

FOR COUNCIL DECISION

ITEM NUMBER	13.2
SUBJECT	Planning Proposal, draft Development Control Plan and draft Planning Agreement for 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta (St John's Anglican Church)
REFERENCE	RZ/5/2018 - D08385712
APPLICANT/S	Jattca Pty Ltd
OWNERS	St John's Parramatta Endowment Fund
REPORT OF	Team Leader –Land Use Planning
CSP THEME:	INNOVATIVE

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

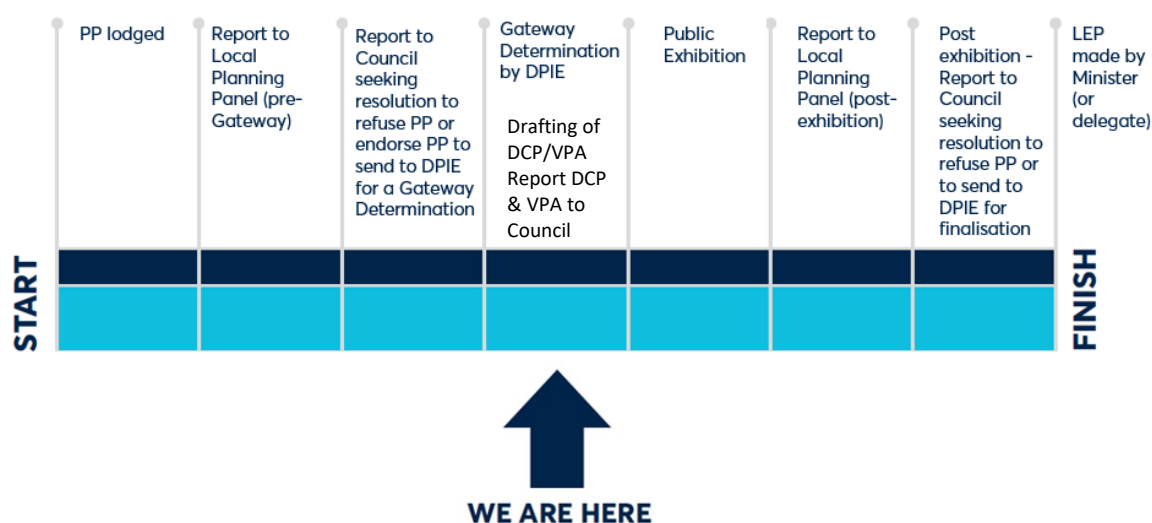
This report seeks Council's direction on a Planning Proposal, draft Development Control Plan and draft Planning Agreement (**Planning Scheme**) for the land at 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta (St John's Anglican Church).

RECOMMENDATION

1. **That IF**, prior to 28th February 2022, the Council and the Applicant agree on a Planning Agreement on terms satisfactory to Council, including the minimum conditions in **Table 2** paragraph 41 of this report; **THEN**
 - a) Council endorse for public exhibition the Planning Scheme (Refer to **Attachments 11 and 12** for the St John's Anglican Church Site acknowledging the Planning Proposal includes amendments as described in 1.b) below).
 - b) The Planning Proposal will be sent to the Department of Planning and Environment seeking endorsement for amendments to the Gateway Determination, being a proposed new clause requiring a staged DA process and a 2 week extension to the required exhibition date (28 February 2022) and finalisation date (30 June 2022).
 - c) The outcome of the public exhibition be reported to Council.
 - d) Council delegate authority to the Chief Executive Officer to complete negotiations of the Planning Agreement on terms referred to in **Table 2** and paragraph 41 and to correct any minor inconsistencies or anomalies of an administrative nature, relating to the Planning Scheme documents, that may arise during the drafting and exhibition processes.
2. **That** should the Planning Scheme proceed to public exhibition, then Council endorse the Chief Executive Officer to:
 - a) Continue negotiations with the Applicant regarding the possible closure and sale of part of Hunter Street as part of the project.
 - b) Continue discussions with the Owners of 181 Church Street, Parramatta regarding their use of alternate vehicle access options.
 - c) Report back to Council the outcomes of these discussions with the report to Council on the outcomes of the planning scheme public exhibition.

3. **Further, that IF** agreement between Council and the Applicant cannot be achieved by 28 February 2022, Council will:
- Write to the Department of Planning and Environment and other relevant public authorities indicating that it will no longer progress the Planning Proposal.
 - No longer pursue any of the Planning Scheme documents
 - Withdraw support for the sale of any portion of Hunter Street to the St John's Anglican Church.
 - Identify land at 41, 43 and 45 Hunter Street, Parramatta on the Land Reservation Acquisition Map to facilitate the creation of a 6 metre wide laneway to provide future vehicle access to these three (3) sites and 181 Church Street, Parramatta, as part of a future housekeeping amendment to Parramatta Local Environment Plan 2011.
 - Write to the St John's Parramatta Endowment Fund confirming that the Deed of Agreement between Council and the Anglican Church Authorities, last signed and amended in 1991, remains in force and continues to secure public access over the Church owned land between Church Street and Hunter Street, notwithstanding that Council withdraws support for the Planning Scheme for the St John's Anglican Church.

PLANNING PROPOSAL TIMELINE



SUMMARY

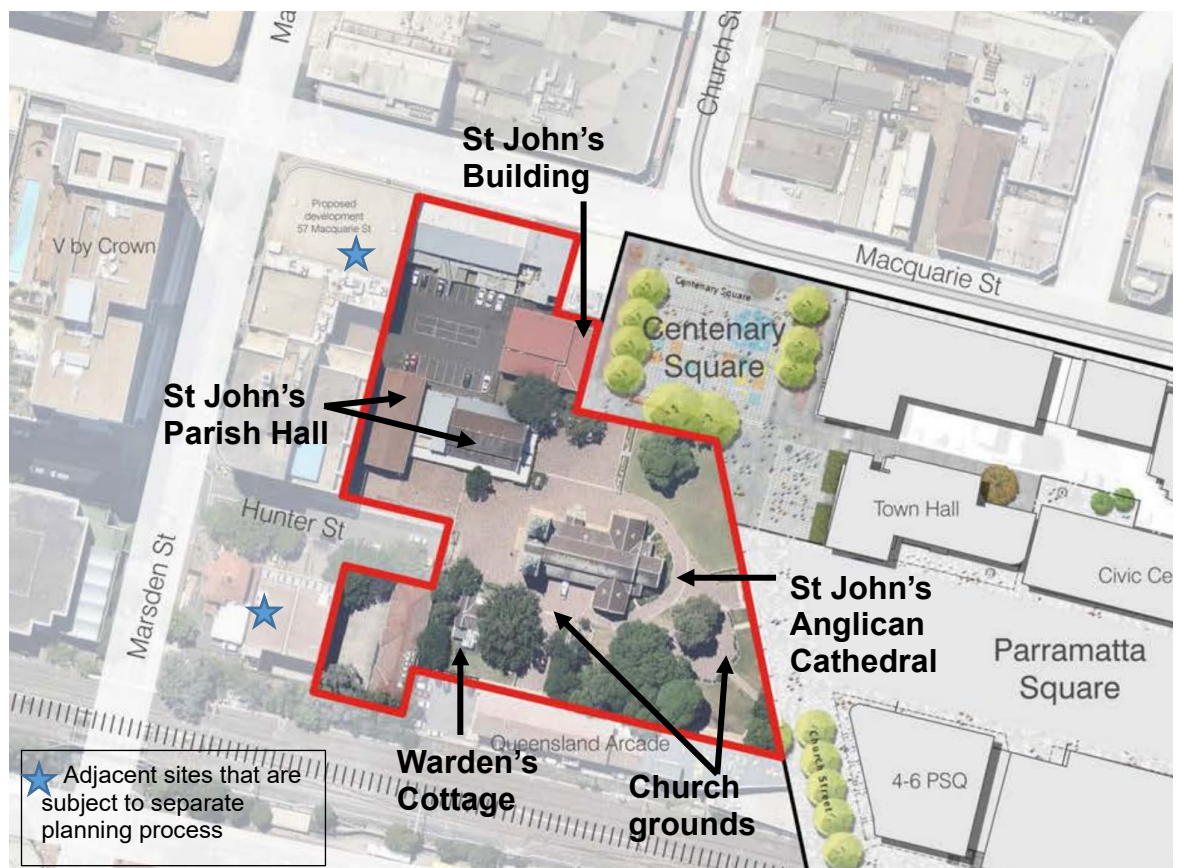
- This report seeks Council's endorsement of a decision making process in relation to the Planning Scheme for the land at 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta (St John's Cathedral Anglican Church) noting that for the purpose of this report the Planning Scheme consists of the Planning Proposal, Draft Development Control Plan and any Planning Agreement agreed.
- Progression of the Planning Scheme cannot be recommended because the terms offered by the Applicant in their Planning Agreement Letter of Offer dated 21 January 2022,
 - Do not outweigh the loss of a local heritage item; and

- ii. Are not consistent with the City of Parramatta Council's Planning Agreements Policy (Amendment 1) adopted by Council 26 November 2018; and
 - iii. Do not include compensation for the 25% reduction in the area of the civic space.
3. The recommendation is that Council officers and the Applicant continue negotiations up until 28th February 2022. If prior to this date, the following conditions summarised below and detailed at **Table 2** of this report are agreed, then the Planning Scheme can proceed to public consultation and following this the exhibition outcomes reported to Council:
 - i. Terms within the Planning Agreement to outweigh the loss of a local heritage item; and
 - ii. Terms within the Planning Agreement to ensure alignment with Council's Planning Agreements Policy; and
 - iii. Terms within the Planning Agreement to compensate for the 25% reduction in the area of the civic space.
4. If an agreement between Council and the Applicant cannot be reached by this date (28 February 2022), the Planning Scheme will no longer be progressed.
5. The Council's resolved position as detailed in the 16 December 2019 Council Report (Item 18.4) in relation to key elements of the Applicant's proposal are:
 - i. Additional density on the site is generally appropriate and consistent with the current policy framework for sites in the CBD as set out in the draft Parramatta CBD Planning Proposal
 - ii. Delisting from the Parramatta Local Environment Plan 2011 of St John's Parish Church Hall may be appropriate if the public benefits accruing to the community by the proposal are greater than the loss associated with potential demolition of the heritage listed Parish Hall.
 - iii. Inclusion of a 6 metre wide strip of land on the Land Reservations Acquisitions Map in the Parramatta Local Environment Plan 2011 to facilitate a laneway for vehicle access to 41, 43 and 45 Hunter Street and 181 Church Street, Parramatta.
6. The Applicant and Council officers have worked to progress the preparation of site-specific Development Control Plan controls for the site to support the changes being made under the Planning Proposal, as well as a Planning Agreement. The purpose of the Planning Agreement is to deliver infrastructure and public benefits for the community based on the matters outlined in the 16 December 2019 Council Report and Resolution, and in particular, whether the net public benefit accruing to the community from the new infrastructure and public benefits outweighs the loss the community will experience by having a locally listed heritage item demolished.
7. The Applicant's 'Letter of Offer' (also referred to as a Planning Agreement) dated 21 January 2022 sets out the public benefits offered to the community by the proposal, subject to Development Consent being granted to remove St John's Parish Church Hall being:
 - i. Item No. 1: an enlarged and embellished open space around the Cathedral.
 - ii. Item No. 2: contribution of a stratum parcel of land to be formed into a section of a new laneway from Marsden Street to the rear parking area of 181 Church Street.

- iii. Item No. 3: enabling temporary vehicle access to and from the rear parking area of 181 Church Street over Church-owned land to and from the existing Hunter Street cul-de-sac.
 - iv. Item No. 4: in perpetuity licence that permits members of the public to access and use the open space.
8. Many elements of the Applicant's current 2021 offer remain the same as the original offer in 2019. Elements such as the Church's control of public access to the open space, the request that the applicant be able to halt temporary access arrangements that might be put in place for 181 Church Street are consistent in both offers. However, the changes to the area of open space and consideration of the further detail now provided on maintenance and liability issues, and the implications of the applicant being able to halt temporary access arrangements, mean that the proposal has been re-assessed in its totality to ensure Officers remain convinced that the public benefit from the Planning Agreement outweighs the loss the community would bear if the heritage item was demolished.
9. Despite engagement there remains disagreement between the Applicant and Council officers about the matters to be included in the Planning Agreement and the resulting level of public benefit accruing to the community through the loss of the St John's Harish Church Hall.
10. It is recommended that the Applicant be given a final opportunity to agree to arrangements which satisfy Council that sufficient public benefit will be provided in the Planning Agreement to offset the demolition of the Heritage item. Unless this can occur prior to the Department of Planning and Environment's deadline for public exhibition of the Planning Proposal (which is 28 February 2022), the Planning Scheme in its entirety should not progress.

SITE DESCRIPTION

11. The subject site contains 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta. These properties comprise of twelve (12) allotments currently owned by the Anglican Church Property Trust, Diocese of Sydney, as Trustee for the Parish of Parramatta and the St John's Parramatta Endowment Fund (see Figures 1 and 2). The subject site is irregular in shape and has a total site area of 10,857 square metres.

Figures 1 and 2: The subject site and surrounds

12. In the location shown in **Figure 3**, the subject site contains a State heritage item known as St John's Anglican Cathedral (I011805) and several local listed items including:

- St John's Parish Church Hall (Local Listing I713);
- Warden's (Verger's) Cottage (Local Listing I653); and
- St John's Building (façade included in local listing I651 for Centenary Square and adjoining buildings).

Figure 3: Heritage items within and adjacent to the subject site

13. These items as they relate to their respective allotments, contribute to the setting and curtilage of the St John's Anglican Cathedral. The subject site and its surrounds are part of a critical heritage precinct in the Parramatta CBD with a number of heritage items on adjacent sites.
14. There is currently one (1) site-specific Planning Proposal being processed for land at 57 Macquarie Street (corner of Marsden Street and Macquarie Street) adjoining the Church site to the west (see **Figure 2**). At the time of writing this report, this application had not yet been reported to Council as part of the pre-Gateway assessment.
15. A State Significant Development process is also underway for land at 41-43 Hunter Street, Parramatta (corner of Marsden Street and Hunter Street) and adjoining the Church site to the west (see **Figure 2**). Council provided comments on the Secretary's Environmental Assessment Requirements (SEARs) in February 2021 and a Design Excellence Competition administered by the NSW Government Architect was held in December 2021. At the time of writing this report, an Environmental Impact Statement had yet to be lodged with the Department to assess the State Significant application for a private hospital.

BACKGROUND

16. On 29 May 2018, Jattca Property Solutions (the Applicant) lodged a Planning Proposal to Council on behalf of the landowner (Anglican Church Property Trust Diocese of Sydney, as Trustee for the Parish of Parramatta and the St John's Parramatta Endowment Fund) in relation to land at 195 Church Street

and 68-79 Macquarie Street and 45 Hunter Street, Parramatta. The subject site is commonly referred to as the St John's Church site or the Church site.

17. The applicant's Planning Proposal as originally submitted to Council is based on a 100-year plan envisaged for the subject site and includes,
 - A new setting for the state heritage listed St John's Anglican Cathedral through an enhanced and enlarged open space comprised of the provision of a new square (proposed to remain under the ownership of the Church but accessible by the public) requiring the closure of part of Hunter Street;
 - A new northern tower comprised of 45-storeys (approximately 192 metres) which requires the demolition of the existing locally heritage listed Church Hall located immediately north west of the State listed Cathedral;
 - A new southern tower comprised of 43-storeys (approximately 152 metres) containing ground floor active uses with residential accommodation above; and
 - Shared basement car parking extending from the north of the site, to the south of the site with proposed vehicular access off Macquarie Street.
18. The applicant's preference is to remove the existing local heritage item identified as St John's Parish Hall and replace it with an office tower and enlarged open space around the Cathedral, and to provide a better connection of Church facilities within the new office tower and the Cathedral. The applicant is also seeking to provide a basement car park under the enlarged open space connecting the two development sites, with both the basement and enlarged open space dependent on the closure of a portion of Hunter Street.
19. On 16 December 2019, Council resolved to endorse the Planning Proposal for the purpose of requesting a Gateway determination; and to prepare a draft Development Control Plan and draft Planning Agreement to be exhibited concurrently with the Planning Proposal. A link to the 16 December 2019 Council Report and Resolution is provided here: Council Report [Agenda of Council - 16 December 2019 \(nsw.gov.au\)](#) and Council Resolution [Minutes of Council - 16 December 2019 \(nsw.gov.au\)](#).
20. On 8 September 2020, the then Department of Planning, Industry and Environment (the Department) issued a Gateway determination which allowed the Planning Proposal to proceed to public exhibition. The Gateway determination is provided at **Attachment 4**. Condition 1(b) of the Gateway requires all references regarding the removal of St John's Parish Hall as an item of local heritage significance are to be removed, as the LEP requires consideration of heritage issues as part of any development application process.
21. Further advice has also been received from Transport for NSW dated in July 2021 confirming that access from Macquarie Street is not encouraged and vehicle access should be provided from Hunter Street as the preferred alternative. A copy of the advice is provided at **Attachment 6**.
22. On 10 November 2021, the Department issued an Alteration to the Gateway Determination (copy provided at **Attachment 5**) which requires the Planning Proposal to commence public exhibition by 28 February 2022; and for the LEP amendment to be finalised by 30 June 2022.

SITE SPECIFIC DEVELOPMENT CONTROL PLAN AND PLANNING PROPOSAL

23. The draft site-specific Development Control Plan for the subject site sets relevant development controls for:
- heritage conservation,
 - the form of the buildings and public domain,
 - vehicle access,
 - parking and servicing,
 - management of flood and rainwater risks; and
 - environmental sustainability.
24. In drafting these controls, the following policy issues have been considered:
- The site-specific Planning Proposal for the St John's Anglican Cathedral site,
 - Council resolution dated 16 December 2019 which set out criteria to be considered when preparing the DCP,
 - Conditions of the Gateway determination dated 8 September 2020
 - Draft amendments to Parramatta City Centre Development Control Plan dated 11 October 2021 and publicly exhibited at the end of last year.
25. The Applicant and Council officers worked in an iterative manner in mid to late 2021 to progress a site-specific DCP that reconciled the stated commercial imperatives of the Applicant and various public domain, heritage and policy issues. The majority of matters in the site-specific DCP have ultimately been agreed upon by both sides, and the site-specific DCP at **Attachment 11** reflects the outcome of that collaboration.
26. The draft site-specific DCP has been drafted to include controls for the two scenarios for the St John's Parish Hall being, Option A, removal and replacement, and Option B, partial retention of the hall.
27. **Attachment 10** provides the following additional information on the DCP:
- The overall intent of the DCP controls,
 - Background to the Heritage, Public Domain and Built Form DCP controls,
 - Outline of the site-specific DCP controls not consistent with the draft Parramatta City Centre Development Control Plan 2021.
 - The proposed planning pathway that reflects the two re-development options for the site, specifically a Stage 1 DA and relationship to the new site-specific LEP clause discussed below and in **Attachment 12**.
28. The site specific Planning Proposal for the subject site was initially endorsed by Council on 16 December 2019. As a result of the Gateway condition, amendments to the Planning Proposal to remove any reference to de-listing of the Church Halls as a heritage item was necessary. This issue has also led Council Officers to recommend the introduction of an additional clause. In order to avoid the applicant having to do two design competitions as part of a future approval process – one with the Hall retained, and one without the Hall - the clause will require a staged approval approach where a decision on the removal of the Hall and building envelope is made in a DA first, with the design competition then proceeding as the next step. The design competition would then know whether the design must retain or remove the Hall. Once the design

competition is complete, a DA that is more procedural in nature will then approve the final design to allow development to proceed. The introduction of this clause requires the Planning Proposal to be amended and endorsed via an alteration to the Gateway determination by the Department prior to any exhibition.

29. The critical matter is understanding the heritage significance of the St John's Parish Church Hall prior to undertaking a Design Competition to provide certainty regarding the proposed form of development to occur on the site. To achieve this principle, the new site specific clause will require the following matters to be addressed by a Stage 1 DA:
- design principles drawn from an analysis of the site and its context,
 - heritage conservation and interpretation including a Conservation Management Plan.
 - the suitability of the land for the development,
 - impact on, and improvements to open spaces,
 - vehicle access, basement design and pedestrian safety,
 - the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers on neighbouring sites in terms of separation, setbacks, amenity and urban form.
30. Notwithstanding the general support for the site-specific DCP and Planning Proposal, there remains disagreement between the Applicant and Council officers about the matters to be included in the Planning Agreement and the resulting level of public benefit accruing to the community through the loss of the St John's Harish Church Hall.
31. The next steps in relation to the site specific DCP and Planning Proposal are dependent on Council's decision in relation to the Applicant's draft Planning Agreement, which is discussed in the next section of this report.

PLANNING AGREEMENT

32. The 16 December 2019 Council report (Item 18.4) listed the public benefits offered by the Applicant as part of the Planning Proposal for the St John's Church site as,
- i. New civic space and laneway (with public access over both);
 - ii. Immediate temporary vehicle access to 181 Church Street; and
 - iii. Future permanent vehicle access along the rear of 45 Hunter Street.
33. This Council report also outlined the framework for the negotiation and assessment of the public benefits offered by the Applicant being,
- i. The value of the public benefits accruing to the community by the proposal and whether these benefits are greater than the loss associated with potential demolition of the local heritage item.
 - ii. Council's policy and procedures relating to Developers and Council entering into Planning Agreements under Section 7.4 of the Environmental Planning and Assessment Act 1979 as set out in the City of Parramatta Council Planning Agreements Policy (Amendment 1) 2018 (Policy).
34. Since this time Council officers and the Applicant have worked to progress a Planning Agreement to deliver infrastructure and public benefits for the

community based on the matters outlined in the 16 December 2019 Council Report and Resolution, as well as new information being,

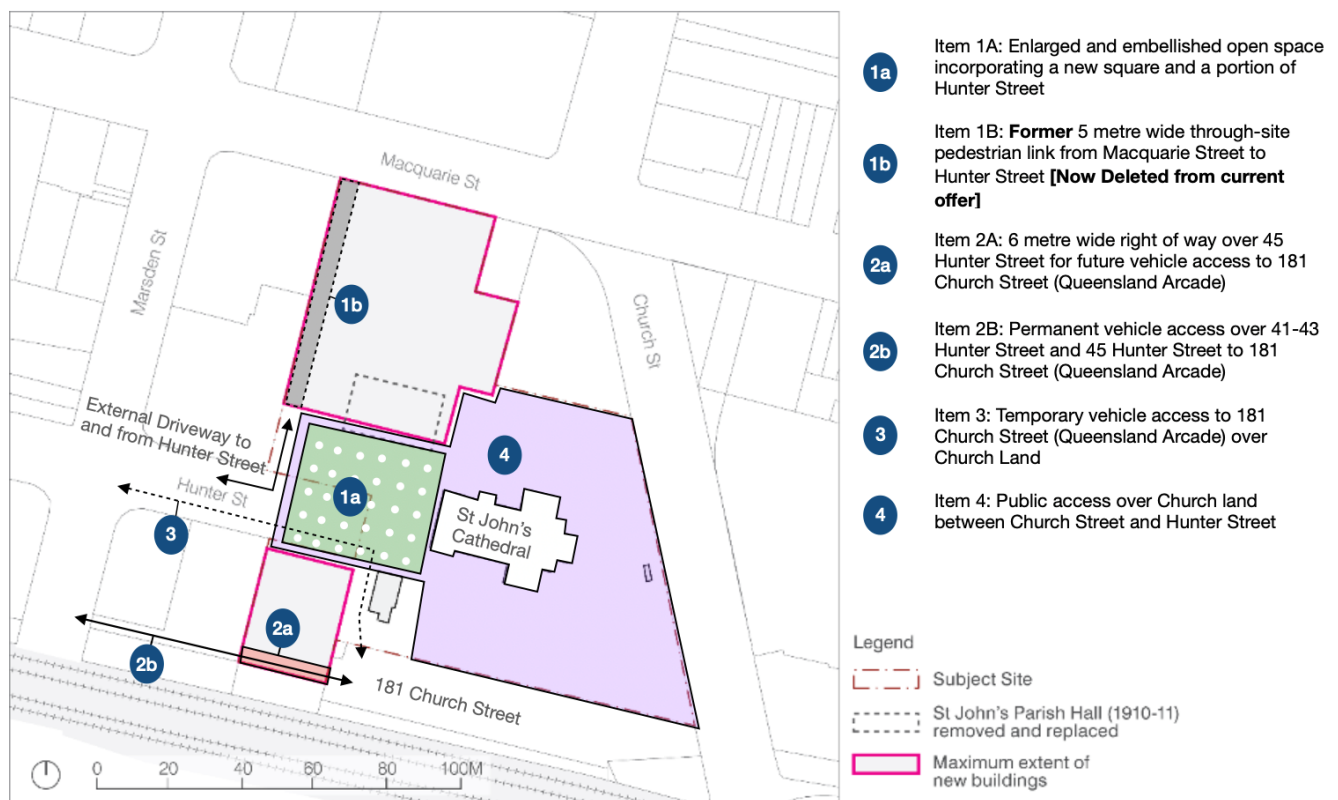
- i. The Department would not support de-listing of the heritage item (see **Attachment 4**), and
 - ii. Transport for NSW advice that makes it highly likely vehicle access will be from Hunter Street which has changed the context for what infrastructure can be delivered (see **Attachment 6**).
35. Despite engagement there remains disagreement between the Applicant and Council officers about the terms of the items offered by the Applicant and the resulting level of public benefit accruing to the community through the loss of the Hall. A detailed assessment of the Applicant's offer is provided at **Attachment 1**.
36. A copy of the Applicant's original Letter of Offer dated 12 September 2019 is provided at **Attachment 3**, and a copy of the Applicant's latest Letter of Offer dated 21 January 2022 is provided at **Attachment 2**. A comparison of the headline public benefits in each offer is outlined in **Table 1**.
37. Many elements of the Applicant's current 2021 offer remain the same as the original offer in 2019. Elements such as the Church's control of public access to the open space, the request that the applicant be able to halt temporary access arrangements that might be put in place for 181 Church Street are consistent in both offers. However, the changes to the area of open space and consideration of the further detail now provided on maintenance and liability issues, and the implications of the applicant being able to halt temporary access arrangements, mean that the proposal has been re-assessed in its totality to ensure Officers remain convinced that the public benefit from the Planning Agreement outweighs the loss the community would bear if the heritage item was demolished.

Table 1: Comparison of public benefits offered

Public benefits within the Applicant's Letter of Offer dated 12 September 2019, and reported to Council on 16 December 2019.	Public benefits within the Applicant's Letter of Offer dated 21 January 2022, and the subject of this report to Council.
<p>Subject to development consent granting the right to remove St John's Parish Church Hall, the following public benefits are offered:</p> <ol style="list-style-type: none"> 1. New civic space and pedestrian laneway; 2. Future permanent vehicle access along the rear of 45 Hunter Street. 3. Immediate temporary vehicle access to 181 Church Street; and 4. Access and use of Civic Space Land and laneway 	<p>Subject to development consent granting the right to remove St John's Parish Church Hall, the following public benefits are offered:</p> <ol style="list-style-type: none"> 1. New civic space; 2. Future permanent vehicle access along the rear of 45 Hunter Street 3. Immediate temporary vehicle access to 181 Church Street; and 4. Access and use of Civic Space Land. <p>Importantly, the conditions within the Applicant's latest planning agreement have reduced the 'value' of the civic space land. This is discussed in this report below and in Attachment 1.</p>

38. The pedestrian laneway was removed from the Applicant's January 2022 offer because vehicle access to the site, now required by TfNSW to be from Hunter Street, would result in a pedestrian-vehicle conflict point decreasing the value of the laneway. Secondly, the size of the civic area that the applicant could make available to the public is also effectively reduced by the driveway through part of the civic area linking to Hunter Street. The area used for the driveway cannot be considered to provide public benefit for the purpose of this assessment.

Figure 4: Diagrammatic map prepared by Council officers illustrating the proposed public benefits on and adjacent to the St John's Church site as offered by the Applicant in the 21 January 2022 Letter of Offer.



39. Despite the changes to the laneway and civic space because of the TfNSW advice, the public benefits offered by the Applicant have the potential to reduce pedestrian and vehicle conflict in two separate locations thereby enlivening and improving part of the pedestrian network in the Parramatta CBD, and at the same time, providing for passive recreation opportunities in an area adjacent to the active public spaces at Centenary Square and Parramatta Square.
40. However, after considering the issues that have arisen since the previous report to Council and the additional detail provided by the Applicant as part of the continued negotiation of the agreement contained in the 21 January 2022 Letter of Offer, Council officers are no longer satisfied that these public benefits outweigh the loss of a local heritage item for the following reasons:
- i. The extent of the area of the open space for public access has decreased by 25% from approximately 2,750sqm to 2,050sqm (see **Figure 5** below). This is due to the removal of the through site link and

introduction of a driveway from Hunter Street, with no additional compensatory offer for the reduced civic space area offered by the Applicant as requested by Council in August 2021.

Figure 5: Comparison of the area of the civic space



- ii. The conditions/ restrictions that the Church proposes to include in the agreement allow the Church to limit any use they choose by the general public and require a significant maintenance contribution from Council, without Council having any proprietary interest. Council currently maintains the open area around the Cathedral between Hunter Street and Church Street (rubbish removal, cleaning, mowing the lawn) at a cost to the Council budget of \$108,600 per annum. It is a reasonable expectation that these costs will increase given the enlargement of the area through the inclusion of a portion of Hunter Street (approximately 530sqm), higher embellishment standard and additional Council responsibilities as outlined in the offer from the Church (removal of graffiti and vandalism, and any repairs for wear and tear and maintenance of the public domain elements). Given the costs and benefits associated with these conditions, the public benefits previously considered to be accruing from the Church allowing access to this land do not appear as significant as initially understood.
- iii. The Applicant has not provided any supporting documentation outlining the lifecycle costs to Council, including operation or ongoing service delivery, as well as likely maintenance and replacement costs. The additional maintenance costs the Applicant is in the agreement proposing to be borne by Council are an unknown and potentially significant imposition on Council budget.

- iv. Further, the lack of a monetary contribution (or similar) for the maintenance works is inconsistent with other negotiations and planning agreements between Council and developers for similar projects as required by objective (d) in Section 1.5 of Council's Planning Agreements Policy, and also section 2.3 part (h) of Council's Policy in that the impact of the proposed planning agreement contributions on Council's insurance liability and asset management strategy, including the ongoing operational and maintenance costs of unplanned infrastructure, that Council will under this agreement be responsible for, cannot be assessed.
 - v. The immediate temporary access to 181 Church Street if achievable would provide a benefit to the community. Currently vehicle access to 181 Church Street (known as the Queensland Arcade site) involves occupants driving over a pedestrianised portion of Church Street near the rail underpass and adjacent to Parramatta Square and Centenary Square. This is not ideal from a pedestrian safety and risk management viewpoint. The Church's offer to allow the vehicles to access the site over their land would assist in resolving this issue. However, the Church requires all costs to be borne by Council and they reserve the right to require the temporary access to cease at any time. Ideally Council would seek an arrangement that gave a guarantee that access for 181 Church Street would never have to occur from Church Street in the future. The fact that there remains a risk that access via Church Street would need to be re-instated if the Church withdrew from the temporary arrangements, compromises the public benefit of this part of the offer.
41. It is proposed to allow time for negotiations to continue until the 28 February 2022. **Table 2** below provides the minimum terms considered by Council Officers to sufficiently demonstrate the public benefit resulting from the loss of the heritage item which will form a critical part of these negotiations.

Table 2: Amendments the Applicant could make to the offer to address issues with the latest offer from the Applicant dated 21 January 2022.

Column 1	Column 2
Reasons why the latest offer from the Applicant is not acceptable	Amendments the Applicant could propose to make the offer acceptable
<p>1. The terms of the latest offer do not outweigh the loss of a local heritage item (St John's Parish Hall)</p>	<p>In addition to the other amendment terms (in the rows below), the Applicant's offer should include more favourable and generous terms that would outweigh the loss of a local heritage item, being:</p> <ul style="list-style-type: none"> 1.1 An easement in favour of Council over the open space in perpetuity; and 1.2 Conditions for access and use by the community and Council within the easement (as required at 1.1) that are unfettered; and 1.3 Alternate vehicle access arrangement (not the current access) for 181 Church Street be made available that require the applicant to provide for an alternate

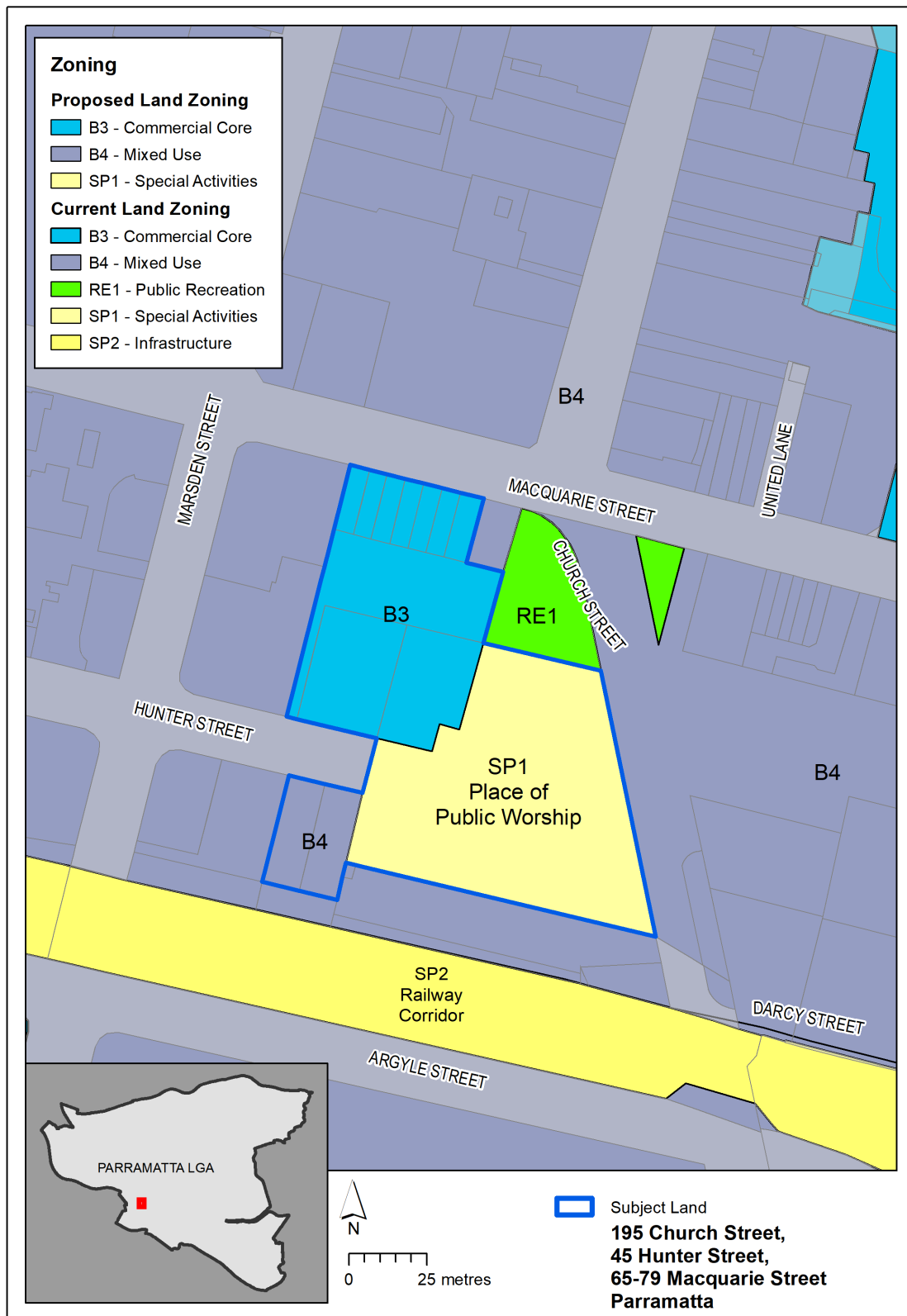
	<p>access to be available until the permanent access via the new laneway becomes available; and</p> <p>1.4 Upscaling the planting offer for the civic space to provide 8-10 trees @ 2000 litre pot size .</p>
2. The terms of the latest offer are not consistent with Council's Planning Agreements Policy	<p>In addition to the other amendment terms (in the row above and below), the Applicant's offer should be amended to align with Council's Planning Agreements Policy, being:</p> <p>2.1 Provision of an easement over the open space in perpetuity; and</p> <p>2.2 Lifecycle costs for the operation and ongoing service delivery, as well as maintenance and replacement costs, of the civic space and and vehicle access for 181 Church Street (temporary, alternate and permanent) to be borne by the Applicant.</p>
3. The terms of the latest offer do not include an alternate offer to compensate for the loss of civic space	<p>In addition to the other amendment terms (in the rows above), the Applicant's offer should include an alternate offer to address the loss of civic space, being:</p> <p>3.1 A monetary contribution to the value of the 25% reduction in civic space land to be expended to fund or part fund infrastructure identified in Council's Draft CBD Contributions Plan schedule of works; and</p> <p>3.2 Acknowledgement that the civic space embellishment works will be undertaken with a nil value ascribed.</p>

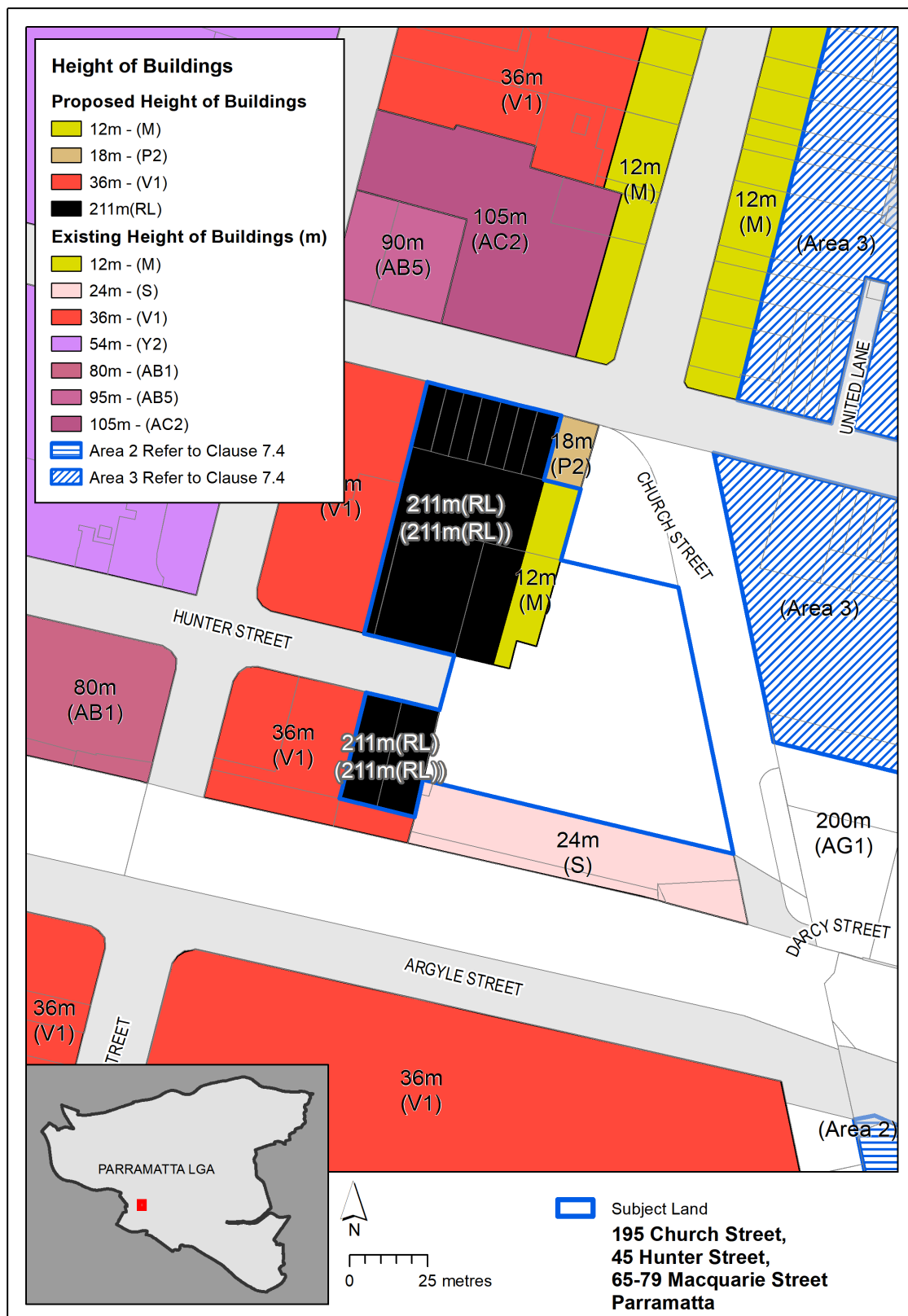
IMPLICATIONS IF THE PLANNING AGREEMENT DOES NOT PROGRESS

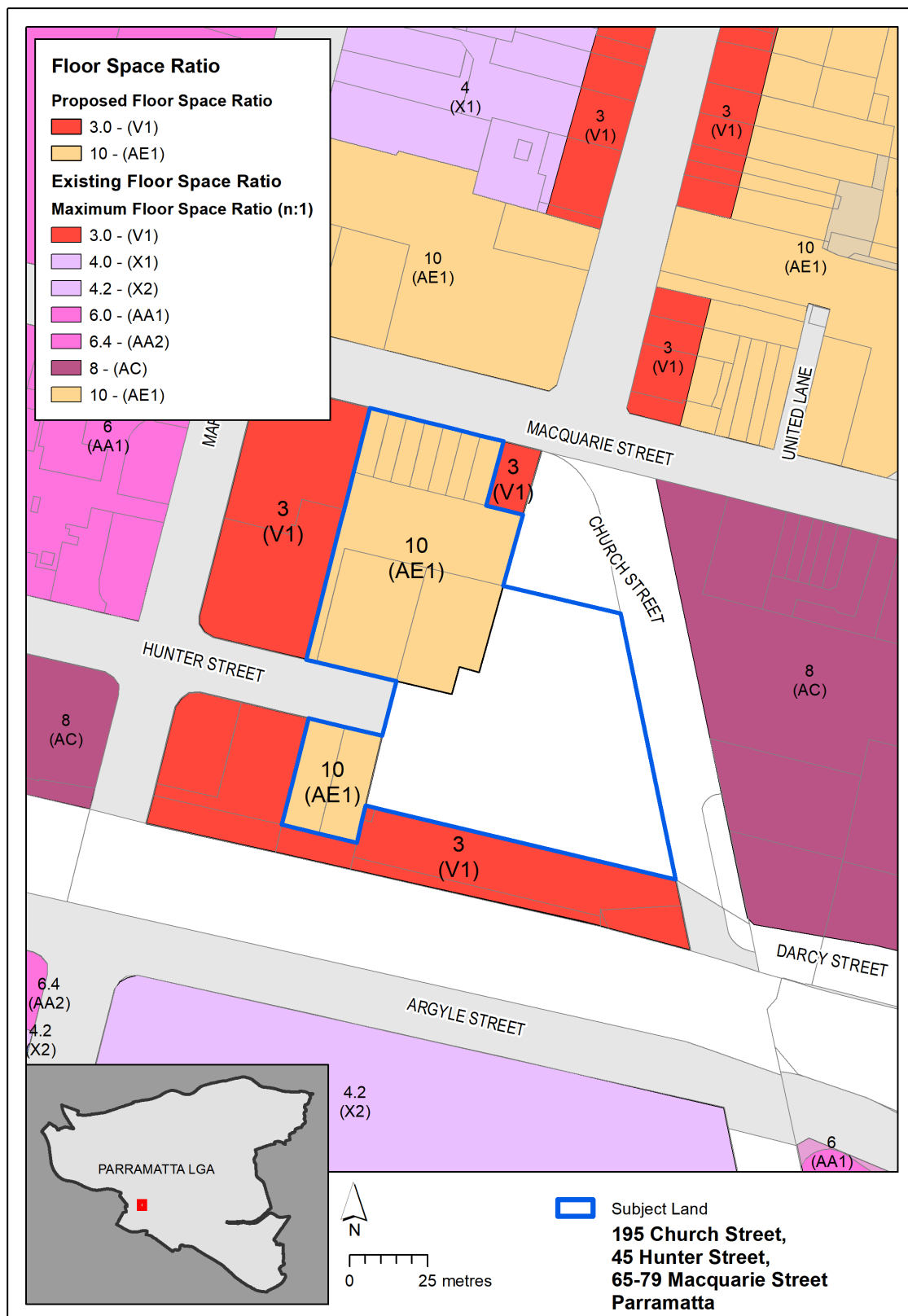
42. A Planning Agreement associated with the Planning Proposal was critical to the 16 December 2019 Report recommendation made by Council officers to de-list the Heritage listed Church Hall. The Department's decision in September 2020 to block the de-listing of the Church Hall in the Gateway Determination meant that negotiations and DCP preparations have proceeded on the basis that the site-specific DCP controls and Planning Agreement would include conditions/ requirements that would only apply if the Applicant was able to obtain development consent granted via a future development application for demolition of the Hall despite the heritage listing.
43. The Planning Proposal also involved a change in Zoning of the land and also the Floor Space Ratio (FSR) and Height of Building controls compared to that provided in the Parramatta CBD Planning Proposal that was endorsed by Council in June 2021. **Table 3** outlines the proposed changes to the planning controls. The proposed zoning, FSR and Height of Building controls are shown on the maps in **Figure 6**.

Table 3: Comparison of the planning controls in the Parramatta CBD Planning Proposal as endorsed by Council in June 2021, with the planning controls for the subject site in the Gateway Determination issued by the Department in September 2020.

Column 1	Column 2	Column 3	Column 4
	Existing (Parramatta LEP 2011)	Parramatta CBD Planning Proposal (as endorsed by Council for finalisation in June 2021)	Site-specific Planning Proposal (as per the Gateway Determination issued in September 2020)
Zoning	Part B4 Mixed Use, part SP1 Special Activities.	Part B4 Mixed Use, part SP1 Special Activities.	Part B4 Mixed Use, part B3 Commercial Core, part SP1 Special Activities.
Maximum Height of Building	Part 24m, part 18m, part 36m and part no height control.	Part 24m, part 18m, part 12m, part 36m, part 211RL and part no height control. Refer Clause 7.6 Sun Access Protection, 6 Parramatta Square and Block A.	Part 12m, Part 211RL and part no height control. Refer Clause 7.6 Sun Access Protection, 6 Parramatta Square and Block A.
Maximum FSR	Part 3:1, part 10:1 and part no FSR shown.	Part 3:1, part 10:1 and part no FSR shown.	Part 10:1 and part no FSR shown (refer to special clauses). Note unlimited commercial floor space clause would also apply which would allow an FSR exceeding 10:1 shown on the FSR map
Parramatta CBD Planning Proposal Special Clauses	Sliding-scale applies	Sliding-scale applies Aeronautical investigation clause Refer Clause 7.6F Active Street Frontage. Refer Clause 7.6L Floodplain Risk Management.	Sliding-scale applies Aeronautical investigation clause Refer Clause 7.6F Active Street Frontage. Refer Clause 7.6L Floodplain Risk Management. Unlimited FSR on Proposed B3 Commercial Core fronting Macquarie Street
Site-specific clauses	Nil	Nil	Additional permitted use to allow basement parking on part of SP1 Special Activities zoned land.
Heritage status Church Hall	Listed	Listed	Listed
Land Reservation Acquisition	Nil	Nil	Land Reservation Acquisition Plan, 6m wide laneway.

Figure 6: Maps illustrating the proposed zoning, FSR and Height of Building controls

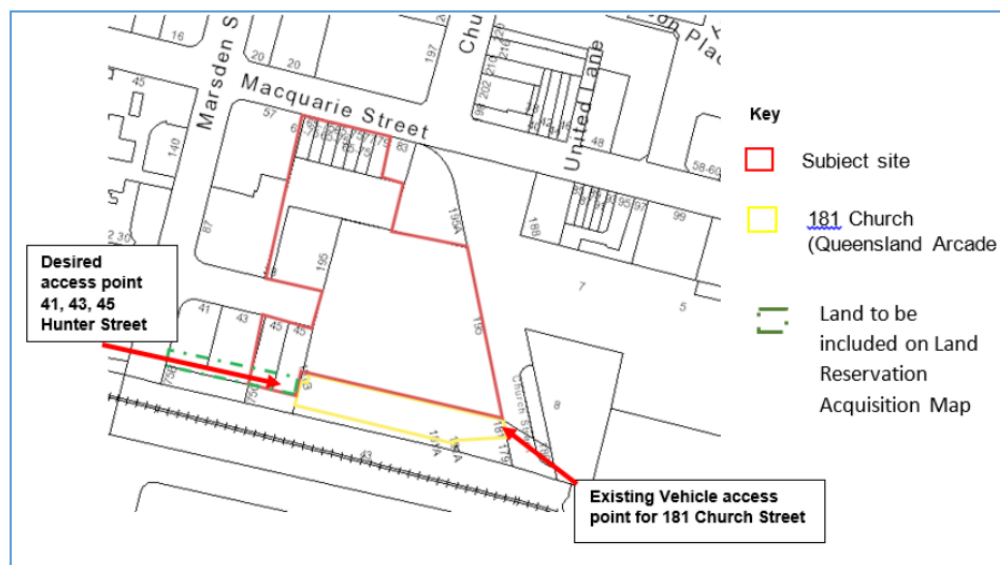




44. If the site specific Planning Proposal does not proceed, the planning controls that will be in place for the site once the Draft Parramatta CBD Planning Proposal comes into force are those in the third column of **Table 3** above. The major differences relate to the area between the Church Hall and Macquarie Street with the land,
- i. remaining zoned B4 Mixed Use rather than B3 Commercial Core, and

- ii. not being able to accommodate a taller tower building as the height is limited to 36 metres (9-11 storeys) rather than 211RL as proposed in the Applicant's site specific PP which would allow towers up to 55-60 storeys depending on the design.
45. Another implication of Council not progressing the Applicant's Planning Proposal as submitted is Council cannot implement the proposed Land Reservation over a 6m wide area of land at the rear of 41, 43 and 45 Hunter Street, as shown in **Figure 6** below. This laneway is proposed as the long term solution to resolving the vehicle access issue for 181 Church Street discussed previously in this report.

Figure 6: Land Reservation Acquisition Plan



46. A State Significant Development (SSD) application has been lodged for 41 and 43 Hunter Street that adjoins the Church site (at 45 Hunter Street) and these sites are also part of the proposal to create a service laneway as shown in **Figure 6**. In discussions with Officers of the Department it appears the SSD application has provision for Council to access the relevant parts of these sites to allow the laneway to be created.
47. Without the Applicant's Planning Proposal to impose the Land Reservation or a Planning Agreement to secure legal access to the relevant part of 45 Hunter Street which is owned by the Church, there is no clear mechanism to acquire the portion of 45 Hunter Street and secure the alternate access for 181 Church Street.
48. Given the importance of planning for and delivering a long term permanent alternate access for 181 Church Street it is recommended that the Land Reservation instead be imposed via the next appropriate Council-initiated Planning Proposal to deal with housekeeping or other site-specific amendments in the Parramatta CBD if the subject Planning Scheme does not proceed.

CONSULTATION AND TIMING

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

Date	Stakeholder	Stakeholder Comment	Council Officer Response	Responsibility
End 2019 to present.	Multiple	Various comments in relation to finalising the draft DCP and VPA.	Extensive consultation has been undertaken to date with internal sections of Council, the applicant and relevant State agencies, including the DPE and TfNSW in order to progress the planning proposal, draft DCP and planning agreement to this point. This includes numerous meetings and detailed correspondence between all parties.	City Planning & Design / Property & Place

50. Should negotiations result in the draft Planning Agreement between the Church and Council and the draft site-specific DCP being publicly exhibited with the Planning Proposal, consultation is anticipated to be undertaken as follows:

- Consistent with the requirements of the *Environmental Planning and Assessment Act 1979* and the conditions of the Gateway Determination.
- Commencement of the public exhibition of the Planning Proposal by 28 February 2022 or extension provided by the DPE.
- Notification of public exhibition will be published on Council's website and social media platforms.
- Notification via email and or mailout of relevant public authorities and organisations.
- Mail out to landowners within a radius of approximately 1 kilometre of the site.

51. Following the conclusion of any exhibition period, a report will be prepared for the Local Planning Panel's and Council's consideration detailing the submissions received and recommended actions. Should Council resolve to endorse the Planning Proposal, it will be forwarded to the DPE for finalisation, subject to any required changes being made as a result of the exhibition process. In accordance with Condition 6 of the Alteration of Gateway Determination, the LEP must be completed by 30 June 2022.

LEGAL IMPLICATIONS FOR COUNCIL

52. The legal implications associated with this report are discussed as follows.

Draft Planning Agreement:

53. As discussed in this report and in **Attachment 1**, the terms of the Planning Agreement could not be agreed by Council officers and the Applicant and therefore the Planning Agreement and associated Deeds of Agreement have not been legally drafted.

54. The CEO should be granted delegation to endorse the draft Planning Agreement documentation for the purpose of public exhibition.

Right of pedestrian access over the Church owned land:

55. The draft Planning Agreement was to include revised terms for enduring access by the public over the Church owned land. Currently this right of pedestrian access between Church Street and Hunter Street around the Cathedral is provided for in a Deed of Agreement between Council and the Church, last signed in 1991.
56. Council and the Church first entered into a Deed of Agreement in relation to the Civic Space Land in 1953, with Amendment Deeds signed in 1971 and 1991 (copy provided at **Attachments 7 and 8**).
57. The 1991 Deed granted for a 50-year period, a right for Council to carry out agreed works on the Church land and permits members of the public use of the paved footways. This Deed is due to expire on 19 August 2041, and if not replaced by a new Deed before this date, the Church and Council may at the Church's authority negotiate the continuation of the Deed of Agreement, with or without amendments, for another set period of time.
58. The works on the Church land that Council regularly carries out includes maintenance and repair works (mowing, removing rubbish, cleaning) for the Civic Space Lands at a cost of \$108,600 per year.
59. Should this Planning Agreement not proceed to supersede these agreements this report recommends that Council write to the St John's Parramatta Endowment Fund and affirm that the Deed of Agreement between Council and the Church last signed in 1991 secures public access by the community between Church Street and Hunter Street despite the withdrawal of Council support for the Planning Proposal.

FINANCIAL IMPLICATIONS FOR COUNCIL

60. This report has flagged that if Council is unable to secure the dedication of required land for the vehicle laneway from Marsden Street to the rear parking area of the 181 Church Street, Parramatta through the development of 41, 43 and 45 Hunter Street, Council may also need to acquire the land. An estimate of the cost of acquiring the land would be provided to Council at the time a housekeeping amendment to include this land on the Parramatta LEP 2011 Land Reservation Acquisition Map is reported to Council.
61. Given that 45 Hunter Street is a small site there may still be scope to negotiate arrangements for the relevant strip of land to be accessible to Council and to vehicles from 181 Church Street. If the Church when they develop the site wish to benefit from development rights below or in the airspace above the 6m wide strip of land, there may be scope for further negotiations as part of any future DA process. However, if an agreement cannot be reached Council would need to acquire the land and fully compensate the owners (the Church).
62. Any on-going negotiations should consider the following:

- i. Council has endorsed a change in approach to infrastructure funding in the Parramatta CBD. At its meeting on 25 October 2021, Council endorsed the Parramatta CBD Local Infrastructure Contributions Plan. Under this Plan, Council is no longer seeking funding for local infrastructure within the CBD by securing monetary contributions through Planning Agreements. Rather, the Plan seeks to increase the percentage rate applicable to development applications in the CBD under Section 7.12 (formerly known as Section 94A contributions) from 3% of the development cost to 4% and 5%, depending on the nature of the development. This case is different however because the contribution is not related to an uplift in development potential but instead to offset the loss of a heritage item. In this context the Planning Agreement remains appropriate.
 - ii. It should be noted that Council cannot apply the increased percentage levy until the Minister endorses the Contributions Plan. At the time of the preparation of this report, the Parramatta CBD Local Infrastructure Contributions Plan had been forwarded to the Minister and has yet to be approved.
 - iii. The exact value of the Section 7.12 development contribution for the redevelopment of the Church site would be calculated as part of the DA assessment based on a Quantity Survey Report, with the required contribution amount included as a condition of any DA consent.
63. If terms can be agreed preparing the draft Planning Agreement documents will require the engagement of Council's external solicitor. As part of any agreement the cost of this would be billed to the Applicant. Any work by Council officers to progress the draft Planning Agreement as well as the draft site-specific DCP would be within the existing City Planning & Design directorate budget.
64. The decision being made by Council on whether to progress the Planning Proposal and associated Planning Agreement has no direct impact on the budget which is the reason the table below is empty.

	FY 21/22	FY 22/23	FY 23/24	FY 24/25
Operating Result				
External Costs				
Internal Costs				
Depreciation				
Other				
Total Operating Result	NIL	NIL	NIL	NIL
Funding Source	N/A	N/A	N/A	N/A
CAPEX				
CAPEX				
External				
Internal				
Other				
Total CAPEX	NIL	NIL	NIL	NIL
Funding Source	N/A	N/A	N/A	N/A

RECOMMENDATION TO COUNCIL

65. The recommendation is that Council and the Applicant continue negotiations up until 28th February 2022. If prior to this date, the conditions detailed at **Table 2** of this report can be agreed, then the Planning Scheme can proceed to public consultation and following this, the exhibition outcomes reported to Council. If an agreement cannot be reached by this date, the Planning Scheme will no longer be progressed.

Janelle Scully

Team Leader –Land Use Planning

Robert Cologna

Group Manager, Strategic Land Use Planning

Fariha Chowdhury

Acting Chief Financial Officer

Bryan Hynes

Executive Director Property & Place

Jennifer Concato

Executive Director City Planning and Design

Brett Newman

Chief Executive Officer

ATTACHMENTS:

1	ATTACHMENT 1 - Detailed assessment of the Planning Agreement for St Johns final	15 Pages
2	ATTACHMENT 2 - Applicant Letter of Offer (21 January 2022)	4 Pages
3	ATTACHMENT 3 - Applicant Letter of Offer (12 September 2019)	2 Pages
4	ATTACHMENT 4 - Gateway Determination (8 September 2020)	4 Pages
5	ATTACHMENT 5 - Alteration of Gateway Determination (10 November 2021)	3 Pages
6	ATTACHMENT 6 - Email from Transport for NSW (July 2021)	1 Page
7	ATTACHMENT 7 - Deed of Agreement Council-Church (1953)	5 Pages
8	ATTACHMENT 8 - Deed of Agreement Council-Church (1991)	24 Pages
9	ATTACHMENT 9 - St John's Heritage Advice	26 Pages
10	ATTACHMENT 10 - SSDCP Assessment final	9 Pages
11	ATTACHMENT 11 - Draft Final DCP controls	30 Pages
12	ATTACHMENT 12 - Planning Proposal Document Final	51 Pages

REFERENCE MATERIAL

13.2 SUBJECT Planning Proposal, draft Development Control Plan and draft Planning Agreement for 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta (St John's Anglican Church)

REFERENCE RZ/5/2018 - D08385712

APPLICANT/S Jattca Pty Ltd

OWNERS St John's Parramatta Endowment Fund

REPORT OF Team Leader, Land Use Planning

MOTION (Prociv/Wearne)

That Council:

- a) Write to the Department of Planning and Environment and other relevant public authorities indicating that it will no longer progress the Planning Proposal.
- b) No longer pursue any of the Planning Scheme documents.
- c) Withdraw support for the sale of any portion of Hunter Street to the St John's Anglican Church.
- d) Identify land at 41, 43 and 45 Hunter Street, Parramatta on the Land Reservation Acquisition Map to facilitate the creation of a 6 metre wide laneway to provide future vehicle access to these three (3) sites and 181 Church Street, Parramatta, as part of a future housekeeping amendment to Parramatta Local Environment Plan 2011.
- e) Write to the St John's Parramatta Endowment Fund confirming that the Deed of Agreement between Council and the Anglican Church Authorities, last signed and amended in 1991, remains in force and continues to secure public access over the Church owned land between Church Street and Hunter Street, notwithstanding that Council withdraws support for the Planning Scheme for the St John's Anglican Church.

FORESHADOWED MOTION (Garrard/Siviero)

- (a) **That** Council staff urgently write to the NSW Department of Planning and Environment (DPIE) on 22 February 2022 seeking an extension of time of up to four to six weeks.
- (b) **That** Council defer consideration of this matter to an urgent Councillor Workshop to be held on 24 February 2022.
- (c) **That** following the Councillor Workshop, the Chief Executive Officer and relevant Council staff meet with the applicant to discuss the matter.

- (d) **Further, that** if the extension of time is not granted by the DPIE, that Council hold an Extraordinary Council Meeting to consider this matter.

The motion moved by Councillor Prociv and seconded by Councillor Wearne on being put was declared LOST.

DIVISION A division was called, the result being:-

AYES: Councillors Bradley, Darley, Davis, Maclean, Prociv and Wearne

NOES: Councillors Esber, Garrard, Green, Humphries, Noack, Pandey, Siviero, Valjak and Wang

The foreshadowed motion moved by Councillor Garrard and seconded by Councillor Siviero then became the motion.

The motion moved by Councillor Garrard and seconded by Councillor Siviero on being put was declared CARRIED.

DIVISION A division was called, the result being:-

AYES: Councillors Esber, Garrard, Green, Humphries, Noack, Pandey, Siviero, Valjak and Wang

NOES: Councillors Bradley, Darley, Davis, Maclean, Prociv and Wearne

3661 RESOLVED (Garrard/Siviero)

- (a) **That** Council staff urgently write to the NSW Department of Planning and Environment (DPE) on 22 February 2022 seeking an extension of time of up to four to six weeks.
- (b) **That** Council defer consideration of this matter to an urgent Councillor Workshop to be held on 24 February 2022.
- (c) **That** following the Councillor Workshop, the Chief Executive Officer and relevant Council staff meet with the applicant to discuss the matter.
- (d) **Further, that** if the extension of time is not granted by the DPE, that Council hold an Extraordinary Council Meeting to consider this matter.

Note: The Lord Mayor vacated the Chair at 7:43pm during the consideration of Item 13.2. The Deputy Lord Mayor assumed the Chair. The Lord Mayor resumed the chair at 7:49pm.