

2 July 2018

Advice for Gateway Determination Review
Planning Proposal 197 Church Street, Parramatta (PP_2016_PARRA_015_00)

1. INTRODUCTION

On 10 April 2018, the Independent Planning Commission (**Commission**) received a request for advice regarding a Gateway Determination Review for 197 and 207 Church Street and 89 Marsden Street, Parramatta.

Holdmark Property Group (the **proponent**) is seeking to delete conditions 1(c)(iii) - (v) of the Gateway Determination made on 13 July 2017, which relate to the requirement to amend the planning proposal so there is no additional overshadowing of the protected area of the public domain within Parramatta Square between 12pm and 2pm in midwinter. **Figure 1** below identifies the Parramatta Square protection area in red.

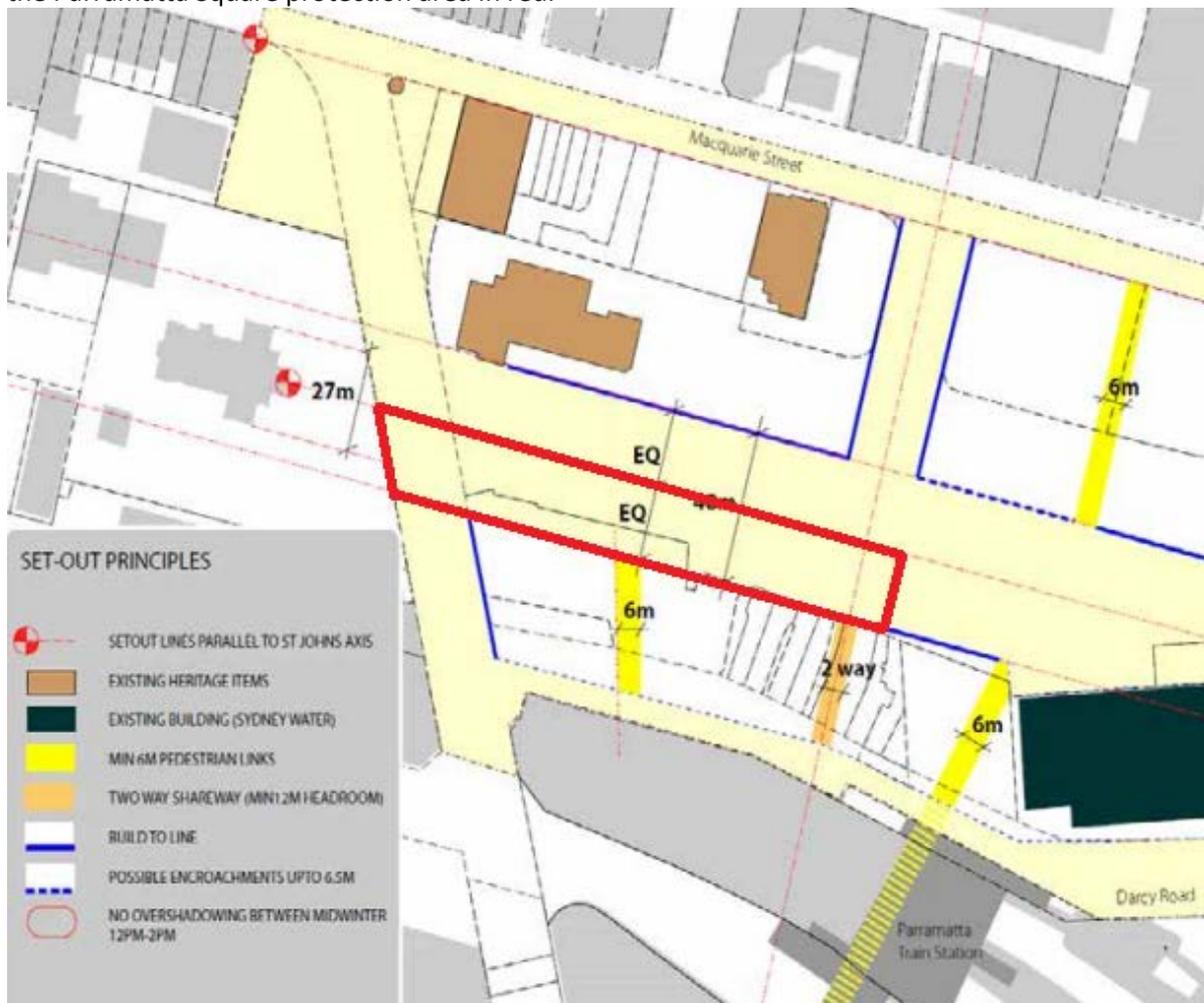


Figure 1: Parramatta Square overshadowing protection area (identified in red)

Source: Parramatta Development Control Plan 2011

The Commission has been requested by the delegate of the Greater Sydney Commission (**GSC**), in accordance with section 3.34(5) of the *Environment Planning and Assessment Act 1979* (the **EP&A Act**), to review the planning proposal and prepare advice concerning the merits of the review request. The GSC specified that the Commission's advice should include a clear and concise recommendation to the GSC confirming whether or not, in the opinion of the Commission, the relevant conditions should be retained.

Professor Mary O'Kane AC, Chair of the Commission, nominated Ms Dianne Leeson (Chair), Mr Soo-Tee Cheong, and Mr Stephen O'Connor to constitute the Commission to provide advice for the review of the gateway determination.

1.1 Proponent's request for gateway determination review

The Gateway Determination made by a delegate of the GSC on 13 July 2017 (**Gateway Determination**) included the following conditions (among others):

“(c) Amend the planning proposal to:

(iii) Change the Explanation of Provisions and proposed height of buildings map to indicate that the maximum height of buildings for the site is subject to clause 7.4 Sun Access;

(iv) Change the Explanation of Provisions to amend clause 7.4 Sun Access, to ensure direct access of natural sunlight, and no additional overshadowing occurs between 12pm – 2pm of the protected area of public domain within Parramatta Square (Note: this is not intended as a site-specific control but will apply to all land affected by clause 7.4);

(v) amend the proposed maximum FSR to ensure consistency with the FSR controls proposed for the site in the Parramatta CBD Planning Proposal (PP_2016_PARRA_015_00), and to ensure that the maximum potential FSR, including design excellence bonus, will comply with clause 7.4 Sun Access (as amended by condition 1(c) above) and the State Environmental Planning Policy 65 Apartment Design Guide;”

The Commission has been requested to provide advice as to whether these conditions should be retained in the Gateway Determination.

As the Commission understands it, the proponent is seeking to delete these conditions as they allow no additional overshadowing of the protected area within Parramatta Square between 12pm-2pm, whereas the current solar access controls in the *Parramatta Local Environmental Plan 2011 (LEP 2011)* and *Parramatta Development Control Plan 2011 (DCP 2011)* requires:

“Overshadowing is to be minimised within the [protected area]. Individual buildings shall be designed so that no single point of the area outlined in red is in shadow for a period greater than 45 minutes between 12pm- 2pm mid-winter.” (Section 4.3.3.7, item C3)

In support of the request to delete these conditions, the proponent submitted a *Review of Gateway Determination, December 2017 (DFP Planning Consultants) (Proponent's Report)* setting out, in its executive summary:

“These Gateway conditions will not only prevent the project from ever proceeding as envisaged, but will also potentially prohibit development of around another 265,000sqm to 380,000sqm of GFA in the northern part of the Parramatta CBD. Assuming 350,000sqm of GFA

could not be developed, this could jeopardise approximately 19,000 new jobs and the realisation of \$3.4 Billion per annum of additional economic benefit for Parramatta.

There is strong evidence to support the deletion of conditions 1(c)(iii), (iv) and (v) of the Gateway Determination.”

1.2 Summary of Planning Proposal and Gateway Determination

The Gateway Determination related to a planning proposal to amend the LEP 2011, which sought to:

- remove current building height controls of 12 metres and 36 metres and the current Floor Space Ratio (FSR) controls of 3:1 and 4:1 that apply to the site; and
- introduce site specific controls permitting a maximum building height of 250 metres (approximately 80 storeys), a maximum Gross Floor Area of 71,000m² (which translates to an FSR of 16.5:1) and exemptions from clauses 24, 22B(4), 22B(3)(d) and 22B(6) of the *Parramatta City Centre Local Environment Plan 2007*.

A chronology of the history of the planning proposal, including its submission to City of Parramatta Council (**Council**) has been prepared by the Commission and is published on the Commission’s website. Particular features of the history of the planning proposal include:

- April 2014 - Preliminary planning proposal for 197 Church Street submitted to Council;
- March 2015 - Planning proposal for 197 Church Street, Parramatta submitted to Council;
- December 2015 – Council resolved to support the planning proposal for 197 Church Street, Parramatta, providing an increase in FSR to 15:1 (excluding design excellence);
- April 2016 - International Design Excellence Competition brief approved by Council;
- June 2016 - Independent jury unanimously selected the design by Rafael de la Hoz (architect) in collaboration with Group GSA as the winner; and
- July 2017 – Gateway Determination made by a GSC delegate.

2. THE DEPARTMENT’S GATEWAY REVIEW JUSTIFICATION ASSESSMENT

The Department of Planning and Environment’s (the **Department**) assessment report identified the increased overshadowing impacts to Parramatta Square as the key impact associated with the review request. The report found that while the planning proposal still had strategic and site based merit, the overshadowing controls included within gateway determination were required to ensure that the proposal did not unreasonably impact the solar access and amenity of Parramatta Square.

The Department’s assessment report concluded that:

“As Parramatta Square is the focal point of Sydney’s second CBD and overshadowing plays a key role in ensuring its maximum usage, enjoyment and success, the sun access controls for the protected area of Parramatta Square should be introduced within the Parramatta Local Environmental Plan 2011.”

3. THE COMMISSION’S MEETINGS AND SITE VISIT

As part of the Gateway Review, the Commission met with the Department, the GSC, the proponent, Council, and visited the site. Meeting and site inspection notes are published on the Commission’s website.

3.1 Briefing from the Department and the Greater Sydney Commission

On 3 May 2018, the Department and the GSC briefed the Commission on the conditions attached to the Gateway Determination, the strategic vision for Sydney and the Parramatta City Centre, as developed by the GSC, and the importance of protecting the solar access of Parramatta Square as

defined within DCP 2011 (identified in **Figure 1**).

3.2 Briefing from the Proponent and Site Visit

On 3 May 2018, the Commission visited the site and locality, including Parramatta Square and the defined protected area zone. The Commission also met with the proponent to discuss the justification for reviewing the Gateway Determination conditions, the design aspects of the planning proposal, identified impacts to solar access and procedural fairness issues regarding the Gateway Determination process.

3.3 Meeting with Parramatta City Council

On 3 May 2018, the Commission met with Council officers to discuss the background to the planning proposal, the importance of maintaining solar access in Parramatta Square and the evolution of planning controls in Parramatta regarding solar access to Parramatta Square. Council officers stated that Council did not support or oppose the development.

4. ADDITIONAL INFORMATION

On 4 May 2018, Council and the Department provided the Commission with additional information, including shadow diagrams and modelling. These documents are published on the Commission's website. The Commission also sought a copy of the proponent's shadow diagrams that were shown during the Commission's meeting with the proponent and these are also published on the Commission's website.

5. THE COMMISSION'S CONSIDERATION

5.1 Proponent's justification

The proponent advanced a number of arguments in the Proponent's Report in support of the request to delete the conditions. These included (in summary) the following:

- the competition winning building more than complies with the current 45-minute overshadowing rule in LEP 2011 and DCP 2011;
- the Parramatta Square solar zone can be enhanced by the installation of heliostats to deliver both light and warmth;
- the competition winning building includes around 650 dwellings, providing accommodation for around 2,000 residents, plus 14,000m² of non-residential uses with the potential to create around 1,350 new jobs and over \$220m per annum of economic benefits;
- based on the encouragement of Council, the proponent has invested many years of work and millions of dollars in designing an iconic, world class building;
- the Department's assessment did not consider the amended reference design;
- the Department's assessment afforded too much weight to media statements made by the Chief Commissioner of the GSC;
- development of a landmark building on this site is consistent with the overarching strategic framework for Sydney and the Parramatta City Centre;
- the condition requiring no additional overshadowing of the public domain of Parramatta Square will result in a poor built outcome for the northern part of the City Centre.
- deletion of the 45-minute overshadowing rule would prohibit an estimated 265,000m² to 380,000m² of gross floor area within Parramatta City Centre;
- this planning proposal is unique and would not create a precedent for further applications;
- it is inequitable to introduce a condition which would essentially negate what the planning proposal is seeking to achieve; and
- the process generates uncertainty for the development and investment community with respect to investment risk in Parramatta.

5.2 Strategic context

The Greater Parramatta to Olympic Peninsula Plan, released by the GSC in October 2016, recognised that Parramatta City Centre is undergoing major revitalisation and the three-hectare Parramatta Square development will create a long-awaited attractive public space in the commercial core. The plan's vision recognised that attractive and effective built environments and public spaces need to reflect a focus on great urban design and environmental excellence.

The Central City District Plan, released by the GSC in March 2018, affirmed that livability and amenity aspects of place are extremely important to Parramatta CBD and the Region's future. The District Plan recognises the need to improve livability as one of four key concepts of the district's future. This concept encourages future planning decisions to start with, and focus on, open space and a people-friendly public realm.

5.3 Significance of Parramatta Square

When the Commission met with Council's representatives, those representatives stated that Council had long established Parramatta Square as the defining component of the Parramatta City Centre. For example, traffic was removed from Centenary Avenue and Parramatta Square in 1975 to protect and promote public space within the City Centre. LEP 2011 and DCP 2011 identified broad objectives for the future of Parramatta City Centre, which included the development of high quality public spaces. Specifically, in relation to Parramatta Square, DCP 2011 states:

"Parramatta Square will be a public gathering place. The public open space at the centre of Parramatta Square will form the pre-eminent ceremonial centre of Parramatta, the site for both significant formal civic events and recurrent cultural and community celebrations and festivals." (Section 4.3.3.7)

Each of the stakeholders that the Commission met with during the process expressed how important public spaces are generally, and Parramatta Square is specifically, in shaping the livability and place building of the Parramatta City Centre.

During the Commission's meeting with the GSC, the Chief Commissioner reaffirmed the importance of Parramatta Square. The Chief Commissioner emphasised that Parramatta Square would play an important role in providing the City's residents with access to a high quality public space because it was central within the City Centre and because there were so few other suitable spaces nearby (Parramatta River and Jubilee Park are the closest alternate public spaces and are quite distant from the City Centre).

The Chief Commissioner stated that Parramatta Square was identified within the Central City District Plan as a highly important component of Greater Parramatta which GSC intends to be developed as a great dual city of Sydney Harbour as it contains many of the qualities that make public spaces great such as amenity, comfort, activities, sociability, and movement of people.

The Department's Planning Team Report of 13 July 2017 (leading to the Gateway Determination) identified Parramatta Square as one of the important spaces that will determine the success of the Parramatta City Centre as a great place. The report stated that Parramatta Square is a regionally significant, premier public space for the emerging City Centre and has received significant investment by the NSW Government and Council to enable the provision of infrastructure to create a world class public space.

The proponent agreed. Despite contesting the changes to the solar access conditions, during the proponent's meeting with the Commission, the proponent's presentation (published on the Commission's website) identified that a building could add other forms of amenity to a public space even if it was overshadowed. The proponent supported the importance of Parramatta Square and its need to continue to be a great public space.

The Commission is satisfied that Parramatta Square is an important public space and plays a significant role in delivering quality open space to Parramatta City Centre and the wider region. The Commission notes that the success of a public space such as Parramatta Square is due to a myriad of place building qualities which include sociability, activities, access and linkages, comfort and solar access, and that planning controls should recognise the importance of the qualities that will make Parramatta Square a great public space.

5.4 Solar access to Parramatta Square

Council's representatives explained to the Commission that controls to manage solar access were established for the Parramatta City Centre in 2001 with the gazettal of *Sydney Regional Environmental Plan No 28 – Parramatta*. This plan established that two hours of solar access must be provided to an area of not less than 6,000 square metres within the Civic Square (now known as Parramatta Square) between 10am and 2pm during the winter solstice.

These solar access controls were carried forward within clause 7.4 Sun access of LEP 2011. LEP 2011 and DCP 2011 also redefined the area where the solar access controls applied by narrowing the area from the Civic Square to a defined boundary within Parramatta Square. DCP 2011 was further amended in December 2015 to require that:

"... no single point of the area outlined in red is in shadow for a period greater than 45 minutes between 12pm- 2pm mid-winter." (Section 4.3.3.7, item C3)

Council's representatives stated that the historical implementation of controls managing solar access within statutory instruments for Parramatta City Centre reflected the NSW Government's and Council's acknowledgment that sunlight penetration through to Parramatta Square was highly important in preserving the amenity values of Parramatta Square.

The Department's 13 July 2017 report mentioned values that had been earlier expressed by the Chief Commissioner of the GSC as being important to city building, including good urban design and place making, protecting access to sunlight and high quality open spaces, recognising and protecting the cultural importance of Parramatta Square among other places in the City Centre, and that public spaces should not be cold, sunless and windswept.

The Commission recognises that these are important values for the Parramatta Square and the City Centre and the Commission agrees with them.

5.5 Evaluation of the solar access conditions in the Gateway Determination

Both the Department and the GSC put the view to the Commission that, without the solar access conditions in the Gateway Determination, considerable amenity and public benefit would be lost. It was stated that 68.5% of the wider Parramatta Square is overshadowed between 12pm – 2pm in mid-winter. They explained that the no additional overshadowing control was conditioned for the protected area as this could be the last opportunity to do so. They considered that if the current overshadowing controls were to continue, the amenity of Parramatta Square would be in jeopardy.

The GSC outlined to the Commission that reduced amenity in Parramatta Square through overshadowing could impact on its future as a great public space. The GSC stated that creating and renewing great places and local centres has been identified as a planning priority in the Central City District Plan. The GSC argued that no additional overshadowing of the protected area within Parramatta Square between 12pm-2pm in mid-winter would help deliver people-friendly public realm and high amenity, in accordance with the priorities of the Central City District Plan.

The proponent suggested that a slender building, consistent with the existing 45-minute solar access controls, could cast a thin, fast-moving shadow that would not result in significant overshadowing of Parramatta Square during mid-winter. The purpose of the thin shadow is to leave considerable areas of Parramatta Square in sunlight, with no particular area overshadowed for a long period of time. The proponent calculated that the average period of overshadowing between 12pm – 2pm in mid-winter resulting from the competition winning design building for any given point in the protected area within Parramatta Square is around 18½ minutes.

However, Council disputed the relevance of this ‘average overshadowing’ period. Council stated that areas within Parramatta Square would be overshadowed for closer to 45 minutes.

In addition, the proponent explained its view that alternative options for public open space should be explored. Preserving sunlight access to Parramatta Square, it stated, would not preserve the whole of its amenity because as the working population for Parramatta grows beyond 20,000 people, the *“designated area will comprise a heavily trafficked area that provides little amenity or peacefulness.”*

The proponent stated that enhancement and delivery of the recently released Civic Link Framework, would provide additional open space and amenity opportunities within the Parramatta City Centre, which could reduce reliance on Parramatta Square for public open space because Parramatta River foreshore and Parramatta Park will be capable of providing equivalent or better solar access.

The Commission has considered and reviewed all the evidence presented by Council, the Department, the GSC and the proponent. The Commission has also considered the likely overshadowing impacts on Parramatta Square of the no additional overshadowing control. The Commission observes that 68.5% of the wider Parramatta Square is already overshadowed in mid-winter, which means the remaining area, the protected area, enjoying full solar access is extremely important. The Commission has concluded that Parramatta Square is important to the success of the Parramatta City Centre, and that solar access is important to the success of Parramatta Square.

The Commission is not persuaded by the proponent’s views that some additional overshadowing of the remaining part of the square that enjoys full solar access would be acceptable. The Commission is similarly unpersuaded by the proponent’s views that the future volume of workers in the City Centre would diminish the amenity of the square (such that full solar access would be unnecessary), nor that other more distant public open spaces are adequate to support the City’s open space needs.

The Commission acknowledges that the proponent has gone to significant lengths to prepare documents and plans showing a tall slender building that could have limited overshadowing impact. However, on balance, the Commission finds that preserving the remaining solar access to Parramatta Square is essential and in the public interest.

5.6 Proposed mitigation of overshadowing impacts (the Heliostat)

The proponent presented to the Commission a design solution involving a heliostat to mitigate overshadowing impacts to Parramatta Square. The proponent stated that a heliostat could be integrated into the design of the proposed tall building to counter the shadow of a building by reflecting warmth and light onto the shaded part of the protected area.

The Department's 13 July 2017 report evaluated the effectiveness of heliostats. The Department's research found that natural light loses approximately 10% of its solar potential on each reflected surface. Therefore, after the light is reflected off the two-proposed heliostat reflective surfaces, a 20% efficiency loss in comparison to direct sunlight would result.

The Department also raised a concern regarding the potential for future buildings to impinge on the solar access to the heliostat, reducing its effectiveness. The Commission notes that although the height of the proposed building would make that scenario unlikely, it does raise issues for future solar access planning in the City Centre. The Commission suggests that the Department should consider developing policies to guide future controls regarding heliostats.

Notwithstanding, the Commission has considered the use of a heliostat to help mitigate overshadowing of Parramatta Square. The Commission is not persuaded that reflected sunlight will provide sunlight qualities in a public open space area that are commensurate with the importance of Parramatta Square and its amenity.

5.7 The Commission's views on the proponent's other views

The Proponent's Report offered a wide range of justifications for the deletion of the conditions.

The proponent emphasised that preparation of the planning proposal had had due regard to the solar access controls of the LEP 2011. The proponent stated that the current provisions adequately protected the amenity of Parramatta Square and that changes to the current provisions would be highly restrictive on future development potential, not only of the site, but across the Parramatta City Centre.

The proponent considers that the conditions in the Gateway Determination significantly reduce the development potential of Parramatta City Centre and negate the opportunity to develop a world class, iconic building. The result would be mixed use 'opportunity' sites in the central portion of the city centre, not being able to realise their development potential, which is contrary to the strategic planning direction for the Central City District Plan as established by the NSW Government and GSC.

The proponent stated that the planning proposal, in its current form, will facilitate the delivery of jobs and housing in the heart of the Parramatta City Centre and that the redevelopment of the site provides an opportunity to explore the potential for new art, cultural or heritage facilities or experiences, and forge strong links to Parramatta Square. The proponent argued that these benefits will be lost if conditions 1(c)(iii) to (v) in the Gateway Determination are retained.

The proponent stated that a significant amount of work has been undertaken to design a building that can comply with the 45 minutes solar access rule for Parramatta Square. Amending the controls at this stage, after the design of a building has been completed, would be a significant waste of the proponent's resources, unfair and a risk to any other developers in the City Centre.

The Commission has reviewed and considered each of the various grounds raised by the proponent, including its contentions regarding lost development opportunity should the existing conditions in

the Gateway Determination be retained. The need to retain the existing solar access as well as other important elements of Parramatta Square will involve consideration of many planning and land development related factors by the responsible planning authority in future planning strategies. However, the Commission is not persuaded that lost development potential would result if the proposed competition winning building cannot be constructed in its current form by reason of the Gateway Determination conditions. That is because at no stage did the existing planning controls permit such a development.

6. THE COMMISSION'S ADVICE

The Commission has reviewed and considered all of the information provided to it and met with the proponent, the Department, the GSC and Council.

The Commission finds that Parramatta Square is a public space that is important to the future of the Parramatta City Centre. To ensure Parramatta Square retains its identity as an important people-friendly public space, as endorsed within the Central City District Plan, the square must retain a high level of amenity.

The Commission finds that if the planning proposal were permitted to allow additional overshadowing of Parramatta Square, amenity would be compromised and the future of the square as a great public place would be diminished. The Commission finds that the existing solar access conditions in the Gateway Determination, which do not allow additional overshadowing of the protected area within Parramatta Square between 12pm – 2pm midwinter, are appropriate.

Therefore, to preserve the future solar amenity of Parramatta Square, the Commission concludes that the proponent's request to delete the solar access conditions of the Gateway Determination is not supportable.

The Commission advises the GSC that in the Commission's opinion, conditions 1(c)(iii) – (v) of the Gateway Determination should be retained.



Dianne Leeson (Chair)
Member of the Commission



Soo-Tee Cheong
Member of the Commission



Stephen O'Connor
Member of the Commission