

# FOR ACTION

LOCAL PLANNING PANEL

21/04/2020

TO: Project Officer, Land Use Planning (Rubcic, Marko)

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**Subject:** Planning Proposal at 12-14 Phillip Street and 331A, 333 & 339 Church Street, Parramatta  
**Target Date:** 21/05/2020  
**Notes:**  
**File Reference:** <FOLDERNUMBER> D07249686

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## DETERMINATION

That the Local Planning Panel recommend to Council:

- (a) **That** Council note the independent peer-review (provided at **Attachment 1**) completed in relation to the subject Planning Proposal and this assessment report.
- (b) **That** Council endorse the Planning Proposal at **Attachment 2** for land at 12-14 Phillip Street and 331A, 333 & 339 Church Street, Parramatta, which seeks to amend Parramatta LEP 2011 by way of:
  - Re-zoning part of the site from B4 Mixed Use to RE1 Public Recreation;
  - Re-zoning part of the site from RE1 Public Recreation to RE2 Private Recreation;
  - Re-zoning part of the site from RE1 Public Recreation to B4 Mixed Use; and
  - Amending the floor-space ratio control for the parts of the site which are being rezoned.
- (c) **That** the Planning Proposal be forwarded to the Department of Planning, Industry and Environment to request a Gateway Determination be issued.
- (d) **That** upon the issue of a Gateway Determination, the Planning Proposal be publicly exhibited for a minimum of 28 days.
- (e) **That** Council advise the Department of Planning, Industry and Environment that Council will not be exercising plan-making delegations for this Planning Proposal.
- (f) **Further, that** Council authorise the Chief Executive Officer to correct any minor anomalies of a non-policy and administrative nature that may arise during the plan-making process.

The Panel's decision was unanimous.

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**INNOVATIVE**

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<b>ITEM NUMBER</b>	6.1
<b>SUBJECT</b>	Planning Proposal at 12-14 Phillip Street and 331A, 333 & 339 Church Street, Parramatta
<b>REFERENCE</b>	RZ/8/2019 - D07249686
<b>REPORT OF</b>	Project Officer, Land Use Planning
<b>LANDOWNER APPLICANT</b>	PCCDEVCO1 Pty Ltd Ethos Urban

**PURPOSE:**

To seek the Local Planning Panel's (LPP) advice on a Planning Proposal seeking to amend Parramatta LEP 2011 by way of:

- Re-zoning part of the site from B4 Mixed Use to RE1 Public Recreation
- Re-zoning part of the site from RE1 Public Recreation to RE2 Private Recreation
- Re-zoning part of the site from RE1 Public Recreation to B4 Mixed Use and apply a floor-space ratio control of 0:1 for this part of the site
- Making adjustments to the floor-space ratio maps in the areas to be rezoned for the purposes of requesting a Gateway Determination from the Department of Planning, Industry and Environment.

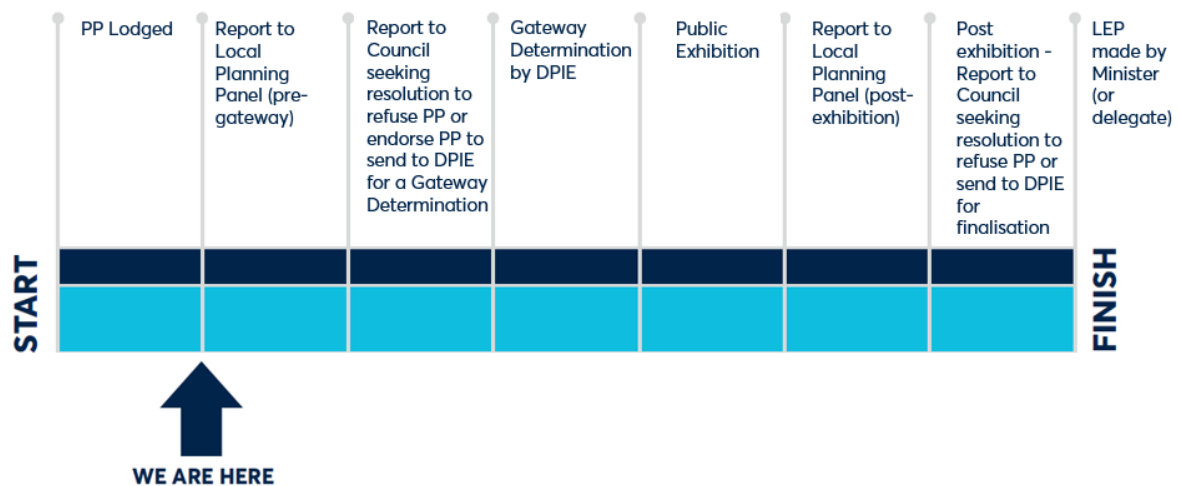
**RECOMMENDATION**

That the Local Planning Panel recommend to Council:

- That** Council note the independent peer-review (provided at **Attachment 1**) completed in relation to the subject Planning Proposal and this assessment report.
- That** Council endorse the Planning Proposal at **Attachment 2** for land at 12-14 Phillip Street and 331A, 333 & 339 Church Street, Parramatta, which seeks to amend Parramatta LEP 2011 by way of:
  - Re-zoning part of the site from B4 Mixed Use to RE1 Public Recreation;
  - Re-zoning part of the site from RE1 Public Recreation to RE2 Private Recreation;
  - Re-zoning part of the site from RE1 Public Recreation to B4 Mixed Use; and
  - Amending the floor-space ratio control for the parts of the site which are being rezoned.
- That** the Planning Proposal be forwarded to the Department of Planning, Industry and Environment to request a Gateway Determination be issued.
- That** upon the issue of a Gateway Determination, the Planning Proposal be publicly exhibited for a minimum of 28 days.
- That** Council advise the Department of Planning, Industry and Environment that Council will not be exercising plan-making delegations for this Planning Proposal.
- Further, that** Council authorise the Chief Executive Officer to correct any

minor anomalies of a non-policy and administrative nature that may arise during the plan-making process.

## PLANNING PROPOSAL TIMELINE



## SUMMARY

1. Council previously had required the developer of this site to deliver to Council a community facility as part of the redevelopment of the site that was formerly owned by Council. Development consent was granted for the building currently under construction which included a community facility in the building podium (the facility was to be a Discovery Centre) which encroached into the RE1 Public Recreation zone, as this use is permitted in the zone.
2. Council subsequently made a decision to not progress with the Discovery Centre in this location and to sell the floor-space to the developer, who agreed to purchase it and use it for commercial purposes. This decision has resulted in a zoning anomaly as the portion of the building podium that encroaches into the RE1 Public Recreation zone will no longer be used as a public facility and the commercial use proposed by the applicant is not permitted in this part of the building under the current zoning. The developer has lodged a Planning Proposal to seek to resolve the issues arising from the encroachment.
3. The encroachment is recommended to be resolved by:
  - Zoning the land where the building encroaches to part B4 Mixed Use and part RE2 Private Recreation;
  - Rezoning another triangular portion of land from B4 Mixed Use to RE1 Public Recreation to compensate for the loss of RE1 Public Recreation area; and
  - Adjusting the floor-space ratio maps so there is no increase in development potential for the site.
4. The key justification for the approach taken is that while there is a decrease in the amount of zoned RE1 Public Recreation space (net decrease by 220 square metres) the amount of publicly available open space along the river foreshore (secured by public rights of access) remains the same as there are pedestrian walkways incorporated into the development. There is no net loss of publicly available space along the Parramatta River foreshore as a result of this Planning Proposal, and therefore the proposal to rectify the zoning anomaly

described above will have minimal impact on the availability of space along the river foreshore to the public.

## SITE DESCRIPTION

5. The subject site is at 12-14 Phillip Street and 331A, 333 & 339 Church Street, Parramatta. The site is irregularly shaped and has an area of approximately 6,281 square metres (Refer to **Figure 1**).
6. The site is located on the southern bank of the Parramatta River between the Lennox and Bernie Banton Bridges. Vehicular access to the site is via Phillip Street and pedestrian access is available from Church Street to the east, Phillip Street to the south and Marsden Street to the west.
7. The site previously accommodated a Council-operated at-grade car park and two-storey commercial buildings at 331A, 333 & 339 Church Street.



**Figure 1:** An aerial image of the site and surrounds (subject site outlined in yellow).

## BACKGROUND

8. In November 2011, Council issued a Request for Proposals for development on the Council-owned car park site which would deliver:
  - At least 24,000 square metres of residential gross floor area with an emphasis on interfaces with and activation of the Parramatta River foreshore; and
  - Public infrastructure including a community facility, multi-function space, associated retail and public domain improvements.
9. Following an extensive selection process involving the review of several master plan concept designs a Project Delivery Agreement (PDA) was formally executed on 24 December 2012 between Council and PCCDevCo1 Pty Ltd (the

developer) which allows PCCDevCo1 Pty Ltd to redevelop the site. Under this arrangement, the stratum subdivision would give ownership of the residential tower and commercial podium to the developer, while the community facilities and public domain would remain in Council's ownership.

10. In May 2013, the applicant lodged a Planning Proposal to amend the Parramatta LEP 2011 to:
  - Increase the maximum floor space ratio control from 6:1 to 12:1;
  - Increase the height of buildings control from 80 metres to 150 metres;
  - De-list the locally-listed heritage item at 333 Church Street, Parramatta; and
  - Re-align the 12 metre height control for the Church Street frontage to match adjoining allotments.The LEP amendment came into force in February 2015.
11. A Development Application was lodged in March 2014 for the construction of a 41 storey mixed-use building comprising a three-storey podium (retail on ground-floor, a community facility on level one and a conference centre on level two) and a 38 storey residential tower.
12. As the submitted architectural plans were informed by an extensive selection process where several design options were considered, it was considered unnecessary to undergo an additional design excellence competition. Pursuant to Clause 22B(5) of the then Parramatta City Centre LEP 2007, the then Director-General of the Department of Planning certified that the development would not need to undergo a design competition. Instead, the architectural plans were referred to a Design Review Panel for their appraisal. Following a few minor amendments to the submitted scheme, the scheme was granted 'design excellence'.
13. Key design elements which contributed towards the granting of 'design excellence' by the design panel include the triple-height columns along the river foreshore boardwalk (with boardwalks at both river level and street level) and a glass 'entry box' which cantilevers over the river foreshore area. Both design elements are shown in **Figure 2**.
14. Development consent was granted by the then Joint Regional Planning Panel (JRPP) in May 2015. Since this time the consent has been modified twice. The first modification relates to the provision of two additional residential storeys in the tower and other minor design reconfigurations. The second modification relates to the amendment of a condition of consent to allow for the resequencing of requirements relating to the final public domain plans.





**Figure 2:** Key design elements viewed from Marsden Street, with the triple-height columns denoted with '1' and glass 'entry box' denoted with '2'.

15. As part of the development, public access is provided across the site's northern boundary. Public access is provided across two levels:
- The river-level promenade, which replaces the previous foreshore level footpath and connects to the existing Lennox Bridge portals; and
  - The street-level colonnade, which provides an at-grade connection between Church and Marsden Streets.

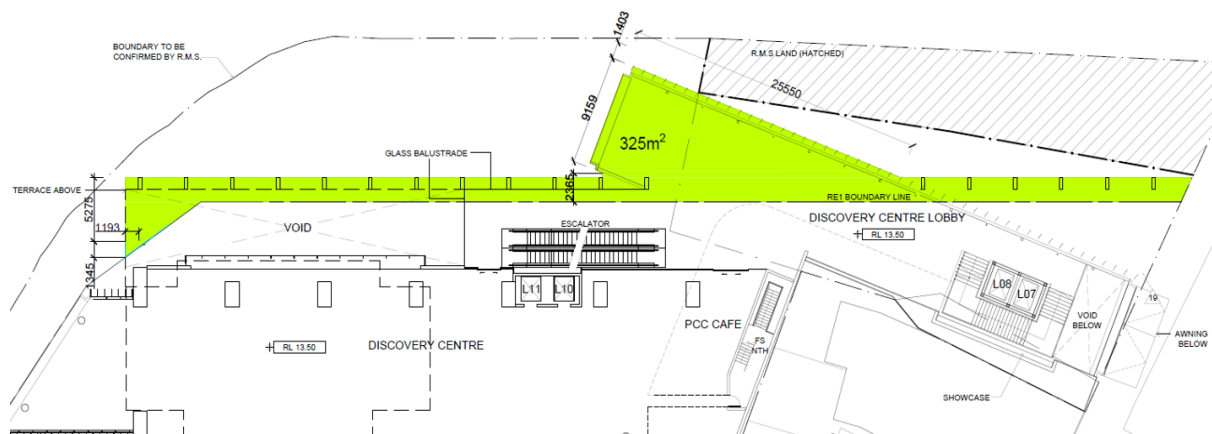
**Figure 3** below shows the locations of the river-level promenade and street-level colonnade as per the approved plans.



**Figure 3:** View of the building podium from the north (Parramatta River in the foreground).

## ISSUES WITH THE CURRENT ZONING SCHEME

16. The Project Delivery Agreement required the provision of a 'Discovery Centre' on the site which would be retained by Council. The Discovery Centre facility was planned to integrate Council's cultural heritage and visitor centres in the Parramatta CBD.
17. The approved architectural plans included the Discovery Centre and associated community facilities in one of the levels of the podium. The podium element of the building, including the glass 'entry box', is not wholly contained within the B4 Mixed Use zone and is approved to be partially within the RE1 Public Recreation zone. However, as the Discovery Centre is defined as an 'information and education facility', at the time of assessment this was a permissible use in the RE1 zone. The extent of the podium and glass 'entry box' approved within the RE1 zone is shown in green in **Figure 4** below.



**Figure 4:** Extent of the podium and glass 'entry box' approved in the RE1 zone (in green).

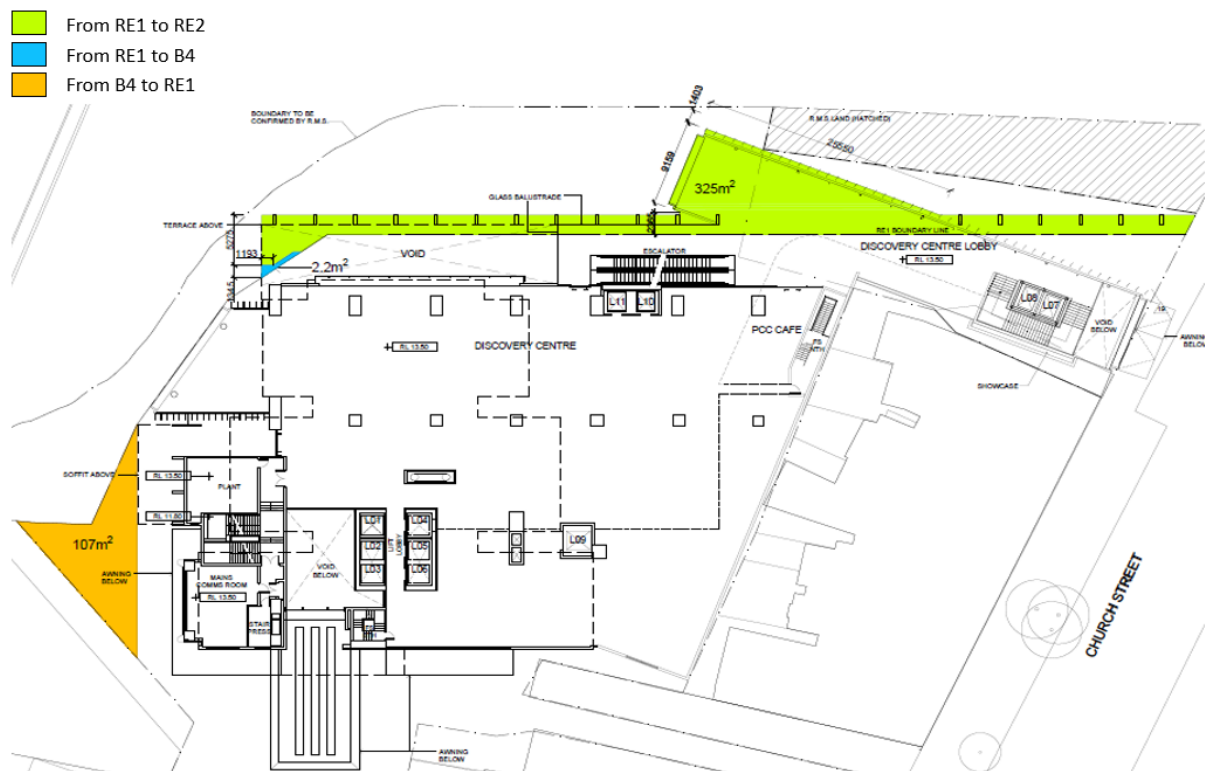
18. At its meeting on 10 July 2017, Council resolved to consolidate the Discovery Centre with two other existing and one proposed cultural facilities into a larger amalgamated facility at 5 Parramatta Square. Council outlined that the facilities would be more accessible at the alternative location due to the proximity to the Parramatta Transport Interchange node, and that the cost of operating an amalgamated facility would be much less than the combined cost of operating several separate facilities.
19. As a result of the above, Council no longer requires the community space approved within the development. Following negotiations with the developer, an agreement was reached whereby the developer would purchase level one of the development which was to house the Discovery Centre. The developer is seeking to pursue commercial uses on this level.
20. Following Council's decision to sell its interests in the site, there is a misalignment between the uses proposed by the applicant and current land zoning arrangements. The commercial use proposed by the applicant for level one is not permitted in the portion of the approved building (as shown in **Figure 4**) that projects into the RE1 Public Recreation zone.

21. The development of this site is already underway. An approval has been granted which cannot be revoked by Council. Construction of the building has already commenced and it is not practical to substantially amend the approved plans so that the building is no longer encroaching into the RE1 Public Recreation land. Given this there are two problems that arise from this inconsistency that need to be addressed:
- i. The developer is only able to use the portions of the building encroaching into the RE1 Public Recreation area for uses permitted in this zone. In practical terms this limits the use of these parts of the building to Cafes which are permitted in the zone;
  - ii. If the RE1 Public Recreation area shown in **Figure 4** is retained, Department of Planning guidelines (per *LEP Practice Note 07-001*) require that all land reserved for a public purpose but not acquired by a Government Agency is to be identified on the Land Reservations and Acquisition Map. Given that Council has just agreed to sell this land to the applicant, it is not appropriate for Council's planning policy to be set up to require future reacquisition of this strip of land. Further to this, terms within the Land Acquisition (Just Terms Compensation) Act 1991 could require Council to compulsorily acquire parts of the building zoned RE1 if the landowner suffers hardship.
22. As part of the agreement to sell former Discovery Centre space, the developer is required to lodge a Planning Proposal application to seek to resolve the zoning misalignment. This report describes and provides an assessment the Planning Proposal lodged by the developer.

## PLANNING PROPOSAL ASSESSMENT

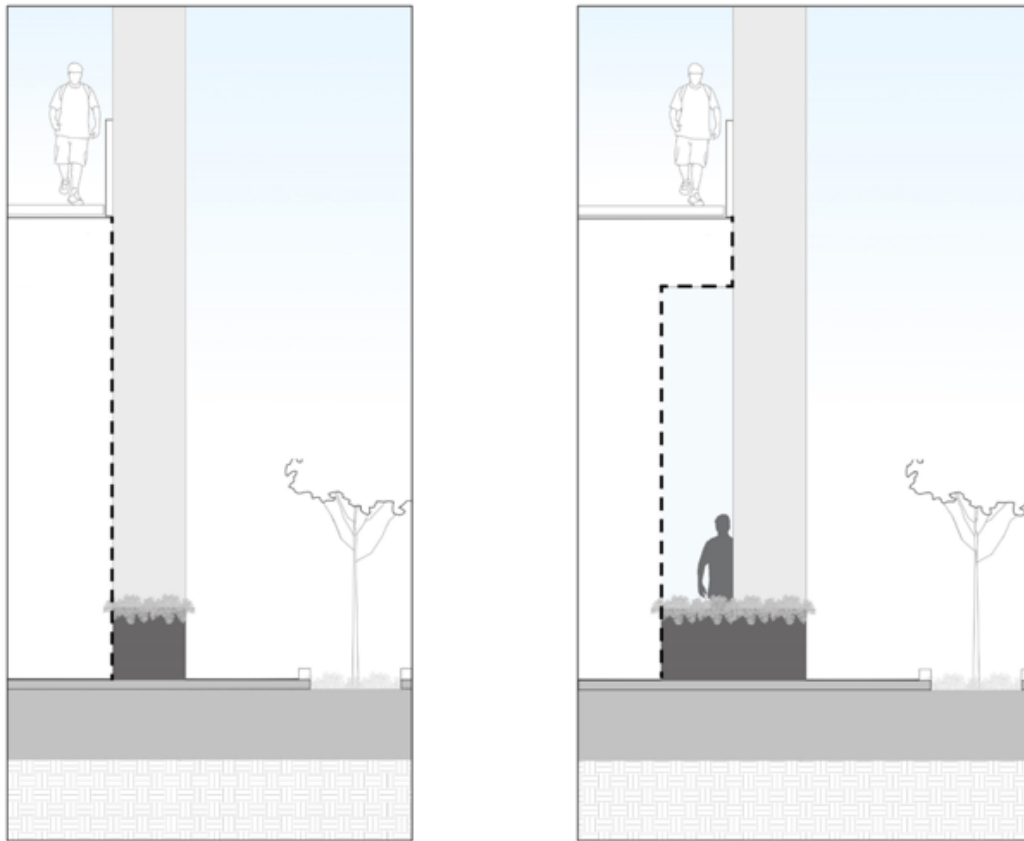
23. Council Officers have discussed options with the applicant on how the zoning misalignment might be resolved and agreed that any resolution should achieve the following objectives:
- i. That there is no net loss of public open space as a result of the Planning Proposal;
  - ii. That the Planning Proposal does not result in a compromised urban design outcome on the site or surrounding areas; and
  - iii. That the Planning Proposal does not result in a greater environmental impact.
24. The applicant lodged their initial Planning Proposal on 11 October 2019. The Planning Proposal, as first submitted, sought to amend the Parramatta LEP 2011 to change the zoning as indicated in **Figure 6** including:
- i. Rezoning the area projecting in the RE1 zone from RE1 to RE2 Private Recreation;
  - ii. Rezoning a portion of space not required being built over by the development from B4 Mixed Use to RE1;
  - iii. Rezoning a portion of basement car parking from RE1 to B4; and
  - iv. Making relevant adjustments to the FSR maps in the areas to be rezoned.



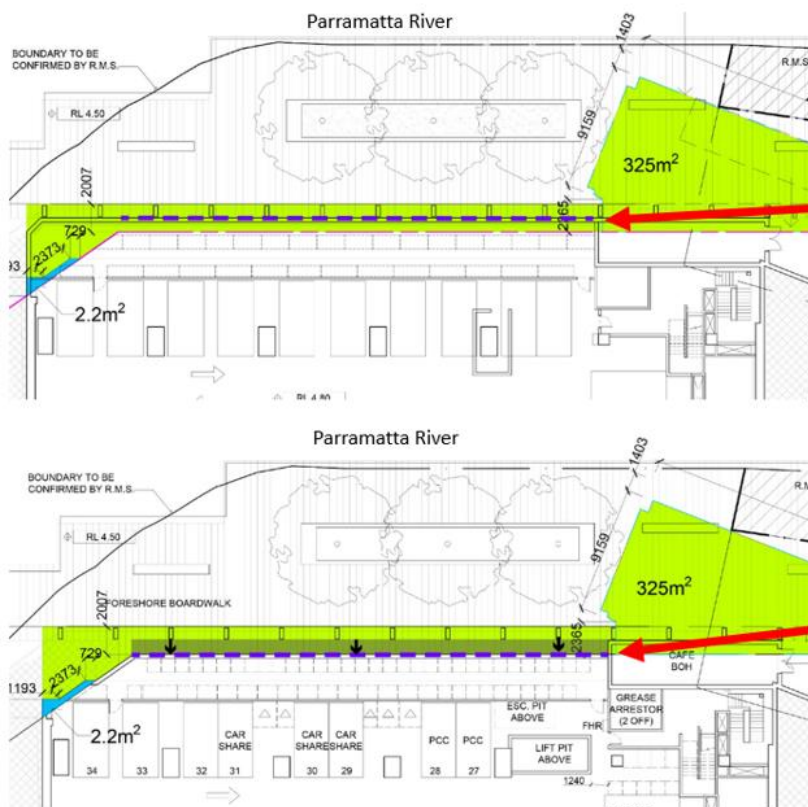


**Figure 6:** Proposed zoning scheme submitted with the initial Planning Proposal.

25. An application to amend the current approved Development Application was lodged with the Planning Proposal. As shown overleaf in **Figure 8** the application was seeking to move the podium wall fronting the river so that the entire area to be rezoned from RE1 Public Recreation to RE2 Private Recreation was able to be accessed by members of the public via a public right of access easement. Given the area of 'publicly zoned land' was being reduced, the amount of land accessible to the community would still be maximised via the public right of way and by moving the wall.
26. However, the assessment identified that this arrangement created an unsafe space behind the columns creating a public safety risk. A better urban design outcome can be achieved if the approved podium wall at river level abutting the rear of the triple height columns is retained, and that spaces, publicly accessible or otherwise, not be created behind the columns. A comparison of both arrangements is shown in **Figure 7** overleaf.



**Figure 7:** Location of the approved podium wall fronting the river (*left*)  
Initially proposed modification of the podium wall fronting the river (*right*)



**Current DA approved location of podium wall at river level**

Comment: If the wall is retained in this location, the public cannot access the area shown in green inside the building

**Location of podium wall at river level proposed in initial application to Council**

Comment: All the area currently zoned public recreation is accessible but this results in unsatisfactory urban design and public safety impacts

**Figure 8:** Location of the podium wall as approved and as proposed in the initial application

**Table 1:** The initial Planning Proposal's consistency with Council Officer's objectives

<b>Objective</b>	There is no net loss of public open space as a result of the Planning Proposal	The Planning Proposal does not result in a compromised urban design outcome on the site or surrounding areas	That the Planning Proposal does not result in a greater environmental impact
<b>Compliance</b>	✓	✗	✓
<b>Discussion</b>	There is marginal gain of accessible space as a result of the Planning Proposal given the proposal to provide access to RE2 zoned land via the public right of way. However, this space is of low amenity.	The Planning Proposal facilitates a modification application which results in a building interface with deep recessed elements which created CPTED issues.	The Planning Proposal has a neutral environmental impact.

27. The urban design issues mean that an alternate approach is being recommended by Council Officers which is described in detail in the next section of this report. A more detailed assessment of the initially lodged Planning Proposal is provided at **Attachment 3**.

## RECOMMENDED PLANNING PROPOSAL

28. The applicant amended their Planning Proposal in accordance with the advice provided by Council Officers. The revised Planning Proposal seeks to amend the Parramatta LEP 2011 to make the changes proposed in **Figure 9** which includes:

- i. Rezone the part of the building that encroaches into the RE1 zone, (the strip south of columns), from RE1 Open Space to B4 Mixed Use

Reason: To recognise that amending the building to allow public access at the river level boardwalk level results in unacceptable urban design and safety outcomes. This will allow the applicant to use this strip which forms part of the building for a commercial use which will allow for the most efficient use of this part of the approved building.

It should also be noted that there is an upper level boardwalk (on the same level as Church Street) that sits above the land to be zoned B4 Mixed Use on the lower level boardwalk (on the same level as the Parramatta River). The upper level boardwalk will have a public right of way easement, as required as part of the PDA, that will allow the public access over the strip of land, irrespective of the area being zoned RE1 Public Recreation or B4 Mixed Use. The appropriate zoning for this strip of land shown in **Figure 9** is B4 Mixed use as it is located within the mixed use building at the riverside boardwalk level.

- ii. Rezone the outermost area projecting in the RE1 Public Recreation zone to the north-face of the columns from RE1 Public Recreation to RE2 Private Recreation

Reason: To ensure that Council does not need to acquire any part of the building which is currently zoned RE1 Public Recreation while minimising the total amount of area to be rezoned B4 Mixed Use. Access will still be retained at the upper level boardwalk in this area via a public right of access.

- iii. Rezone a portion of space not required being built over by the development from B4 Mixed Use to RE1 Public Recreation (shown in yellow in **Figure 9**)

Reason: To compensate for the loss of RE1 Public Recreation area as specified above.

- iv. Make relevant adjustments to the floor-space ratio maps in the areas to be rezoned

Reason: The rezoning of part of the site from RE1 Public Recreation to B4 Mixed Use could permit additional gross-floor area on the site if the current floor-space ratio arrangements are maintained. It is noted that the current land use zoning and floor-space ratio maps do not align and that only 68 square metres of the part of the site being rezoned from B4 Mixed Use to RE1 Public Recreation, which totals 107 square metres, has floor-space apply to it. To not allow for any additional development potential the area to be rezoned to B4 Mixed Use (108 square metres) will have its floor-space ratio amended so that a floor-space ratio control of 12:1 applies to only 68 square metres of the rezoned area. The area to be rezoned to RE1 Public Recreation will have its floor-space ratio of 12:1 removed so that no control applies. No amendment to the mapped floor-space ratio control is required for the part of the site being rezoned RE1 Public Recreation to RE2 Private Recreation (retain no floor-space ratio control).

29. The proposed zoning scheme overlaid on the approved architectural plans is shown in **Figure 9** below. A complete set of indicative zoning plans, as proposed in the revised Planning Proposal are provided at **Attachment 4**.



**Figure 9: Proposed amendments to the land use zoning map**

### Justification

30. While the Planning Proposal reduces the amount of RE1 Public Recreation zoned land on the site, it does not reduce the amount of publicly accessible open space. The approved development facilitates more public open space than what could be provided under strict adherence to land use zoning as it includes publicly accessible spaces across multiple levels and in RE1, B4 and W2 zones. The quantum of publicly accessible space will not change as a result of the Planning Proposal – only the zoning of the publicly accessible areas will be subject to change. This is demonstrated in **Table 2**.

**Table 2:** Comparison of the quantum of public open space under different zoning schemes

	<b>Current Zoning</b>	<b>Initial Planning Proposal &amp; Modification Application</b>	<b>Recommended Planning Proposal</b>
<b>Land zoned RE1</b>	1,569m <sup>2</sup>	1,349 m <sup>2</sup>	1,349 m <sup>2</sup>
<b>Publicly accessible area in RE1 zone*</b>	2,544m <sup>2</sup>	1,998m <sup>2</sup>	1,998m <sup>2</sup>
<b>Publicly accessible area in RE2 zone</b>	nil	614m <sup>2</sup>	438m <sup>2</sup>
<b>Publicly accessible area in B4 zone</b>	746m <sup>2</sup>	746m <sup>2</sup>	854m <sup>2</sup>
<b>Publicly accessible area in W2 zone</b>	630m <sup>2</sup>	630m <sup>2</sup>	630m <sup>2</sup>
<b>Total Public Open Space</b>	<b>3,920m<sup>2</sup></b>	<b>3,988m<sup>2</sup></b>	<b>3,920m<sup>2</sup></b>

**Note:** The public access to the site via Freemasons Arms Lane and Oyster Lane has not been included in the above calculations. These easements and their associated zoning are not subject to change as a result of any Planning Proposal or Modification Application.

\*Publicly accessible area in the RE1 zone is provided on the river-level promenade and above on the street-level colonnade, hence why it is higher than the actual land zoned RE1.

31. Council Officers acknowledge that the triangular shaped area to be rezoned from B4 Mixed Use to RE1 Public Recreation is unlikely to be high-quality public open space due to its location away from the Parramatta River. The area would be capable of providing trees and a resting area (benches, tables, etc.) for people walking along the river foreshore. However, irrespective of this

Planning Proposal, arrangements in the Project Delivery Agreement have this area dedicated to Council, with public access arrangements to be applied at subdivision stage. Given this, the rezoning of this area to RE1 is justified as it aligns with its proposed uses and helps minimise the net loss of zoned RE1 Public Recreation area.

32. It is noted that areas of the site zoned RE1 Public Recreation are classified as operational land. The Planning Proposal does not intend to make any amendments to the classification of land on this site and any new RE1 Public Recreation areas will also be operational land.
33. The area to be rezoned to B4 Mixed Use (108 square metres) will have its floor-space ratio amended so that a floor-space ratio control of 12:1 applies to the 68 square metres of the rezoned area. However, in order to ensure that the Planning Proposal does not result in a greater environmental impact than what is already approved, the area to be rezoned to RE1 Public Recreation will have all of its floor-space ratio of 12:1 removed (68 square metres) so that no control applies. This is to ensure that no additional gross-floor area can be generated as a result of this Planning Proposal. The intention of this Planning Proposal is to resolve the misalignment between the approved development and the zoning and not allow additional development potential.
34. Council Officers considered amending the floor-space ratio maps so that the existing misalignment between zoning and floor-space ratio maps is rectified (so that floor-space ratio applies to all areas zoned B4 Mixed Use and so no floor-space ratio applies to areas zoned RE1 Public Recreation and RE2 Private Recreation). However, the area zoned B4 Mixed Use is larger than the area which has a mapped floor-space ratio. Aligning the zoning and floor-space ratio maps would result in a significant increase in development potential which would not align with the objectives of the Planning Proposal.
35. The revised Planning Proposal aligns with all of the Council Officer's objectives, as summarised in the assessment matrix in **Table 3**.

**Table 3:** The revised Planning Proposal's consistency with Council Officer's objectives

<b>Objective</b>	There is no net loss of publicly accessible usable space as a result of the Planning Proposal	The Planning Proposal does not result in a compromised urban design outcome on the site or surrounding areas	That the Planning Proposal does not result in a greater environmental impact
<b>Compliance</b>	✓	✓	✓
<b>Discussion</b>	Whilst there is a nominal decrease in the area of zoned open space, the amount of publically available open space protected via public right of ways over the riverside boardwalk and higher terrace means the amount of space available to the community is unchanged.	The Planning Proposal allows for an appropriate building interface with the public domain at river-level in accordance with the original design excellence scheme.	The Planning Proposal has a neutral environmental impact as no additional gross floor area can be derived as a result of the rezoning.

## PEER REVIEW

36. As Council has formally had an interest in this site, Council Officers have commissioned an independent peer review of this report and the Planning Proposal document.
37. Following an internal tender selection process, Knight Frank Town Planning was selected to complete the peer review for Council. The consultancy was appropriately briefed on the background to the Planning Proposal and was provided all relevant material to assist them with providing professional planning advice.
38. On 27 March 2020, Knight Frank issued their peer review to Council Officers. The peer review acknowledged the need for the Planning Proposal and gave in-principle support for the amendments to the mapped land use zoning and floor-space ratio controls as a means to rectify the misalignment between the approved development and the zoning.
39. The independent peer review suggested minor technical amendments to the Planning Proposal document and these have been adopted in their entirety. The complete independent peer review can be found at **Attachment 1**.
40. Based on this peer review, Council Officers are satisfied that the Planning Proposal has been assessed transparently and can be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination.

## PLAN-MAKING DELEGATIONS

41. New delegations were announced by the then-Minister for Planning and Infrastructure in October 2012, allowing councils to make LEP amendments of local significance. On 26 November 2012, Council resolved to accept the delegation for plan-making functions and that these functions be delegated to the Chief Executive Officer.
42. It is noted that Council has previously had an interest in this site. In order to avoid a perceived conflict of interest, Council Officers have recommended that Council not request plan-making delegations for this Planning Proposal. This means that once the Planning Proposal has been to Gateway, undergone public exhibition and been adopted by Council, the Department, rather than Council Officers, will liaise with Parliamentary Counsel Office on the legal drafting and mapping of the LEP amendment. The Minister of Planning (or delegate) then signs the LEP amendment before it is notified on the NSW Legislation website.

## CONSULTATION & TIMING

43. Council Officers have met with officers from the Department of Planning, Industry and Environment to seek their preliminary advice on the approach used to resolve the planning issues related to this site. The Department's

Officers understood the rationale underpinning the Planning Proposal and advised that they are willing to consider the argument being put forward by Council Officers.

44. Council Officers acknowledge that this advice was provided in good faith and does not constitute an approval. Furthermore, the assessment contained within this report, together with the Planning Proposal and supporting documentation, will need to be assessed by the Department which will then determine whether the Planning Proposal can proceed via a Gateway Determination.
45. Should a Gateway Determination be issued by the Department, the Planning Proposal will be publicly exhibited for a minimum of 28 days. A report on the outcomes of the public exhibition will be provided to the Local Planning Panel addressing any objections received. If no objections are received, the matter will be reported directly to Council seeking approval to finalise the Planning Proposal.

## **FINANCIAL IMPLICATION FOR COUNCIL**

46. The independent peer review has been paid for using funds from Council's Land Use Planning budget that includes funds received annually to fund third-party consultants that assists Council with either making or implementing planning decisions in a transparent manner. The total costs associated with the peer review are in the order of \$3,000.
47. This Planning Proposal does not result in any additional residential uplift. Council Officers are not seeking to negotiate an associated Planning Agreement on this basis. This proposal deals with the issues arising from a Council decision to sell the floor space that would have been occupied by former Discovery Centre facility to the developer. The financial impact of the decision to sell the facility was considered at Council's meeting on 28 August 2019 in closed session and is not relevant to this part of the process which seeks to resolve the planning issues arising from that decision.

Marko Rubcic  
**Project Officer, Land Use Planning**

Robert Cologna  
**Team Leader Land Use Planning**

David Birds  
**Group Manager, City Planning**

Jennifer Concato  
**Executive Director City Strategy & Development**

## **ATTACHMENTS:**

- |   |  |          |
|---|--|----------|
| 1 | Final peer review                                | 7 Pages  |
| 2 | Planning Proposal                                | 30 Pages |
| 3 | Assessment of initially lodged Planning Proposal | 4 Pages  |



**4 Mapped zoning amendments**

14 Pages

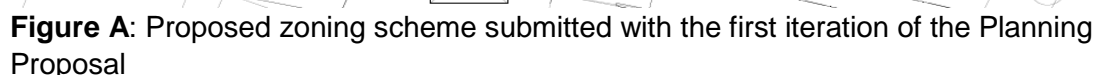
**REFERENCE MATERIAL**

1. Based on previous meetings and advice provided by Council Officers, the applicant lodged a Planning Proposal on 11 October 2019. The Planning Proposal, as first submitted, sought to:

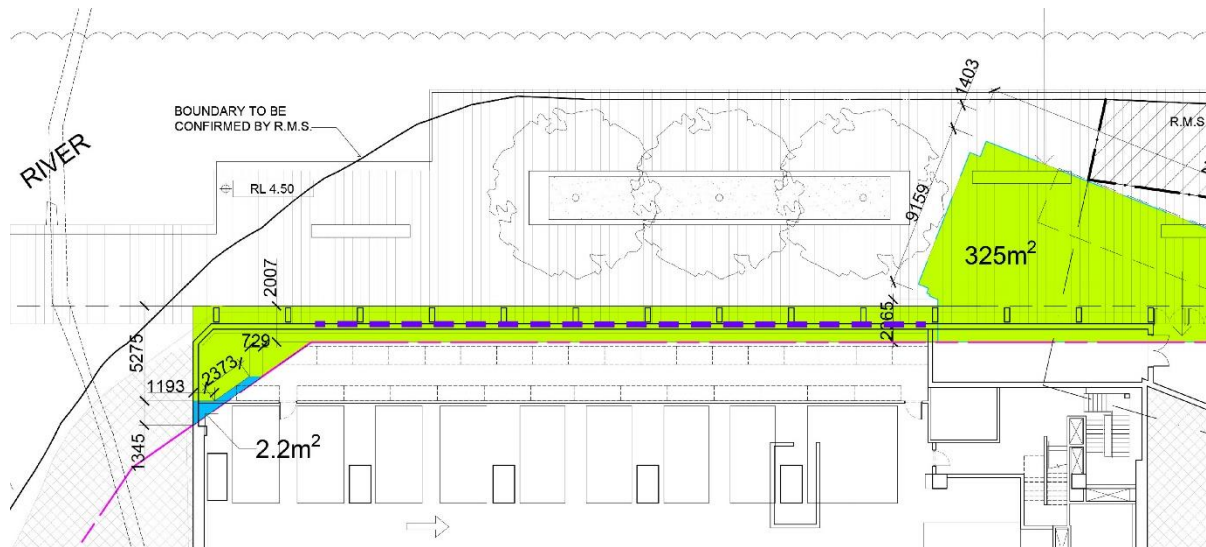
- Reason: To ensure that Council does not need to acquire any part of the building which is currently zoned RE1. While the RE2 zone does not necessarily provide 'public' space, permissible uses within that zone are generally consistent with that of the RE1 zone.

- Reason: To compensate for the loss of RE1 area as specified above.

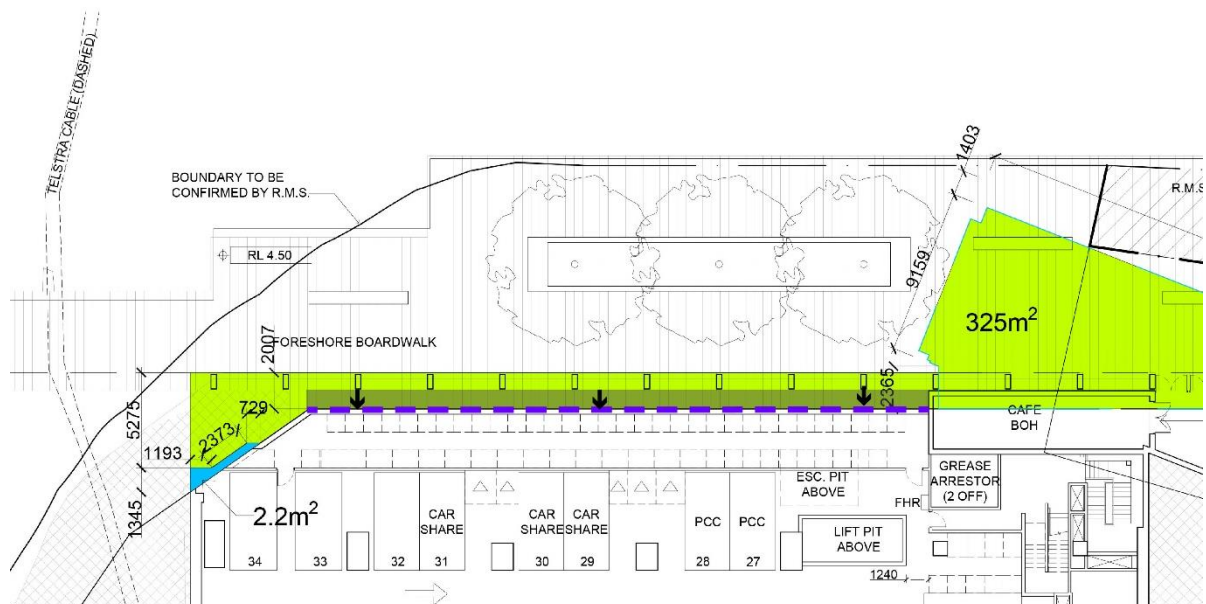
- Reason: The basement structure is largely complete and it is not possible to move the basement wall so that it does not project into the RE1 zone.



2. A Section 4.55 Modification Application was lodged in conjunction with the Planning Proposal. Previously, the podium along the river foreshore had been approved to be perpendicular to, and touching the southern face of the triple-height building columns. The Modification Application sought to, amongst other things, move the north-facing podium building line at river level southward by approximately 1.1 metres. This would mean that all parts of the building in the proposed RE2 Private Recreation at the river promenade level would be accessible to members of the public.
3. **Figures B and C** below shows the podium as approved and as proposed in the Modification Application. The proposed rezoning from RE1 to RE2 is overlaid in green for indicative purposes.



**Figure B:** Location of the approved podium along the river foreshore shown in dashed purple

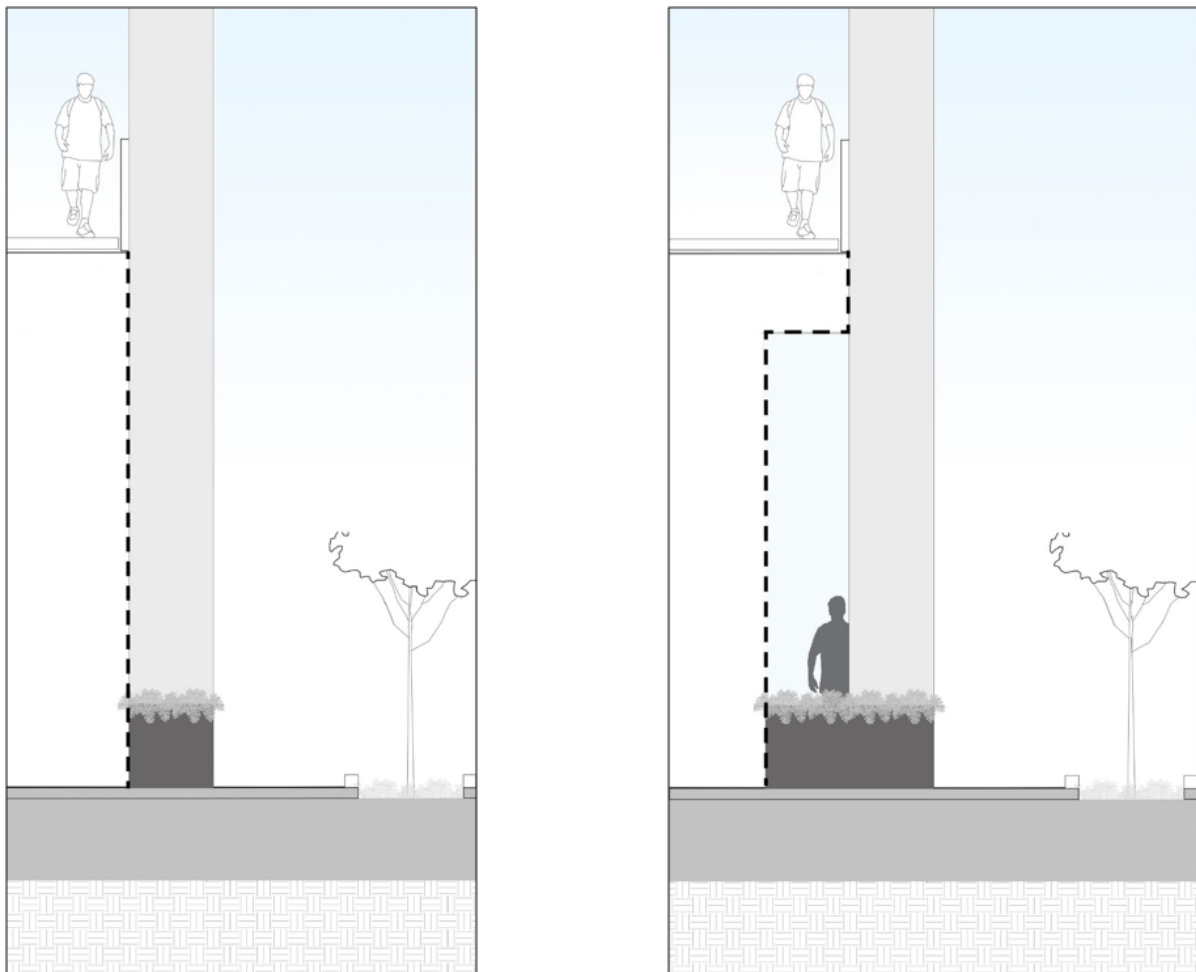


**Figure C:** Location of the podium along the river foreshore proposed in the Modification Application shown in dashed purple

#### Issues with the initial Planning Proposal

4. The assessment of the applicant's Planning Proposal included referrals to the following units within Council for comment:
  - Property Development Group;
  - City Significant Development Assessment;
  - Open Space and Natural Resources;
  - City Transformation (Urban Design); and
  - Assets Strategy and Property Management.

5. Council's City Transformation team raised concern with the Planning Proposal and the associated modification application. In particular, concern was raised that the urban design outcome would be compromised if the building line at podium level were moved southward, creating a gap between the columns and building wall.
6. Previously, it was intended that raised planters be included in-between the columns so that there was limited capacity for 'hiding' behind the columns and to appropriately green the interface between the building and the public domain. However, by shifting the building line back and creating a gap between the columns and building line, there is a compromised design and public safety outcome. The significant CPTED (Crime Prevention through Environmental Design) issues are reflected in **Figure D** below which compares the differing interface outcomes resulting when the podium building line is shifted southward or retained in its approved position.



**Figure D:** The building interface per the approved podium building line (left) and per the proposed Modification Application (right)

7. If the modification application does not proceed but the Planning Proposal proceeds and rezones the area that currently projects into the RE1 zone to RE2, a portion of the basement carpark associated with the building's residential apartments would be within the newly created RE2 zone. Neither car parking nor facilities ancillary to residential accommodation are permissible in the RE2 zone, meaning that such rezoning would be inconsistent with the objectives of the RE2 zone.



8. Moreover, the zoning will not determine which parts of the development will be publicly accessible. The PDA requires the landowner to stratum subdivide the site so that the boardwalk and other open areas, which currently traverse RE1, B4 and W2 Recreational Waterways zones, are made publicly accessible at all times.
9. The PDA does not require the space in-between the columns at river-level to be publicly accessible. The application of RE2 zoning in-between and behind the columns would not result in either more or less public open space, despite the rezoning from RE1.
10. A better urban design outcome can be achieved if the podium building line along the river foreshore remains at its approved location (flush with the south face of the building columns). The initial Planning Proposal's consistency with Council Officer's objectives is summarised in the assessment matrix shown at **Table 1** below.

**Table 1:** The initial Planning Proposal's consistency with Council Officer's objectives

<b>Objective</b>	There is no net loss of public open space as a result of the Planning Proposal	The Planning Proposal does not result in a compromised urban design outcome on the site or surrounding areas	That the Planning Proposal does not result in a greater environmental impact
<b>Compliance</b>	✓	✗	✓
<b>Discussion</b>	There is marginal gain of accessible space as a result of the Planning Proposal given the proposal to provide access to RE2 zoned land via the public right of way. However, this space is of low amenity.	The Planning Proposal facilitates a modification application which results in a building interface with deep recessed elements which created CPTED issues.	The Planning Proposal has a neutral environmental impact.