

MINUTES OF THE MEETING OF CITY OF PARRAMATTA COUNCIL HELD IN THE CLOISTER FUNCTION ROOMS, ST PATRICK'S CATHEDRAL 1 MARIST PLACE, PARRAMATTA ON MONDAY, 13 JULY 2020 AT 6.30PM

PRESENT

The Lord Mayor, Councillor Bob Dwyer and Councillors Benjamin Barrak, Phil Bradley, Donna Davis, Pierre Esber, Michelle Garrard (Deputy Lord Mayor), Steven Issa, Andrew Jefferies (6.32pm), Sameer Pandey, Dr Patricia Prociv, Bill Tyrrell, Andrew Wilson, Lorraine Wearne and Martin Zaiter.

1. OPENING MEETING

The Lord Mayor, Councillor Bob Dwyer, opened the meeting at 6.30pm.

2. ACKNOWLEDGEMENT OF THE TRADITIONAL LAND OWNERS

The Lord Mayor, Councillor Dwyer, acknowledged the Burramattagal people of The Darug Nation as the traditional custodians of this land, and paid respect to their ancient culture and their elders past and present.

INNOVATIVE

ITEM NUMBER 18.6
SUBJECT FOR APPROVAL: Draft Development Control Plan and draft Planning Agreement, 18 – 40 Anderson Street, Parramatta
REFERENCE RZ/4/2018 - D07175486
REPORT OF Project Officer Land Use

LAND OWNER: Australia and New Zealand International Investment Group
Pty Ltd

APPLICANT: Landream

DEVELOPMENT APPLICATIONS CONSIDERED BY SYDNEY CENTRAL CITY PLANNING PANEL: Nil

PURPOSE:

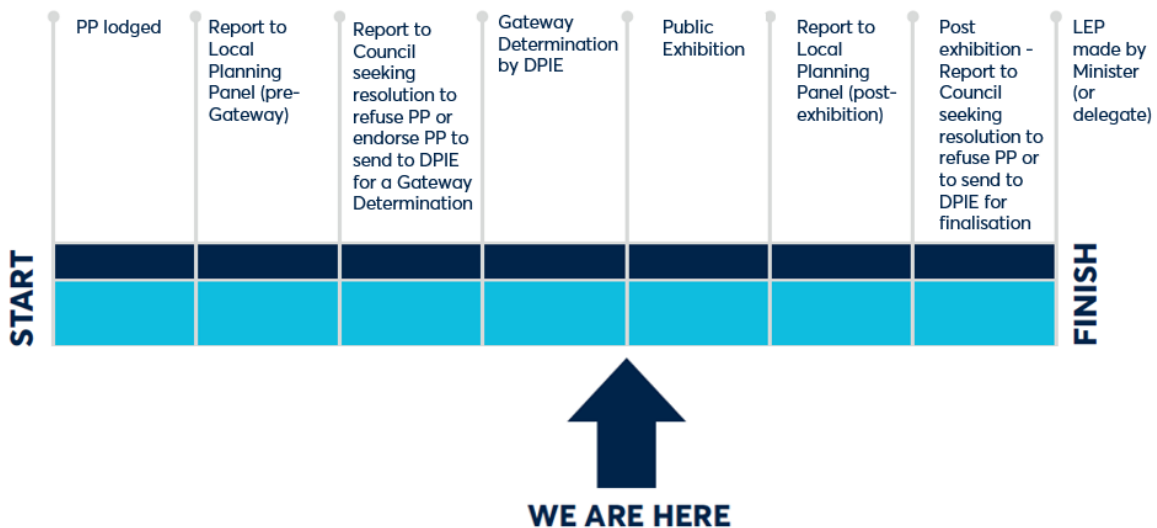
The purpose of this report is threefold:

- To report back to Council the outcomes of the preparation of a draft Development Control Plan (DCP) and the negotiation of terms for a draft Planning Agreement with the landowner in relation to this site.
- To seek Council's endorsement of a draft site-specific Development Control Plan for purposes of concurrent exhibition with the relevant Planning Proposal and draft Planning Agreement.
- To seek Council's delegation to finalise a draft Planning Agreement for purposes of concurrent exhibition with the relevant Planning Proposal and draft DCP.

RECOMMENDATION

- (a) **That** Council approve the draft Development Control Plan (DCP) at **Attachment 1** for the purposes of public exhibition, subject to the following amendments:
1. Figure 3 to be finalised in accordance with the detailed design for landscaping to be agreed as part of the finalisation process for the draft Planning Agreement; this should include adding dimensions to the figure.
 2. Figure 4 to be amended so that the residential podium height is notated as RL 30.4 and the building overhang near the on-site trees is deleted.
- (b) **That** Council delegate authority to the Chief Executive Officer to finalise a draft Planning Agreement that takes into consideration the letter of offer at **Attachment 2** for the purposes of public exhibition. This requires resolution of the following outstanding matters:-
- A process to ensure appropriate design, delivery and valuation of the footpath and park embellishment works;

- Determining whether the applicant be party to the agreement rather than the landowner;
 - Confirmation on the timing of the following actions
 - payment of contributions,
 - delivery of the works in kind,
 - registration and removal of the agreement from the title of the land; and
 - defect rectification periods;
 - Inclusion of a cap on the legal/administration costs payable by the applicant;
 - Potential access to Council owned land for construction cranes; and
 - Other legal, policy and security measures as they arise during the agreement drafting process.
- (c) **That** the draft DCP and draft Planning Agreement (once draft versions are finalised) are publicly exhibited concurrently with the Planning Proposal for 18–40 Anderson Street previously endorsed by Council on 12 August 2019.
- (d) **That** the public exhibition outcomes are reported back to Council.
- (e) **Further, that** Council authorise the Chief Executive Officer to correct any minor inconsistencies or anomalies of an administrative nature relating to the Planning Proposal, draft DCP and draft Planning Agreement documentation that may arise during the drafting and exhibition processes.



BACKGROUND

The Site

1. The subject site is located at 18–40 Anderson Street, Parramatta. The legal description of the site is Lot 20 DP 792518, and it has a site area of approximately 8,075m². The site currently contains the seven-storey Holiday Inn Hotel, including 181 rooms, ground floor restaurant and bar, corporate function rooms, and other facilities. The site is shown in **Figure 1**.

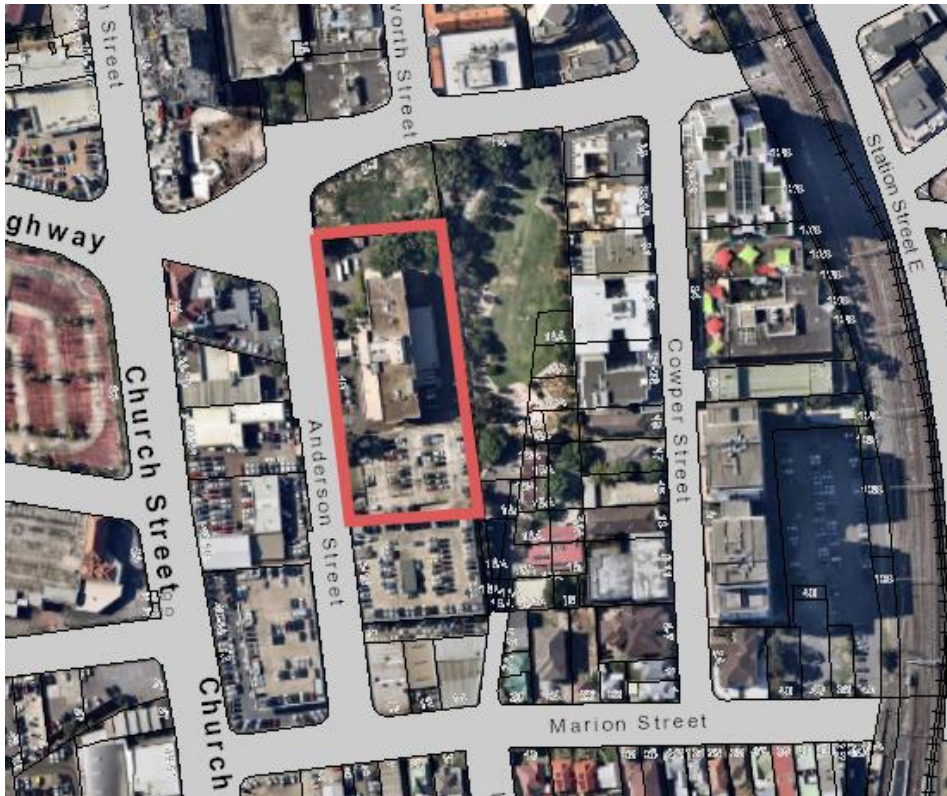


Figure 1 – Site Location Map (site shown outlined in red)

2. Immediately surrounding development comprises:
 - North: 5–7 Parkes Street (Development Application DA/730/2016 recently approved for a 24-storey mixed-use development);
 - South: a two-storey car repair facility with rooftop parking (further south are more repair shops and related facilities);
 - East: Jubilee Park; and
 - West: the two-storey PJ Gallagher’s Irish pub and multiple car dealership / repair shops along Church Street.

Planning Proposal History

3. On 9 May 2018, Landream lodged a Planning Proposal seeking to amend the Parramatta LEP 2011 in part to rezone the subject site from B5 *Business Development* to B3 *Commercial Core* and to permit residential accommodation and serviced apartments as additional permitted uses.
4. On 11 February 2019, Council endorsed progression of the Planning Proposal, after the matter had been considered by the Local Planning Panel and resolved:
 - (a) ***That Council note the recommendation of the Local Planning Panel dated 18 December 2018 in relation to this matter as detailed below, but with minor inconsequential changes relating to the format of site-specific provisions and a requirement for all documents to be publicly exhibited concurrently, noting that the Panel’s recommendation is consistent with the Council Officer’s recommendation to support the proposal.***

- (b) **That** Council endorse the Planning Proposal at 18 – 40 Anderson Street, Parramatta (included as **Attachment 2**) for the purposes of a Gateway Determination, which seeks the following amendments to Parramatta Local Environmental Plan (LEP) 2011 in relation to the subject site:
- Rezone the site from B5 Business Development to B3 Commercial Core;
 - Amend the maximum building height in the Height of Buildings Map from 14 metres to part 120 metres and part 0 metres;
 - Amend the maximum floor space ratio (FSR) on the Floor Space Ratio Map from 4:1 to 6:1;
 - Amend Schedule 1 Additional Permitted Uses to add residential accommodation' and 'serviced apartments' as additional permitted uses and include a provision limiting those additional permitted uses to a maximum FSR of 3:1 (and up to 3.9:1 FSR with design excellence) and subject to a minimum FSR of 3:1 being provided as non-residential floor space;
 - Add site-specific controls that provide for the following:
 - Requirement to demonstrate Jubilee Park is not overshadowed by development of the site;
 - Reduced car parking rates in line with the Parramatta CBD Strategic Transport Study; and
 - High performing building bonus and Dual Piping.
- (c) **That** the Planning Proposal be forwarded to the Department of Planning and Environment to request the issuing of a Gateway Determination, noting that prior to public exhibition:
- issues relating to flood mitigation and risk assessment to be dealt with and if necessary the Planning Proposal will be amended; and
 - a revised reference design will be finalised that addresses flood mitigation and urban design issues discussed in this report.
- (d) **That** a site-specific Development Control Plan (DCP) be prepared and reported to Council prior to its public exhibition.
- (e) **That** the applicant be invited to negotiate a potential Planning Agreement for the subject site and that delegated authority be given to the Chief Executive Officer to negotiate a Planning Agreement with the landowner in relation to the Planning Proposal on behalf of Council. The outcome of negotiations shall be reported back to Council prior to the draft Planning Agreement being placed on public exhibition.
- (f) **That** the Planning Proposal, site-specific DCP and draft Planning Agreement be placed on public exhibition concurrently.
- (g) **That** Council advises the Department of Planning and Environment that the Chief Executive Officer will be exercising the plan-making delegations for this Planning Proposal as authorised by Council on 26 November 2012.
- (h) **Further, that** Council grant delegated authority to the Chief Executive Officer to correct any minor anomalies of a non-policy and administrative nature that may arise during the amendment process.

5. After receiving the request for a Gateway determination from Council, the Department of Planning, Industry and Environment (DPIE) advised on 28 May 2019 that the Planning Proposal would not be processed further. DPIE had concerns with the intent to make residential accommodation an additional permitted use in the zone, which could undermine the commercial zone and the Parramatta CBD Planning Proposal. Council and the proponent were encouraged to discuss a way forward for this proposal that aligned with the Parramatta CBD Planning Proposal.
6. In response to DPIE's concerns, Council endorsed on 12 August 2019 proposed amendments to the Planning Proposal for the purposes of requesting a Gateway Determination as follows:
 - Rezone the site from B5 Business Development to B4 Mixed Use;
 - Insert a site-specific provision requiring a minimum 3:1 non-residential FSR; and
 - Remove the proposed site-specific additional permitted use provisions allowing for residential accommodation and serviced apartments.
7. On 3 October 2019, DPIE issued a Gateway determination allowing the Planning Proposal to proceed subject to conditions.

Comparison of Planning Controls

8. A comparison of current planning controls, proposed controls of the Parramatta CBD Planning Proposal and controls of the amended Planning Proposal for the subject site are shown in **Table 1** below.

Table 1: Comparison of Controls

	Current Controls	CBD Planning Proposal Controls	Amended Site-Specific Planning Proposal
Area	8073m ²		
Zone	B5 Business Development	B3 Commercial Core (Residential and Serviced Apartments not permitted in B3 Zone)	B4 Mixed Use
FSR	4:1	6:1	6:1 (Minimum 3:1 non-residential FSR required)
HOB	18m	Base and Incentive are part 80m and part 0m, and requirement to comply with Sun Access Protection provision	Part 120m and part 0m, and compliance with Sun Access Protection provision
Yield	32,292m ² commercial floor*	49,247m ² commercial floor space*	Approximately 284 apartments [^] and either 24,219m ² of commercial floor space or a hotel with approximately 250 apartments [#]

*Residential development is not permitted in these cases but hotels of 250 rooms or more could be included in the mix of commercial uses on the site

^ Based on Average apartment size of 85m²

Hotel size based on concept in applicants urban design report

9. The site is subject to high-hazard flooding, and is affected by the probable maximum flood (PMF) event, as well as the 1:100 and 1:20 year flood.
10. The documentation submitted in support of the application indicates the applicant is intending to develop the site with a new hotel which will replace the hotel currently on site and a new residential tower development.

DRAFT SITE-SPECIFIC DEVELOPMENT CONTROL PLAN (DCP)

11. Pursuant to Council's resolution of 11 February 2019, a draft DCP for this site is to be publicly exhibited concurrently with the Planning Proposal and draft Planning Agreement. Therefore, a draft DCP (**Attachment 1**) has been prepared for Council's consideration.
12. The objectives of the draft DCP are as follows:
 - a. To create a high quality urban environment that provides a mix of uses including hotel, commercial and high density residential.
 - b. To allow for viable hotel and residential floor plates while ensuring that built form responds to site constraints related to flooding, overshadowing and tree protection.
 - c. To improve the quality and function of the public domain through provision of new pedestrian links and new park for passive recreation.
 - d. To minimise overshadowing to Jubilee Park.
 - e. To protect the mature fig trees in the northern portion of the site.
 - f. To encourage activation of the street and public domain.
 - g. To enable adequate flood conveyance and management while providing for the embellishment of portions of the Clay Cliff Creek corridor.
13. The controls in the draft DCP are divided into five sections, the content of which is summarised as follows:
 - a. Public Domain and Landscaping: controls relating to provision and design of a pedestrian access path along the Eastern boundary of the site and a public park, as well as controls relating to landscaping, active frontage along Anderson St, minimisation of vehicular access presenting to the street, and protection of the fig trees on-site.
 - b. Controls establishing building envelopes, particularly with regards to setbacks, podium heights, and inter-building separation, as well as protecting solar access to Jubilee Park.
 - c. Controls establishing appropriate flooding and stormwater management measures for the site, including allowing floodwater conveyance, providing landscaping, and preventing impacts to adjoining properties.
 - d. Parking and Access: these controls establish a single entry point off Anderson Street to serve both hotel and residential uses, the criteria for providing a porte-cochere driveway, and potential provision of a designated bus/passenger vehicle drop-off and pick-up zone on Anderson Street. The

Applicant has expressed their preference for two vehicle entry points (rather than the single shared entry point otherwise provided for in the controls) due to the two land uses proposed at this site. Therefore, an objective and control relating to a scenario in which two crossings are unavoidable is also included in the DCP; this objective/control pair focuses on pedestrian safety, street trees and technical performance of the vehicle crossing.

- e. Architectural resolution: controls addressing matters including viewlines from Great Western Highway, establishing positive public domain interface, and quality of the street walls / frontages.
14. It is recommended that the following minor amendments should be made to the DCP at **Attachment 1** prior to its exhibition:
- a. Figure 3 should be finalised in accordance with the detailed design for landscaping to be agreed as part of the finalisation process for the draft Planning Agreement (discussed in further detail later in this report), and this should include adding dimensions to the figure.
 - b. Figure 4 should be amended so that the residential podium height is notated as RL 30.4 (to make consistent with the notation for the non-residential podium height), and the building overhang near the on-site trees should be deleted (as Council officers' position is that building setbacks should be open to the sky).

DRAFT PLANNING AGREEMENT

15. Negotiations have been proceeding on a Draft Planning Agreement for the subject site. A final letter of offer was provided to Council on 15 May 2020 (**Attachment 2**) and a draft VPA document submitted to Council on 2 June 2020. Since submission of the Draft VPA negotiations have continued to finalise the Planning Agreement. The sections below detail the current status of these negotiations.

Community Infrastructure Contribution

16. Council's Planning Agreements Policy was adopted by Council at its Meeting on 26 November 2018. The Parramatta CBD Planning framework includes a resolution of Council dated 10 April 2017 which applies a 'Phase 1' community infrastructure amount of \$150 per square metre and a 'Phase 2' community infrastructure amount of \$375 per square metre. The Framework applies these value sharing amounts to increases in residential potential only. In this case it has been agreed with the applicant that the proposed amendment in the Planning Proposal allow for an increase of 3:1 development potential and that the community infrastructure contribution should be based on this uplift. Therefore the agreed value of the contribution is as detailed in **Table 2** below

Table 2: Calculation of Community Infrastructure Contribution

Site Area	8,027 m ²
Increase in residential development potential permitted by the proposed controls	3:1 = (3x8,027) = 24,081m ²
Community infrastructure contribution Required (\$150/additional m ² residential)	24,081x\$150/m ² = \$3,612,150

Works in Kind Planning Agreement Arrangements

- Council’s Planning Agreements Policy allows for a Community Infrastructure contribution to be in the form of a monetary contribution or as works-in-kind. Under Council’s CBD Planning Strategy (endorsed by Council in April 2015) the subject site contains an area that Council could consider acquiring when the subject site is redeveloped as part of a land dedication and works-in-kind arrangement. Figure 2 is an extract from this strategy that shows Council’s strategy for a green space corridor extending over the subject site. The subject site is shown outlined in red and the portion of the site shaded green is the portion of the subject site to be acquired for open space sought under this strategy.

Figure 2: Extract from CBD Planning Strategy for Auto Alley precinct



Subject site – Outlined in Red

- An urban design analysis undertaken as part of previous studies to support the CBD Planning Strategy identified that a 3m-wide walkway along the eastern boundary the site would be desirable. **Figure 3** shows the open space and walkway in green.

Figure 3: Proposed Open Space and Walkway -18-40 Anderson Street



19. The applicant has agreed to dedicate the land shown in dark green in **Figure 3** to Council at no cost subject to them being able to utilise the FSR generated by the land on the remainder of the development site. The arrangement is consistent with Council’s Planning Agreement policy for the dedication of land.
20. The applicant has also agreed to undertake work to embellish the proposed walkway and park. The cash contribution required under Council’s Community Infrastructure framework would be decreased by the value of the works proposed to be undertaken by the applicant. This arrangement is consistent with Council’s Planning Agreement Policy Framework and the breakdown based on current estimates is shown in **Table 3**.

Table 3: Breakdown of Community Infrastructure Contribution to Council within Planning Agreement

Total Value of Community Infrastructure Contribution within Planning Agreement	\$3,612,150
Embellishment Work* Value	\$3,250,000
Monetary Contribution Payable	\$362,150

*Based on estimate provided by the applicant – VPA will include a process to verify this cost.

21. Based on the current estimate, the embellishment works are less than the total community infrastructure contribution required. The applicant has requested that should, at the time the development occurs, the value of the works exceed the community infrastructure contribution payable that the difference be discounted from any Section 7.11/7.12 developer contributions payable for this development. Council Officers support inclusion of a clause to allow for this arrangement to be put in place as it is consistent with the works-in-kind provisions in the Council’s Planning Agreements Policy.

Other Planning Agreement negotiation Issues

22. The Planning Agreement will be drafted to achieve the following principles, which have been agreed with the applicant:-
- require that the Community Infrastructure Contribution will increase should Council endorse changes to the Community Infrastructure Framework to increase the rate payable. The rate that will be applied will be the rate in force when the development application for redevelopment of this site is approved.
 - Include clauses that will require review of the Planning Proposal should Council replace the Community Infrastructure Framework with increased Developer Contributions Requirements. Unless this review is available to cover this circumstance the VPA would inadvertently require payment of double the Community Infrastructure Contribution amount to Council which is not the intention of the VPA.
 - The dedication of the land identified in Figure 3 in dark green at no cost to Council and embellishment of pathway and open space with the embellishment cost only to be offset against the Community Infrastructure Contribution;
 - Any Section 7.11 or 7.12 contributions will still be payable. Should the value of works in kind for embellishment of the open space exceed the Community Infrastructure Contribution required the difference will be discounted from the Section 7.11 or Section 7.12 contributions payable or Council will arrange to refund of the difference through another mechanism agreed in the final VPA.
 - Given the works in kind arrangements proposed, that Council's normal requirement for the community infrastructure payment arrangements with 25% to be paid at construction certificate stage at 75% to be paid at occupation certificate stage be varied. The payment arrangements should ensure the payment required at construction certificate stage is adjusted to account for the value of the works in kind the applicant will deliver as part of the agreement.
23. It is recommended that Council delegate the CEO to finalise the draft Planning Agreement on behalf of Council for the purpose of exhibition. At the time of finalisation of this report the following procedural, design and legal details were still being finalised:-
- A process to ensure that:-
 - i. the detailed design and works proposed meet Council's requirements,
 - ii. works are delivered in a safe and appropriate manner with appropriate levels of Council oversight;
 - iii. there is transparent methodology for a more detailed valuation of the works at time of delivery, and
 - iv. there is an agreed schedule for delivery of Community infrastructure funds and works in kind.
 - Agreement on potential bank guarantees, bonds, arrangements for registration of and removal of the agreement from the title of the land,

defect/rectification periods for works and other security measures that should be put in place to protect Council's interests;

- Agreement on who should be party to the agreement. Council's position is that the landowner should be party to the agreement. The applicant is suggesting they can provide warranties within the agreement that would allow for the developer to be party to the agreement rather than the owner. Council will only allow the applicants arrangement if the legal risks Council might bear are satisfactorily addressed by the warranties proposed by the applicant;
- The applicant has agreed to cover Council's legal and administration costs but would like to have a maximum amount they could be asked to pay specified in the agreement. A quote will be obtained from Council solicitors to be used as the basis for negotiating any legal and administration cost cap included in the agreement;
- Whether Council will accept a request for the crane access to Council owned land to located cranes during the construction process.

CONSULTATION & TIMING

24. Pending Council's resolution on this matter, the draft DCP and draft Planning Agreement will be publicly exhibited with the 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. The outcome of the public exhibition will then be reported to Council.

FINANCIAL IMPLICATION FOR COUNCIL

25. The Planning Agreement currently being negotiated will involve the applicant delivering an embellished park and potentially a monetary payment to a total value of \$3,612,150 in addition to the Section 7.11 and 7.12 contributions payable at the time the development proceeds.

Paul Kennedy
Project Officer Land Use

Robert Cologna
Land Use Planning Manager

David Birds
Group Manager, City Planning

Alistair Cochrane
Chief Financial Officer

Jennifer Concato
Executive Director City Planning and Design

Brett Newman
Chief Executive Officer

ATTACHMENTS:

- 1 DRAFT DCP – 18-40 Anderson Street, Parramatta 10 Pages
- 2 Revised Letter of Offer - 18-40 Anderson Street, Parramatta v4 5 Pages

REFERENCE MATERIAL