

URBIS

CLAUSE 4.6 VARIATION – SUN ACCESS 5 AND 7 PARRAMATTA SQUARE

PREPARED FOR
CITY OF PARRAMATTA
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URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Stephen White
Senior Consultant	Simon Gunasekara
Assistant Planner	Eliza Scobie
Project Code	P8433
Report Number	FINAL

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INTRODUCTION

This Clause 4.6 variation request has been prepared by Urbis on behalf of the City of Parramatta Council, the applicants for a regional development application (DA) seeking approval for a new community and civic building located at 5 and 7 Parramatta Square that will act as the civic centrepiece of the Parramatta Square precinct. This request relates specifically to the proposed mixed-use building at 5 Parramatta Square.

The request seeks to vary the height of building development standard prescribed under Clause 4.3 and the sun access development standard prescribed under Clause 7.4 of the *Parramatta Local Environmental Plan 2011* (Parramatta LEP 2011). It is noted these controls are interdependent, with Clause 4.3 relying on the provisions contained within Clause 7.4 to set the maximum height of building control for the site.

Parramatta LEP 2011 prescribes a solar protection zone being the land at Parramatta Square identified with blue hatching in the Sun Access Protection Map. The proposed development, specifically the civic spire component, protrudes into the protection zone, representing a maximum contravention of 3% of dispersed overshadowing within the north-eastern corner of the sun access plane.

This variation request should be read in conjunction with the Architectural Plans and Design Report prepared by Manuelle Gautrand Architecture, Lacoste + Stevenson and DesignInc and the supporting consultant documentation provided within the Development Application package.

The variation request is made pursuant to Clause 4.6 of the Parramatta LEP 2011. For a request to meet the requirements of Clause 4.6(3) of Parramatta LEP 2011, it must:

1. *“adequately” demonstrate “that compliance with the height standard is unreasonable or unnecessary in the circumstances” of the project on the site; and*
2. *“adequately” demonstrate “that there are sufficient environmental planning grounds” to justify contravening the height standard.*

This request contains justified reasoning for the proposed variation to the interdependent development standards contained within clause 4.3 and clause 7.4 of the Parramatta LEP 2011 in respect of the above two matters as follows:

- The underlying objective of the two interdependent development standards will be achieved, notwithstanding the minor degree of overshadowing of the solar protection zone. In doing so, this establishes that strict compliance with the standard is unreasonable. Refer to Section 5.1.1 of this request.
- Notwithstanding the departure from the development standards, there are sufficient environmental planning grounds to support the proposed development. Specifically, the proposed development including the civic spire element will play an important strategic role in the Parramatta Square precinct as the centre point for civic development and community engagement and is consistent with the emerging character of the Parramatta Square precinct. Refer to Section 5.1.2 of this request.

1. ASSESSMENT FRAMEWORK

1.1. CLAUSE 4.6 OF PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2011

Clause 4.6 of the Parramatta LEP 2011 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the consent authority must be satisfied that 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, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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.*

[Note: Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018].

This document forms a Clause 4.6 written request to justify the contravention of the Height of Building development standard in Clause 4.3 and the Sun Access development standard in Clause 7.4 of the Parramatta LEP 2011. The assessment of the proposed variation has been undertaken in accordance with the requirements of the Parramatta LEP 2011, Clause 4.6 Exceptions to Development Standards.

1.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which written requests to vary development standards should be approached.

This approach is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. Consistent with paragraph 22, this request will demonstrate that compliance with the development standard is unreasonable or unnecessary using one way.

[22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

This request is prepared in accordance with paragraph 17.

[17] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

These relevant principles will be addressed in the following discussion.

2. SITE AND LOCALITY

2.1. SUBJECT SITE

The land to which this variation request relates is known as 5 and 7 Parramatta Square, Parramatta (5 & 7PS). The site is legally described as Lot 8 DP 1252009 and is owned by the City of Parramatta Council. The site comprises a rectangular shaped parcel of land comprising a total site area of approximately 3,857sqm.

The site is located within the Parramatta Square urban renewal precinct and is outlined in 'red' in the aerial image in **Figure 1** below. Further detail is provided in the Site Analysis Plans contained within the Architectural Package and Site Survey Drawings submitted with the development application.

The site is presently occupied by the Parramatta Town Hall to the west of the site, a two-storey Victorian Civic building with a single level basement that is locally heritage listed (I650) under Schedule 5 of *Parramatta Local Environmental Plan 2011* (PLEP 2011). The land to the east of the Parramatta Town Hall previously contained the former Parramatta City Council Chambers building that was demolished in August 2016 (DA/237/2015 – approved 29 June 2016). Site preparation works including demolition of the basement car park, bulk excavation and construction of below ground shoring walls were approved by DA/206/2017 on 15 March 2017). In accordance with these works, the eastern portion of the site is currently cleared in preparation for redevelopment.

Key site features are as follows:

- The site has a natural surface sloping gently to the north-west towards the Parramatta River, but is generally flat with existing ground levels. There is currently limited vegetation on the site.
- The site is not located within a Heritage Conservation Area, however the Aboriginal Sensitivity Map contained within the Parramatta Development Control Plan 2011 identifies the site as having high Aboriginal heritage sensitivity and a likelihood of subsurface Aboriginal deposits. A local heritage listed Convict Drain (I647) also traversed underneath the site in a south-westerly direction, however in accordance with DA107/2016 and relevant Aboriginal Heritage Impact Permits, was removed from the site.
- Local-listed heritage items in the vicinity of the site include Leigh Memorial Uniting Church located directly to the north of the site (I719), Murray's building and potential archaeological site to the north-west of the site (I652) and Bicentennial Square (Centenary Square) further north-west (I651). A State-listed heritage item, St John's Anglican Cathedral, is located to the west of the site (I01805).

Figure 1 – Aerial Location Plan



Source: Urbis

2.2. SITE CONTEXT

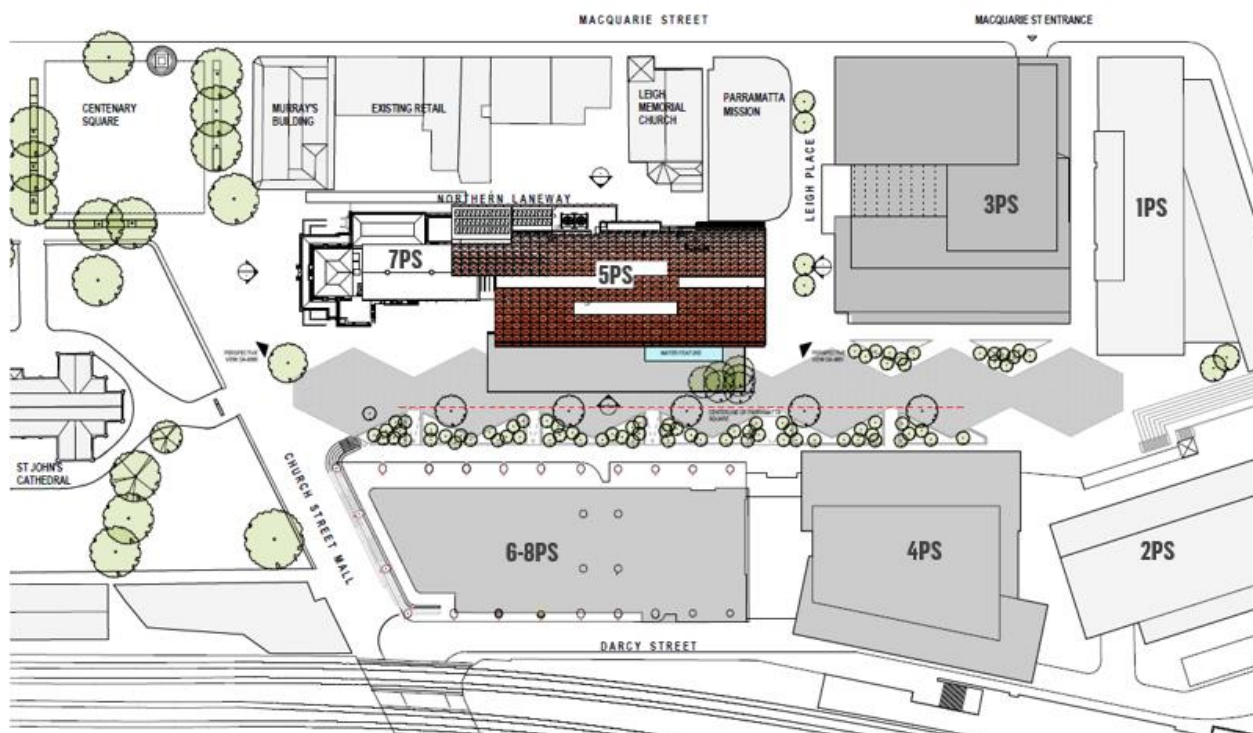
The site forms part of the three-hectare Parramatta Square urban renewal precinct located at the core of the Parramatta Central Business District. Parramatta Square will be transformed into a central hub with a substantial new civic space and up to 360,000sqm of mixed-use floor space, supporting social, cultural and economic activity and aligning with strategic aspirations for the Parramatta CBD. The precinct will reinforce Parramatta's role as the second metropolitan centre of the Greater Sydney region and one of the three cities of the *Greater Sydney Region Plan*.

The Parramatta Square precinct includes an important area of public open space, known as Parramatta Square, which accommodates 3,000sqm of open space at a width of 40m between 5 and 7 Parramatta Square and 6 & 8 Parramatta Square. Importantly, this area includes public domain elements such as fixed furniture and landscaping elements, which cast minor shadows across the square.

Parramatta Square is approximately 240 metres walk to the north of Parramatta Railway Station, which also connects to Westfield Parramatta Shopping Centre.

The subject site is situated to the north-west of Parramatta Square, as illustrated in **Figure 2** below. To the east of the site is 3 Parramatta Square and further east the recently constructed Western Sydney University Campus (1PS). To the south-east is the Sydney Water building (2PS), which is a high-rise commercial office tower. Development to the north comprises of a range of two and three storey commercial buildings.

Figure 2 – Precinct Plan



Source: Manuelle Gautrand Architecture, Lacoste + Stevenson and DesignInc

3. THE PROPOSED DEVELOPMENT

The proposed development seeks consent for the development of a 6-storey (31.6m) mixed-use building, comprising civic, commercial and retail land uses, internal alterations to the existing Parramatta Town Hall and public domain improvements. The building will be occupied by the City of Parramatta Council, and will form the new Council Chambers.

Specifically, this DA seeks consent for:

- Development of a 6-storey mixed use building (plus architectural rooftop spire) with a total GFA of 4,974 sqm incorporating civic, commercial and retail land uses. Known as the 'Council Chambers building', the building will include:
 - A new Council Chambers and associated administrative facilities including reception areas, office spaces for Council operations (both open plan and individual spaces) for up to 99 staff, meeting rooms, breakout spaces and ancillary office areas including storage and utility areas. End of trip facilities (EOTF) are also proposed within the basement.
 - Various publicly accessible spaces including an amphitheatre, exhibition space, a community library with associated learning areas, technology room, maker spaces, children areas, youth areas and visual collections as well as customer service points and amenities.
 - Illuminated façade (north and south) included an architectural spire roof feature of 4.77m in height. The façade will incorporate LED lighting.
 - Café (153sqm) with adjacent outdoor dining area along the eastern elevation, and associated back of house kitchen, servery and storage areas.
 - Basement integration with the adjacent underground 'super basement' to provide direct a visitor drop-off zone and loading dock. The proposed additions are consistent with the overall masterplan for the Parramatta Square development.
 - Plant, storage and rooftop PV solar cells.
- Alterations and additions to the existing Parramatta Town Hall to integrate with adjacent mixed-use building, including the following works:
 - Partial demolition of non-heritage significant elements within the Town Hall building, including some internal walls, stairways, internal doorways, storage and amenities on the eastern elevation.
 - Interventions into the existing Parramatta Town Hall, primarily on the Hall's eastern elevation, to enable the integration with the adjacent Council Chambers building.
- Partial demolition of an existing external amenities block to the north of the Parramatta Town Hall.
- Public domain and landscaping works to the new mixed-use component including planting of shrubbery on the Level 2, 3 and 4 terraces, a native landscaped rooftop garden, public seating areas at ground level along the northern laneway and adjacent to future Leigh Place, and external paving in line with the adjacent public domain precinct plan.

The proposal seeks consent for a variety of land uses due to the nature of the proposal as a multi-use community facility. Consent is sought for the following uses of the site in accordance with the Parramatta LEP 2011:

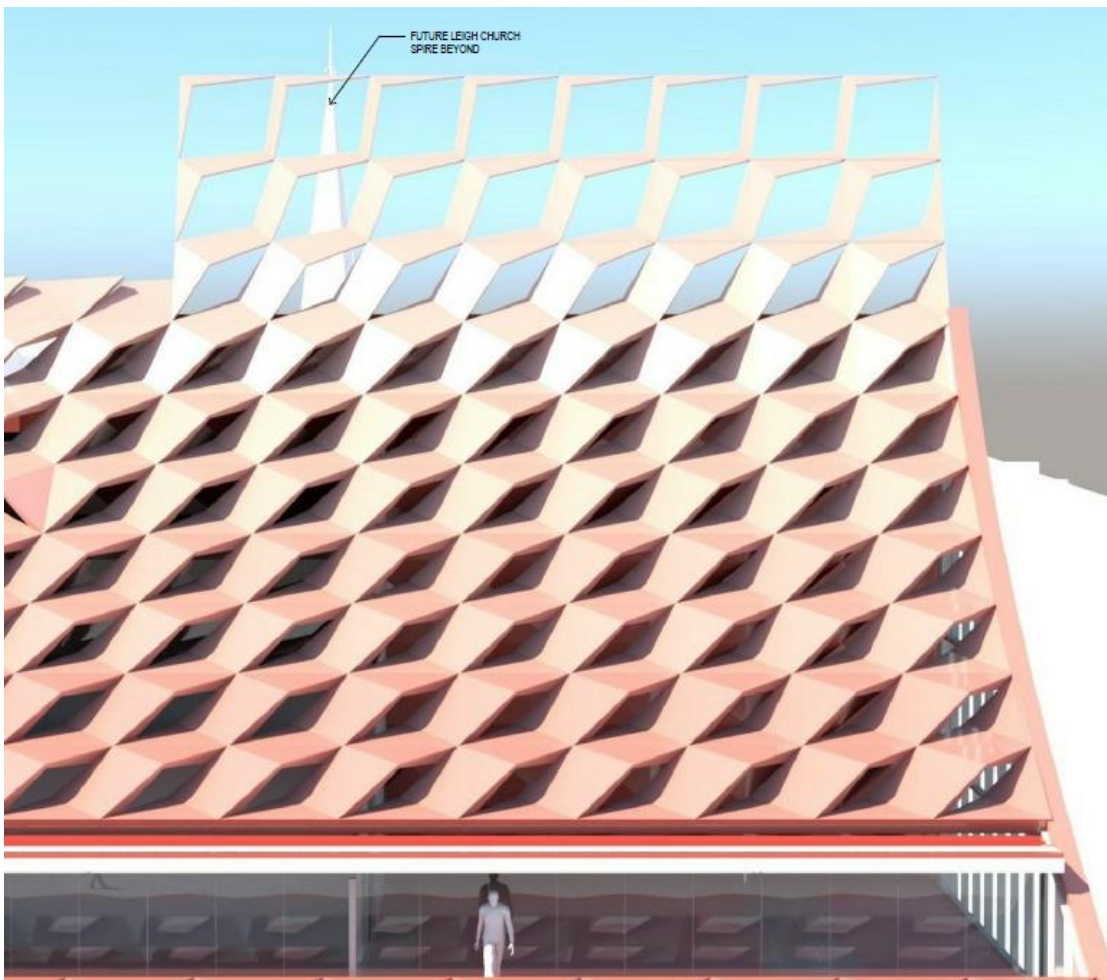
- Community facility
- Information and education facility
- Function centre (Discovery centre exhibition space)
- Food and drink premises

Photomontages of the proposed development are provided below in **Figure 3**.

Figure 3 – Photomontages of the proposed development



Picture 1 – The proposal from the south-eastern elevation



Picture 2 – Civic spire element

Source: Manuelle Gautrand Architecture, Lacoste + Stevenson and DesignInc

4. EXTENT OF CONTRAVENTION

4.1. HEIGHT OF BUILDINGS STANDARD

Clause 4.3 of the Parramatta LEP 2011 states:

- (1) *The objectives of this clause are as follows:*
 - a) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
 - b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - c) *to require the height of future buildings to have regard to heritage sites and their settings,*
 - d) *to ensure the preservation of historic views,*
 - e) *to reinforce and respect the existing character and scale of low density residential areas,*
 - (f) *to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) *Despite subclause (2), any development on land identified with a thick blue line and labelled “Area 1” on the Height of Buildings Map is not to exceed the height determined in accordance with the Table to this clause.*

The identified Height of Building map relies upon the sun access plane and overshadowing controls contained within Clause 7.4 of the Parramatta LEP 2011. This request therefore seeks to vary these two interdependent controls.

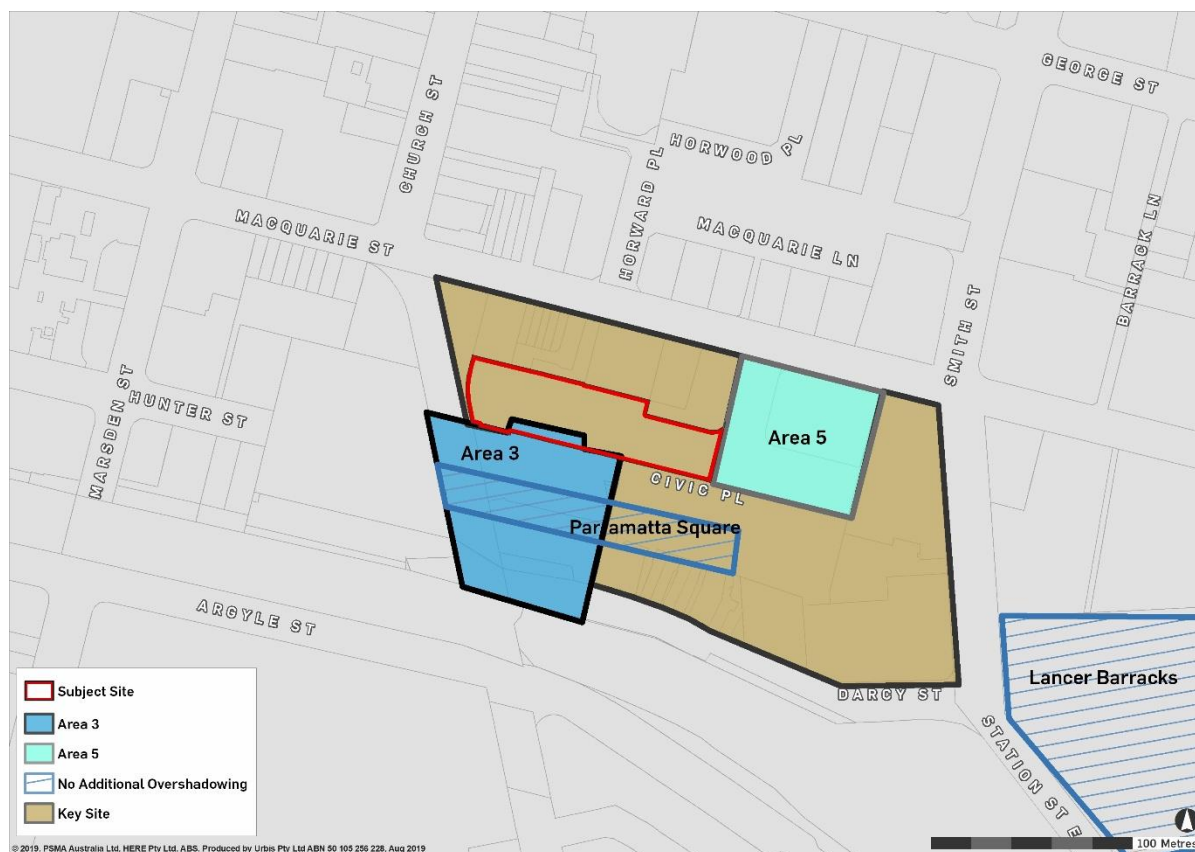
4.2. SUN ACCESS STANDARD

Clause 7.4 of the Parramatta LEP 2011 states:

- (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.*

The objective of the clause is to protect public open space in Parramatta Square from overshadowing. The protected solar access zone within Parramatta Square is identified by blue hatching in the following **Figure 4**. The proximity of the site to this protection zone is also illustrated by the red outline below.

Figure 4 – Proximity of the site to the solar protection zone



Source: Parramatta LEP 2011, Urbis

4.3. VARIATION TO PROVISION

Pursuant to clause 7.4 of the LEP, the maximum height of buildings for this site is determined by the buildings ability to not impact the sun access plane dictated by the protected public open space within Parramatta Square. This results in a minor breach in height of 4.83m, resulting only from the civic spire architectural roof feature, and a minor element of the top of the façade.

The proposed development has a maximum height of 32.75m, which is measured from the highest point of the development at the civic spire element. The civic spire element comprises the uppermost 3.85m of this building height, whilst the building envelope only extends to 28.9m.

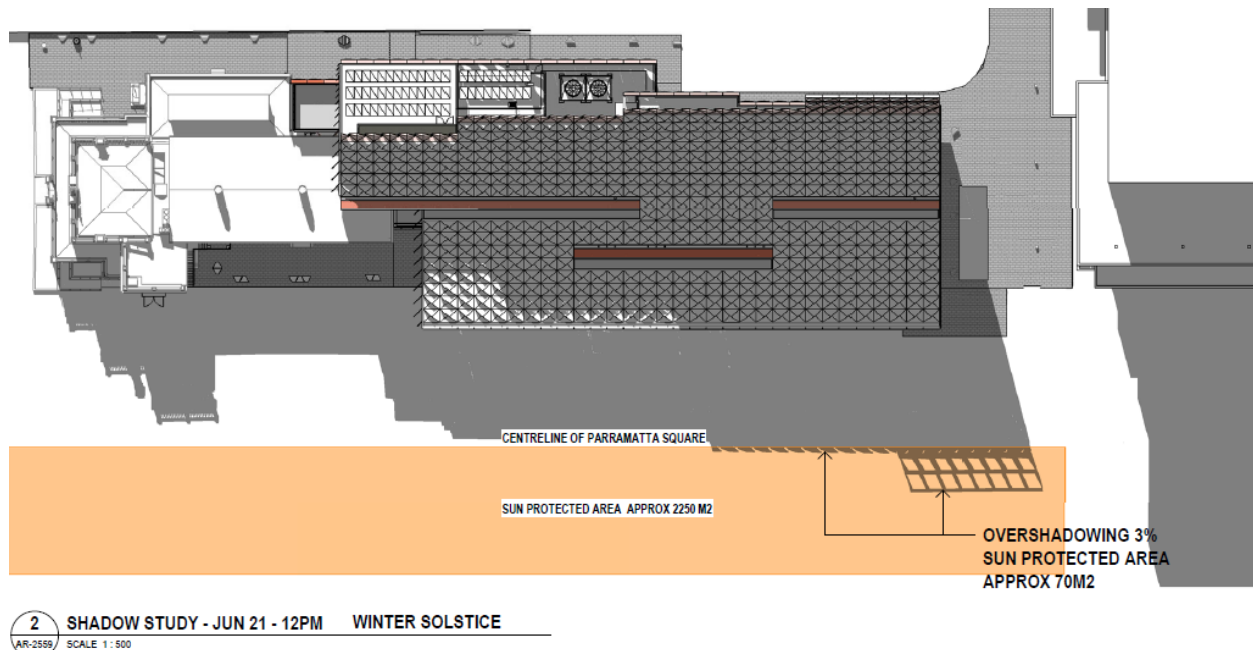
The spire is designed to contribute to the symbolic nature of the development and is clad with the design's iconic 'curtain wall' façade, which features angled aluminium panels interwoven with skylights. These indented voids enable the passage of light and solar access whilst simultaneously creating a highly textural and visually engaging façade.

Overshadowing impacts were modelled for the winter solstice (21 June) and also to determine the extent to which overshadowing impacts occurred during the year. The assessment demonstrated the civic spire will result in a minor degree of overshadowing of the adjacent Parramatta Square sun protection area, being the land identified in the blue hatching on the Sun Access Protection Map. The overshadowing is limited to a brief window between 12pm and 2pm, with no degree of overshadowing after 1.30pm due to the easterly movement of the shadow following the solar path. Due to the textured nature of the façade, the proposal will generate a dappled and transient shadow and will not create a permanent block to solar access. The small duration and area of anticipated overshadowing impacts to the solar protection zone is illustrated in Figure 5.

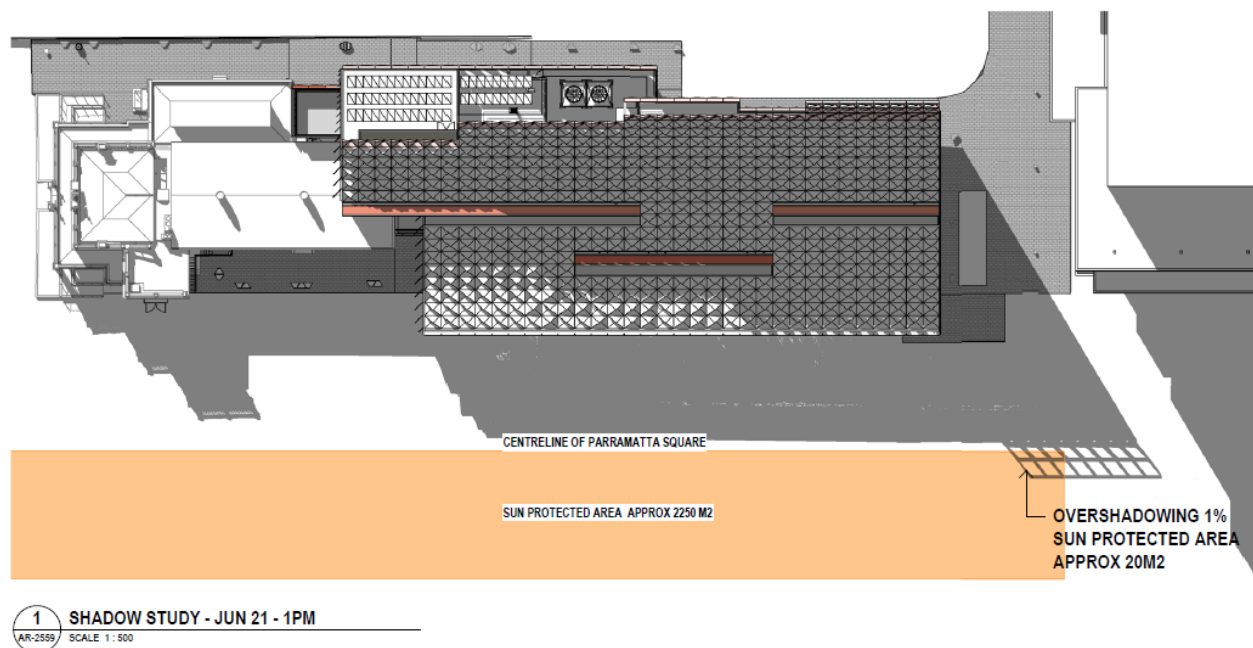
Averaged across the solar protection zone (of 2,250m²), this causes a maximum impact of approximately 70m² (3%) reduction in solar access. The area within the solar protection zone predicted to receive the greatest impact is limited to the north-eastern corner of the zone at the intersection of Leigh Place and the site boundary of 5PS. It is noted that the solar impact has limited occurrence between 25 May and July 7 (44 days) with a minor impact at either end of this range of 20m² (0.88%) (Refer Figure 6 and Shadow Analysis attached).

Due to the interdependent nature of clause 4.4 and clause 7.4 of the Parramatta LEP 2011, the minor degree of overshadowing of the Parramatta Square solar access zone circumvents the proposed development's level of compliance with the height of building control.

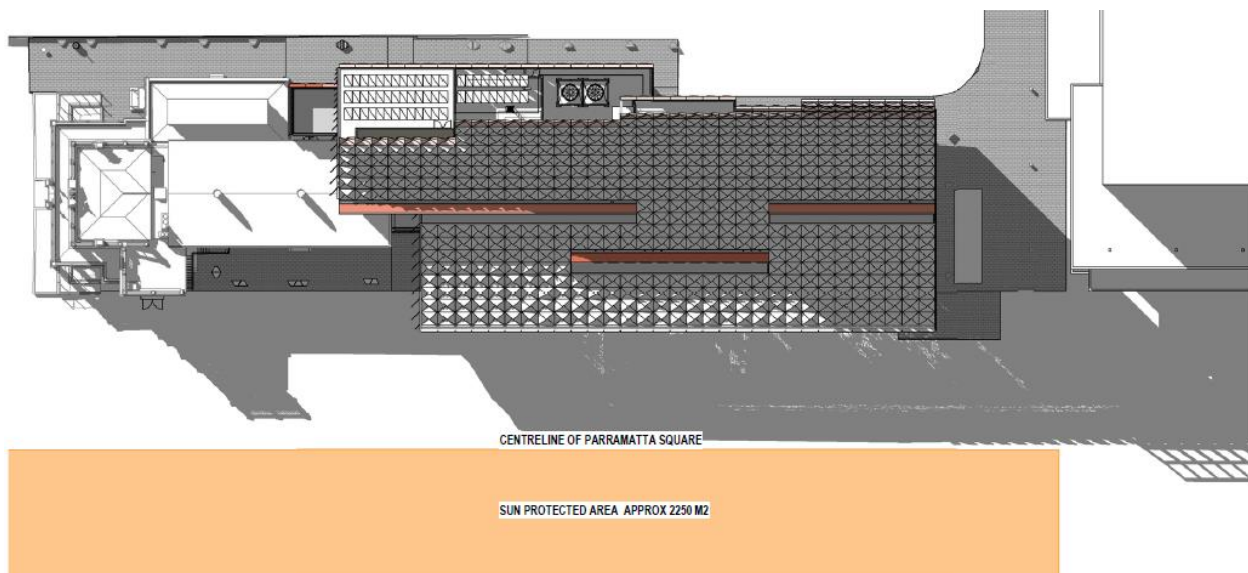
Figure 5 – Overshadowing Analysis



Picture 3 – Extent of overshadowing at 12pm on winter solstice



Picture 4 – Extent of overshadowing at 1pm on winter solstice

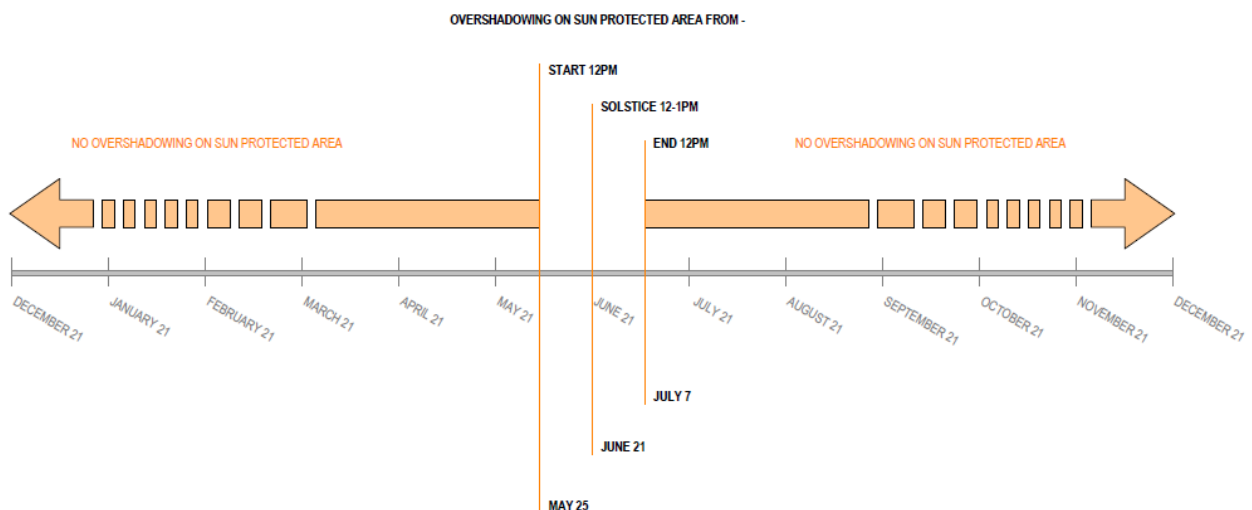


3 SHADOW STUDY - JUN 21 - 2PM
AR-2559 SCALE 1:500

Picture 5 – Extent of overshadowing at 2pm on winter solstice

Source: Manuelle Gautrand Architecture, Lacoste + Stevenson and DesignInc

Figure 6 – Shadow Impact Study



Source: Google Earth

5. CLAUSE 4.6 VARIATION REQUEST

5.1. KEY QUESTIONS

5.1.1. Clause 4.3 - Height of Building

Is the Planning Control a Development Standard?

The height of buildings control prescribed under Clause 4.3 of the Parramatta LEP constitutes a development standard as per the definition of *development standard* under the EP&A Act 1979 as follows:

Development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of Clause 4.6 as it is not listed within Clause 4.6(6) or Clause 4.6(8) of Parramatta LEP 2011.

What is the Underlying Object or Purpose of the Standard?

The objectives of the standard are clearly established in the relevant LEP as set out in Section 6.1 of this report.

5.1.2. Clause 7.4 - Sun Access Control

Is the Planning Control a Development Standard?

The sun access control prescribed under Clause 7.4 of the Parramatta LEP 2011 constitutes a development standard as per the definition of *development standard* under the EP&A Act 1979 as follows:

Development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development

Furthermore, there is recent precedence of this planning control being applied as a development standard, confirming this position.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of Clause 4.6 as it is not listed within Clause 4.6(6) or Clause 4.6(8) of Parramatta LEP 2011.

What is the Underlying Object or Purpose of the Standard?

The objectives of the standard are clearly established in the relevant LEP as set out in Section 6.1 of this report.

5.2. CONSIDERATIONS

The assessment of the proposed variations against the relevant considerations of Clause 4.6 (3) of the Parramatta LEP 2011 is outlined in the following subsections. The consideration of the variations to the two development standards is undertaken in a combined analysis due to the interdependent nature of the controls.

5.2.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the ‘five-part test’ outlined in *Wehbe v Pittwater [2007]* NSWLEC 827.

An applicant does not need to establish all of the tests or ‘ways’. **It may be sufficient to establish only one way**, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or

unnecessary in more than one way. The development is justified against **three** of the Wehbe tests as set out below.

Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of clause 4.4 are as follows:

- a) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- c) *to require the height of future buildings to have regard to heritage sites and their settings,*
- d) *to ensure the preservation of historic views,*
- e) *to reinforce and respect the existing character and scale of low density residential areas,*
- f) *to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.*

The proposed variation responds to the objectives of clause 4.4 as follows:

- the non-compliant roof spire accentuates the building transition within the context of the surrounding built form and the Parramatta Square public domain (refer **Figure 7**).
- The bespoke nature of the building design with the sloped façade deliver a strong built form transition and character to the surrounding context.
- The spire element that breaches the control is an extension of the distinct curtain wall façade and will visually present as a light weight transparent feature, this will avoid the building element creating any visual barrier to block views.
- The spire element only measures 3.85m x 16.8m along the full length of the proposed building (approximately 75m), so it will consistent a minor incursion into the view scape.
- There will be no discernible impact from the public domain. While the spire element will be visible from either existing or future commercial buildings in the locality, the impact is considered negligible.
- The spire element is an articulated design feature which comprises no habitable space and thus creates no privacy impact.
- The submitted heritage impact statement has considered the design to be of our time in contrast to the more historic sense of civic decorum found in the 1883 Town Hall. It is also noted that other high-rise developments completed and under construction in the vicinity of the site have already changed the character of the area. The proposed building, and spire provides a contemporary interpretation of a civic building and public domain. The nature of the spire element in questions is acceptable on heritage grounds.

Figure 7 – 5PS and 7PS in context of the scale of surrounding development



Source: Manuelle Gautrand Architecture, Lacoste + Stevenson and DesignInc

The objective of clause 7.4 is as follows:

“Protect public open space in Parramatta Square, the Lancer Barracks site and Jubilee Park from overshadowing”

In the context of the proposed development, it is considered the underlying intent of this clause is to create usable, functional and high- amenity open spaces within Parramatta for members of the public and visitors to enjoy. The provision of these open spaces is a desirable objective that is indisputable.

A successful public open space is achieved through the interplay of a number of urban design principles including accessibility (both within the space and into the space), vibrancy and public activity (through supporting a diversity of uses during both the day and night), safety and amenity (appropriate areas of shade and solar access, lighting and visual sightlines), and a strong sense of place identity and local character. The provision of solar access is therefore only an element of a successful public open space, despite the restrictive wording of the clause.

The proposed development, including the civic spire element, will contribute positively to the achievement of a high-amenity public open space in Parramatta Square as follows:

- The provision of active uses along the southern and eastern elevation adjacent to the Square, including the concierge, café space and reading lounge, and the use of bi-foldable glass doors will blur site boundaries to create a seamless transition between public and semi-public zones. This will improve accessibility and ensure public activity within the square and surrounding precinct.
- The proposal will form the northern border of Parramatta Square and represents a high-quality building of architectural excellence. The proposal will further contribute to the success of Parramatta Square as an open space within the city.
- In general, the proposal does not generate any adverse impacts that would reduce the amenity of the precinct, specifically in relation to wind, reflectivity, heritage, flooding, traffic or acoustic impacts. The proposal respects prevailing view corridors, specifically the northern view corridor down the civic link and interlinking Church Street towards the Parramatta River.
- The proposal, specifically the civic spire element, will create an iconic and instantly recognisable architectural element associated with Parramatta Square and the metropolitan centre. The civic spire will strongly contribute to a sense of place within the Square and will form the centre point of the surrounding precinct.

In regard to the above, it is considered the underlying intent of the interdependent clauses; being the provision and protection of public open space, is achieved despite the minor degree of overshadowing of the solar protection zone and associated breach of the height control.

Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not applicable. The underlying objectives and purpose of the development standards is relevant.

Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

As outlined in Test 1, the primary underlying intent of the interdependent objectives is the provision of an activated, usable and high-amenity public open space within Parramatta Square. In order to achieve compliance with the controls, the civic spire element would need to be removed, representing both a detrimental impact to the architectural identity of the building and the strategic value of the broader Parramatta Square precinct. The underlying objectives would not be entirely defeated if compliance was required, however this loss would detract from the cultural and strategic significance of the civic building and the important role and function as a centre point of the Parramatta Square precinct.

Accordingly, strict compliance with the standard would diminish the strategic importance of the Parramatta Square precinct and the development of a cultural landmark within Parramatta. A strictly compliant development when compared to the proposed would:

- Fail to provide an architecturally significant and iconic centre point. The spire represents the importance of the civic functions found within the Council Chambers, and in turn the strategic role of Parramatta Square as the community heart of the Parramatta LGA and Central City District metropolitan centre. A strictly compliant development would do less to promote the success and strategic significance of Parramatta Square, undermining the vision and objectives of the urban renewal precinct.
- Lose the architectural reference and interpretation of the Parramatta church spires, including those contained within Leigh Memorial Church and St John's Cathedral. The spire provides a contemporary interpretation of Parramatta's cultural heritage and conveys the strategic significance of these existing buildings within the proposed development. The loss of the spire would undermine this heritage interpretation and disrupt the contextual relationship between the proposed development and surrounding civic buildings.
- Diminish the contextual volume and movement of the façade achieved by the civic spire element. The building form grows from Parramatta Square towards the sun that culminates with the spire. A strictly compliant building would feature a flat, horizontal roof plane and would not evoke the same level of inspiration and architectural movement achieved through the spire.
- It is further noted the civic spire was identified within the Jury assessment of the scheme during the Architectural Design Competition as an integral element to the building. The loss of the spire would undermine the Jury's summation of the scheme as an "iconic landmark building of architectural quality that will be instantly recognisable and associated with Parramatta", and may jeopardize the achievement of design excellence.

Test 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

The sun access control has not been abandoned by past decisions, however, the applicant notes the positive determination of DA672/2018 on 19 June 2019 by Parramatta City Council included a departure from this development standard. Similar to the proposal, the approved development will result in a minor degree of overshadowing of the Parramatta Square solar protection zone and will cause dappled shadowing of the square as a result of landscaping elements and fixed public furniture. It is considered reasonable the same level of flexibility and circumstantial merit assessment of the departure is applied to the proposed variation as was applied in DA672/2018.

Notwithstanding the above, the proposed variation to the development standard for both DA672/2018 and the proposed development is only relevant in the context of the unique civic applications for Parramatta Square and the strategic social and cultural importance of the urban renewal precinct. These applications are entirely within the public interest and seek to provide public benefits that are crucial to achieving the amenity and function of the Parramatta Square community hub. The proposed variation does not seek to

establish a precedent, nor does it intend to diminish the weight and ongoing role of the development standard in protecting the amenity of public open space in Parramatta.

Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary

Not relied upon.

5.2.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variation to the development standards as follows:

- The proposed development seeks to play an important strategic role in the Parramatta Square precinct as the centre point for civic development and community engagement. In turn, the civic spire element plays an important architectural role in the design of the building as the pinnacle of the building and creates a contextual volume integral to the award of design excellence by the competition Jury. The civic spire is therefore linked to the cultural and strategic significance of this new civic building, which will house social and community interactions for the next generation of Parramatta residents and visitors. The building will also accommodate Council Chambers and some administrative functions of the City of Parramatta Council as the facilitator of the growth and development of the Parramatta CBD.
- The transformational effect of the proposed development and surrounding developments within the Parramatta Square precinct will provide the catalyst to reposition Parramatta as the second CBD of the Greater Sydney region. The proposal, including the contravening spire element, demonstrates an opportunity to facilitate this repositioning and there is therefore a responsibility to support the development commensurate with its strategic significance at a district and regional planning level.
- The proposed development does not cause any adverse impacts on the amenity of the locality. The Statement of Environmental Effects submitted within the Development Application package provides a comprehensive assessment on the potential impacts of the proposal, including its impact on the desired future character of the area, wind, heritage, views, reflectivity and flooding, and concludes the development is acceptable in each of these cases. As outlined in the succeeding **Section 5.1.3.**, there are a number of significant public benefits arising from the proposed development, of which the contravening civic spire element is a critical component.
- The proposed overshadowing is minimal, temporary and transient as modelled on the winter solstice on 21 June. With the very limited impact only occurring between 12 pm and 1.30pm at mid-winter, being the worst occurrence. Whilst this is a well-recognised and accepted standard for shadowing models, the degree of overshadowing of the proposed development will not generate this level of impact during the remaining months of the year, particularly in the summer months when activity within the public square is expected to peak.
- The height protrusion into the solar access zone is restricted to the civic spire, which represents only the uppermost 3.85m in the north-eastern corner of the façade. With the exception of this element, the bulk of the building envelope lies within the maximum height of buildings development standard and generates no shadowing impact on the surrounding public domain.
- The development achieves the underlying intent of the development standard, the delivery of a high-quality public open space, as outlined in Section 6.1.1, and is also consistent with the zone objectives as outlined in Section 6.1.3.

In conclusion, there are sufficient environmental planning grounds to justify convening the development standard within these unique circumstances.

5.2.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

The proposal is in the public interest as the development is consistent with the underlying objectives of the development standards, as outlined in **Section 6.1.2**. The proposal demonstrates a significant contribution to the Parramatta Square precinct through the delivery of an architecturally significant, high-quality and iconic civic building that will strengthen the role of the precinct as a strategic community hub and the City as Sydney's second CBD.

In addition to this, the proposed development is consistent with the land use objectives of the B4 Mixed Use zone, within which the site is located. The consistency of the proposed development with the zone objectives is outlined in **Table 1** below.

Table 1 – Assessment of Compliance with Land Use Zone Objectives

Objective	Proposal	Compliance
<i>To provide a mixture of compatible land uses.</i>	The proposed development offers a range of land uses within the site, which will complement the mixed-use and vibrant nature of the surrounding Parramatta Square precinct. The development will provide a range of services for the community including the Council Chambers, Library, community meeting rooms, exhibition space and café, which will support the commercial and mixed-use land uses contained within the surrounding precinct.	COMPLIES
<i>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.</i>	The subject site is located approximately 240m north of the Parramatta transport interchange, which offers rail and bus links, and is located 800m south-west of Parramatta Ferry Wharf which offers complementary ferry services. The location of the site and surrounding public domain will encourage walking and cycling throughout the city centre.	COMPLIES
<i>To encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i>	The development proposes an innovative, engaging and creative architectural response to the site that will contribute positively to the amenity of the Parramatta Square precinct. Further, the building incorporates sustainability measure including water efficient fixtures and fittings, a building design that provides high levels of daylight and thermal comfort and use of sustainable materials.	COMPLIES
<i>To create opportunities to improve the public domain and pedestrian links.</i>	The redevelopment of the broader Parramatta Square Precinct will deliver an improved public domain with strong connectivity to the all areas of the Parramatta CBD. It aligns with the Parramatta Civic Link Framework Plan and will have a transformative impact on the metropolitan centre. Specifically, the proposal incorporates a northern pedestrian laneway and pedestrian linkages to the surrounding public domain to increase permeability of the site.	COMPLIES

Objective	Proposal	Compliance
<i>To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</i>	The proposed Council facilities will play an essential role in the ongoing development of Parramatta CBD, providing the civic centrepiece for the City.	COMPLIES
<i>To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</i>	The proposed development will ensure the continued importance of Parramatta Square and the surrounding area as a focal point for civic activity within the CBD. The joining of the existing Town Hall building with the proposed Council facilities will provide a renewed and ongoing purpose for the Town Hall ensuring its relevance and function remains long into the future.	COMPLIES

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

5.2.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

It is noted that the site is located within the Parramatta Archaeological Management Unit 2869, a State-listed item under the Heritage Act recognised for containing high archaeological research potential. The proposed non-compliance with the development standards will not raise any matter of significance for State or regional environmental planning including this State listing. It has been demonstrated that the proposed variation is appropriate based on the unique circumstances of the case as a civic community facility, and its critical contribution to the strategic nature and significance of the Parramatta Square precinct.

5.2.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

Whilst it is accepted the intent of the development standards aims to deliver a public benefit in the form of a public open space with direct solar access between 12pm and 2pm, the merits of this public benefit must be considered in respect of the proposed development which also offers extensive and long-term public benefits. The proposal will deliver public uses that are essential to the social sustainability, growth and operation of the Parramatta community, including a public library, flexible spaces for interaction, café spaces, exhibition areas, Council Chambers and administrative areas for the City of Parramatta Council. The architecture of the building represents a unique contribution to the built environment and will be instantly recognisable within the Parramatta CBD.

The proposed variation represents a unique circumstance in which upholding the public benefit of the control standard would circumvent the delivery of other essential public benefits; that is the provision of an architecturally iconic and strategically significant civic building.

When considered on the balance of merits, it is recognised the proposed contravention of the provision is minimal, temporary and transient, and will only affect the amenity of the Parramatta Square solar protection zone for less than 2 hours on the winter solstice. Whilst the shadowing analysis prepared by Manuelle Gautrand Architecture, Lacoste + Stevenson and DesignInc identifies the proposal will only impact a maximum of 70m² (3%) of this zone, the actual practical impact will be less than this due to the dappled nature of the shadowing. The retention of the civic spire will create an iconic focal point for pedestrians within the Parramatta Square precinct. At a strategic level, this public benefit transcends to benefit the broader Parramatta LGA and Central District community through the delivery of an iconic civic building with a myriad of functions and operations that support the community.

In comparison, strict implementation of the sun access control will have a permanent impact on the entire Parramatta Square precinct through the removal of the civic spire element, loss of an iconic centre point and diffusion of the strength of the architectural expression of 5 Parramatta Square. Restricting flexibility in implementation of the control to achieve strict compliance is not considered reasonable and justifiable, particularly when this compliance would undermine the strategic importance of the building and thwart the underlying objective of the control as outlined in **Section 5.1.1**.

The contravention of the development standards has been demonstrated to be appropriate in the circumstances of this unique case based on the merit assessment of the public benefits associated with a compliant and non-compliant development. As outlined within this variation, it is clear the non-compliance will deliver greater benefits at both site-specific and strategic levels, and accordingly the variation to the standards is justified.

5.2.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

Planning Circular 18-003 'Variation to Development Standards' issued by the then DPE (now DPIE) on 21 February 2018 advises that all consent authorities may assume the Secretary's concurrence under clause 4.6 of an LEP subject to a number of restrictions. The circular states:

Regionally Significant Development

Sydney district & 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.

The subject DA is a type of development specified in Schedule 7 of *SEPP (State & Regional Development) 2011* as it is a Council related development with a value over \$5 million and is therefore considered regionally significant development. The Panel can therefore assume the concurrence of the Secretary.

There are no known additional matters that need to be considered within the assessment of this request.

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ANGEL PLACE
LEVEL 8, 123 PITT STREET
SYDNEY NSW 2000

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

21 October 2019

Mr Alex McDougall
Executive Planner, City Significant Development
City of Parramatta Council
Level 5, 126 Church Street
Parramatta NSW 2150

Dear Alex,

RE: DA/476/2019 - CLAUSE 4.6 VARIATION REQUEST - JUSTIFICATION ADDENDUM

1. INTRODUCTION

We are writing on behalf of the City of Parramatta Council (**the applicant**) to address the planning matters raised in your request for information (**RFI**), dated 4 October 2019 relating to DA476/2019 at 5-7 Parramatta Square, Parramatta. This letter specifically addresses the planning matters identified within the RFI raised by the independent planner who is assessing the development application. Further information and justification of the additional environmental, heritage and ecological matters identified within the RFI are provided in a separate response, to which this letter is appended to.

The RFI references the Clause 4.6 variation request provided within the Development Application (**DA**) package, lodged on 16 August 2019. The report states, inter alia:

It is therefore requested that proponent review the variation to development standards request prepared under clause 4.6 of Parramatta LEP 2011 in particular demonstration that there are sufficient environmental planning grounds for the non-compliance to satisfy the consent authority to support the variation request.

This letter outlines the outcome of the review of the Clause 4.6 variation request undertaken by the applicant and reinforces the environmental planning grounds upon which the variation is supported. This addendum letter has been informed by the objectives and the matters for consideration outlined in Clause 4.6(3) of the *Parramatta Local Environmental Plan 2011* (**Parramatta LEP 2011**).

2. BACKGROUND

DA476/2019 seeks approval for the development of a 6-storey (plus architectural rooftop spire) mixed-use building, comprising civic, commercial and retail land uses, internal alterations to the existing Parramatta Town Hall and public domain improvements at 5-7 Parramatta Square, Parramatta (**the site**). Once complete, the building will be occupied by the City of Parramatta Council, and will form the new Council Chambers.

The request seeks to vary the height of building development standard prescribed under Clause 4.3 and the sun access development standard prescribed under Clause 7.4 of the Parramatta LEP 2011. It is noted these controls are interdependent, with Clause 4.3 relying on the provisions contained within Clause 7.4 to set the maximum height of building control for the site.

Parramatta LEP 2011 prescribes a solar protection zone being the land at Parramatta Square identified with blue hatching in the Sun Access Protection Map. The proposed development, specifically the civic spire component, protrudes into the protection zone, representing a maximum contravention of 3% of dispersed overshadowing within the north-eastern corner of the sun access plane between the hours of 12pm and 2pm at mid-winter.

3. ASSESSMENT FRAMEWORK

The Clause 4.6 variation request submitted within the DA package was prepared in accordance with several NSW Land and Environment Court (**NSW LEC**) planning principles and judgements that have refined the manner in which written requests to vary development standards should be approached, as well as providing guidance for interpretation of the standards.

Specifically, the request was prepared and submitted in accordance with the judgement of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, which held that compliance with the development standard can be demonstrated unreasonable or unnecessary using one way.

[17] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

*[22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. **An applicant does not need to establish all of the ways.** It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. (emphasis added)*

In accordance with *Initial Action Pty Ltd v Woollahra Municipal Council*, the applicant respectfully contends with the RFI statement concluding it is insufficient to rely on a submission with only one way demonstrated.

Notwithstanding this, the applicant relied upon a number of ways in the submission to demonstrate that a better outcome would arise in the unique circumstances of the case by allowing flexibility in the application of the standard.

Further discussion of these matters are outlined in the following subsection.

4. JUSTIFICATION ADDENDUM

Whilst the proposed variation was demonstrated to result in minimal and undiscernible impacts on the adjacent public domain, it was also demonstrated that there are sufficient environmental planning grounds for the non-compliance to satisfy the consent authority. The following matters for consideration are reviewed and reinforced as appropriate justification for the non-compliances.

The proposed development seeks to play an important strategic role in the Parramatta Square precinct as the centre point for civic development and community engagement. The civic spire element plays an important architectural role in the design of the building as the pinnacle of the building and creates a contextual volume integral to the award of design excellence by the competition Jury. This is further reinforced by the Jury Review on 3 October 2019, of which the Jury concluded:

The Jury are in full support of the proposed spire, which has been a consistent design principle that has been retained since the original design competition. Although the spire does cause a “dappled” shadow across the Parramatta Square solar protection zone (12-2pm midwinter), the spire is a semi-transparent element that contains no floorspace. It is beautifully detailed and integrated into the design of the building.

Removal of the spire would have a detrimental impact on the architectural identity of the building and the strategic value of the broader Parramatta Square precinct, detracting from the cultural and strategic significance of the building and function as a centre point of the Parramatta Square precinct.

The height protrusion into the solar access zone is restricted to the civic spire, which represents only the uppermost 3.85m in the north-eastern corner of the façade. With the exception of this element, the bulk of the building envelope lies within the maximum height of buildings development standard and generates no shadowing impact on the surrounding public domain. The proposal is modest in the context of Parramatta Square, and the proposal will re-introduce a modesty and human scale into the precinct through contrasting with surrounding buildings of up to 230 metres in height.

The proposed overshadowing is minimal, temporary and transient as modelled on the winter solstice on 21 June. With the very limited impact only occurring between 12 pm and 1.30pm at mid-winter, being the worst occurrence. Whilst this is a well-recognised and accepted standard for shadowing models, the degree of overshadowing of the proposed development will not generate this level of impact during the remaining months of the year, particularly in the summer months when activity within the public square is expected to peak.

5. CONCLUSION

The contravention of the development standard has been demonstrated to be appropriate in the circumstances of this unique case based on the merit assessment of the public benefits associated with a compliant and non-compliant development. As outlined within the original variation request and this letter, it is clear the non-compliance will deliver greater benefits at both site-specific and strategic levels, and accordingly the variation to the standards is justified.

Notwithstanding the above, the proposed variation is only relevant in the context of the unique civic applications for Parramatta Square and the strategic social and cultural importance of the urban renewal precinct. These applications are entirely within the public interest and seek to provide public benefits that are crucial to achieving the amenity and function of the Parramatta Square community hub. The proposed variation does not seek to establish a precedent, nor does it intend to diminish the



weight and ongoing role of the development standard in protecting the amenity of public open space in Parramatta.

Should you require any additional information or clarification please do not hesitate to contact either Simon Gunasekara on 02 9233 7698 or Eliza Scobie on 02 8233 7613.

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Gunasekara", written in a cursive style.

Simon Gunasekara

Senior Consultant