

FOR ACTION

COUNCIL

11/05/2020

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

Subject: FOR APPROVAL: Pre-Gateway - Planning Proposal for 12-14 Phillip Street and 331A, 333 & 339 Church Street, Parramatta
Target Date: 10/06/2020
Notes:
File Reference: <FOLDERNUMBER> D07357764

RESOLVED (Tyrrell/Garrard)

- (a) **That** Council note the independent peer-review (provided at Attachment 2) completed in relation to the subject Planning Proposal and the assessment report (provided at Attachment 1).
- (b) **That** Council endorse the Planning Proposal at Attachment 3 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) **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; and
- (g) **Further, that** Council note that the Parramatta Local Planning Panel's advice to Council (Attachment 1) is consistent with the recommendations of this report.

DIVISION A division was called, the result being:-

AYES: Councillors Bradley, Davis, Dwyer, Esber, Garrard, Issa, Jefferies, Pandey, Prociv, Tyrrell, Wearne, Wilson and Zaiter

NOES: Councillor Barrak

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INNOVATIVE

ITEM NUMBER	18.6
SUBJECT	FOR APPROVAL: Pre-Gateway - Planning Proposal for 12-14 Phillip Street and 331A, 333 & 339 Church Street, Parramatta
REFERENCE	RZ/8/2019 - D07357764
REPORT OF	Project Officer, Land Use Planning
LANDOWNER	PCCDEVCO1 Pty Ltd
APPLICANT	Ethos Urban

DEVELOPMENT APPLICATIONS DETERMINED BY THE SYDNEY CENTRAL CITY PLANNING PANEL

- a) DA/171/2014 – Development application for the demolition, tree removal and construction of a 41 storey mixed-use building containing retail tenancies, conference venue, discovery/exhibition centre and 413 residential apartments over 6 levels of basement car parking with stratum subdivision. Approved on 15 April 2015 by the former Joint Regional Planning Panel (Sydney West), which was replaced by the Sydney Central City Planning Panel.
- b) DA/171/2014/A – Modification to the approved mixed-use tower development including two additional residential levels, two additional basement levels (59 additional car parking spaces), reconfiguration of podium including additional mezzanine level, revised residential apartment mix and revised stratus subdivision. Approved on 12 September 2018 by the Sydney Central City Planning Panel.

PURPOSE:

To seek Council's endorsement to forward a Planning Proposal to the Department of Planning, Industry and Environment that seeks to amend Parramatta LEP 2011 controls that apply to the subject site by:

- Reconfiguring the boundary between the RE1 Public Recreation Zone and B4 Mixed Use zone on the site;
- Rezoning part of the site zoned RE1 Public Recreation to RE2 Private Recreation to resolve a zoning inconsistency that arose when Council sold its interest in the subject site; and
- Adjusting the mapped floor space ratio controls to reflect the zoning changes above in a manner that does not increase the development potential of the site.

RECOMMENDATION

- (a) **That** Council note the independent peer-review (provided at **Attachment 2**) completed in relation to the subject Planning Proposal and the assessment report (provided at **Attachment 1**).
- (b) **That** Council endorse the Planning Proposal at **Attachment 3** 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) **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; and
- (g) **Further, that** Council note that the Parramatta Local Planning Panel's advice to Council (**Attachment 1**) is consistent with the recommendations of this report.

PLANNING PROPOSAL TIMELINE



SITE DESCRIPTION

1. 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**).
2. 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.
3. 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

4. In December 2012, Council entered into a Project Delivery Agreement with PCCDevCo1 (the developer). Under this agreement, the developer would be permitted to develop Council's site, but would need to dedicate to Council a Discovery Centre and an enhanced public domain around the site including along the Parramatta River foreshore.
5. In 2015, development consent was granted for the building currently under construction. The approved architectural plans, per the design excellence scheme, included the Discovery Centre in the podium which projected from the B4 Mixed Use zone into the adjacent RE1 Public Recreation zone. As the Discovery Centre is defined as a 'community facility', the projection into the RE1 Public Recreation zone was permissible. The extent of the projection into the RE1 Public Recreation zone is shown in **Figure 2** below.

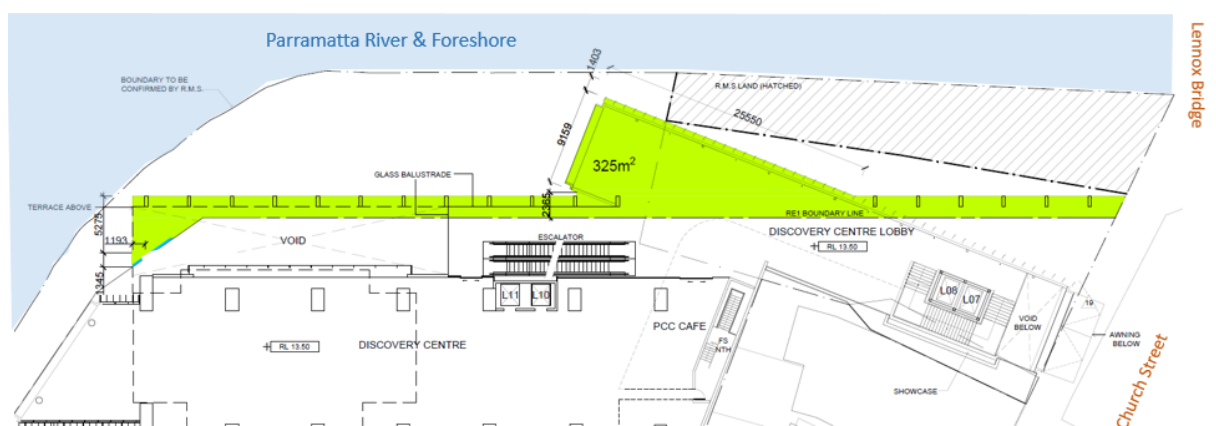


Figure 2: Extent of the podium projection into the RE1 Public Recreation zone (in green).

6. 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.

7. As a result of the above, Council no longer required the community space approved within the development and an agreement was reached whereby the developer purchased level one of the development which was to house the Discovery Centre. The developer is seeking to pursue commercial uses on this level.
8. Construction of the building has already commenced and it is not practical to substantially amend the approved plans so that the building no longer projects into the RE1 Public Recreation land. Given this, there are two issues which arise as a result of the zoning misalignment:
 - i. The developer is only able to use the portions of the building encroaching into the RE1 Public Recreation area, which they have now purchased, 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; and
 - ii. If the RE1 Public Recreation area shown in **Figure 2** is retained, Department of Planning guidelines require that all land reserved for a public purpose but not owned by a Government Agency to be identified on the Land Reservations and Acquisition Map. Given that Council has just sold this land to the applicant, it is counterintuitive for Council's planning policy to be set up to require future reacquisition of this strip of land.
9. 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. The assessment below is as a result of the lodgment of this application which was submitted in October 2019.

RECOMMENDED PLANNING PROPOSAL

10. A detailed assessment report of the Planning Proposal is provided at **Attachment 1**.
11. The intention of this Planning Proposal is not to reduce the amount of public access to the public foreshore of the Parramatta River. Improving access to the river foreshore is a key strategic objective of Council to ensure the river is activated, more accessible and better integrated into the CBD. The Planning Proposal will not change the amount of land accessible to the community because the development will continue to deliver public access at river level and street level as shown in **Figure 3**. This public access will be accessible via an easement for public access required by the Project Delivery Agreement and the Planning Agreements already in place. These areas will be accessible to the public irrespective of whether they are within the B4 Mixed Use Zone or the RE2 Private Recreation Zone.

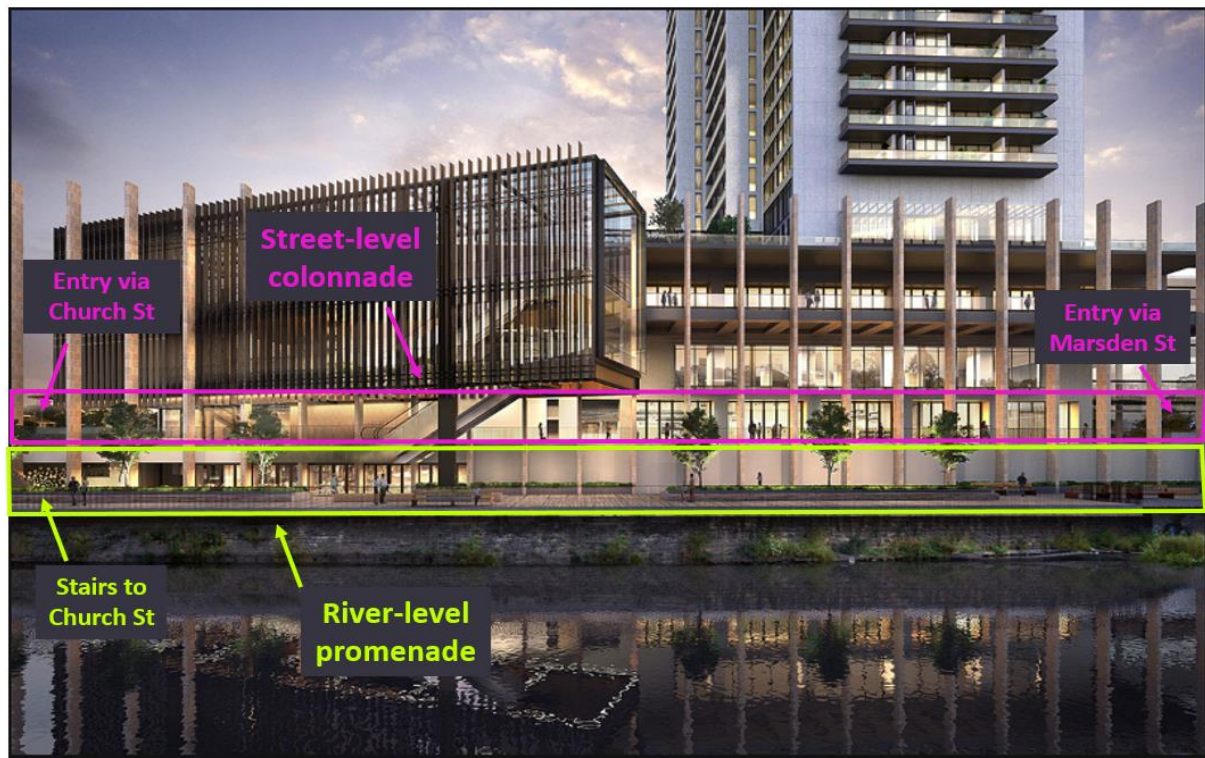


Figure 3: View of the building podium from the north (Parramatta River in the foreground) with public access to be provided on both the street-level colonnade and the river-level promenade.

12. The Planning Proposal seeks to amend the Parramatta LEP 2011 to make the changes proposed in **Figure 4** which includes:
 - i. Rezone the part of the building that will not be accessible to the public (because it is within the outer wall of the development) that encroaches into the RE1 zone, from RE1 Open Space to B4 Mixed Use
Reason: 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.
 - ii. Rezone the outermost area projecting in the RE1 Public Recreation zone that will be accessible to the public 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. Public access will still be retained to the approved boardwalk on both levels in this area via a public right of access.
 - iii. Rezone a portion of space not required as part of the development from B4 Mixed Use to RE1 Public Recreation
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. In order to

ensure that there is no greater environmental impact as a result of this Planning Proposal, the mapped FSR will be redistributed to ensure that no additional gross floor area can be achieved.

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

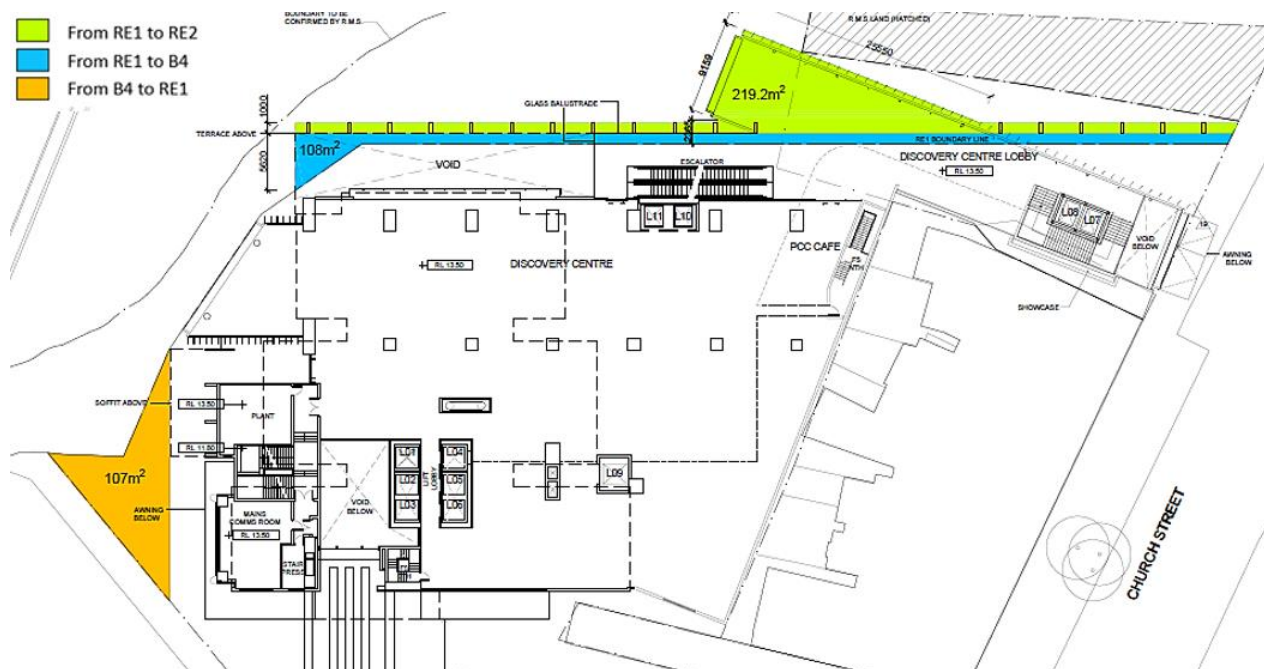


Figure 4: Proposed amendments to the land use zoning map.

14. 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 1**.

Table 1: Comparison of the quantum of public open space under the current and proposed zoning scheme

	Current Zoning	Recommended Planning Proposal
Land zoned RE1	1,569m ²	1,349 m ²
Publicly accessible area in RE1 zone*	2,544m ²	1,998m ²
Publicly accessible area in RE2 zone	nil	438m ²
Publicly accessible area in B4 zone	746m ²	854m ²
Publicly accessible area in W2 zone	630m ²	630m ²
Total Public Open Space	3,920m ²	3,920m ²

*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.

15. In the report to the Parramatta LPP, Council Officers noted that areas of the site currently 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 be sought to be classified as operational land by way of a Council resolution later in the process.
16. In summary, the Planning Proposal in its proposed form is the best mechanism in resolving the zoning misalignment as:
 - a) There is no net loss of publicly accessible space as a result of the Planning Proposal;
 - b) The Planning Proposal does not result in a compromised urban design outcome on the site or surrounding areas; and
 - c) The Planning Proposal does not result in a greater environmental impact.

PEER REVIEW

17. 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.
18. 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.
19. 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.
20. 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 2**.
21. 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.

PARRAMATTA LOCAL PLANNING PANEL

22. This matter was considered by the Parramatta Local Planning Panel (LPP) at its meeting on 21 April 2020 (refer to **Attachment 1** for the assessment report and minute).
23. In issuing its advice to Council, the Parramatta LPP supported the Council Officer's recommendations and advised Council to forward the Planning Proposal to the Department of Planning, Industry and Environment for the purposes of requesting a Gateway Determination.

24. 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 Parramatta LPP addressing any objections received. If no objections are received, the matter will be reported directly to Council seeking approval to finalise the Planning Proposal.

PLAN-MAKING DELEGATIONS

25. 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.
26. 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.

FINANCIAL IMPLICATION FOR COUNCIL

27. 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.
28. This Planning Proposal does not result in any additional residential uplift. Under Council's CBD Planning Proposal Community Infrastructure Framework a contribution to community infrastructure is only required where there is an uplift in residential development potential.
29. This proposal deals with the issues arising from a Council decision to sell the floor space to the developer that would have been occupied by the formerly proposed Discovery Centre facility. 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
Acting Manager Land Use Planning

David Birds
Group Manager City Planning

Alistair Cochrane

Acting Chief Financial Officer

Jennifer Concato

Executive Director City Strategy & Development

Brett Newman

Chief Executive Officer

ATTACHMENTS:

- | | | |
|---|---|----------|
| 1 | Local Planning Panel Assessment Report & Minute | 16 Pages |
| 2 | Peer Review | 7 Pages |
| 3 | Planning Proposal | 30 Pages |
| 4 | Zoning Plans | 14 Pages |

REFERENCE MATERIAL