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Plan Finalisation report – PP number 2022-3571

Riverside Theatre - 353A-353C Church St and Part of 351 Church St, Parramatta, Lot 2 DP 740382 and Lot 1 DP 740382.

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Parramatta Local Environmental Plan 2023 (Amendment No. 1)

The planning proposal (**Attachment A**) applies to the Riverside Theatre site within the Parramatta CBD as shown in **Figure 1**. The planning proposal is needed to facilitate the redevelopment of the Riverside Theatre. Following the Department's finalisation of the Parramatta CBD PP, only land outlined in blue in **Figure 1** adopted the proposed planning controls. The land remaining in Parramatta North (outlined in yellow), including the Riverside Theatre Site, did not adopt these controls and are under further investigation. This proposal seeks to amend development controls to increase the building height and apply site-specific controls to the Special Provisions map within the Parramatta LEP 2023.

The proposal will enable the delivery of cultural, social and community infrastructure by providing a hybrid Riverside Theatre redevelopment scheme that includes the retention and upgrade of the 700-seat theatre and construction of multi venue arts centre on the subject site. This redevelopment will fulfil a priority of Council's cultural infrastructure plan titled 'A Cultural Plan for Parramatta's CBD 2017-2022'.



Figure 1. Site Context (source: Nearmap)

1.2 Site Description

The planning proposal applies to land at 353A-353C Church Street and part of 351 Church Street, Parramatta. The site has an existing building that is located on the eastern side of the site, with the frontage facing Church Street and the Parramatta River Foreshore (**Figure 2**). The existing theatre contains three separate theatres and event spaces. Above-ground parking is located on the western side of the site on the corner of Market and Marsden Street. The Riverside Theatre is owned and operated by City of Parramatta Council.

Table 1 Site description

Address	353A-353C Church St and Part of 351 Church St, Parramatta
Lot / DP	Lot 1 DP 740382 and Lot 2 DP 740382
Council / LGA	City of Parramatta
LGA	Parramatta
Size	7000sqm



Figure 2. Subject site outlined in red (source: Planning Proposal)

The site is located within the Parramatta CBD (**Figure 2**) and bounded by Marsden Street to the west, Market Street to the north, Church Street to the east and the Parramatta River Foreshore to the south. Prince Alfred Square is to the north of the site and the Old King's Parade Ground to the west. East of the site, land at Church Street is developed with a 5-6 storey mixed-use development. South of the site on the opposite side of the River, a mixed-use tower (The Lennox Development) is being developed. The site is within walking distance of the Parramatta Light Rail stop (at Prince Alfred Square) which will be opened as part of the Stage 1 of the Parramatta Light Rail project in 2024.

1.3 Purpose of Plan

The purpose of the plan is to amend the Parramatta Local Environmental Plan (LEP) 2023 to:

1. Amend the **Height of Buildings Map** (Sheet HOB_009) from 15m to show a maximum building height of 28m.
2. Amend the Special Provision Map to include the site and introduce a Site-Specific Clause within '**Part 7** Additional local provisions – Parramatta City Centre' that:
 - a. prevents new development generating overshadowing to the Parramatta River Foreshore between 12pm and 2pm;
 - b. requires active street frontages; and
 - c. specifies a maximum Design Excellence bonus of 15%.

The plan facilitates delivery of a hybrid Riverside Theatre that will include the upgrade of the existing 700 seat theatre and a new multi venue arts centre. This proposal will create over 100 ongoing jobs annually.

1.4 State electorate and local member

The site falls within the Parramatta state electorate. Donna Davis MP is the State Member.

The site falls within the Parramatta federal electorate. Dr Andrew Charlton MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 16 November 2022 (**Attachment B**) determined that the proposal should proceed subject to conditions. The determination included a requirement for the proposal to be updated to include additional flood information to support the proposed amendments. This is discussed further in Section 4.1 of this report.

At Council's meeting on 27 February 2023, the planning proposal was endorsed and submitted to the Department to finalise the LEP (**Attachment C and C1**). Council has met all the Gateway determination conditions.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 14 December 2022 to 2 February 2023.

A total of 31 submissions were received including 30 community submissions and 1 public agency submission. While all submissions supported the intended outcome of the planning proposal, a number raised planning related concerns. The post-exhibition report outlines the issues raised and Council's response (**Attachment D**).

The Department considers Council has adequately addressed the matters raised in the public submissions. A summary of key matters raised, and Council's response is included in **Table 2**.

Table 2 Summary of Key Issues

Issue raised	Council response and Department assessment of adequacy of response
<p>Insufficient car parking for future theatre visitors</p>	<p>Council Response:</p> <p>Council notes that the planning proposal will not result in greater development yield than what is currently experienced on the site (i.e. no change to the existing FSR). Council acknowledges that the site is well serviced by public transport infrastructure and that as such no detailed parking consideration is required as a part of the planning proposal.</p> <p>Detailed car park design will be prepared as part of future design and State Significant Development Application process. Any proposed parking provision will need to comply with relevant controls for the CBD contained within the Parramatta LEP and Development Control Plan.</p> <p>Department Response:</p> <p>The site is well serviced by public transport including the western train line, bus network, ferry services as well as the theatre being within walking distance from the future Parramatta Light Rail which is due to open in 2024. It is considered that with the completion of this infrastructure, the theatre will be more accessible. The detailed car parking design will be dealt with at the Development Assessment stage.</p>
<p>Lack of detailed flood protection measures for the site</p>	<p>Council Response:</p> <p>Council note that the planning proposal will not generate greater flood risk compared to the current level of flood risk on the subject site (see Figure 3) under the planning controls. The planning proposal has been assessed against the Planning Ministerial Direction and is consistent with its flooding requirements. Council also note that the planning proposal is not intensifying development yield rather is strictly addressing urban design considerations through the alteration of building height from 15m to 28m (no changes to FSR proposed).</p> <p>Department Response:</p> <p>The Department notes the Gateway determination contained a condition to address the Section 9.1 Direction 4.1 Flooding by including flooding analysis from the Parramatta CBD Planning Proposal (CBD PP). Council responded to this condition by updating the planning proposal prior to public exhibition.</p> <p>The Department notes that the updated Floodplain Risk Management Plan that was prepared as a part of the CBD PP also encompasses the Riverside Theatre site and expands on the flood context of the site</p>

Issue raised	Council response and Department assessment of adequacy of response
	including risks and mitigation measures. Flood impact and mitigation will be further considered through the Development Assessment stage.
Protection of view corridors for residents living in the Lennox building	<p>Council Response:</p> <p>Council notes that the Lennox building is located directly opposite the Riverside Theatre on the southern bank of Parramatta River and is the tallest building in the surrounding built environment with a building height of 157m.</p> <p>The planning proposal seeks to increase the building height from 15m to 28m which is considered to have inconsequential impacts on the view corridor, given the existing building has the height of 25m and the eastern side of Church Street has the height of building control at 36m. In addition, the theatre concept design indicates that the proposed 28m is the highest building element which slowly descends towards the western side of the subject site.</p> <p>Department Response:</p> <p>The Department notes Council has adequately assessed the impacts of loss of views for the proposed controls.</p>
Overshadowing of the Parramatta River and its foreshore area	<p>Council Response:</p> <p>Council notes that the planning proposal seeks to protect solar access to the southern side of the Parramatta River foreshore by introducing a site-specific clause requiring new development to not overshadow the southern side of the river foreshore between the hours of 12:00pm and 2:00pm (noting that the northern side of the river is already overshadowed by the existing building).</p> <p>These hours of solar protection are consistent with the Council adopted policy position relating to overshadowing proposed in the CBD PP.</p> <p>Council also notes that the proposed concept design to be delivered by the planning proposal exceeds the solar access protection to the Parramatta River and its foreshore area by an additional three hours. This further demonstrates the low impact development will have on overshadowing to Parramatta River and its foreshore area.</p> <p>Department Response:</p> <p>The Department agrees with Council's assessment. The inclusion of a site-specific-clause to prevent overshadowing on the southern side of the river foreshore is considered adequate to address concerns about overshadowing of the Parramatta River.</p>

Issue raised	Council response and Department assessment of adequacy of response
Consultation on the design of theatres programs	<p>Council Response:</p> <p>Council noted that a number of the submissions commented on the detailed consultation on the design of theatres programs. Council considers these concerns to be out of the scope of the proposal and will be consulted on as a part of future process.</p> <p>Department Response:</p> <p>The Department agrees with Council assessment.</p>

3.1 Advice from agencies

The Department notes that advice was received from Endeavor Energy as a part of the exhibition process of the planning proposal. Endeavor Energy raised no objection to the planning proposal however noted that any future development on the site within close proximity of the existing and/or required electricity infrastructure need to comply with relevant guideline and policy.

In response, Council noted this advice and further identified that relevant service providers will be consulted as part of the Development Assessment process in the future to ensure adequate service provision.

No consultation is required with public authorities or government agencies under section 3.34(2)(d) of the EP&A Act.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment B1**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the Central City District Plan and is consistent with the priorities for infrastructure and collaboration, liability, productivity and suitability as outlined in the plan.
- Remains consistent with the Council's Local Strategic Planning Statement and other strategic plans in which it is identified as one of the many cultural infrastructure projects needed for Parramatta to thrive as the Central City.
- Is generally consistent with Section 9.1 Directions. Direction 1.4 Site-specific provisions and Direction 4.5 Flooding are considered of minor significance and is justified. Further consistency with Direction 4.1 has been considered and updated in the planning proposal as conditioned in 1(a) of the Gateway determination.
- Remains consistent with relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment,

requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 3 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 4 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

Direction 4.1 Flooding

The Gateway determination report identified that the original planning proposal was inconsistent with Direction 4.1 Flooding and left this unresolved subject to additional information being included in the proposal. This direction applies when a relevant planning authority prepares a planning proposal that creates, removes, or alters a zone or a provision that affects flood prone land. As noted in the planning proposal, the site is located within the Probable Maximum Flood for the Upper Parramatta River and the western side of the site is affected by the 100-year flood event (**Figure 3**). If a PMF event was to occur, it is likely a flood depth will be greater than 2-4 meters on the Riverside Theatre site.

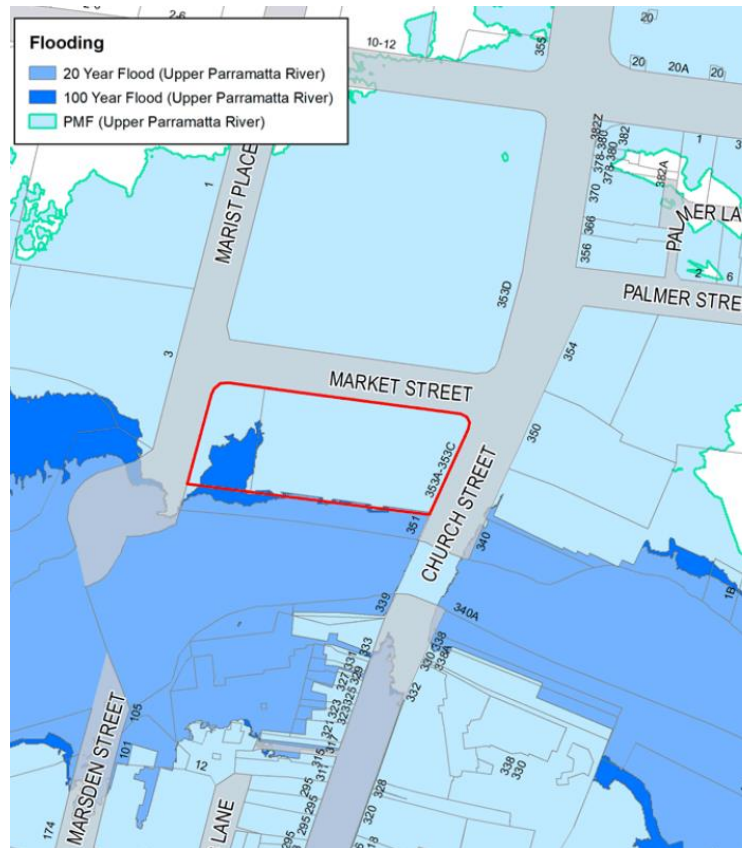


Figure 3. Flooding Map extract (source: planning proposal)

Council originally noted that proposal was consistent with the direction as it did not intensify development yield, with no increase in FSR sought. The proposal was noted to be strictly focused on urban design considerations with the amendment of height of building provisions. Although there is no increase in FSR, the planning proposal has indicated that the total seating capacity is likely to increase as part of the redevelopment. The Department in issuing the Gateway determination, included condition 1(a) which required the planning proposal be updated to include flooding analysis that was undertaken as part of the CBD PP, to ensure that this Direction is addressed appropriately.

The planning proposal has been revised and updated to include a greater analysis of Section 9.1 Flooding by including flooding analysis from the CBD PP. From this analysis the planning proposal concluded that the Floodplain Risk Management Plan (**Attachment F**) that was prepared as a part of the CBD PP includes the Riverside Theatre site and is therefore applicable. The Floodplain Risk Management Plan (**Attachment F**) outlines the context of the site's flood risks and mitigation measures in relation to the whole of the Parramatta CBD study area including the Riverside Theatre.

It has been identified within the Floodplain Risk Management Plan that the site is located on the edge of the high hazard zone with the remainder being classified as medium to low hazard. The plan notes that the flood duration is the longest in areas directly adjacent to the Parramatta River. It is likely due to the site's close proximity to the river, that if the river breaks its banks the site will be inundated and would remain impacted when the flood has receded from other areas of Parramatta.

Although the riverbank adjacent to the site is considered a high flood risk to life (category 8), this land has not been included as a part of the planning proposal and will not be developed according to Figure 1 of the planning proposal. The site itself sits within lower risk categories (category 3 and 4) where mitigation measures recommend shelter in place above the PMF in accordance with Flood Emergency Response Plan (FERP), prohibit residential development while permitting

commercial development that is below 1% flood level if other planning considerations can be justified.

It is important to note that any potential impacts as a result of the development will be appropriately considered and addressed at the development application stage in accordance with the Flood Risk Development Manual, the Floodplain Risk Management Plans and the relevant controls contained within the PLEP 2023 and Parramatta Development Control Plan 2011. Therefore, the updated planning proposal with analysis from the CBD PP and the Floodplain Risk Management Plan, justifies the inconsistency with Direction 4.1.

Urban Design and Built Form

Condition 1(b) of the Gateway determination required Council to clarify the intended design excellence bonus for height of buildings and updated diagrams and modelling accordingly. The planning proposal was updated to include a more detailed explanation of the rationale behind the design excellence bonus.

The updated planning proposal explains that the concept design of the site will be used as the basis for the future Design Excellence Competition. To be consistent with the Council endorsed CBD PP, a site-specific clause has been proposed that allows for a 15% Design Excellence Height and/or FSR bonus to the winning design scheme following the design excellence competition.

As the site was removed from the finalisation of the CBD PP, the existing LEP allows for a Design Excellence bonus of up to 25% for all non-residential development in the B4 zone. The proposed site-specific clause reinstates the CBD PP bonus at 15% and if awarded could bring the maximum permitted height from 28m to 32m (i.e. 28m +15%). Council notes that is well below the height that could have been achieved if the CBD PP was finalised as adopted by Council.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 5 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Two maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment G)</i> Council confirmed on 27/07/2023 that it approved the draft and that the plan should be made (Attachment H)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 11/08/2023, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Secretary's delegate determine that:

- The draft LEP's inconsistency with Section 9.1 Direction 4.1 Flooding is justified in accordance with the terms of this Direction; and

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- Is consistent with the relevant objectives and Planning Priorities of the Central City District Plan;
- Aligns with the strategic vision of the Parramatta Local Strategic Statement 2036;
- Facilitates the redevelopment project for the Riverside Theatre to progress following the site's removal from the Parramatta CBD Planning Proposal (CBD PP) at Parramatta;
- Enable the timely delivery of a piece of cultural, social and community infrastructure to meet the needs of the current and future population of the City of Parramatta and Greater Sydney; and
- Fulfill the actions of Council's cultural infrastructure plan titled 'A Cultural Plan for Parramatta's CBD 2017-2022'.



15/08/2023

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Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination dated 16 November 2022
B1	Gateway Determination Report
C	Section 3.36(1) consultation with Council
D	Council Post-exhibition Report – 27 February 2023
D1	Council Minutes – 27 February 2023
E	Local Planning Panel – Council report and Minutes – 15 February 2023
F	Parramatta CBD Floodplain Management Plan 2021
G	Council comments on draft LEP
H	Council confirmation of draft LEP
PC	Parliamentary Council Opinion