

## Voluntary Planning Agreement

**City of Parramatta Council**

**ABN 49 907 174 773**

**AND**

**FABCOT PTY LTD**

**ABN 55 002 960 983**

**AND**

**J.L. DUNROSE PTY LIMITED**

**ABN 62 000 038 059**

*G. Man*  
25/5/2022

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**Date** **2022**

## Parties

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Representative	Manager Land Use Planning – XX
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<b>First Applicant</b>	Fabcot Pty Ltd ABN 55 002 960 983
Address	1 Woolworths Way Bella Vista NSW 2153
Attention	Company Secretary Woolworths Group Limited 1 Woolworths Way Bella Vista NSW
<b>Second Applicant</b>	J.L. Dunrose Pty Limited ABN 62 000 038 059
Address	'01' Suite 12 Level 12, 222 Pitt Street Sydney NSW 2000
First & Second Applicant	Nathan Dundovic
Contact Person	Regional Development Manager, Corporate Property, Woolworths Group Limited
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## Background

- A The First Applicant is the Developer of the Land.
- B The Second Applicant is the registered proprietor of the Land.
- C For the purpose of this Deed, the First Applicant and Second Applicant are collectively referred to as 'The Applicant'.
- D The Land is zoned B6 Enterprise Corridor and SP2 Infrastructure (Public Transport Corridor) pursuant to the *Parramatta (former The Hills) Local Environmental Plan 2012* and currently comprises an existing warehouse building with a gross floor area of 7,405m<sup>2</sup>.
- E The Land was previously used as a Bunnings Warehouse and is currently leased to the Developer.

- F On 28 October 2019, Planning Ingenuity Pty Ltd, on behalf of the Developer lodged the Planning Proposal with Council, which sought to amend Schedule 1 of the LEP by **adding 'retail premises' as an additional permitted use (limited to a maximum of 3,800m<sup>2</sup>)** to facilitate a supermarket.
- G On 1 July 2021, the Applicant made an offer to Council for the provision of a monetary contribution, Bridge Works, dedication of land and registration of an easement to facilitate the Planning Proposal and to be applied to a public purpose provided the Land is developed for use as a supermarket.

## Operative Provisions

### 1 Planning Agreement under the EPA Act

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#### 1.1 Status of this Deed

- (a) The parties agree that this Deed is a planning agreement within the meaning given to that term in section 7.4(1) of the Environmental Planning and Assessment Act 1979.
- (b) The planning agreement constituted by this Deed applies to the Land and the Planning Proposal.

### 2 Operation

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#### 2.1 Commencement

- (a) The Parties agree that this Deed takes effect on the execution of this Deed by all of the Parties to it.
- (b) The party who executes this Deed last is to insert, on page 1, the date on which they did so and provide a copy of the fully executed and dated Deed to all other Parties to this Deed.

### 3 Definitions and Interpretation

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#### 3.1 Definitions

In this Deed, the following definitions will apply:

**Applicant** means the First Applicant (Fabcot Pty Ltd) and the Second Applicant (J.L. Dunrose Pty Limited) collectively.

**Bridge Works** means the construction of a lightweight steel bridge structure 3m wide that is to provide future pedestrian access to the Land from North Rocks Road. The approximate location of the footbridge is shaded in blue with red hatching in the plan at Schedule 3 to this Deed.

**Business Day** means any day except a bank or public holiday throughout New South Wales or a Saturday or Sunday;

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

**Construction Certificate** means a construction certificate as defined under section 6.4 of the EPA Act, or if the Former Building and Subdivision Provisions apply, section 109C of the EPA Act

**Contribution** means the monetary contribution in the sum of **\$500,000.00** payable by the Applicant, as outlined at clause 6 of this Deed.

**Council** means City of Parramatta Council ABN 80 690 785 443.

**Council Works** means the design, specification and construction of the future footbridge connection facilitated by the Contribution. The approximate location of the footbridge is shaded in blue in the plan at Schedule 3 to this Deed.

**Council Works Area** means the part of the Land over which the Council Works will be carried out.

**CPI** means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

**Dedication Land** means that part of the Land to be dedicated to Council in accordance with this Deed, marked as “Land to facilitate James Ruse Drive widening” on the plan at Schedule 2 of this Deed.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Development Consent** means the Development Consent with respect to the application for development approval to be lodged with Council regarding the future development of the Land for use as a Woolworths supermarket .

**Developer** means Fabcot Pty Ltd ABN 55 002 960 983

**Dispute** means a dispute or difference between the parties under or in relation to this Deed.

**Easement** means the public access easement to be registered on title, over the part of the Land shown in pink on the plan at Schedule 4 of this Deed.

**Easement Area** means the part of the Land included within the Easement.

**Easement Terms** means the terms of the Easement to be provided as set out in Schedule 6 of this Deed.

**EPA Act** means the *Environmental Planning and Assessment Act 1979*.

**Explanatory Note** means an explanatory note prepared under clause 25E(1) of the Regulation.

**First Applicants Development Notice** a notice from the First Applicants to the Second Applicant and Council, specifying the First Applicants intention to proceed with the development of the land in accordance with the terms of the Development Consent and Construction Certificate.

**Land** means the land comprised in Lot 61 in Deposited Plan 1264730 (formerly Lot 1 in Deposited Plan 112482 and Lot 6 in Deposited Plan 247452) and known as 1 Windsor Road, North Rocks, and includes any lot created by the consolidation or subdivision of those lots from time to time.

**Land Owner** means J.L.Dunrose Pty Limited ABN 62 000 038 059.

**LEP** means the *Parramatta (former The Hills) Local Environmental Plan 2012*.

**Occupation Certificate** means an occupation certificate as defined under section 6.4 of the EPA Act, or if the Former Building and Subdivision Provisions apply, section 109C of the EPA Act, and includes an interim Occupation Certificate, a final Occupation Certificate or a partial Occupation Certificate as the case may be.

**Offer** means the offer made on behalf of the Applicant (in the form of the letter from Woolworths Group dated 1 July 2021) to enter into this Deed for the Contribution, Bridge Works, dedication of the Dedication Land and registration of the Easement.

**Owners Development Notice** a notice from the Second Applicant to Council, issued in accordance with 6.1(i) with respect to the future development of the Land for the use of the land as a supermarket that is not operated by the First Applicant.

**Parties** means the parties to this Deed.

**Planning Proposal** means the document proposing amendments to the LEP, lodged by Planning Ingenuity Pty Ltd on behalf of the Developer with Council on 28 October 2019 and which is included under Schedule 1 of this Deed.

**Public Purpose** means the public purpose to which the Contribution will be applied and the Bridge Works constructed, subject to clause 6 of this Deed, to provide public pedestrian access.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

### 3.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule or annexure attached to this Deed forms part of it;
- (e) a reference to a party includes its legal personal representatives, successors and permitted assigns;

- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) unless expressly stated to be otherwise, the meaning of general words is not limited by **specific examples introduced by 'including', 'for example' or similar inclusive expressions**; and
- (i) a reference to this Deed means this Deed and includes any variation or replacement of this Deed.

### **3.3 No fettering clause**

The Applicant acknowledges that Council cannot fetter in advance the exercise of any of its statutory discretions, whether by way of contract, estoppel or otherwise, in relation to any application relating to the Land to be lodged with the vendor in its capacity as a governmental authority nor pre-determine any decision in respect of any such application.

### **3.4 Warranties**

The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) are able to fully comply with their obligations under this Deed.

### **3.5 Further agreements**

The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

### **3.6 Surrender of right of appeal**

The Applicant is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed in so far as the subject-matter of the proceedings relates to this Deed, unless it is in exercising rights in accordance with clause 7.2(e) of this Deed.

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## **4 Section 7.11, 7.12 and 7.24 of the EPA Act**

### **4.1 Application of section 7.11, 7.12 and 7.24**

This Deed does not exclude the application of sections 7.11, 7.12 and 7.24 of the EPA Act in respect of any development applications for the future redevelopment of the Land.

#### 4.2 Benefits

Benefits obtained by Council under this Deed are not to be taken into consideration in determining any development contribution under section 7.11 of the EPA Act in respect of any development applications for the future redevelopment of the Land.

#### 4.3 Offer by the Applicant

The Applicant acknowledges that this Deed is in the terms of the Offer made by the Applicant in connection with the Planning Proposal.

### 5 Planning Proposal

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#### 5.1 Lodgement of Planning Proposal

- (a) The Developer has lodged the Planning Proposal with Council.
- (b) The Planning Proposal seeks the following changes to the LEP in relation to the Land:
  - (i) Amending Schedule 1 of the LEP by adding '**retail premises**' as an additional permitted use (limited to a maximum of 3,800m<sup>2</sup>).
- (c) As part of the Planning Proposal, and pursuant to section 7.4(1)(a) of the EPA Act, the First Applicant has made an offer to enter into this Deed to facilitate the Planning Proposal and to make provision for dedication of the Dedication Land and registration of the Easement following the amendment of the LEP, the Bridge Works following the issue of a Construction Certificate for the development of the Land (regardless of use) and a Contribution following the issue of a Construction Certificate for the development of the Land as a supermarket.
- (d) The Planning Proposal envisages the future redevelopment of the Land being the utilisation of the existing warehouse building to accommodate a full-line supermarket of 3,800m<sup>2</sup>, the remainder of the existing warehouse building of 3,015m<sup>2</sup> to be developed for other uses permitted in accordance with the proposed changes to the LEP outlined under clause 5.1(b) of this Deed.
- (e) Nothing in this Deed relieves the Applicant of its statutory obligations under the EPA Act to obtain the necessary development consent/s for any such future redevelopment of the Land.
- (f) **Nothing in this Deed fetters Council's discretion under the EPA Act in assessing and determining as it sees fit any future development applications for a future redevelopment of the Land, excluding clause 6.3(b) of this Deed and determining as it sees fit any future development applications for a future redevelopment of the Land.**



- (g) The Parties acknowledge that the future redevelopment of Land for a supermarket is subject to and conditional on the LEP being amended as sought under the Planning Proposal. The registration of the Easement and Dedication of Land is conditional on the LEP being so amended, the Bridge Works are conditional on the issue of a Construction Certificate for the development of the Land (regardless of use) and the Contribution is subject to and conditional on the issue of a Construction Certificate for development of the Land as a supermarket.
- (h) Notwithstanding clause 5.1(g) the First Applicant may notify Council in writing at any time following issue of the Planning Proposal that it does not intend to proceed with the future development of the Land as proposed in clause 5.1(d).
- (i) If the First Applicants serves the notice provided in clause 5.1(h) the Second Applicant agrees to fulfill all of the First and Second Applicants obligations under this Deed, where applicable and the First Applicant is released by Council and the Second Applicant from all further obligations, claims or rights as provided in this Deed

## 6 Contribution

### 6.1 Monetary Contribution

- (a) Subject to clause 6.1(d), the First or Second Applicant is to pay the Contribution in the amount of **\$500,000.00** or an amount calculated in accordance with the following formula, whichever is the greater:

$$\begin{array}{r}
 \$500,000.00 \quad \times \quad \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this agreement}}
 \end{array}$$

- (b) The parties agree and acknowledge that the Contribution will be used by the Council towards the Public Purpose by facilitating construction of the future footpath connection and or other future works within the North Rocks vicinity.
- (c) Despite clause 6.1(b), the Council may apply the Contribution towards any other public purpose which satisfies section 7.4(2) of the Act, other than the Public Purpose, if the Council reasonably considers that the public interest would be better served by applying the Contribution towards that other public purpose.
- (d) The Contribution is to be paid either:
  - (i) by the First Applicant to Council in one instalment of \$500,000.00 with payment to be made within 14 days of:
    - (A) the issue of a valid tax invoice for the Contribution in the name of the First Applicant; and

- (B) receipt by the First Applicant of the Construction Certificate for the Development Consent; and
  - (C) issue of the First Applicants Development Notice,
- or the Contribution is to be paid:
- (ii) by the Second Applicant to Council in one instalment of \$500,000.00 with payment to be made within 14 days of:
    - (A) the issue of a valid tax invoice for the Contribution in the name of the Second Applicant; and
    - (B) receipt by the Second Applicant of the Construction Certificate for the development of the Land for a supermarket that is not to be operated by the First Applicant; and
    - (C) issue of the Owners Development Notice.
  - (e) The Contribution is taken to have been made upon the receipt by Council of the full amount required under this Deed in cash or by unendorsed bank cheque or by the deposit via electronic funds transfer, and clearance of the full amount, into a bank account nominated by Council.
  - (f) The Contribution is to be paid by either the First Applicant or the Second Applicant, whichever is first in time to satisfy the requirements of 6.1(d) (i) or (ii).

## 6.2 Bridge Works

- (a) Subject to issue of the First Applicant's Development Notice or the Owners Development Notice, and the issue of a Construction Certificate with respect to development of the Land, the relevant Applicant will carry out the Bridge Works in accordance with this agreement and the Construction Terms in Schedule 5 and any future development consent granted for the Bridge Works.
- (b) The Bridge Works will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for the Bridge Works.
- (c) The Second Applicant is responsible for the ongoing maintenance of the Bridge Works, including all costs associated with maintenance
- (d) Practical Completion of the Bridge Works is to occur prior to the issue of the final occupation certificate for the future development of the Land. The Bridge Works will be carried out following the coming into force of the new LEP under the Planning Proposal and following the granting of development consent for the future development of the Land.
- (e) Council and the Second Applicant agree and acknowledge that the Bridge Works serve the Public Purpose.

## 6.3 Dedication of Land

- (a) Upon the LEP being amended as sought in the Planning Proposal, the Second Applicant must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax, except as permitted by Council.
- (b) The Dedication Land is to be dedicated by the Second Applicant on the understanding that:
  - (i) Council agrees and acknowledges that the Dedication Land will be deemed and included as unimproved land and part of the Land for the purpose of calculating Floor Space Ratio associated with any future development application associated with the Land notwithstanding its dedication or transfer for public use.
- (c) The Second Applicant is responsible for the ongoing maintenance of the Dedicated Land, including all costs associated with the maintenance.
- (d) The documents to give effect to the dedication of the Dedication Land are to be lodged with NSW Land Registry Services within 28 days of the LEP being amended as sought in the Planning Proposal.

#### **6.4 Public Access and Easements**

- (a) Upon the LEP being amended as sought in the Planning Proposal, the Second Applicant will, at no cost to Council, register against the title to the Land, the Easement, being:
  - (i) an easement in gross burdening the Easement Area, being that part of the Land on which the Bridge Works will be located and that part of the Land on which the future footbridge connection facilitated by the Contribution will be constructed, as shown in the plan at Schedule 4 of this Deed, in favour of the Council permitting public pedestrian access over the Bridge Works and the future footbridge connection and generally in accordance with the Easement Terms.
- (b) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Applicant provides to the Council a copy of the relevant title search showing the registration of the instrument.
- (c) Any easement, required under clause 6.4(a) must be registered prior to the issue of any Occupation Certificate for the future development of the Land.
- (d) The parties agree that the proposed easement under this clause will serve the Public Purpose.
- (e) The Applicant agrees and acknowledges that the obligations under this clause 6.4 are relevant considerations for the Council or any other consent authority when determining a development application or modification application relating to the Land and that a failure to comply with those obligations or any

inconsistency with the requirements in those clauses may constitute a reason for refusal of such a development application or modification application.

- (f) **The Applicant agrees to comply with and accept liabilities for the Council's obligations in clause 2 of Schedule 6 (Terms of Easement) until such time as the Council has commenced the Council Works.**

## **6.5 Access to Applicant's Land**

- (a) The Applicant acknowledges and agrees that Council will carry out the Council Works.
- (b) The Applicant grants the Council a licence to enter, pass through or occupy the Council Works Area to enable the Council to carry out the Council Works. Nothing in this clause creates or gives the Council any estate or interest in any part of the Land.
- (c) The Council will carry out the Council Works at its own costs.

## **7 Dispute Resolution**

### **7.1 Dispute resolution – expert determination**

- (a) This clause applies to a Dispute between the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- (i) the Parties to the Dispute agree that it can be so determined, and
  - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- (b) Such a Dispute is taken to arise if one party gives another party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 7.1(b), the Parties are to meet within 14 Business Days of the notice in an attempt to resolve the Dispute. At every such conference, each party must be represented by a person having authority to agree to a resolution. All aspects of every such conference, except the fact of the occurrence, will be privileged.
- (d) If, within 28 Business Days of a notice being given, the Parties have not resolved the Dispute, the Dispute must be referred to expert determination and be determined by an expert. If, within a further 10 Business Days, the Parties have not agreed upon an expert, the expert must be nominated by the Australian Commercial Disputes Centre.
- (e) The expert determination must be conducted in accordance with the Guidelines for Expert Determination of the Australian Commercial Disputes

Centre. Except where the parties otherwise agree in writing or the Guidelines for Expert Determination of the Australian Commercial Disputes Centre otherwise provide:

- (i) each party must bear its own costs and pay one half of the expert's fees and expenses;
- (ii) the expert must not act as an arbitrator; and
- (iii) the determination of the expert will be final and binding on the Parties.

## 7.2 Dispute Resolution – Mediation

- (a) This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 7.1 applies.
- (b) Such a Dispute is taken to arise if one party gives another party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 7.2(b), the Parties are to meet within 14 Business Days of the notice in an attempt to resolve the Dispute.
- (d) If, within 28 Business Days of a notice being given, the Parties have not resolved the Dispute, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- (e) If the Dispute is not resolved by mediation within a further 28 Business Days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- (f) Each party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (g) The Parties are to share equally the costs of the President, the mediator, and the mediation.

**7.3** Nothing in this clause 7 will prejudice the right of a party to institute proceedings to enforce payment due under this Deed or to seek injunctive or urgent declaratory relief.

**7.4** Notwithstanding the existence of a Dispute, the parties must continue to perform their respective obligations under this Deed unless excused from performance by another provision of this Deed.

## 8 Enforcement

### 8.1 Breach of Deed

- (a) This clause applies to a breach of the **Applicant's** obligations under this Deed.

- (b) Council may give the Applicant written notice specifying the particulars of the breach, the means for rectifying the breach (if such exist), the reasonable timeframe for rectification of the breach or compensation Council will accept in a reasonable timeframe in lieu of the rectification of the breach.
- (c) Nothing in this clause prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Applicant, including but not limited to seeking relief in an appropriate court.

## 8.2 Compulsory Acquisition

- (a) If the Applicant does not dedicate the Dedication Land to Council as required by clause 6.3 of this Deed, the Council may compulsorily acquire the relevant land, in which case the Applicant consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the Land Acquisition (Just Terms Compensation) Act 1991.
- (b) Clause 8.2(a) constitutes an agreement for the purposes of section 30 of the Land Acquisition (Just Terms Compensation) Act 1991.
- (c) Except as otherwise agreed between the Applicant and Council, the Applicant must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 8.2(a).
- (d) The Applicant indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 8.2(a).
- (e) The Applicant must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 8.2(a).

## 9 Risk

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### 9.1 Risk

The Applicant performs this Deed at its own risk and its own cost.

### 9.2 Release

The Applicant releases Council from any Claim it may have against Council arising in connection with the performance of the Applicant's obligations under this Deed except if, and to the extent that, the Claim arises because of Council's negligence or default.

### 9.3 Indemnity

The Applicant indemnifies Council from and against all Claims that may be sustained, suffered, recovered or made against Council arising in connection with the

performance of the **Applicant's** obligations under this Deed except if, and to the extent that, **the Claim arises because of Council's negligence or default.**

## **10 Registration and Caveat**

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### **10.1 Acknowledgment**

The Land Owner (Second Applicant), being the registered proprietor at the time of execution of this Deed, acknowledges that Council requires the registration of this Deed (including any Variations pursuant to clause 12.9) on the folio of the Land under section 7.6 of the EPA Act and that, on registration by the Registrar-General, this Deed will be binding on and enforceable against the registered proprietor of the Land from time to time as if each registered proprietor for the time being had entered into this Deed.

### **10.2 Consents to registration**

Not later than 10 Business Days after this Deed has been executed by the Parties, the Second Applicant must, at its cost, obtain the consents to the registration of this Deed from each and every person who has an estate or interest in the Land.

### **10.3 Developer and Landowner's obligations**

The Land Owner (Second Applicant) (being the registered proprietor at the time of execution of this Deed) must:

- (a) not later than 10 Business Days after this Deed has been executed by the Parties:
  - (i) deliver to the Council in registrable form required by NSW Land Registry Services an instrument to procure the registration of this Deed on the title to the Land duly executed by the Land Owner (being the registered proprietor at the time of execution of this Deed) and any other person required by NSW Land Registry Services to execute such instrument; and,
  - (ii) provide all relevant consents to the registration (including the consents required under clause 10.2) to NSW Land Registry Services.
- (b) immediately upon receiving the registrable form instrument executed by the Council, lodge the instrument and all other necessary documents with the NSW Land Registry Services to enable this Deed to be registered, and
- (c) do all other things reasonably necessary to enable this Deed to be registered pursuant to section 7.6 of the EPA Act

### **10.4 Release**

Council must execute and give to the Applicant any forms required by NSW Land Registry Services to remove the registration of this Deed from the folio/s for the Land after **the Applicant has complied with all its obligations under this Deed to Council's** satisfaction.

## 10.5 Registration expenses

The Applicant **must pay Council's expenses including registration fees, legal costs** and disbursements in relation to the registration of this Deed and its subsequent removal from the title to the Land.

## 10.6 Caveatable interest

The Applicant acknowledges that the rights under this Deed give Council a caveatable interest in the Land and consents to the Council registering such a caveat.

## 10.7 Restriction on dealings

- (a) The Land Owner (Second Applicant) (being the registered proprietor at the time of execution of this Deed) must not:
- (i) sell or transfer the Land or any part of it, or
  - (ii) assign the **Applicant's** rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- (iii) the Developer or the Land Owner (as the case may be) has, at no cost to the Council, first procured the execution by the person to whom the Land, or part thereof, is to be sold or transferred or the **Applicant's** rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
  - (iv) the Council has given written notice to the Developer or the Landowner (as the case may be) stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
  - (v) the Developer or the Landowner (as the case may be) is not in breach of this Deed, and
  - (vi) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- (b) Subject to clause 10.7(c), the Developer and the Landowner (as the case may be) acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 10.7(a).
- (c) Clause 10.7(a) does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

## 11 Notices

### 11.1 Notices given under this Deed:



- (a) must be in writing and clearly readable in the English language;
- (b) must be signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
- (c) **may be delivered to a party by hand or by prepaid post to that party's address** shown in page 1 of this Deed or to such other address or person as a party may specify by notice given in accordance with this clause.

**11.2 A notice is taken to be duly given and received:**

- (a) if delivered by hand, when delivered; or
- (b) if delivered by prepaid post, three Business Days after being deposited in the mail with postage prepaid.

**11.3** Despite clause 11.2, notices received after 5.00pm in the place of receipt or on a non-Business Day are taken to be received at 9.00am on the next Business Day.

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**12 General**

**12.1 Relationship between the Parties**

Except as expressly provided to the contrary in this Deed, nothing in this Deed will constitute the Parties as principal and agent, employer and employee, partners or otherwise liable for the acts or omissions of any other party.

**12.2 Entire agreement**

This Deed records the entire agreement between the Parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the Parties in relation to the subject matter of this Deed.

**12.3 Further assurance**

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this Deed.

**12.4 Counterparts**

This Deed and any variation of this Deed may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

**12.5 Survival**

All warranties, releases, exclusions and limitations of liability, indemnities, terms with respect to intellectual property and confidential information in this Deed will remain valid and binding following expiry or termination of this Deed. Any other provision by its nature intended to survive expiry or termination of this Deed survives expiry or termination of this Deed.

## **12.6 No waiver**

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this Deed does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

## **12.7 Cumulative rights**

The rights, powers, authorities, discretions and remedies of a party under this Deed do not exclude any other right, power, authority, discretion or remedy.

## **12.8 Severability**

If any provision of this Deed is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (b) where the offending provision cannot be read down then that provision must be severed from the Deed in which event, the remaining provisions of this Deed operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this Deed.

## **12.9 Variation**

This Deed can only be amended, supplemented or replaced by another document publicly notified and signed by the Parties in accordance with the Regulation.

## **12.10 Governing law and jurisdiction**

This Deed is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this Deed.

## **12.11 Explanatory Note**

Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

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**13 Costs**

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- 13.1** The First Applicant agrees to pay Council's legal costs incurred to give effect to this Deed including but not limited to, the costs of preparing, negotiating and executing this Deed and any other related document within 28 Business Days of a written demand by Council for such payment.

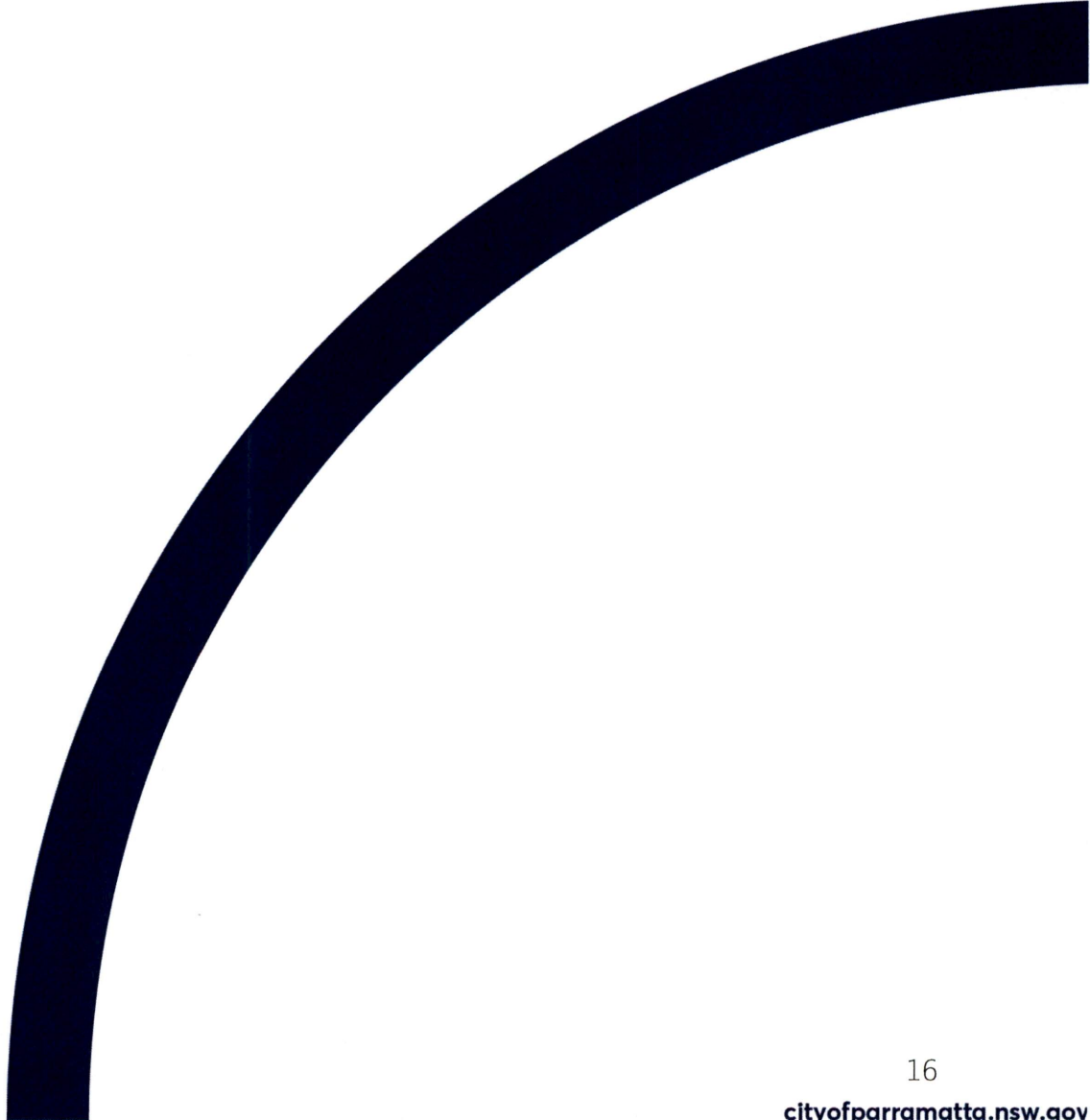
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**Schedule 1 – Planning Proposal**

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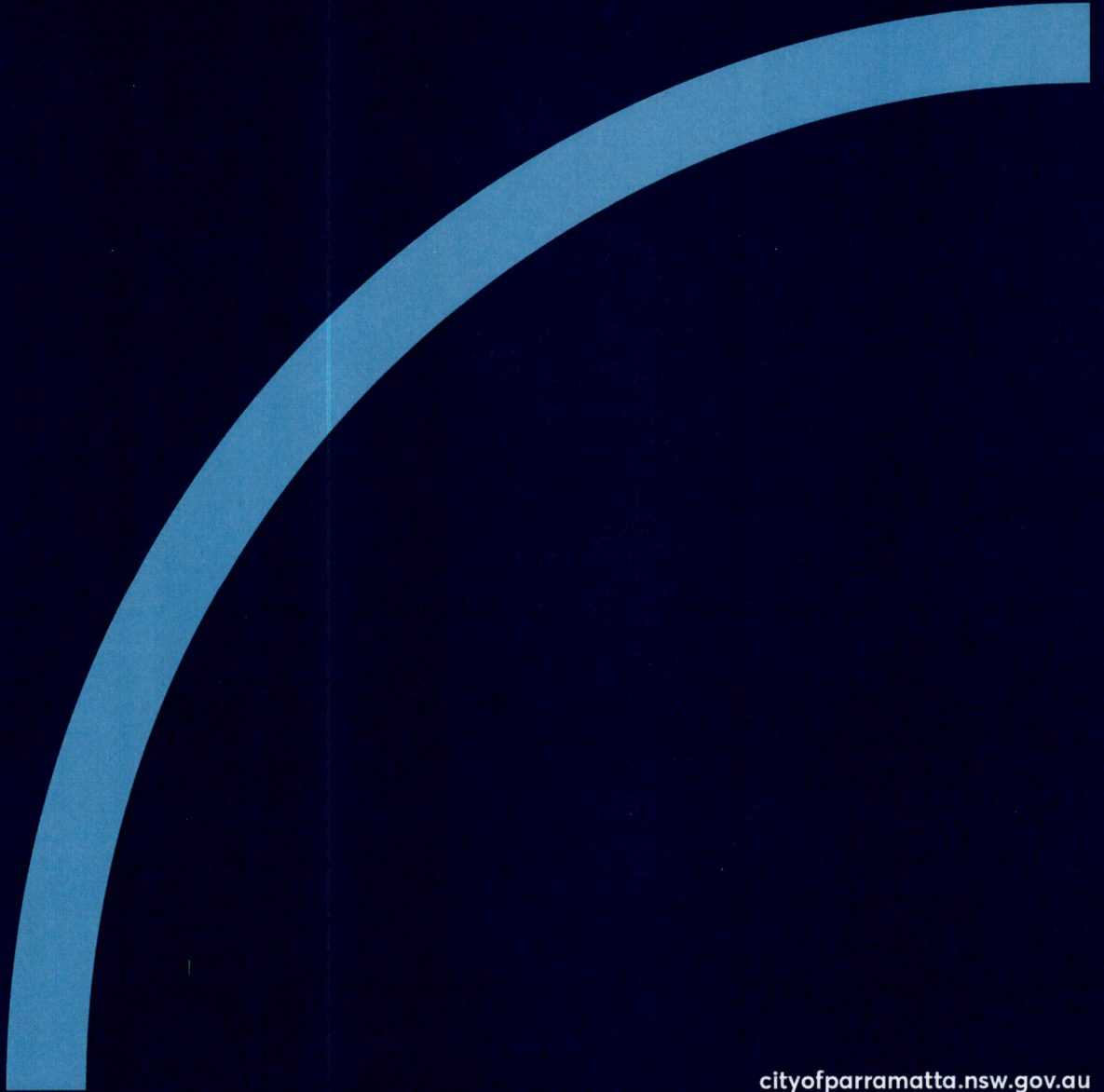
# PLANNING PROPOSAL

1 Windsor Road, North Rocks





**CITY OF  
PARRAMATTA**



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## Planning Proposal drafts

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Proponent versions:

No.	Author	Version
1.	Planning Ingenuity Pty Ltd	22 October 2019

Council versions:

No.	Author	Version
1.	City of Parramatta Council	Report to Local Planning Panel and Council on the assessment of planning proposal and submission to DP&E for Finalisation
2.	City of Parramatta Council	Consistent with Gateway Determination



## INTRODUCTION

This planning proposal explains the intended effect of, and justification for, the proposed amendment to *Parramatta (former The Hills) Local Environmental Plan 2012*. It has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* and the Department of Planning and Environment (DP&E) guides, 'A Guide to Preparing Local Environment Plans' (August 2016) and 'A Guide to Preparing Planning Proposals' (August 2016) and 'Guidance for merged councils on planning functions' (May 2016).

### Background and context

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On 28 October 2019, the applicant, Planning Ingenuity Pty Ltd, on behalf of the landowner, Fabcot Pty Ltd, lodged a Planning Proposal with the City of Parramatta Council for land at 1 Windsor Road, North Rocks. The site was previously occupied by a Bunnings store however it is currently unoccupied.

The subject site is located on the corner of Windsor Road and James Ruse Drive. The site comprises two lots and is legally described as Lot 1 in DP 112482 and Lot 6 in DP 247452, with a total area of approximately 2.52ha.

The site has frontage to Windsor Road to the west and to James Ruse Drive (slipway) to the north. It is adjacent to, but does not have direct frontage to, North Rocks Road, being separated by Darling Mills Creek which runs adjacent to the site to the eastern and southern boundaries.

The main access to the site is from North Rocks Road with vehicular entry/exit and a pedestrian walkway via an elevated concrete bridge over Darling Mills Creek. Secondary vehicular access is available to Windsor Road.

The site is currently occupied by a large warehouse building (previously occupied by Bunnings Warehouse), with a gross floor area of 7,405m<sup>2</sup>. At grade car parking is provided on the site, with 260 spaces located predominantly to the south of the building with the remainder to the north and west.

The site is shown in **Figure 1** and **Figure 2** below.



Figure 1 – Site at 1 Windsor Road, North Rocks subject to the planning proposal



Figure 2 – Aerial view

Under *Parramatta (former The Hills) Local Environmental Plan 2012* the site:

- is zoned B6 Enterprise Corridor and SP2 Infrastructure (Public Transport Corridor);

An extract of each the above maps is provided in Part 4 – Mapping; specifically, Section 4.1 Existing controls.

## **PART 1 – OBJECTIVES OR INTENDED OUTCOMES**

The Planning Proposal seeks approval to permit ‘retail premises’ in the form of a supermarket and liquor shop on the site. The site is within the B6 Enterprise Corridor Zone which currently allows a range of non-residential (and commercial) uses but not ‘retail premises’. The site also contains a small portion of land zoned SP2 Infrastructure (Public Transport Corridor) along the Windsor Road frontage, but this does not affect any existing structures. The proposed future development of the site seeks to utilise the existing warehouse building on the site to accommodate a full-line Woolworths supermarket of 3,800m<sup>2</sup> (including a BWS liquor store). The remainder of the existing building (3,015m<sup>2</sup>) will potentially be developed as a warehouse and distribution centre (non-retail) which is permitted under the current B6 zone that applies to the site. Further, an existing mezzanine level of 590m<sup>2</sup> is proposed to accommodate ancillary office space.

## **PART 2 – EXPLANATION OF PROVISIONS**

This planning proposal seeks to amend *Parramatta (former The Hills) Local Environmental Plan 2012* in relation to the zoning controls.

In order to achieve the desired objectives the following amendments to the *Parramatta (former The Hills) Local Environmental Plan 2012* would need to be made:

1. Amend Schedule 1 of the *Parramatta (former The Hills) Local Environmental Plan 2012* by adding retail premises as an additional permitted use (limited to a maximum of 3,800m<sup>2</sup>) to facilitate a Woolworths supermarket and a liquor store.
2. Require that ‘retail premises’ may only be permitted as an additional permitted use in conjunction with an existing permissible use under the B6 Enterprise Corridor zone.

## PART 3 – JUSTIFICATION

This part describes the reasons for the proposed outcomes and development standards in the planning proposal.

### 3.1 Section A - Need for the planning proposal

This section establishes the need for a planning proposal in achieving the key outcome and objectives. The set questions address the strategic origins of the proposal and whether amending the LEP is the best mechanism to achieve the aims on the proposal.

#### 3.1.1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

The Planning Proposal is not the result of any strategic study or report. As noted, the site is currently occupied by a large warehouse building (previously occupied by Bunnings Warehouse), with a gross floor area of 7,405m<sup>2</sup>. The Planning Proposal seeks to amend Schedule 1 of the Parramatta (former The Hills) Local Environmental Plan 2012 by adding retail premises as an additional permitted use (limited to a maximum of 3,800m<sup>2</sup>) to facilitate a Woolworths supermarket and a liquor store.

#### 3.1.2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

An alternative option is to amend the Parramatta (former The Hills) Local Environmental Plan 2012 to rezone the site to B6 Mixed Use Zone. However, this is not considered as an appropriated mechanism to address the site-specific scenario. The expansion of the type of retail use permissible on the site would serve the existing and future community and is considered consistent with the aims of the B6 zone. Further, it is not considered that the proposal will undermine or pre-empt any future strategic planning for North Rocks. **Therefore, allowing 'retail premises' as an additional permitted use is the best means of achieving the objectives or intended outcomes.**

### 3.2 Section B – Relationship to strategic planning framework

This section assesses the relevance of the Planning Proposal to the directions outlined in key strategic planning policy documents. Questions in this section consider state and local government plans including the NSW Government's Plan for Growing Sydney and subregional strategy, State Environmental Planning Policies, local strategic and community plans and applicable Ministerial Directions.

#### 3.2.1 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

A Metropolis of Three Cities

In March 2018, the NSW Government released the *Greater Sydney Region Plan: A Metropolis of Three Cities* (“the GSRP”) a 20 year plan which outlines a three-city vision for metropolitan Sydney for to the year 2036.

The GSRP is structured under four themes: Infrastructure and Collaboration, Liveability, Productivity and Sustainability. Within these themes are 10 directions that each contain Potential Indicators and, generally, a suite of objective/s supported by a Strategy or Strategies. Those objectives and or strategies relevant to this planning proposal are discussed below.

### ***Liveability***

An assessment of the planning proposal’s consistency with the GSRP’s relevant Liveability objectives is provided in Table 3b, below.

**Table 3b** – Consistency of planning proposal with relevant GSRP Actions – Liveability

Liveability Direction	Relevant Objective	Comment
<p><b>A city for people</b></p>	<p><b>O6:</b> Services and infrastructure meet communities’ changing needs</p>	<p>The planning proposal supports the liveability objectives of the District Plan. <i>“Liveability is about people’s quality of life. Maintaining and improving liveability requires housing, infrastructure and services that meet people’s needs...”</i></p> <p>Given the substantial increase in the future population of the District, the proposed additional permitted retail use will provide opportunities and better access to jobs and services for current and future population.</p> <p>It meets and reflects local communities’ changing needs and improves the quality of life in terms of liveability and accessibility- more healthy, resilient and socially connected.</p> <p>The proposed supermarket will allow for additional retail floor space in the form of a supermarket and liquor store and will not compete with existing centres in the area</p>
	<p><b>O7:</b> Communities are healthy, resilient and socially connected</p>	

		that provide a range of retail and non-retail uses.
<b>A city of great places</b>	<b>O12:</b> Great places that bring people together	The proposed supermarket will bring and attract a combination of people together, provide opportunities for social connection in the neighbourhood.
	<b>O13:</b> Environmental heritage is identified, conserved and enhanced	<p>The site contains a locally listed <b>heritage item, 'Stone Bridge Approaches and Foundation Plaque, Sydney Woollen Mills'</b>, Item A23 in Schedule 5 of The Hills LEP 2012. The only known built heritage elements on the site is a portion of wall with inset foundation plaques located along Windsor Road, directly adjacent to the footpath, which is bounded at the rear by metal cyclone fencing.</p> <p>The proposed future development of the site will utilise the existing warehouse building, with minor alterations including some existing openings to be blocked off and made good, some portions of wall cut out, new shopfront glazing and new awning. All works would be clear of the existing built heritage fabric by approximately 25 metres, and hence there would be no physical impact to the heritage item.</p>

### *Productivity*

An assessment of the planning proposal's consistency with the GSRP's relevant Productivity objectives is provided in Table 3c, below.

**Table 3c –** Consistency of planning proposal with relevant GSRP Actions – Productivity

Productivity Direction	Relevant Objective	Comment
Jobs and skills for the city	O19: Greater Parramatta is stronger and better connected	<p>The District Plan identifies the need for additional retail floor space in the district: <i>“Research has shown that the Central City District will need to accommodate more than 1.76 million square metres of additional retail floor space over the next 20 years”</i>. The proposal will allow for additional retail floor space in the form of a supermarket and liquor store and will not compete with existing centres in the area that provide a range of retail and non-retail uses. Given the substantial increase in the future population of the District, it is important to provide supermarket floor space to provide adequate services for the population, noting that there is already an undersupply of supermarket floor space for the existing population.</p> <p>Allowing additional permitted use of retail premises will ensure that the site continues to provide employment uses which is consistent with the objective of the Economic Corridor.</p>

### *Sustainability*

An assessment of the planning proposal’s consistency with the GSRP’s relevant Sustainability objectives is provided in Table 3d, below.

**Table 3d** – Consistency of planning proposal with relevant GSRP Actions – Sustainability

Sustainability Direction	Relevant Objective	Comment
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A city in its landscape	<b>O25:</b> The coast and waterways are protected and healthier	The Darling Mills Creek is located adjacent to the site to the east and south. In relation to potential flood impacts, the site is already developed with recent use as a Bunnings Warehouse and the proposal will not significantly affect the nature of the use of the site given that it seeks to allow only an additional permitted use (retail premises) on the site. The proposal does not introduce any sensitive land uses to the site.
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### Implementation

An assessment of the planning proposal's consistency with the GSRP's relevant Implementation objectives is provided in Table 3d, below.

**Table 3d** – Consistency of planning proposal with relevant GSRP Actions – Implementation

Implementation Direction	Relevant Objective	Comment
Implementation	<b>O39:</b> A collaborative approach to city planning	<p>The Planning Proposal is consistent with the State Government's Planning Proposal process in accordance with the 'A Guide to Preparing Planning Proposals'.</p> <p>The Planning Proposal considers other strategic planning documents including the Central City District Plan and local strategies. This will be further discussed below.</p>

### Central City District Plan

In March 2018, the NSW Government released *Central City District Plan* which outlines a 20 year plan for the Central City District which comprises The Hills, Blacktown, Cumberland and Parramatta local government areas.

Taking its lead from the GSRP, the *Central City District Plan* ("CCDP") is also structured under four themes relating to Infrastructure and Collaboration, Liveability, Productivity and Sustainability. Within these themes are Planning Priorities that are



each supported by corresponding Actions. Those Planning Priorities and Actions relevant to this planning proposal are discussed below.

### **Liveability**

An assessment of the planning proposal's consistency with the CCDP's relevant Liveability Priorities and Actions is provided in Table 4b, below.

**Table 4b** – Consistency of planning proposal with relevant CCDP Actions – Liveability

<b>Liveability Direction</b>	<b>Planning Priority/Action</b>	<b>Comment</b>
<p><b>A city for people</b>  <b>O6:</b> Services and infrastructure meet communities' changing needs</p>	<p><b>PP C3: Provide services and social infrastructure to meet people's changing needs</b></p> <ul style="list-style-type: none"> <li>• <b>A8:</b> Deliver social infrastructure that reflects the need of the community now and in the future.</li> </ul>	<p>The proposed additional permitted retail use will provide opportunities and better access to jobs and services for current and future population. It meets and reflects <b>the objective of meet communities' changing needs.</b></p>
<p><b>O7:</b> Communities are healthy, resilient and socially connected</p>	<p><b>PP C4: Working through collaboration</b></p> <ul style="list-style-type: none"> <li>• <b>A10:</b> Deliver healthy, safe and inclusive places for people of all ages and abilities that support active, resilient and socially connected communities by (a-d).</li> <li>• <b>A15:</b> Strengthen social connections within and between communities through better understanding of the nature of social networks and supporting infrastructure in local places</li> </ul>	<p>The Planning Proposal will encourage greater physical activity and social connection. It also provides better access to local retailers of fresh food which is consistent with the objective – communities are healthy, resilient and socially connected.</p>
<p><b>A city of great places</b>  <b>O12:</b> Great places that bring people together  <b>O13:</b> Environmental heritage is identified, conserved and enhanced</p>	<p><b>PP C6: Creating and renewing great places and local centres, and respecting the District's heritage</b></p> <ul style="list-style-type: none"> <li>• <b>A19:</b> Identify, conserve and enhance environmental heritage by (a-c)</li> <li>• <b>A20:</b> Use place-based planning to support the role of centres as a focus for connected neighbourhoods</li> <li>• <b>A21:</b> In Collaboration Areas, Planned Precincts and planning for centres (a-d)</li> </ul>	<p>Heritage and history are important components of local identity and form part of the character of places. Understanding the significance and community values of heritage early in the planning process provides greatest opportunity for conservation and management.</p> <p>The subject site contains Heritage Item 23 – Stone Bridge Approaches and Foundation Plaque, Sydney Woollen Mills listed in Schedule 5 of the Hills LEP 2012. The only known built heritage elements on the site is a portion of wall with inset foundation plaques located along Windsor Road, directly adjacent to the footpath, which is bounded at the rear by metal cyclone fencing.</p>

		The proposed future development of the site will utilise the existing warehouse building, with only minor alterations required. All works would be clear of the existing built heritage fabric by approximately 25 metres, and hence there would be no physical impact to the heritage item.
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### *Productivity*

An assessment of the planning proposal's consistency with the CCDP's relevant Productivity Priorities and Actions is provided in Table 4c, below.

**Table 4c** – Consistency of planning proposal with relevant CCDP Actions – Productivity

Productivity Direction	Planning Priority/Action	Comment
<b>Jobs and skills for the city</b> <b>O15:</b> The Eastern, GOP and Western Economic Corridors are better connected and more competitive	<b>PP C8: Delivering a more connected and competitive GOP Economic Corridor</b>	<p>The proposed development provides opportunities to access to jobs, goods and services.</p> <p>The economic Impact assessment indicates that the study notes that the proposed supermarket and associated liquor store, coupled with the warehouse and distribution and ancillary office use will provide both direct and indirect employment generation in the region of 1,196 jobs. It is consistent with the objective</p>

#### **4.1.1. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

The following local strategic planning documents are relevant to the planning proposal.

##### **Parramatta 2038 Community Strategic Plan**

Parramatta 2038 is a long term Community Strategic Plan for the City of Parramatta and it links to the long-term future of Sydney. The plan formalises several big and transformational ideas for the City and the region.

The planning proposal is considered to meet the strategies and key objectives identified in the plan including:

**Accessible:** The proposed additional permitted retail use will provide opportunities and better access to jobs and services for current and future population.

**Welcoming:** The site contains Heritage Item 23 – Stone Bridge Approaches and Foundation Plaque, Sydney Woollen Mills listed in Schedule 5 of the Hills LEP 2012. The proposed future work will not have physical impact to the heritage item.

**Thriving:** Contributes to the vibrancy of Parramatta, provides opportunities and better access to jobs and services, which promotes a better quality of life.

**Innovative:** The Planning Proposal provides local retail service to local and the broader community.

### **Parramatta Local Strategic Planning Statement**

In March 2018 the NSW Government introduced requirements for councils to prepare a Local Strategic Planning Statement (LSPS) as part of planning legislation to align state and local government plans as well as to guide long term planning and infrastructure decisions. LSPS responds to the planning priorities and objectives within **the NSW Government's Central City District Plan as well as the statutory requirements** set out in section 3.9 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) and supporting regulations.

The LSPS provides greater weight to strategic planning in the broader plan making process and any new planning proposal must justify any inconsistency with this framework and the supporting Local Housing Strategy (LHS) and Employment Lands Strategy (ELS).

Council's Local Strategic Planning Statement was published on 31 March 2020. The LSPS provides strategic direction on how the City of Parramatta is planning for the next 20 years. The site is not in an area that is specifically identified for growth within the LSPS, however given there is an existing undersupply of supermarket floorspace in the broader region and the potential job creation from the proposal (detailed in the Assessment of Key Issues below), it is considered that the Proposal is generally consistent with the LSPS.

#### **4.1.2. Is the planning proposal consistent with the applicable State Environmental Planning Policies?**

The following State Environmental Planning Policies (SEPPs) are of relevance to the site (refer to Table 5 below).

**Table 5 – Consistency of planning proposal with relevant SEPPs**

<b>State Environmental Planning Policies (SEPPs)</b>	<b>Consistency:</b> <b>Yes = ✓</b> <b>No = x</b> <b>N/A = Not applicable</b>	<b>Comment</b>
SEPP No 1 Development Standards	N/A	Not relevant to proposed amendment.
SEPP 4 – Development Without Consent and Miscellaneous Exempt and Complying Development	N/A	Not relevant to proposed amendment.
SEPP 33 – Hazardous and Offensive Development	N/A	Not relevant to proposed amendment.
SEPP No 55 Remediation of Land	✓	There is no proposed works as a part of this Planning Proposal
SEPP 60 – Exempt and Complying Development	N/A	This SEPP is not applicable to the subject land under Clause 1.9 of the Parramatta LEP 2011
SEPP 64 – Advertising and Signage	N/A	Not relevant to proposed amendment
SEPP No 65 Design Quality of Residential Flat Development	✓	Not relevant to proposed amendment
SEPP No.70 Affordable Housing (Revised Schemes)	N/A	Not relevant to proposed amendment
SEPP (Affordable Rental Housing) 2009	N/A	Not relevant to proposed amendment

SEPP (BASIX) 2004	N/A	Not relevant to proposed amendment
SEPP (Exempt and Complying Development Codes) 2008	✓	The Planning Proposal will not preclude the application of the SEPP for future development
SEPP (Infrastructure) 2007	✓	The Planning Proposal will not preclude the application of the SEPP for future development
Sydney Regional Environmental Plan No 18– Public Transport Corridors	N/A	This SEPP is not applicable to the subject land under Clause 1.9 of the <i>Parramatta LEP 2011</i> .
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	N/A	The proposed development is not located directly on the Sydney Harbour Catchment foreshore. Any potential impacts as a result of development on the site, such as stormwater runoff, will be considered and addressed appropriately at DA stage.
SEPP (Urban Renewal) 2010	N/A	Not relevant to proposed amendment

#### 4.1.3. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)

In accordance with Clause 9.1 of the *EP&A Act 1979* the Minister issues directions for the relevant planning authorities to follow when preparing planning proposals for new LEPs. The directions are listed under the following categories:

- Employment and resources
- Environment and heritage
- Housing, infrastructure and urban development
- Hazard and risk
- Housing, Infrastructure and Urban Development
- Local plan making

The following directions are considered relevant to the subject Planning Proposal.

**Table 6** – Consistency of planning proposal with relevant Section 9.1 Directions

Relevant Direction	Comment	Compliance
<b>1. Employment and Resources</b>		

<p>Direction 1.1 – Business and Industrial Zones</p>	<p>This Planning Proposal seeks to amend Schedule 1 of the Parramatta (former Hills) LEP 2012 to allow retail premises as an additional permitted use to facilitate a Woolworths supermarket and a liquor store comprising 3,800m<sup>2</sup> of a supermarket, 3,015m<sup>2</sup> of a warehouse and distribution centre (non-retail) and 590m<sup>2</sup> of offices.</p> <p>The proposal protects employment land by maintaining the existing commercial floor space and maintaining employment in the zone. By virtue of expanding the type of retail use permissible at the site it will potentially allow for additional employment uses in the locality.</p> <p>The proposal would address some of the significant undersupply of supermarket floor space within the area. It would provide significant improvement in the range of retail facilities that would be available to residents, particularly in terms of convenient supermarket retailing, improve choice of location and allow for price competition.</p> <p>Given there is an existing undersupply of supermarket floorspace in the broader region as identified in the supporting economic impact analysis and the potential job creation from the proposal it is considered that the Proposal is generally consistent with the LSPS. More specifically, the proposal is consistent with Planning Priority 11 of the LSPS that seeks to “<i>Build the capacity of...Local Centres and Employment Lands to be strong, competitive and productive</i>”. This Planning Proposal is proposing to accommodate a supermarket, also a warehouse distribution component and still classified as employment land, and there will be significant increase in jobs which addresses the existing need. Noting the warehouse distribution is currently permissible within the zone.</p> <p>An Economic Impact Assessment has also been provided in support of the Planning Proposal prepared by Location IQ and has been reviewed by Council officers, that indicates this proposal has a potential to generate up to 1,196 direct and indirect jobs. The proponent has indicated that the currently permissible distribution centre proposed on site would be reliant on a co-located supermarket in order to operate, as distribution stock would be drawn from the supermarket stock in many instances. It is considered that the proposal does meet the objectives of the Direction.</p>	<p>Yes</p>
<p><b>2. Environment and Heritage</b></p>		
<p>Direction 2.3 - Heritage Conservation</p>	<p>The subject site contains Heritage Item 23 – Stone Bridge Approaches and Foundation Plaque, Sydney Woollen Mills listed in Schedule 5 of the Hills LEP 2012. The only known built heritage elements on the site is a portion of wall with inset foundation plaques</p>	<p>Yes</p>

	<p>located along Windsor Road, directly adjacent to the footpath, which is bounded at the rear by metal cyclone fencing.</p> <p>The proposed future development of the site will utilise the existing warehouse building, with only minor alterations required. All works would be clear of the existing built heritage fabric by approximately 25 metres, and hence there would be no physical impact to the heritage item.</p> <p>A full assessment of potential heritage impacts would be required as part of the future detailed development application and would address any potential impacts, including visual impacts, however these are expected to be minimal.</p>	
Direction 2.6 – Remediation of Contaminated Land	At this point in time, there is no work proposed at the site, the intention of the proposal is for the supermarket and the associated warehouse distribution to occur within the existing building. However, in the event that should any works be proposed within the site (ie. Demolition or new structure), the issue of remediation will need to be addressed at the DA stage.	Yes
<b>3. Housing, Infrastructure and Urban Development</b>		
Direction 3.1 - Residential Zones	N/A	N/A
Direction 3.4 - Integrating Land Use and Transport	<p>The planning proposal will enable improved access to convenience shopping for the surrounding area and passing traffic.</p> <p>The area is accessible via public transport and road connections - have access to a number of bus services which operate between Parramatta and various locations.</p> <p>A Traffic Impact Assessment is submitted with this application, see details in the traffic and transport section.</p>	Yes
<b>4. Hazard and Risk</b>		
Direction 4.1 - Acid Sulfate Soils	The proposal is seeking to utilise the existing building on site and therefore is not expected to undertake any excavation that could expose any acid sulfate soils should they exist.	Yes

	<p>The applicant will be required to carry out a geotechnical study to investigate acid sulfate soils risk prior exhibition if there is going to be any excavation work on the site.</p> <p>Notwithstanding the above, this issue would be required to be addressed (given the current lack of acid sulfate soils mapping) at the DA stage should excavation be proposed.</p>	
Direction 4.3 - Flood Prone Land	<p>Darling Mills Creek is located adjacent to the site, to the east and south. In relation to potential flood impacts, the site is already developed with recent use as a Bunnings Warehouse and the proposal will not significantly affect the nature of the use of the site given that it seeks to allow only an additional permitted use (retail premises) on the site. The proposal does not introduce any sensitive land uses to the site.</p> <p>An overland flow assessment is submitted with the application which concludes that there is relatively low overland flooding risk to the site given the limited contributing catchment area. Additionally, flood mapping plans are provided which demonstrate that the building footprint lies entirely outside areas subject to hazard during the 1% AEP flood event.</p> <p>The proposal does not appear to be obstructing any <b>significant overland flow conveyance path ('floodway')</b> nor will it cause unacceptable displacement of overland flow floodwaters onto other properties or lands.</p> <p>The main vehicular access to the site (from North Rocks Road) is substantially elevated over the creek and which could accommodate a change in level to the creek. In addition, secondary access to/from Windsor Road is also available.</p>	Yes
<b>5. Local Plan Making</b>		
Direction 6.1 - Approval and Referral Requirements	The Planning Proposal does not introduce any provisions that require any additional concurrence, consultation or referral.	Yes



<p>Direction 6.3 - Site Specific Provisions</p>	<p>This Planning Proposal seeks to amend Schedule 1 of the Parramatta (former Hills) LEP 2012 to allow retail premises as an additional permitted use to facilitate a Woolworths supermarket and a liquor store comprising 3,800m<sup>2</sup> of a supermarket, 3,015m<sup>2</sup> of a warehouse and distribution centre (non-retail) and 590m<sup>2</sup> of offices.</p> <p>It is considered that a site specific provision is required for this planning proposal in order to facilitate a use for which there is an identified need. The use will also generate employment on a currently vacant site within an Employment Zone, and facilitate a warehouse and distribution centre that is already permissible within the existing zone. Rezoning this whole site to a zone (such as the B2 Zone) that would facilitate retail uses over the entire site would result in unintended/greater impacts from traffic and economic perspectives than what has currently been considered. For instance, such an approach could allow for a supermarket and a large</p>	<p>Yes</p>
	<p>number of specialty stores to develop on site, the impacts of which have not been assessed.</p> <p>A site specific provision is considered the best way to facilitate the proposed use and mitigate any unintended impacts that could result from the entire site being rezoned. This is proposed to be achieved via a site specific provision limiting the supermarket/retail use on the site to a maximum of 3,800 sqm, thereby ensuring that the site does not develop outside a clearly defined parameter.</p>	
<p><b>6. Metropolitan Planning</b></p>		
<p>Direction 7.1 - Implementation of A Plan for Growing Sydney</p>	<p>The Central City District Plan (CCDP) identifies the need for additional retail floor space in the district: <i>“Research has shown that the Central City District will need to accommodate more than 1.76 million square metres of additional retail floor space over the next 20 years”</i>. <b>The proposal will allow for additional retail floor space in the form of a supermarket and liquor store and will not compete with existing centres in the area that provide a range of retail and non-retail uses.</b> Given the substantial increase in the future population of the District, it is important to provide supermarket floor space to provide adequate services for the population, noting that there is already an undersupply of supermarket floor space for the existing population.</p> <p>Further, the planning proposal will support the liveability objectives of the District Plan. <i>“Liveability is about people’s quality of life. Maintaining and improving liveability requires housing, infrastructure and services that meet people’s needs...”</i>. Allowing for a supermarket will provide for the day to day needs of the large population in the district (existing and future).</p>	<p>Yes</p>

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## 4.2. Section C – Environmental, social and economic impact

This section considers the potential environmental, social and economic impacts which may result from the Planning Proposal.

### 4.2.1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The site is not affected by critical habitat or threatened species, populations or ecological communities, or their habitats. Further, the Planning Proposal is seeking enable an additional use within an existing building of the site.

### 4.2.2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The main potential environmental impacts to be examined in detail with any future development proposal for the site are:

#### **Traffic and Transport**

An assessment of potential traffic and parking implications has been prepared by the applicant's traffic consultant, Colston Budd Rogers & Kafes in support of the Planning Proposal. A copy of the traffic assessment is included at **Appendix 1**.

#### ***Car Parking***

The traffic report states that while the site currently provides approximately 300 parking spaces within the existing at grade car parking area, this will be reconfigured to provide a reduction to the total number of spaces resulting in approximately 256 car spaces in accordance with the RMS rates for supermarkets. In addition, bicycle and motor cycle spaces will be provided in accordance with Council requirements.

#### ***Traffic Generation***

The Traffic Report indicates that the previous Bunnings store on the site was surveyed by the RMS and found to generate approximately 200 vehicles per hour (two way) in the weekday afternoon peak hour. The report also states that based on surveys of similar supermarkets and RMS guidelines for warehouses and offices, the proposed development would generate approximately 420 vehicles per hour (two way) in the weekday afternoon peak hour. The report, then notes that during the afternoon peak period, a high proportion of above trips will be passing trade given the sites location and heavy traffic flows on the adjacent road network. Accordingly, the report concludes that the increase in traffic on the surrounding road network

compared to the previous Bunnings store (when excluding passing trade given these vehicles are already on the road network) is likely to increase by up to 100 vehicles per hour (two way). However, when this is distributed to the surrounding road network, increases in traffic on North Rocks Road and Windsor Road will be minor at approximately 20 to 50 vehicles per hour (two way).

Council officers consider that the trip generation from the site is likely to be lower than similar sites in the afternoon peak due to the high levels of traffic congestion within the area. It is considered that customers are likely to travel to other supermarkets that are easier to access during peak periods or may also travel to the site outside of these peak times to take advantage of the extended trading hours of supermarkets. For this reason, Council officers consider that the proposed centre is not likely to contribute to additional traffic as much as may occur in other locations. That said, whilst the proposal will have a relatively minor impact on the surrounding road network (based on the applicant's modelling detailed above) when compared with the previously approved Bunnings store, Council officers and the applicant's traffic consultant acknowledge that the adjacent road network is currently operating at capacity in the weekday afternoon peak. Notwithstanding the above, the site is also well located to deliver improvements to the surrounding traffic network while also improving access to and from the site. This is discussed in detail below under *Traffic and Transport Infrastructure Upgrades*.

### ***Traffic and Transport Infrastructure Upgrades***

The applicant's traffic report recommends the provision of a third lane on the westbound off ramp of James Ruse Drive onto Windsor Road. The report indicates that the additional left turn lane will result in reduced delay/queues on the westbound off ramp as well as the ability to reallocate the traffic signalisation phases across the overall road network in this area, including the North Rocks Road approach to Windsor Road (benefitting right turn egress from the subject site).

It is noted that the site is well located to facilitate this additional left hand turn lane as it would require some land take along the James Ruse Drive frontage of the subject site which is currently undeveloped (e.g. some at grade car spaces, and landscape buffer). Given that both James Ruse Drive and Windsor Road are State roads the Planning Proposal and associated traffic report was also referred to Transport for NSW (TfNSW) for comment.

The key traffic issues raised by TfNSW are detailed in the below table:

**Table 7:** TfNSW preliminary comments and response

<b>TfNSW Preliminary Comment</b>	<b>Council Officer Response</b>
TfNSW recommend that "a site specific clause be inserted into the LEP limiting retail on the subject site to 3,800sqm only" to align	The applicant's traffic assessment was based on a 3,800m <sup>2</sup> supermarket with the balance of the site a warehouse/distribution

<p>with the traffic generating rate of a shopping centre &lt; 10,000sqm (12.7 vehicle trips per 100sqm GLFA in PM peak period).</p>	<p>centre. Therefore, Council officers agree <b>with TfNSW's recommendation that a site specific clause limiting retail on the site to 3,800m2 of retail space in total is appropriate.</b></p>
<p>TfNSW currently have no approved road proposal that impacts the subject site, however the James Ruse Drive intersection with Windsor Road is currently under investigation for potential future transport improvements in the medium to long term. TfNSW acknowledge that an additional left turn lane at the James Ruse Drive off ramp into Church St/Windsor road will not only benefit the broader network but will also benefits for the proposed development given the existing traffic capacity issues within the adjoining network.</p> <p>Should land be provided to facilitate the above additional lane, TfNSW will consider waiving a right hand turn restriction from the site into North Rocks Rd during afternoon peak.</p> <p>However, to provide flexibility for motorists exiting the site, a U-turn facility (roundabout) should be provided on North Rocks Road (in the vicinity of the site) to allow vehicles wishing to turn right out of the site onto North Rocks Road, can instead turn left, then do a U-turn nearby to allow them to get to Windsor Road, in order to assist right hand turn movements out of the site during peak periods.</p>	<p>At this stage, TfNSW are still yet to prepare a Property Impact Plan detailing how much land will be required for the additional left turn lane on the James Ruse Drive off ramp onto Church Street/ Windsor Road. It is understood that TfNSW are currently in the process of preparing this plan for consideration by the applicant.</p> <p>Should this be agreed to by the applicant, a suitable mechanism to facilitate the delivery of this land to State Government will need formalised (e.g. VPA with the State Government/Satisfactory Arrangements Provisions within the Planning Proposal or other) as this relates to a State Government owned road i.e. James Ruse Drive.</p> <p>In relation to the U-turn facility, Council has care and control of North Rocks Road and it is therefore recommended that Council enter into negotiations with the applicant for the purposes of delivering a roundabout/U-turn facility on North Rocks Road within an appropriate location. It is noted that the proposed roundabout will ultimately need to <b>be approved by Council's Traffic Committee</b> and would not need to be delivered until the supermarket opens, however to ensure certainty that the roundabout will be delivered by the applicant, it is recommended that the commitment to deliver the works is formalised as part of a VPA with Council.</p>
<p>The proponent is required to prepare a detailed Plan of Management that identifies practicable measures to minimise as much as possible queuing/congestion within the site associated with potential delays for motorists attempting to turn right from the site to North</p>	<p>Noted. It considered that the requirements of the Plan of Management could be addressed through the delivery of the roundabout.</p>

<p>Rocks Road during peak periods. This is due to queues on the North Rocks Road approach to Windsor Road extending past the signalised site access road in the peak periods. The Plan of Management should be submitted to Council and TfNSW for review and comment as part of any future DA for the proposed development.</p>	
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**Council's Traffic and Transport team have also raised a number of** issues relating to pedestrian and cyclist access to and from the site. The existing footpath on the southern side of the existing driveway bridge over Darling Mills creek is approximately 1.2m wide which is acceptable for the previous Bunnings use where most customers are picking up hardware and garden supplies by vehicle, but for a supermarket use the nature of shopping trips is different and is likely to generate a greater proportion of trips from pedestrians and/or cyclists.

It is therefore recommended that Council investigate the option of negotiating a planning agreement (in addition to the roundabout discussed in the above table) with the applicant to facilitate the provision of a shared path (at least 3m wide) which may require augmentation to the existing bridge (i.e. clip on structure) or alternatively a standalone bridge alongside to facilitate safe access for pedestrians and cyclists entering and leaving the site.

Based on the above, it is considered that there are still a number of outstanding traffic and transport matters that are yet to be resolved, however these relate to confirming a delivery mechanism for the proposed additional left turn lane at the James Ruse Drive off ramp into Church Street/Windsor Road (State infrastructure), new roundabout on North Rocks road to manage right hand turn movements from the subject site (Council infrastructure) and improved accessibility for pedestrians and cyclists.

It noted that while these delivery mechanisms are still yet to be confirmed, it is considered that the planning proposal has appropriately considered the traffic and transport impacts and there is sufficient scope to address how these items will be delivered following Gateway Determination being issued, but prior to public exhibition of the proposal.

Should Council endorse the planning proposal to proceed to Gateway Determination, Council will continue to liaise with State Government and the applicant to ensure that the identified traffic and transport works (both State and local) are confirmed via an appropriate delivery mechanism (either via VPA and/or planning provisions to be included within the planning proposal such satisfactory arrangements).

### **Heritage**

A Heritage Impact Assessment has been prepared by Extent Heritage Advisors in support of the submitted Planning Proposal and is included at **Appendix 3**. The site contains a locally listed heritage item referred to as, 'Stone Bridge Approaches and



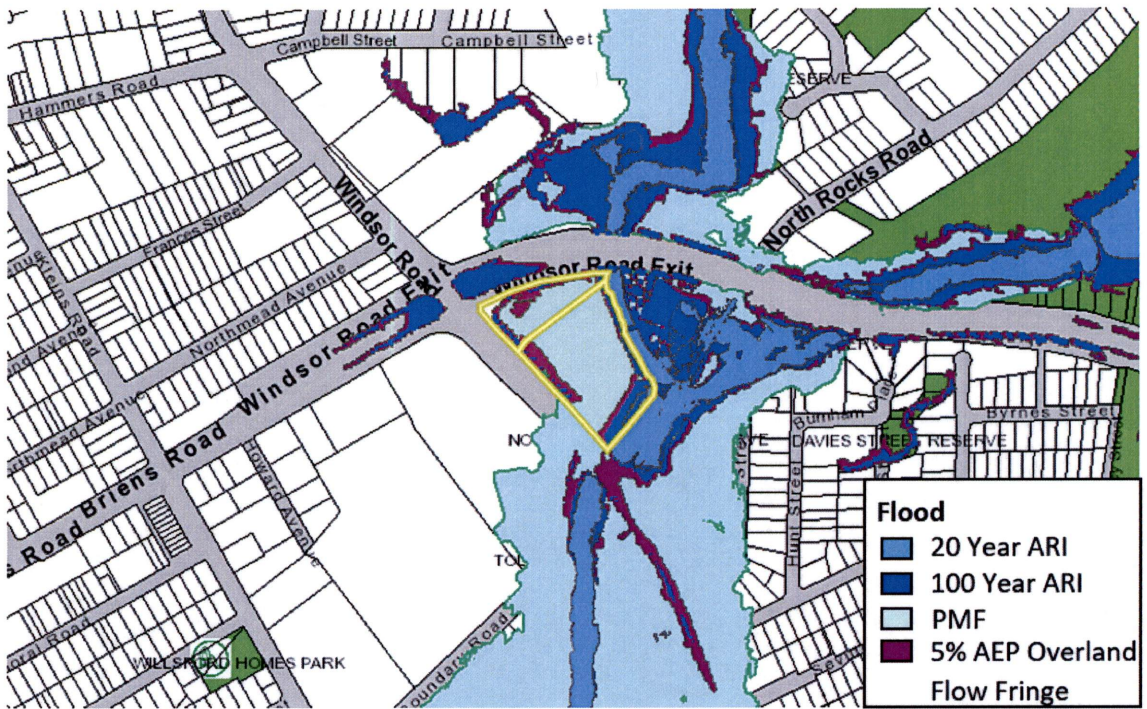
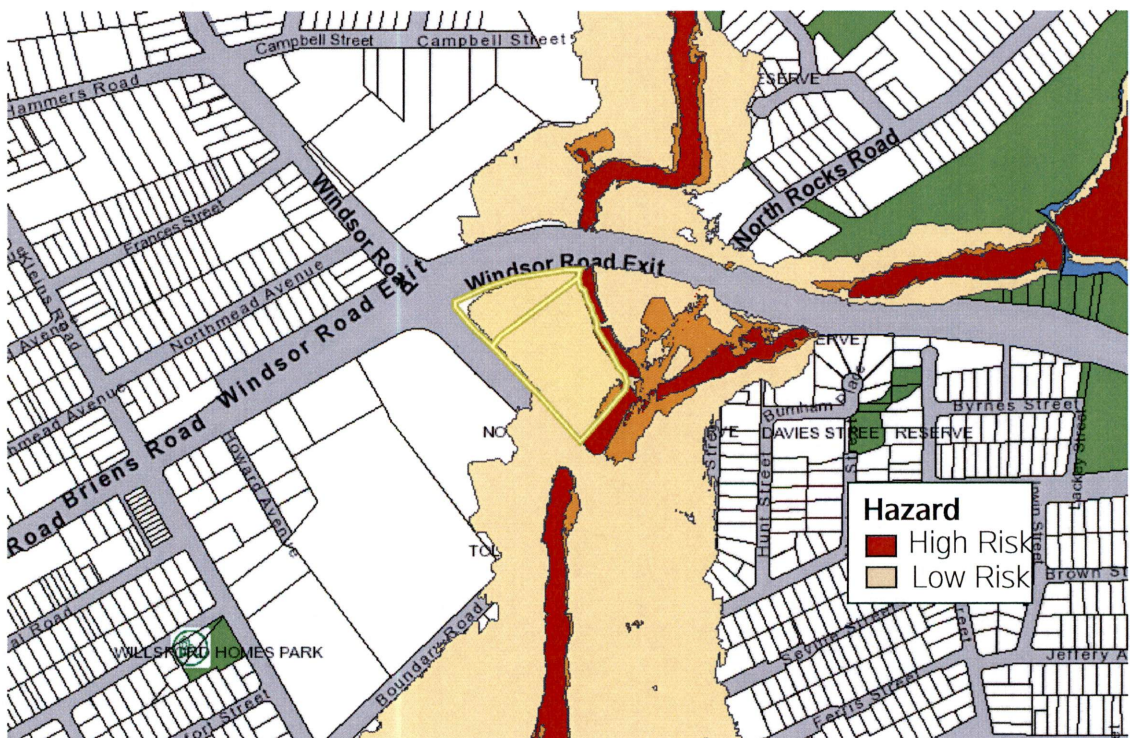


Figure 4: Flood Affectation

Figure 5 shows there is an area of high flood hazard flow (shown in red), but affects the site only the outer edges and is located near the Darling Mills Creek



**Figure 5:** Flood Risk – map showing ‘low hazard’ flood zone in yellow

The change in use from the hardware warehouse (Bunnings) to a supermarket is predicted to increase the number of occupants on the site, which will increase the flood risk associated with this development. However the flood studies indicate minimal intrusion of high hazard flooding onto the site and only minor intrusion of moderate hazard 1% AEP (100 year ARI) flooding around the edges of the land. This means increasing the number of occupants on the site is not likely to generate an increased risk from overland flow flooding.

As the proposal is not seeking to alter the extent of the existing building envelope on the site, it does not appear to be obstructing any significant overland flow conveyance path (‘floodway’) nor will it cause unacceptable displacement of overland flow floodwaters onto other properties or lands. Potential flood impacts would be further considered and addressed as a part of the future detailed development application.

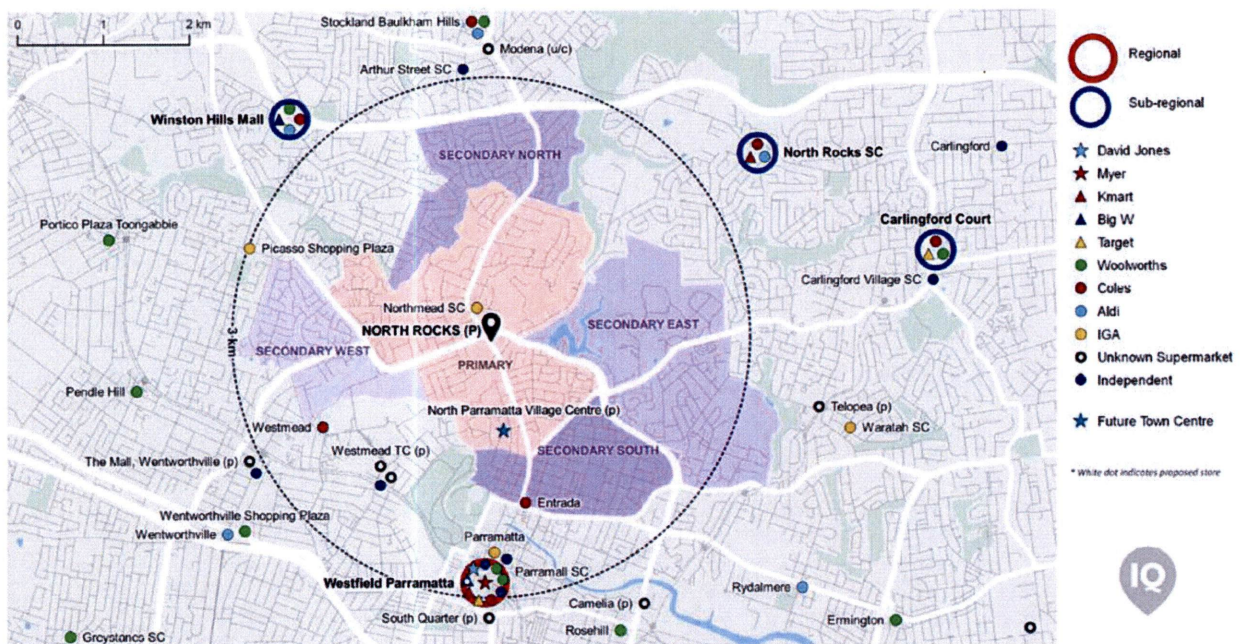
#### **4.2.3. How has the planning proposal adequately addressed any social and economic effects?**

##### **Economic Impact**

An Economic Impact Assessment has also been provided in support of the Planning Proposal prepared by Location IQ. The study presents an analysis of the trade area, its demographics, socio-economic profile, projected population growth and expenditure capacity. It also presents a detailed analysis of the retail profile of the trade area, including a competitor analysis, highlighting the supply and the indicative performance of food retailing stores in the area. Overall, the analysis supports the viability for the proposed supermarket at the subject site. A copy of the Economic Impact Assessment is included at **Appendix 2**.

The study notes that there is currently an undersupply of supermarket space within the identified trade area and any impacts on nearby centres or supermarkets both within and outside the main trade area are manageable. The economic impact analysis undertaken by Location IQ indicates that all impacts of the proposed supermarket at 1 Windsor Road, North Rocks on surrounding centres are within a reasonable competitive range of 10% or less. Therefore, the proposal will not threaten the viability of any nearby centre or supermarket, particularly given the current undersupply of supermarket floorspace in the trade area. In addition, the impacts from the proposed development on other centres will be offset over time given the underlying population growth (and associated growth in retail spending) within the trade area and within the broader region. The identified trade area for the proposed supermarket as contained in the economic impact analysis is shown in **Figure 6** below.





**Figure 6: Main Trade Area and Competition (extracted from Economic Impact Assessment)**

Furthermore, the study notes that the proposed supermarket and associated liquor store, coupled with the warehouse and distribution and ancillary office use will provide both direct and indirect employment generation in the region of 1,196 jobs.

It is noted that the Economic Impact Assessment only assesses the potential economic impacts of the proposed development being a supermarket and liquor store of 3,800m<sup>2</sup>, a warehouse and distribution centre and associated office space. However, should the Planning Proposal proceed and allow retail premises as an additional permitted use, there is potential for a much larger retail centre to be developed on the site that could include a large number of specialty stores or discount department stores. Such a centre would have a profoundly different impact on surrounding centres that has not been adequately considered should the proposed LEP amendment proceed in its current form. The potential for a much larger centre would also lead to significantly different traffic generation from the site as noted in the traffic and transport section above.

In order to address this concern, it is proposed that the additional permitted use of retail premises be limited to a maximum of 3,800m<sup>2</sup> in accordance with the proposed supermarket and liquor store development included in the Planning Proposal. It is proposed to include this limit as part of the Additional Permitted Use provisions within Schedule 1 of the Parramatta (former The Hills) Local Environmental Plan 2012. This will ensure that retail uses are capped on the site and any additional retail uses do not occur on the site over and above those that have already been subject to a detailed impact analysis.

## Social Impacts

In terms of social impacts, in allowing for a full-line supermarket in an area with an identified shortage of supermarket floor space, the planning proposal will provide for the day-to-day needs of the substantial population in the area and therefore provide positive social impacts.

### **4.3. Section D – State and Commonwealth Interests**

#### **4.3.1. Is there adequate public infrastructure for the planning proposal?**

The Proposal does not intend to facilitate any new development, rather the Planning Proposal will facilitate an additional permitted use within the existing building.

However, given the issues identified within the Traffic and Transport section above, a Planning Agreement may provide an appropriate mechanism to ensure that issues associated with the increase in demand for infrastructure as a result of the Planning Proposal are satisfactorily addressed.

It is therefore recommended that Council authorise the Chief Executive Officer (CEO) to negotiate a Planning Agreement on behalf of Council. Should the Planning Agreement proceed, the outcome of the negotiations would be reported back to Council prior to its concurrent public exhibition with the Planning Proposal. The key elements of the Planning Agreement would address the following:

- delivery of a roundabout on North Rocks Road, and
- augmentation of the existing bridge over Darling Mills Creek to facilitate increased capacity for pedestrian and cyclists.

In addition, as noted in the Traffic and Transport section above, a mechanism to deliver a third lane on the James Ruse Drive off ramp should be agreed to by the State Government and the proponent prior to any public exhibition of the Planning Proposal. This will likely require some land take on the northern boundary of the site but will not impact the existing structures on site. Should a Planning Agreement be required to deliver the additional lane, it would be undertaken at State level as James Ruse Drive is not a Council owned and managed road.

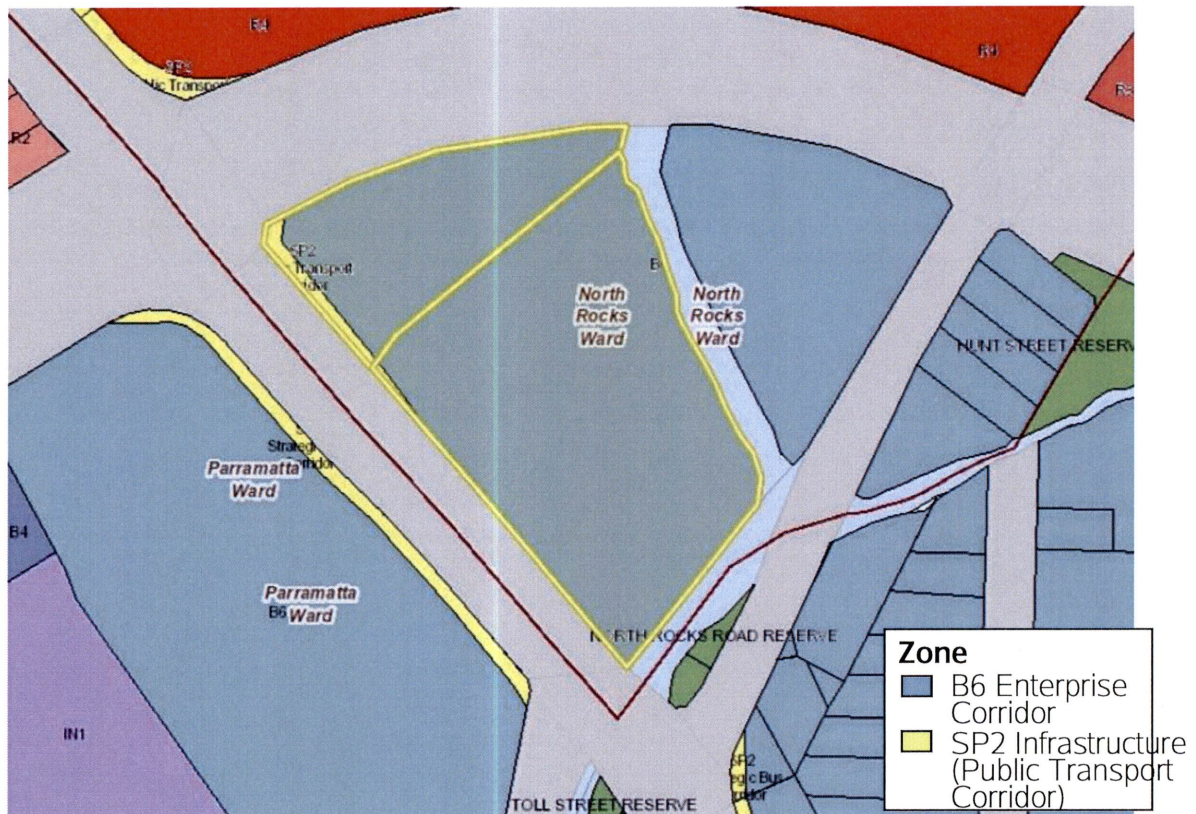
#### **4.3.2. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation with the State and Commonwealth public authorities will be undertaken once the gateway determination has been issued.

## PART 4 – MAPPING

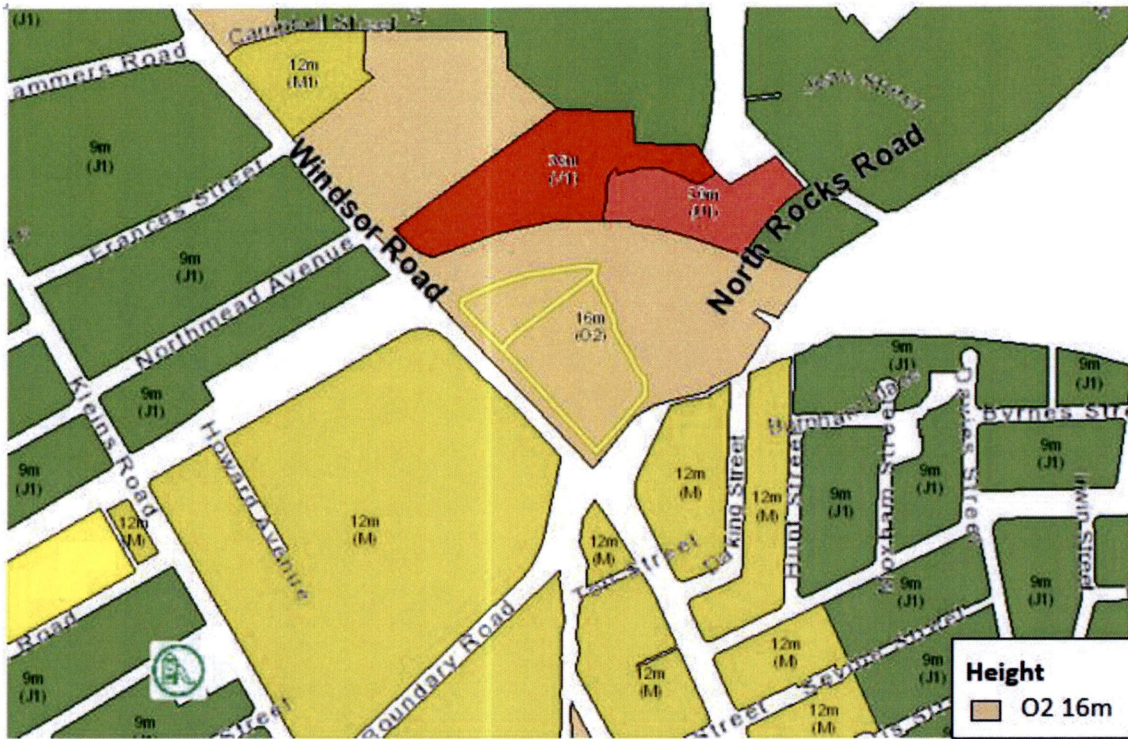
This section contains the mapping for this planning proposal in accordance with the DP&E's guidelines on LEPs and Planning Proposals. **Existing controls**

This section illustrates the current *Hills LEP 2012* controls which apply to the site.



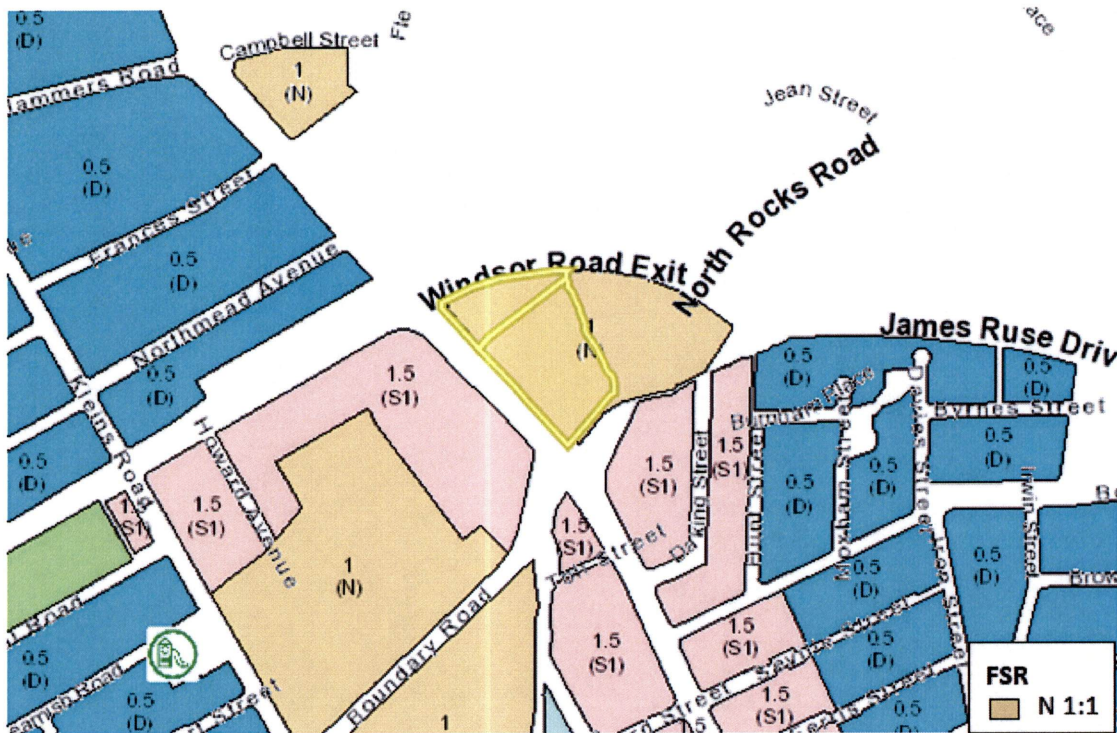
**Figure 7** – Existing zoning extracted from *Parramatta (former The Hills) LEP 2012* Land Zoning Map

**Figure 7** illustrates the existing B6 Enterprise Corridor Zone and SP2 Infrastructure Zone.



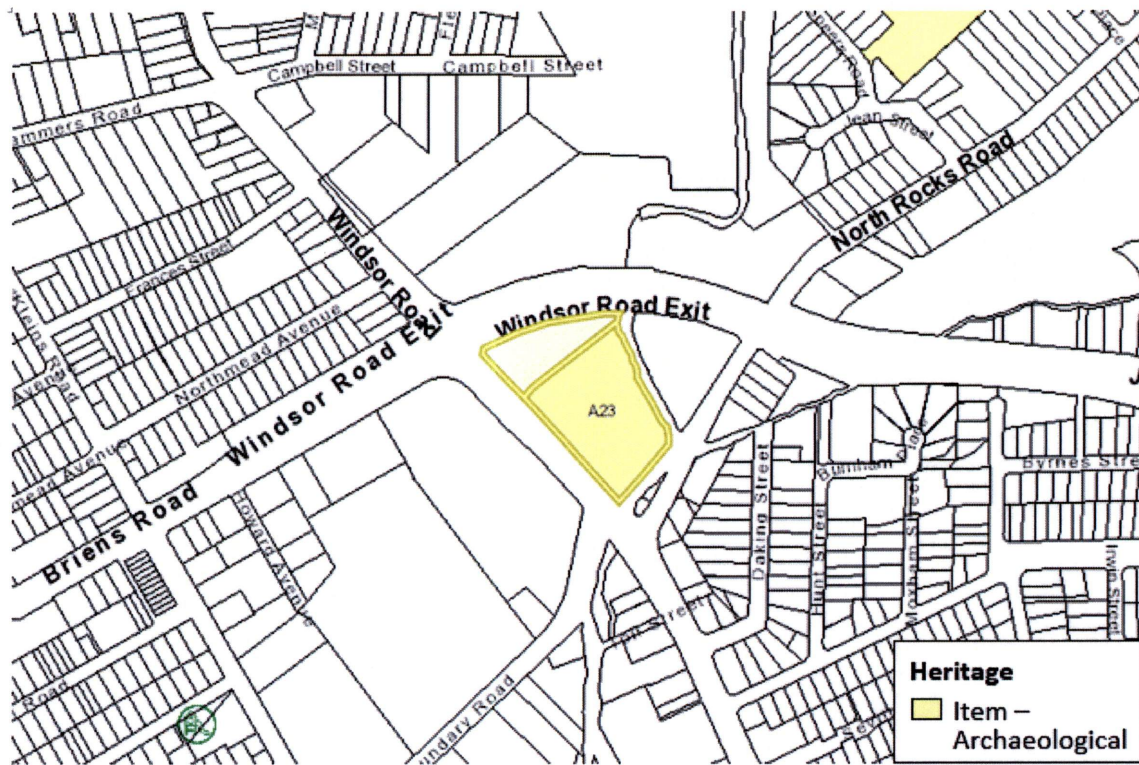
**Figure 8** – Existing building heights extracted from the *Parramatta (former The Hills) LEP 2012* Height of Buildings Map

**Figure 8** illustrates the existing building height of 16 metres.



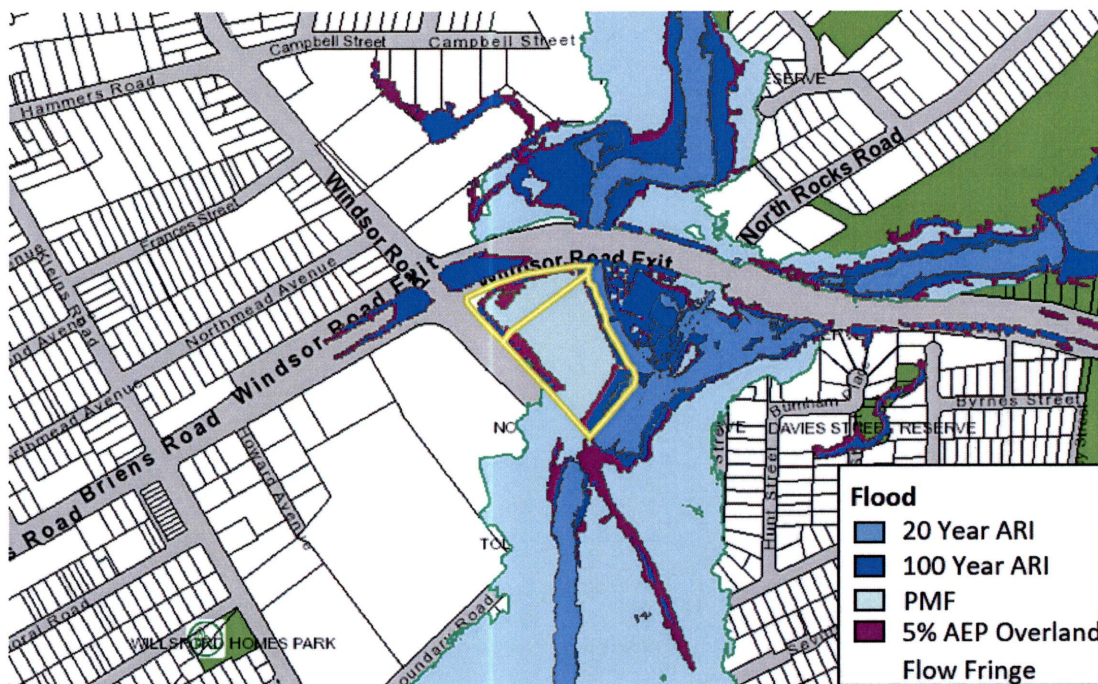
**Figure 9** – Existing floor space ratio extracted from the *Parramatta (former The Hills) LEP 2012* Floor Space Ratio Map

**Figure 9** illustrates the existing FSR of 1:1.



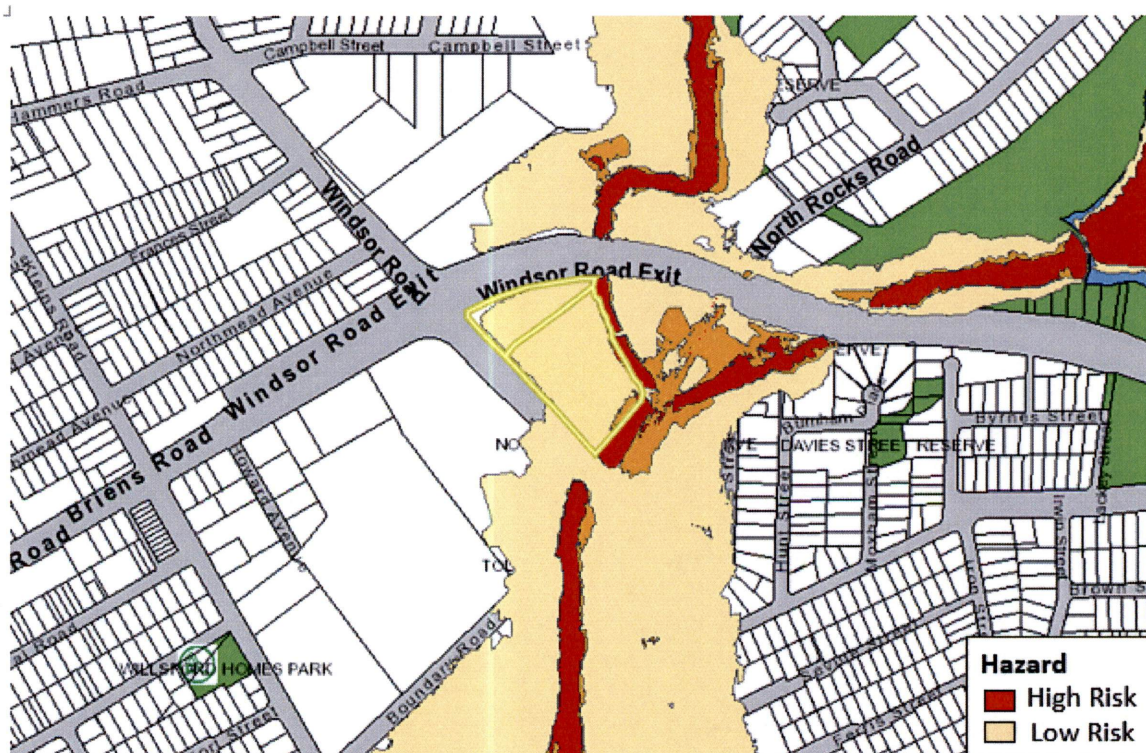
**Figure 10** – Existing heritage items extracted from the *Parramatta (former The Hills) LEP 2012* Heritage Map

**Figure 10** above illustrates Item 23 – Stone Bridge Approaches and Foundation Plaque, Sydney Woollen Mills



**Figure 11** – Existing flooding extant extracted from the *Parramatta (former The Hills) LEP 2012* 5/20/100 Year ARI and PMF Flooding Map

**Figure 11** above illustrates the flooding extant in the vicinity of the site.



**Figure 12** – Existing flooding extant extracted from the *Parramatta (former The Hills) LEP 2012* Flood Hazard Map

**Figure 12** above illustrates the flooding extant in the vicinity of the site.



## **4.2 Proposed controls**

No changes to the zoning, height, and FSR controls are proposed as a part of this Planning Proposal. The proposal is seeking to amend Schedule 1 of the Parramatta (former The Hills) Local Environmental Plan 2012 by adding retail premises as an additional permitted use (limited to a maximum of 3,800m<sup>2</sup>) to facilitate a Woolworths supermarket and a liquor store.

## **PART 5 – COMMUNITY CONSULTATION**

The planning proposal (as revised to comply with the Gateway determination) is to be publicly available for community consultation.

Public exhibition is likely to include:

- newspaper advertisement;
- **display on the Council's web-site;** and
- written notification to adjoining landowners.

The gateway determination will specify the level of public consultation that must be undertaken in relation to the planning proposal including those with government agencies.

Consistent with sections 3.34(4) and 3.34(8) of the *EP&A Act 1979*, where community consultation is required, an instrument cannot be made unless the community has been given an opportunity to make submissions and the submissions have been considered.

## PART 6 – PROJECT TIMELINE

Once the planning proposal has been referred to the Minister for review of the Gateway Determination and received a Gateway determination, the anticipated project timeline will be further refined, including at each major milestone throughout the planning proposal's process.

Table 7 below outlines the anticipated timeframe for the completion of the planning proposal.

**Table 7** – Anticipated timeframe to planning proposal process

MILESTONE	ANTICIPATED TIMEFRAME
Report to LPP on the assessment of the PP	16 June 2020
Report to Council on the assessment of the PP	27 July 2020
Referral to Minister for review of Gateway determination	August 2020
Date of issue of the Gateway determination	November 2020
Commencement and completion dates for public exhibition period	November/December 2020
Commencement and completion dates for government agency notification	November/December 2020
Consideration of submissions	February 2021
Consideration of planning proposal post exhibition and associated report to Council	March/April 2021
Submission to the Department to finalise the LEP	May 2021
Notification of instrument	June 2021

# Appendix 1 – [Traffic Review]

## **Appendix 2 – [Economic Impact Assessment]**

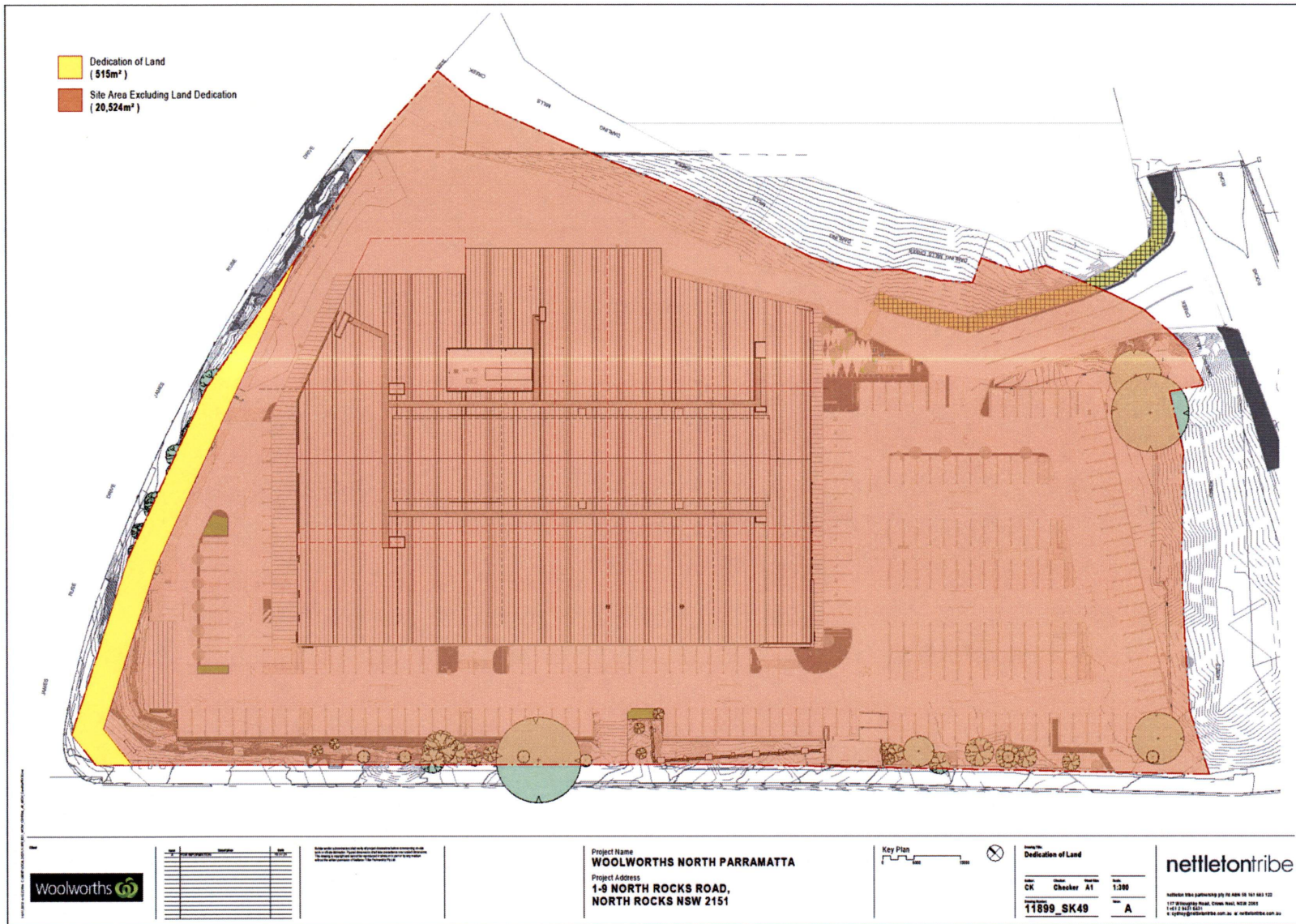
## **Appendix 3 – [Heritage Impact Assessment]**

## **Appendix 4 – [Overland Flow Report]**

## **Schedule 2 – Plan of Dedication Land**

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| 1 Windsor Road, North Rocks

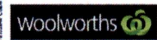
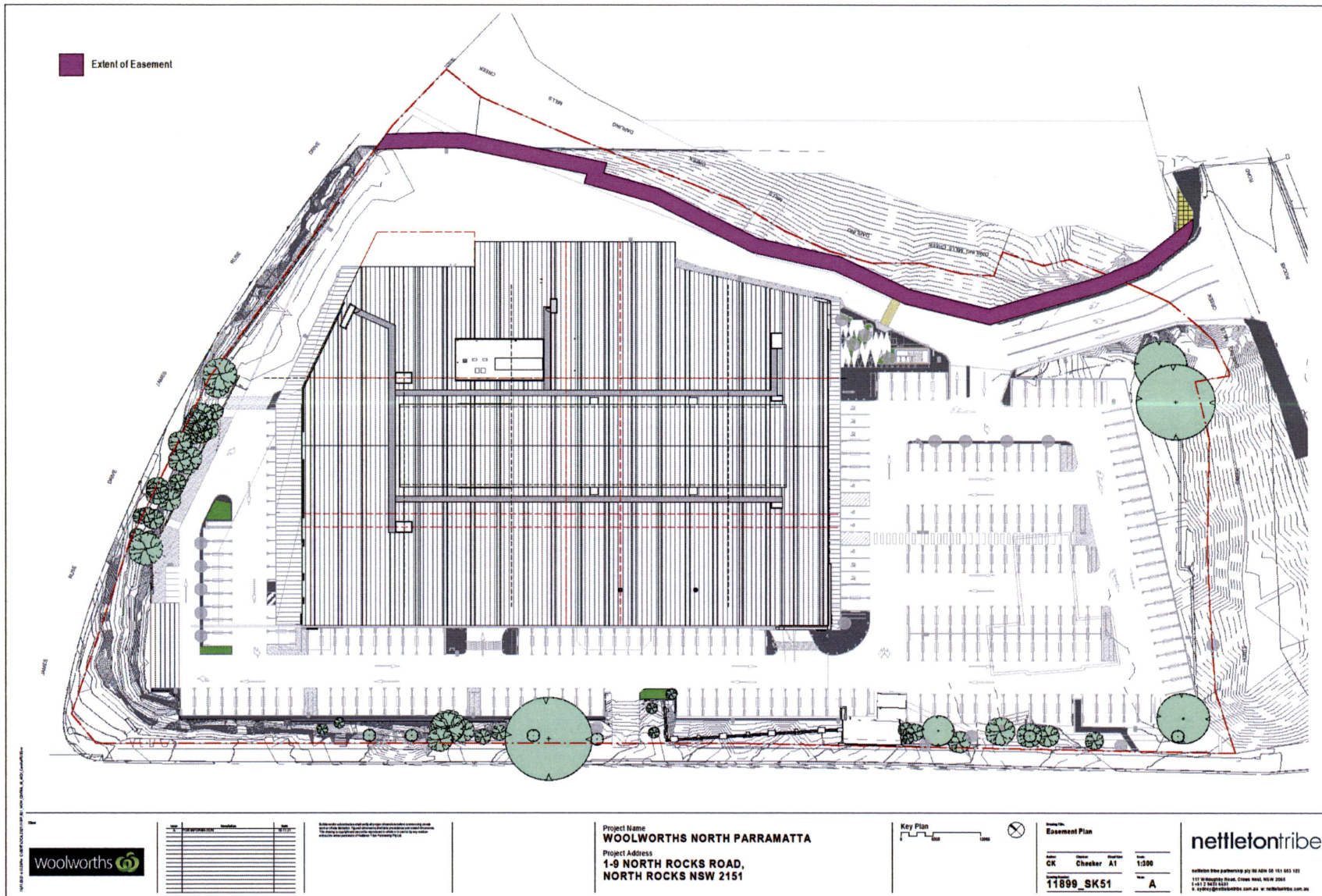
## **Schedule 3 – Plan of Bridge Works and Council Works**

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**Schedule 4 – Plan of Easement Area**

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NO.	DATE	DESCRIPTION	BY

Notes:  
 1. All dimensions are in millimetres unless otherwise stated.  
 2. The site is to be used in accordance with the approved planning instrument.  
 3. The site is to be used in accordance with the approved planning instrument.  
 4. The site is to be used in accordance with the approved planning instrument.

Project Name  
**WOOLWORTHS NORTH PARRAMATTA**  
 Project Address  
**1-8 NORTH ROCKS ROAD,  
 NORTH ROCKS NSW 2151**



Easement Plan			
NO.	DATE	DESCRIPTION	BY
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11899_SK51			A

**nettleontribe**  
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 111 Windsor Road, Crows Nest NSW 2061  
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 e info@nettleontribe.com.au w nettleontribe.com.au

| 1 Windsor Road, North Rocks

## Schedule 5 – Construction Terms

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### 1 Interpretation

For the purposes of this Schedule 5, the definitions and Interpretation principles in clause 3 of this Deed will apply and, unless context indicates a contrary intention:

**Applicant means** the First Applicant if a Woolworths supermarket is to be constructed on the Land, otherwise it means the Second Applicant.

**Builder** means any entity contracted under the Construction Contract to carry out the Works.

**Construction Contract** means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

**Defects Liability Period** means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

**Detailed Design** means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 5 **Error! Reference source not found.** and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

**Services** means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

**Superintendent** means the Superintendent appointed under any Construction Contract.

**Works means the Bridge Works.**

### 2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Applicant requires any Approvals in order to carry out the obligations under this agreement, then the Applicant will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Applicant must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

### **3 Costs of Works**

All costs of the Works must be borne by the Applicant.

### **4 Project Management and Contractor Engagement**

4.1 The Applicant will be responsible for managing the Works.

4.2 The Applicant will ensure that any contractor it engages to carry out the Works agrees to:

- (a) carry out the **Applicant's** obligations in these Construction Terms as part of any Construction Contract; and
- (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

### **5 Design Development and Approvals**

#### **5.1 Concept Design**

Council and the Applicant will work in consultation with each other to prepare and agree the concept plans for the Works.

#### **5.2 Detailed Design**

- (a) Prior to Works commencing the Applicant must provide a copy of the draft Detailed Design to the Council for approval.
- (b) Within 28 Business Days of receiving the Detailed Design, Council will respond to the Applicant with any suggested amendments to the Detailed Design.
- (c) Council and the Applicant must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 28 Business Days of Council providing its suggested amendments in accordance with clause 5.2(b) of this Schedule 5 to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
  - (i) is consistent with the obligation to carry out the Works under this Deed; and
  - (ii) is consistent with the Development Consent; and
  - (iii) does not materially and adversely affect the Development; and
  - (iv) is not unreasonable.

5.3 Any acceptance by the Council of the Detailed Design under this clause 5 of Schedule 5 is not to be taken as approval of or to any Construction Certificate for the Works.

5.4 **Good faith**

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

**6 Carrying out of Works**

6.1 **Communication**

The Applicant must keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

6.2 **Standard of Works**

- (a) Unless otherwise provided, the Applicant shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
  - (i) Any relevant Australian Standard;
  - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.
- (c) The Applicant will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.2(b)(ii) of this Schedule 5 from Council if the Council fails to deliver them to the Applicant.
- (d) The Applicant may but is not obliged to reinstate any Works where damage or destruction is as a result of:
  - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or
  - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

6.3 **Damage to people, property & utilities**

- (a) The Applicant is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this agreement:
  - (i) all necessary measures are taken to protect people and property;
  - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
  - (iii) nuisances and unreasonable noise and disturbances are prevented.



- (b) Without limiting clause 6.3(a) of this Schedule, the Applicant is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## **7 Inspection**

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Applicant must request the Inspection Schedule from the Council prior to the Works commencing.
- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Applicant must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Applicant must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
  - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
  - (ii) giving reasonable notice to the Applicant;
  - (iii) complying with all reasonable directions of the Applicant; and
  - (iv) being accompanied by the Applicant or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule 5), notify the Applicant of any defect or non-compliance in the Works and direct the Applicant to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
  - (i) removal of defective or non-complying material;
  - (ii) demolishing defective or non-complying work;
  - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
  - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Applicant is issued a direction to carry out further work under clause 7(e) of this Schedule 5, the Applicant must, at its cost, rectify the defect or non-

compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.

- (g) If the Applicant fails to comply with a direction to carry out work given under 7(e) of this Schedule 5, the Council will be entitled to refuse to accept that the Works **(or the relevant part of the Works) meet the Council's standards and specifications** and may refuse to issue a Certificate of Practical Completion, **until the required Works have been completed to the Council's satisfaction**, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Applicant has rectified a defect or non-compliance identified in a notice issued under 7(e) of this Schedule 5 does not constitute:
  - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
  - (ii) an Approval by the Council in respect of the Works; or
  - (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

## **8 Completion**

### **8.1 Practical Completion**

- (a) When the Applicant considers that the Works, or any part of the Works, are complete, the Applicant must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 5, the Council will carry out an inspection of the Works and will, acting reasonably, either:
  - (i) provide written certification to the Applicant that the Works have been completed; or
  - (ii) notify the Applicant of any additional information required or matters which must be addressed by the Applicant prior to the certification being issued.
- (c) If Council does not attend to the inspection referred to in Clause 8.1(b) of this Deed within 10 Business Days, the Applicant may send a further Notice to the Council requesting an inspection.
- (d) If the Applicant is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 5, the Applicant will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 5 for written certification that the Works have been completed.

- (e) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

## 8.2 Delivery of documents

- (a) The Applicant must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:
  - (i) all “as built” full-sized drawings, specifications and relevant operation and service manuals;
  - (ii) all necessary certificates including the certificates of any consultants of the Applicant that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
  - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Applicant must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

## 8.3 Assignment of Warranties and Causes of Action

- (a) The Applicant must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Applicant and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Applicant must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

## 8.4 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Applicant a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
  - (i) action required to be undertaken by the Applicant to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Applicant must comply with the Rectification Notice by:
  - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
  - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.

- (c) The Council must give the Applicant and its contractors any access required to carry out the Rectification Works.
- (d) When the Applicant considers that the Rectification Works are complete, either the Applicant must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Applicant under clause 8.4(d) of Schedule 5 and, acting reasonably:
  - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Applicant in writing that it is satisfied the Rectification Works are complete.
- (f) The Applicant must meet all costs of and incidental to rectification of defects under this clause 8.4.
- (g) If the Applicant fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Applicant, and may:
  - (i) call upon any Bond or Bank Guarantee provided to the Council under clause 8.5 of this Schedule 5 to meet its costs of carrying out Rectification Works; and
  - (ii) recover as a debt due to the Council by the Applicant in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (h) The Applicant must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Applicant and before to the end of the Defects Liability Period.
  - (i) If, prior to the end of the Defects Liability Period:
    - (i) the Applicant fails to request the inspection, or
    - (ii) the Council does not carry out the inspection,
 the Council may extend the Defects Liability Period so that the inspection may be carried out.

#### 8.5 **Security for Defects Liability**

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Applicant must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.
- (b) The Applicant advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of

the security held by the Applicant from the Builder under the terms of the Construction Contract, provided that:

- (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
  - (ii) the Applicant procure an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 8.5(a) of this Schedule 5 for that item of Works (or any remaining balance of it) to the Applicant.
- (d) Notwithstanding clause 8.4(c) of this Schedule 5, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.
- (e) The Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Applicant within 14 days after the Defects Liability Period has ended.

## **9 Risk**

The Applicant undertakes the Works entirely at its own risk.

## **10 Insurance**

- (a) Prior to the commencement of the construction of any of the Works, the Applicant must ensure the Builder effects and the Applicant must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
- (i) construction works insurance for the value of the Works;
  - (ii) public risk insurance for at least \$20 million;
  - (iii) workers compensation insurance as required by Law.
- (b) The Applicant must provide evidence of currency of insurance required by clause 10(a) of this Schedule 5 upon request by the Council, acting reasonably, throughout the term of this agreement.

## **11 Indemnities**

The Applicant indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Applicant of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

## **12 Intellectual Property Rights**

The Council acknowledges that the Applicant or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Applicant has or receives intellectual property rights for the Works, the Applicant shall assign those intellectual property rights to Council or permit use thereof.

**13 Risk of contamination**

- (a) The Applicant acknowledges and agrees:
  - (i) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
  - (ii) it will attend to any necessary remediation at its own costs; and
  - (iii) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

**14 Plans**

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the parties.

## Schedule 6 – Easement Terms

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- 1 The owner of the Easement Area grants to the Council and members of the public full and free right to go, pass and repass over the Easement Area at all times:
  - (a) with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals; and
  - (b) on foot without vehicles (other than bicycles, wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
- 2 The Council must, to the satisfaction of the owner of the Easement Area, acting reasonably:
  - (a) keep the Easement Area (including any services in, on or under the Easement Area) in good repair and condition suitable as a safe public right of way;
  - (b) maintain and repair the Easement Area and all improvements on the Easement Area;
  - (c) keep the Easement Area clean and free from rubbish; and
  - (d) maintain sufficient public liability insurance covering the use of the Easement Area in accordance with the terms of this Easement.
- 3 Council acknowledges that it is solely responsible for all aspects of public safety in respect of the use of the Easement Area over which the Council Works are located notwithstanding that it is not the owner of the Easement Area
- 4 The owner of the Easement Area **must ensure that any rules made by an Owner's Corporation** relating to the Easement Area have been approved by the Council, not to be unreasonably withheld or delayed.
- 5 If any member or members of the public loiter or congregate, for any purpose which the owner of the Easement Area, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 6 The Council or the owner of the Easement Area may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Area.
- 7 The Council or the owner of the Easement Area may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an **Owner's Corporation relating to the Easement Area**.
- 8 The owner of the Easement Area **may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not**

required) temporarily close or temporarily restrict access through all or part of the Easement Area for the time and to the extent necessary but only on reasonable grounds for the purposes of:

- (a) construction, construction access, repairs, maintenance, replacement and alteration to the Easement Area or any improvements in, on or under the Easement Area; or
- (b) security, public safety or evacuation of the Easement Area and adjoining buildings.

9 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, Council, subject to the consent of the owner of the Easement Area which may not be unreasonably withheld, and the owner of the Easement area, provided any necessary planning approvals are obtained, may:

- (a) Carry out works in the Easement Area for the purposes of enhancing the Easement Area;
- (b) Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level within the Easement Area; and
- (c) Use the Easement Area,

in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 9 July 2012 and amended 25 February 2013, or any such policy of the Council that replaces that policy.

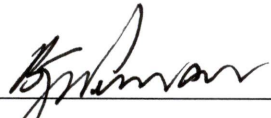
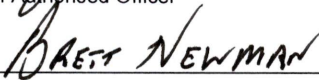
10 The Council is solely empowered to release this Easement.



11 This Easement may only be varied by written agreement between the Council and the owner of the Easement Area.



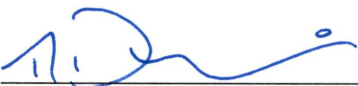

Executed as a Deed

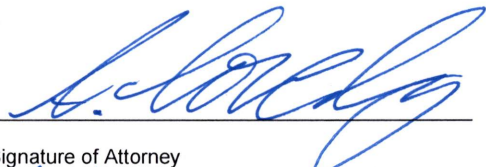
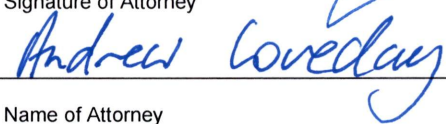
Executed by  
City of Parramatta Council ABN 49  
907 174 773 by its authorised officers:

  
\_\_\_\_\_  
Signature of Authorised Officer  
  
\_\_\_\_\_  
Name and Position of Authorised Officer

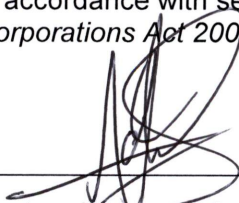

  
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Signature of Witness  
  
\_\_\_\_\_  
Name of Witness


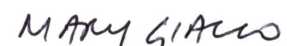
Executed by  
Fabcot Pty Ltd  
ABN 55 002 960 983  
pursuant to Power of Attorney dated 17  
July 2016:

  
\_\_\_\_\_  
Signature of Witness  
  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Attorney  
  
\_\_\_\_\_  
Name of Attorney

Executed by  
J.L. Dunrose Pty Limited  
ABN 62 000 038 059  
in accordance with section 127(1) of the  
Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Signature of Director and Company Secretary  
  
\_\_\_\_\_  
Name of Director ~~Director~~ COMPANY SECRETARY

  
\_\_\_\_\_  
Signature of Director  
  
\_\_\_\_\_  
Name of ~~witness~~ DIRECTOR