

INNOVATIVE

ITEM NUMBER	17.4
SUBJECT	FOR APPROVAL: Post Gateway - Draft Development Control Plan and Letter of Offer (Planning Agreement) - 135 George St and 118 Harris St, Parramatta (Albion Hotel site)
REFERENCE	RZ/3/2017 - D07788396
REPORT OF	Project Officer-Land Use Planning
APPLICANT/S	Think Planners
OWNERS	PIC Royal Investments Pty Ltd

DEVELOPMENT APPLICATIONS CONSIDERED BY SYDNEY CENTRAL CITY PLANNING PANEL: Nil**PURPOSE:**

To seek Council's endorsement of a draft site-specific Development Control Plan and Letter of Offer (draft Planning Agreement) for the purpose of public exhibition concurrently with a previously endorsed Planning Proposal for the site at 135 George Street and 118 Harris Street, Parramatta.

RECOMMENDATION

- (a) **That** Council endorse the site-specific draft Development Control Plan (DCP) at **Attachment 1** for public exhibition.
- (b) **That** a draft Planning Agreement document be prepared to reflect the terms outlined at **Attachment 2** and that the Chief Executive Officer be delegated authority to negotiate and finalise the legal drafting of the Planning Agreement on behalf of Council for the purposes of public exhibition.
- (c) **That** the draft DCP and draft Planning Agreement be publicly exhibited concurrently with the Planning Proposal for 135 George Street and 118 Harris Street previously endorsed by Council on 23 March 2020.
- (d) **That** the applicant update the reference design for the purpose of public exhibition so as to reflect the controls in the endorsed Planning Proposal and the draft DCP.
- (e) **That** Council requests the Department of Planning, Industry and Environment amend the Gateway determination for the related Planning Proposal to remove the requirement to include a satisfactory arrangements clause.
- (f) **Further that** Council authorises the Chief Executive Officer to correct any minor inconsistencies or anomalies of an administrative nature relating to the draft DCP and draft Planning Agreement documentation that may arise during the drafting and exhibition processes.

PLANNING PROPOSAL TIMELINE

Planning Proposal Timeline



THE SITE

1. The subject site is located at 135 George Street and 118 Harris Street, Parramatta and has a legal description of Lot 135 DP 748984 and Lot 4 DP 388895 (Refer to **Figure 1**). The site has an area of 3,135 square metres. The site contains the Albion Hotel.
2. The site adjoins another development site to the west and south known as the Former Cumberland Media site. To the north is the Parramatta River foreshore, to the east is the Robin Thomas Reserve.



Figure 1: Site Location (site shown outlined in blue)**PLANNING PROPOSAL**

3. At its Meeting on 23 March 2020, Council considered a report on a Planning Proposal for the subject site. Council resolved to endorse the Planning Proposal which seeks to increase the density of permissible development consistent with the provisions of the CBD Planning Proposal. A comparison table identifying the endorsed Planning Proposal in context of the existing Parramatta LEP 2011 and the Parramatta CBD Planning Proposal is provided below in Table 1.

Control	Existing (Parramatta LEP 2011)	Parramatta CBD Planning Proposal (as endorsed by Council on 25 November 2019)	Previous lapsed Planning Proposal	Endorsed Planning Proposal
Zoning	B4 Mixed Use	No change	No change	No change
FSR	4:1	10:1 Incentive FSR (excluding Design Excellence) (noting that bonuses and the unlimited commercial floor space site specific provision discussed below allows for an FSR of 12:1 or greater)	8.47:1 (including Design Excellence)	10:1 Incentive FSR (excluding Design Excellence) (noting that bonuses and the unlimited commercial floor space site specific provision discussed below allows for an FSR of 12:1 or greater)
Height (Refer to paragraph 4 below)	54m (approx 14 storeys)	EXHIBITED 130m – approx 40 storeys Incentive Height (149.5 – approx 46 storeys including Design Excellence bonus). RESOLVED (on 23 March 2020) 144m – approx 44 storeys - Incentive Height (165.6m -approx 51 storeys including Design Excellence bonus).	102 m (35 storeys)	144m – approx 44 storeys - Incentive Height (165.6m -approx 51 storeys including Design Excellence bonus).

Control	Existing (Parramatta LEP 2011)	Parramatta CBD Planning Proposal (as endorsed by Council on 25 November 2019)	Previous lapsed Planning Proposal	Endorsed Planning Proposal
Site-specific provision		<p>An additional FSR of 0.5:1 is achievable, provided that high-performing buildings standards are met.</p> <p>Includes maximum car parking rates previously endorsed by Council; and</p> <p>Minimum commercial floor space area of 1:1</p> <p>Unlimited commercial floor space (within the height limit).</p>	Total FSR can only be reached if that development includes a standalone pub	<p>An additional FSR of 0.5:1 is achievable, provided that high-performing buildings standards are met.</p> <p>Includes maximum car parking rates previously endorsed by Council; and</p> <p>Minimum commercial floor space area of 1:1</p> <p>Unlimited commercial floor space (within the height limit).</p>
Land reservation Map		Proposes a 7m wide reservation on the Harris Street frontage for the purpose of local road widening.	No change	7m wide reservation on Harris St frontage for the purpose of local road widening.
Heritage provisions	See below	Includes amendment to Clause 7.4 Sun Access Protection to ensure that any part of the proposed building does not cause additional overshadowing to the Experiment Farm heritage item between the hours of 10.00am and 2.00pm on 21 June.	No change	Includes amendment to Clause 7.4 Sun Access Protection to ensure that any part of the proposed building does not cause additional overshadowing to the Experiment Farm heritage item between the hours of 10.00am and 2.00pm on 21 June.
Number of dwellings¹	147	405	291	405
Commercial Gross Floor Area		4,360 sqm	825 sqm	4,360 sqm

Table 1: Summary of endorsed Planning Proposal.

¹ The number of dwellings has been estimated based on the maximum achievable residential gross-floor area (including bonuses) divided by an average apartment size of 85m². The number of dwellings for the applicant's Planning Proposal reflects the Reference Design.

4. It should be noted that the height control for the subject site exhibited in 2020 with the CBD Planning Proposal (130 metres mapped) reflected an earlier resolution of Council made on 25 November 2019. However, Council's more recent resolution for this site made on 23 March 2020 was to apply the same height under the Parramatta CBD Planning Proposal as that adopted for the site-specific Planning Proposal (144 metres mapped). This drafting error was identified recently by Council Officers and will be rectified through the public exhibition of the site-specific Planning Proposal for the subject site. This matter will be further discussed in the report to Council regarding the results of public exhibition of the CBD Planning Proposal which is anticipated to be reported to Council later in 2021.
5. The existing heritage provisions applicable to the subject site include:
 - a. The site is not listed as an item of heritage significance and is not within a Heritage Conservation Area.
 - b. The site is across the road from Robin Thomas Reserve which is listed on the State Heritage Register as an "Ancient Aboriginal and Early Colonial Landscape" and is listed under Schedule 5 of Parramatta LEP 2011 as being of local heritage significance as an archaeological site.
 - c. To the north there are several heritage items of local significance within the Parramatta River foreshore area:
 - i. the Gasworks bridge;
 - ii. the Queens Wharf Reserve and stonewall and potential archaeological site; and
 - iii. an item of state heritage significance being the HMAS Parramatta Shipwreck and memorial.
6. Council also resolved to prepare a draft DCP and enter negotiations on a Planning Agreement and report both to Council for endorsement prior to their concurrent exhibition with the Planning Proposal. The draft DCP and Letter of Offer (Draft Planning Agreement) are the subject of this report.

Gateway Determination

7. The Department of Planning, Industry and Environment (DPIE) issued a Gateway determination on 31 July 2020 (refer to **Attachment 3**). The main requirements were as follows:
 - a. Update the proposed mapping to reflect the current controls on the adjoining Cumberland Media site at the time of exhibition;
 - b. Introduce a satisfactory arrangements clause for funding of state and regional infrastructure;
 - c. Include the Overshadowing Technical Paper submitted with the Parramatta CBD Planning Proposal with the exhibition material;
 - d. Prior to finalising the plan, Council is to ensure there is consistency between the Planning Proposal and the Parramatta CBD Planning Proposal;
 - e. Council is to consult with the following State and Federal Agencies during the public exhibition:
 - i. Commonwealth Department of Infrastructure, Transport, Regional Development and Communities;

- ii. Civil Aviation Safety Authority;
 - iii. Department of Premier and Cabinet – Heritage NSW;
 - iv. NSW State Emergency Services; and
 - v. Transport for NSW.
8. With regard to subpoint (a) above, since the Gateway determination was issued, the site-specific Planning Proposal for the Cumberland Industries site has been finalised and notified under Parramatta LEP 2011 (Amendment No. 48) on 27 November 2020. As such, the proposed mapping within the Planning Proposal for the subject site will be updated to reflect the current zoning for the Cumberland Industries site.
9. With regard to subpoint (b) above, the State Government has yet to implement the State Infrastructure Contribution (SIC) requirement that it has been suggesting it will implement during the course of the last 5 years. State Government agencies have been inconsistently requesting Council apply a satisfactory arrangements clause which would require the applicant to make a contribution towards State Government infrastructure even if the SIC is never implemented. Where State Agencies have requested during the exhibition process that this clause be applied to Council Planning Proposals, Officers have raised concern that the application of these clauses is inconsistent and does not treat all developers in the Parramatta CBD equitably. For the same reasons it is recommended Council requests the Department amend the Gateway determination to remove the requirement to include a satisfactory arrangements clause.
10. Council made a similar request recently in relation to the Gateway determination for the site-specific Planning Proposal at 197 Church Street, Parramatta. In this instance, the DPIE agreed to this request when they issued a new Gateway determination for the site in October 2020.
11. It is noted that the Gateway determination will lapse on 31 April 2021. An extension has been requested from the DPIE and at the time of the preparation of this report, Council Officers were waiting on a response.

ISSUES/OPTIONS/CONSEQUENCES

Relationship with adjoining site – Cumberland Industries

12. Crucial to Council's consideration of the DCP is its relationship with the DCP for the adjoining site at 142- 154 Macquarie Street, Parramatta known as the Cumberland Industries site. The site-specific DCP for the Cumberland Industries site came into effect on 27 November 2020 with the notification of Parramatta LEP 2011 Amendment 48.
13. The Cumberland Industries DCP was prepared having regard to the likely development of the Albion Hotel site and reflects a block-wide masterplanning approach for both sites. As such, the subject DCP is presented as an addition to the existing site-specific DCP to include the Albion Hotel site within the affected site area. It is noted that the additions to the DCP do not alter any of the existing controls relating to the Cumberland Industries site.

14. An extract from the applicant’s reference design is shown in Figure 2 below in context of the Planning Proposal for the adjoining Cumberland Industries site. The reference design for the Albion Hotel site reflects the controls endorsed by Council in the Planning Proposal. However, since the preparation of the design, Council has negotiated draft DCP controls with the applicant which are not entirely reflected in the reference design. As such, it is recommended that the applicant amend the reference design prior to public exhibition to reflect the draft DCP controls.



Figure 2: Extract from applicant’s reference design indicating relationship with Planning Proposal on the Cumberland Industries site (Note: the building footprints shown here for the Albion Hotel site were indicative at the time and do not reflect the setbacks in the draft DCP. This diagram is included merely to demonstrate the Planning Proposal for the adjoining Cumberland Industries site.)

Draft Site-Specific DCP

15. The draft site-specific DCP (refer to **Attachment 1**) has been prepared to provide more detailed built form guidelines to supplement the LEP controls. Pursuant to Council’s resolution on 23 March 2020, the draft DCP is to be publicly exhibited concurrently with the Planning Proposal and draft Planning Agreement.
16. In summary, the DCP seeks to provide principles, objectives and controls in relation to the following:

- a. Public domain;
- b. Building Form;
- c. Access, parking and servicing; and
- d. Sustainability, microclimate and water.

17. The main controls include:

- a. New plazas and walkways are to be provided in accordance with Figure 3 below (extracted from Figure 4.3.3.7.23 on page 4 of the draft DCP in **Attachment 1**). This includes a shared zone right of way through the site in an east-west direction shown as number 8 in the figure below. It also includes a pedestrian laneway running along the western edge of the site in a north-south direction shown as number 7 in the figure below. Both of these extend through the whole street block including the Cumberland Industries site and will ensure a high level of connectivity and pedestrian amenity within the site.



Figure 3: Location of pedestrian walkways and plazas (extracted from DCP in Attachment 1).

- b. A two-storey undercroft is to be provided along the pedestrian laneway shown as number 7 in the figure above. This will affect the building in the north of the subject site and will line up with the undercroft provided in the building in the south of the Cumberland Industries site. This will ensure a clear line-of-sight through this part of the block.

- c. The building form will be consistent with the street setbacks and tower setbacks shown in Figures 4 and 5 below (extracted from Figures 4.3.3.7.27 and 4.3.3.7.29 on pages 10 and 11 of the draft DCP in **Attachment 1**)

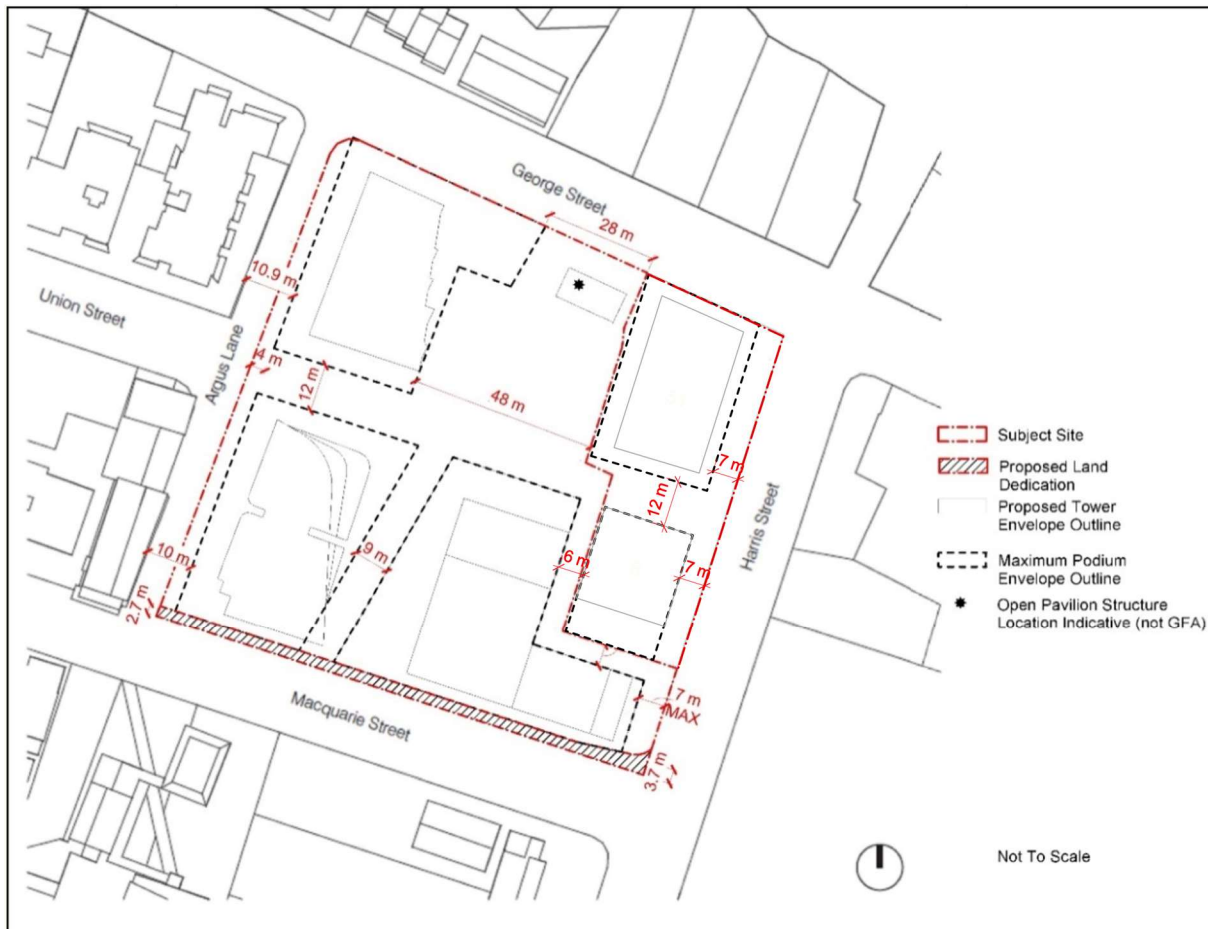


Figure 4: Setbacks and building separations at street level (extracted from draft DCP in **Attachment 1**).

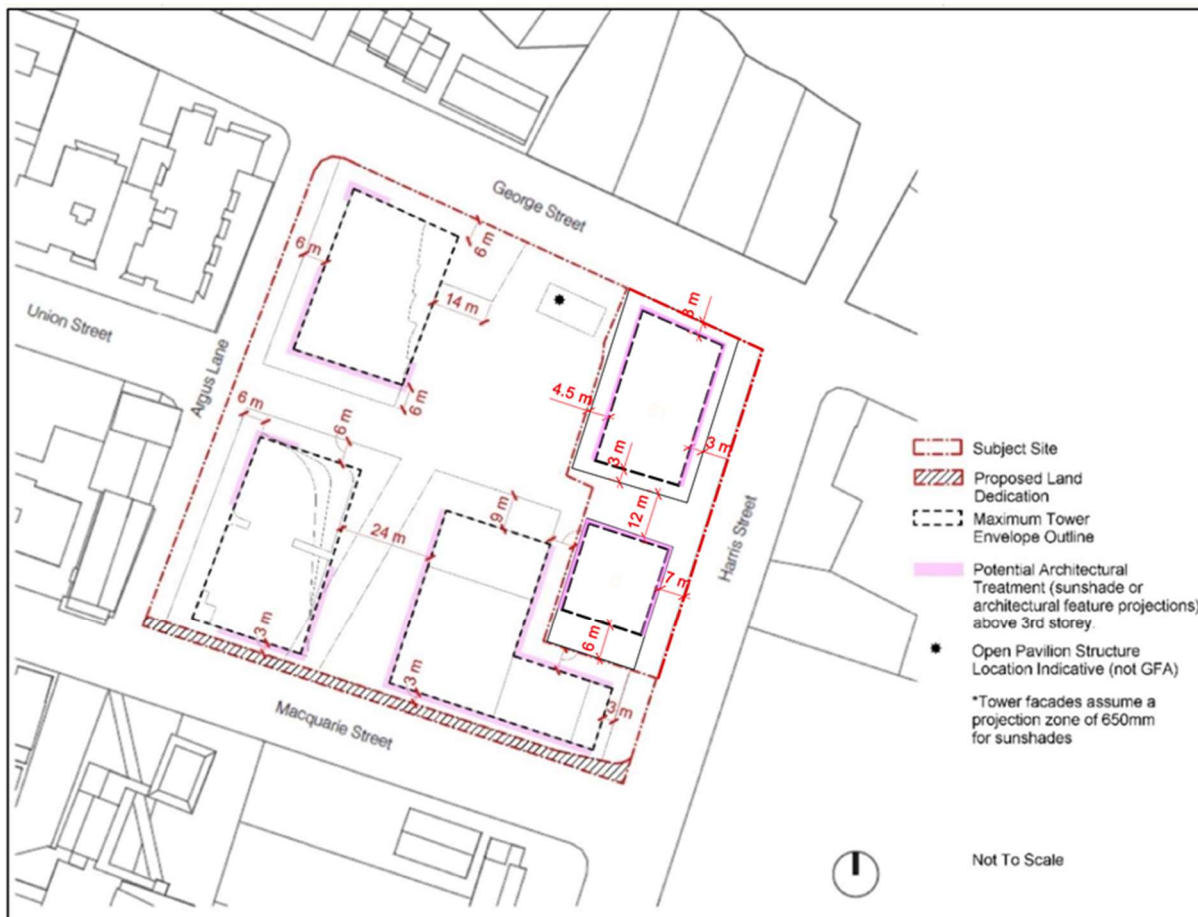


Figure 5: Setbacks and building separation at tower level (extracted from draft DCP in Attachment 1).

- a. Vehicular access is to be provided to the site at the southern end of the site in a left-in-left-out arrangement.

Letter of Offer (Draft Planning Agreement)

18. The Letter of Offer has been submitted by the applicant to establish the terms under which a draft Planning Agreement will be prepared (refer to **Attachment 2**). The draft Planning Agreement will ultimately require the developer to contribute towards the provision of community infrastructure in the Parramatta CBD.
19. The commercial terms within the Letter of Offer provide for the following contributions towards community infrastructure:
 - a. A monetary contribution of \$2,821,500;
 - b. Dedication of land for road widening along Harris Street to Council, up to a width of 7 metres, the width to be agreed with the Council and Transport for NSW;
 - c. Dedication of land for the purpose of a splay corner on the corner of George Street and Harris Street, the dimensions to be agreed with the Council and Transport for NSW;
 - d. Granting of public easement rights over the 12 metre wide east-west link;
 - e. Granting of public easement rights under the proposed 6 metres wide public pedestrian access at the western edge of the site;

- f. Public domain embellishment works of land that will be subject to public easements.
20. The monetary contribution is consistent with Council’s Planning Agreements Policy which references the Parramatta CBD Planning Proposal which contains provisions regarding community infrastructure needs. The Parramatta CBD Planning framework includes a resolution of Council dated 10 April 2017 which applies a ‘Phase 1’ value sharing amount of \$150 per square metre.
 21. Council’s Planning Agreements Policy was adopted by Council at its Meeting on 26 November 2018. The method of calculating the amount of value sharing relative to the increase in FSR is demonstrated in Figure 6 below.

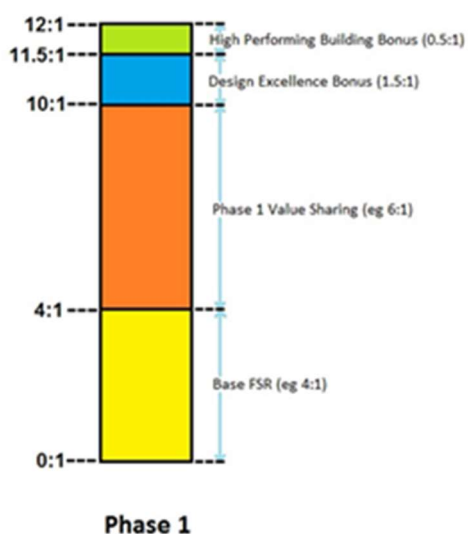


Figure 6: FSR controls relative to the Phase 1 Value Sharing under Parramatta CBD Planning Proposal

22. Phase 1 Value Sharing represents the increase in FSR between the “base” FSR control and the “incentive” FSR control. The applicable value sharing rate for Phase 1 is 20 percent of this land value uplift.
23. Using the methodology above, the draft Planning Agreement for the Albion Hotel site is based on the following calculations:

Development parameters	
Site Area	3,135 m ²
Base FSR	4:1
Incentive FSR (Phase 1)	10:1
Phase 1 calculation	
Incentive FSR minus base FSR	10:1 - 4:1 = 6:1
Increase in FSR multiplied by site area	6 x 3,135 = 18,810 m ²
Increase in floor area multiplied by \$150	18,810 x \$150 = \$2,821,500
Value of Monetary Contribution	\$2,821,500

Table 2: Calculation of monetary contribution applicable to draft Planning Agreement Letter of Offer.

24. In February 2021, the DPIE released a new “Planning Agreements Practice Note” (the Practice Note). Under Clause 25B(2) of the Environmental Planning and Assessment Regulations 2000, councils are required to have regard to the Practice Note when preparing planning agreements. The Practice Note states that:

“...the use of planning agreements for the primary purpose of value capture is not supported as it leads to the perception that planning decisions can be bought and sold and that planning authorities may leverage their bargaining position based on their statutory powers...”

25. However, the Transitional Provisions of the Practice Note state that:

“This practice note does not apply to a new or amended planning agreement if it:

- (a) has been substantially negotiated when this practice note is published, and
(b) public notice of the agreement or amendment is given before 1 July 2021.”*

26. The subject Letter of Offer (Planning Agreement) has been substantially negotiated and is likely to be exhibited before 1 July 2021 and is therefore consistent with the Transitional Provisions of the Practice Note. Further, while the new direction has been issued, the applicant has submitted this offer after the release of the new Ministerial Direction and has agreed to proceed on this basis. Initial legal advice suggests there is no legal impediment to Council proceeding with a draft Planning Agreement based on the applicants offer.
27. It is recommended that the draft Voluntary Planning Agreement (VPA) document be prepared to reflect the terms outlined in the Letter of Offer at **Attachment 2** and that the Chief Executive Officer be delegated authority to negotiate and finalise the legal drafting of the VPA on behalf of Council for the purposes of public exhibition. Pursuant to Council’s resolution on 23 March 2020, the draft Planning Agreement is to be publicly exhibited concurrently with the Planning Proposal and draft DCP.

LEGAL IMPLICATIONS FOR COUNCIL

28. There are no direct legal impacts on council as a result of any decision to exhibit the Draft DCP and Planning Agreement recommended by this report.

CONSULTATION & TIMING

29. Stakeholder Consultation

30. The following internal stakeholder consultation has been undertaken in relation to this matter:

Date	Stakeholder	Stakeholder Comment	Council Officer Response	Responsibility
26 September 2020	City Significant Development	DCP - Identified several minor corrections that were needed to terminology, numbering and clarification of the controls.	Comments reflected in the draft DCP provided as Attachment 1.	City Planning
26 September 2020 and 25 February 2021	Traffic and Transport	DCP - Advised that the vehicular access from Harris Street should be left-in, left-out only with no right turn from Harris Street into the site. VPA - Advised that Council should be seeking to secure dedication of land relating to the 7m wide road widening along Harris St.	DCP - figure 4.3.3.7.30 was amended to prescribe a left-in-left-out turn only. VPA – Applicant agreed to amend the Letter of Offer to include dedication of the land.	City Planning
26 September 2020	Catchment and Development Engineer	Advised that the draft DCP is sufficient with regard to flood risk management.	Noted.	City Planning
26 September 2020 and 16 December 2020	City Design	DCP – Advised that first version of draft DCP provided inadequate setbacks and resulted in undesirable built form outcomes. Also provided further drawings to clarify the built form controls.	DCP – Applicant amended setbacks in conjunction with discussions with City Planning and City Design. Further drawings included to clarify the built form controls.	City Planning

Councillor Consultation

31. Councillors have not been consulted on the detail of the Draft DCP or Planning Agreement Offer but have previously endorsed the draft Planning Proposal and

resolved that a Gateway Determination be requested at its Meeting on 23 March 2020. At that time Council also resolved that a Draft DCP and draft Planning Agreement be progressed which resulted in this report being prepared. In addition Councillors will be briefed as part of a scheduled Councillor briefing on the subject Business Paper one week prior to the 22 March 2021 Council Meeting.

FINANCIAL IMPLICATIONS FOR COUNCIL

32. The costs associated with the preparation, exhibition and finalisation of the draft DCP and draft Planning Agreement are funded within the City Planning budget.
33. If Council resolves to approve this report in accordance with the recommendation, Council will be in a position to receive a monetary contribution of \$2,821,500 should the development proceed. This contribution is not included in the current adopted four-year budget and if resolved, will be included within the budget process or as part of quarterly reviews. The Planning Agreement monetary contribution would be delivered in addition to Section 7.12 contributions payable with respect to any redevelopment of the site.
34. If Council resolves to approve this report, staff will recommend the use of the funds to deliver a capital project in line with the infrastructure work being undertaken in relation to the CBD Planning Proposal at a later date. The capital works will incur future maintenance and depreciation expenditure that will be determined as part of the project planning process.
35. The table below represents an estimate of the potential timing of the additional contribution to be received if Council resolves to approve this report, noting the actual availability of the funding will be dependent on the program for the delivery of the project which is yet to be determined.

	FY 20/21	FY 21/22	FY 22/23	FY 23/24	F24/25
Revenue Contribution			\$2,821,500		
Operating Result					
External Costs					
Internal Costs					
Depreciation					
Other					
Total Operating Result					
Funding Source			VPA Contribution		
CAPEX					
CAPEX					
External					
Internal					
Other					
Total CAPEX					

NEXT STEPS

36. Should Council resolve to endorse the draft DCP and draft Letter of Offer, the draft Planning Agreement will be legally drafted in conjunction with the

applicant and under the guidance of Council's solicitor. The draft DCP and draft Planning Agreement will be publicly exhibited alongside the relevant site-specific Planning Proposal. The exhibition will be conducted in accordance with the Gateway determination, the requirements of the Environmental Planning and Assessment Act 1979 and the Parramatta DCP 2011.

37. The results of public exhibition will be reported to the Local Planning Panel (in the case that there is an objection/s requesting a change to the Planning Proposal) and subsequently reported to Council.

Felicity Roberts
Project Officer-Land Use Planning

Robert Cologna
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Paul Perrett
Chief Financial Officer

David Birds
Acting Executive Director, City Planning & Design

Brett Newman
Chief Executive Officer

ATTACHMENTS:

- | | | |
|---|--|----------|
| 1 | Draft Development Control Plan | 18 Pages |
| 2 | Letter of Offer (draft PLanning Agreement) | 2 Pages |
| 3 | Gateway determination issued 31 July 2020 | 2 Pages |

REFERENCE MATERIAL