



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request 24 & 26-30 Parkes Street & 114-116 Harris Street, Harris Park

Gateway Determination Advice Report

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23 March 2022

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State of New South Wales through the Independent Planning Commission 2022

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DEFINED TERMS

ABBREVIATION	DEFINITION
CBD PP	Parramatta CBD Planning Proposal
Commission	Independent Planning Commission of NSW
Council	City of Parramatta
DCP	Development Control Plan
Department	NSW Department of Planning and Environment
Department's Gateway Determination Report	The Department's <i>Gateway determination report - PP02021-5178</i> , dated 6 October 2021, recommending that the Planning Proposal should not proceed
Department's Gateway Review Report	Department's <i>Gateway Review Justification Assessment</i> report for the review of the Gateway Determination, received by the Commission on 18 February 2022
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
FSR	Floor Space Ratio, as defined in the Dictionary of PLEP 2011
Gateway Determination	Department's Gateway Determination for the Planning Proposal issued on 21 October 2021
Material	The material set out in section 8.2
Minister	Minister for Planning
PLEP 2011	Parramatta Local Environmental Plan 2011
Planning Proposal	Proposal to amend PLEP 2011 to insert a site-specific provision to exempt the FSR sliding scale clause from applying to the Site
Proponent's Gateway Review Report	<i>Gateway Determination Review 24+ 26-30 Parkes Street +114-118 Harris Street Parramatta</i> , November 2021, prepared by Think Planners P/L
Site	Three parcels in separate ownership at 24 Parkes Street, 26, 28 & 30 Parkes Street, and 114 & 116 Harris Street, Harris Park
Site Parcel 1	24 Parkes Street, Harris Park
Site Parcel 2	26, 28 & 30 Parkes Street, Harris Park
Site Parcel 3	114 & 116 Harris Street, Harris Park

1 INTRODUCTION

1. On 11 August 2021 the City of Parramatta (**Council**) lodged a Planning Proposal with the NSW Department of Planning and Environment (**Department**) seeking to amend the Parramatta Local Environmental Plan 2011 (**PLEP 2011**) to introduce a site-specific exemption to Floor Space Ratio (**FSR**) sliding scale controls.
2. The Site in the City of Parramatta Local Government Area comprises three parcels of land in Harris Park (**Site Parcels**):
 - 24 Parkes Street (**Site Parcel 1**)
 - 26, 28 & 30 Parkes Street (**Site Parcel 2**)
 - 114 & 116 Harris Street (**Site Parcel 3**).
3. On 21 October 2021, as delegate of the then Minister for Planning and Public Spaces, the Department issued a gateway determination that the Planning Proposal should not proceed (**Gateway Determination**).
4. The Proponent, Think Planners P/L on behalf of the landowners of the three Site Parcels, wrote to the Department on 1 December 2021 requesting a review of the Gateway Determination.
5. On 18 February 2022, the NSW Independent Planning Commission (**Commission**) received a referral from the Department requesting advice pursuant to section 2.9(1) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) in relation to the Planning Proposal and Gateway Determination.
6. The Department's referral letter stated that the advice should include a clear and concise recommendation to the Minister's delegate confirming whether the Gateway Determination should be overturned, and given a Gateway determination to proceed, or not.
7. Professor Mary O'Kane AC, Chair of the Commission, nominated Professor Helen Lochhead to constitute the Commission Panel reviewing the Planning Proposal and providing advice concerning the merits of the review request.

2 SITE AND LOCALITY

8. The Department's Gateway Review Justification Assessment Report (**Department's Gateway Review Report**) describes the Site and its surrounds, stating:

The site is located at the edge of Parramatta CBD, bound by Parkes Street to the south and Harris Street to the east....

East of the site exists the mid-sized Robin Thomas Reserve.....This reserve is one of the few open spaces in the city centre and contributes to the character and amenity of the area. To the south of the site, across Parkes Street, are apartment buildings that are estimated to date from the 1970s and 1980s. Immediately adjoining the northern site boundary is Clay Cliff Creek, an open concrete channel. To the site's west is a recently completed and occupied residential tower at 22 Parkes Street and at 14 – 20 Parkes Street, Parramatta development consent has been issued for mixed use development following a recent rezoning.

9. The Site location is shown in **Figure 1** and the Site layout is shown in **Figure 2**. A temporary display office and associated car park located in Site Parcel 2 is visible in **Figure 1**.



Figure 1: Site Location (source: Department's Gateway Review Report)



Figure 2: Site layout showing Site Parcels 1, 2 & 3
 (source: Council report to the Local Planning Panel 16 June 2021)

10. **Figure 3** shows the Site (outlined in red) in the wider context of Parramatta CBD (outlined in blue). It also shows the state and locally heritage-listed Experiment Farm and its curtilage (outlined in yellow).



Figure 3: Site context, showing the boundary of the Parramatta CBD in blue and the curtilage of Experiment Farm in yellow
(source: Department's Presentation to the Commission on 9 March 2022)

11. Experiment Farm is the site of the first land grant given to James Ruse in the early days of the colony of NSW. The cottage is one of the oldest residences in Australia (source: National Trust NSW website and Council's website). The curtilage shown is consistent with the extents of the heritage listing under PLEP 2011. The State heritage listing is understood to extend further northward to include additional open space to the south of Parkes Street.

3 BACKGROUND

12. The current Planning Proposal was preceded by individual planning proposals for the three Site Parcels, which were submitted to the Department in August 2018. These proposals are described in the Department's Gateway Review Report (page 3), as follows:

These proposals variously sought to increase development standards and, in some proposals, remove the applications of the FSR sliding scale control for the three individual sites subject to the current proposal. The intent of each proposal was to facilitate greater development potential for the sites with the objective of development without amalgamation.

13. One of the three individual planning proposals, relating to Site Parcel 3, received Gateway determination to proceed on 29 September 2020.

14. In July 2021, Council resolved not to proceed with the individual planning proposals for the Parcel Sites, in favour of a single planning proposal for the Site as a whole. This decision is described in the Department's Gateway Review Report (page 3), which states:

In early 2021, after officer consideration of the three proposals, Council came to an agreement that a superior built form outcome would not be achieved through amalgamation, as opposed to allowing an exemption of the FSR sliding scale and developing the sites individually. Council then supported a combined planning proposal applying to the three sites seeking to exempt the land from the sliding scale to allow individual development at the maximum FSR envisaged through the CBD PP.

4 STATUTORY CONTEXT

4.1 Current Controls – PLEP 2011

15. Under the PLEP 2011, the land zoning for the Site is B4 – Mixed Use.
16. The maximum building height at the Site is 54m as shown on the Height of Buildings Map, and pursuant to clause 4.3 – *Height of buildings*.
17. The PLEP 2011 FSR Map shows an FSR of 4:1 for the Site. Clause 4.4 specifies that the maximum FSR for any building on any land is not to exceed that shown on the FSR Map.
18. The Site is subject to additional controls under *Part 7 Additional local provisions—Parramatta City Centre* as it is within the area shaded yellow on the Additional Local Provisions Map. Both the CBD PP and the current PP seek amendments to Part 7 of the PLEP 2011.
19. Clause 7.2 *Floor space ratio* includes provisions for calculating the maximum FSR for land subject to Part 7, within the Parramatta City Centre. The sliding scale varies the FSR based on the area of the sites, either by direct substitution of alternative FSRs or by calculating an FSR based on site area using a range of formulas.
20. The sliding scale under Clause 7.2 does not affect the Site as it only applies to sites with mapped FSRs that are specified in the clause, the lowest of which is currently 6:1.

4.2 Proposed Controls – CBD PP

21. Council's Parramatta CBD Planning Proposal (**CBD PP**) is currently before the Department for finalisation and seeks to introduce a new planning framework for the Parramatta CBD.
22. The CBD PP would amend controls under Part 7 of the PLEP 2011. The CBD PP (page 3) explains the purpose of the proposed amendments as follows:

The amendments expand and intensify commercial activities and support higher density mixed use and residential development. The vision is for new buildings to define streets and public spaces to deliver a comfortable, functional and attractive public domain; while the towers above are tall and slender and are set back to allow daylight, views and circulation of air to the streets and public spaces below. The heritage significance of heritage items and conservation areas is respected and managed within the city form and buildings perform to high environmental standards.

23. The CBD PP includes a revised maximum Height of Buildings Map that shows an unchanged maximum height of 54m for the Site.
24. The CBD PP also seeks to introduce a new Incentive Height of Buildings Map. To take up the Incentive Height of Building, a development would need to meet similar prerequisites as for the Incentive FSR, discussed below.

25. The Incentive Height of Building Map shows height limits for the site of up to 122m, limited in part by a sun access plane to protect overshadowing of Experiment Farm.
26. The CBD PP includes an amended Land Reservation Acquisition Map. The map shows that the Site would be subject to road widening of 3m on Parkes Street and 3m on Harris Street (shown in **Figure 4** below).
27. Amongst the changes proposed in the CBD PP are the insertion of an updated Floor Space Ratio Map and creation of a new Incentive Floor Space Ratio Map.
28. The updated Floor Space Ratio Map shows an unchanged FSR of 4:1 for the Site.
29. The CBD PP proposes that an Incentive FSR can be achieved at a site subject to preconditions, including meeting Community Infrastructure Principles related to access to, or provision of, adequate community infrastructure, where achievable.
30. The Incentive Floor Space Ratio Map shows an Incentive FSR of 10:1 for the Site.
31. The CBD PP would also amend clause 7.2 *Floor Space ratio* to include reference to the Incentive Floor Space Ratio Map and modify the FSR formulas slightly. The CBD PP amendment would omit subclauses 7.2 (1) and (2) and insert:

(1) Despite clauses 7.6C (3) and 7.6H, the maximum floor space ratio for buildings on land for which the maximum floor space ratio shown on the Incentive Floor Space Ratio Map is specified in Column 1 of the table to this subclause is the amount specified opposite that floor space ratio in:

(a) if the site area for the development is less than or equal to 1,000 square metres—Column 2 of the table, or

(b) if the site area for the development is greater than 1,000 square metres but less than 1,800 square metres—Column 3 of the table, or

(c) if the site area for the development is equal to or greater than 1,800 square metres—Column 4 of the table.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>4:1</i>	<i>3:1</i>	<i>(3+1X):1</i>	<i>4:1</i>
<i>6:1</i>	<i>4:1</i>	<i>(4+2X):1</i>	<i>6:1</i>
<i>7:1</i>	<i>4.5:1</i>	<i>(4.5+2.5X):1</i>	<i>7:1</i>
<i>8:1</i>	<i>5:1</i>	<i>(5+3X):1</i>	<i>8:1</i>
<i>10:1</i>	<i>6:1</i>	<i>(6+4X):1</i>	<i>10:1</i>

(2) For the purposes of Column 3 of the Table to subclause (1):

X = (the site area in square metres – 1000)/800

32. Notably, as the Site would have an Incentive FSR of 10:1, the amended Clause 7.2 would apply to the Site (as 10:1 is included in the FSRs shown in Column 1 of the amended clause).
33. As the Site Parcels each have areas between 1000m² and 1800m², the maximum FSR (excluding any bonuses) would be calculated as (6+4X):1, where X is (the site area in square metres - 1000)/800.
34. Council's Report to the Local Planning Panel on 16 June 2021 included calculation of the allowed FSR for each of the Site Parcels, as shown in **Table 1** below. This table also shows allowed FSRs accounting for a design bonus, pursuant to Clause 7.10 *Design Excellence – Parramatta City Centre of the LEP 2011*.

Table 1 – FSR Allowed under CBD PP proposed Clause 7.2 (source: Council Officer’s Report to the LPP on 16 June 2021)

Site	Site area	Allowed FSR
24 Parkes Street	1,663m ²	9.155:1 (10.52:1 with design excellence)
26-30 Parkes Street	1,506m ²	8.53:1 (9.81:1 with design excellence)
114-116 Harris Street	1,776m ²	9.88:1 (11.362:1 with design excellence)

5 THE PLANNING PROPOSAL

35. Council lodged the Planning Proposal with the Department on 11 August 2021. The proposal seeks to amend the PLEP 2011 to exempt the Site from the FSR sliding scale under Clause 7.2 of PLEP 2011.
36. The purpose of the Planning Proposal is described in the Department’s Gateway Determination Report (Section 1.2), which states:
- “The proposal seeks to facilitate the sites’ redevelopment for three mixed use towers that are intended to be lodged for approval under separate Development Applications.”*
37. Importantly, the sliding scale under Clause 7.2 *Floor Space Ratio* of the PLEP 2011 does not currently apply to the Site. The Planning Proposal is seeking a pre-emptive exclusion from the anticipated controls under the amended Clause 7.2 proposed in the CBD PP, which would otherwise apply to the Site and would reduce the allowable FSR to beneath the Incentive FSR of 10:1.

6 THE GATEWAY DETERMINATION

38. As set out in the Department’s Gateway Determination Report dated 21 October 2021, the Department determined that the Planning Proposal should not proceed for the following reasons:
1. *The planning proposal does not demonstrate site specific merit as:*
 - a. *The planning proposal remains inconsistent with the following Section 9.1 Ministerial Directions, which require further resolution to comply:*
 - *Direction 2.3 Heritage Conservation;*
 - *Direction 4.3 Flooding; and*
 - *Direction 6.3 Site Specific Provisions.*
 - b) *The planning proposal is inconsistent with the following State Environmental Planning Policies:*
 - *SEPP 65 Design Quality of Residential Flat Buildings [now Design Quality of Residential Apartment Development].*
 2. *The planning proposal is not accompanied by adequate required information to support the progression of the planning proposal.*
 3. *The planning proposal does not justify the need for the proposed amendment nor sufficiently demonstrate the resulting FSR is appropriate.*

7 THE GATEWAY DETERMINATION REVIEW REQUEST

39. The **Proponent** wrote to the Department on 1 December 2021 requesting a review of the Gateway Determination and provided the Proponent's Gateway Review Report (Think Planners, November 2021).
40. The Proponent's Gateway Review Report contends that the FSR sliding scale should not apply as amalgamation will not provide the best urban outcome for the Site, stating:
- After extensive discussions, meetings, reporting and analysis over a number of years, the City of Parramatta Council urban designers and planning officers in 2020 reached an agreement with the three proponents that the superior urban form is not achieved through amalgamation of the three sites, but rather the better outcome is the individual development of the sites and careful arrangement of the building envelopes.*
41. Regarding consistency with the intent of clause 7.2 *Floor Space Ratio*, the Proponent's Gateway Review Report (page 8) states:
- The FSR sliding-scale is a policy lever to encourage site amalgamation. Once the Council agreed with the proponents that the better arrangement for the three sites is three individual towers, rather than require site amalgamation, it is logical that the Council officers supported an exemption from the FSR sliding scale for the three sites in this unique circumstance.*
42. Regarding Apartment Design Guide (**ADG**) compliance, the Proponent's Gateway Review Report contends that the designs prepared in support of the Planning Proposal are indicative only and that it is:
- "inappropriate for the Gateway determination review to make any ADG conclusions on the basis of sketch drawings that Council readily acknowledges are to be the subject of further testing".*
43. With regards to the State Heritage listed Experiment Farm, and the possibility of development at the Site causing overshadowing to the heritage site, the Proponent's Gateway Review Report acknowledges that the Experiment Farm Protected area should be free from overshadowing and states that the Gateway could be conditioned to require further analysis prior to finalisation.
44. Regarding consistency with Direction 4.3 – Flooding, the Proponent's Gateway Review Report states:
- "We concur with the Department that for the proposal to be consistent with this direction, the proposal must align with the safe areas of refuge controls proposed within the CBD planning proposal.*
-
- The subject sites are all capable of being designed to provide areas of safe refuge, which will be articulated and illustrated in a subsequent development application lodgement."*
45. With regards to the potential for unforeseen changes to the controls proposed under the CBD PP, the Proponent's Gateway Review Report states that numerous gateways have already been issued by the Department "*on the basis of consistency with the express and implicit intentions of the CBD PP*". The Proponent provided a list of these in the email to the Commission on 14 March 2022, and an expanded list was provided by the Council in its letter to the Commission dated 16 March 2022.

8 THE COMMISSION'S CONSIDERATION

8.1 Commission's Meetings

46. The Commission completed a Locality Inspection on 1 March 2022 and met with key stakeholders on Wednesday 9 March 2022.
47. All meeting and site inspection notes were made available on the Commission's website, as shown in **Table 2**.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes Available on
Department	9 March 2022	17 March 2022
Proponent	9 March 2022	17 March 2022
Council	9 March 2022	17 March 2022
Site Inspection	1 March 2022	4 March 2022

8.2 Material Considered by the Commission

48. In this review, the Commission has carefully considered the following documents (**Material**):

Department:

- The Department's *Gateway determination report - PP02021-5178*, dated 6 October 2021
- The Department's Gateway Determination, issued on 21 October 2021 by the delegate for the Minister
- The Department's *Gateway Review Justification Assessment* report, received by the Commission 18 February 2022, and its attachments
- Transcript and presentation from the Department's meeting with the Commission held on 9 March 2022

Council:

- *Planning Proposal 114-118 and 24 & 26-30 Parkes Street Parramatta*, Council (version undated but reference is to the Report to the Local Planning Panel and Council on the Planning Proposal)
- Council officer's Report seeking advice on the Planning Proposal, referred to the Sydney Central City Local Planning Panel held on 16 June 2021 (LPP Report)
- Council's report and resolution to proceed to Gateway, 27 July 2021 (on the Department's planning proposal tracker website)
- *Planning Proposal Parramatta CBD Amendment to Parramatta LEP 2011*, dated July 2021 including the draft LEP instrument version 4 dated April 2021 and maps dated April (accessed from Council's website)
- Council's letter to the Department dated 27 January 2022 providing comments on the Gateway Review
- Council's letter to the Commission dated 16 March 2022, in response to questions from the Commission
- *Overshadowing in the Parramatta CBD Technical Paper 6*, City of Parramatta, dated June 2019 and revision dated 11 November 2019
- Transcript from the Proponent's meeting with the Commission held on 9 March

2022

Proponent:

- *Gateway Determination Review 24+ 26-30 Parkes Street +114-118 Harris Street Parramatta*, November 2021, prepared by Think Planners P/L
- 24-30 Parkes Street Urban Design Presentation to Council, prepared for SH Parkes International Pty Ltd & Parkes Street Development Pty Ltd, 25 June 2020, by Urbis
- Proponent's email dated 14 March 2022 in response to questions on notice from the Commission
- Transcript and presentation from the Proponent's meeting with the Commission held on 9 March 2022

8.3 Council's View

49. Council provided a letter to the Department dated 22 January 2022 providing its views on the Gateway Determination review sought by the Proponent.
50. Council's view on the Planning Proposal is summarised in the Department's Gateway Review Report (pages 3-4) as follows:

Council officers generally support the proponent's grounds for review for the following reasons:

- *The planning proposal is generally consistent with relevant Section 9.1 Ministerial Directions.*
 - *The proposed built form should be able to achieve a substantial degree of compliance with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG) solar access requirements, irrespective of issues with solar access in the Parramatta CBD.*
 - *The final urban design outcome is considered acceptable and will be refined in the finalisation of a site-specific Development Control Plan.*
 - *The supporting information to the planning proposal is considered to be adequate.*
 - *There is a justified need for the planning proposal.*
51. Council's view on the consistency of the Planning Proposal's with SEPP 65 – Design Quality of Residential Flat Buildings (**SEPP 65**), is summarised in the Department's Gateway Review Report as follows:

Council officers note that the three proposed towers are able to achieve at least 70% solar access, although an ADG review would be required to confirm this. The officers also note that it will be difficult to fully meet ADG solar requirements in the Parramatta CBD built form context with FSRs of 10:1 and greater proposed.

52. Council's Report to the Local Planning Panel on 16 June 2021 included a reference design for the Site (**Figure 4**). Council's report (page 364) makes the following comments regarding the reference design:

"...the final design outcome includes compromises which Council officers consider are not ideal, but are ultimately acceptable. These include the following:

- *The 3m tower setbacks to the east and west side boundaries for 24 Parkes Street.*
- *The 6m tower setbacks to the west boundary for 26 + 30 Parkes Street and 114 + 116 Harris Street.*

Council officers have accepted the above setbacks as a significant compromise because of the size of the sites and the lack of support for them to be amalgamated."

“... the proponent was advised on 12 May 2021 that this overshadowing of Experiment Farm Protected Area was not supported by Council staff and that they would take a position recommending compliance with the CBD Planning Proposal through both the LEP and DCP controls for the sites. It was stated that to achieve compliance, building height could be slightly decreased or an upper tower setback could be introduced.”

55. In its meeting with the Commission, Council made the following comments regarding the amenity levels that can be expected to be achieved at the Site with the proposed FSR uplift in place:

“My concern is that we are at the planning proposal rezoning stage and we’re already compromising setbacks and, in my experience, once things get to the development application stage, there’s usually further compromises that could then be made. And I think it sets..... the building up poorly for that amenity to be achieved if we’re already compromising now.”

8.4 Department’s Consideration

56. The Department’s Gateway Review Report included consideration of the Proponent’s Gateway Review Report and the Council’s letter to the Department, dated 27 January 2022.
57. The Department’s Gateway Review Determination Report (page 9) recommends that no amendments to the Gateway determination are made.
58. Regarding the purpose of the FSR sliding scale, the Department’s Gateway Review Report states:

The sliding scale provision serves two purposes, being to encourage amalgamation through reducing FSR and where not availed to ensure that the resulting built form is of a scale which proportionally responds to the site size.

.....

The incentivisation of a greater FSR through amalgamation provides a larger building envelope for the FSR to be achieved, placing less pressure on setbacks and the built form outcome. As these sites are not proposed to be amalgamated, the Department is concerned that built form outcomes may result in FSR maximisation on sites that have difficulty accommodating such densities.

59. Regarding the pre-emptive submission of the Planning Proposal, in advance of the CBD PP being finalised, the Department’s Gateway Review Report makes the following comments:

- *“The Department is currently in the process of finalising the CBD planning proposal, as such, the development controls and standards have not yet been determined.*
- *The Department has commissioned further urban design review to support the finalisation of the CBD planning proposal and determining the most appropriate built form.*
- *As such, the Department considers that the subject planning proposal is premature given the intent for further urban design testing and it is uncertain whether the proposed CBD controls will remain consistent with the initial proposal or be amended.*

- *While site specific planning proposals have previously been able to proceed concurrently with the CBD PP these have typically sought to bring forward the outcomes of the CBD PP. As the Department is now actively seeking to finalise the CBD PP, it is not considered appropriate to proceed with a proposal seeking to alter the proposed controls until the LEP is made and the built form context is determined.”*

60. In its meeting with the Commission, the Department made the following comments on the progress of the CBD PP:

“...we are doing quite a detailed assessment at the moment. We’re looking at all the provisions, the heights, the densities that are proposed throughout the CBD and that assessment is still ongoing. A decision hasn’t been made yet as to the making of that final plan. And it may be that there would be further changes to that planning proposal as part of the department’s finalisation process.”

9 KEY ISSUES

9.1 Heritage Conservation

61. The Department’s Gateway Determination found that the Planning Proposal is inconsistent with Direction 2.3 – Heritage Conservation due to the risk of overshadowing of Experiment Farm and its curtilage.
62. Council’s letter to the Commission dated 16 March 2022 provided analysis demonstrating that minor amendments to the Reference Design could achieve compliance with the solar access provisions related to Experiment Farm.
63. Council considers the Planning Proposal to be consistent with Direction 2.3 – Heritage Conservation, as Experiment Farm is protected to the extent recommended by heritage consultants Hector Abrahams, as reflected in the controls proposed in the CBD PP.
64. The Commission considers that the targeted FSR uplift would not preclude compliance with the anticipated solar access controls proposed in the CBD PP. However, to achieve the targeted FSRs, increased floorplate areas would be necessary to compensate for the height reductions modelled by the Council. Any such increases to floorplate areas would add further pressure on already compromised tower setbacks and would further impede compliance with SEPP 65, as discussed in Section 9.4 below.

9.2 Flooding

65. The Department’s Gateway Determination found that the Planning Proposal is inconsistent with Direction 4.3 – Flooding, stating:

“The proposal is inconsistent with Direction 4.3, as it is proposing uplift on flood prone land.

...

For the proposal to be consistent with this direction, the proposal must align with the safe areas of refuge controls proposed within the CBD planning proposal. It is recommended that this direction remain unresolved”

66. The CBD PP states that “a significant proportion of the Parramatta CBD is within the floodplain of the Parramatta River and its tributaries”. The CBD PP would also enable significant density increases for the Site (FSR increase from 4:1 to 10:1) and for much of the Parramatta CBD.

67. The FSR uplift sought by the Planning Proposal would be allowed at the Site if amalgamation of the Site was pursued as an alternative to an exemption from the sliding scale FSR clause. Therefore, the Commission considers that the FSR changes in the Planning Proposal would not lead to any inconsistency with Section 9.1 Ministerial Direction 4.3 – Flooding that would not already be caused by the FSR uplift proposed in the CBD PP.
68. It is noted, however, that site amalgamation may provide added flexibility to achieve flood resilient design, such as shared refuge areas and increased deep soil areas.

9.3 Site Specific Provisions

69. The Department's Gateway Determination found that the Planning Proposal is inconsistent with Direction 6.3 – Site Specific Provisions as it lacks sufficient justification for the introduction of a site-specific exemption.
70. The Proponent has contended that amalgamation of the Site would not achieve improved design outcomes, and therefore a site-specific exemption is necessary.
71. As discussed further in Section 9.7, the Commission considers that the Planning Proposal does not demonstrate that the Site has any unique qualities that would justify an exemption from the FSR controls developed through the CBD PP.

9.4 Consistency with SEPP 65

72. The Department's Gateway Determination found that the Planning Proposal is inconsistent with SEPP 65, stating:

“the Department considers that the proposal has the potential to be [sic] generate a development outcome that gives rise to inconsistencies with the SEPP. This demonstrates that the density being proposed is too great as it requires compromises to future residents' amenity through reduced setbacks, in order to be accommodated on site.”

73. Council has acknowledged that the proposed FSR uplift may require compromises to key considerations under SEPP 65, such as setbacks, building separation and solar access. The Council, in its meeting with the Commission, indicated that its position is a compromise which responds to the Proponent's agreement to road widening on the subject sites. Meanwhile, the Council has also indicated that these compromises respond to the size of the sites and the lack of support for their amalgamation.
74. The Commission considers amalgamation of the three Site Parcels could deliver significant built form benefits that have not been adequately assessed. These include:
- Improved streetscape with fewer vehicular crossings with shared access and egress routes, loading bays, and servicing arrangements
 - Improved parking efficiency through a shared basement
 - More generous and amenable open spaces through consolidating communal open space and deep soil areas
 - Improved building layouts other than those already tested
 - Shared flood refuge arrangements
75. The Commission has noted the Proponents position that designs prepared in support of the proposal were indicative only and should not be used to determine whether consistency with SEPP 65 is achievable.

76. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with the intention of SEPP 65 as the proposed FSR uplift would significantly impede the achievability of acceptable residential amenity at the Site.

9.5 Inadequate Information

77. The Department's Gateway Determination found that the Planning Proposal is not accompanied by adequate required information to support the progression of the Planning Proposal.

78. In its meeting with the Commission, the Proponent advised that its reason for not undertaking modelling of development achievable with the CBD PP sliding scale provision, was that this would represent an unjustified cap on development potential.

79. In its meeting with Council, the Commission asked the Council whether testing of a one-site scenario was undertaken. Council advised in the letter to the Commission on 16 March 2022 that:

There was no amalgamation option which tested the three adjoining lots. Whilst Council encouraged this scenario, noting the site area of 114 – 116 Harris Street at 1776 m², there was limited uplift incentive to encourage amalgamation with adjoining owners.

80. The Commission considers that a key point of reference for assessment of the Planning Proposal is the built form that could be achieved using the FSRs allowed under the anticipated CBD PP sliding scale. The failure to model the built forms that would be achievable in lieu of the Planning Proposal, and assuming gazettal of the CBD PP in its current form, is a key shortcoming of the Planning Proposal.

81. The Commission agrees with the Department's findings that the Planning Proposal is not accompanied by adequate required information to support its progression.

9.6 Inadequate Justification for Site Specific Exemption

82. The Department's Gateway Determination found that the planning proposal does not justify the need for the proposed amendment nor sufficiently demonstrate the resulting FSR is appropriate.

83. The purpose of the FSR sliding scale is two-fold. By varying FSR based on site area, the scale serves to:

- encourage site amalgamation
- prevent overdevelopment of smaller sites

84. The CBD PP seeks to amend Clause 7.2 of the PLEP 2011 but does not change its basic intent. The reasons for the changes to the sliding scale are explained in the CBD PP on page 58:

The intent of these changes to the FSR sliding scale is to balance equity of development potential with the physical capacity of the site and give certainty of development and fair value to the smaller sites while incentivising the consolidation of sites.

85. The Proponent contends that the purpose of the sliding scale FSR clause is to encourage the amalgamation of the Site, and once it has been shown that this does not produce a better urban design outcome, that the clause should not apply.

86. The Commission considers that the Planning Proposal has not demonstrated that amalgamation of the three Site Parcels will not provide a better urban outcome with improved amenity and greater compliance with key controls.

87. The Commission considers that the Planning Proposal is inconsistent with the intent of the sliding scale provision, with regard to encouraging site amalgamation and preventing overly dense development on smaller sites.
88. The subject Planning Proposal is predicated on the gazettal of the CBD PP which is currently being assessed by the Department and has not been finalised. The Commission considers that the Planning Proposal should not be given a Gateway to proceed without a definitive understanding of the outcome of the CBD PP and the controls from which an exemption is sought.

10 CONCLUSION: THE COMMISSION'S ADVICE

89. The Commission has undertaken a review of the Gateway Determination as requested by the Department in its letter received on 18 February 2022. In doing so, the Commission has considered the Material (in Section 8.2) including the submissions by the Proponent, the Council and the Department, and the reasons given in the Department's Gateway Report and Gateway Review Report.
90. Procedurally, the Commission considers that the Planning Proposal has been submitted prematurely and that it should not be given Gateway to proceed without a definitive understanding of the outcome of the CBD PP and finalisation of the controls from which an exemption is sought.
91. The Commission agrees with the Department's findings that the Planning Proposal lacks adequate required information, especially with regards to analysis of the built form options that would otherwise be achievable under various scenarios and site amalgamations.
92. The Commission agrees with the Department's finding that the Planning Proposal lacks adequate justification for the site-specific exemption to the FSR sliding scale provision. The proposal does not demonstrate that amalgamation of the three sites will not provide a better urban outcome with improved amenity. By introducing a site-specific exemption, the Planning Proposal would also compromise the objective of the sliding scale to prevent overdevelopment of smaller sites.
93. The commission also finds that the Planning Proposal is inconsistent with the intent of SEPP65 - Design Quality of Residential Flat Developments, as the targeted FSR uplift may significantly impede the achievability of acceptable residential amenity and compliance with key controls.
94. The Commission's advice to the Minister's delegate is that the Gateway determination issued on 21 October 2021 should not be overturned and that the Planning Proposal should not be given a Gateway to proceed.



Professor Helen Lochhead (Chair)
Member of the Commission