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Review of Gateway Determination

Planning Proposal for

197 and 207 Church Street and 89 Marsden Street,
Parramatta

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Executive Summary

1 INTRODUCTION

This report accompanies a request for Gateway Review lodged in accordance with Section 5.4 of DPE's Guide to preparing local environmental plans.

The purpose of the Gateway Review is to request the deletion of conditions 1(c)(iii), (iv) and (v) of the Gateway Determination issued by the delegate of the Greater Sydney Commission (GSC), being NSW Department of Planning and Environment (DPE) on 13 July 2017.

2 BACKGROUND

Holdmark is proposing to build a landmark, world-class tower at 197 Church Street, designed by Rafael de la Hoz in collaboration with Group GSA ("RDLH/GSDA"), as the winning entry in a Council-endorsed International Design Excellence Competition.

Holdmark has invested many years of work in designing this iconic proposal, in close collaboration with the City of Parramatta. The site has been identified by the Council as being of key, strategic value for the CBD, and an appropriate counterpoint "bookend" to the Aspire tower site.

A Planning Proposal to facilitate the realisation of this vision was endorsed by Parramatta Council on 7 December 2015 and forwarded by the Council on 4 May 2016 to DP&E/Greater Sydney Commission for Gateway Determination.

The visually spectacular mixed-use building is of significant socio-economic benefit to Parramatta. It includes around 650 dwellings (including affordable key worker housing opportunities) plus approximately 14,000m² of non-residential uses with the potential to create around 1350 new jobs and provide over \$220m per annum of additional economic benefits to Parramatta.

On the following page is an artist's impression of the competition winning building as viewed from the existing Centenary Square.

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Competition winning building as viewed from Centenary Square

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On 13 July 2017, DP&E (as delegate for the GSC) issued a Gateway Determination which included conditions seeking to abolish the 45-minute rule in the current LEP/DCP (such rule having been established by Council following robust and detailed modelling, public consultation and workshopping) and replace it with a “no-overshadowing” provision for the 3000sqm “solar zone” of the future Parramatta Square.

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. This report details that evidence, the key points of which are summarised below.

3 SUMMARY OF JUSTIFICATION FOR REVIEW OF GATEWAY DETERMINATION

3.1 Fully compliant with the 45-minute Rule in current LEP/DCP

The competition winning building more than complies with the Council-adopted 45 minute rule which, as of the date of this report, is the current LEP and DCP control in relation to overshadowing of the solar zone of the future Parramatta Square. In fact, the average period of shadowing resulting from the proposed RDLH/GSA competition winning building for any given point in the DCP solar zone of Parramatta Square is around 18½ minutes.



The 45-minute rule was established following extensive consultation and robust testing by Council and it was a strict requirement of Council’s resolution to support the Planning Proposal that any future building comply with this rule.

The 45 minute rule was assessed by Council as striking an appropriate balance between encouraging development of tall, slender built forms on land to the north of Parramatta Square and acknowledging that the shadows cast by such buildings would move quickly and that solar access would be maximised during other periods of the year, particularly the autumn and spring equinoxes – refer Page 6 of Minutes of Council Meeting on 12 October 2015.

The Council’s design for the public domain of Parramatta Square indicates that the public space will be a very busy and very vibrant place with a significant number of structures and landscaping which will in themselves create shading of the DCP solar zone. Preservation of uninterrupted solar access to this space is not only impractical, it is clearly not considered essential to the useability or functionality of this space, particularly given the envisaged activities and improvements.

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Extract from *Inhabit Report* at Appendix 13 showing average duration of overshadowing of a single point in the DCP solar zone is less than 19 minutes

3.2 HelioStat solution to enhance solar access

Notwithstanding the compliance of the competition winning building with the 45 minute rule, solar access to the DCP solar zone of Parramatta Square can be enhanced by the installation of heliostats to deliver both light and warmth to effectively counteract overshadowing.

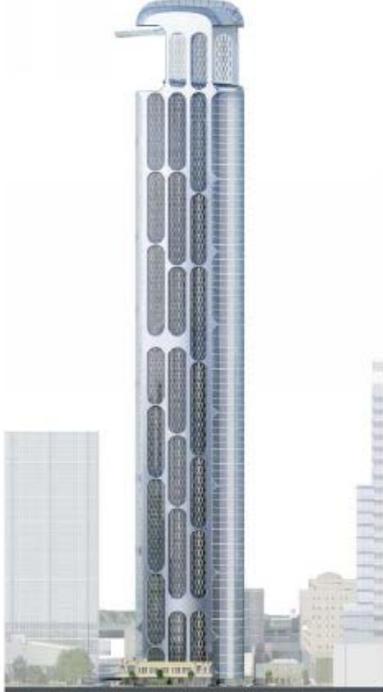
A heliostat array can be integrated seamlessly with the design of the futuristic competition winning building.

The provision of a heliostat will counter the shadow impacts of the tower by reflecting sunlight (warmth and light) onto the shaded part of the DCP solar zone. Holdmark has engaged expert building physics consultants who have established that a heliostat array can potentially deliver solar access of up to 130% of the average ambient daylight on a mid-winter's day. This effectively provides a like for like replacement of natural sunlight during the key overshadowing period of 12 noon to 2pm.

Examples of where the use of heliostats has been accepted and has positively impacted amenity can be seen in recent developments at One Central Park in the Sydney CBD and at Walker Street, Rhodes.

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OPTION 1



OPTION 1



Artist's impression of heliostat array on competition winning building

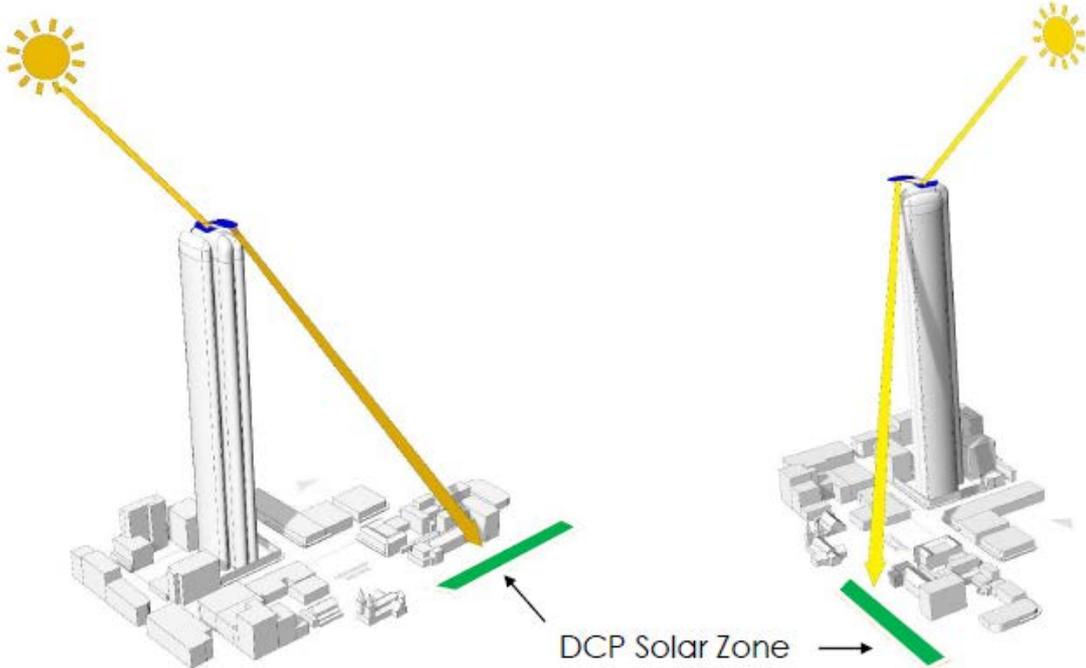


Diagram of operation of heliostat on 197 Church Street, Parramatta

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3.3 Significant ongoing socio-economic benefits of the competition winning building

The stunningly futuristic mixed-use building that was announced the unanimous winner of the Council-endorsed International Design Excellence Competition includes around 650 dwellings providing accommodation for around 2,000 residents (including affordable key worker housing opportunities) plus approximately 14,000m² of non-residential uses with the potential to create around 1,350 new jobs and over \$220million per annum of economic benefits.

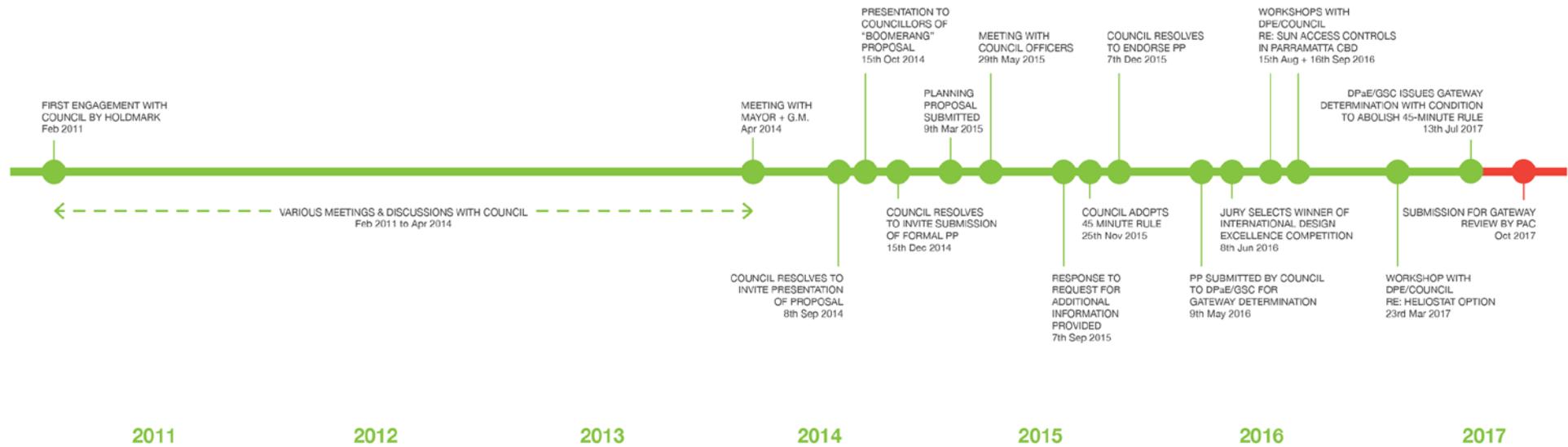
This outcome (in respect of jobs, dwellings and recurrent annual economic output) is completely consistent with the Government's strategic vision for Parramatta (including *A Plan for Growing Sydney* and the recently released revised Draft Central City District Plan, October 2017) and provides a significant opportunity to meet the jobs and housing targets. The revised Draft Central City District Plan reinforces the vision for Parramatta as detailed in the Greater Sydney Commission's draft regional plan for Sydney - *A Metropolis of Three Cities – Our Greater Sydney 2056* - released October 2017.

3.4 Consistent with detailed discussions and collaboration with Parramatta Council

The Planning Proposal and the building design which was the outcome of the International Design Competition was the result of numerous discussions and consultations with Councillors and Council staff. Based on encouragement from Council, Holdmark invested many years of work and millions of dollars in designing an iconic, world-class building for 197 Church Street, a site identified by the Council as being highly strategic for the CBD, that will function as an appropriate counterpoint "bookend" to the Aspire tower site.

The Council has declared that its vision for this key site is a world-class, iconic design statement which will embody the aspirations of Parramatta to become a global city.

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Timeline of discussions undertaken with Council and DPE/GSC since 2011

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3.5 Assessment of Planning Proposal based on incomplete information

The DPE assessment of the Planning Proposal does not appear to have considered the amended reference design which eventuated as a result of the Design Competition process undertaken in close collaboration with the Council. It appears that documentation relating to the Design Competition and the ultimate winning building was not passed on by Council to DPE. Accordingly, it seems that the DPE assessment has been made using incomplete information.

The performance of the competition-winning design is significantly better in respect of overshadowing than the original *Boomerang* reference design assessed in the DPE Planning Assessment Report.

The review of the Gateway Determination should be conducted with the benefit of all relevant information, and in the context of the improved (and fully-compliant) solar access resulting from the competition winning design.

3.6 Weight Afforded to Media Release

The DPE Planning Report prepared to inform the Gateway Determination places significant weight on an article by Lucy Turnbull (in her role as Chief Commissioner of the Greater Sydney Commission) that appeared in the *Sydney Morning Herald* on 12 July 2016.

In the article, the Chief Commissioner writes ‘our’ decision in relation to the Planning Proposal for 48 Macquarie Street (to restrict the height of development on that site to ensure a future building did not overshadow Parramatta Square) reflected the Commission’s position in relation to development that *‘puts the quality of our public spaces at risk’*.

A review of publicly available information on the GSC’s website has not revealed any policy or other adopted position of the GSC in relation to overshadowing of public spaces. Therefore, in the absence of formal policy, the media article can only be credited, at best, as being the opinion of the Chief Commissioner; not the adopted policy position of the GSC. Moreover, reporting in the media can often be selective, incomplete and occasionally misleading.

Given that this is an opinion expressed in a media article by the Chief Commissioner, as opposed to an adopted policy position of the GSC, the considerable weight that has been afforded this article is misplaced.

3.7 Strategic Merit Test has been met

The purpose of a Gateway Determination is to assess the strategic merit of a Planning Proposal. All stakeholders agree that this test has been comprehensively satisfied.

From a strategic perspective, there is no dispute that the site at 197 Church Street is ideally located to accommodate an iconic building in the Parramatta CBD. It is centrally located at the key junction of the current Church Street mall, Centenary Square and Macquarie Street, and will be a logical counterpoint “bookend” to complement the Aspire building to be constructed at 8 Parramatta Square. The development of a landmark building on this site is also consistent with the objectives of the overarching strategic framework for Sydney, the Central City District and the Parramatta CBD. Replacement of the 45-minute rule with a no overshadowing requirement will prevent the realisation of the development of the competition winning iconic building on this site.

197 Church Street occupies a key strategic location in the centre of the Parramatta CBD and its proximity to the Parramatta Transport Interchange makes it a strategically desirable location to increase density. This aligns with the State Government’s policy position in *A Plan for Growing Sydney* released in 2014 for higher density development to be located proximate to public transport.

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3.8 Detrimental implications of 'no overshadowing' approach

Council endorsed a recommendation by Council Officers to adopt the 45-minute rule in relation to overshadowing of the solar zone of Parramatta Square following significant debate, robust modelling, public consultation and workshoping. The 45-minute rule is retained in Council's own CBD Planning Proposal currently lodged for Gateway Determination.

The competition winning building has been designed to fully comply with the endorsed 45 minute rule in the LEP/DCP, as required by the Council resolution of 7 December 2015.

As stated by Council's Director of Strategic Outcomes and Development at a Council meeting held on 12 October 2015:

"The 45 minute time period was calculated based on Council's internal modelling and will allow the redevelopment of sites to the north of the square to overshadow however, will ensure where a tower element is provided it will not require lower bulkier forms but instead will promote a tall more slender built form. The controls will still allow significant overshadowing of Parramatta Square when the cumulative impacts in mid-winter but the intention is to promote taller slender forms that maximise solar access during other parts of the year particularly the autumn and spring equinox."

Deletion of the 45-minute rule and adoption in lieu of a "no overshadowing" provision (as proposed by the conditions of the Gateway Determination) is the antithesis of good planning policy because it would:

- Contravene an adopted, carefully-considered Council policy.
- Reduce the height of a building on 197 Church Street by over 70% from 83 storeys to approximately 20 storeys, rendering the project unviable as envisaged.
- Significantly reduce and potentially prohibit the development potential of a large area north of Parramatta Square (estimated to be in the order of 265,000m² to 380,000m² of GFA), thereby massively discouraging further investment in the CBD. The socio-economic impacts of the 'loss' of this floorspace are discussed in **point 3.8** below.
- Be contrary to the current and proposed LEP development controls for land to the north of Parramatta Square.
- Conflict with Council's own intentions for public domain structures in (and therefore overshadowing) Parramatta Square.
- Be inconsistent with Council's current control permitting structures to overhang Parramatta Square by up to 6.5m.
- Result in an unsatisfactory urban design outcome in terms of cityscape for the CBD.

The Gateway Determination condition requiring no overshadowing of the public domain of Parramatta Square will result in a poor built outcome for the northern part of the City. It will be contrary to the city-shaping profile usually desired for any major city, with the tallest buildings at the city core graduating to lower buildings at the city fringes.

To achieve good urban design and city-shaping, the precinct north of the Parramatta Square should be low at the Parramatta River. Building height should then ascend towards the south, allowing view sharing to the River and Hills to the north, solar access to each building and solar penetration along the north oriented streets.

But the zero shade to the solar zone of Parramatta Square policy envisaged by the Gateway Determination conditions will result in the built form north of Parramatta Square becoming a south sloping prism of buildings. The highest buildings will form a wall along the River and the lowest will be along the Square.

Each building will stand in the shade of its northern neighbour.

Each building will block the views of the River and Hills district to the north, , contrary to good urban design. This built form will seriously restrict the ability for residential development to be undertaken in

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areas south of the River as compliance with the Apartment Development Guidelines will be unable to be achieved.

Rather than a restrictive policy for one public space, for one period of the day, the City should focus on a number of spaces, each with its own character and solar accessibility. The recently released Civic Link Framework Plan indicates that Council is aware that a series of open space areas is required for what the revised draft Central City District Plan identifies as one of the top five CBDs in Australia.

The Framework Plan clearly puts great emphasis on the Civic Link as being a fundamental component of the public space network through the centre of Parramatta, providing a green, cultural “spine” for the city where people can relax and mingle and enjoy the open air and sunshine. In comparison, Parramatta Square will be a busy commercial thoroughfare and not the ideal place to sit and relax.

The Civic Link Framework Plan identifies that controls to minimise overshadowing of the link between 11am and 1pm will be introduced into the LEP and DCP.

This will provide choice - time of day, warm and cool conditions.

3.9 Detrimental Socio-Economic Impacts

The consequence of the Gateway Determination conditions in relation to Clause 7.4 of Parramatta LEP 2011 is that a significant portion of the northern CBD will probably remain undeveloped (or certainly unimproved from the current stock) as there would be insufficient commercial incentive for land owners to develop. (This also raises the very material issue of compensation to landowners who have invested to date, relying on the fact that any application submitted in accordance with the current planning controls would be “grandfathered” if the controls subsequently changed. This is further discussed in **point 3.11** below.)

The estimated quantum of new floorspace which could be developed in compliance with the current planning controls, but which would be sterilised if the 45-minute rule was abolished, has been estimated to be in the order of 265,000m² to 380,000m² of GFA – refer **Appendix 16**.

Such an outcome must surely be unintended, because it would:

- Be inconsistent with the strategic objectives for Parramatta as detailed in *A Plan for Growing Sydney* and the Government’s vision for Parramatta,
- Undermine the 3 cities vision and significantly reduce the economic benefit which would otherwise be realised as a result of this investment.
- Result in a reduction in income to Council for the provision of infrastructure within the CBD.

AEC Group has undertaken a high-level analysis to determine the impacts of this potentially very significant ‘loss’ of GFA north of Parramatta Square. For the purposes of assessing the socio-economic impacts of the no overshadowing policy, AEC has tested the loss of 350,000m² of GFA. If a view was formed that a different figure for the lost GFA was more appropriate, the associated impacts can be approximated on a simple pro-rata basis.

Based on a (conservative) assumption that half of the 350,000m² would be commercial floorspace, the analysis has identified that adoption of a no overshadowing rule could result in:

- A total of around 19,000 FTE new jobs not being created.
- Approximately \$3.4 billion per annum of additional economic benefit not being realised.
- Around 2,000 dwellings (accommodating approximately 5,000 residents) not being built.

In terms of the impacts on the development potential of 197 Church Street as envisaged, the ‘no overshadowing’ rule would result in:

- Approximately 1,350 FTE jobs not being created.
- Over \$250 million per annum of gross product not being contributed to the Parramatta economy.
- Around 650 new dwellings not being built.

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3.10 Exceptional Circumstances

The Planning Proposal for 197 Church Street, Parramatta is unique in a number of ways, such that any decision to allow it to proceed will not create a precedent for further applications. Its unique features include:

- It is one of only two Planning Proposals submitted before 17 June 2015, the date on which the proposed amendment to DCP 45-minute rule was first foreshadowed by DP&E/GSC.
- It is the only Planning Proposal to have a Council resolution specifically stating it is endorsed subject to compliance with the 45-minute rule.
- It is the only Planning Proposal to have undergone an International Design Excellence Competition endorsed by Council and DPE (via the Office of Government Architect's involvement in the competition as the jury chair).

3.11 Procedural Fairness

The change in direction in respect of the 45-minute rule after the Planning Proposal had been endorsed by Council and submitted to DPE/GSC for Gateway Determination raises serious questions regarding procedural fairness, due process and natural justice.

During the course of the Planning Proposal, Holdmark responded pro-actively, and in good faith to numerous requests from Council for additional information, notwithstanding the considerable investment of time and money required.

Holdmark has, in good faith, pursued this Planning Proposal in close consultation with Council for over 3 years.

Of more concern, however, is the concept of procedural fairness and how the “goalposts” have shifted during the course of the Planning Proposal. The establishment of the 45-minute rule in the LEP/DCP was the result of a resolution of Council to accept a recommendation by Council Officers following robust and detailed modelling, public consultation and workshopping. The 45-minute rule is retained in the CBD Planning Proposal currently lodged by Council for Gateway Determination

As required by the Council resolution of 7 December 2015, the competition winning building has been designed to fully comply with the 45 minute rule.

It was only when the Gateway Determination for the Planning Proposal for 48 Macquarie Street was issued on 17 June 2016 (several weeks after the 197 Church Street Planning Proposal had been lodged) that the deletion of the 45-minute rule was foreshadowed.

It is patently inequitable to retrospectively introduce a control which would essentially negate what the Planning Proposal is seeking to achieve. Moreover, the accepted principle in planning law is that when a control changes, any application lodged prior to the change in controls taking effect will be assessed pursuant to the rules in force when the application was lodged. On the basis of procedural fairness, that principle should apply in this case.

3.12 Confidence in the Planning System (Sovereign Risk)

This process generates uncertainty for the development and investment community and their financiers with respect to investment risk in Parramatta. The potential result is that billions of dollars of proposed investment in Parramatta could be withdrawn, thousands of planned jobs and homes might not eventuate and the “central city” vision for Parramatta will not be realised.

There are, however, other very significant consequences as this issue raises questions regarding the ability of investors and financiers to have confidence in the NSW planning system. This has far-reaching implications for NSW as a whole, because there are potentially crucial decisions which will be made in respect of future investment in major projects based on reliance on the planning system and consistency

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of application of planning policy. Even decisions made after robust consultation with the public are called into question by the proposal to retrospectively delete the 45-minute rule.

4 CONCLUSION and REQUESTED OUTCOME

4.1 Conclusion

It is evident that both Council and DPE agree in principle that the Planning Proposal for 197 Church Street Parramatta has strategic merit and is supportable.

However, conditions 1 (c) (iii), (iv) and (v) of the Gateway Determination prevent the development of the winning building of the International Design Excellence Competition in compliance with Council's vision.

The Planning Proposal has been prepared in accordance with Council's requirements. The winning design complies with the 45-minute rule which should continue to apply as it was established after lengthy public consultation, detailed modelling, workshoping and debate. As stated by Council's Director of Strategic Outcomes and Development, it provides satisfactory protection for solar amenity whilst still facilitating development north of the future Parramatta Square.

The retrospective withdrawal of the 45-minute rule in favour of a "no-overshadowing" rule is inequitable and contrary to the usual "savings and transitional" provisions applied when planning legislation and controls are amended. Inconsistency of application of planning policy also creates uncertainty for the development industry and undermines confidence in the NSW Planning System. Furthermore, a "no overshadowing" provision is the antithesis of good policy as it will sterilise the development of around 265,000m² to 380,000m² of GFA in the northern sector of the Parramatta CBD – with severely detrimental socio-economic consequences.

Notwithstanding the compliance of the competition winning building with the 45 minute rule, solar access to the DCP solar zone of Parramatta Square can be enhanced by the installation of heliostats to deliver both light and warmth to effectively counteract overshadowing.

As the Planning Proposal for 197 Church Street is an exceptional circumstance, there is no risk of setting a precedent.

Permitting the Planning Proposal to proceed in this manner would be a win-win for Parramatta and the GSC. Not only would the perceived overshadowing issue be addressed but the development of a major new landmark building (with all the associated socio-economic benefits) would be facilitated.

The futuristic iconic design of the winning building can become a symbol for the future of Parramatta as Sydney's Central City and a legacy for future generations to use and enjoy.

4.2 Requested Outcome

On the basis of the discussion and supporting evidence contained herein, deletion of Conditions 1 (c) (iii), (iv) & (v) of the Gateway Determination is requested.

This report accompanies a request for Gateway Review lodged in accordance with Section 5.4 of DPE's *Guide to preparing local environmental plans*.

1 Introduction

DFP Planning has been engaged by Holdmark being the proponent for a Planning Proposal in relation to 197 and 207 Church Street and 89 Marsden Street, Parramatta (the site). Hereinafter, the site will be referred to as 197 Church Street, Parramatta in terms of its address.

The Planning Proposal seeks to modify the built form development controls as they currently apply to the site under Parramatta Local Environmental Plan 2011 (Parramatta LEP 2011) to remove the maximum height of building control that applies to the site, increase the maximum floor space ratio (FSR) to 15:1 (excluding the 15% design excellence bonus) and exclude certain areas from the gross floor area calculations. These proposed amended controls were established by a resolution of City of Parramatta Council on 7 December 2015.

The Gateway Determination for the Planning Proposal was issued on 13 July 2017. The delegate of the Greater Sydney Commission (GSC) determined that a conditional Gateway Determination be issued for the Planning Proposal. Conditions 1 (c)(iii), 1 (c)(iv) and 1 (c)(v) of the Gateway Determination require City of Parramatta Council (Council) as the relevant planning authority (RPA) to 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 (Planning Proposal_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*

A copy of the Gateway Determination issued 13 July 2017 is included at **Appendix 1** to this report.

The purpose of this report is to provide justification for the **deletion of conditions 1 (c) (iii), (iv) & (v)** of the Gateway Determination issued 13 July 2017.

Pursuant to Section 5.4 of *A guide to preparing local environmental plans*, Holdmark has decided to lodge a request for a Gateway Review. In accordance with the requirements of Section 5.4, the following is provided:

- A completed application form;
- A copy of the Planning Proposal and supporting information as submitted to the Gateway; and
- Justification for why an alteration of the Gateway determination is warranted, including, where relevant, responses to issues raised by the original Gateway decision maker.

A disclosure of reportable political donations (as required under Section 147 of the Act) has not been included as Holdmark has made no such donations.

The completed form is attached to this report.

Attachments to this Planning Report include the following reports and plans:

- A copy of the Gateway Determination issued 13 July 2017 (**Appendix 1**)
- The Planning Proposal report (including appendices) prepared by DFP Planning and submitted with the Planning Proposal application to Parramatta City Council on 9 March 2015 (**Appendix 2**);

1 Introduction

- A copy of the Council Officer's report to the Council meeting of 7 December 2015 and minutes of meeting of 7 December 2015 (**Appendix 4**);
- The Council endorsed brief for the International Design Excellence Competition prepared in accordance with Council's resolution of 7 December 2015 (**Appendix 5**);
- A copy of the final report of the Competition jury which considered all entries in the International Design Excellence Competition (**Appendix 7**);
- Details of the winning design of the Design Excellence Competition, including details in relation to shadow impacts of the winning design compared to the original *Boomerang* concept (**Appendix 8**);
- Detailed chronology of the Planning Proposal process for 197 Church Street Parramatta including meetings and discussions held post Council's determination to support the Planning Proposal on 7 December 2015 (**Appendix 9**).
- Details of a heliostat solution to address concerns relating to solar access to the protected public domain area of Parramatta Square raised subsequent to the lodging of the Planning Proposal and the completion of the International Design Competition (**Appendix 13**);

We understand that, following a review of the information submitted to the Department of Planning and Environment (DPE) with the request for Gateway Review, DPE will prepare a report for consideration by the Planning Assessment Commission (PAC). The DPE report to be prepared by DPE will:

- Outline the proposal
- Include reasons why the review request has been made
- Provide reasons as to why the original Gateway determination was made
- Detail the views of the Council and the proponent.

The remainder of this report provides further justification as to why a reconsideration of the Gateway Determination is warranted and, specifically, why the conditions of the Gateway Determination as outlined above are not justified in this particular circumstance.

Holdmark requests an opportunity to address the PAC in person. If required, Holdmark is also available to meet with DPE to assist in the DPE's review of the information provided as part of this Gateway review request.

2 Background

2.1 Introduction

This background to the Planning Proposal is provided as it assists in understanding the actions that have been undertaken during the course of the Planning Proposal to ensure the requirements of the City of Parramatta Council have been satisfied and to ensure the development was not only economically and structurally feasible but also fulfilled the Council's objective of creating an iconic building for the Parramatta CBD on this site.

2.2 Preliminary Planning Proposal

In April 2014 a preliminary concept proposal for the redevelopment of 197 Church Street, Parramatta was submitted to seek initial feedback from Council on the merits of a proposal to redevelop the site for a landmark building. The concept proposal was accompanied by a planning and urban design report which set out a vision for the redevelopment of the site. The concept proposal was the first step prior to the preparation of a detailed Planning Proposal for formal consideration by Council.

In September 2014, the concept proposal submitted with preliminary Planning Proposal was considered at a Council meeting, together with additional detail in relation to overshadowing. Council resolved to invite Holdmark to present to the Council the merits of its proposal.

In October 2014, a PowerPoint presentation and fly through video with commentary was presented at a Councillor workshop in relation to the proposed redevelopment of the concept design being considered at that time, being a building known as the *Boomerang*.

In December 2014, a report was considered by Council in relation to the preliminary planning proposal for 197 Church Street as well as two other preliminary proposals for sites at 20-22 Macquarie Street and 220-230 Church Street & 48 Macquarie Street (the Greenway site).

At that meeting, Councillors acknowledged the significant investment developments such as those proposed would bring to Parramatta and expressed particular enthusiasm for the landmark building proposed on 197 Church Street, Parramatta.

Following debate, the Council resolved:

- (a) *That Council accept building proposal (a), (b) and (c) and request a further report.*
- (b) *That Council seek an opportunity to create an A Grade building in the CBD by encouraging the developer to submit an innovative plan/proposal for the key site which would then be assessed on its merits.*
- (c) *Further that each application for (a), (b) and (c) be assessed on its merits individually with a 10:1 FSR as stipulated in Council's draft planning framework.*

A letter from Council dated 18 December 2014 provided clarification as to the intent of the Council resolution and invited Holdmark to lodge a Planning Proposal for increased height and floor space ratio (FSR). Council also confirmed that any Planning Proposal for the site would not be required to be limited to a FSR of 10:1.

2.3 Planning Proposal Application – March 2015

In response to Council's resolution and invitation to submit a Planning Proposal, an application to amend Parramatta City Centre LEP 2007 (being the relevant planning instrument at that time) was lodged on 9 March 2015. The Planning Proposal sought to amend PCCLEP 2007 in the following manner:

- Remove the current height controls of 12m and 36 metres that currently apply to the site under Clause 21 'Height of Buildings' of the PCC LEP 2007.
- Remove the current Floor Space Ratio controls of 3:1 and 4:1 that currently apply to the site under Clause 22 'Floor Space Ratio' the provisions of the PCC LEP 2007.

2 Background

- Introduce site specific controls for the site by inserting a new clause titled 'Part 6 - Additional Local Provisions' to the PCC LEP 2007 which permits:
 - i. A maximum building height of 250 metres (approximately 80 storeys)
 - ii. A maximum Gross Floor Area of 71,000m² (which translates to an FSR of 16.5:1)

The Site Specific Clause also proposed the following:

- i. Application of an alternative definition of 'Gross Floor Area' (GFA) that amends the definition within the PCC LEP 2007.
- ii. Exemption from Clause 24 'Exceptions to development standards' of the PCC LEP 2007
- iii. Exemption from Clause 22B(4) of the PCC LEP 2007 to remove the requirement to run a Design Competition.
- iv. Exemption from Clause 22B(3)(d) of the PCC LEP 2007 to remove consideration of solar access in awarding Design Excellence to a design scheme.
- v. Exemption from Clause 22B(6) to not permit a further height and/or FSR increase if Design Excellence is achieved on the subject site. i.e. 250 metres and a GFA of 71,000m² would be the maximum built form outcome permitted on the site.

The Planning Proposal was supported by an Urban Design Analysis which included a concept plan for a building known as the *Boomerang* as a reference design.

A copy of the Planning Report and accompanying appendices, including the Urban Design Analysis, is included at **Appendix 2** to this report.

The Urban Design Analysis considered a number of issues associated with the development of a landmark building on the site including:

- Changes to the Parramatta CBD skyline
- What makes a city?
- The strategic location of the site
- Incorporation of the heritage façade
- Setbacks and the relationship with the ground level plane
- Archaeological considerations
- Overshadowing impacts

Following initial assessment of the Planning Proposal, Council wrote to the applicant on 12 May 2015 outlining key issues with the proposal and the additional information required by Council in order to continue assessment of the Planning Proposal.

Council also requested that the Planning Proposal be revised and resubmitted taking into consideration the key issues and that further analysis be conducted on a scheme seeking an FSR of 10:1 in order to maintain consistency with the recommendations of the adopted Parramatta CBD Planning Strategy and Council's resolution from 15 December 2014 in relation to the CBD Planning Strategy.

In September 2015, the Planning Proposal submission was amended in the following manner:

- Propose a maximum Floor Space Ratio (FSR) increase from 3:1 and 4:1 to 16.5:1, instead of a Gross Floor Area control of 71,000m² within a Site Specific Clause.

2 Background

- Remove the application of a maximum Building Height, or if Council deemed a height control necessary from an LEP drafting perspective, increase the maximum Building Height from 12m and 36m to 250m.
- Retract the Planning Proposal's original request to be exempt from Clause 22B(4) of the PCC LEP 2007 (to remove the requirement to run a Design Competition) with the applicant now proposing to pursue an International Architectural Design Competition at an appropriate stage of the development process.

2.4 LEP and DCP Sun Access Controls

2.4.1 Parramatta LEP Sun Access Controls

When the Planning Proposal was submitted in March 2015, the relevant planning instrument at that time was PCCLEP 2007. PCCLEP 2007 included the following controls in relation to sun access to certain public areas:

29E Sun access

- (1) *The objective of this clause is to protect public open space in the vicinity of the Parramatta Square site, the Lancer Barracks site and Jubilee Park from overshadowing.*
- (2) *Despite any provision of Part 4, development is prohibited on land to which this Plan applies if the development results in any part of a building projecting above the sun access plane controls established for that land by the City Centre Development Control Plan.*

In relation to Clause 29E, it is noted that the clause refers to public open space in the vicinity of the Parramatta Square site.

Secondly, Clause 29E identifies that development that does not comply with the sun access planes in the DCP is prohibited. In this regard, we note that there have never been sun access planes relevant to Parramatta Square. Accordingly, there were no legislated sun access controls for Parramatta Square pursuant to PCCLEP 2007.

On 17 December 2015, PCCLEP 2007 was repealed and the controls for the City Centre were incorporated into Parramatta LEP 2011.

The sun access provisions previously contained in Clause 29E of PCCLEP 2007 were replaced with a new clause, Clause 7.4 of Parramatta LEP 2011, which reads 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.*

In relation to Clause 7.4 we note that Parramatta LEP 2011 does not define Parramatta Square. For the purposes of understanding the public open space area referred to in Clause 7.4 as Parramatta Square, Parramatta Development Control Plan (DCP) 2011 has been referenced.

Figure 4.3.3.7.1 in Section 4.3.3 of the DCP identifies that part of the Parramatta City Centre which comprises Parramatta Square. **Figure 1** is an extract of Figure 4.3.3.7.1 of the DCP. Parramatta Square is defined by a street block.

2 Background

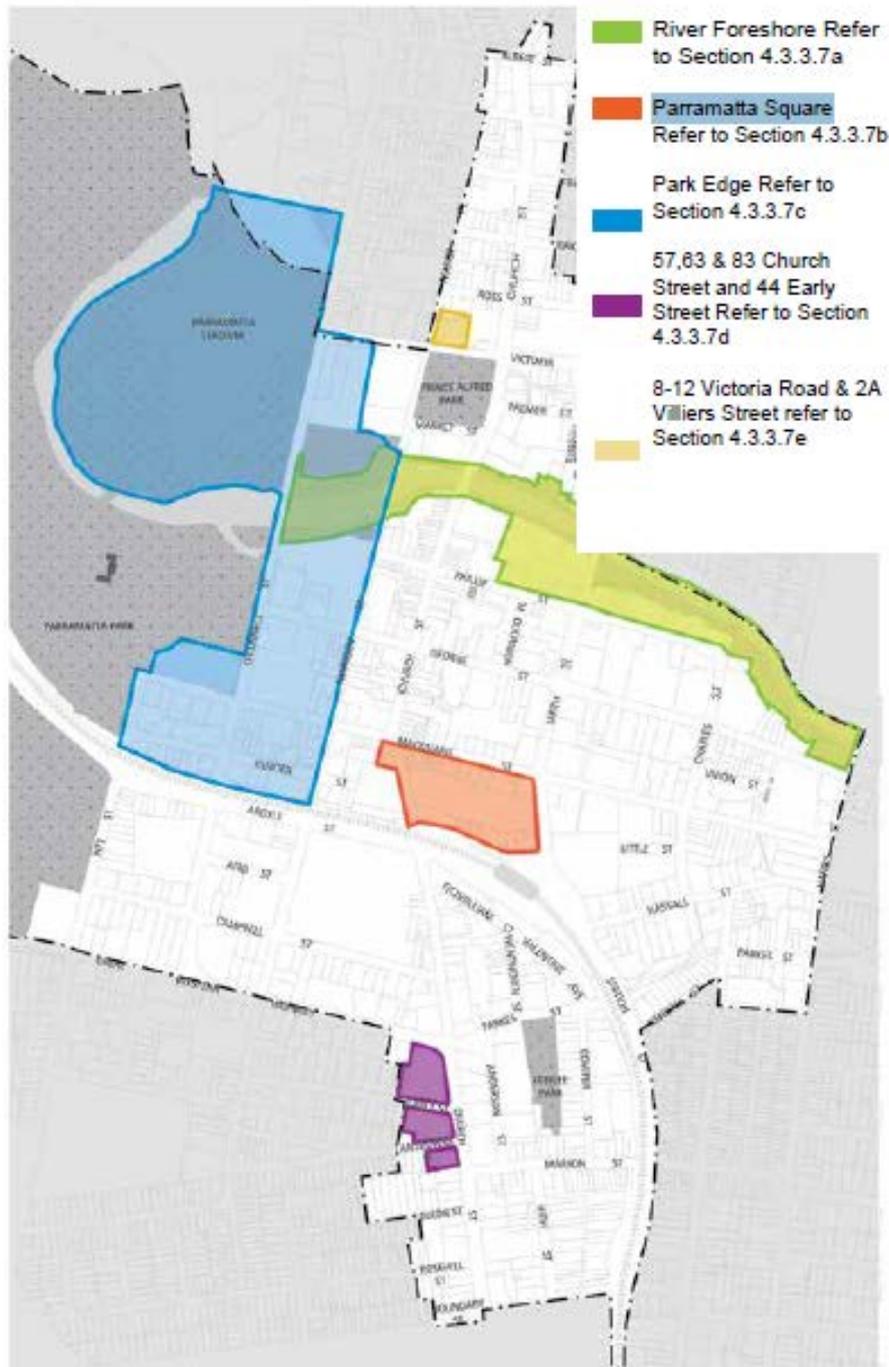


Figure 1 Extract from Parramatta DCP 2011 – Figure 4.3.3.7.1

2 Background

Within the broader Parramatta Square is public open space and the areas coloured yellow in Figure 4.3.3.7.3 of the DCP appear to show the public open space in Parramatta Square.

Figure 2 is an extract of Figure 4.3.3.7.3.

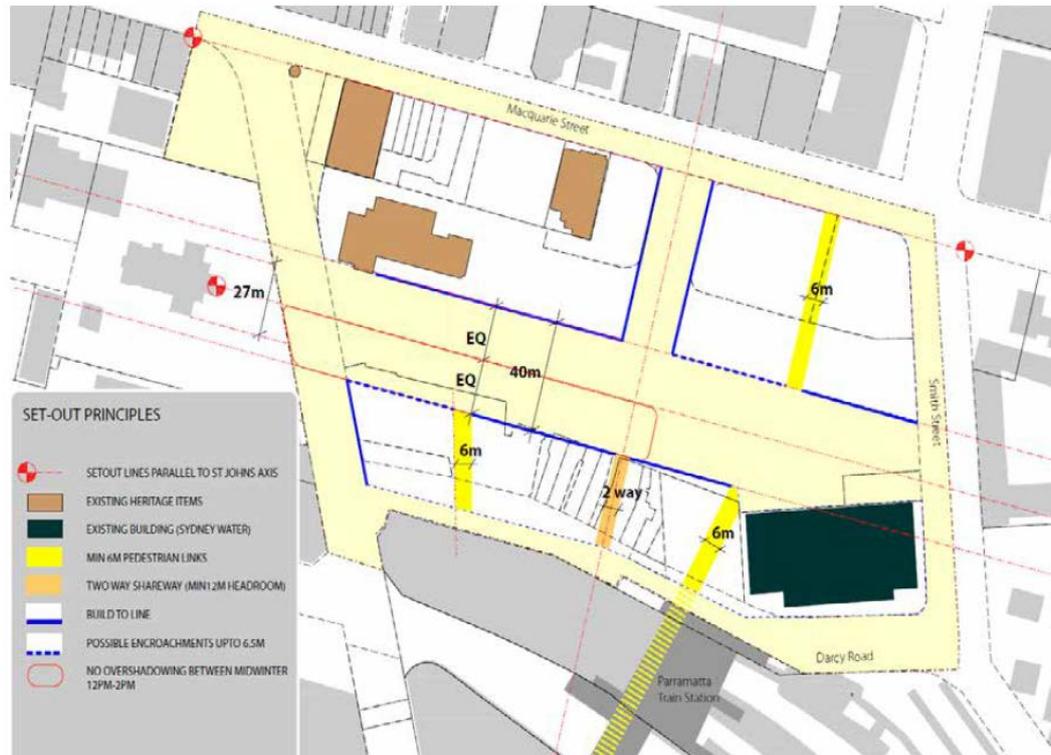


Figure 2 Extract from Parramatta DCP 2011 – Figure 4.3.3.7.3

Controls C1 and C3 listed on page 94 of Parramatta DCP 2011 are of relevance to this discussion. These controls are as follows [our emphasis in **bold type**]:

- C.1** Provide a total of 6,000sqm of public open space across the site (excluding Church Street Mall from calculation). At least 3,000 sqm with a minimum width of 40m is to form one contiguous area in the centre of the site, as shown on Figures 4.3.3.7.3 and 4.3.3.7.4. **Encroachments up to 6.5 metres into the 40 metre minimum width zone may be considered where justified by an agreed design excellence rationale.**
- C.3.** Overshadowing is to be minimised within the area outlined in red Figure 4.3.3.7.3. **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.**

2.4.2 Parramatta DCP Sun Access Controls

The following is a chronology of Council's consideration of the DCP solar access controls as they relate to Parramatta Square during the course of Council's assessment of the Planning Proposal for 197 Church Street, Parramatta.

Appendix 3 to this report provides a detailed chronology of Council's endorsed position since March 2015 with respect to overshadowing of the public domain areas of Parramatta Square by individual buildings.

As seen from this chronology, the introduction of the 45 minute rule was the result of extensive public consultation, careful consideration and robust testing by Council staff.

Critically, the following is the response from Council's Director Strategic Outcomes and Development was provided during the public forum at the Council meeting on 25 October

2 Background

2015 in response to a submission (on behalf of Parramatta Mission) to remove the solar access controls from the DCP.

In this response, Council's Director Strategic Outcomes and Development notes that:

- The 45 minute time period was based on Council's modelling and will allow redevelopment of sites to the north of Parramatta Square to overshadow (the DCP solar zone);
- The 45 minutes of overshadowing is considered to be a level of overshadowing that is appropriate in order to comply with Clause 29E of PCC LEP 2007;
- The control will encourage tall, slender built forms; and
- There will be cumulative impacts in mid-winter but, by promoting taller, slender built forms, solar access will be maximised during other periods of the year, particularly the autumn and spring equinoxes.

"Removing the solar access controls from the DCP as requested in the submissions will not mean that the consent authority does not need to give consideration to the issue of overshadowing associated with a development immediately north of Parramatta Square. Clause 29E Sun Access in the Parramatta City Centre LEP 2007 will still need to be addressed as part of the assessment of future development applications. The consent authority would also be required to address overshadowing as part of the environmental considerations under Section 79C. Given this, the removal of the controls from the DCP will reduce the level of certainty about the level of shadowing that is considered appropriate in order to comply with this clause.

The 45 minute time period was calculated based on Council's internal modelling and will allow the redevelopment of sites to the north of the square to overshadow however, will ensure where a tower element is provided it will not require lower bulkier forms but instead will promote a tall more slender built form. The controls will still allow significant overshadowing of Parramatta Square when the cumulative impacts in mid-winter but the intention is to promote taller slender forms that maximise solar access during other parts of the year particularly the autumn and spring equinox."

2.5 Council Resolution of 7 December 2015

The Planning Proposal for 197 Church Street Parramatta was considered by Council at a meeting on 7 December 2015 (Item 10.5 on Council business paper). A copy of the report to Council is included at **Appendix 4** to this report.

In relation to solar access to the public domain areas of Parramatta Square, the Council officer's report references the Council resolution of 23 November 2015 to endorse the 45 minute rule for overshadowing of the area outlined in red in Figure 4.3.3.7.3 of the DCP (hereinafter referred to as the DCP solar zone).

In this regard, the Council officer's report makes the following observations with respect to the reference design for the *Boomerang* building that was submitted with the Planning Proposal application:

The indicative building envelope and the positioning of the tower to result from the applicant's proposed FSR of 16.5:1 and height control of 250m (or no height control) does not comply with this control. Any future development to result from the proposed planning controls would overshadow one point in the designated area (area hatched in red in Figure 9) of Parramatta Square for a time greater than 45 minutes between midwinter 12pm-2pm. Council's 3D Model determined that the proposed development scheme at 16.5:1 would overshadow one point in the designated area for approximately 65 minutes.

It should be noted, however, that the Planning Proposal was originally submitted prior to the 45 minute rule being adopted.

The report also notes that Council Officers recommended an FSR control of 10:1 for the subject site in order to maintain consistency with the recommendations of the Parramatta CBD Planning Strategy. The report recommended that testing and modelling be undertaken to determine what FSR and built form could be developed on the subject site so that no point of the DCP solar zone is overshadowed for more than 45 minutes.

2 Background

Parramatta City Council resolved to support the Planning Proposal and instead of further testing and modelling, resolved to require the preparation of a brief for a design competition, the outcome of which would be a building that complies with the 45 minute rule.

The following is the Council resolution of 7 December 2015:

- a) **That** Council endorse the Planning Proposal in Attachment 1 subject to it being modified as follows:
- Incorporate the recent changes proposed by the applicant detailed in the section of this report titled *Final Planning Proposal for 197-207 Church Street, Parramatta*.
 - Provide an increase in FSR to 15:1 (excluding design excellence) subject to compliance with the sun access provisions of Clause 29E of PCCLEP 2007, including the 45 minute rule for overshadowing of the solar zone of Parramatta Square and SEPP 65.
 - Inclusion of a clause requiring an international design competition.
 - A height to be determined by a design competition as described in (b).

- b) **That** the applicant work collaboratively with the CEO to draft a brief for an international design competition to design a building on the site, demonstrating compliance with the sun access provisions (Clause 29E of PCCLEP 2007) including the 45 minutes rule for overshadowing of the solar zone of Parramatta Square and SEPP 65. In particular, any future building on the site must demonstrate a built form that appropriately addresses the building separation controls of the ADG to ensure future development on adjacent sites is not compromised (including 20-22 Macquarie Street, Parramatta).

If any design competition entry proposes a height greater than 156AHD it will need to be supported by an Aeronautical Study to address the relevant Section 117 Direction.

The design competition brief must require entrants to retain the HERITAGE façade of the existing building on the site.

The applicant must include, as one of the entries in the design competition, the 'Boomerang' design already submitted to Council in support of its Planning Proposal, modified as required to comply with the design competition brief.

- c) **That**, following drafting of the design competition brief, the CEO forward the Planning Proposal (together with the design competition brief) to the Department of Planning and Environment, seeking a Gateway determination.
- d) **That** Council proceed with negotiations for a Voluntary Planning agreement VPA with the landowner in relation to the Planning Proposal including an amount for Uplift of FSR from 10:1 to 15:1 and that any VPA entered into would be an addition to S94 Development Contributions.
- e) **That** delegated authority is given to the CEO to negotiate the VPA on behalf of Council and that the outcomes of negotiations are reported back to Council prior to its public exhibition.
- f) **That** Council advises the Department of Planning and Environment that the CEO will be exercising the plan making delegations for this Planning Proposal as authorised by Council on 26th November 2012.
- g) **Further, that** council authorise the CEO to correct any minor anomalies of a non-policy and administrative nature that may arise during the plan-amendment process.

2.6 Design Excellence Competition

2.6.1 Design Competition Brief

In response to the Council resolution of 7 December 2015, a brief for an International Design Competition was prepared in consultation with Parramatta City Council.

This brief was approved on behalf of the CEO by the Director of Strategic Planning on 1 April 2016. A copy of the brief and Council's endorsement is included at **Appendix 5** to this report.

2 Background

As a result of the preparation of the brief for the design excellence competition being completed to Council's satisfaction, the Planning Proposal for 197 Church Street, Parramatta was forwarded to NSW Department of Planning and Environment (DPE) (as delegate of the Greater Sydney Commission) for a Gateway Determination on 4 May 2016. Council's letter dated 4 May 2016 to DPE requesting Gateway Determination is included at **Appendix 6** to this report. Appended to that letter was a copy of the endorsed design competition brief.

2.6.2 Initial consideration of design competition entries

Given that the reference design submitted with the Planning Proposal (being the *Boomerang* proposal) did not satisfy the requirements of Council's resolution, Holdmark thought it prudent to conduct the design competition to ensure the Gateway Determination was based on a design that conformed with Council's requirements. Accordingly, the International Design Competition was undertaken and conducted in close consultation with Council.

The judging of the initial design competition was held on 18 May 2016. The competition jury comprised three panel members:

- Olivia Hyde (Chair) – Office of the Government Architect
- Kim Crestani – City Architect, City of Parramatta representative
- Chris Johnson – CEO Urban Development Taskforce, Proponent representative

In addition to the panel members, the following persons were present as either observers or technical advisors:

- Penny Bowen – City of Parramatta, Project Officer – Urban Design
- Che Wall – Flux Consultants (invited on behalf of City of Parramatta)
- Brad Roeleven – City of Parramatta, Executive Planner, City Significant Development
- Kevin Nassif – Holdmark Property Group
- Gavin Carrier – Holdmark Property Group (via video)
- Ellen Robertshaw – DFP Planning
- Michelle Niles – DFP Planning

Of the six firms invited to participate in the competition, only four submitted complying responses to the initial information request. These firms together with their nominated international partner are detailed in **Table 1**.

Local Firm	International Partner
Cox Architects	Shatotto Architects
GroupGSA	Rafael De La Hoz Architects
PTW	Heneghan Peng Architects
Robertson and Marks	Nikken Sekkei

Each entrant was required to demonstrate that the submitted design complied with the non-negotiable parameters as set out the design competition brief. These non-negotiable parameters included:

- The design must comply with the 45 minute rule with respect to overshadowing of the solar zone of Parramatta Square.
- The design must be buildable using recognised traditional building techniques.
- The design must be commercially viable.

2 Background

- The design must retain and integrate the heritage façade of the Murray Bros building.
- The design must demonstrate compliance with the ADG building separation provisions.
- A mixed use development generally comprising retail/commercial floorspace on the ground floor and podium levels with residential floorspace in the tower.
- A maximum FSR of 17.25:1.
- A maximum GFA of 74,300m².
- 14,000m² of the total GFA of the building is to be provided as retail/commercial floorspace, with the balance of the GFA being provided as residential floorspace.

Each of the four teams presented their designs to the jury and, following these presentations, the jury questioned the contestants in relation to aspects of their designs.

Following the completion of the presentations, the jury convened to discuss each of the schemes. Of particular concern to the jury members was the issue of financial viability of some of the schemes. Following discussions with a QS, the jury shortlisted two contestants (being Cox/Shattoto and GroupGSA/Rafael de la Hoz) and requested these entrants undertake the further design development in relation to each of their schemes.

2.6.3 Consideration of shortlisted entries

The jury reconvened at the office of the City of Parramatta on 8 June 2016.

At that meeting, in addition to the jury members the following were also in attendance:

- Ellen Robertshaw, Competition Manager
- Gavin Carrier, observer on behalf of the proponent
- Kevin Nassif, observer on behalf of the proponent
- Penelope Bowen, observer on behalf of the City of Parramatta

The jury noted that the 45 minute rule for overshadowing of the solar zone was addressed and compliant for both schemes.

The Jury unanimously agreed that the GroupGSA/De La Hoz scheme was the better in terms of displaying design excellence for the following reasons:

- The GroupGSA/De La Hoz building is streamlined and fluid and represents a futuristic, almost space age, character. The jury believes this character is well suited for the emerging confidence of the City of Parramatta. The winning design firmly positions Parramatta as championing the future.
- The plan for the tower is a very elegant streamlined cluster of three shapes with curved profiles. This form breaks down the mass of the building into three elements which reinforces the vertical reading of the building.
- The curved ends and tops to the building give it a dynamic appearance.
- The exo-skeleton that frames the building gives a city scale simplicity to the tower while adding interest as it appears to climb up the building. The pattern of the structural frame is derived from an abstraction of the pattern of eucalyptus bark. Within this framework the pattern of sun shields gives a more human scale to the tower.
- At the roof level is a series of dramatic shared spaces and the ground level has active uses and public spaces that reinforce the clarity of the tower while addressing the street edge through the heritage façade.
- The jury believes that the partnership between De La-Hoz and Group GSA was the most successful of the four competition proposals. Rafael de La-Hoz from Spain clearly drove much of the fluid form of the building and the continuation of this collaboration will enrich the final solution.

2 Background

- The jury also acknowledged the simplicity of the architectural competition process in Parramatta that encourages innovation by private sector developers through the ideas of quality architects.
- As part of the design development of this scheme the following should be considered:
- Corridors to the serviced apartments should be open to light and ventilation.
- Car parking should be re considered with a view to achieving further reductions in parking provision, given the site's location in relation to existing and future public transport options. The potential for utilising the go-get car share schemes should also be examined.
- The jury noted that it is imperative that the materiality of the scheme is maintained- especially the solutions for the glazing of the curved façade and sun shading fins.
- The jury noted that the Cox/Shattoto scheme had also addressed the issues well and was a very close second.

The jury noted that the final scheme for the site might not achieve the maximum proposed FSR of 17.25:1 and included a number of caveats in relation to the final design, namely:

- The materiality and other distinctive design features including the glazing of the curved façade treatments must be maintained as part of design development.
- Inclusion of generous shared use spaces, such as the roof space were considered a strong element of the design and should be retained.
- The Jury will reconvene at the pre DA lodgement meeting to ensure the materiality and other distinctive design features are maintained.

A copy of the final jury report is included at **Appendix 7** to this report.

A copy of the initial submission by Group GSA/Rafael de la Haz Architects, together with the supplementary information submitted in response to the initial feedback from the jury, is included at **Appendix 8** to this report.

Figure 3 is an image of the Competition winning building.

2 Background



Figure 3 View from Centenary Square - Winning entry of Design Excellence Competition by GroupGSA Architects and Rafael de la Hoz

2 Background

2.7 Background Conclusion

The official Planning Proposal process commenced in early 2014 however, Holdmark's vision for the redevelopment of the site had been in the planning and was discussed with Council for many years prior to 2014.

Holdmark embarked on the International Design Excellence Competition as the reference design submitted with the Planning Proposal application in March 2015 did not satisfy the design criteria as set out in Council's resolution of 7 December 2015 or the relevant provisions of Parramatta DCP 2011 in relation to solar access to Parramatta Square.

It was concluded that in order for DPE to make an informed decision with respect to the Gateway Determination for the Planning Proposal, it should be demonstrated that it was possible to design a building which was capable of complying with those requirements.

It is not known whether Parramatta Council forwarded the relevant information pertaining to the winning design to DPE/GSC, to ensure that the complete package of information was assessed by DPE/GSC as part of the Gateway Determination process.

Following Council's resolution to support the Planning Proposal for 197 Church Street (and endorsement of the design competition brief), the Planning Proposal was forwarded to DPE by Council on 9 May 2016 for a Gateway Determination. During DPE's assessment of the Planning Proposal for Gateway, a Gateway Determination was issued in relation to a Planning Proposal on 48 Macquarie Street, Parramatta (the Greenway site) on 17 June 2016.

The Gateway Determination for the Greenway Planning Proposal included a condition which was not dissimilar to the condition imposed on the Gateway Determination subsequently issued for the Planning Proposal for 197 Church Street in relation to an amendment of Clause 7.4.

The condition of relevance to this Gateway Review that was imposed on the Greenway Planning Proposal Gateway Determination is condition 1 (a)(i) which reads as follows:

- (i) *amend clause 7.4 Sun Access, to ensure no 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);...*

It was on the basis of this condition that Holdmark requested DPE to hold the Gateway Determination for the Planning Proposal for 197 Church Street in abeyance. This condition was also the catalyst for the investigations, meetings and discussions between Holdmark, DPE/GSC and Council over the ensuing months and more detailed design work being undertaken to further demonstrate the shadow impacts of the competition winning building and how these might be addressed if the impacts were deemed to be unacceptable.

Records of workshops, meetings and correspondence between parties during the period pre and post issue of the Gateway Determination of the Planning Proposal for the Greenway site is included in the chronology at **Appendix 9** to this report and in the email extracts at **Appendix 10**.

3 Justification for Review of Gateway Determination

3.1 Strategic Framework

3.1.1 Metropolitan Plan for Sydney *A Plan for Growing Sydney*

The regional strategic planning context for the Planning Proposal is detailed within *A Plan for Growing Sydney*, which sets out a strategic planning framework for Sydney.

This includes a series of objectives and actions under four overarching goals:

- Goal 1: A competitive economy with world-class services and transport;
- Goal 2: A city of housing choice with homes that meet our needs and lifestyles;
- Goal 3: A great place to live with communities that are strong, healthy and well connected; and
- Goal 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.

Parramatta is identified as a key strategic centre within metropolitan Sydney and the Plan aims to continue growing Parramatta as Sydney's second CBD. The Plan has a strong focus on western Sydney and is aiming to build new housing and continue urban renewal in centres in western Sydney, including Parramatta. The plan also promotes greater investment in arts, culture and education in Parramatta along with new transport links such as the Parramatta light rail.

The Plan seeks to deliver sustained growth and intensive development in strategic locations across Sydney such as Parramatta to expand the economy and support more jobs closer to where people live.

The Plan identifies the following core elements for growing Greater Parramatta:

- integrating the precincts within Greater Parramatta and connecting the centre to the wider community and other centres through the proposed Parramatta Light Rail initiative;
- continuing to grow the commercial core as the central focus of business activity; and
- encouraging growth across a range of employment types.

The Plan also states that for Parramatta to fulfil its role as Sydney's second CBD it needs to expand arts, cultural and entertainment activities to increase its appeal as a dynamic and diverse place to work, live and play.

For the Greater Parramatta region, the Plan is also seeking to:

- Integrate Parramatta CBD with Westmead, Parramatta North, Rydalmere and Camellia.
- Grow the specialised Health and Education Precincts at Westmead and Rydalmere.
- Renew Parramatta North to create a vibrant mixed-use precinct.
- Establish a new partnership to manage renewal of the Greater Parramatta to Olympic Peninsula (GPOP) priority growth area.
- Identify and deliver enabling infrastructure to support growth and urban renewal
- Deliver priority revitalisation precincts.
- Grow the knowledge economy as part of the extension of the global economic corridor.

3 Justification for Review of Gateway Determination

The Plan also sets out the priorities for Sydney's subregions. Parramatta is within the West Central district. The West Central district is identified as being a significant focus for infrastructure investment and intensive growth over the next 20 years. The relevant identified priorities for the district are:

- a competitive economy;
- accelerate housing supply, choice and affordability and build a great place to live;
- protect the natural environment and promote its sustainability and resilience;
- provide capacity for additional mixed use development in Parramatta CBD; and
- provide capacity for long-term employment growth in the CBD;

The Planning Proposal for 197 Church Street is consistent with the goals of a *Plan Growing for Sydney* as it will facilitate the delivery jobs and housing in the heart of the Parramatta CBD. Redevelopment of the site provides an opportunity to explore the potential for new art, cultural or heritage facilities or experiences within the site, and forge strong links to Parramatta Square.

An iconic tower on the site at 197 Church Street will assist in raising Parramatta's profile and act as a catalyst to encourage further investment to promote Parramatta's economic status.

3.1.2 Revised Draft Central City District Plan

In October 2017, the Greater Sydney Commission released the revised Draft Central City District Plan. This plan replaced the previously exhibited Draft West Central District Plan.

The District Plans were flagged in *A Plan for Growing Sydney* and are the link between *A Plan for Growing Sydney* and the Local Environmental Plans.

Notwithstanding that the Planning Proposal was lodged prior to release of the draft District Plan, the revised Draft Plan is a relevant consideration in relation to the Planning Proposal.

Parramatta CBD is the Central City in the Greater Sydney Commission's vision of the three cities that will comprise Sydney - the established Eastern Harbour City, the developing Central River City and emerging Western Parkland City in and around the new airport. The GSC envisages that these three cities will have their own unique identity, and each must be planned to maximise liveability, productivity and sustainability. The revised draft District Plan envisages that the Parramatta CBD will be the driver of the Central River City and will be one of the top five CBDs in Australia.

The revised draft Central City District Plan notes that the three cities policy for Sydney will mean that residents in the Central City District will have quicker and easier access to a wider range of jobs, housing types and activities as part of the transformation of their District. The revised draft Plan also makes the following observations about the Central City District:

The District is one of the most dynamic and rapidly growing regions in Australia. It plays a pivotal role in Greater Sydney's future as an economic and employment powerhouse, a core hub for transport and services, and the home of vibrant and diverse centres and communities. It will be at the core of Greater Sydney's Central River City.

...

Transport connections radiating north, south, east and west from Parramatta CBD will optimise its locational advantage, improve business-to-business connections and provide quicker access for a larger number of skilled workers to businesses in Greater Parramatta.

The revised Draft Central City District Plan reinforces the vision for Parramatta as detailed in the Greater Sydney Commission's draft regional plan for Sydney - *A Metropolis of Three Cities – Our Greater Sydney 2056* - released October 2017.

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The Planning Proposal is consistent with the objectives and vision set out in the revised draft Plan and will reinforce the vision for the Parramatta CBD as one of the top five CBDs in the country.

3.1.3 Architectus Framework Study

In recognition of Parramatta's status as Western Sydney's Premier Regional City and Sydney's other CBD, Council engaged Architectus and SGS Economics and Planning to review the current planning framework, market conditions, opportunities and constraints and develop a new planning framework to encourage growth and development in Parramatta.

The draft *Parramatta City Centre Planning Framework Study* which included built form scenario testing of the City Centre by Architectus and an economic analysis of underlying market conditions by SGS Economics and Planning was considered by Council at a meeting in August 2014.

Development Scenarios

Four built form scenarios were investigated as part of the Planning Framework Study:

1. Scenario A: Existing Controls – A scenario based on sites developing to the current controls.
2. Scenario B: No height or FSR controls – where the main restriction on development is what the market may deliver.
3. Scenario C: Increased FSR, no height control – based on an increased FSR control, similar to that applied in the City of Sydney.
4. Scenario D: Increased height, no FSR control – based on a 'stepped' height transition to adjacent areas and restricting heights to improve solar access outcomes to key locations.

Each of these scenarios was tested and the positives and negatives of each development outcome assessed.

The scenario testing was used as a basis to inform the recommended controls for Parramatta. Key outcomes of the scenario testing which have led to development of recommended controls include the following:

- Scenario C - increased FSR, no height control has been determined as the preferred approach for Parramatta, as it both allows for the projected floor space demand within Parramatta and encourages tall, slim towers.
- Sun access controls, similar to those shown in Scenario D (increased height, no FSR control) are also recommended to form part of the proposed controls for Parramatta. Testing demonstrates the effectiveness of these controls in retaining sun access to the key public domain areas of Parramatta City Centre.
- Although Scenarios C and D deliver appropriate overall floor space outcomes, no scenario delivers the appropriate floor space mix required to match projected demand. This highlights the need to implement mechanisms for encouraging employment uses within Parramatta City Centre.
- The preferred approach (Scenario C) also provides better visual outcomes for the City Centre, as a Floor Space Ratio control basis tends to avoid dense clusters of development.
- Existing views of Parramatta are likely to significantly change if Parramatta is to deliver its projected growth, including historic views such as that from Mays Hill.

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- Heritage outcomes may also need to be reconsidered in the light of a significant uplift in development capacity across Parramatta. This includes the existing controls relating to the Old Government House and Domain World Heritage Site as well as low-scale conservation areas which form some of the edges to the existing City Centre.

The draft *Planning Framework Study* also included site-by-site testing based on Scenarios C and D and the preferred development scenario (being Scenario C with the sun access controls in Scenario D). The testing for 197 Church Street recommended a development with one tower with a maximum height of 63m and 21,350m² of floor space.

Notwithstanding the recommendations of the draft *Planning Framework Study*, the Planning Proposal submission (and supporting documentation) demonstrated that the site at 197 Church Street is capable of accommodating more floor space and height than that noted in the Framework Study and the resultant development will still meet all key outcomes with the exception of the sun access controls recommended in the *Parramatta Framework Study* (noting that these are different to the Council endorsed DCP controls). Importantly, the additional floor space that would be permitted if this planning proposal proceeds will assist Council in meeting its overall floor space outcomes.

3.1.4 CBD Planning Strategy

In April 2015, Council adopted the Parramatta CBD Planning Strategy which was based on the draft *Planning Framework Study*. The redevelopment of 197 Church Street as envisaged in the Planning Proposal will assist in achieving the vision expressed in the Strategy in that the Planning Proposal seeks to develop a landmark building which displays design excellence and provides for well activated streets.

Key to the Strategy are the ten principles which are:

- P1** Achieve world's best practices in the planning and development of cities.
- P2** Achieve a strategic balance of land uses.
- P3** Create an attractive and distinctive city skyline, defined by tall, slender towers.
- P4** Create a liveable, active and highly desirable city.
- P5** Promote economic diversity, prosperity and jobs growth.
- P6** Improve the quality of urban design and the public domain.
- P7** Achieve design excellence.
- P8** Celebrate heritage and the natural environment.
- P9** Facilitate the delivery of infrastructure to support Parramatta's growth.
- P10** Improve access to the regional transport network.

The development of an iconic mixed use building on 197 Church Street such as that envisaged in the design excellence competition winning design, will be capable of satisfying all of the relevant principles and in particular P3 (create a distinctive skyline), P7 (achieve design excellence) and P8 (celebrate heritage).

3.2 Statutory Framework

3.2.1 Parramatta LEP 2011

Section 2.4.1 of this report detailed the sun access provisions of the current (and former) LEP as they relate to Parramatta Square.

Development which could be undertaken on sites within the vicinity of Parramatta Square in accordance with the current LEP development controls has also been considered.

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In this regard, it is noted that the LEP currently allows for development up to 54m in height on land on the southern side of Macquarie Street (east Church Street and that part of Parramatta Square previously known as Centenary Square).

The plan at **Appendix 11** to this report demonstrates the shadow impacts of development undertaken on land to the north of Parramatta Square in accordance with the current height of buildings controls as set out in Parramatta LEP 2011. This plan illustrates that there is a significant shadow impact on the public domain areas of Parramatta Square including the area designated as the protected solar zone in Figure 4.3.3.7.3 of the DCP.

Based on the current provisions of Clause 7.4 of Parramatta LEP 2011, for the purposes of a proposed development, Council would only need to be satisfied that development proposed on land other than land identified as being within Area 2 of the Height of Buildings map, did not result in **excessive** overshadowing of public open space in Parramatta Square (being all of the area coloured yellow in Figure 4.3.3.7.3, not just the DCP solar zone). Other than the areas identified on the LEP Height of Buildings map as Area 2 (which makes a specific reference to Clause 7.4) there is no statutory 'restriction' on development, other than to demonstrate that it does not result in **excessive** overshadowing.

It is acknowledged that any development proposal submitted under Parramatta LEP 2011 would also need to have regard to the relevant DCP provisions. As noted in **Section 2.4.2** of this report, these provisions require that any single point in the protected area of public domain in Parramatta Square (as noted in Figure 4.3.3.7.3 of the DCP (reproduced as **Figure 2** in this report) is not shaded by individual buildings for a period exceeding 45 minutes between 12pm-2pm mid-winter – the 45 minute rule.

In this regard, the design excellence winning building has demonstrated compliance with this requirement, unlike the *Boomerang* reference design submitted with the Planning Proposal (prior to the introduction of the 45 minute rule) and upon which the DPE Planning Report was based.

Figure 4 demonstrates that the competition winning building will only overshadow a single point within the DCP solar zone for an average of **18 minutes**, compared that to 45 minutes permitted by the current DCP control.



Figure 4 Comparison of DCP solar access control v the shadow impact of the competition winning building on any single point within the DCP solar zone

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Further, the building that ultimately won the design excellence competition will not result in excessive overshadowing of the public open space of Parramatta Square as required by Clause 7.4(2) of Parramatta LEP 2011.

Further discussion regarding solar access to Parramatta Square, including various comparative analyses, is provided in **Section 3.3** of this report.

3.2.2 Parramatta DCP 2011

Parramatta DCP 2011 was formally adopted by Council on 22 November 2010 with further changes adopted on 28 March 2011 and came into effect on 12 October 2011.

The DCP has been amended on a number of occasions in the intervening period. Relevant to consideration of the Planning Proposal and this Gateway Review are the amendments relating to sun access to the public domain of Parramatta Square and in particular the area outlined in red on Figure 4.3.3.7.3 of the DCP (Refer **Figure 2** of this report).

The history of how the current provisions of the DCP relating to sun access to the public domain in Parramatta Square came to be is detailed in **Section 2.4.2** of this report.

Further discussion regarding solar access to Parramatta Square, including various comparative analyses, is provided in **Section 3.3** of this report.

3.2.3 Draft CBD Planning Proposal

On 11 April 2016, Council resolved to adopt the draft Planning Proposal for the Parramatta CBD and to seek a Gateway Determination from the NSW Department of Planning and Environment. The Planning Proposal has been submitted to DPE for a Gateway Determination. As at the date of this report, a Gateway Determination had not been issued.

According to Council's website, the purpose of the CBD Planning Proposal is to:

- provide for an expanded and more intense commercial core to strengthen and facilitate the role of Parramatta as a dual CBD; and
- support the CBD as a vibrant centre by surrounding the core with higher density mixed use.

The Planning Proposal for the CBD was supported by a number of technical studies which informed the provisions of the draft amendment to Parramatta LEP 2011.

The draft LEP provisions formed part of the Planning Proposal 'package'. As part of the amendments to Parramatta LEP 2011, Council is proposing a new clause, clause 7.4A, which relates specifically to sun access protection to public open space in Parramatta Square, being the entire area of public open space, not just the DCP solar zone.

The provisions of clause 7.4A as set out in the draft LEP provisions are as follows:

7.4A Sun access protection—Parramatta Square

- (1) *The objective of this clause is to protect public open space in Parramatta Square from overshadowing.*
- (2) *This clause applies if the consent authority considers that development which 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 controls specified for that land in section 4.3.3 of the Parramatta Development Control Plan.*

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The following is an extract from the planning report prepared for the CBD Planning Proposal in relation to solar access Parramatta Square and the DCP provisions:

Based on the resolution of Council on 9 March 2015 and 23 November 2015 to amend the control relating to overshadowing of Parramatta Square, a separate provision dealing specifically with solar access to Parramatta Square is included in the Planning Proposal. The control requires an individual building not to overshadow any point in the solar protection zone in Parramatta Square for no more than 45 minutes as referenced in Parramatta DCP.

Therefore, clause 7.4A of the draft CBD LEP is premised on the DCP control, including the 45 minute rule, remaining unchanged.

3.3 Solar Access Considerations for Parramatta Square

3.3.1 Introduction

As noted in **Section 1** of this report, the conditions of the Gateway Determination issued in relation to the Planning Proposal for 197 Church Street, Parramatta (inter alia), require City of Parramatta Council, as the relevant planning authority (RPA) 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 (Planning Proposal_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*

These conditions will negate any opportunity to develop a world class, iconic building such as that envisaged by the Council endorsed brief for the International Design Excellence Competition and as illustrated in the competition winning design shown in **Figure 3**.

The effect of this condition would result in key mixed use 'opportunity' sites in the central portion of the CBD not being able to realise their development potential which is contrary to the strategic planning direction for the Central City District and the Parramatta CBD in particular, as established by the State Government and the GSC.

The conditions of the Gateway Determination will reduce the development potential of a significant component of the CBD. A section extending from Parramatta Square north towards the river would also effectively be down zoned as a result of the building heights having to be limited.

The Greater Sydney Commission has identified a need for an increase in commercial and residential populations in Parramatta for it to sustain its role as a dual CBD (Parramatta Strategic Framework 2016). Given the above listed constraints on the growth of the CBD boundaries, a condition which would effectively limit building heights for a significant portion of the CBD is ill considered and will undermine the long-term growth of the CBD.

In order to quantify the impacts of the Gateway condition, GroupGSA has undertaken a comparative analysis of the impacts on floorspace development within the northern part of the Parramatta CBD. That analysis compared the floorspace that might be able to be developed based on the current 45 minute rule compared to that which might be able to be developed if the mooted 'no overshadowing' rule was implemented.

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That analysis estimated that between **265,000m²** and **380,000m²** of developable floorspace might not be realised within the CBD due to the significant height reductions imposed by the 'no overshadowing rule'.

The significant detrimental socio-economic impacts of the 'loss' of this floorspace are explained in **Section 3.11** of this report.

3.3.2 Public Domain of Parramatta Square

Parramatta Square Public Domain

Much of the area referred to as the public domain of Parramatta Square does not yet exist. In particular, much of the area identified in Figure 4.3.3.7.3 of Parramatta DCP 2011 as the solar zone is currently occupied by buildings.

Council's vision for the public domain of Parramatta Square is clearly articulated in a number of documents including Parramatta DCP 2011 and numerous Council reports. However, it must be recognised that the DCP solar zone comprises only one section of the greater area of public domain that is in Parramatta Square.

The solar zone comprises of strip of public domain along the southern edge of the public domain area which is 20m wide and approximately 150m in length and has an area of almost 3,000m².

The public domain of Parramatta Square, however encompasses that area coloured yellow in **Figure 2** of this report. This area, including the solar zone (but excluding Macquarie Street, Smith Street & D'Arcy Street), is approximately 17,000m².

Alternative open space locations in Parramatta CBD

Whilst there are strategically locational positives to the development of the public domain area within Parramatta Square, particularly in relation to providing vital pedestrian links between key public transport nodes, it is unlikely to function as an 'oasis' in the Parramatta CBD in which workers, visitors and residents can relax and wind down.

The public domain of Parramatta Square, including the DCP solar zone, will comprise a highly urbanised landscaped setting that will be trafficked by a significant number of pedestrians accessing the Western Sydney University, Parramatta library and Council building, the Parramatta railway station, Parramatta light rail, Parramatta Westfield and the significant developments in Parramatta Square which are anticipated to have a working population in excess of 20,000 people.

Given this, reserving just one portion of the public domain (that crosses two pedestrian lanes with access through Parramatta Square to the train station and Westfield) for sunlight access will not preserve amenity for people during lunchtime, as the designated area will comprise a heavily trafficked area that provides little amenity or peacefulness.

The public domain within the CBD will need to comprise a series of spaces, including Parramatta Square, that will provide different opportunities for people depending on their needs. In this regard, the future character, treatment and function of Parramatta Square must be considered in terms of the solar zone and how it is envisaged that this area might be used. Ultimately, Parramatta Square might not be the optimal area to protect (in terms of solar access) as it might not be the preferred space for people seeking to escape the 'hustle and bustle' of the CBD.

The function of Parramatta Square within the overall open space network within the CBD is recognised in the recently released Civic Link Framework Plan, which describes Parramatta Square as having a civic and transport interchange function. The Civic Link is a proposed green corridor connecting Parramatta Square with the River Foreshore. The Framework Plan notes that the Civic Link is *in response to the scale and pace of change currently being*

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undertaken in the CBD, stimulated by increased development, new public transport initiatives and growth in both the commercial and residential markets.

The Framework Plan includes images which reinforce the concept of the Civic Link incorporating pedestrian activity on either side of a landscaped spine which will include seating and areas of soft landscaping. The optimal north-south alignment of the Civic Link in terms of solar access is also recognised in the Civic Link design principles which seek to minimise cumulative overshadowing impacts to the link between 11am and 1pm.

Parramatta Square on the other hand has an east-west orientation which is not the optimal location for a zone with the objective of preserving solar access.

The Framework Plan clearly puts great emphasis on the Civic Link as being a fundamental component of the public space network through the centre of Parramatta, providing a green, cultural “spine” for the city where people can relax and mingle and enjoy the open air and sunshine. In comparison, Parramatta Square will be a busy commercial thoroughfare and not the ideal place to sit and relax.

The availability of other areas of public domain within and immediately adjoining the Parramatta CBD has been investigated. The location of these other areas is shown on the plan at **Figure 5**. Although that investigation did not include the opportunity to provide a north-south aligned green space between Parramatta Square and the River foreshore, the provision of this link will further add to the variety of alternative locations within the CBD which have the benefit of a more optimal alignment and existing controls for the purposes of solar access.

For example, two of the areas identified on the open space network plan at **Figure 5** (Lancer Barracks and Jubilee Park) are protected in terms of solar access by very detailed height plane plans in Parramatta DCP 2011. These are the height plane plans specifically referenced in Clause 7.4(3) of Parramatta LEP 2011.

Other areas, including the Parramatta River foreshore and Parramatta Park are within a short walking distance of Parramatta Square¹ and potentially more accessible to large parts of the CBD. Both of these areas, together with Lancer Barracks and Jubilee Park are capable of accommodating an area of 3,000m² which is the size of the protected solar zone in Parramatta Square.

The function of Parramatta Square within the CBD is clearly articulated in the October 2016 report by the GSC entitled: GPOP – Greater Parramatta and the Olympic Peninsula.

In this publication, Parramatta Square is identified as being the primacy commercial hub of the CBD, whilst the River is described as the CBD’s centrepiece, a positive endorsement of the River as being the principal open space destination in the CBD.

The revitalised Parramatta CBD will be GPOP’s commercial and civic centre. It will grow with a strong commercial core, an identifiable CBD skyline, a sound mix of finance, insurance, accountancy, legal, real estate, convention, public administration and IT services and a lively night-time economy.

The revitalised Parramatta River will be the CBD’s centrepiece and will connect to the prestigious commercial address of Parramatta Square via the Civic Link. Parramatta CBD will be designed as our central ‘30-minute city’.(Page 30)

¹ The Civic Link Framework Plan notes that the River foreshore is only 490m from Parramatta Square

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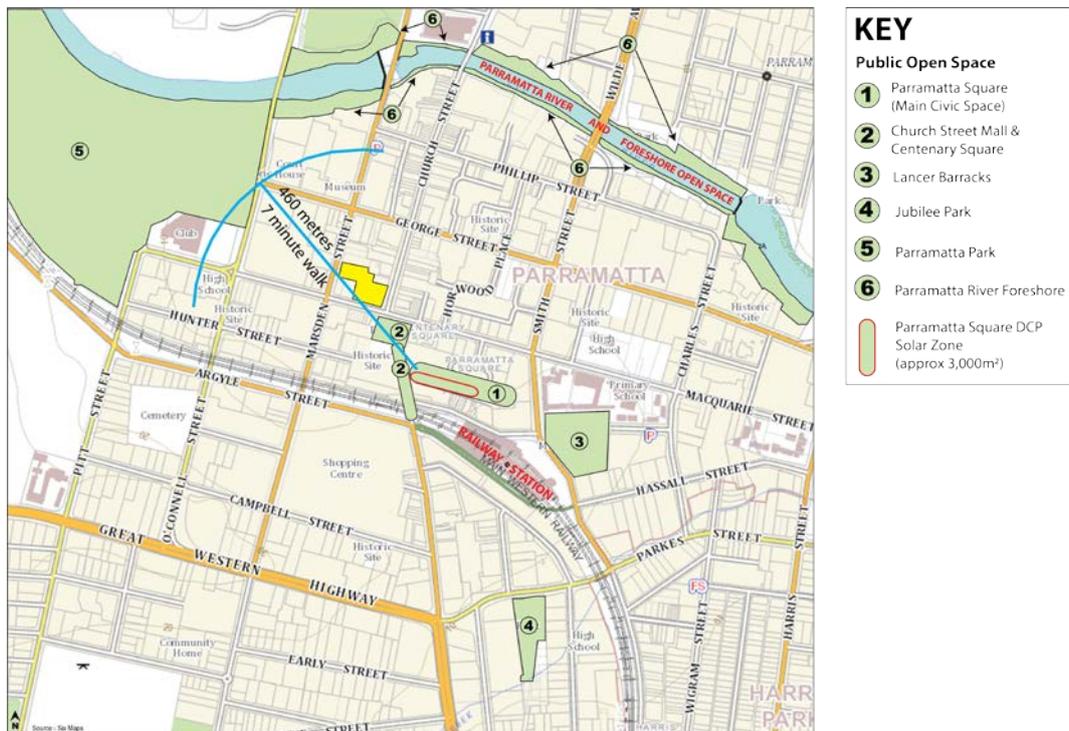


Figure 5 Areas of public open space within Parramatta CBD (Note: Yellow is 197 Church Street, Parramatta)

3.3.3 Embellishment of Parramatta Square Public Domain

At a Council meeting on 14 August 2017, a report relating the progress of planning and design for the Parramatta Square Public Domain was considered by Council.

At that meeting Council (by its Administrator) resolved as follows:

- a) That Council notes the progress since November 2016 on the design development of the Parramatta Square Public Domain and the process undertaken to provide Walker Corporation with the Performance Specification and Reference Design.
- b) Further, that a report be prepared for the future Council, following Walkers' response to the performance specification and reference design, that takes into account this information and Council's available budget for the project.

As noted in the following paragraphs, the Council envisaged improvements within the public domain of Parramatta, including the proposed commercial uses and public domain embellishments which will result in overshadowing of parts of Parramatta Square.

Council's endorsement of the improvements proposed within Parramatta Square is inconsistent with the conditions of the Gateway Determination for 197 Church Street, which envisage a blanket prohibition in respect of **any** overshadowing.

Figure 6 below is an extract from the Attachment 1 to the Council report which shows the proposed General Arrangement Plan for Parramatta Square public domain. Attachment 1 to the Council report is a document entitled *Parramatta Square – Public Domain – Reference Performance Specification – 4² – Developer Issue 19.05.2017*.

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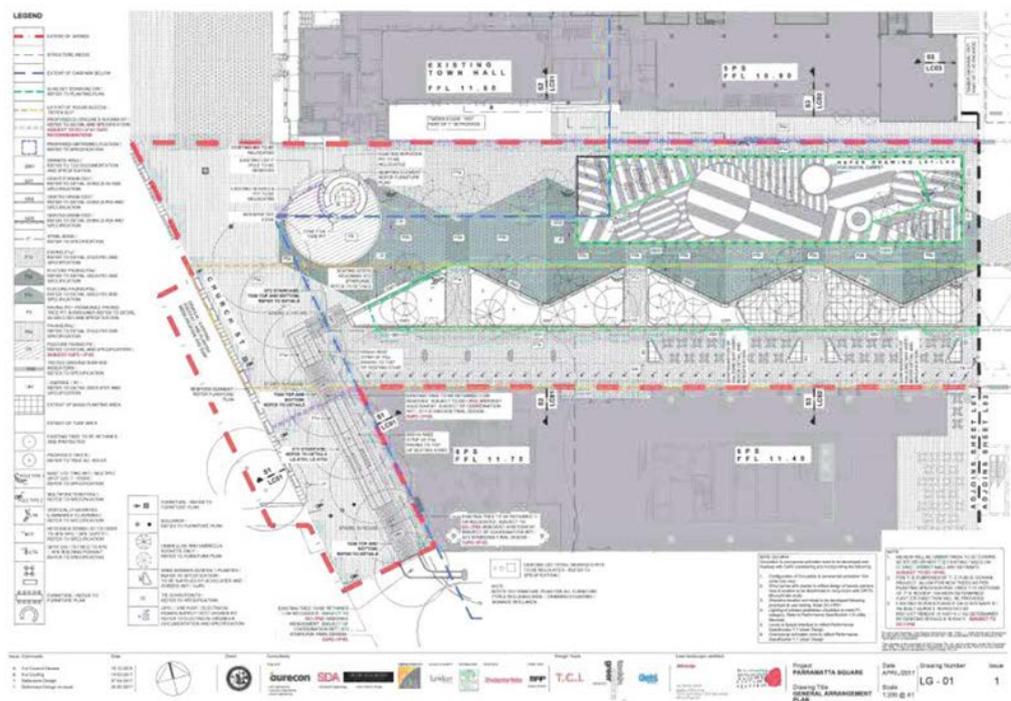


Figure 6 Extract from Attachment 1 to Item 10.2 on Council business paper to meeting of 14 August 2017

The reference plans in the Council report included civil works plans, soft landscaping, seating, activation plans, access and wayfinding plans, and street furniture plans. The overwhelming impression provided by these plans is that the public domain area of Parramatta Square (including the DCP solar zone) will be an incredibly busy area, teeming with activities ranging from markets, concerts and includes cafes and restaurants.

The following is an extract from a website about development of Parramatta Square (<https://www.parramattasquare.net.au/precinct/>)

City of Parramatta has released an Enhanced Concept Design for the Public Domain which sets out a vision for a world-class public space that meets the needs of residents, commuters and visitors to our City, as well as Council's vision for a preeminent civic and ceremonial space fit for public events.

The recalibrated plans for the Public Domain are the result of an extensive community consultation process undertaken in October 2015 in which residents and stakeholders provided valuable feedback on a Draft Concept Design. That feedback, along with considerable milestones in the design and planning of the buildings in Parramatta Square, has helped shape the Enhanced Concept Design that is now available for public comment.

To be used by thousands of residents, visitors and workers every day, the public domain will not only be home to a new state-of-the-art library and civic centre, but it will benefit from Smart City strategies and become an integrated transit hub.

This creative and stimulating environment is being designed to deliver an enjoyable place to meet, interact, socialise, shop and work.

Figure 7 is a section through that part of the public domain of Parramatta Square in which the DCP solar zone is located. This section shows that within the 20m wide DCP solar zone, approximately 7m has been identified as pedestrian circulation (primary and secondary), approximately 4-5m will be occupied by what appears to be commercially operated cafes (with seating and umbrellas) and the remaining area (approximately 9m) will be landscaped with seating, trees and fixed shade structures. This section also demonstrates the overhang encroachment of 6.5m permitted by Control C1 of Section 4.3.3.7 (b) – Site Objectives of DCP 2011.

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All these items will combine to create significant shading of Parramatta Square, including the DCP solar zone.

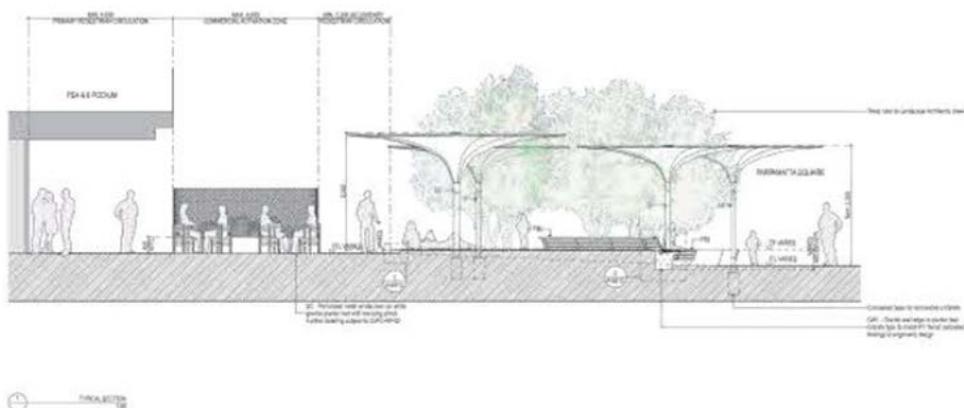


Figure 7 Extract from Attachment 1 of Report to Council meeting of 14 August 2017 showing section through the DCP solar zone of Parramatta Square

The public domain area of Parramatta Square is strategically positioned between the existing Parramatta railway station and the proposed light rail station at Macquarie Street and new retail, commercial and civic facilities to be provided within Parramatta Square and the developing CBD. In this regard, and as discussed in the extract above, it is envisaged that the public domain of Parramatta Square will be a very well used pedestrian thoroughfare, which, whilst vibrant and energetic, may not be overly conducive as a space in which to relax and unwind. This is reinforced in the activity portrayed in the section plan at **Figure 7**.

The above suggests that, as an area in which to congregate and as an activity space, the public domain of Parramatta Square will likely function extremely well, but as an area in which to 'relax', there may be better areas within the Parramatta CBD as identified in **Section 3.2.2** of this report.

3.3.4 Shadow Impact Assessment

3.3.4.1 Design Competition Winning Building – Fully compliant with 45 minute rule

For the purposes of understanding how shadow from the design competition winning building (as shown in **Figure 3**) impacts on the DCP solar zone in Parramatta Square, GroupGSA/Rafael de La-Hoz Arquitectos have prepared detailed shadow diagrams using the competition winning building as a reference based on the following times during the year:

- Mid winter/Winter solstice;
- March 22/Autumn equinox – This shadow diagram is based on Australian Eastern Daylight Saving time;
- September 22/Spring equinox – This diagram is based on Australian Eastern Standard time;
- Mid summer/Summer equinox.

These shadow diagrams are attached at **Appendix 12** to this report. These shadow diagrams have assessed the overshadowing impacts between 12 noon and 2pm being the time period specified in Parramatta DCP 2011.

Considering the shadow diagrams for mid-winter, the following observations are relevant:

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- The shadow of the building first starts to impact on the DCP solar zone at 12.45pm in mid-winter;
- At 1pm in mid-winter 2,522.56m² (or 84.3%) of the DCP solar zone is unaffected by shading from this building;
- At 2pm, 1,929.32m² (or 64.5%) of the DCP solar zone is unaffected by shading from this building.
- 2pm is the time when the DCP solar zone is most affected by shading from the building.
- The average duration of overshadowing of any single point in the DCP solar zone is 18 minutes and 31 seconds.
- The building shadow fully complies with the DCP 45 minute control.

Table 2 identifies the percentages and area of the almost 3,000m² of the DCP solar zone which would be unaffected by overshadowing from the competition winning building between 12 noon and 2pm in mid-winter.

Table 2 Solar Access to DCP Solar Zone in mid-winter		
Time of Day	% of DCP Solar Zone unaffected	Area of DCP Solar Zone unaffected by shading (m ²)
12 noon	100%	2,992.4m ²
12.15pm	100%	2,992.4m ²
12.30pm	100%	2,992.4m ²
12.45pm	93.9%	2,809.6m ²
1.00pm	84.3%	2,522.56m ²
1.15pm	74.1%	2,218.08m ²
1.30pm	71.3%	2,133.96m ²
1.45pm	68%	2,035.65m ²
2.00pm	64.5%	1,929.32m ²

On the day of the autumn equinox, the shadow does not begin to encroach on the DCP solar zone until 1.30pm, due to the angle of the sun at this time of year. The ‘worst case’ occurs at 2pm, However, at this time, 2,250.2m² or 75.2% of the DCP solar zone is unaffected by shading from this building.

On the day of the spring equinox (22 September), the shadow impact begins to encroach on the solar zone at 12.15pm however the extent of impact is minimal (3.3% or less than 100m²). Due to the azimuth of the sun and the difference of 1 hour (from the autumn equinox), the maximum overshadowing occurs at 12.45pm but even then, 74.2% (2,226m²) of the solar zone is unaffected by the shadow of the design competition winning building

The summer solstice is 22 December. On this day there would be no shadow impacts on the DCP solar zone from the design competition winning building.

In summary, the shadow from the building which was designed to comply with Council’s ‘ground rules’ for the International Design Competition:

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- Fully complies with the DCP 45 minute rule.
- The most shadow affectation will occur at 2pm in mid-winter but even so, 64.5% of the solar zone is unaffected by shading from this building.
- The average duration of overshadowing of a single point within the DCP solar zone in mid-winter is **18 minutes and 31 seconds**. This is significantly less than the maximum 45 minutes permitted by the DCP – refer **Figure 4**.
- There would be no shadow impacts on the day of the summer solstice.

3.3.4.2 Comparison of International Design Competition Building with the Planning Proposal submitted reference design

It is apparent, when reviewing the Planning Report (prepared by NSW Department of Planning and Environment) upon which the Gateway Determination has been based, that that report has had no regard to the International Design Competition conducted by Holdmark (and in consultation with and endorsed by City of Parramatta Council) or the winning design that transpired as a result of that competition.

As previously noted, Holdmark thought it prudent to conduct the design competition to ensure the Gateway Determination was based on a design that would conform with Council's requirements as the reference design submitted with the Planning Proposal (being the *Boomerang* proposal) was prepared prior to the December 2015 resolution and therefore did not satisfy the requirements of Council's resolution.

Page 6 of DPE Planning Report notes that (the proponent has advised):

- The *Boomerang* reference design would commence to overshadow the DCP solar zone at 12.41pm (in mid-winter);
- At 1pm, 54% of the DCP solar zone would not be affected by shading from the *Boomerang*;
- At 2pm, other buildings and shade trees overshadow approximately 44% of the protected area (being the DCP solar zone). The proposal (i.e. – the *Boomerang*) will increase shading of the protected area by a further 24%. This will result in a total of 68% of the protected area being in shadow at 2pm.

By way of comparison, the Design Competition winning building will result in 84.3% of the DCP solar zone being unaffected by shading from the building at 1pm in mid-winter. And at 2pm (even discounting any shadows that might be cast by other structures and trees within Parramatta Square), the Design Competition winning building would also have significantly improved performance in terms of minimising shading.

Further, the design and orientation of the *Boomerang* was such that it did not comply with the DCP 45 minute rule (noting that this DCP control was introduced after the Planning Proposal was originally lodged with Council).

The slimness of the shadow of the Design Competition winning building is much improved compared to the *Boomerang* reference design as is the speed at which the shadow moves across the DCP solar zone and the percentage of the DCP solar zone that would be impacted by shading.

There are a number of important observations to make in relation to the overshadowing of the DCP solar zone as analysed in the DPE Planning Assessment Report:

- The DPE Planning Assessment report refers to the shadow impacts of the *Boomerang* reference design that was submitted with the original Planning Proposal application.

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- That building did not comply with the DCP 45 minute rule with respect to shading of the DCP solar zone.
- The shadow cast by the *Boomerang* was broad and consequently slow moving across the zone.
- Council's support for the Planning Proposal (and as part of their resolution to forward the Planning Proposal to DPE for a Gateway Determination) was premised on a building design that would comply with the 45 minute rule.
- Given that the Planning Proposal reference design could not comply with that requirement, an International Design Competition was conducted in order to demonstrate that it was possible to develop a building on the site that could meet Council's requirements and to provide DPE with a reference design that had the endorsement of Council, the development industry and the Office of Government Architect (which is a branch of DPE).

Based on the above, it is respectfully submitted that the Gateway Determination has been based on information that is no longer relevant and for this reason alone a review of that decision is warranted.

3.3.5 Comparative Analysis

For the purposes of considering the differences in shadow impacts on the DCP solar zone, the following scenarios have been modelled:

1. Shadow impacts based on current LEP/DCP controls (include discussion regarding encroachments permitted under DCP onto the protected area)
2. Shadow impacts based on draft CBD LEP controls

Detailed plans of the extent of shading of the DCP solar zone based on the above scenarios are included at **Appendix 12**.

These plans indicate:

- If development was undertaken on land to the north of Parramatta Square in accordance with the current LEP building height development standards, there would be significant overshadowing of the DCP solar zone (and much of the rest of the public domain in Parramatta Square).
- If development was undertaken on land to the north of Parramatta Square in accordance with the draft CBD LEP building height development standards (irrespective of whether the FSR incentives were triggered), there would be significant overshadowing of the DCP solar zone (and much of the rest of the public domain in Parramatta Square).

3.3.6 Cumulative Impact Assessment

One of the concerns expressed in the DPE Planning Assessment report was the potential cumulative impact in terms of overshadowing of the DCP solar zone that might occur if the Planning Proposal on 197 Church Street proceeded in accordance with Council's resolution of 7 December 2015.

The potential for there to be a cumulative shadow impact as a result of the 45 minute rule was carefully considered by Council at the meeting on 25 October 2015. At that meeting, Council's Director Strategic Outcomes and Development noted that:

The controls will still allow significant overshadowing of Parramatta Square when the cumulative impacts in mid-winter but the intention is to promote taller slender forms that maximise solar access during other parts of the year particularly the autumn and spring equinox."

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The concern regarding cumulative impacts is, in our opinion, unfounded as the Planning Proposal for 197 Church Street is the only Planning Proposal supported by a Council resolution which would allow for the construction of a building that might shade the DCP solar zone, subject to that building complying with the 45 minute rule.

The Planning Proposal proceeded on the basis of a resolution of Parramatta Council which required a design competition to be conducted and for entry to that competition to demonstrate compliance with the 45 minute rule. To our knowledge no other Planning Proposal endorsed by Council included such a requirement.

Based on numerous discussions with Council, Holdmark invested many years of work and millions of dollars in designing an iconic, world-class building for 197 Church Street, a site identified by the Council as being strategic for the CBD and an appropriate counterpoint to “bookend” the Aspire tower site. The competition winning building was designed in accordance with Council’s resolution and in accordance with the Council endorsed competition brief. **The winning design was commended by the competition jury as being innovative, imaginative and a development which firmly positions Parramatta as championing the future.**

Any future Planning Proposals/DAs on other sites would be subject to the controls in place at the time of consideration of those Planning Proposals/DAs.

Accordingly, the Planning Proposal for 197 Church Street can be considered as a ‘one-off’ special case because:

- It is one of only two Planning Proposals to have been lodged with DPE/GSC prior to the foreshadowed change to the 45 minute rule that will be directly affected by the change to the rule;
- It is the only Planning Proposal to have undergone an International Design Excellence Competition endorsed by Council and DPE (via the Office of Government Architect’s involvement in the competition as the jury chair).

Hence, no precedent would be established by permitting the Planning Proposal on 197 Church Street to proceed with an amended Gateway Determination that deleted conditions 1 (c)(iii), 1 (c)(iv) and 1 (c)(v) and accordingly, any concerns regarding a cumulative impact from multiple developments are unfounded.

3.4 Heliostat as a Technical Solution to enhance solar access

Notwithstanding that the extent of overshadowing of the DCP solar zone by the competition winning building complies with the 45 minute rule and is, in our opinion, acceptable, there is also the potential to enhance solar access to Parramatta Square by the installation of a heliostat or a similar facility on a future building at 197 Church Street. A heliostat could be used to transfer solar energy onto the solar zone to counteract the building shadow.

Heliostats are motorised mirrors that can rotate with two-degrees of freedom. Their orientation is controlled by software so that they can redirect solar light and warmth at a known target at any given time of the year.

The use of a heliostat would be consistent with Parramatta Council’s Smart City Masterplan Vision which states the following:

“Parramatta will be a Smart City that leverages the foundations of good urban planning... and enabling technologies that will underpin our position as a vibrant, people centric, connected and economically prosperous city” (Source: Smart City Masterplan: Issue 1.0, August 2015)

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Detailed testing demonstrates that the competition winning building will perform better than the 45 minute rule, with the average duration of shade on any one point being 18 minutes and 31 seconds.

Light is generally measured in lux which is a unit of measurement used to combine all direct and indirect sunlight during the daytime.

For the purposes of understanding different lux levels:

- The approximate lux level on a rainy day is 10,000 lux
- On an overcast day, the approximate illumination level (lux) is 20,000 lux
- Bright sunlight is equivalent to approximately 50,000 lux.

Table 3 below quantifies the performance of a heliostat installation on the competition winning building at 197 Church Street in terms of the sun energy (light and warmth) to both shaded and unshaded areas of the DCP solar zone in mid-winter.

In **Table 3**:

- **Proposed illumination level** is the average illumination level (in lux) of that part of the DCP solar zone will the heliostat installed.
- **Average ambient daylight** is the average light and warmth level across the DCP solar zone.
- The **percentage change** identifies how the reflected sunlight compares to the average ambient daylight in the DCP solar zone.

For example, at 12.30pm on 21 June, the illumination level from the reflected sunlight will be 5% better than the average illumination level within the DCP solar zone as a whole.

Date	Time	Proposed illumination level (lux)	Average ambient daylight (lux)	% change
21 June	12:00	N/A	N/A	-
	12:30	53,783	51,459	105%
	13:00	43,614	49,481	88%
	13:30	40,228	46,780	86%
	14:00	31,351	40,883	77%

Table 4 is an assessment of the potential heliostat performance assuming the tower component of the development on 197 Church Street is rotated 26° counter clockwise. By rotating the tower by 26° there is a marked improvement in the efficiency of the heliostat to the extent that it will essentially replicate the average ambient daylight across the DCP solar zone between 12 noon and 2pm. **Based on this minor adjustment, the heliostat would be capable of providing a ‘like for like’ effect in terms of natural sunlight.**

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Table 4 Heliostat impact results on areas of DCP Solar Zone in mid-winter based on the competition winning building tower being rotated

Date	Time	Proposed illumination level (lux)	Average ambient daylight (lux)	% change
21 June	12:00	N/A	N/A	-
	12:30	66,806	51,210	130%
	13:00	48,577	48,577	100%
	13:30	44,235	46,206	96%
	14:00	39,818	40,217	94%

Appendix 13 to this report is a detailed assessment of how heliostats function and how the installation of a heliostat on 197 Church Street can enhance solar access to the areas of the DCP solar zone during the periods of the year when this area is shaded by the tower.

Appendix 14 is peer review advice from ARUP in response to their review of the concept heliostat installation on 197 Church Street. Following their review, ARUP has advised that:

“While there are significant technical challenges to be addressed in the detailed design, installation and ongoing management of the heliostat system, it is our opinion that these challenges are not insurmountable based on precedents of similar systems achieving intended outcomes. The most relevant precedent is the Sea Mirror installation at One Central Park Sydney...”

In summary, the proposed heliostat system presents exciting possibilities for the proposed development and surrounding area. It is Arup’s opinion that the proposed system is technically feasible, but presents some challenging design issues, which would need to be addressed in later design stages.”

This review by ARUP related to an earlier opinion for a heliostat installation. Following more detailed investigations, it was found that significant improvements to that earlier design were able to be incorporated. In this regard, a larger area of mirror surface was provided which increased the effectiveness of the heliostat. The larger area of mirror not only reduced the control complexity but also increased the scale of the elements to be controlled. Access to the mirror will be from the housing provided. Shelter for the mirrors and maintenance systems can be provided from the housing. The mirrors can be retractable and the housing closable which will assist in minimising damage to the mirror system by exposure to the elements when conditions are unfavourable.

Not only does the installation of a heliostat system provide an opportunity to enhance solar access to the public domain of Parramatta Square, it also presents the exciting opportunity to provide ‘light as art’ to the Square.

Examples of where light as been used as an art form are included in **Appendix 13** and reproduced below in **Figure 8**.

In addition to the above benefits of a heliostat installation, when the heliostat is not actively redirecting light and warmth across the DCP solar zone, there is an opportunity to capture this free heat source and convert it to useable energy.

Using a similar approach to Concentrated Solar Power (CSP) technology, where the sun's power is harnessed to generate electricity, the heliostat mirrors can be repurposed as lenses and reflectors to concentrate sunlight, heating a fluid such as water or oil and producing steam to drive a turbine.

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This multi-functional approach also serves to meet the defined goals for Council's Smart City Policy, particularly in reference to applying and utilising new approaches and technologies that deliver wider benefits for residents, businesses, local governments and tourism.

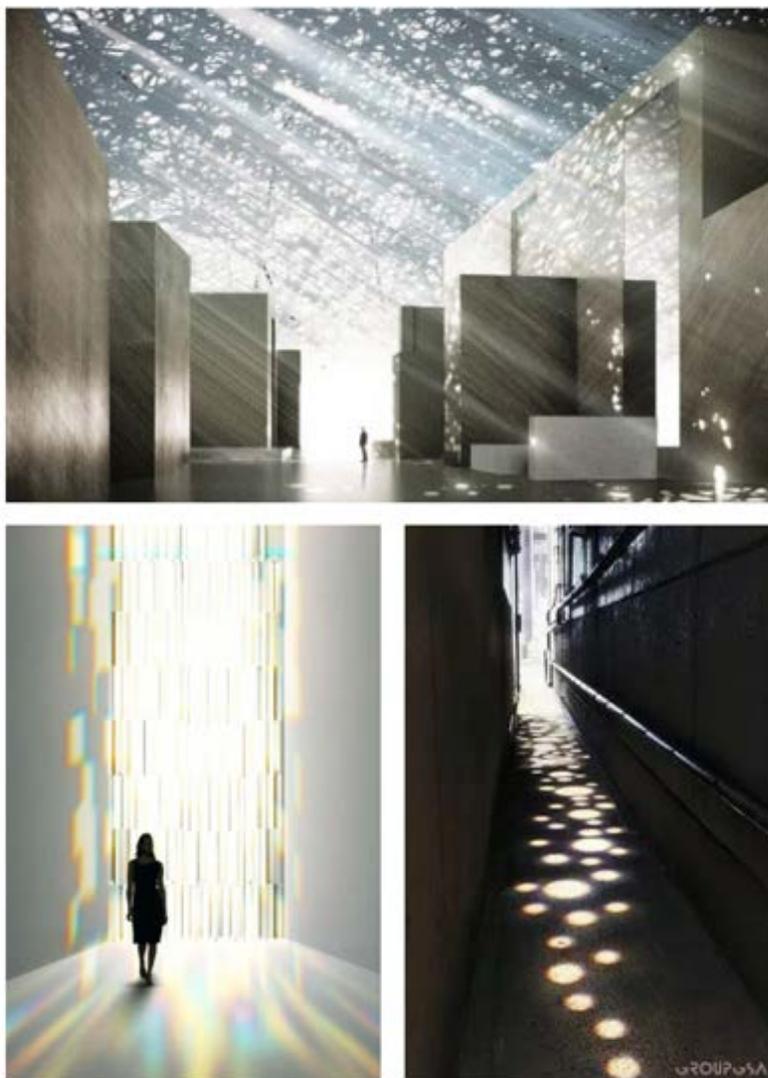


Figure 8 Examples of light as art

Questions have also been raised regarding the impact on the operation of the proposed heliostat if other sites also propose to increase building height and seek to address overshadowing by use of a heliostat. The circumstances in which the operation of the heliostat on 197 Church Street would be affected would be if a building was built between 197 Church Street and Parramatta Square obstructing reflected light or a building that shaded the heliostat. In either case, such a building would shade Parramatta Square and would be subject to the controls in place at that time and would need to be considered on their merits.

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3.5 Significant ongoing socio-economic benefits of the Competition Winning Building

The stunningly futuristic mixed-use building that was announced the unanimous winner of the Council-endorsed International Design Excellence Competition includes around 650 dwellings providing accommodation for around 2,000 residents (including affordable key worker housing opportunities) plus approximately 14,000m² of non-residential uses with the potential to create around 1,350 new jobs and over \$220 million per annum of economic benefits.

This outcome (in respect of jobs, dwellings and recurrent annual economic output) is completely consistent with Government's strategic vision for Parramatta (including *A Plan for Growing Sydney*) and provides a significant opportunity to meet the jobs and housing targets.

3.6 Consistency with detailed discussions and collaboration with Parramatta Council

The Planning Proposal and the building design which was the outcome of the International Design Competition was the result of numerous discussions and consultations with Councillors and Council staff. Based on encouragement from Council, Holdmark invested many years of work and millions of dollars in designing an iconic, world-class building for 197 Church Street, a site identified by the Council as being highly strategic for the CBD, that will function as an appropriate counterpoint "bookend" to the Aspire tower site.

Figure 9 below is a timeline of the engagement Holdmark has had with Council and DPE/GSC since the concept for the development of an iconic building at the site at 197 Church Street Parramatta was first envisaged.

Appendix 9 is a detailed chronology of the interaction that has occurred during this period to date and **Appendix 10** is a record of the communications that have occurred since issue of the Gateway Determination for the Planning Proposal for 48 Macquarie Street.

The Council has declared that its vision for this key site is a world-class, iconic design statement which will embody the aspirations of Parramatta to become a global city.

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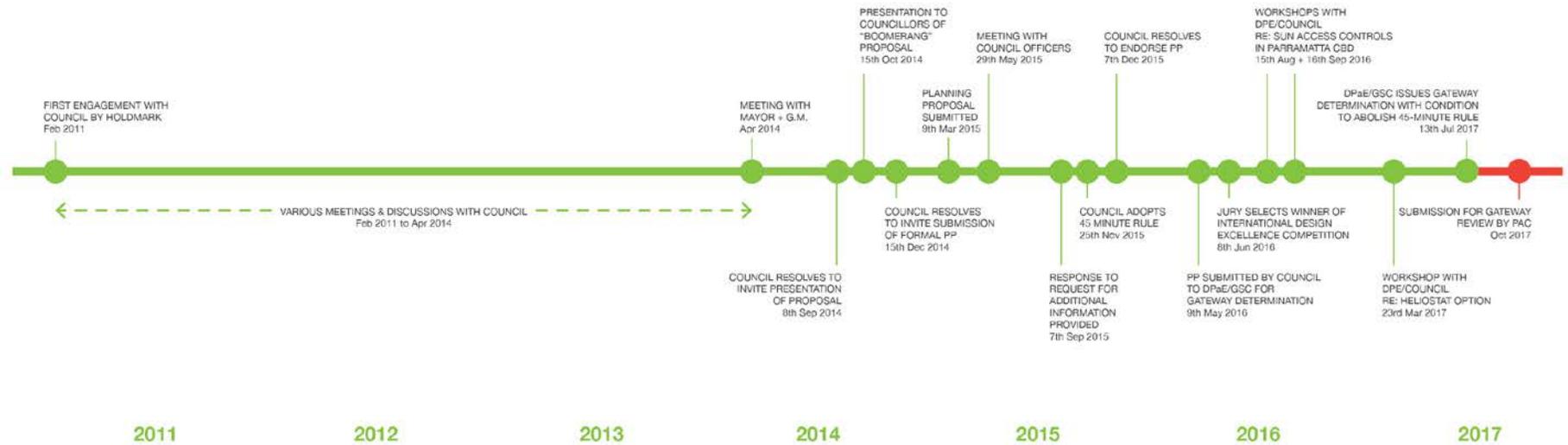


Figure 9 Timeline of consultation with Council and DPE/GSC since project inception

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3.7 Assessment of Planning Proposal based on incomplete information

The DPE assessment of the Planning Proposal does not appear to have considered the amended reference design which eventuated as a result of the Design Competition process undertaken in close collaboration with the Council. It appears that documentation relating to the Design Competition and the ultimate winning building was not passed on by Council to DPE. Accordingly, it seems that the DPE assessment has been made using incomplete information.

The performance of the competition-winning design is significantly better in respect of overshadowing than the original *Boomerang* reference design assessed in the DPE Planning Assessment Report.

The review of the Gateway Determination should be conducted with the benefit of all of the relevant information, and in the context of the improved (and fully-compliant) solar access resulting from the competition winning design.

3.8 Weight Afforded a Media Article

The DPE Planning Report prepared to inform the Gateway Determination places significant weight on an article by Lucy Turnbull (in her role as Chief Commissioner of the Greater Sydney Commission) that appeared in the *Sydney Morning Herald* on 12 July 2016.

In the article the Chief Commissioner writes ‘our’ decision in relation to the Planning Proposal for 48 Macquarie Street (to restrict the height of development on that site to ensure a future building did not overshadow Parramatta Square) was a reflection of the Commission’s position in relation to development that ‘puts the quality of our public spaces at risk’.

Specifically, the article states:

The role of the Greater Sydney Commission in Parramatta is to work with the community, industry and all agencies of the state government to ensure that the principles of great city building are applied to greater Parramatta as it grows.

These principles include ensuring that good urban design and place making leads to greater liveability. As more and more people live, work and study in and enjoy the Parramatta CBD, access to sunlight and high quality open spaces will be even more important...

Our recent decision to protect sunlight in the middle of the day in winter at the new Parramatta Square by imposing a condition on solar access on the proposed rezoning for 48 Macquarie Street reflects this. The commission will unashamedly champion growth that improves the city and it will challenge growth that puts the quality of our public spaces at risk.

A review of publicly available information on the GSC’s website has not revealed any policy or other adopted position of the GSC that would support the Chief Commissioner’s comments in relation to overshadowing of public spaces. Therefore, in the absence of formal policy, the media article can only be credited, at best, as being the opinion of the Chief Commissioner; not the adopted policy position of the GSC. Moreover, reporting in the media can often be selective, incomplete and occasionally misleading.

Given that this is an opinion expressed in a media article by the Chief Commissioner, as opposed to an adopted policy position of the GSC, the considerable weight that has been afforded this article is misplaced.

However, in response to the Chief Commissioner’s observations that “*as more and more people live, work and study in and enjoy the Parramatta CBD, access to sunlight and high quality open spaces will be even more important*”, it is considered that the design competition winning building will ensure that the principles espoused in the article by the Chief Commissioner will be fulfilled. This building has been designed in such a way that will result in minimal overshadowing of the DCP solar zone (with overshadowing limited to an average of

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18 minutes for any single point in the zone) and will be the epitome of “*growth that improves the city*”.

3.9 Strategic Merit

The purpose of a Gateway Determination is to assess the strategic merit of a Planning Proposal. All stakeholders agree that this test has been comprehensively satisfied.

From a strategic perspective, there is no dispute that the site at 197 Church Street is ideally located to accommodate an iconic building in the Parramatta CBD. It is centrally located at the key junction of the current Church Street mall, Centenary Square and Macquarie Street, and will be a logical counterpoint “bookend” to complement the Aspire building to be constructed at 8 Parramatta Square. The development of a landmark building on this site is also consistent with the objectives of the overarching strategic framework for Sydney, the West Central District and the Parramatta CBD. Replacement of the 45-minute rule with a no overshadowing requirement will prevent the realisation of the development of an iconic building on this site.

197 Church Street occupies a key strategic location in the centre of the Parramatta CBD and its proximity to the Parramatta Transport Interchange makes it a strategically desirable location to increase density. This aligns with the State Government’s policy position in A Plan for Growing Sydney released in 2014 for higher density development to be located proximate to public transport.

3.10 Detrimental implications of ‘no overshadowing’ approach

Council endorsed a recommendation by Council Officers to adopt the 45-minute rule in relation to overshadowing of the solar zone of Parramatta Square following significant debate, robust modelling, public consultation and workshopping. The 45-minute rule is retained in the CBD Planning Proposal currently lodged for Gateway Determination.

The proposed development has been designed to fully comply with the endorsed 45 minute rule in the LEP/DCP and as required by the Council resolution of 7 December 2015.

As stated by Council’s Director of Strategic Outcomes and Development at a Council meeting held on 25 October 2015:

“The 45 minute time period was calculated based on Council’s internal modelling and will allow the redevelopment of sites to the north of the square to overshadow however, will ensure where a tower element is provided it will not require lower bulkier forms but instead will promote a tall more slender built form. The controls will still allow significant overshadowing of Parramatta Square when the cumulative impacts in mid-winter but the intention is to promote taller slender forms that maximise solar access during other parts of the year particularly the autumn and spring equinox.”

Deletion of the 45-minute rule and adoption of a “no overshadowing” provision (as proposed by the conditions of the Gateway Determination) is the antithesis of good planning policy because it would:

- Contravene an adopted, carefully-considered Council policy.
- Reduce the height of a building on 197 Church Street by over 70% from 83 storeys to approximately 20, rendering the project as envisaged by the Design Competition winning entry undevelopable.
- Significantly reduce and possibly prohibit the development potential of a large area north of Parramatta Square. GroupGSA has undertaken an analysis comparing the GFA that could be developed on land to the north of Parramatta Square based on the current 45 minute rule and the GFA that might be able to be developed if the mooted ‘no overshadowing’ rule is implemented. GroupGSA has estimated that in the order of

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265,000m² and 380,000m² of GFA would be unable to be developed if the no overshadowing rule comes into being – refer **Appendix 16**. The socio-economic impacts of the 'loss' of this floorspace are discussed in **Section 3.10** below.

- Be contrary to the current and proposed CBD LEP development controls for land to the north of Parramatta Square.
- Conflict with Council's own intentions for public domain structures in (and therefore overshadowing) Parramatta Square.
- Be inconsistent with Council's current control permitting structures to overhang Parramatta Square by up to 6.5m.
- Result in an inappropriate urban design outcome in terms of cityscape for the CBD.

The Gateway Determination condition requiring no overshadowing of the public domain of Parramatta Square will result in a poor built outcome for the northern part of the City. It will be contrary to the city-shaping profile usually desired for any major city, with the tallest buildings at the city core graduating to lower buildings at the city fringes.

To achieve good urban design and city-shaping, the precinct north of the Parramatta Square should be low at the Parramatta River. Building height should then ascend towards the south, allowing view sharing to the River and Hills to the north, solar access to each building and solar penetration along the north oriented streets.

But the zero shade in Parramatta Square policy envisaged by the Gateway Determination conditions will result in the built form north of Parramatta Square becoming a south sloping prism of buildings. The highest buildings will form a wall along the River and the lowest will be along the Square.

Each building will stand in the shade of its northern neighbour.

Each building will block the view to the north, of the River and Hills district, contrary to good urban design. This built form will seriously ability for residential to be undertaken in areas south of the River as compliance with the Apartment Development Guidelines will be unable to be achieved.

Rather than a restrictive policy for one public space, for one period of the day, the City should focus on a number of spaces, each with its own character and solar accessibility.

This will provide choice - time of day, warm and cool conditions.

3.11 Socio-Economic Impacts of 'no overshadowing' rule

Based on development occurring in accordance with Scenario C in the Architectus CBD Planning Framework Study, it was estimated that 2,070,000m² of new residential GFA and 760,000m² of new commercial GFA could be developed within the existing centre. The estimated total new GFA that could be developed in the CBD based on this preferred scenario was 2,830,000m². Whilst these estimates do not factor in the solar controls envisaged in Scenario D (increased height, no FSR control, no overshadowing of public spaces), Scenario C was adopted as the preferred outcome suggesting the targeted development yields in Scenario C were the preferred targets for the CBD.

As previously noted, GroupGSA has estimated that between 265,000m² and 380,000m² of GFA would not be able to be developed on land to the north of Parramatta Square if the no overshadowing rule is implemented. This represents 9.3% - 13.4% of the total additional floorspace envisaged under the Architectus CBD Planning Framework Study. A copy of the comparative analysis undertaken by GroupGSA is included at **Appendix 16** to this report.

In order to be able to quantify the socio-economic impacts of the loss of this floorspace, AEC Group has undertaken a high level economic analysis assuming of 350,000m² of floorspace

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could not be developed. At this high level of assessment, if a different figure for the 'lost' GFA was applied, the associated impacts could be estimated on a simple pro-rata basis. A copy of the analysis based on the loss of 350,000m² of floorspace is included at **Appendix 15** to this report.

The analysis by AEC identified that if 350,000m² of floorspace could not be developed, the following negative impacts for Parramatta might result from this prohibition:

- **Around 19,000 new jobs might be jeopardised.**
- **In the order of \$3.4 billion per annum of additional economic benefits may not be realised.**
- **Accommodation for at least 5,000 residents would not be built.**

Whilst the economic analysis assumes a 50/50 split of the floorspace that will not be able to be developed between commercial and residential floorspace, it is noted that much of the land to the north of Parramatta Square is within the B3 Commercial Core zone. Residential development is not permitted within the Commercial Core zone and therefore the assumed 50/50 split is considered to be conservative and the economic impacts could actually be worse than that assessed.

Not only will the no overshadowing rule (as envisaged by the Gateway conditions) impact on the development potential of much of the CBD to the north of Parramatta Square, it will also impact on the development potential of 197 Church Street, as envisaged by the Design Competition winning entry.

Overall, the effect of the Gateway condition to delete the 45 minute rule will be to:

- Stifle investment and growth in a central portion of the CBD close to Parramatta Square, the Parramatta railway station and the future light rail route;
- Compromise the ability of the Parramatta CBD to become Sydney's "dual CBD" as envisaged by the Parramatta Strategic Framework 2016, a Plan for Growing Sydney and the draft West Central District Plan; and
- Create nervousness and uncertainty in the industry, which will undoubtedly discourage further investment in Parramatta and jeopardise thousands of associated jobs and economic benefits.

The example that has been tested (i.e. – the loss of 350,000m² of development floorspace) shows that the deletion of the 45 minute rule will also:

- Compromise the ability for Council to raise the \$835 million worth of infrastructure funding predicated on the residential growth envisaged in the Parramatta CBD Strategy;
- Jeopardise the creation of around 19,000 new jobs;
- Compromise housing supply for at least 5,000 residents.

This analysis has demonstrated that deletion of the 45 minute rule will have very significant and presumably unintended impacts on the ability of the Parramatta CBD to fulfil the objectives of the overarching strategic framework for the City.

3.12 Exceptional Circumstances

The Planning Proposal for 197 Church Street, Parramatta is unique in a number of ways, such that any decision to allow it to proceed will not create a precedent for further applications. Its unique features include:

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It is one of only two Planning Proposals submitted before 17 June 2015, the date on which the foreshadowed amendment to DCP 45-minute rule was first foreshadowed by DP&E/GSC.

It is the only Planning Proposal to have a Council resolution specifically stating it is endorsed subject to compliance with the 45-minute rule.

It is the only Planning Proposal to have undergone an International Design Excellence Competition endorsed by Council and DPE (via the Office of Government Architect's involvement in the competition as the jury chair).

3.13 Procedural Fairness

The conditions of the Gateway Determination raise the question of procedural fairness particularly as the outcome of Condition 1 (c)(iv) (to amend Clause 7.4 of Parramatta LEP 2011 so that no additional overshadowing of the protected area of public domain within Parramatta Square occurs between 12pm – 2pm) will negate the opportunity to develop the Design Competition winning building on 197 Church Street.

At its meeting of 7 December 2015, Parramatta Council resolved to support the Planning Proposal for 197 Church Street on the proviso that Holdmark, in consultation with Council, prepare a brief for an International Design Competition. One of the non-negotiable parameters that any entry for the competition was required to meet was to ensure the building design complied with the DCP 45 minute rule.

Given that the reference design submitted with the Planning Proposal (being the *Boomerang* proposal) was prepared prior to the introduction of the 45 minute rule and so did not satisfy the requirements of Council's resolution, Holdmark, in close consultation with Council, conducted a design competition to ensure that DPE could consider a design that conformed with Council's requirements as part of the Gateway Determination. In this way all parties could be confident that it was possible to develop the site in accordance with Council's DCP controls.

The Design Competition judging was held in Council's offices and indeed, Council was represented on the 3 person jury by Council's City Architect. The decision of the jury was unanimous.

The amendment now proposed to clause 7.4 is the antithesis of good planning because it has the effect of overturning a solar access policy of Council which was adopted following extensive consultation. This goes against the objects of the EP&A Act which relevantly include promotion and co-ordination of the orderly and economic use and development of land.

Orderly and economic use and development of land is achieved through a planning system which mandates rigorous consultation prior to the adoption of LEPs and DCPs. This rigour was applied in relation to:

- Parramatta LEP 2011 clause in question, which is clause 7.4; and
- Parramatta DCP which has resulted in the adoption of the '45 minute' solar access rule as Council policy.

Consistency in decision-making is also of particular significance given the recent Council amalgamations.

The current solar access provisions were not inserted or adopted on a whim. The controls were adopted by Council on 23 November 2015 following a lengthy process of consultation regarding the amending of the DCP and extensive modelling. So much is apparent from the business paper to Council's 23 November 2015 meeting which resolved to adopt the DCP draft amendments and to advise applicants for any relevant planning proposal and development applications – including Holdmark – of the retention of Council's DCP provisions

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and invited them “to revise current applications to demonstrate compliance with the solar access provisions”.

In the case of clause 7.4 of the Parramatta LEP, it has also undergone the rigour of review by Parliamentary Counsel and endorsement by DPE.

In reliance on these existing controls, Holdmark has worked closely with Council to explore the best outcomes for its site and has spent millions of dollars over a number of years on the basis of the negotiations with and the advice of Council, including most recently by conducting an international design competition to produce an outstanding design for this site. Clause 7.4 which, in its current form gives effect to Council's current policy, was endorsed by Parliamentary Counsel and DPE through the drafting process and is now the law. Similarly, the Parramatta DCP provisions giving effect to the '45 minute rule' have been through a mandated process of public consultation, have been adopted by Council and are the applicable policy. The Court tells us that those provisions should be the fundamental and focal point of decision-making.

In view of the above, and the foregoing discussion in this report, it is abundantly clear that the conditions of the Gateway Determination which would effectively negate the opportunity to develop 197 Church Street based on the Design Competition winning design, are unjust and contrary to the objects of the EP&A Act.

3.14 Confidence in the Planning System (Sovereign Risk)

This process generates uncertainty for the development and investment community and their financiers with respect to investment risk in Parramatta. The potential result is that billions of dollars of proposed investment in Parramatta could be withdrawn, thousands of planned jobs and homes might not eventuate and the “central city” vision for Parramatta will not be realised.

There are, however, other very significant consequences as this issue raises questions regarding the ability of investors and financiers to have confidence in the NSW planning system. This has far-reaching implications for NSW as a whole, because there are potentially crucial decisions which will be made in respect of future investment in major projects based on reliance on the planning system and consistency of application of planning policy. Even decisions made after robust consultation with the public are called into question by the proposal to retrospectively delete the 45-minute rule.

4 Conclusion

4.1 Summary

This report provides reasoned evidence as to why the deletion of conditions 1(c)(iii), (iv) and (v) of the Gateway Determination sought by this application for a Gateway Review is justified in the particular circumstances of the Planning Proposal for 197 Church Street, Parramatta. The key reasons are as follows:

4.1.1 Consistency with Planning Controls

When considering the shadow impact of the competition winning building it can be seen that due to the slimness of the tower and the innovative design, the shadow impacts on the DCP solar zone are not unacceptable or excessive and will comply with the 45 minute rule. Further, in terms of the mid-winter shadow, it has been calculated that the shadow will only shade any single point in the DCP solar zone for an average of 18 minutes and 31 seconds, which is significantly less than the DCP control of 45 minutes.

At 12 noon in mid-winter, all 3,000m² of the DCP solar zone is unaffected by shadows from the competition winning building.

At 2pm in mid-winter, 1,929.32m² of the DCP solar zone is unaffected by shading from the competition winning building. This does not take into account other parts of the public domain of Parramatta Square which are not shaded between 12 noon and 2pm. Nor does it take into account the other public domain areas within and immediately adjacent to the CBD which offer alternative, and possibly more peaceful havens given the intensity of activity and pedestrian traffic envisaged for Parramatta Square.

4.1.2 Other Shading of the DCP Solar Zone

Based on plans appended to the Council report of 14 August 2017, the DCP solar zone will be a heavily trafficked thoroughfare with some areas available for commercial lease for café seating. Therefore, the area will not be available to all users during the hours of 12 noon to 2pm.

Furthermore, there will be significant shadowing resulting from the design for the Parramatta Square public domain as endorsed by Council at its meeting on 14 August 2017.

4.1.3 Heliostat as a Technical Solution

If it is considered that the shadow cast over the DCP solar zone, although compliant with the DCP 45 minute rule, is not acceptable, there is the opportunity to address this with the installation of a heliostat or similar facility on the building to transfer solar energy (light and warmth) onto the solar zone.

Although a relatively recent innovation in Australia, heliostat installations have been used in a number of countries as a mechanism for supplementing and enhancing sunlight to spaces where solar access to a space is affected. There are two recent examples in Sydney where heliostats have been employed (or approved) as a means of addressing solar access to public spaces. These include the development at One Central Park on Broadway and a Planning Panel approved development at Walker Street, Rhodes.

The DPE Planning Assessment report suggests reasons as to why a heliostat (or other technical solution) is not considered an acceptable technique for the purposes of addressing sun access to the DCP solar zone. However, the issues of concern discussed in the report are all resolvable.

The architects of the competition winning building have already considered how such an installation could be integrated into the design of the building without compromising its unique characteristics. A sketch of how a heliostat could be mounted onto the building is included in the technical report at **Appendix 13**.

Detailed matters relating to ownership and maintenance are easily resolvable and can be addressed as part of a DA submission.

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4.1.4 Detrimental Economic Consequences

If the conditions of the Gateway Determination are not modified, this will have serious economic consequences not only in relation to the feasibility of developing 197 Church Street, but for the Parramatta CBD as a whole.

The number of Planning Proposals currently in the pipeline is a positive response by investors and developers that Parramatta is to be taken seriously as Sydney's other CBD. The development of the Western Sydney Employment Area and the airport at Badgerys Creek will provide further catalysts to the shift of business focus from Central Sydney to the west. Inconsistency of application of Council controls will significantly undermine this confidence. This has much wider implications for the whole of NSW as it raises serious doubts as to the ability of investors to be able to rely on Council decisions specifically and the planning system generally. A potential consequence of this is the raising of concerns in respect of Sovereign Risk.

City of Parramatta Council made a conscious and well informed decision in relation to the sun access controls within the CBD before endorsing the 45 minute rule. This decision recognised that a balance needs to be struck between encouraging development of world class buildings and how development interacts with public spaces.

Maintenance of the solar zone of Parramatta Square as a shade free area on June 21 between 12 noon and 2pm will have implications on the developability of much of the land to the north of Parramatta Square to the extent that it would potentially be unviable for many sites to redevelop at all.

It has been estimated that introduction of the 'no overshadowing' rule could result in between 265,000m² and 380,000m² of GFA not being able to be developed on land to the north of Parramatta Square. However, as noted above, the consequences may be even more profound if land owners deem that it is not feasible to develop their land if the development yield is compromised as a result of the 'no overshadowing' rule.

In order to quantify the socio – economic impacts of the estimated loss in development GFA as a consequence of the introduction of the 'no overshadowing' rule, AEC Group as tested the impacts if 350,000m² of developable GFA was lost. AEC has concluded that this could have the following profoundly detrimental socio-economic impacts:

- 8,750 full time equivalent (FTE) direct jobs not being created and a total of 18,947 FTE jobs (direct and indirect) jobs not being created.
- Lost income of **\$1,769.7 million** per annum to the Parramatta economy. The income is a measure of the level of wages and salaries paid to employees of the industry under consideration and to other industries benefiting from the Project.
- An impact on the gross regional product of **\$3,393.6 million**. Gross Product is the value of output after deducting the cost of goods and services inputs in the production process. Gross product (e.g. Gross Regional Product) defines a true net economic contribution and is the preferred measure for assessing economic impacts.
- 2,000 residences (approximately 5,000 persons) not being able to be accommodated within the centre.

Should this occur, it would severely compromise Council's ability to raise \$835 million of infrastructure funding and result in the loss of billions of investment dollars into Parramatta economy. The knock-on impacts of this would be the loss of thousands of job opportunities.

Clearly, deletion of the 45 minute rule will have very significant and presumably unintended impacts on the ability of the Parramatta CBD to fulfil the objectives of the overarching strategic framework for the City.

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In terms of the impacts on 197 Church Street, redevelopment of this site as proposed will deliver over 14,000m² of commercial (non-residential) floorspace to the heart of the CBD. However, this would not be achievable if the 'no overshadowing' rule was implemented. This 14,000m² is more than twice as much commercial floorspace than currently available on site. This is in recognition of the site's strategically important location and the fact that retaining and encouraging commercial activity in the CBD will ensure that this site assists in contributing to the vibrant commercial hub of Parramatta.

4.1.5 Incomplete material used for assessment

DPE's assessment of the Planning Proposal should have the benefit of all of the relevant material. The DPE Planning Assessment report upon which the Gateway Determination is based references a concept scheme prepared prior to the December 2015 resolution of Council. This resolution established the parameters for the Planning Proposal to proceed, which included the requirement to prepare a brief for an International Design Competition to be conducted for the site. The resolution also mandated that entries to that competition comply with the DCP 45 minute control with respect to sun access to the DCP solar zone.

As the reference design submitted with the Planning Proposal did not comply with this control, the proponent, Holdmark, deemed it judicious to conduct the International Design Competition so that DPE (as delegate to the Greater Sydney Commission) would have confidence in making a Gateway Determination that it was possible to develop the site in accordance with the development controls being sought as part of the Planning Proposal that complied with Council's requirements.

The winning design satisfies the 45 minute rule. The winning design comprises an iconic 83 storey tower constructed in three off-set sections. The staggering of the sections not only adds visual interest to the structure, it also has a functional consequence of minimising the shadow impacts.

The significant volume of additional information provided in respect of the competition winning scheme appears to have been omitted from DPE's assessment.

Furthermore, the considerable weight that has been afforded the article by the Chief Commissioner of the GSC in the 12 July 2016 edition of the Sydney Morning Herald, is misplaced as the assessment suggests that this is the policy position of the GSC. No evidence to indicate that the GSC has adopted the position espoused in the Chief Commissioner's article is apparent in information that is publicly available. On the contrary, the GPOP report dated October 2016 refers to Parramatta Square as the *prestigious commercial address in the CBD* and the revitalised River as the *centrepiece*.

Notwithstanding, the design competition winning building will be consistent with the principles of good urban design and place making as detailed in the Chief Commissioner's article and will ensure solar access in excess of that determined by Council as being appropriate for the DCP solar zone (through adoption of the 45 minute rule) is provided.

4.1.6 Consistency with Strategic Planning Objectives

From a strategic perspective, the site at 197 Church Street is ideally located to accommodate an iconic building in the Parramatta CBD. It is centrally located at the junction of the northern end of the current Church Street mall, Centenary Square and Macquarie Street and will be a logical counterpoint bookend to the Aspire building to be constructed diagonally opposite at 8 Parramatta Square. The development of a landmark building on this site is also consistent with the objectives of the overarching strategic framework for Sydney, the West Central District and the Parramatta CBD. Removal of the 45 minute rule in lieu of a no overshadowing requirement will prevent the realisation of the development of an iconic building on this site.

197 Church Street occupies a key strategic location in the centre of the Parramatta CBD and its proximity to the Parramatta Transport Interchange makes it a strategically desirable location to increase density. This aligns with the State Government's policy position in *A Plan*

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for *Growing Sydney* released in 2014 for higher density development to be located proximate to public transport.

On 27 April 2015, Council adopted the Parramatta CBD Planning Strategy (Strategy). The strategy established a vision for growth, principles and actions to guide a new planning framework for the CBD. One of the recommendations of the Strategy is to remove building height controls (and impose a higher FSR for much of the City Centre). Whilst the Planning Proposal for 197 Church Street proposes a FSR greater than that recommended in the Strategy, additional floorspace is justifiable in this circumstance as a development with this density can achieve the key outcomes identified in the Strategy whilst still complying with Council's adopted policy position in relation to development within the CBD. Council recognised and endorsed this by its resolution of 7 December 2015. Redevelopment of the site in accordance with Council's recommendation of 7 December 2015 is consistent with the objectives and direction advocated in the Strategy.

Redevelopment of 197 Church Street will deliver significant benefits to the public domain which would not be realised without a commercially viable development option.

A Plan for Growing Sydney nominates Parramatta as the principal focus of the Central City, being one of the three cities in the metropolis that is Global Sydney. The Parramatta City Centre is one of the two main economic centres of the Greater Parramatta and the Olympic Peninsula (GPOP). One of the priorities for the Central City District is to grow a vibrant Parramatta City with a productive and diversified economy. In this regard, redevelopment of 197 Church Street with a world class building which has been subject to an international design competition is entirely consistent with this objective.

4.1.7 Exceptional circumstances

The Council resolution in relation to their support of the Planning Proposal for 197 Church Street Parramatta on the basis that any future development comply with the 45 minute rule is unique to this Planning Proposal. Consequently, the concern of the potential precedent effect of allowing this development to proceed is unlikely eventuate unless Council resolves to support another Planning Proposal in a similar manner.

It is understood that no other Planning Proposals have included a specific requirement to comply with the DCP 45 minute rule other than the Planning Proposal for 197 Church Street.

4.1.8 Procedural Fairness and Due Process

Over the course of the project (dating back to before the submission of the preliminary Planning Proposal in April 2014) based on the Council's enthusiasm for the project, Holdmark had the confidence to progress the proposal further. This involved investing millions of dollars and working collaboratively with Council to ensure a future development on the site satisfied Council's vision for this strategically important site.

It was on the basis of the Council resolution of 7 December 2015 (and to ensure the Gateway Determination was based on a compliant reference design) that gave Holdmark the confidence to invest in undertaking the design competition.

Of more concern, however, is the concept of procedural fairness and how the "goalposts" have shifted during the course of the Planning Proposal. The establishment of the 45-minute rule in the LEP/DCP was the result of a resolution of Council to accept a recommendation by Council Officers following robust and detailed modelling, public consultation and workshopping. The 45-minute rule is retained in the CBD Planning Proposal currently lodged by Council for Gateway Determination

As required by the Council resolution of 7 December 2015, the competition winning building has been designed to fully comply with the 45 minute rule.

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It was only when the Gateway Determination for the Planning Proposal for 48 Macquarie Street was issued on 17 June 2016 (several weeks after the 197 Church Street PP had been lodged) that the deletion of the 45-minute rule was foreshadowed.

It is patently inequitable to retrospectively introduce a control which would essentially negate what the Planning Proposal is seeking to achieve. Moreover, the accepted principle in planning law is that when a control changes, any application lodged prior to the change in controls taking effect will be assessed pursuant to the rules in force when the application was lodged. On the basis of procedural fairness, that principle should apply in this case.

Therefore, in the interests of procedural fairness, due process and natural justice, this Planning Proposal should be considered on the basis of the terms of Council's resolution of 7 December 2015 and the competition winning design. Any decision otherwise is considered to be contrary to good planning practice and the objects of the EP&A Act.

4.2 Recommendation

In view of the above, it is recommended that Conditions 1 (c)(iii), 1 (c)(iv) and 1 (c)(v) of the Gateway Determination issued on 13 July 2017 in relation to the Planning Proposal for 197 Church Street Parramatta be deleted.