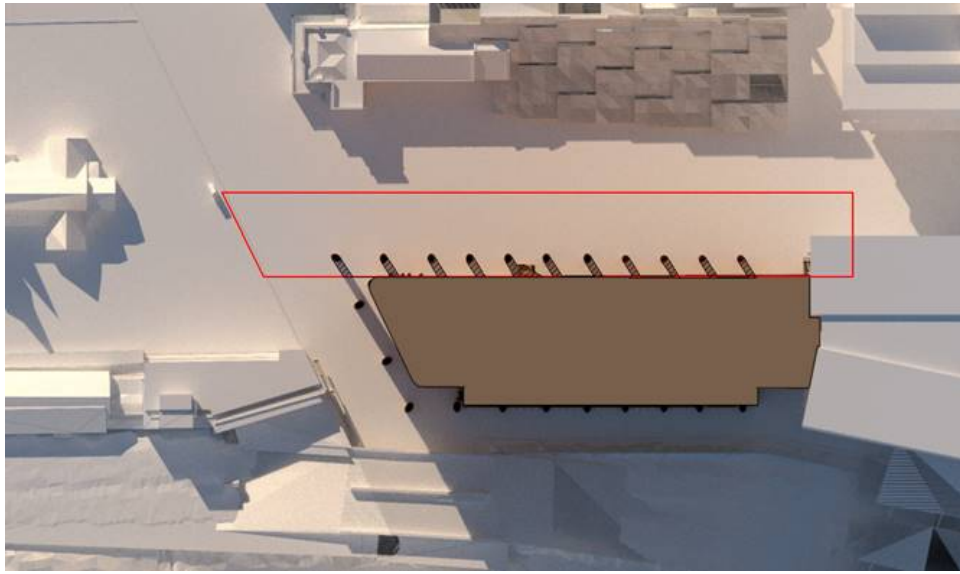
12PM



Total Area: **2808.5 sqm**      Shaded Area: **96.58**

Shading Percentage: **3.4%**

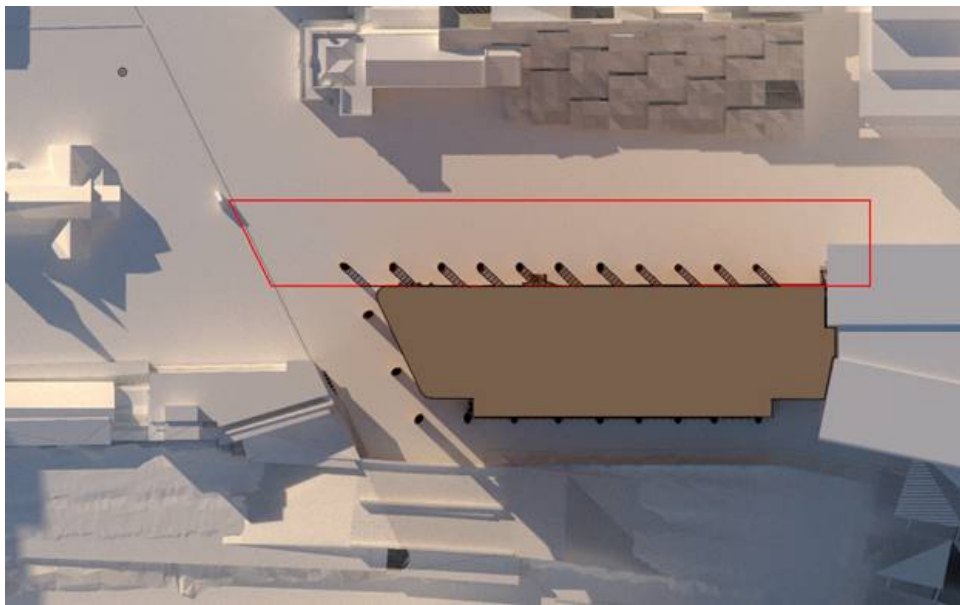
1PM



Total Area: **2808.5 sqm**      Shaded Area: 116.8

Shading Percentage: **4.2%**

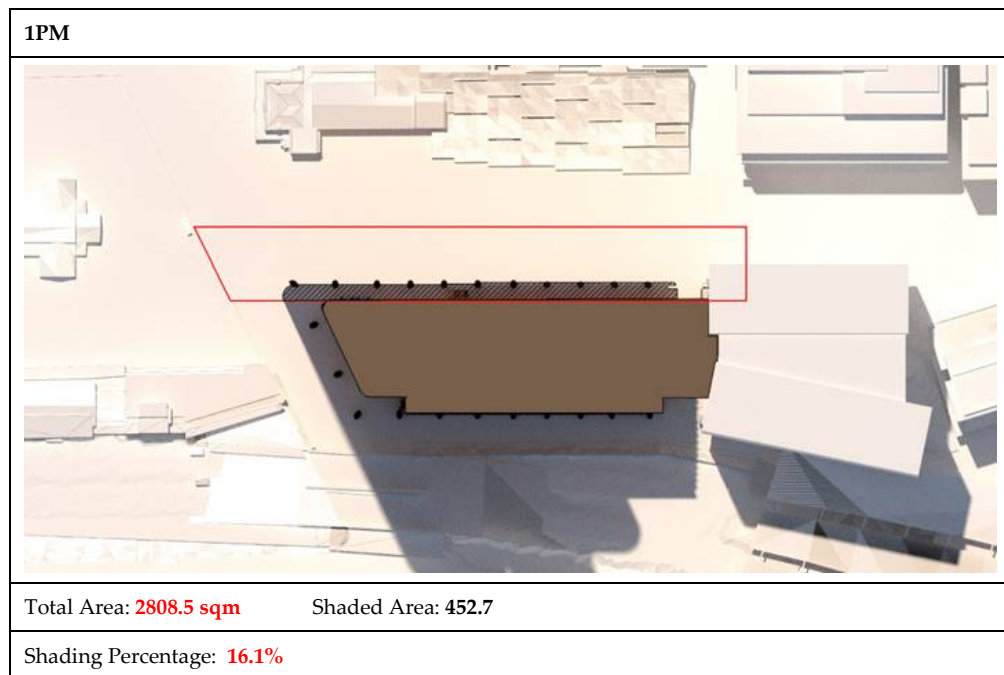
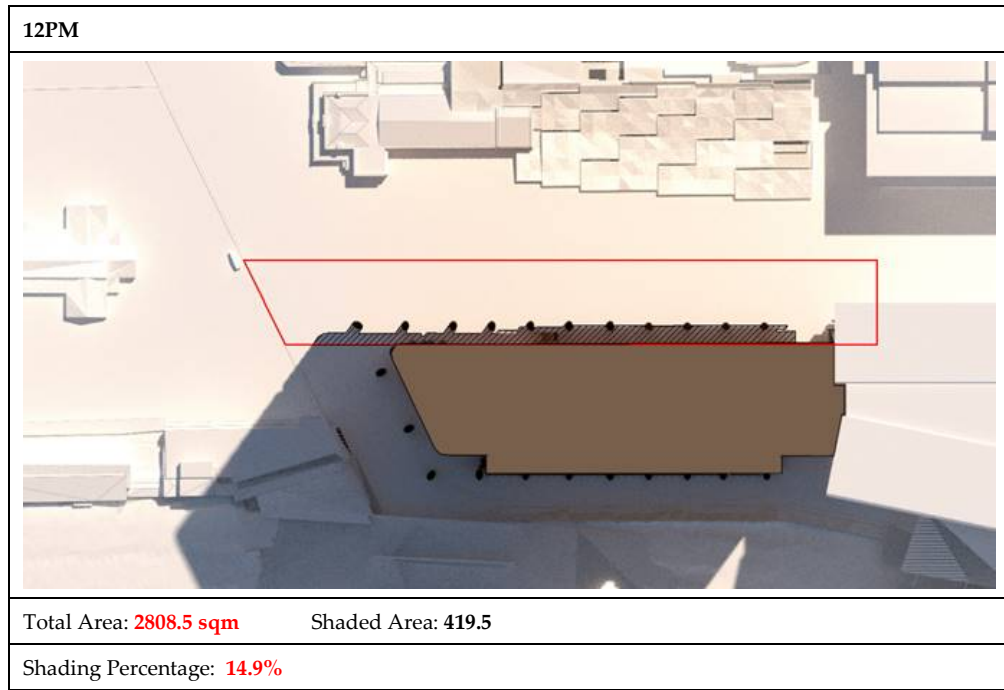
2PM



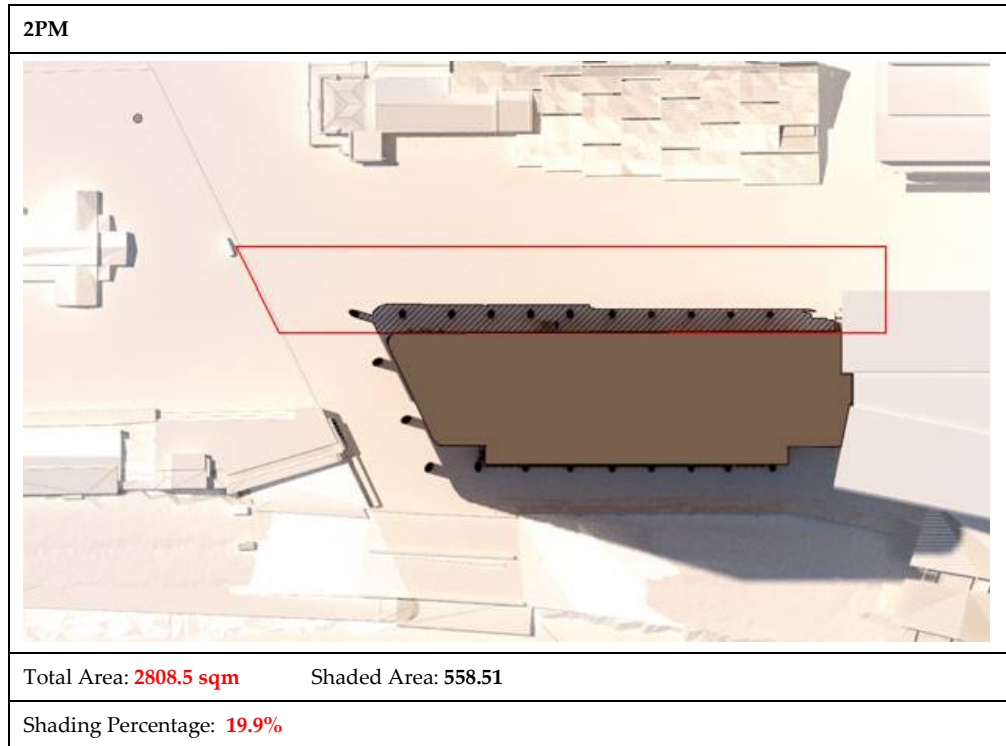
Total Area: **2808.5 sqm**      Shaded Area: 153.3

Shading Percentage: **5.5%**

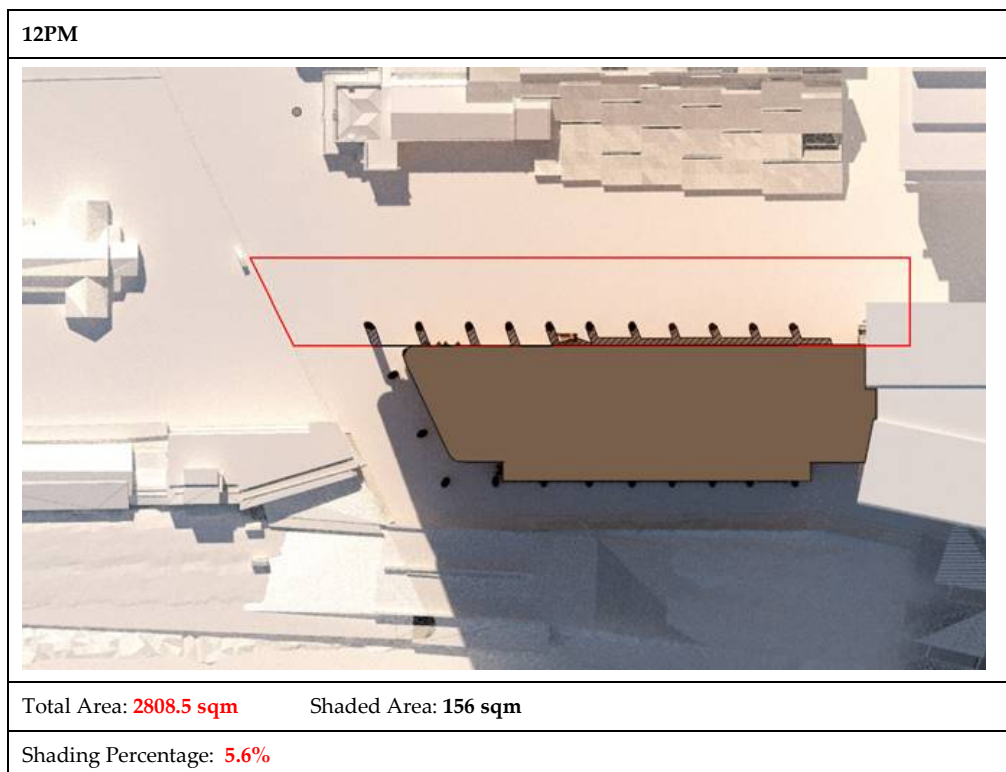
- Summer Solstice on 22 December
  - At 12pm - 14.9% (419.5m<sup>2</sup>) of the sun access protection zone to be overshadowed
  - At 1pm - 16.1% (452.7m<sup>2</sup>) of the sun access protection zone to be overshadowed
  - At 2pm - 19.9% (558.51m<sup>2</sup>) of the sun access protection zone to be overshadowed



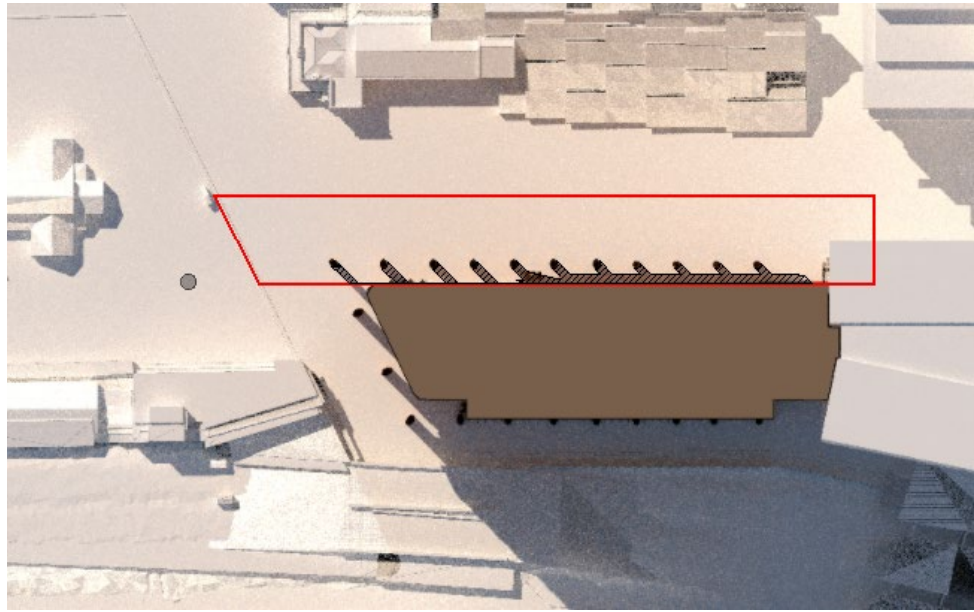




- Autumn / Spring Equinox on 22 March
  - At 12pm - 5.6% (156m<sup>2</sup>) of the sun access protection zone to be overshadowed
  - At 1pm - 7.5% (211.26m<sup>2</sup>) of the sun access protection zone to be overshadowed
  - At 2pm - 9.2% (259.55m<sup>2</sup>) of the sun access protection zone to be overshadowed



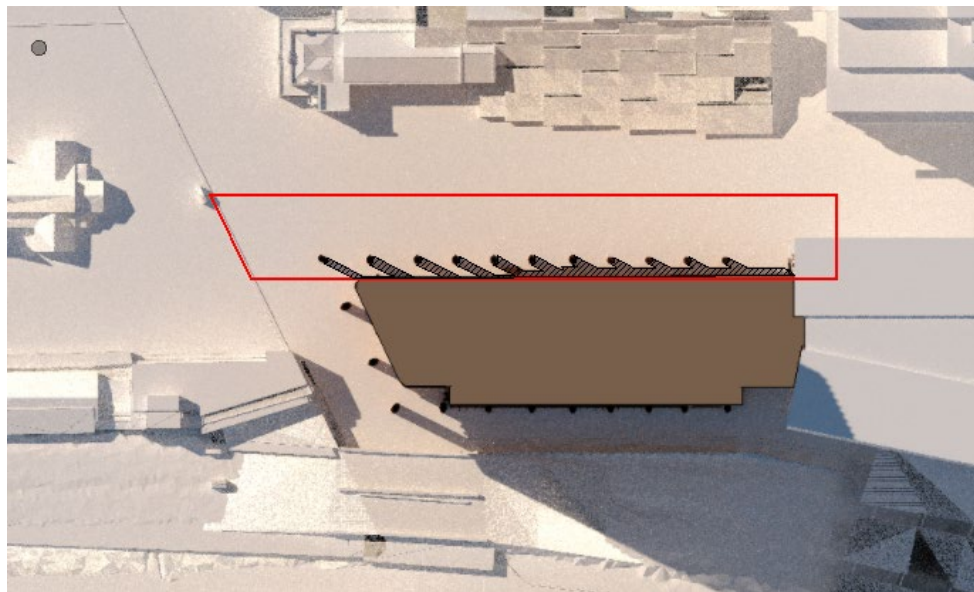
1PM



Total Area: **2808.5 sqm**      Shaded Area: **211.26 sqm**

Shading Percentage: **7.5%**

2PM



Total Area: **2808.5 sqm**      Shaded Area: **259.55 sqm**

Shading Percentage: **9.2%**

**2.31** In summary, a variation to the standard at clause 7.4(2) of PLEP 2011 is requested to allow a minimum of 3.4% (96.58m<sup>2</sup>) and a maximum of 19.9% (558.51m<sup>2</sup>) of the sun access protection zone to be overshadowed, between 12 noon and 2pm, on Parramatta Square, being the land at Parramatta Square shown with blue hatching on the Sun Access Protection Map.

### 3.0 JUSTIFICATION FOR PROPOSED VARIATION

#### **Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

- 3.1** The purpose of the standard is abundantly clear. It is to protect a particular area of public open space within Parramatta Square from overshadowing. This purpose is a fundamental and long established principle enshrined in planning legislation and planning controls throughout NSW. Compliance with the standard is important in providing a good level of amenity to Parramatta Square to ensure its success as a useable open space within the city.
- 3.2** However, in this instance compliance with the development standard is unreasonable and unnecessary because:
- The overshadowing occurs at the margin of the solar protection area with the majority of the area remaining free from shadows, and thus the desirability of this space for active uses such as markets, entertainment, events and outdoor dining is not undermined. In summer at 12 noon, 85% of the solar protection area is free from shadows and at 2pm, 80% is free from shadows. At mid-winter at 12 noon, approximately 97% of the solar protection area is free from shadows and at 2pm, 95% of the solar protection area is free from shadows.
  - The shadow diagrams demonstrate that the overshadowing does not impact on the future planting of vegetation within the Parramatta Square public domain.
  - The planning standard was introduced to control the building form of development to the north. These developments because of their location and orientation have shadows that fall to the south and to the southeast, potentially overshadowing Parramatta Square. The 6/8 development is located on the southern side of Parramatta Square and as demonstrated by the shadow diagrams the main shadows fall to the south and southeast, with only marginal shadowing falling to the north.
  - In order to satisfy the standard (as evidenced by the sun angle diagrams for the summer solstice when the sun angle is at its highest) all built form to the north below the sun angle plane would need to be removed (i.e. the columns, stairs, upper ground terrace, podium 1 and Level 3). However, the Design Jury identified these elements, and particularly valued them and requested they be retained in the DA design as follows: *(a) Civic Colonnade – support for the proposition of a grand colonnade that forms a civic address to Parramatta Square. The proposed form of the columns (elliptical and circular), materiality (sandstone and granite / other stone), scale and relationship to surrounding buildings should be retained (b) Public Terrace (Level 01). The proposed public terrace, located on the upper ground floor provides an important public connection linking Darcy Street to Centenary Square. Unambiguously public access to the terrace must be retained. The public stairs linking Parramatta Square to the Public Terrace are also supported. ...* From an urban design and design excellence perspective, the impact of satisfying the standard would be overwhelmingly detrimental to the quality of the development as it relates to the public realm. The ability to structurally support and construct the cantilever above Level 3 would obviously provide further challenges.

**Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development**

- 3.3 The building form has been refined through the detailed design process in consultation with the Design Excellence Jury and which has awarded the building design excellence. The transformational effect of the development of Parramatta Square Precinct will enhance the locality as one of Parramatta's preferred locations for commerce.
- 3.4 The development has the capacity to transform what exists today as an under-utilised site into a precinct that is a destination in itself. There is therefore a great opportunity and responsibility to support the development commensurate with its strategic significance, while reinforcing the desired future character of the area
- 3.5 It is apparent the proposed variation to the standard is a desirable outcome. The outdoor dining area is provided with a high level of sun access in mid-winter when it is desirable and shade in summer when it is desirable.
- 3.6 The overshadowing does not cause any adverse impacts on the amenity of the locality. The proposed building has been assessed for its potential impacts on the desired future character of the area, overshadowing, views, heritage and wind environment, and has been found to be acceptable in each of these cases.
- 3.7 In light of the above, there are no environmental planning grounds that warrant maintaining and/or enforcing the overshadowing standard in this instance.

**Clause 4.6(4)(a)(ii): The development is in the public interest because it is consistent with the objectives of the development standard and objectives for development within the zone**

- 3.8 The proposed development is consistent with the objective of the overshadowing standard, for the reasons discussed above.
- 3.9 The site is affected by two land use zones: the B4 Mixed Use and the SP2 Infrastructure Zone. The majority of the zone is affected by the B4 Mixed Use Zone with some 44m<sup>2</sup> of the site affected by the SP2 Infrastructure Zone.
- 3.10 The objectives for the B4 Mixed Use zone are as follows:
- *To provide a mixture of compatible land uses.*
  - *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
  - *To encourage development that contributes to an active, vibrant and sustainable neighbourhood.*
  - *To create opportunities to improve the public domain and pedestrian links.*
  - *To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.*



- *To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.*

**3.11** The proposed development is consistent with the zone objectives for the following reasons:

- It provides a mixture of compatible land uses being commercial, retail and function centre.
- It integrates suitable business, office and retail development in an accessible location so as to maximise public transport patronage and encourage walking and cycling. The proximity of the Parramatta train station, the bus interchange, Parramatta Westfield and the surrounding shopping district demonstrates that the location is appropriate and accessible. The proposed development is designed to respond to and integrate with these facilities. It similarly encourages appropriate employment opportunities in accessible locations.
- The development will contribute to the creation of an active, vibrant and sustainable precinct. It achieves this with its relationship to Parramatta Square and Darcy Street by maximising active frontages. Other than openings for pedestrian circulation, the retail frontage to Parramatta Square is continuous and can be configured in a variety of formats to suit different food and beverage offerings. The upper ground level slab edge projects along the northern frontage to Parramatta Square to provide a protected zone for pedestrians along this edge. The development creates opportunities to improve the public domain, pedestrian links and view corridors.
- The development provides for the daily commercial needs of the locality.
- The development protects and enhances the unique qualities and character of special areas within the Parramatta City Centre.

**3.12** The objectives of the SP2 Zone are:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

**3.13** The proposed development is located adjoining the railway easement of the western line and Parramatta Station and the Parramatta to Epping rail reserve traverses part of the site. Nothing in the proposed development will detract from the ability to provided future infrastructure within the designated reserve and the proposed development will augment access to Parramatta Station. The proposed development is therefore consistent with the objectives of the zone.

***Overall public interest***

**3.14** In accordance with the requirements of Clause 4.6(4)(a)(ii), the proposed development and variation to the development standard is in the public interest because it achieves the objectives of both the development standard and the land use zone.

## 4.0 CONCLUSION

- 4.1** Compliance with the development standard contained in Clause 7.4(2) of the Parramatta LEP 2011 is unreasonable and unnecessary in the circumstances of the case, and the justification to vary that standard is well founded. The proposed variation allows for a better planning outcome for the site and recognises the unique circumstances of the proposal.
- 4.2** This clause 4.6 variation request demonstrates, notwithstanding the proposed variation to the development standard, that:
- the objectives of the overshadowing development standard are achieved notwithstanding the variation to the numerical control;
  - the proposed flexible application of controls achieves better planning and architectural outcomes than would be achievable by strict adherence to the controls across the development site;
  - it is in the public interest as the proposal is consistent with the applicable land use zones and development standards;
  - the additional overshadowing of Parramatta Square will not result in adverse amenity or environmental impacts;
  - the non-compliance with the development standard does not raise any matters of State and regional planning significance;
  - there is no public benefit in maintaining the development standard adopted by the environmental planning instrument for this site; and
  - the circumstance particular to this site and the development proposal are such that they and this justification are unlikely to be replicated.
- 4.3** The clause 4.6 request demonstrates that the proposed development will deliver a better outcome for the site, and the broader community. Overall, the proposal optimises the opportunity to establish a high quality development that creates a revitalised precinct in the City Centre of Parramatta and provides significant public benefits, consistent with Parramatta Council's objectives.
- 4.4** For the reasons set out in this written request, the proposed development should be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Parramatta LEP 2011.

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# Stage 6 & 8 Parramatta Square

Commercial tower & retail space

Clause 4.6 - Variation Request



6 & 7 Parramatta Square  
Parramatta NSW 2150

Prepared By:  
Walker Corporation Pty Ltd  
Level 21 Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000



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# 1.0 INTRODUCTION

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## Overview of request for variation

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- 1.1 The proposed variation to the development standards contained in Clause 7.8, as permitted under Clause 4.6 of the *Parramatta Local Environment Plan 2011* (Parramatta LEP 2011), is requested in the context of the Development Application for 6&8 Parramatta Square located in the city centre of Parramatta and the particular characteristics of the site. The principal arguments in favour of this variation are detailed in this request prepared by Walker Corporation.
- 1.2 This request is to:
- to set aside the requirement to provide residential common areas and private open space in Clause 7.8(2)(a) & (b); and
  - to vary the maximum gross floor space in Clause 7.8 to allow additional floor space within the proposed building.
- 1.3 The request is considered justified in the context of the circumstances of the project, and in terms of it satisfying the established tests associated with clause 4.6 variations. It is considered that flexibility in the application of the development standards is justified.
- 1.4 The redevelopment of Parramatta Square is a once in a generation intervention in the urban fabric of central Parramatta. The ownership of key parcels of land by the City of Parramatta has created a large redevelopment site equivalent to a city block that would otherwise not have occurred. The Development Application is a place making opportunity and arises from the desire by the City of Parramatta to create a major civic space and commercial hub in the heart of the Parramatta CBD that seamlessly integrates with and augments pedestrian access to Parramatta Railway Station.
- 1.5 The site has the ability to accommodate a significant number of additional workers due to its proximity to the Parramatta Railway Station. New development proposed in Parramatta Square will unlock growth opportunities in the commercial heart of the Parramatta CBD.
- 1.6 In the light of this opportunity, the consent authority is requested that a site located adjoining a railway station and a future light rail should be enabled to maximises this opportunity to the modest extent requested. The proposed variation is sought in a responsible manner and the assessment of the variation in terms of the key controls that affect and protect the environmental quality the site, demonstrates that the impact of the proposed variation is materially neutral.

## Clause 4.6 Variation

- 1.7 Clause 4.6 of Parramatta LEP 2011 enables the consent authority to grant consent to development that departs from a development standard included in the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards, including floor space, that achieve better outcomes or that are in the public interest.

- 1.8 Clause 4.6 of the LEP reads:

### *4.6 Exceptions to development standards*

*(1) the objectives of this clause are as follows:*

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development 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 to a development standard that is expressly excluded from the operation of this clause.*

*(3) Development 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:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(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*

*(b) the concurrence of the Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and*

*(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

*(6).....(7)*

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following:*

*(a) a development standard for complying development,*

*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building, to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for land on which such a building is situated,*

*(c) clause 5.4,*

*(ca) a development standard that relates to the height of a building, or a floor space ratio, in Parramatta City Centre (as referred to in clause 7.1 (1)) by more than 5%.*

## Guidance contained in Case Law

**1.9** Guidance in justifying a variation to a development standard is found in a number of key decisions of the NSW Land and Environment Court, in particular, in the following judgements:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

**1.10** Consistent with the statutory requirements set out in Clause 4.6, and as guided by the above case law, this request to vary a development standard:

- identifies the development standard to be varied;
- identifies the extent of the variation sought;
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances;
- demonstrates that there are sufficient environmental planning grounds to justify the variation; and
- demonstrates that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the B4 zone and SP2 zone.



1.11 Development consent can therefore be granted to the proposed development despite the proposed variation of the development standard because, pursuant to clause 4.6(4)(a) the consent authority can be satisfied that:

- this written request has adequately addressed the matters required to be demonstrated by clause 4.6(3); and
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone(s).

## 2.0 Development Standard to be Varied

### Parramatta LEP 2011 - Clause 7.8

2.1 Council has by letter dated 29 August 2016, confirmed that the site specific development controls included in clause 7.8 are development standards. The letter states in part that *'if you are not proposing to comply with the development standards contained in clause 7.8(2)(a) and (b,) a written request is required that seeks to justify the contravention of the development standards in accordance with the provisions of clause 4.6'.*

2.2 Clause 7.8 of the LEP reads:

*'7.8 Development on land at 160 – 182 Church Street, Parramatta*

*(1) This clause applies to land marked 'Area 3' on the Special Provisions Area Map.*

*(2) Despite clauses 4.3, 4.4 and 7.10 (5), the consent authority may grant consent to development on land to which this clause applies, but only if the consent authority is satisfied that the gross floor area of any resulting building will not be greater than 95,000 square metres and of that gross floor area:*

*(a) not less than 10% will be used for common areas such as common rooms, communal gardens, corridors, foyers and recreation facilities (indoor), and*

*(b) not less than 5% will be used for private open space.'*

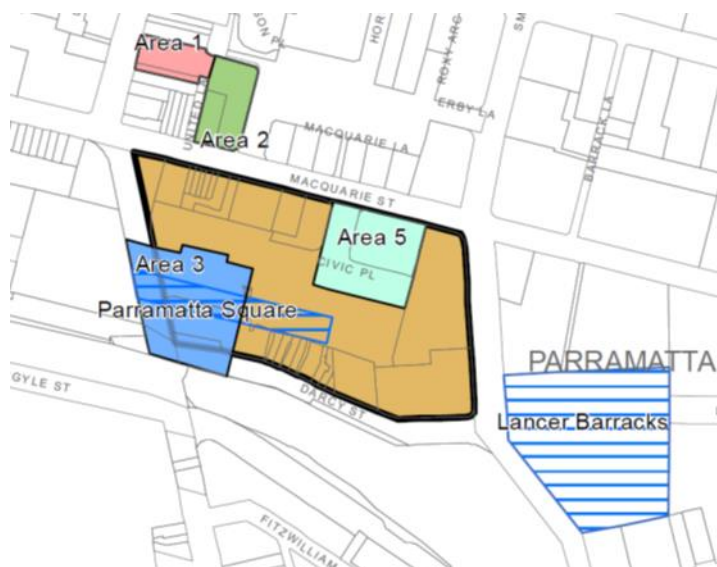


Figure 1 – 'Area 3' on the Special Provisions Area Map – PLEP 2011

## The variation sought

2.3 It is requested that :

- Clause 7.8 (2) which limits that maximum gross floor area permissible to 95,000m<sup>2</sup> in Area 3, be varied to enable an increase of GFA by 5% to 99,750m<sup>2</sup>; and
- the requirement contained in Clause 7.8 (2) (a) and (b) that:
 

*‘(a) not less than 10% will be used for common areas such as common rooms, communal gardens, corridors, foyers and recreation facilities (indoor), and*

*(b) not less than 5% will be used for private open space’.*

be set aside.

## The Land Subject to this variation

- 2.4 This Clause 4.6 request to vary a development standard relates to land at 6&7 Parramatta Square, Parramatta. Also known as Stage 6&8 Parramatta Square.
- 2.5 The site is located at the south western sector of the Parramatta Square precinct on the corner of Church Street Mall and Darcy Street. The site also includes the Church Street Mall reserve to the west and Darcy Street reserve to the south. To the north, the site includes and adjoins the proposed central civic space in Parramatta Square.

## Site Description

- 2.6 The site is generally rectangular with a total area of 9,785m<sup>2</sup>. The proposal includes development that extend into the Darcy Street reserve and Church Street Mall reserve. The site is affected by the Parramatta to Epping project corridor and includes part of the Parramatta Rail Corridor.
- 2.7 The site is located in proximity to a number local and state heritage items. Two key heritage items that adjoin the site are Parramatta Town Hall and St John’s Anglican Church.

## Site Context - Parramatta Square

- 2.8 The Parramatta Square precinct is designated by Parramatta Council as a mixed use urban renewal area and is strategically significant. It represents a unique opportunity in time to influence the nature of development in the Parramatta CBD and to reinforce its position as the second major urban centre in the state. An key consideration in the justification of the variation sought to the development standards is the context of the site.
- 2.9 Since the adoption of the Master Plan for a Civic Place in 2003 by Parramatta Council, now superseded by the Parramatta Square Masterplan 2015, the master planning of the precinct has

been designed to revitalise the civic and business centre of Parramatta. This is proposed by reconfiguring the existing built form and spatial arrangement to create a central public square, defined by new buildings including commercial, civic and retail uses.

- 2.10 The Parramatta Square precinct will be the location of new Parramatta Council administration and Council Chambers, the Parramatta University of Western Sydney Campus building, 'A' grade office buildings that will attract significant corporate tenants all adjoining a new central public space. It is envisaged that the proposed uses will generate a critical mass of human activity to revitalise the civic heart of Parramatta as a destination for community and ceremonial gatherings and cultural celebration.
- 2.11 The development of Parramatta Square is intended by the Parramatta Council to demonstrate design excellence and environmental sustainability as well as achieving targets for future employment growth by encouraging development that will generate employment opportunities.

### Surrounding Development – Existing and Future

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- 2.12 Land use in the vicinity of the site is primarily retail and office, as follows:-

- To the north of the site is Parramatta Town Hall and 5 Parramatta Square the site of the future Parramatta library, Heritage and Visitor Centre, and Experience and Discovery Centres.
- To the north and north-east, interspersed with the existing building stock in Macquarie Street east on the southern side is 1 Parramatta Square, the site of University of Western Sydney 15 storey campus and now completed, and 3 Parramatta Square, the site of a future commercial office building.
- The site adjoins 4 Parramatta Square to the east, the site of a commercial office tower and for which development consent has been granted;
- Further to the east of the site, adjoining 4 Parramatta Square, is the Sydney Water building a multi-storey commercial office building consisting of some 14 levels;
- To the west is Church Street Mall and St John's Anglican Cathedral; and
- To the south, the site adjoins Darcy Street and the Parramatta transport interchange including Parramatta Railway Station and concourse, and the Parramatta Railway line viaduct. The Westfield Regional Shopping Centre is located to the south of interchange.



## Nature of variation Sought

### Clause 7.8 2(a) & 2(b)

- 2.13 Clause 7.8 and 'Area 3' were introduced as part of Amendment 10 to the Parramatta Local Environmental Plan 2011 in December 2015, following the approval of Planning Proposal PP\_2013\_PARRA\_001\_00. The Planning Proposal was for the Aspire residential tower at 160 – 182 Church Street, Parramatta (now referred to as 8 Parramatta Square) and sought site specific provisions to ensure a high standard of residential amenity of a future residential and hotel tower.
- 2.14 Common areas such as communal gardens and indoor recreation facilities and private open space are amenities associated with residential development. These terms are referenced in the 'Apartment Design Guide – Tools for improving the design of residential apartment development', published by the Department of Environment and Planning. By way of example, communal open space is defined in the Apartment Design Guide as: 'outdoor space located within the site at ground level or on a structure that is within common ownership and for the recreational use of residents of the development. Communal open space may be accessible to residents only, or to the public.' Private open space is defined under the Apartment Design Guide as: 'outdoor space located at ground level or on a structure that is within private ownership and provided for the recreational use of residents of the associated apartment.' (our emphasis)
- 2.15 The site specific controls for 'Area 3' permit 95,000m<sup>2</sup> of gross floor area (GFA) on the basis that a minimum amount of common area and private open space be provided for residents of the development.
- 2.16 However, since the site specific controls were introduced, a review of the most appropriate use of the site has been undertaken which has resulted in the use changing from residential to commercial. In addition, a need for campus style floorplates has been identified resulting in 6 Parramatta Square being combined with 8 Parramatta Square.
- 2.17 As a result, the development footprint of 6&8 Parramatta Square, is partially located within 'Area 3' and which results in clause 7.8 of the LEP applying to that part of the building.
- 2.18 As a consequence, it is impossible for the subject application to comply with the development standards for common areas and private open space at clause 7.8(2) (a) and 7.8(2)(b) as these are relevant to a residential development, not a commercial development.
- 2.19 Clause 7.8(2)
- 2.20 Variation is also sought to the requirement included in clause 7.8(2) that any resulting building in 'Area 3' not be greater than 95,000m<sup>2</sup>. It is requested that the maximum cap to be varied by 5% or 4,750m<sup>2</sup>.
- 2.21 The development that has undergone a Architectural Design Excellence Competition and designated as demonstrating Design Excellence.

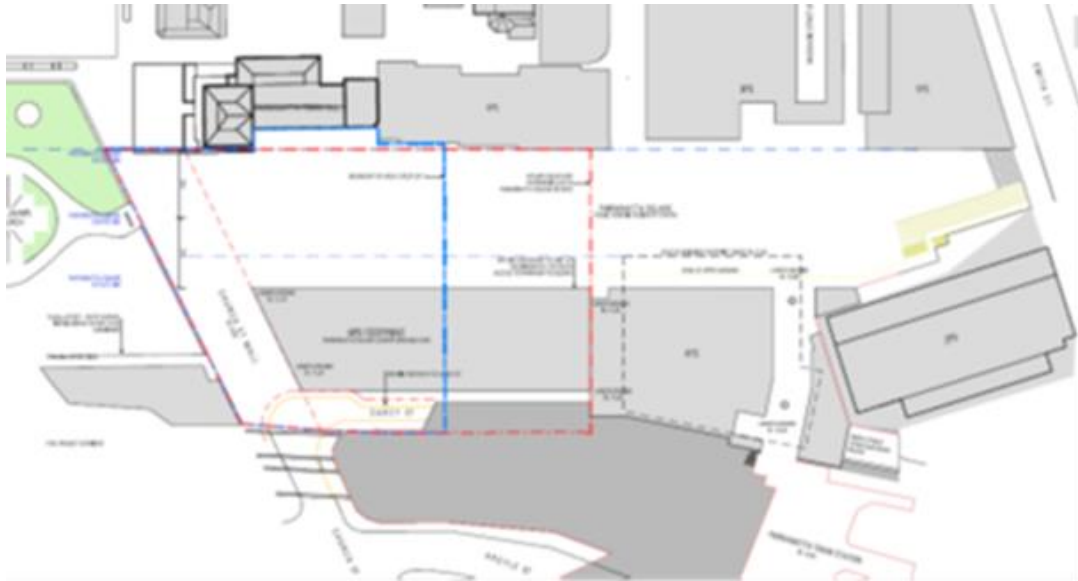


Figure 2 – Description of part site located in Area 3.

## 3.0 Justification for proposed Variation

### Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

- 3.1 In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ of the Land and Environment Court identified five ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.
- 3.2 While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).
- 3.3 The five ways outlined in *Wehbe* include:
  1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
  2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
  3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
  4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*
  5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*
- 3.4 It was not suggested by Preston CJ, that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary, nor that a development need not demonstrate satisfaction of more than one of five ways outlined.
- 3.5 This clause 4.6 request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development.

3.6 Relevant to the variation sought in relation to Clause 7.8 (2) and 7.8 2(a) and 2(b):

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (First way); and

3.7 Relevant to Clause 7.8 2(a) and 2(b):

- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second way); and

3.8 Relevant to Clause 7.8(2)

- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth way).

and accordingly justifies the variation to the development standard in three of the five ways outlined in Wehbe.

3.9 In addition, the judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge, on appeal, upheld the Commissioner's approval of significant variations to height and FSR controls. He noted that under Clause 4.6, the consent authority did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses the matters in clause 4.6(3)(a), that compliance with each development standard is unreasonable or unnecessary.

**The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way)**

3.10 Clause 7.8 does not include objectives, nor does the clause include a FSR but a GFA cap of 95,000m<sup>2</sup> for the land identified as 'Area 3'. The objectives of the FSR development standard included in clause 4.4 of the Parramatta LEP 2011 state:

*(a) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*

*(b) to provide a transition in built form and land use intensity within the area covered by this Plan,*

*(c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings*

*(d) to reinforce and respect the existing character and scale of low density residential areas.*

3.11 The floor space cap of 95,000m<sup>2</sup> is a measure of density and can be readily converted to a FSR equivalent. Therefore, the objectives are considered relevant and applicable. The objectives considered relevant to the requested variation are (a), (b) and (c). The site is not in proximity to any low rise residential areas and therefore objective (d) is not relevant.

- 3.12 Objective (a) –to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
- 3.13 The development application is seeking consent for an increase by 5% in the quantum of permissible floor space or 4,750m<sup>2</sup>. The form of the building has been tested with various architectural schemes. The additional floor space represents two floors of the proposed tower or approximately one campus floor. The additional floor space does not impact on the perceived bulk or scale of the building envelope, and will not have a perceptible impact on the intensity of land use.

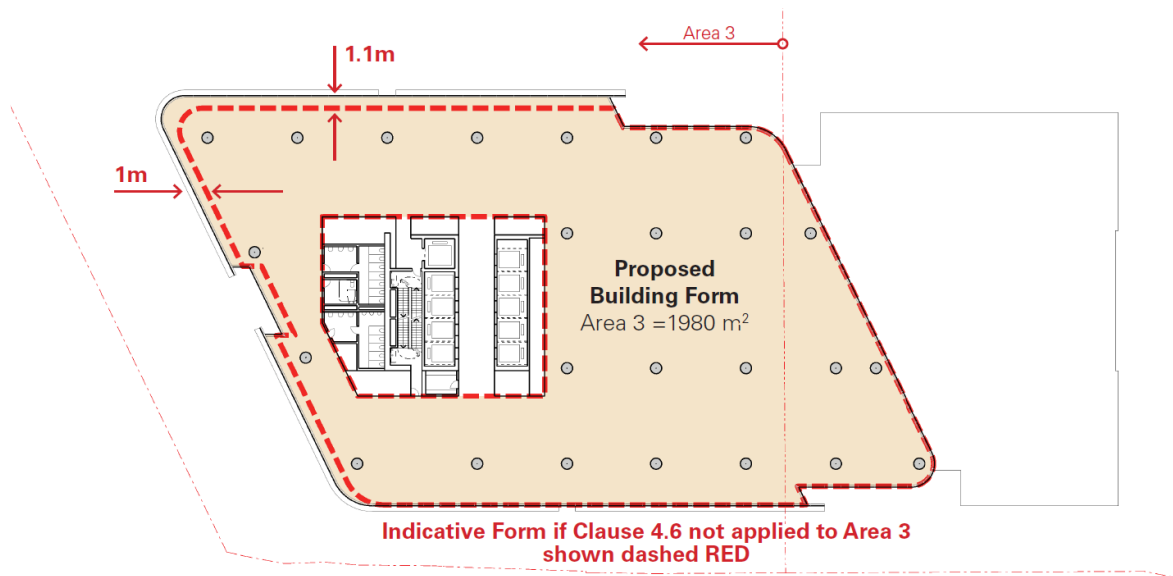


Figure 3 - Indicative Form if Clause 4.6 not applied to Area 3 shown dashed RED - JPW

#### Massing Implications of Clause 4.6

- 3.14 The diagram above illustrates the very minor impact the application of Clause 4.6 has on the building form within Area 3, whilst delivering multiple benefits at the ground levels and to the commercial floorplates above. As an example, a typical Sky Rise floor has 2,295m<sup>2</sup> NLA. Without the application of Clause 4.6, a 5% reduction in area would be required.
- 3.15 Such a reduction could be achieved in numerous ways, but all have detrimental impacts on floorplate flexibility and value, with no significant change to the building's external expression or silhouette in the city skyline, and all with undesirable impacts at ground level.
- 3.16 The application of Clause 4.6 allows the building form to deliver greater public benefit at ground level and create more efficient and effective commercial floorplates within the development.



### 3.17 Benefits of Application of Clause 4.6

- Greater separation and distinction between facades (A key issue for Design Excellence Jury);
- Improved floorplate flexibility with appropriate circulation zones around the core;
- Added diversity of commercial floorplate offering within the Parramatta CBD;
- Opportunities to integrate façade recesses and curved corners to better articulate building form and slenderness of tower;
- Increased pedestrian protection at ground levels without reducing accessible public space;
- More consistent colonnade expression to Parramatta Square and Church Street Mall;
- Greater value as a commercial attractor to the Parramatta CBD with minimal visual impact to the building's form or silhouette; and
- Allows for the inclusion of the Parramatta Sky Room Function Centre.

### 3.18 Impacts of Not Applying Clause 4.6

- Less separation and distinction between facades, which will result in a more uniform and less animated building expression;
- Reduced floorplate flexibility;
- Less floorplate diversity in the Parramatta CBD;
- More conventional building facades and expression;
- Less protection to public space at ground levels; and
- Eliminates the Parramatta Sky Room Function Centre.

3.1 The proposed basement forms part of the integrated vehicular basement for Parramatta Square. The basement plans fully integrate with the basement levels for Stages 1, 3, 4 & 6, 5 and 8 Parramatta Square and will provide interconnected vehicular access to these sites.

3.2 Vehicular access to basement parking and servicing facilities will be via two separate two way ramps, one located at the eastern end of Darcy Street, and the second from Macquarie Street, located within the footprint of 3 Parramatta Square.

#### Generation of vehicle and pedestrian traffic,

3.3 A total of 463 tenant car parking spaces are provided for 6&8 Parramatta Square. This quantum is substantially less than that permissible under the provisions of Parramatta LEP 2011 which is some 1,320 space.

- 3.4 A pedestrian study has been undertaken by WSP Australia Pty Ltd and is included in **Folder 3**. The projected pedestrian movement within Parramatta Square is some XXx. The impact of the additional employees generated by the additional floor space of some Xx is considered to be negligible in the context of the overall anticipated pedestrian movement.

*Objective - (b) to provide a transition in built form and land use intensity within the area covered by this Plan,*

- 3.5 The built form of 6&8 Parramatta Square in the context of the Parramatta CBD can be most effectively demonstrated by the recent approvals and construction activity in central Parramatta as described in Figure 4



Figure 4 – Development approved and or under consideration within Parramatta CBD – BG&E.

- 3.6 Within Parramatta Square the built form and scale of development is established by the site specific Parramatta Square guidelines included in Parramatta Development Control Plan 2011. A transitional form is established by solar access planes in Parramatta Square, the effective height control. The controls provide for low rise building envelopes on the northern side of Parramatta Square determined by solar access and overshadowing controls within Parramatta Square. On the southern side of the Parramatta Square, larger building envelopes are determined solar access planes designed to protect Lancer and Jubilee Parks from additional overshadowing. The proposed building envelope does not create additional shadow and is of a scale and form envisaged by the controls included in Parramatta LEP 2011 and Parramatta DCP 2011.

*Objective - (c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings*

- 3.7 The built form and scale and measures to protect the settings of heritage items is established by the site specific Parramatta Square guidelines included in Parramatta Development Control Plan 2011. A Heritage Impact Assessment (HIS) prepared by NBR+S is included in **Folder 3**. The report unreservedly recommends the approval of the proposed development from a heritage

perspective and makes positive reference in particular to the successful relationship of the design of the proposed development within its heritage context.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second way)

- 3.8 Clause 7.8 and 'Area 3' was introduced as part of Amendment 10 to the Parramatta Local Environmental Plan 2011 in December 2015, following the approval of Planning Proposal PP\_2013\_PARRA\_001\_00. The Planning Proposal was for the Aspire residential tower at 160 – 182 Church Street, Parramatta (also known as 8 Parramatta Square) and sought site specific provisions to ensure the residential amenity of a future residential and hotel tower.
- 3.9 The site specific controls included in Clause 7.82(a) & 2(b) requires that of the 95,000m<sup>2</sup> GFA permitted in 'Area 3' a minimum amount (10%) of common area and (5%) of private open space be provided for residents of the development. This provision is considered to be not relevant to the proposed development.
- 3.10 Common areas such as communal gardens and indoor recreation facilities; and private open space are amenities associated with a residential development. These terms are referenced in the Apartment Design Guide.
- 3.11 Communal open space is defined in the Apartment Design Guide as: "outdoor space located within the site at ground level or on a structure that is within common ownership and for the recreational use of *residents* of the development. Communal open space may be accessible to residents only, or to the 'public'.
- 3.12 Private open space is defined under the Apartment Design Guide as: "outdoor space located at ground level or on a structure that is within private ownership and provided for the recreational use of *residents* of the associated apartment."
- 3.13 The proposed development is not a residential development. However, the intent of providing a high standard of amenity irrespective of the use of the building is envisaged by the provision of internal atriums and break out areas, ensuring a high standard of amenity of the future tenants of the proposed building. See Figure 5



Figure 5- Rendering Central Atrium 6&8 Parramatta Square – Source JPW

The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth way).

- 3.14 The City of Parramatta adopted the Parramatta CBD Planning Proposal (CBD Planning Proposal) on 11 April 2016. The CBD Planning Proposal is the outcome of detailed technical studies which reviewed the current planning framework for the CBD of Parramatta. The objective of the CBD Planning Proposal is to establish controls that will facilitate the achievement of the vision for the Parramatta CBD to reinforce Parramatta as the second CBD in the state. The CBD Planning Proposal identifies a need for significant growth of commercial floor space in the Parramatta City Centre to which this planning proposal responds.
- 3.15 The CBD Planning Proposal makes provision for certain sites with a minimum site area of 1,800m<sup>2</sup> in the B4 mixed Use Zone identified as Additional Local Provisions which captures the subject site, that are proposed to be developed for commercial use, to be exempted from maximum floor space ratio controls, provided a minimum commercial floor space equivalent to 1:1 is proposed and community infrastructure is provided. Community infrastructure means a building or place owned or controlled by a public authority and includes among other facilities and assets, public roads and public squares. In this regard, Walker Corporation is constructing the central civic space of Parramatta Square and upgrading the public domain surrounding the subject site. The other caveats include that the proposed height complies with the solar access controls, aviation limitations under Airports Act, and the building design be the result of a design excellence process.

- 3.16 The stated intent of the control is to exempt commercial development from the overall maximum FSR controls to activate land on the edge of the B3 Commercial Core Zone and facilitate the provision of a range of commercial uses that will contribute to the long term economic growth of the CBD. For land within the B3 Commercial Core zone, the CBD Planning Proposal introduces a new clause that exempts office development from any floor space ratio controls. The intent being to encourage office development that typically has higher order employment opportunities and yields to support the CBD of Parramatta's long term growth as Sydney's second city.
- 3.17 Consideration of the CBD Planning Proposal by the Department of Environment and Planning is well advanced. On 10 April 2017 Council endorsed the Parramatta CBD Strategic Transport Study, which is a key supporting document for the CBD Planning Proposal. Following its endorsement, Council forwarded the Study to the Department to inform their Gateway assessment of the CBD Planning Proposal. To date, there are not indications that the proposed elimination of the application of FSR controls from the B3 and B4 zones as described are not supported by Department of Environment and Planning.
- 3.18 Although the gateway process has not been completed, reference to the relevant provisions included in the CBD Planning Proposal are considered to be relevant in this instance as an indication of Council's policy position in relation to floor space as a planning tool on this site.

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**Clause 4.6(3)(b): That there are sufficient environmental planning grounds to justify contravening the development.**

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- 3.19 The key environmental considerations identified that additional floor space may result in offending are the following:
- Parramatta Square Desired Future Character;
  - Solar Access to public spaces;
  - Heritage Significance;
  - View corridors; and
  - PANS-OPS restrictions.

**Desired Future Character of Parramatta Square**

- 3.20 The design of the proposed building envelope ensures that a tower will reflect the current and evolving future character of the urban context. The building height is determined by the sun access plane designed to preserve solar access to Lancer Barracks and Jubilee Park.
- 3.21 The building form has been refined through the detailed design process in consultation with the Design Excellence Jury and which has awarded the building design excellence. The transformational effect of the development of Parramatta Square Precinct will enhance the locality as one of Parramatta's preferred locations for commerce.



- 3.22 It has the capacity to transform what exists today as an under-utilised site into a precinct that is a destination in itself. There is therefore a great opportunity and responsibility to maximise the capacity of the site commensurate with its strategic significance, while reinforcing the desired future character of the area.

#### Overshadowing

- 3.23 The building envelope complies with the existing Sun Access Plane applying to the north of the site, being the Parramatta Square, Lancer Barracks and Jubilee Park Sun Access Planes which plays a critical role in protecting the amenity of the CBD. With the building envelope complying with the Sun access Plane, the objective contained in Clause 7.4(1) of Parramatta LEP 2011 is also satisfied as follows:

*(1) The objective of this clause is to protect public open space in Parramatta Square, the Lancer barracks site and Jubilee park from overshadowing.*

- 3.24 Detailed modelling of the shadow study analysis prepared by JPW included in **Folder 2**, confirms that the additional shadow cast are generated by a building envelope that complies with Parramatta LEP 2011 and the sun access planes specified in section 4.3.3 of the Parramatta Development Control Plan 2011.

#### Views

- 3.25 A view analysis has been undertaken by JPW. The analysis demonstrates the appropriateness of the proposed building in its setting.
- 3.26 Key local views will be created in the central spine of Parramatta Square and the link to River side created to Horwood Place along Leigh Street. In addition:
- the additional floor space generated will not result in views at the local level being encroached;
  - views of heritage buildings within the Parramatta Square Precinct are maintained;
  - the protected views identified in Parramatta DCP 4.3.3 which protect the view corridor along Parramatta Square are preserved;
  - the key urban design principles adopted for the towers will help create a strong identifiable form when viewed within the city skyline and from Government House; and
  - the proposal is consistent with the change to the Parramatta CBD skyline that defines a new density and scale of development that supports the role of Parramatta Square Precinct's as Parramatta's primary transport interchange.

#### Heritage

- 3.27 A key element of the character of Parramatta Square is derived from its heritage context. The site is not located within a Conservation Area, but is located in close proximity to a number of key heritage items, including the Parramatta Town Hall and the St John's Anglican Church. A

Statement of Heritage Impact has been prepared by NB+RS included in **Folder 3** to assess the potential heritage impacts associated with the proposed tower.

- 3.28 The assessment of the proposed building confirms that the development of the site will not impact on the heritage significance of surrounding heritage items. The assessment acknowledges that the scale of development is changing.
- 3.29 The proposed development located within the newly configure Parramatta Square has the potential to provide a spatial enclosure which will create immediacy and open views to Parramatta Town Hall and St John's Anglican Church from the public domain of Parramatta Square.
- 3.30 The proposed development will result in positive outcomes. At the podium level the intent is to use complementary materials to ensure the building does not diminish the significance of heritage items and their setting.
- 3.31 Accordingly, the built form and additional floor space will not preclude the proposal from being compatible with the site's heritage context and the desired future character of the area.

#### PAN-OPS restrictions

- 3.32 The height of the proposed building is RL243. Advice from DIRD indicates that at this height the building does not encroach the RTTC and will not be a reason for not approving the building. The proposed variation to the development standards does not have an effect on the height of the building.

#### Conclusion on Objective 4.6.3(b)

- 3.33 It is apparent that the proposed variation, the building envelope will not result in any adverse impacts on the amenity of the locality. The proposed building has been assessed for its potential impacts on the desired future character of the area, overshadowing, views, heritage and wind environment, and has been found to be acceptable in each of these cases.
- 3.34 In light of the above, there are no environmental planning grounds that warrant maintaining and/or enforcing the numerical floor space standard in this instance and the flexible application of the floor space control allowed specifically by clause 4.6(8)(ca) of Parramatta LEP 2011.

#### Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

##### Consistency with objectives of the development standard

- 3.35 The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in Section 3.8 of this report.

### Consistency with objectives of the zone

3.36 The site is affected by two land use zones; the B4 Mixed Use and the SP2 Infrastructure Zone. The majority of the zone is affected by the B4 Mixed Use Zone with some 44m<sup>2</sup> of the site affected by the SP2 Infrastructure Zone.

3.37 The objectives for the B4 Mixed Use zone are as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To encourage development that contributes to an active, vibrant and sustainable neighbourhood.
- To create opportunities to improve the public domain and pedestrian links.
- To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.
- To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.

3.38 The proposed development is consistent with the zone objectives for the following reasons:

- It provides a mixture of compatible land uses being commercial, retail and function centre.
- It integrates suitable business, office and retail development in an accessible location so as to maximise public transport patronage and encourage walking and cycling. The proximity of the Parramatta train station, the bus interchange, Parramatta Westfield and the surrounding shopping district demonstrates that the location is appropriate and accessible. The proposed development is designed to respond to and integrate with these facilities. It similarly encourages appropriate employment opportunities in accessible locations.
- The development will contribute to the creation of an active, vibrant and sustainable precinct. It achieves this with its relationship to Parramatta Square and Darcy Street by maximising active frontages. Other than openings for pedestrian circulation, the retail frontage to Parramatta Square is continuous and can be configured in a variety of formats to suit different food and beverage offerings. The upper ground level slab edge projects along the northern frontage to Parramatta Square to provide a protected zone for pedestrians along this edge. The development creates opportunities to improve the public domain, pedestrian links and view corridors.
- The development provides for the daily commercial needs of the locality.
- The development protects and enhances the unique qualities and character of special areas within the Parramatta City Centre.

3.39 The objectives of the SP2 Zone are:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

3.40 The proposed development is located adjoining the railway easement of the western line and Parramatta Station and the Parramatta to Epping rail reserve traverses part of the site. Nothing in the proposed development will detract from the ability to provide future infrastructure within the designated reserve and the proposed development will augment access to Parramatta Station. The proposed development is therefore consistent with the objectives of the zone.

#### Overall public interest

3.41 In accordance with the requirements of Clause 4.6(4)(a)(ii), the proposed development and variation to the development standard is in the public interest because it achieves the objectives of both the development standard and the land use zone.

3.42 In addition, Parramatta Council adopted the Parramatta CBD Planning Proposal (CBD Planning Proposal) on 11 April 2016. The CBD Planning Proposal is the outcome of detailed technical studies which reviewed the current planning framework for the CBD of Parramatta. The objective of the CBD Planning Proposal is to establish controls that will facilitate the achievement of the vision for the Parramatta CBD to reinforce Parramatta as the second CBD in the state. The CBD Planning Proposal identifies a need for significant growth in the Parramatta City Centre to which this planning proposal responds.

3.43 The CBD Planning Proposal proposes that commercial development in the B4 zone can be exempted from FSR, subject to the provision of community infrastructure.

#### Conclusion on clause 4.6(4)(a)(ii) and overall in relation to clause 4.6(4)

3.44 Despite the proposed variation to the floor space control included in Clause 7.8, it has been demonstrated that the proposed gross floor area is consistent with the objectives of the B4 Mixed Use land use zone and the FSR development standard under the Parramatta LEP 2011.

3.45 Accordingly, the consent authority can be satisfied that this written request has adequately addressed the matters in clause 4.6(3) and that the proposed development would be in the public interest because it provides a number of benefits, and 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.

#### Conclusion on clause 4.6(4)(b)- the concurrence of the Secretary

3.46 The Secretary of the Department of Planning and Environment can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 08-003 'Variations to development standards', dated 9 May 2008. The circular informs councils that arrangements for the Director-General's concurrence can be assumed in respect of any

environmental planning instrument that adopts clause 4.6 of the Standard Instrument or a similar clause providing for exceptions to development standards. This circular is a notice under 64(1) of the *Environmental Planning and assessment Regulation 2000*.

- 3.47 A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.



## 4.0 CONCLUSION

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- 4.1 Compliance with the development standard contained in Clause 7.8 of the Parramatta LEP 2011 is unreasonable and unnecessary in the circumstances of the case, and the justification to vary that standard is well founded. The proposed variation allows for a better planning outcome for the site and recognises the unique circumstances of the proposal.
- 4.2 This clause 4.6 variation request demonstrates, notwithstanding the proposed variation to the development standard, that:
- the objectives of the FSR development standard are achieved notwithstanding the variation to the numerical control;
  - the proposed flexible application of controls achieves better planning and architectural outcomes than would be achievable by strict adherence to the controls across the development site;
  - it is in the public interest as the proposal is consistent with the applicable land use zones and development standards;
  - the additional floor space can readily be accommodated within the site, is compatible with the envisaged future scale and character of the area, and will not result in additional adverse amenity or environmental impacts;
  - the non-compliance with the development standard does not raise any matters of State and regional planning significance;
  - there is no public benefit in maintaining the development standard adopted by the environmental planning instrument for this site; and
  - the circumstance particular to this site and the development proposal are such that they and this justification are unlikely to be replicated.
- 4.3 The clause 4.6 request demonstrates that the proposed development will deliver a better outcome for the site, and the broader community. Overall, the proposal optimises the opportunity to establish a high quality development that creates a revitalised precinct in the City Centre of Parramatta and provides significant public benefits, consistent with Parramatta Council's objectives.
- 4.4 For the reasons set out in this written request, the proposed development should be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Parramatta LEP 2011.

