

#### 4 Orchard Hills North Planning Proposal

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<b>Outcome</b>	<i>We plan and shape our growing City</i>
<b>Strategy</b>	<i>Undertake strategic planning that will ensure balanced growth and liveability</i>
<b>Principal Activity</b>	<i>Facilitate and plan for housing diversity and liveability</i>

**Previous Items:** Accelerated Housing Delivery Program update- Councillor Briefing- 23 Apr 2018  
Orchard Hills North Planning Proposal (Accelerated Housing Delivery Program site)- Policy Review Committee- 04 Jun 2018  
Orchard Hills North Planning Proposal (update)- Councillor Briefing- 19 Oct 2020  
Orchard Hills North Planning Proposal- Councillor Briefing- 12 Apr 2021  
Update on Orchard Hills North Planning Proposal- Councillor Briefing- 21 Mar 2022  
Orchard Hills North Draft Development Control Plan and Draft Contributions Plan- Councillor Briefing- 16 May 2022  
Planning Proposal to amend Penrith Local Environmental Plan 2010 - Orchard Hills North- Ordinary Meeting- 27 Jun 2022  
Orchard Hills North Planning Proposal- Councillor Briefing- 14 Nov 2022

**Procedural note:** Section 375A of the Local Government Act 1993 requires that a division be called in relation to this matter.

**Proponent:** Legacy Property

**Subject Land:** Located at Caddens Road, Kingswood Road, Frogmore Road and Castle Road, Orchard Hills

#### Executive Summary

The purpose of this report is to present to Councillors the outcomes of a public exhibition of the Orchard Hills North Planning Proposal, draft Development Control Plan (draft DCP), draft Section 7.11 Contributions Plan (draft 7.11 Plan) and draft local Legacy Property Voluntary Planning Agreement Letter of Offer (draft local Legacy VPA Offer).

Councillors have received the following Councillor memos on the Planning Proposal:

1. 29 March 2018 – Lodgement of Planning Proposal
2. 4 August 2021 – Advising on the progress of the project
3. 2 September 2021 - Response to landowner enquiries expressing concerns over perceived delays of the exhibition of the Planning Proposal
4. 25 February 2022 – Advising of the updated timeframes issued by amended Gateway Determination

5. 4 March 2022 – Advising of the Gateway Determination timeframe
6. 29 April 2022 – Advising of Orchard Hills North Facebook posts regarding proposed north-south road corridor
7. 11 May 2022 – Regarding the Councillor Briefing of 16 May 2022
8. 16 May 2022 – Regarding correspondence received from Legacy Property on 16 May 2022
9. 25 May 2022 – Regarding change to intended reporting date to Council
10. 22 June 2022 – Properties in the Orchard Hills North Planning Proposal
11. 20 July 2022 – Orchard Hills North public exhibition
12. 4 August 2022 – Legacy Property community information session
13. 23 August 2022 – Interim response to Tracy Simpson
14. 2 December 2022 – Residual risks associated with the Orchard Hills North Planning Proposal

At its Ordinary Meeting of 27 June 2022, Council considered a report on the Orchard Hills North Planning Proposal, draft DCP, draft 7.11 Plan and draft local Legacy VPA Offer and resolved that the Plans be placed on public exhibition.

The Planning Proposal and supporting information was placed on public exhibition from 25 July to 22 August 2022. A total of 62 submissions were received.

The key issues raised in public submissions related to:

- Changes to the boundary of the rezoning area;
- Traffic planning;
- Stormwater management; and
- Planning controls and structure plan.

During the public exhibition period, Council formally sought comment from several State government agencies in accordance with the requirements of the Gateway Determination issued for the Planning Proposal. Submissions have been received from most of the agencies consulted. The key issues raised in agency submissions related to:

- Formulation of a State VPA to secure land required for the North-South road corridor and the new school site;
- Use of the Transport Investigation Area (TIA) overlay and concurrence clause for the North-South road corridor;
- Consistency with the Cumberland Plain Conservation Plan (CPCP); and
- Acceptance of a proposed location of a new site for the Orchard Hills Public School.

The publicly exhibited Planning Proposal has been amended in response to various matters raised and addressed post-exhibition, including revisions to the proposed new school site, revisions to the north-south road zoning and TIA overlay, and requirements to ensure delivery of local infrastructure prior to future development applications.

The publicly exhibited draft DCP, draft Section 7.11 Development Contributions Plan, and draft Legacy Local VPA Offer have been amended in response to various matters raised and addressed post-exhibition.

The report to Council's 27 June 2022 Ordinary Meeting presented several financial risks associated with the project which the report stated need to be investigated and mitigated prior to Council's future consideration of the Planning Proposal for post-exhibition endorsement. Significant progress has been made in working towards mitigating the financial risks to Council, and overall, the financial risk will be significantly minimised, if not reduced to zero, subject to the provision of:

- The S7.11 plan and it being fully adopted by IPART;

- A State VPA;
- Local VPAs;
- Further planning and infrastructure planning undertaken by the State Government for Orchard Hills South; and
- Deferral of the commencement of the LEP amendment and inclusion of a specific LEP clause relating to the approval of the contributions plan by IPART or other funding mechanism as outlined below.

This report recommends that Council endorses the amended Planning Proposal, draft 7.11 Plan (with amendments) and amended draft DCP, and that Council and Legacy Property are to continue to work towards finalisation of a VPA Offer which is to be reported to a future Council meeting for consideration.

## **Background**

On 27 March 2018, Council received a Planning Proposal (RZ18/0004 & PP-2020-1693) from Legacy Property which seeks to amend Penrith Local Environmental Plan 2010 (LEP 2010) for a 151.9ha site located at Caddens Road, Kingswood Road, Frogmore Road and Castle Road in Orchard Hills, known as Orchard Hills North. At present the rezoning area is zoned RU4 Primary Production Small Lots under LEP 2010 and is utilised predominantly for rural residential lifestyle properties.

The rezoning area contains a total of 54 existing lots and consists of multiple land holdings. It is envisaged that the development of the rezoning area would deliver approximately 1,729 dwellings in a broad mix of housing types, and a population of around 5,187 people. The majority of housing would be standard detached dwellings. There would also be a medium density housing area central to the rezoning area around the village centre, and east-west road corridor and north-south road corridor. A large lot housing area is envisaged in the south-east corner of the rezoning area. New parks, sportsfields, stormwater facilities and roads are planned to support the additional population.

It is noted that the lands to the west of the rezoning area, broadly between Kingswood Road and The Northern Road, are not subject to the Planning Proposal and are therefore not proposed to be rezoned. For the purposes of this report, references to the 'Structure Plan area' mean both the rezoning area (Area A) and the land west of the rezoning area to The Northern Road (Area B). However, in October 2022, DPE announced a precinct planning process to be led by DPE, to rezone and plan these remaining lands, as well as lands to the south identified within the Orchard Hills Investigation Area, for urban purposes.

At its Policy Review Committee meeting of 4 June 2018, Council considered a report on the Orchard Hills North Planning Proposal and resolved to endorse the Planning Proposal, and that it be forwarded to the Minister for Planning with a request to issue a Gateway Determination. The resolution also required that, following the issuing of a Gateway Determination, a report is to be presented to Council to seek resolution to publicly exhibit a DCP and Section 7.11 Development Contributions Plan alongside the Planning Proposal. Following the 4 June 2018 Council meeting, Council officers and the proponent resolved outstanding issues relating to an agreed sportsfield configuration, in accordance with the Council resolution. On 31 July 2018, Council submitted the updated Planning Proposal to DPE to request a Gateway Determination.

On 22 February 2019, a Gateway Determination was issued for the Planning Proposal (DPE reference PP\_2018\_PENRI\_006\_00). The Gateway Determination enables the Planning Proposal to proceed to public exhibition after the conditions of the Gateway have been addressed.

The key Gateway requirements that were required to be addressed prior to proceeding to public exhibition are:

- Preparation of a transport assessment to identify the impact of the development on the surrounding road network and critical intersections, under guidance from NSW Roads and Maritime / Transport for NSW;
- Preparation of a site-specific DCP to support the Planning Proposal;
- Preparation of a Section 7.11 Development Contributions Plan to support the Planning Proposal;
- Undertake pre-exhibition consultation with the NSW Rural Fire Service;
- Council to consider providing a minimum lot size control in the Penrith LEP 2010 instead of utilising the DCP as proposed, to provide greater certainty to dwelling yields;
- The Planning Proposal is to be referred to Council's Local Planning Panel for its consideration and views; and
- Should the Planning Proposal be significantly altered prior to exhibition, Council is to consider seeking an altered Gateway Determination and liaise with DPE.

Since the issue of the original Gateway Determination in February 2019, Council worked closely with DPE, the proponent and State agencies (largely TfNSW) to enable the Planning Proposal to proceed to public exhibition. As a result of these discussions, several significant changes to the Planning Proposal have occurred as a result of responding to and addressing State agency issues. This included the inclusion of strategic road corridors in the development structure plan, introduction of minimum lots sizes and a dwelling yield cap, changes to the quantity of open space due to changes to the masterplan, and a reduction to the village centre size due to the introduction of the strategic road corridors.

The changes made to the Planning Proposal since its original endorsement in June 2018 did not change the original intent of the Planning Proposal including the maximum number of dwellings originally anticipated and considered by Council in 2018.

At its Ordinary Meeting of 27 June 2022, Council considered a report on the Orchard Hills North Planning Proposal, draft DCP, draft 7.11 Plan and draft local Legacy VPA Offer and resolved that the Plans be placed on public exhibition.

### **Department of Planning and Environment timeframes**

The initial Gateway Determination issued in February 2019 included a timeframe to complete the LEP, which was within 24 months of the issue of the Gateway Determination (being February 2021). Due to the need to identify and preserve a North-South road corridor, resolve significant matters with the proponent and respond to State agencies, this timeframe has not been achievable.

Under planning reforms led by the State Government, DPE introduced a new 'Cohort' Planning Proposal program, where Planning Proposals that had been in the system and were experiencing challenges were assisted by the DPE's Planning Delivery Unit to assist in unlocking any obstacles and working towards a resolution. Councillors were briefed on these proposals at the Councillor Briefing of 14 February 2021. These Planning Proposals were issued timeframes for completion by DPE and if these timeframes were not achieved, the Minister for Planning has the ability to 'call in' the Planning Proposal to be refused or made. Whilst this Planning Proposal has been identified as a Cohort Planning Proposal for some time, the need to find a resolution to the North-South road corridor has meant that timeframes for completion have needed to be flexible and therefore, the Minister has not yet called in the Planning Proposal.

DPE wrote to Council on 24 February 2022 with an alteration to the Gateway Determination which included additional milestone dates to progress the Planning Proposal. The alteration states that the Planning Proposal is to be publicly exhibited by 4 April 2022, a report to be made to Council post-exhibition for final consideration by 30 June 2022, and for the LEP to be Gazetted by 31 July 2022. The alteration also stated that if these timeframes were not met, consideration may be given to whether the Planning Proposal should proceed. On 3 March 2022, Council officers wrote to DPE to convey concerns over the new timeframes issued by DPE, stating that they are unrealistic and unachievable. The correspondence requested that DPE amend the timeframes to enable sufficient time for completion of the necessary work required for a public exhibition.

On 7 April 2022, DPE responded to Council's letter and acknowledged that with Planning Proposals with significant challenges, including the Orchard Hills North Planning Proposal, there are greater challenges in meeting the timeframes. Notwithstanding the above, DPE encouraged Council to place the Planning Proposal on public exhibition as soon as possible without amending the milestones imposed.

On 23 May 2022, DPE advised Council officers that the matter may be reported to the 27 June 2022 Ordinary Meeting of Council for decision to progress to public exhibition. DPE noted that it is unlikely that any further extensions to the Gateway timeframes will be granted and that the Minister for Planning may take action if the timeframes are not met.

In correspondence to Council dated 3 August 2022, DPE stated its requirement for Council officers to report the Planning Proposal to the December 2022 Council meeting for decision. DPE stated that it would like to work with Council to ensure the LEP to rezone the land can progress to finalisation on the condition that the rezoning will not be granted until Council is satisfied the DCP, 7.11 plan and VPA matters have been resolved.

### **Public exhibition**

The Planning Proposal and supporting information was placed on public exhibition from 25 July to 22 August 2022. Exhibition material was available to view online on Council's Your Say Penrith website, at Council's Civic Centre, Penrith Library and St Marys Library. The exhibition was advertised in the Western Weekender throughout the public exhibition period. Written notification of the public exhibition was given to landowners and occupiers of 152 properties located on the affected land and nearby or adjacent lands.

A total of 87 public submissions were received on the public exhibition. Following review of all submissions, Council officers determined that 38 of the submissions were proforma-style using 12 variations of the same text from multiple submitters. Officers retained 12 of these proforma submissions instead of 38 because officers regard there being 12 unique submissions made instead of 38. There were also 5 duplicate submissions and 1 submission representing 7 landowners. A summary of the submissions made on the public exhibition is provided below:

- Objections to the proposal: 5 submissions
- Concerns raised or clarification sought, or suggestions made: 27 submissions
- Support for the proposal: 30 submissions
- Total: 62 submissions

Detailed responses to all public submissions are provided in Attachment 1. The key issues raised in public submissions are outlined below:

- Changes to the boundary of the rezoning area, such as request for removal of two properties located at Frogmore Road, or requests for additional properties to be

added to the proposed rezoning, located in Area B to the west, at Hermitage Court to the east, and two properties at the east end of Castle Road.

*Officer Response:*

Requests for removal of land from the rezoning is not supported on the basis of ensuring holistic planning and delivery outcomes. Requests for Area B lands to be included in the rezoning are not supported, given the State Government's Orchard Hills Precinct Planning process that applies to this land. Detailed investigations of this land have not yet been undertaken and will be subject to DPE's precinct-planning process which is indicated to be completed by the end of 2023, as outlined in DPE's discussion paper. There is limited merit to rezone the Hermitage Court lands as these are also developed for rural-residential purposes and are not identified within the Orchard Hills Urban Investigation Area. The two properties at the east end of Castle Road which seek inclusion in the rezoning already contain a zoning consistent with the zoning proposed on the adjacent lands in the rezoning area, and there is no merit to change the zoning of these two properties.

- Traffic planning, including requests for clarification around the proposed supporting road network infrastructure, such as the suitability of the road widths proposed, consideration of alternative alignments, timely delivery of infrastructure, whether the proposed road improvements will be suitable to support increased population, impact on the Uniting Church site and Orchard Hills Public School site from the east-west road.

*Officer Response:*

Council officers are supportive of the proposed road improvements as they meet site-specific requirements of the subject site and would support future growth. A Heritage Impact Study considered the impact from the east-west road on the Mt Hope Uniting Church and concludes that the proposed road development would have no impact on the significance of the subject site as a local heritage item. It is also noted that, in respect to the impact of the east-west road on the existing Orchard Hills Public School, this is considered acceptable given that SINSW submission did not raise objection to the east-west road impacting the existing school site. The east-west road is critical infrastructure required to support the development, with its location determined based on several key factors with a view to minimise impacts as much as possible.

- Stormwater management, including the suitability of proposed locations of stormwater infrastructure and its impact on properties, and the suitability of the proposed new school site, notably in respect to stormwater and flood affectation.

*Officer Response:*

Stormwater infrastructure is considered critical infrastructure and is located in areas best suited to detain water during storm and flood events. A Stormwater Strategy has been prepared to service the rezoning area. No changes are proposed to the proposed locations of any basins. The post-development scenario of the proposed school site will result in the land being free from flood affectation, which is presented in the exhibited Stormwater Strategy.

- Planning controls and structure plan, including requests to enable larger minimum lot sizes, provision of privacy controls, and use of materials to combat urban heat, as well as concerns over some proposed elements in the Area B structure plan, such as proposed open space, and impact on affected properties.

*Officer Response:*

There are several planning mechanisms which will encourage range of lot sizes within the rezoning area, including the use of a minimum lot size in addition to precinct dwelling caps. Regarding urban heat, Clause 7.30 of Penrith LEP 2010 and the Urban Heat Chapter of DCP 2014 will apply ensuring that any future development within the precinct (and within the applicable zone) must demonstrate how planning and design measures have been incorporated to mitigate the impacts of the heat island effect. Regarding the Area B Structure Plan, this is indicative only and was developed to guide the overall function and purpose of open space between Area A and Area B. Further detailed investigations will occur on this land as part of DPE's precinct-planning process. The proposed rezoning to this land is expected to be placed on public exhibition by mid-end 2023, as outlined in DPE's discussion paper.

### **Agency consultation**

During the public exhibition period, Council formally sought comment from several State government agencies in accordance with the requirements of the Gateway Determination issued for the Planning Proposal. Submissions have been received from most of the agencies consulted, with submissions received from DPE, TfNSW, Schools Infrastructure NSW, the Department of Primary Industries, the Environment Protection Authority, the State Emergency Service, NSW Police, Fire and Rescue NSW, NSW Health, Sydney Water, Endeavour Energy, Jemena Gas and Telstra.

At the time of writing this report, submissions remain outstanding from NSW Rural Fire Service, Deerubbin Local Aboriginal Land Council, and DPE – Water. DPE has been assisting Council in receiving submissions from these agencies through the Planning Delivery Unit, and Council has also followed up the outstanding agencies. Should Council resolve to finalise the Planning Proposal and request DPE make the LEP amendment, DPE have advised that as they finalise the Plan, they will further follow up with these agencies and consult with Council if any issues are raised.

Attachment 2 provides details of all agency submissions and key issues raised. The key issues raised in agency submissions received are listed below:

- *Department of Planning and Environment (DPE)*

A State VPA to secure land required for North-South road corridor and the school is to be prepared by the State Government and Legacy Property. No funding source for construction of the North-South ultimate road will be identified as part of this Planning Proposal process. The need for the North-South road, and funding, will be determined as a part of future strategic investigations to be undertaken for the Orchard Hills Metro station and adjoining lands.

The State VPA would include a 5-year sunset clause, where the Minister will benefit from a call option requiring Legacy to dedicate the ultimate road land to the Minister's nominee. The Minister's nominee will not be identified in the State VPA, thereby ensuring that the land will not be dedicated to Council until there is demonstrable need and funding for delivery. The call option would only occur upon publication of a strategic plan confirming need for the transport link and land, and a funding and contributions framework that includes the ultimate road and M4 crossing. If the land is not required, Legacy would make an alternative contribution towards State and regional infrastructure.

#### *Officer Response:*

DPE's suggested principles for the State VPA would address financial risk to Council. It is noted that under the provisions of clause 6.2 of LEP 2010, development consent must not be

granted within an urban release area unless Council is satisfied that where public infrastructure that is essential for the proposed development, arrangements have been made for the delivery of that infrastructure. Therefore, it is only once the State VPA has been executed, that development consent will be able to be granted.

- *Transport for NSW (TfNSW)*

TfNSW does not support the use of the Transport Investigation Area (TIA) overlay and concurrence clause for the North-South road corridor and instead proposes transfer of the land required for the North-South ultimate road to Council through a State VPA. No funding source for the construction of the North-South ultimate road will be identified as part of this Planning Proposal process. The road will not be a State Road due to its Collector Road function.

The funding source for future construction of the North-South Road corridor can be identified at a later stage as part of the planning and investigations of the planned Orchard Hills Centre and broader Greater Penrith to Eastern Creek (GPEC) Investigation Area.

Future planning and investigations are to occur to determine the preferred bridge alignment option across the M4 Motorway. Council as roads authority is best placed to determine the width of the corridor, including verge and median widths.

*Officer Response:*

Council is of the view that the TIA overlay and concurrence clause needs to remain on the LEP map, to preserve the corridor land from development and ensure this objective is included within a planning instrument, without solely relying on the State VPA to preserve the land. Council seeks to amend the concurrence clause to require DPE to determine the appropriate concurrence role for development proposals on the affected land instead of TfNSW. Council officers have discussed this with DPE who have indicated that this would be a sensible approach given Council's role as the consent authority in assessing development applications. Council seeks to amend the extent of land covered by the TIA overlay to reduce its land coverage, given it needlessly affects properties that were not intended to be identified. As a result of this change, the only lands to be affected by the TIA are the two largest landholdings, being Legacy Property and one other private landowner. Both of these landowners raised no objections to the TIA.

- *Department of Planning and Environment - Environment and Heritage Group (EHG)*

The first Environment and Heritage Group submission requested that an assessment of consistency be prepared with the Cumberland Plain Conservation Plan (CPCP). The second EHG submission requested further information, following review of the submitted consistency assessment, and raised concern that the assessment had not addressed key issues in relation to the protection and enhancement of existing native vegetation and riparian corridors on avoided land.

*Officer Response:*

Ministerial Direction 3.6 – Strategic Conservation Planning applies to the site, given the rezoning area contains Avoided land. The Planning Proposal is consistent with this Direction.

The assessment of consistency against the CPCP has been completed, which concludes that any impacts to Threatened Ecological Communities as a result of the Planning Proposal is less than what would be allowed if a developer were to clear all lands classified as 'Certified - Urban Capable Land' under the CPCP.



A supplementary response to the second EHG submission concludes that the Planning Proposal does address the key issues relating to the protection and enhancement of existing native vegetation and riparian corridors on Avoided land. However, the area of Avoided land designated by the CPCP will not be cleared or developed if the Planning Proposal is implemented. No drainage infrastructure or other development will occur within the Avoided land and a Vegetation Management Plan will be prepared to provide for permanent protection of the Avoided land and replanting of native vegetation.

Therefore, the Planning Proposal is consistent with the CPCP.

- *School Infrastructure NSW (SINSW)*

Following consultation between SINSW and stakeholders, SINSW has accepted a revised proposed location of a 1.9ha new site for the Orchard Hills Public School. The revised dimensions and size, as well as required building height control have been specified in the SINSW submissions.

The SINSW submissions indicate that the current Orchard Hills Public School site is not appropriate to accommodate more demand. A new site would be required to meet future demand and growth in the area.

SINSW support the provision of a school site within the rezoning area, subject to secured funding through a VPA (preferred) or capital allocation from NSW Treasury.

*Officer Response:*

The new school site location, dimensions, and size result in minor changes to the proposed zoning maps. The changes do not result in any fundamental change to the size or embellishment of the proposed open space parcel OS8.

All other agencies raised either minor matters or no objections.

### **Amendments to Planning Proposal**

The publicly exhibited Planning Proposal is proposed to be amended in response to various matters raised and addressed post-exhibition. Listed below are the key changes proposed to the Planning Proposal:

- Revision to RE1 Public Recreation zone boundary and R1 General Residential zone boundary to reflect revised dimensions and location of open space parcel OS8 and the proposed new school site located to the west of the village centre. This is necessary to accommodate a revised location and dimensions of the proposed new school site which have been accepted by SINSW. No changes to the overall size of OS8 have occurred;
- Additional local provision to enable a 15m building height on the location of the proposed new school site, but only if the development is for a school. For all other development, the current proposed 8.5m height limit would apply. This is necessary to accommodate SINSW requirements in relation to the building height required for delivery of the future new school on the site;
- Removal of southern section of SP2 Local Road zone for north-south road between the east-west road corridor and the M4 Motorway. This section of the north-south road has been identified as not having a nexus to the rezoning and the preservation of this land and construction funding will now be identified within the State VPA;

- Reduction to Transport Investigation Area (TIA) overlay. Council proposes to retain a 33.6m wide TIA overlay on the draft LEP zoning map for the north-south ultimate road in accordance with the width previously agreed to by stakeholders during preparation of the Transport Management and Accessibility Plan supporting the Planning Proposal. At the southern end of the rezoning area, Council proposes to modify the proposed TIA overlay, to reduce it so it does not impact on the two non-Legacy-controlled properties. The resulting amended TIA overlay does still widen at the southern end to accommodate space for batters and structures for the future bridge. The exhibited TIA overlay (proposed by DPE and TfNSW) is regarded by Council officers as needlessly affecting properties that were not intended to be identified;
- Alteration of TIA concurrence clause. Council seeks to amend the concurrence clause to require DPE to determine the appropriate concurrence authority for development proposals on the affected land, instead of TfNSW;
- Correction to proposed local provision for Orchard Hills North under Part 7 of the LEP in relation to the applicability of integrated housing to development proposals to 300sqm size lots. It was identified post-exhibition that the provision should apply only to lots less than 300sqm, and not to lots equal to 300sqm;
- Amendment to precinct boundaries within the rezoning area, changes to residential lot yield targets within each precinct, the addition of an integrated housing area, in response to changes to proposed new school site boundaries, and to respond to re-aligned north-south road, and correct errors identified in the document. The changes to precinct boundaries and lot size distribution do not result in a change to the total anticipated dwelling yield in the rezoning area, nor a change to the total number of standard lots and integrated housing lots in the rezoning area. The overall average lot size in the rezoning area is anticipated to remain around 400sqm. The changes and therefore considered to be acceptable;
- Additional proposed provision to LEP 2010 Part 6 (Urban Release Areas), requiring that development consent cannot be granted to land within an Urban Release Area unless a relevant Contributions Plan is in effect or an alternative mechanism is provided for the delivery of local infrastructure. This provision is discussed later in this report; and
- Addition of new RE1 Public Recreation zoning on the southern edge of the rezoning area at Frogmore Road, to accommodate new stormwater basin B8. This land is currently in Legacy Property control.

Attachment 3 presents all changes made to the Planning Proposal post-exhibition.

The final amended Planning Proposal is enclosed and has been provided under separate cover and is publicly available on Council's website.

### **Amendments to Development Control Plan**

The publicly exhibited draft DCP is proposed to be amended in response to various matters raised and addressed post-exhibition. Listed below are the key changes made to the draft DCP.

- Additional biodiversity controls added to emphasise relevant legislation and the preservation of significant flora and fauna species, ecological communities and their habitats;
- Amendment to integrated housing provisions to ensure consistency with the amended control in the Planning Proposal relating to the applicability of 300sqm lots;

- Correction to discrepancies with the correlation of controls relating to minimum lot size, different dwelling typologies, lot widths and garage dominance of the streetscape;
- Additional retaining wall requirements to limit maximum heights;
- Additional controls to manage and address the land use interface between Orchard Hills North and properties fronting Hermitage Court;
- Additional acoustic amenity controls to mitigate noise impacts from major roads to residential areas;
- Revision to the village centre indicative layout and controls to achieve more appropriate built form outcomes;
- Additional requirements around delivery of tree canopy cover;
- Amendments to the contaminated land management controls relating to relevant legislation;
- Amendments to the development's road hierarchy map as well as the amendments to the road reservation widths and road typologies for the development;
- Amendments to controls relating to the north-south ultimate road corridor to reflect changes made to the Planning Proposal and 7.11 Plan in respect to applicable land;
- Amendments to the pedestrian and cycle network; and
- The entire draft DCP was updated and contemporised to reflect all post-exhibition changes and agreements reached.

Attachment 4 presents all changes made to the draft DCP post-exhibition.

The final amended draft DCP is enclosed separately and is publicly available on Council's website.

### **Section 7.11 Development Contributions Plan**

A draft Section 7.11 Development Contributions Plan for Orchard Hills North (s7.11 Plan) was placed on exhibition to support the Planning Proposal. The exhibited s7.11 Plan has been provided to Councillors as a separate enclosure and is publicly available on Council's website.

A s7.11 Plan is needed to ensure that the local infrastructure required to support the development outcomes sought by the planning proposal will be delivered. Local infrastructure included in the s7.11 plan includes local roads, water cycle management works and open space (such as local parks and active open space).

It is important that the s7.11 plan reflects the final development outcomes of the Planning Proposal and associated supporting documents, such as the DCP and other technical studies. This will ensure that the scope of works and their costs are accurate and reduce potential financial risk to Council.

#### *Status and finalisation of S7.11 Plan*

Council officers have been working with the proponents to review, update and finalise the s7.11 Plan, based on submission matters and planning proposal changes. This work is close to finalisation. It is proposed that Council endorse the attached draft s7.11 plan (as exhibited) and recommend that the changes in the table below, be incorporated into the s7.11 plan before its submission to IPART.

Matter	Proposed amendment
Land Valuation	Update/amend based on a review of land values and consideration of just terms compensation allowance
Staging	Expected delivery timeframes to be included/adjusted
Cost rates	Review, and where necessary update cost rates of infrastructure, such as any cost discrepancies, miscalculations, omitted items
Contingency	Update/amend based on a review and consistency with IPART benchmarks
Open space	Respond to the final open space strategy and essential works list
Roads	Update/amend based on LEP mapping and technical studies
Water cycle management	Update/amend based on updates to technical studies
Dwelling/ Population projections	Update/amend where required, to ensure currency
Specifications	Inclusion of works specifications in the works schedule
Typographical/references	Correct all errors and ensure references are correct
Technical	Ensure all calculations within the works schedule and references to indexation are correct

### *IPART Process*

To comply with Ministerial Directions, Council is unable to authorise the s7.11 plan to be made until:

- The s7.11 Plan is reviewed by IPART; and
- the Minister, after considering the review, directs Council to make the LEP.

IPART will assess the s7.11 Plan for:

- compliance with the essential works list;
- establishment of nexus;
- reasonableness of costs; and
- apportionment between existing and future infrastructure users.

IPART will prepare a draft report on their findings, which is released for public consultation. Following this, a final report will be prepared and sent to the Minister. The Minister will consider the report and direct Council to make the s7.11 Plan, with or without amendments.

For housekeeping and procedural purposes, it is proposed to request DPE include the Orchard Hills North urban release area under Schedule 2 of the Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012. This will recognise the precinct as an urban release area for development contributions purposes and formally apply a \$30,000 development contributions cap to the precinct.

### *Next steps for infrastructure delivery*

Due to the critical nature of having an infrastructure delivery mechanism in place, it is proposed that development consent should not be granted until such time that an appropriate infrastructure delivery mechanism is in place. This may be an s7.11 Plan or a Voluntary Planning Agreement (VPA) where suitable. This matter is discussed further in the report below.

## Legacy Property Local VPA Offer

A letter of offer to enter into a VPA from Legacy Property was included in the planning proposal exhibition. Subsequent to the exhibition, this offer has been amended and re-submitted. The offers seek to deliver infrastructure identified in the draft s7.11 plan on the subject sites, as well as affordable housing contributions and additional contributions towards open space embellishment and road surfacing for Frogmore Road.

In addition to the affordable housing offer as outlined above, at the Ordinary Meeting of 25 July 2022, Council endorsed an Affordable Rental Housing Contribution Scheme Planning Proposal (ARH Planning Proposal) for Glenmore Park Stage 2 and Orchard Hills North to be forwarded to DPE with a request to issue a Gateway Determination. A Gateway Determination was issued by DPE on 22 October 2022 enabling the Planning Proposal to proceed to public exhibition and the planning proposal is currently on exhibition.

Given that the Planning Proposal is expected to be in place prior to any development consent being issued in the urban release areas, the inclusion of affordable housing within the VPA offer is considered as a back up option, that will be superseded by the new ARH clause once gazetted.

The offer to enter into a VPA is considered a positive step to securing enabling infrastructure, providing certainty and limiting potential financial risk to Council ahead of a future IPART review.

A high-level review of the offer has been undertaken by Council officers. The primary matters that have arisen are with respect to the fragmentation of land ownership, orderly development, understanding part road delivery, the need for an access strategy and the alignment of open space with dwelling delivery.

Council officers will continue to work with the proponents on the offer. Councillors will be further briefed on the matter when the offer progresses to the drafting of the VPA, and this will be reported to a future Council meeting.

The final draft Legacy Property local VPA Offer is provided at Attachment 5.

## State VPA

It is understood that Legacy Property, DPE, TfNSW and SINSW are currently negotiating a State VPA which is intended to encompass the following contributions to be provided by Legacy Property to State government:

- Land required for the ultimate North-South road corridor, which will not be included in the Section 7.11 Plan;
- Land required for a new school site, to be the future new location of the Orchard Hills Public School;
- A monetary contribution towards off-site State intersection upgrades, based on the outcomes of the TMAP; and
- A biodiversity contribution under the Cumberland Plain Conservation Plan.

DPE has recently advised Council that the key terms of the State Planning Agreement have been agreed to and supported by SINSW and TfNSW. Negotiation continues with regard to:

- the extent of future road land to be dedicated;
- to the value of the education and future road land;

- the extent of land the Agreement is to apply; and
- the pathway Legacy will take with regard to addressing Biodiversity issues.

DPE advise that once the above matters have been resolved, the Planning Agreement will progress to developer execution and notification. State Planning Agreements are publicly notified and Council will be provided with an opportunity to provide comment on the draft agreement at this time.

The DPE letter to Council dated 20 October 2022 (refer to Attachment 6) suggested principles for the State VPA which were intended to address the financial risk to Council. Council accepts these principles and anticipates that these will be applied in preparation of the State VPA. This is discussed later in this report.

### Mitigation of financial risk to Council

The report to Council's 27 June 2022 Ordinary Meeting presented several financial risks associated with the project which the report stated need to be investigated and mitigated prior to Council's future consideration of the Planning Proposal for post-exhibition endorsement.

Significant progress has been made in working towards mitigating the financial risks to Council, and overall, the financial risk will be significantly minimised, if not reduced to zero, subject to the provision of:

- The S7.11 plan and it being fully adopted by IPART;
- A State VPA;
- Local VPAs;
- Further planning and infrastructure planning undertaken by the State Government for Orchard Hills South; and
- Deferral of the commencement of the LEP amendment and inclusion of a specific LEP clause relating to the approval of the contributions plan by IPART or other funding mechanism as outlined below.

The table below provides information on each of the infrastructure funding risks associated with the Orchard Hills North Planning Proposal, the steps taken to mitigate each risk, the funding source for each item to reduce the risk and the residential risk remaining.

Infrastructure	Previous Financial Risk	Steps to mitigate	Funding Mechanism	Residual Risk	Comment
Essential Works List and IPART Approval	\$124,000,000	IPART approval for full amount	S7.11 plan	\$0	IPART have estimated 12-18 months from Council endorsement of 7.11 Plan (earliest Dec 2023)
					In addition, suggested planning controls to ensure that the approved IPART plan is in place ahead of any development application being determined. If all the items are not approved by IPART then there are options

					to: <ul style="list-style-type: none"> <li>Remove item</li> <li>Require works through development consent</li> <li>Local VPA's</li> </ul>
<b>Local North-South road funding</b>	\$4,025,577	Further work has confirmed that this road can be included wholly in S7.11 plan and not rely on Area B	7.11 plan	\$0	
<b>Ultimate North-South road corridor funding</b>	\$8,200,000	Acquisition authority nominated by Minister when needs and funding mechanism agreed	State VPA	\$0  Note: If there is no need for this road there is no cost. If there is a need the cost will be included with a funding mechanism	Terms of the State VPA are agreed, the timing for exhibition and finalisation is to be confirmed.
<b>East-West road funding</b>	\$21,331,456	Confirmed increased apportionment to Area A, so included in the S7.11 Plan.  For East West road in Area B included in future State-led planning of Orchard Hills South	7.11 plan	\$0	Access Strategy will be required for access to Area A until Area B is planned.
<b>Frogmore Road resurfacing</b>	\$256,180	Part included in the S7.11 Plan and Legacy agreed to include Area B apportionment in the Local VPA	7.11 plan Local VPA	\$0 \$0	
<b>Basin B7</b>	\$7,729,105	Area A basin included in the S7.11 Plan	7.11 plan	\$0	

In addition to the above information, off-site infrastructure upgrades have been identified through the planning proposal process. The full cost of these works cannot be included in the draft s7.11 Plan because they are associated with cumulative background growth across Penrith LGA and are not fully related to the proposed zoning changes. These are also as a result of many other developments occurring in the area due to Penrith being a growth council. Therefore, Council resolved at its meeting of 27 June 2022 to investigate the development of a Section 7.12 plan to fund these works attributed to background growth.

In relation to the specific LEP clause referred to above and to further minimise any potential financial risk to Council resulting from the outcomes of the IPART review of the s7.11 Plan, it is proposed to insert a new clause into Part 6 of Penrith LEP 2010 (Urban Release Areas) relating to the provision of local infrastructure. The clause will require that development consent cannot be granted to land within an Urban Release Area unless the relevant Contributions Plan is in effect or an alternative mechanism is provided for the delivery of local infrastructure. This approach is similar to the current clause 6.2 of the LEP, where development consent cannot be granted on land within an urban release area unless Council is satisfied that arrangements have been made for the provision of State public infrastructure. Clauses of this nature also applies to land within the Aerotropolis and Mamre Precinct, for local infrastructure purposes. Such a clause would also be consistent with provisions for land within the Sydney Region Growth Centres, where land has been rezoned prior to a s7.11 Plan being in force.

The intent of this clause is to ensure that there is limited risk exposure to Council in enabling the making of the Plan and provides flexibility that either a Contributions Plan needs to be in effect to be granted development consent or other arrangements such as a VPA being in place, using the contributions plan as a base for negotiation and that it delivers all the local infrastructure required for the development. This ensures that development is not granted consent unless there is provision for local infrastructure to support development.

Given the approach above, the proponent has requested Council seek a deferred commencement of the Plan, following submission of the Planning Proposal to DPE for finalisation. This is to reduce the period between when the Plan is made, and when the Plan commences which is the time when a Development Application can be considered or approved. This request is due to commercial considerations by the proponent. The proponent has requested the Plan commence from 1 October 2023. Whilst Council raises no objections to this approach, DPE as the plan-making authority will make the ultimate decision regarding the deferred commencement request.

### Next steps

Should Council endorse the recommendation made in this report, it is anticipated that several processes will occur, which are described below:

- All supporting technical studies supporting the Planning Proposal are to be updated and contemporised to reflect the final revised Planning Proposal endorsed by Council;
- Council will submit the Planning Proposal to the Department of Planning and Environment for finalisation and gazettal, with a request to make the LEP, with a deferred commencement date of 1 October 2023;
- DPE to finalise and gazette the LEP amendment sought by the Planning Proposal after receiving Council's request for finalisation;
- The draft DCP will take effect on or after the date when the LEP amendment takes effect;
- The draft Section 7.11 Contributions Plan will be amended in accordance with the changes presented in this report;
- Council will forward the draft Section 7.11 Contributions Plan to IPART with a request to conduct a formal review of the document. This review process may take up to 18 months to complete. Following completion of the IPART review, the Minister will consider IPART's recommendations and will direct Council to make the plan, with or without changes;
- Council and Legacy Property will finalise and agree to a local VPA Offer, to be reported to a future Council meeting for consideration;



- Council and Legacy Property will prepare, publicly notify and execute a local VPA in relation to the subject site; and
- Legacy Property and the State Government will prepare, publicly notify and execute a State VPA in relation to the subject site.

### **Financial Implications**

The infrastructure funding risks associated with the Orchard Hills North Planning Proposal have been outlined in the table on pages 14-15 and includes the steps to mitigate the risk, funding mechanism for each risk and residual risk remaining.

The financial risks can be mitigated through the provision of:

- The S7.11 plan and it being fully adopted by IPART
- A State VPA
- Local VPA's
- Further planning and infrastructure planning undertaken by the State Government for Orchard Hills South
- Deferral of commencement of the LEP amendment and inclusion of a specific LEP clause relating to the approval of the contributions plan by IPART or other funding mechanism.

To further mitigate Council's financial risk, it is proposed to insert a new clause into Part 6 of Penrith LEP 2010 (Urban Release Areas) which will require a relevant Contributions Plan to be in effect or an alternative mechanism to be provided for the delivery of local infrastructure prior to consent being granted to land with an Urban Release AREA.

### **Risk Implications**

DPE has provided correspondence to Council requiring Council progress and complete the Planning Proposal process by December 2022. DPE provided advice that further timeframe extensions are unlikely to be granted unless there are extenuating circumstances and encouraged Council to finalise the plan-making process as soon as possible. If these timeframes are not achieved, the Minister for Planning has the ability to 'call in' the Planning Proposal to be refused or made. Council's open dialogue and regular discussions with DPE has likely contributed positively to the project, and the Minister has not yet called in the Planning Proposal.

### **Conclusion**

This report has presented the outcomes of a public exhibition of the Orchard Hills North Planning Proposal, draft DCP, draft 7.11 Plan and draft local Legacy VPA Offer.

The Planning Proposal and supporting information was placed on public exhibition from 25 July to 22 August 2022. A total of 62 public submissions were received. Submissions were also received from most of the State agencies consulted.

The publicly exhibited Planning Proposal, draft DCP, draft 7.11 Plan and draft local Legacy VPA Offer have been amended in response to various matters raised and addressed post-exhibition.

The financial risks to Council which were identified in the previous 27 June 2022 report to Council's Ordinary Meeting have been investigated and mitigated. Significant progress has been made in working towards mitigating the financial risks to Council, and overall, the financial risk will be significantly minimised, if not reduced to zero, subject to the provision of:

- The S7.11 plan and it being fully adopted by IPART;
- A State VPA;
- Local VPAs;
- Further planning and infrastructure planning undertaken by the State Government for Orchard Hills South; and
- Deferral of the commencement of the LEP amendment and inclusion of a specific LEP clause relating to the approval of the contributions plan by IPART or other funding mechanism.

This report recommends that Council endorses the amended Planning Proposal, draft 7.11 Plan (with amendments) and amended draft DCP, and that Council and Legacy Property are to continue to work towards finalisation of a VPA Offer which is to be reported to a future Council meeting for consideration.

## RECOMMENDATION

That:

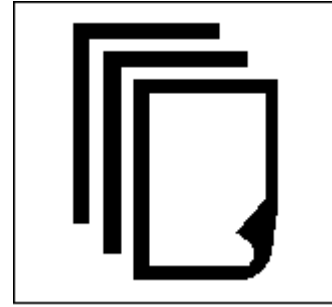
1. The information contained in the report on Orchard Hills North Planning Proposal be received.
2. Council endorse the Planning Proposal presented in this report and which has been provided to Councillors as a separate enclosure and is publicly available on Council's website.
3. All supporting technical studies supporting the Planning Proposal be updated and contemporised to reflect the final revised Planning Proposal referred to in resolution 2.
4. Council endorse the draft amendment to the Penrith Development Control Plan 2014 which has been provided to Councillors as a separate enclosure and is publicly available on Council's website.
5. The draft amendment to the Penrith Development Control Plan 2014 referred to in resolution 4 take effect following the date when the LEP amendment sought by the Planning Proposal takes effect.
6. Council endorse and amend the draft Section 7.11 Development Contributions Plan (which has been provided to Councillors as a separate enclosure and is publicly available on Council's website) in accordance with the changes presented in this report.
7. Council forward the draft Section 7.11 Contributions Plan referred to in resolution 6 to the Independent Pricing and Regulatory Tribunal (IPART) with a request to conduct a formal review of the document.
8. Council request the Department of Planning and Environment to include Orchard Hills North in Schedule 2 of the Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012.
9. Council submit the Planning Proposal to the Department of Planning and Environment for finalisation and gazettal with a request that the LEP amendment be made, with deferred commencement on 1 October 2023, and once resolution 3 has been met.

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10. Council and Legacy Property finalise negotiations in respect to a local Legacy Property VPA Offer, and that this be reported to a future Council meeting for consideration.

#### ATTACHMENTS/APPENDICES

1. Detailed responses to public submissions	13 Pages	Attachments Included
2. Detailed responses to agency submissions	6 Pages	Attachments Included
3. Changes made to Planning Proposal post-exhibition	3 Pages	Attachments Included
4. Changes made to draft DCP post-exhibition	3 Pages	Attachments Included
5. Draft Legacy Property local VPA Offer	22 Pages	Attachments Included
6. DPE letter to Council 20 October 2022	2 Pages	Attachments Included

# ATTACHMENTS



Date of Meeting: Monday 12 December 2022

Report Title: Orchard Hills North Planning Proposal

Attachments: Detailed responses to public submissions  
Detailed responses to agency submissions  
Changes made to Planning Proposal post-exhibition  
Changes made to draft DCP post-exhibition  
Draft Legacy Property local VPA Offer  
DPE letter to Council 20 October 2022

## DETAILED RESPONSES TO PUBLIC SUBMISSIONS

### ORCHARD HILLS NORTH PUBLIC EXHIBITION

1	<p><b>Summary of issue raised</b></p> <p>Submission: 1, 14 Relevant land: 33 Frogmore Road, Orchard Hills (Area A)</p> <p>Submission: 1, 14 Relevant land: 33 Frogmore Road, Orchard Hills (Area A)</p> <p>Submission: 23 Relevant land: 27-29 Frogmore Road, Orchard Hills (Area A)</p>	<p><b>Requests for removal of land from the proposed rezoning area</b></p> <p>Requests that the landowner's property at Frogmore Road is removed from the proposal rezoning.</p> <p>Concern raised with the landowner's property being included in the proposed rezoning without consent.</p> <p>Concern raised that the initial rezoning proposal did not seek to rezone the landowner's land, however now the land is proposed to be rezoned. How did this change occur without consent of the landowner?</p>
	<p><b>Officer response:</b></p> <p>Requests for removal of certain lands from the rezoning area are not supported because if removed, those lands would reduce the ability to masterplan the rezoning area holistically, which is required to enable delivery of efficient and logical planning outcomes. In addition, the recent State Government announcement of the precinct planning for Orchard Hills announced in October 2022 would mean that to exclude this land now, the land may then be isolated from any rezoning as it would not form part of this Planning Proposal or part of the Orchard Hills precinct being led by the State Government. Retaining this land as part of the Planning Proposal will provide certainty to landowners.</p> <p>The initial application formed by Legacy Property in its submission to the Accelerated Housing Delivery Program did not include the submitter's land. At the time of lodgement of the Planning Proposal, the application was subsequently amended to expand the proposed rezoning area to include the submitter's land. It is noted that consent from the landowner is not required to be included in a Planning Proposal. Landowners consent is however required for a Development Application where applicable to the subject land.</p>	
	<p><b>Changes to documentation:</b></p> <p>No changes are proposed in response to the issues raised above.</p>	
2	<p><b>Summary of issue raised</b></p> <p>Submission: 4, 17, 18</p>	<p><b>Requests for additional land to be added to the proposed rezoning area</b></p> <p>The 2 properties at the eastern end of Castle Road, to the east of the rezoning area, are requested to be added to the Planning Proposal.</p>

<p>Relevant land: 7 Castle Road, Claremont Meadows &amp; 1-5 Castle Road, Claremont Meadows (Area A)</p> <p>Submission: 24 Relevant land: 222-228 Castle Road, Orchard Hills (Area B)</p> <p>Submission: 35 Relevant land: 24 Caddens Road, 30 Caddens Road, 38-34 Caddens Road, 46-52 Caddens Road, 54-60 Caddens Road, 62-68 Caddens Road, 70-76 Caddens Road in Orchard Hills (Area B)</p> <p>Submission: 48</p> <p>Submission: 56 Relevant land: 169-172 Castle Road, Orchard Hills (Area B)</p> <p>Submission: 59 Relevant land: 193-195 Castle Road, Orchard Hills (Area B)</p> <p>Submission: 66 Relevant land: 46-52 Caddens Road, Orchard Hills (Area B)</p> <p>Submission: 70 Relevant land: 54-60 Caddens Road, Orchard Hills (Area B)</p> <p>Submission: 77 Relevant land: 181-183 Castle Road, Orchard Hills (Area B)</p> <p>Submission: 78, 79 Relevant land: 185-191 Castle Road, Orchard Hills (Area B)</p> <p>Submission: 84 Relevant land: 1794-1802 The Northern Road, Orchard Hills (Flower Power garden centre) (Area B)</p> <p>Submission: 87 Relevant land: Hermitage Court, Orchard Hills (Immediately east of Area A)</p>	<p>The Area B lands, to the west of the rezoning area, are requested to be added to the Planning Proposal.</p> <p>Caddens, Kingswood, Castle and Frogmore Roads need to be appropriately reconstructed to align with development rollout.</p> <p>The lands at Hermitage Court, to the east of the rezoning area, are requested to be added to the Planning Proposal.</p>
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<p><b>Officer response:</b></p> <p>The two properties at the eastern end of Castle Road, which seek inclusion in the rezoning, are currently zoned C3 Environmental Management and C2 Environmental Conservation. These zonings are consistent with the proposed zonings of the adjacent properties in this part of the rezoning area, which are also proposed to be zoned C3 and C2. Therefore, there is no merit to rezone the two subject properties or include these in the Planning Proposal, as they will remain as C2 or C3 due to their environmental qualities.</p> <p>Requests to add Area B lands to the proposed rezoning area are not supported, as this land is intended to be planned for under the State Government's precinct planning process for Orchard Hills, as announced in October 2022. This process is anticipated to consider land use planning outcomes for Area B, as well as infrastructure delivery, funding matters, and mitigation of impacts. The boundaries of Area A (the rezoning area) were defined upon lodgement of the Planning Proposal in 2018. At that time a significant portion of the land of Area A was under Legacy Property control, which supported the choice of boundary for Area A. At that time Legacy Property had not obtained land control for significant parts of Area B and therefore Area B was not included in the proposed rezoning. The impacts of increased traffic from the development of Area A on surrounding roads (including Area B) has been considered during preparation of the Transport Management and Accessibility Plan (TMAP) which supports the Planning Proposal. The TMAP has identified the necessary road upgraded required to support these increased traffic levels.</p> <p>Caddens, Kingswood, Castle and Frogmore Roads need to be appropriately reconstructed to align with development rollout. It is acknowledged that the fragmented ownership of the rezoning area may result in partial development of the rezoning area and partial delivery of upgrades to Caddens, Kingswood, Castle and Frogmore Roads. It is noted that Section 3.1 of the draft DCP includes the following control:</p> <p><i>As part of the redevelopment of the site, full construction and/or reconstruction will be required for Kingswood Road, Castle Road, Frogmore Road, Ulm Road and Caddens Road including but not limited to full width pavement reconstruction to both sides, stormwater drainage and kerb and gutter to both sides of the road and intersections apportioned appropriately as per the relevant road cross section. Each of these roads shall be upgraded and reconstructed in association with an adjoining subdivision or when a new local/collector road is connected to that road.</i></p> <p>Legacy Property has committed to add several sections of half roads into the 7.11 Plan so as to address concerns in relation to the reconstruction of existing rural roads.</p> <p>The need for reconstruction of existing rural roads that do not form part of the 7.11 Plan work schedule would be considered and addressed as part of future development application processes.</p> <p>Requests to add the Hermitage Court lands to the proposed rezoning are not supported, as there is limited merit that warrants a change to the current rural zoning and those lands are already developed for rural-residential purposes. It is noted that in the Western City District Plan and Penrith Local Strategic Planning Statement, Orchard Hills North is identified as an Urban Investigation Area. Hermitage Court is not included within this Urban Investigation Area.</p> <p><b>Changes to documentation:</b></p>
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	Legacy Property has committed to add several sections of half roads into the 7.11 Plan so as to address concerns in relation to the reconstruction of existing rural roads.	
<b>3</b>	<b>Summary of issue raised</b>  Submission: 1, 14 Relevant land: 33 Frogmore Road, Orchard Hills (Area A)  Submission: 4 Relevant land: 7 Castle Road, Claremont Meadows (Area A)  Submission: 75 Relevant land: 19 Frogmore Road, Orchard Hills (Area A)	<b>Change to Council rates</b>  Question raised regarding how Council rates will change or increase, should the landowner wish to remain living on the land once rezoned.
	<b>Officer response:</b>  The public exhibition material included information relating to changes to Council rates as a result of the proposed rezoning. In summary, the rezoning may increase land valuation and increase how much a person is to pay for their Council rates. More detailed information is available in the exhibited fact sheet on this matter. Council's Rates team is also available to answer further queries.	
	<b>Changes to documentation:</b>  No changes are proposed in response to the issues raised above.	
<b>4</b>	<b>Summary of issue raised</b>  Submission: 1, 14 Relevant land: 33 Frogmore Road, Orchard Hills (Area A)  Submission: 20, 21  Submission: 66 Relevant land: 46-52 Caddens Road, Orchard Hills. (Area B)  Submission: 71 Relevant land: Frogmore Road, Orchard Hills, close to Penrith Christian School (Area B)  Submission: 75	<b>Traffic and transport</b>  Requests for clarification around the proposed supporting road network infrastructure, such as the suitability of the road widths proposed, consideration of alternative alignments for the north-south road corridor and east-west road corridor, timely delivery of infrastructure, whether the proposed road improvements will be suitable to support increased population, compliance with the Western Sydney Design Guidelines, the assumptions relied upon in preparation of the TMAP, maintenance of access to properties during construction, impact on the Uniting Church site and Orchard Hills Public School site from the east-west road.



<p>Relevant land: 19 Frogmore Road, Orchard Hills (Area A)</p> <p>Submission: 80 Relevant land: 54 Darvill Road, Orchard Hills (south Orchard Hills, south of M4 Motorway)</p> <p>Submission: 82 Relevant land: 3 Frogmore Road, Orchard Hills (Mt Hope Uniting Church) (Area A)</p>	
<p><b>Officer response:</b></p> <p>The TMAP, draft Section 7.11 Plan and draft DCP supporting the Planning Proposal provide detailed information in respect to the proposed improvements to be made to the road network, timing, funding and delivery. Whilst the delivery of infrastructure and development will occur in stages, this is standard practice for new release areas. Council's 7.11 Plan outlines the infrastructure to be delivered and at what stage. While not all infrastructure, such as parks and playgrounds, can be delivered all at once, it is intended that some infrastructure is provided alongside the development on a stage-by-stage basis.</p> <p>The Planning Proposal was lodged with Council in March 2018, which was well before the Western Sydney Design Guidelines were prepared. Council and the proponent have been working towards site-specific road profiles for some time, and these are proposed to be adopted within the DCP. Council has not yet adopted the Western Sydney Street Design Guidelines.</p> <p>The current proposed North-South road corridor alignment was selected to align with O'Connell Lane with a potential future crossing over the M4 to provide connectivity to the Orchard Hills South urban investigation area. Alternate alignments were considered, such as Kingswood Road, however, the proposed alignment was selected to maximise holistic north-south continuity between Orchard Hills and the Great Western Highway, and for safety purposes.</p> <p>The future development of Area B is anticipated to deliver an East-west corridor to link with The Northern Road, forming a new signalised intersection between Frogmore Road and Castle Road. It is likely that Frogmore Road and Castle Road will become left-in / left-out controlled, and the new East-west road / The Northern Road intersection will form a primary access to Orchard Hills North. The road alignment was selected as to not burden the existing roadways and to keep distance for the development access from the M4 / The Northern Road interchange.</p> <p>As part of this current Planning Proposal process, there is no proposal for delivery of a North-South road connection to the M4 Motorway. A further link across the M4 associated with Orchard Hills South urban investigation area will be subject to future traffic planning and modelling, as part of the recently announced GPEC precinct planning to be managed by the NSW State government. The scope of the current Planning Proposal is consistent within the TMAP. The land required for the future North-South 'ultimate' road link is to be preserved through application of the 'Transport Investigation Area' (TIA) LEP mapping and concurrence requirements, and through execution of a State VPA relating to the subject land required for this road connection. The State VPA to be executed between State Government and Legacy Property is anticipated to secure the land required for delivery of the ultimate north-south road corridor.</p>	

	<p>Greater certainty to determine that access to properties is retained and provided for throughout the duration of the future development of the land will be provided at Development Application (DA) stage. A future DA will include a detailed Traffic Management Plan to ensure that any construction impacts or accessibility issues will be minimised to affected residents</p> <p>It is correct that the current proposed alignment of the east-west road does impact on the north end of the properties containing the Mt Hope Uniting Church and the existing Orchard Hills Public School. The east-west road is critical infrastructure required to support the development. The location of the road has been determined based on several key factors such as road design, achievement of orderly development of surrounding land, and the minimise impacts as much as possible. In this regard, the east-west road should not be moved in order to accommodate the requests of specific landowners. All affected landowners will be compensated for the land required.</p> <p>A Heritage Impact Assessment has been submitted to determine the impact on the Orchard Hills Uniting Church, being local heritage item I156 of Schedule 5 of Penrith LEP 2010. The assessment demonstrates that the proposed road development would have no impact on the significance of the subject site as a local heritage item. The east-west road would impact on the north end of the church site, reducing its setback. These alterations would not detrimentally impact any identified landscaping associated with the subject site and would not impact on any significant curtilage or settings related to the heritage building. The east-west road would also improve access to the church site instead of the current arrangement where access is provided across the adjacent school site.</p> <p>In respect to the impact of the east-west road on the existing Orchard Hills Public School site, it is noted that the SINSW submission did not raise objection to the east-west road impacting the existing school.</p>				
	<p><b>Changes to documentation:</b></p> <p>No changes are proposed in response to the issues raised above.</p>				
5	<table border="1"> <thead> <tr> <th data-bbox="324 922 1093 970">Summary of issue raised</th><th data-bbox="1093 922 1948 970">Current school site and new school site</th></tr> </thead> <tbody> <tr> <td data-bbox="324 970 1093 1209"> <p>Submission: 80 Relevant land: 54 Darvill Road, Orchard Hills (south Orchard Hills, south of M4 Motorway)</p> <p>Submission: 82 Relevant land: 3 Frogmore Road, Orchard Hills (Mt Hope Uniting Church) (Area A)</p> </td><td data-bbox="1093 970 1948 1209"> <p>The proposed future location of the school is occupied currently by a water dam in a low point. Is this location therefore appropriate?</p> </td></tr> </tbody> </table>	Summary of issue raised	Current school site and new school site	<p>Submission: 80 Relevant land: 54 Darvill Road, Orchard Hills (south Orchard Hills, south of M4 Motorway)</p> <p>Submission: 82 Relevant land: 3 Frogmore Road, Orchard Hills (Mt Hope Uniting Church) (Area A)</p>	<p>The proposed future location of the school is occupied currently by a water dam in a low point. Is this location therefore appropriate?</p>
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	<p><b>Officer response:</b></p> <p>The post-development scenario of the proposed school site will result in the land being free from flood affectation, as outlined within the Stormwater and Flood Management Strategy.</p>				

<b>Changes to documentation:</b>  No changes are proposed in response to the issues raised above.		
<b>6</b>	<b>Summary of issue raised</b>  Submission: 75 Relevant land: 19 Frogmore Road, Orchard Hills (Area A)  Submission: 86 Relevant land: 106 Caddens Road, Orchard Hills (Area A)	<b>Stormwater management</b>  The suitability of proposed locations of stormwater infrastructure and impact on properties.  Concerns raised over stormwater management for properties located at the east end of Castle Road, and impact in significant rain events.
<b>Officer response:</b>  In respect to the subject land at Frogmore Road, the easement that currently runs through the submitters land will be maintained, however Stormwater run-off from development to the rear of this property will be managed and diverted to the new detention basin on Frogmore Road. As Basin B7 does not form part of Area A of the rezoning proposal, a permanent basin B8 will be constructed in the rezoning area in the location previously nominated for a temporary basin, to provide detention to ensure post-developed flows match with pre-developed flow. Ultimately when Basin B7 is delivered, the drainage easement will be utilised to ensure flows from the rear of the property are diverted to the ultimate Basin B7.  Stormwater infrastructure is considered critical infrastructure and is located in areas best suited to detain water during storm and flood events. A Stormwater and Flood Management Strategy has been prepared to service the rezoning area. No changes are proposed to the proposed locations of any basins. Due to the fragmented land ownership, a staged stormwater management strategy is required to be developed to ensure properties not part of the proposal by Legacy are not adversely impacted by stormwater runoff and flows. The staged stormwater strategy should also include a bulk earthworks strategy to ensure any earthworks will not adversely impact any properties not part of the Legacy proposal. The preparation of this strategy will occur at a future DA phase.		
<b>Changes to documentation:</b>  No changes are proposed in response to the issues raised above.		
<b>7</b>	<b>Summary of issue raised</b>  Submission: 1, 14 Relevant land: 33 Frogmore Road, Orchard Hills (Area A)  Submission: 11	<b>Planning controls and masterplan for rezoning area (Area A)</b>  Requests for amendments to proposed planning controls to enable larger minimum lot sizes, provisions of appropriate privacy controls for housing, use of materials to combat urban heat.

	<p>Submission: 71 Relevant land: Frogmore Road, Orchard Hills, close to Penrith Christian School (Area B)</p> <p>Submission: 22</p>	
	<p><b>Officer response:</b></p> <p>The proposed zoning for 'compact lots' is R1 General Residential.</p> <p>There are several planning mechanisms which will encourage delivery of a range of lot sizes within the rezoning area, including the use of a minimum lot size in addition to precinct dwelling caps which have determined that an average lot size of 400sqm will be achieved.</p> <p>While residential flat buildings are permitted in the R1 zone, the height limit serves to constrain the potential for apartments. Apartment development is also constrained through the precinct-based yield controls and DCP.</p> <p>An indicative structure plan of the Village Centre is outlined within Chapter 6 of the DCP. Matters regarding specific design details or interpretative features such as public art, will be considered as part of a future Development Application. The DCP has been amended to include objectives relating to delivery of a village centre design that acknowledges the rural nature and historic land use of the area.</p> <p>In respect to privacy concerns, it is noted that the location of the east-west road in the vicinity of the village centre has been determined based on several contributing factors, namely in the interest of delivering an efficient and effective street network, and to fit with broader masterplanning of the estate. Therefore, the location of the east-west road in this location will be retained. Concerns in relation to overlooking of properties and loss of privacy can be addressed in accordance with the draft DCP controls relating to provision of privacy and amenity for residential dwellings.</p> <p>Clause 7.30 Urban Heat of Penrith LEP 2010 will apply ensuing that any future development within the precinct (and within the applicable zone) must demonstrate how planning and design measures have been incorporated to mitigate the impacts of the heat island effect.</p> <p><b>Changes to documentation:</b></p> <p>The DCP has been amended to include objectives relating to delivery of a village centre design that acknowledges the rural nature and historic land use of the area.</p>	
8	<p><b>Summary of issue raised</b></p> <p>Submission: 5 Relevant land: 14a Blueridge Place, Orchard Hills (Area B)</p>	<p><b>Area B indicative masterplan</b></p> <p>Concern raised in respect to some proposed elements in the Area B structure plan, such as proposed open space, and impact on affected properties.</p>

	<p>Submission: 71 Relevant land: Frogmore Road, Orchard Hills, close to Penrith Christian School (Area B)</p>	
	<p><b>Officer response:</b></p> <p>Regarding the Area B Structure Plan, this is indicative only and was developed to guide the overall function and purpose of open space between Area A and Area B and other elements such as major road corridors. Further planning and consultation will occur by the State Government as the precinct-planning authority for the remainder of the Orchard Hills precinct in 2023, as outlined within DPE's Orchard Hills Discussion Paper.</p>	
	<p><b>Changes to documentation:</b></p> <p>No changes are proposed in response to the issues raised above.</p>	
9	<p><b>Summary of issue raised</b></p> <p>Submission: 2</p> <p>Submission: 22</p> <p>Submission: 71 Relevant land: Frogmore Road, Orchard Hills, close to Penrith Christian School (Area B)</p> <p>Submission: 75 Relevant land: 19 Frogmore Road, Orchard Hills (Area A)</p>	<p><b>Loss of existing character</b></p> <p>Concern over loss of existing rural character in Orchard Hills as a result of the proposal.</p>
	<p><b>Officer response:</b></p> <p>The proposed rezoning area is located in a logical location where an extension to the existing urban area is warranted. Orchard Hills North is identified as an Urban Investigation Area in both the State and Local Government planning framework including the Western City District Plan and Penrith Local Strategic Planning Statement. As this land is identified as being for urban purposes, a lot size of 1,500m<sup>2</sup> is not considered an efficient use of land that is identified for urban purposes.</p> <p>A Landscape and Visual Assessment was undertaken as part of the original Planning Proposal to address the impact on views. The introduction of new public roads and open space throughout the development will increase the opportunity for views to the Blue Mountains from public areas that are currently private property.</p>	



<p>Council has a strategic planning framework to balance the need for future growth with a range of constraints and opportunities. The Penrith Local Strategic Planning Framework is Council's plan for how to cater for the expected growth and identifies growth opportunities, balanced with areas for protection. The LSPS is required to be consistent with the State Government planning framework, including housing targets for the Penrith LGA.</p>		
<p><b>Changes to documentation:</b></p> <p>No changes are proposed in response to the issues raised above.</p>		
10	<p><b>Summary of issue raised</b></p> <p>Submission: 22</p> <p>Submission: 71</p> <p>Relevant land: Frogmore Road, Orchard Hills, close to Penrith Christian School (Area B)</p>	<p><b>Supporting infrastructure and servicing</b></p> <p>Requests to ensure that the development is appropriately supported by infrastructure and servicing.</p>
<p><b>Officer response:</b></p> <p>The Planning Proposal is supported by detailed development controls via the DCP and Section 7.11 Contributions Plan to ensure the delivery of appropriate local infrastructure. Submissions have been received from relevant utility and servicing agencies in support of the proposal. A Transport Management and Accessibility Plan has also been prepared which identifies the relevant infrastructure upgrades required as a result of the development.</p> <p>The matter of obtaining improved phone connectivity is a matter for the relevant telecommunications provider to address.</p>		
<p><b>Changes to documentation:</b></p> <p>No changes are proposed in response to the issues raised above.</p>		
11	<p><b>Summary of issue raised</b></p> <p>Submission: 4, 17, 18</p> <p>Relevant land: 7 Castle Road, Claremont Meadows &amp; 1-5 Castle Road, Claremont Meadows (east of Area A)</p>	<p><b>Matters regarding two properties at east end of Castle Road</b></p> <p>Concerns raised regarding the management of impacts to properties during the construction period, stormwater management and flooding to the properties from the M4 Motorway, clarification around mailing address, clarification sought around the intended future zoning and use of nearby land to the west, ability to connect to town sewerage, future bridge upgrade at Castle Road, maintenance of access to properties during the construction period, provision of shared pathways, and upgrade to existing roadways.</p>

	<p><b>Officer response:</b></p> <p>The management of impacts during the construction period will be addressed as part of future development application processes.</p> <p>Matters regarding the impacts of stormwater management and flooding for properties located at the east end of Castle Road are not related to the Planning Proposal. This matter has been forwarded to the appropriate department within Council for further consideration. It is noted that drainage issues relating to stormwater runoff from the M4 Motorway are not the responsibility of Council but are the responsibility of Transport for NSW.</p> <p>The submitter's request for clarification around mailing address for the subject property has been forwarded to the appropriate department within Council for action.</p> <p>This area to the west of the submitters land is proposed to be zoned C3 Environmental Management, with a minimum lot size of 2,000sqm. The purpose of the zoning and minimum lot size control is to deliver low intensity residential development in an environmental setting.</p> <p>It is anticipated that new lots in the vicinity of the submitter's property would be connected to sewer, which may create the opportunity for the submitter's property to be connected, potentially at cost to the landowner. Submissions have been received from relevant utility and servicing agencies in support of the proposal and/or raising no objection, based on consideration of current and future capacity of services, service planning and anticipated growth. Submissions have been received from Sydney Water, Endeavour Energy, Telstra and Jemena Gas Networks.</p> <p>It is not proposed Castle Road be widened due to the delivery of the east-west link. Any works on Castle Road associated with the development area will be subject to future Development Applications in association with an adjoining subdivision or when a new local/collector road is connected.</p> <p>The draft DCP presents shared pathways proposed in the area around the submitter's property.</p> <p>Access to The Northern Road from Castle Road is unchanged with the Area A development. Residents will have access to the future Orchard Hills Railway Station. The matter of Caddens Road access from Ulm Road is outside the scope of this Planning Proposal. Section 3.1 of the draft DCP includes a control requiring reconstruction of Castle Road, including pavement, stormwater drainage, kerb and gutter, to be undertaken in association with the adjoining subdivision.</p>				
	<p><b>Changes to documentation:</b></p> <p>No changes are proposed in response to the issues raised above.</p>				
12	<table border="1"> <tr> <th data-bbox="324 1145 1093 1201">Summary of issue raised</th><th data-bbox="1093 1145 1948 1201">Matters regarding the property 66-70 Castle Road, Orchard Hills</th></tr> <tr> <td data-bbox="324 1201 1093 1313"> <p>Submission: 8, 82 Relevant land: 66-70 Castle Road, Orchard Hills (Area A)</p> </td><td data-bbox="1093 1201 1948 1313"> <p>Concerns raised regarding masterplanning outcomes for properties affected by the future North-South road at the junction with the M4 Motorway, such as development potential and consideration for higher density housing.</p> </td></tr> </table>	Summary of issue raised	Matters regarding the property 66-70 Castle Road, Orchard Hills	<p>Submission: 8, 82 Relevant land: 66-70 Castle Road, Orchard Hills (Area A)</p>	<p>Concerns raised regarding masterplanning outcomes for properties affected by the future North-South road at the junction with the M4 Motorway, such as development potential and consideration for higher density housing.</p>
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<p>Submission: 8, 82 Relevant land: 66-70 Castle Road, Orchard Hills (Area A)</p>	<p>Concerns raised regarding masterplanning outcomes for properties affected by the future North-South road at the junction with the M4 Motorway, such as development potential and consideration for higher density housing.</p>				

	<p><b>Officer response:</b></p> <p>The draft LEP and DCP controls applying to the site were formulated based on several influencing factors, namely the identification of the future ultimate north-south road alignment in the part of the rezoning area, and the requirement to provide an appropriate quantum of open space in the appropriate location. It is common in new release areas that smaller properties may need to coordinate or facilitate orderly development with adjoining properties.</p> <p>The location of the proposed park which affects the landowner's site has been determined based on several factors, notably the gradient of the land and the quantum of open space to be provided. This has meant that there would be difficulty in shifting the location of the park, or in reducing its size. The positioning of the basin land at the eastern end was determined in to meet stormwater management objectives and also is difficult to re-position, given limited flexibility being so close to Claremont Creek. Therefore, the request to change or move the open space from the landowner's site is not supported.</p> <p>The road reservation widths to be delivered in the rezoning area are to be in accordance with the road cross sections set out in the draft DCP. A 13m wide reservation is therefore not supported.</p> <p>In discussions with TfNSW, DPE and the proponent in developing the Transport Investigation Area (TIA) overlay, it was Council and the proponent's intentions that the TIA did not impact the subject property. Council has amended the TIA layer accordingly to remove the TIA overlay from the submitter's land.</p> <p>The request for additional residential density on the site is not supported. The suggestion for provision of alternative planning outcomes and potentially higher density on the land affected by the future North-South road at the junction with the M4 Motorway is a reasonable request to consider, given the unique location and affectation by the future roadway. It is possible that the 'compact housing' could be extended to cover this land also, and be included in the draft DCP controls. It is noted that at this current time there is no guaranteed certainty that the North-South ultimate road will be delivered on the site, as it is pending future investigations to determine need, funding and design. Therefore it is not desirable to change the draft planning controls to respond to future road infrastructure which might not occur. Given the above, it is recommended that no changes are made to the planning controls for this site at this current time.</p>				
	<p><b>Changes to documentation:</b></p> <p>It is proposed to amend the TIA layer overlay on the draft LEP zoning map to remove the TIA overlay from the submitter's land.</p>				
13	<table border="1"> <thead> <tr> <th data-bbox="333 1123 1090 1155">Summary of issue raised</th><th data-bbox="1090 1123 1957 1155">Matters regarding lands at Hermitage Court</th></tr> </thead> <tbody> <tr> <td data-bbox="333 1155 1090 1315"> <p>Submission: 87 Relevant land: Hermitage Court, Orchard Hills (Immediately east of Area A)</p> </td><td data-bbox="1090 1155 1957 1315"> <p>Concern raised regarding potential land use conflict between the rezoning area and the rural-zoned Hermitage Court lands to the east, requests for servicing and sewer connection, inclusion of these lands in the proposed rezoning, and incorporation of these lands into the anticipated development outcome of the rezoning area.</p> </td></tr> </tbody> </table>	Summary of issue raised	Matters regarding lands at Hermitage Court	<p>Submission: 87 Relevant land: Hermitage Court, Orchard Hills (Immediately east of Area A)</p>	<p>Concern raised regarding potential land use conflict between the rezoning area and the rural-zoned Hermitage Court lands to the east, requests for servicing and sewer connection, inclusion of these lands in the proposed rezoning, and incorporation of these lands into the anticipated development outcome of the rezoning area.</p>
Summary of issue raised	Matters regarding lands at Hermitage Court				
<p>Submission: 87 Relevant land: Hermitage Court, Orchard Hills (Immediately east of Area A)</p>	<p>Concern raised regarding potential land use conflict between the rezoning area and the rural-zoned Hermitage Court lands to the east, requests for servicing and sewer connection, inclusion of these lands in the proposed rezoning, and incorporation of these lands into the anticipated development outcome of the rezoning area.</p>				



	<p><b>Officer response:</b></p> <p>In response to concern raised regarding the potential land use conflict between the rezoning area and the rural-zoned Hermitage Court lands to the east, the draft DCP has been amended to require that a 1.0m wide continuous landscape buffer is to be provided, at subdivision stage, at the shared boundary between Orchard Hills North and the rear of properties fronting Hermitage Court.</p> <p>It is anticipated that new lots in the vicinity of the submitter's property would be connected to sewer, which may create the opportunity for the submitter's property to be connected, potentially at cost to the landowner. Submissions have been received from relevant utility and servicing agencies in support of the proposal and/or raising no objection, based on consideration of current and future capacity of services, service planning and anticipated growth. Submissions have been received from Sydney Water, Endeavour Energy, Telstra and Jemena Gas Networks.</p> <p>Requests to add the Hermitage Court lands to the proposed rezoning are not supported, as there is limited merit that warrants a change to the current rural zoning and those lands are already developed for rural-residential purposes. It is noted that in the Western City District Plan, Orchard Hills North is identified as an Urban Investigation Area. Hermitage Court is not identified within the Urban Investigation Area.</p>
	<p><b>Changes to documentation:</b></p> <p>The draft DCP has been amended to require that a 1.0m wide continuous landscape buffer is to be provided, at subdivision stage, at the shared boundary between Orchard Hills North and the rear of properties fronting Hermitage Court.</p>

## DETAILED RESPONSES TO AGENCY SUBMISSIONS

### ORCHARD HILLS NORTH PUBLIC EXHIBITION

Presented below are the issues raised in agency submissions made on the Orchard Hills North public exhibition.

Agency	Key issues raised	Council officer response
Department of Planning and Environment (DPE)	<p>A State VPA to secure land required for North-South road corridor and the school is to be prepared by State government and Legacy Property.</p> <p>No funding source for construction of the North-South ultimate road will be identified as part of this Planning Proposal process.</p> <p>The need for the North-South road is to be determined through strategic planning to be undertaken for the Orchard Hills Metro station and adjoining lands. If this work confirms the need for the road, a funding source for construction would also be identified.</p> <p>DPE understands Council's concerns that the dedication of the ultimate road land to Council prior to confirmation of construction funding may set community expectations for the delivery of the road and bridge, representing a substantial liability to Council.</p> <p>The State VPA would include a 5-year sunset clause, where the Minister will benefit from a call option requiring Legacy to dedicate the ultimate road land to the Minister's nominee. The Minister's nominee will not be identified in the State VPA, thereby ensuring that the land will not be dedicated to Council until there is demonstrable need and funding for delivery. The call option would only occur upon publication of a strategic plan confirming need for the transport link and land, and a funding and contributions framework that includes the ultimate road and M4 crossing. If the land is not required, Legacy would make an alternative contribution towards State and regional infrastructure.</p> <p>DPE and Legacy are negotiating for the delivery of the interim North-South road (7.11 Plan funded) to be captured by the State VPA, thereby reducing the scope of the 7.11 contributions plan.</p>	<p>DPE's suggested principles for the State VPA would address financial risk to Council.</p> <p>It is acknowledged that the need for the North-South ultimate road will be confirmed at a future time, including the selection of the bridge alignment option across the M4 Motorway.</p> <p>The anticipated removal of the interim North-South road from the Section 7.11 Plan reduces the need to masterplan the rezoning area to respond to and include significant parts of the North-South corridor. If the North-South road were not to proceed, it is unlikely that the masterplan would contain poor planning outcomes or inefficiencies.</p> <p>Retaining the application of the TIA overlay and concurrence clause will assist to mitigate risk to Council until the State VPA is executed, to ensure the preservation of the North South corridor.</p>

Agency	Key issues raised	Council officer response
Transport for NSW (TfNSW)	<p>TfNSW acknowledges that the preservation of land for the ultimate north-south road needs resolution prior to making of the LEP.</p> <p>TfNSW does not support the use of the Transport Investigation Area (TIA) overlay and concurrence clause for the North-South road corridor and instead proposes transfer of the land required for the North-South ultimate road to Council through a State VPA.</p> <p>No funding source for the construction of the North-South ultimate road will be identified as part of this Planning Proposal process. The road will not be a State Road due to its Collector Road function. The funding source for future construction of the North-South Road corridor can be identified at a later stage as part of the planning and investigations of the planned Orchard Hills Centre and broader Greater Penrith to Eastern Creek (GPEC) Investigation Area.</p> <p>Future planning and investigations are to occur to determine the preferred bridge alignment option across the M4 Motorway (the exhibited TIA overlay is wide enough to capture land relating to both options).</p> <p>Council as roads authority is best placed to determine the width of the corridor, including verge and median widths. The corridor should accommodate a 4-lane road that is bus capable and integrates with the preferred bridge alignment option (subject to further investigation).</p>	<p>See response above to DPE submissions.</p> <p>Council is of the view that the TIA overlay and concurrence clause needs to remain on the LEP map, to preserve the corridor land from development and ensure this objective is included within a planning instrument, without solely relying on the State VPA to preserve the land.</p> <p>It is recommended that instead of Council or TfNSW, DPE be identified as the appropriate concurrence authority for development proposals on the affected land. This is to avoid any conflicts between Council's role as the consent authority for the assessment of development applications.</p> <p>The exhibited TIA overlay (proposed by DPE and TfNSW) is regarded by Council officers as needlessly affecting properties that were not intended to be identified. The bridge alignment option and the need for the ultimate north-south road are yet to be confirmed and will not be confirmed as part of this Planning Proposal process. The exhibited TIA overlay widens at the southern end to accommodate space for two potential bridge options. There are 2 non-Legacy-controlled properties which are affected by the TIA that were not intended to be affected when stakeholders discussed the need to apply a TIA overlay to the rezoning area. Those two properties are not intended to form part of the State VPA for land acquisitions.</p> <p>Council proposes to retain a 33.6m wide TIA overlay on the draft LEP zoning map for the north-south ultimate road in accordance with the width previously agreed to by stakeholders during preparation of the TMAP supporting the Planning Proposal. At the southern end of the rezoning area Council proposes to modify the proposed TIA overlay, to reduce it so it does not impact on the two non-Legacy-controlled properties. The resulting amended TIA overlay does still widen at the southern end to accommodate space for batters and structures for the future bridge.</p>
Environment and Heritage Group (EHG) of DPE	<p>The first Environment and Heritage Group submission has requested that an assessment of consistency be prepared with</p>	<p>Legacy has completed the assessment of consistency against the CPCP, which concludes that any impacts to Threatened Ecological Communities as a result of the</p>

Agency	Key issues raised	Council officer response
	<p>the Cumberland Plain Conservation Plan (CPCP).</p> <p>The second submission from EHG requested further information. EHG raised concern that the consistency assessment prepared by Legacy Property in response to the first EHG submission had not addressed key issues in relation to the protection and enhancement of existing native vegetation and riparian corridors on avoided land. It should be demonstrated that biodiversity impacts within avoided land will be avoided. It should also be demonstrated that measures will be implemented over avoided land to mitigate impacts associated with the intensification of surrounding land use and to enhance the existing native vegetation and riparian corridors within the avoided land.</p>	<p>Planning Proposal is less than what would be allowed if a developer were to clear all lands classified as 'Certified - Urban Capable Land' under the CPCP. Therefore, the Planning Proposal is consistent with the CPCP.</p> <p>Ministerial Direction 3.6 – Strategic Conservation Planning applies to the site, given the rezoning area contains Avoided land. The Planning Proposal must be consistent with this Direction.</p> <p>For Avoided land, sub clause 1 of the Direction requires that the Planning Proposal needs to protect and enhance native vegetation, riparian corridors, ecological communities, threatened species and their habitats, koala habitat and corridors, and matters of national environmental significance. The Planning Proposal is consistent with sub clause 1.</p> <p>Sub clause 3 of the Direction requires that a Planning Proposal cannot rezone land identified as Avoided land to a rural, residential, business, industrial, SP1 Special Activities, SP2 Infrastructure, SP3 Tourist, RE2 Private Recreation, or equivalent zone. The Planning Proposal seeks to rezone rural land that is Avoided land to a C2 and C3 zone. The Planning Proposal is consistent with the Direction.</p> <p>Legacy Property has prepared a response to the matters raised in the second submission by EHG, which is now included as an appendice to the Planning Proposal. The response concludes that the Planning Proposal does address the key issues relating to the protection and enhancement of existing native vegetation and riparian corridors on Avoided land.</p> <p>The area of Avoided land designated by the CPCP will not be cleared or developed if the Planning Proposal is implemented. No drainage infrastructure or other development will occur within the Avoided land and a Vegetation Management Plan (VMP) will be prepared to provide for permanent protection of the Avoided land and replanting of native vegetation.</p>
School Infrastructure	Following consultation between SINSW and stakeholders, SINSW has accepted a revised proposed location of a new site for	The agreed new school site location, dimensions and size result in minor changes to the proposed zoning maps. The changes do

Agency	Key issues raised	Council officer response
NSW (SINSW)	<p>the Orchard Hills Public School. The revised dimensions and size, as well as required building height control have been specified in the SINSW submissions.</p> <p>The SINSW submissions indicate that the current Orchard Hills Public School site is not appropriate to accommodate more demand. A new site would be required to meet future demand and growth in the area.</p> <p>SINSW support the provision of a school site within the rezoning area, subject to secured funding through a VPA (preferred) or capital allocation from NSW Treasury.</p> <p>The proposed R1 zone of the school site is a prescribed zone for educational establishments as per Clause 3.44 of the State Environmental Planning Policy (Transport and Infrastructure) 2021.</p> <p>The relevant Planning Proposal maps are to be updated to refer to the school site as "Potential education facilities – subject to further investigation"</p>	<p>not result in any fundamental change to the size or embellishment of the proposed open space parcel OS8.</p>
Department of Primary Industries (DPI) Agriculture	<p>No objection raised.</p> <p>The submission notes that there is limited future agricultural potential for this area.</p>	<p>Noted. No further action.</p>
NSW Environment Protection Authority (EPA)	<p>No objection raised.</p> <p>General comments are provided for Council's consideration in relation to noise mitigation and land contamination.</p>	<p>Mitigation of potential impacts of noise is addressed in the draft DCP acoustic controls for residential development.</p> <p>Council officers are of the view that there is no significant constraint to rezoning associated with land contamination, and the Planning Proposal complies with Ministerial Planning Direction 4.4 Remediation of contaminated land.</p>
NSW State Emergency Service (SES)	<p>No objection raised.</p> <p>Submission draw's Council's attention to ensuring that the relevant Ministerial Directions, including Direction 4.3 – Flood Prone land (now 4.1 – Flooding), and the NSW Floodplain Development Manual to be adhered to.</p>	<p>The Planning Proposal is supported by a stormwater and flood management strategy which has been accepted by Council officers.</p> <p>The Planning Proposal complies with Ministerial Planning Direction 4.1 – Flooding.</p>



Agency	Key issues raised	Council officer response
NSW Police Force	No objection raised. Request made that planning controls are included to address Crime Prevention through Environmental Design (CPTED) principles in the design of open spaces and the village centre.	The draft DCP has been amended to include controls to address CPTED principles in the design of open spaces and the village centre.
Fire and Rescue NSW	No objection raised. The scale of the development itself is not sufficient to generate the need for a new fire station.	Noted.
NSW Health – Nepean Blue Mountains Local Health District	No objection raised. Submission provides suggestions and comments for consideration, relating to the provision of housing diversity, green spaces, urban heat mitigation, reduction in gas usage, and some requests for clarification regarding the envisaged development outcome.	There are several planning mechanisms which will encourage range of lot sizes within the rezoning area and housing diversity. The proposed provision of green spaces in the Planning Proposal is considered appropriate and sufficiently addresses community demand. Regarding urban heat, Clause 7.30 of Penrith LEP 2010 and the Urban Heat Chapter of DCP 2014 will apply ensuring that any future development within the precinct will mitigate the impacts of the heat island effect. The reticulation of gas in new subdivisions is still common practice, however future home owners ultimately have the choice of whether to use gas. The Planning Proposal has been updated to respond to matters raised in the NSW Health submission.
Sydney Water	No objection raised. The submission raises the need to better understand the timeframes for the proposed rezoning, to enable Sydney Water to better plan for servicing of the development. The submission raises the possibility that the proponent may need to fund and construct temporary infrastructure to have their development serviced until the permanent solution is finalised and commissioned.	Noted. No further action required. It is noted that the site has been identified as an Urban Investigation Area in the District Plan and Council's Local Strategic Planning Statement. The site is identified in Sydney Water's Growth Servicing Plans.
Endeavour Energy	No objection raised. Submission provides detailed conditions for developer to apply in future planning for the development.	Noted. No further action.

<b>Agency</b>	<b>Key issues raised</b>	<b>Council officer response</b>
Jemena Gas Networks	No objection raised.	Noted. No further action.
Telstra	No objection raised. Information is provided in respect to requirements around the potential relocation of Telstra infrastructure as part of the future development phase.	Noted. No further action.

## POST-EXHIBITION CHANGES PROPOSED TO THE PLANNING PROPOSAL ORCHARD HILLS NORTH

Amendment to Planning Proposal	Justification
Revision to RE1 Public Recreation zone boundary and R1 General Residential zone boundary to reflect revised dimensions and location of open space parcel OS8 and the proposed new school site located to the west of the village centre.	<p>This is necessary to accommodate a revised location and dimensions of the proposed new school site which have been accepted by SINSW. No changes to the overall size of OS8 have occurred.</p> <p>In addition to the changes sought to the LEP zoning map, changes are also required to the height, lot size and land reservation acquisition maps to reflect the changes.</p>
Additional local provision to enable a 15m building height for on the location of the proposed new school site, but only if the development is for a school. For all other development, the current proposed 8.5m height limit would apply.	This is necessary to accommodate SINSW requirements in relation to the building height required for delivery of the future new school on the site. The proposed clause under Part 7 of the LEP for Orchard Hills North is to be amended to add the requirement for the school site to achieve the additional height.
Remove proposed Additional Permitted Uses provision on the existing Orchard Hills Public School, which seeks to enable the site to continue to be used for educational purposes.	The SINSW submission confirms that the R1 General Residential zone is a prescribed zone for educational establishments as per Clause 3.44 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. Therefore, there is no requirement to propose an Additional Permitted Uses provision on the existing Orchard Hills Public School site to enable the educational use to continue under the R1 General Residential zonings.
Minor adjustment of east-west road SP2 Local Road zoning	The east-west road alignment has been slightly re-aligned to reduce the number of impacted properties. This necessitates a change to the zoning, height, lot size and land reservation acquisition maps.
Alteration to SP2 Local Road zone width for east-west road reservation	Primarily an increase in the width to accurately reflect the road reservation width required to be delivered in the Section 7.11 Contributions Plan, which has nexus to the rezoning. This necessitates a change to the zoning, height, lot size and land reservation acquisition maps. The east-west road is 29.6m for the section that is west of the north-south road, and 24.6m for the section east of the north-south road.
Removal of southern section of SP2 Local Road zone for north-south road between the east-west road corridor and the M4 Motorway	This section of the north-south road has been identified as not having a nexus to the rezoning and will be transferred to the State VPA for delivery. This necessitates a change to the zoning, height, lot size and land reservation acquisition maps.
Alteration to SP2 Local Road zone width for north-south road reservation (for northern section that is being retained)	Primarily an increase in the width to accurately reflect the road reservation width required to be delivered in the Section 7.11 Contributions Plan, which has nexus to the rezoning. The nominated width is 33.6m, which is the same width as the Transport Investigation Area (TIA) overlay, being the ultimate north-south road width. The 7.11 Plan outlines that it is not practical to deliver 3 lanes as required by the TMAP and rather the full 4 lanes should be delivered. This necessitates a change to the zoning, height, lot size and land reservation acquisition maps. The section of the SP2 Local Road zone for the north-south road that is to be retained,



	located between Caddens Road and the east-west road, has had its width amended to be the same as the TIA width (33.6m).
Reduction to Transport Investigation Area (TIA) overlay	<p>The exhibited TIA overlay (proposed by DPE and TfNSW) is regarded by Council officers as needlessly affecting too many properties and is unreasonable.</p> <p>Council proposes to retain a 33.6m wide TIA overlay on the draft LEP zoning map for the north-south ultimate road in accordance with the width previously agreed to by stakeholders during preparation of the TMAP supporting the Planning Proposal. The amended TIA overlay now applies to the land between the east-west road and the M4 Motorway. At the southern end of the rezoning area, Council proposes to modify the proposed TIA overlay, to reduce it so it does not impact on the two non-Legacy-controlled properties, being Lot 43 DP 881960 and Lot 5 DP 239091. The resulting amended TIA overlay does still widen at the southern end to accommodate space for batters and structures for the future bridge. This necessitates a change to the zoning map.</p>
Alteration of TIA concurrence clause	Council seeks to amend the proposed Part 7 local provision for Orchard Hills North in relation to the TIA concurrence authority to require DPE to determine the appropriate concurrence authority for development proposals on the affected land instead of TfNSW.
Insert a new clause into Part 6 of Penrith LEP 2010 (Urban Release Areas) relating to the provision of local infrastructure.	<p>To further minimise financial risk to Council resulting from the outcomes of the IPART review of the Contributions Plan, it is proposed to insert a new clause into Part 6 of Penrith LEP 2010 (Urban Release Areas) relating to the provision of local infrastructure. The clause will require that development consent cannot be granted to land within an Urban Release Area unless the relevant Contributions Plan is in effect or an alternative mechanism is provided for the delivery of local infrastructure. This approach is similar to the current clause 6.2 of the LEP, where development consent cannot be granted on land within an urban release area unless Council is satisfied that arrangements have been made for the provision of State public infrastructure. A clause of this nature also applies to land within the Aerotropolis, for local infrastructure purposes, and to land within the Sydney Region Growth Centres (i.e Blacktown LGA).</p> <p>The intent of this clause is to ensure that there is limited risk exposure to Council in enabling the making of the Plan and provides flexibility that either a Contributions Plan needs to be in effect to be granted development consent or other arrangements such as a VPA being in place.</p>
Correction to proposed local provision for Orchard Hills North under Part 7 of the LEP in relation to the applicability of integrated housing to development proposals to 300sqm size lots	<p>The current proposed Part 7 local provision for Orchard Hills North requires that a development application which seeks subdivision to create a lot that is equal to or less than 300sqm must also seek in that application the erection of the dwelling that would result from that subdivision. Integrated housing allows the assessing officer to better assess the proposed development and its impacts.</p> <p>It was identified post-exhibition that the above integrated housing provision should apply only to lots less than 300sqm instead of applying to lots equal to or less than 300sqm. The proposed provision in the Planning Proposal has therefore been amended accordingly.</p>

	It is noted that 300sqm size lots are considered to be standard size. The intent of the integrated housing control is to apply this to lots typically around 220sqm in size and not to 300sqm lots.
Amendment to precinct boundaries within the rezoning area, changes to residential lot yield targets within each precinct, and addition of integrated housing areas, in response to changes to proposed new school site boundaries, and to respond to realigned north-south road	<p>It was identified post-exhibition that the precinct boundaries and numbering within the rezoning area were drawn based on a previous and now changed alignment to the north-south road. The current proposed North-South road alignment is situated further west than previously located. Post-exhibition, the precinct boundaries and numbering have now been amended to provide for a more logical and manageable set of precinct boundaries. The new boundaries and numbering are reflected in the revised Minimum Lot Size map.</p> <p>The changes to the proposed new school site and OS8 recreation zone has resulted in a reduction to the size of the 'compact lots' integrated housing area immediately to the south of the new school site. In order to maintain the anticipated yield of integrated housing lots in the rezoning area, it is proposed to create two additional 'compact lots' integrated housing areas adjacent to the north side of the OS5 linear park Werrington Creek riparian corridor. In addition, Precinct 6 has been amended to cover the surrounding proposed RE1 zone-zoned lands, as there is no yield associated with that zone. These changes have resulted in changes to the Height of Buildings map and Minimum Lot Size map.</p> <p>The above changes also have resulted in a post-exhibition amendment to the 'Residential lot distribution' table in the Part 7 local provision proposed for Orchard Hills North, to reflect the changes to lot yield targets for each precinct in the table, and following the identification of errors in this table. The post-exhibition changes to lot distribution in each precinct do not result in any change to the total anticipated dwelling yield in the rezoning area, nor a change to the total number of standard lots and integrated housing lots to be delivered in the rezoning area. The overall average in the rezoning area is anticipated to remain around 400m<sup>2</sup>. The changes are therefore considered to be acceptable.</p>
Scenic and Landscape Values map	The shaded pink area was removed from Castle Road and Frogmore Road to be consistent with the zoning, height and lot size.
Urban Release Areas Map	The shaded yellow area was slightly expanded to capture Kingswood Rd, Caddens Road, Frogmore Road, Castle Road, to be consistent with the zoning, height and lot size maps.
Addition of RE1 Public Recreation zone for new stormwater basin B8	The new stormwater basin B8 is to be reflected by way of a new RE1 Public Recreation zone, located at the southern edge of the rezoning area at Frogmore Road.
Minor amendments to the B2 Local Centre zoning for the village centre	Minor amendments to the boundary of the B2 Local Centre zone for the village centre have been made, to reflect the changes made to the east-west road SP2 zone and the revised boundaries of the RE1 and R1 zones relating to the new school site boundaries.
General formatting, contemporising, clarification, and correction to inconsistencies in the document	Amendment made in responses to agency submissions and issues identified post-exhibition.

## POST-EXHIBITION CHANGES PROPOSED TO THE DRAFT DEVELOPMENT CONTROL PLAN ORCHARD HILLS NORTH

Amendment to draft DCP	Justification
<p><i>Chapter 4.6 Biodiversity</i></p> <p>Additional biodiversity controls added to emphasise relevant legislation and the preservation of significant flora and fauna species, ecological communities and their habitats</p>	<p>The purpose of these changes is to clarify and strengthen the planning controls which relate to the protection and management of biodiversity in the rezoning area.</p>
<p><i>Chapter 5.1 Subdivision and neighbourhood design</i></p> <p>Amendment to integrated housing provisions to ensure consistency with the amended control in the Planning Proposal relating to its applicability of 300sqm lots</p>	<p>This change aligns with the same proposed LEP control presented in the Planning Proposal.</p>
<p><i>Chapter 5 Residential development</i></p> <p>Correction to discrepancies with the correlation of controls relating to minimum lot size, different dwelling typologies, lot widths and garage dominance of the streetscape</p>	<p>The purpose of these changes is to ensure that the different controls for different dwelling types were aligned, as it was identified in the Council review that some controls were not compatible with other controls.</p>
<p><i>Chapter 5.2 Site grading, earthworks and retaining walls</i></p> <p>Additional retaining wall requirements to limit maximum heights</p>	<p>The purpose of these changes is to clarify and strengthen the planning controls which relate to retaining walls and site grading, given the rezoning area contains steep areas of land.</p>
<p><i>Chapter 5.15 Residential amenity</i></p>	<p>In response to concerns raised in the public submissions in respect to land use conflict between the rezoning area and the neighbouring rural zone at Hermitage Court to the east, a 1.0m wide continuous landscape buffer is to be provided, at subdivision stage,</p>

Additional controls to manage and address the land use interface between Orchard Hills North and properties fronting Hermitage Court	at the shared boundary between Orchard Hills North and the rear of properties fronting Hermitage Court.
<i>Chapter 5.17 Road traffic noise</i>  Additional acoustic amenity controls to mitigate noise impacts from major roads to residential areas	The purpose of these changes is to clarify and strengthen the planning controls which relate to the protection and management of residential amenity in response to noise generated from key roads including the M4 Motorway, east-west road and north-south road.
<i>Chapter 6 Village Centre</i>  Revision to the village centre indicative layout and controls to achieve more appropriate built form outcomes	It is proposed not to prescribe a specific design layout or design solution, but instead to define key principles and desired outcomes to provide greater flexibility in the preparation and consideration of a Development Application.
<i>Chapter 7.1 Urban heat island</i>  Additional requirements around delivery of tree canopy cover	The purpose of this change is to introduce tree canopy delivery targets in response to an action in Council's Green Grid Strategy.
<i>Chapter 7.3 Contaminated land management</i>  Amendments to the contaminated land management controls relating to relevant legislation	The purpose of these changes is to clarify and strengthen the planning controls which relate to the assessment, management and remediation of contaminated land in the rezoning area.
<i>Chapter 3.1 Street network</i>  Amendments to the development's road hierarchy map as well as amendments to the road reservation widths and road typologies for the development	The purpose of these changes is to clarify and strengthen the planning controls applying to the delivery of all roads in the rezoning area.
<i>Chapter 3.3 North-South Road Corridor</i>  Amendments to controls relating to the north-south ultimate road corridor to reflect changes made to the Planning Proposal and 7.11 Plan in respect to applicable land	The purpose of these changes is to provide additional controls and clarify requirements around the delivery of the North-South Road in an 'interim' and 'ultimate' state, including requirements for subdivisions, and where the corridor applies.

<i>Chapter 3.7 Pedestrian and cycle network</i>  Amendments to the pedestrian and cycle network	The purpose of these changes is to clarify and strengthen the planning controls applying to the delivery of the pedestrian and cycle network in the rezoning area.
<i>General</i>  The entire draft DCP has been updated and contemporised to reflect all post-exhibition changes.	The entire draft DCP has been updated and contemporised to reflect all post-exhibition changes to the envisaged development masterplan and changes made in response to issues raised during the exhibition period and Council officer's review.



26 October 2022

General Manager  
Penrith City Council  
PO Box 60  
PENRITH NSW 2751

Attention: Natalie Stanowski

Dear Natalie,

**LETTER OF OFFER TO ENTER INTO A PLANNING AGREEMENT WITH PENRITH CITY COUNCIL –  
ORCHARD HILLS NSW**

LegPro Orchard Hills Pty Ltd as trustee for LegPro Orchard Hills Unit Trust (**Legacy**) offers to enter into a Voluntary Planning Agreement (**VPA**) with Penrith City Council (**Council**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in accordance with the terms of this Letter of Offer (**Offer**).

The Offer supersedes Legacy's previous offer dated 14 April 2022.

**1 Application**

The VPA will be entered into in connection with the Orchard Hills North Planning Proposal (PP\_2018\_PENRI\_006\_00) (**Planning Proposal**).

The Planning Proposal seeks to amend *Penrith Local Environmental Plan 2010* to rezone approximately 151.9ha of land in the Orchard Hills North area from RU4 Primary Production Small Lots to R1 General Residential, B2 Local Centre, RE1 Public Recreation, E2 Environmental Conservation and E3 Environmental Management.

**2 The Land**

The VPA will apply to the Land identified in Schedule A (**Land**).

Where not already owned by Legacy, the Land is controlled under legally binding option agreements. Most of these options cannot be exercised until the date on which the relevant amended *Penrith Local Environmental Plan 2010* commences to give effect to the Planning Proposal (**Commencement Date**).

Completion (i.e. settlement) of the Land will occur progressively generally between 6-12 months following the Commencement Date.

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+61 2 9252 1111  
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**3 Sections 7.11 Contributions**

Legacy agrees to provide dedication of land, monetary contributions and/or embellishment works as identified in Schedule B.

These contributions are applicable to the Land in accordance with the Draft Orchard Hills North – ‘Area A’ Development Contributions Plan 2022 dated 25 October 2022, or as determined by IPART.

The contributions have been calculated based on forecast yields. The monetary component will ultimately be adjusted to reflect the final yield approved through development applications.

**4 Additional Public Benefits**

Legacy agrees to provide the Additional Public Benefits set out in Schedule C subject to the Planning Proposal being made in the form as submitted to Council. Legacy reserves the right to amend this Offer should the Planning Proposal be amended prior to its finalisation.

**5 Operation**

The VPA will operate on and from the Commencement Date.

**6 Enforcement and security**

Security will be provided through:

- registration of the VPA on title of the Land;
- inclusion of a clause allowing Council to compulsorily acquire land to be dedicated for \$1;
- restriction on the issue of relevant certificates under Part 6 of the EP&A Act prior to the relevant obligation(s) being satisfied.

**7 Registration**

On execution of the VPA, Legacy will register the VPA on those titles of the Land that it is the registered proprietor.

The VPA will subsequently be registered on the titles of the balance of the Land within 10 days of Legacy becoming the registered proprietor.

The VPA is to include a mechanism which allows for the VPA to be released from the Land in stages as relevant obligations under the VPA are satisfied.



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**8 Infrastructure delivery capability**

Legacy has a successful track record of delivering public infrastructure in a range of projects across Sydney. This includes the completion of infrastructure and open space works of a similar nature delivered through a Voluntary Planning Agreement with Penrith City Council for the adjoining Caddens development.

Legacy has both the technical capability and financial capacity to deliver the public benefits proposed in this Offer.

**9 Section 7.11, 7.12 and 7.24 Contributions**

The VPA will exclude the application of sections 7.11 and 7.12 of the EP&A Act from the Land and any subsequent development of the Land.

Section 7.24 of the Act is not proposed to be excluded from operation by the VPA.

**10 Summary of requirements referred to in section 7.4 of the EP&A Act**

Schedule D provides a summary of those matters referenced at section 7.4 of the EP&A Act and how these are to be addressed in the VPA.

**11 Risks**

Potential risks are identified in Schedule E.

**12 Limitation of liability**

The VPA will contain the limitation of liability clause contained in Schedule F.

Legacy anticipates preparing the full VPA document following confirmation that Council is generally satisfied with this Offer.

Legacy Property successfully delivered an extensive range of public benefits in our Caddens project under the VPA with Council, and we look forward to working with Council to continuing our contribution to the future success of Penrith through the Orchard Hills North project.

Yours sincerely,

**Matthew Hyder**  
Chief Executive Officer

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**Schedule A: Land**

Land currently owned by Legacy:

Address	Folio Identifier
132-138 Caddens Road, Orchard Hills	12/1344
7-11 Frogmore Road, Orchard Hills	7/857982

Land currently controlled by Legacy:

Address	Folio Identifier
80-88 Caddens Road, Orchard Hills	6/1344
98-104 Caddens Road, Orchard Hills	8/1344
114-122 Caddens Road, Orchard Hills	100/700141
124-130 Caddens Road, Orchard Hills	101/700141
140-146 Caddens Road, Orchard Hills	13/1344
148-152 Caddens Road, Orchard Hills	14/1344 15/1344 16/1344 17/1344
75 Castle Road, Orchard Hills	33/1344
83-89 Castle Road, Orchard Hills	34/1344
99 Castle Road, Orchard Hills	36/1344
107 Castle Road, Orchard Hills	37/1344
78-88 Castle Road	42/881960
126-164 Castle Road, Orchard Hills	1/239091
166-204 Castle Road, Orchard Hills	8/857982

**Schedule B: Contributions**

**Summary of Contributions**

Stage	Indicative Lot Yield	Non-residential Net Developable Area(ha)	Amount of Required Contributions**	Proposed Value of Land & Works***	Proposed Monetary Contribution
1	428	0	\$46,542,860	\$36,359,270	\$10,183,590
2	258	2.2	\$29,064,248	\$14,367,420	\$14,696,828
3	293	0	\$31,862,285	\$20,705,875	\$11,156,410
	979	2.2	\$107,469,393	\$71,432,565	\$36,036,828

**Note:**

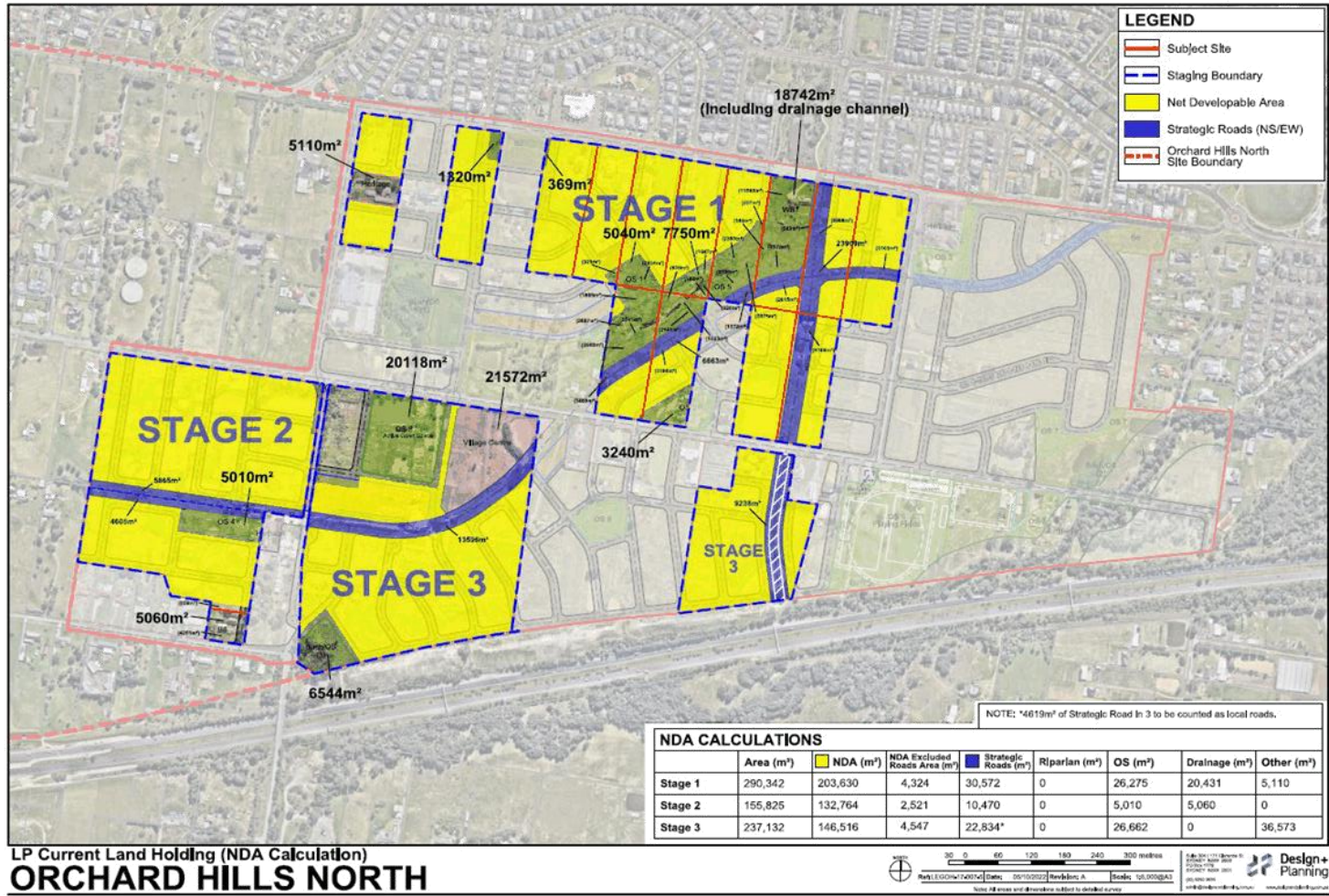
\* Includes 1 x retail lot

\*\* Calculations based on a contribution rate of \$108,745 per final lot or dwelling house plus \$458,199 per hectare of net developable area.

\*\*\* Includes allowance for Professional & Authority Fees plus Contingency in line with IPART guidelines.

Timing subject to Legacy Property land holdings and staging.

Overall Plan



**Stage 1: Proposed Land & Works Contributions**

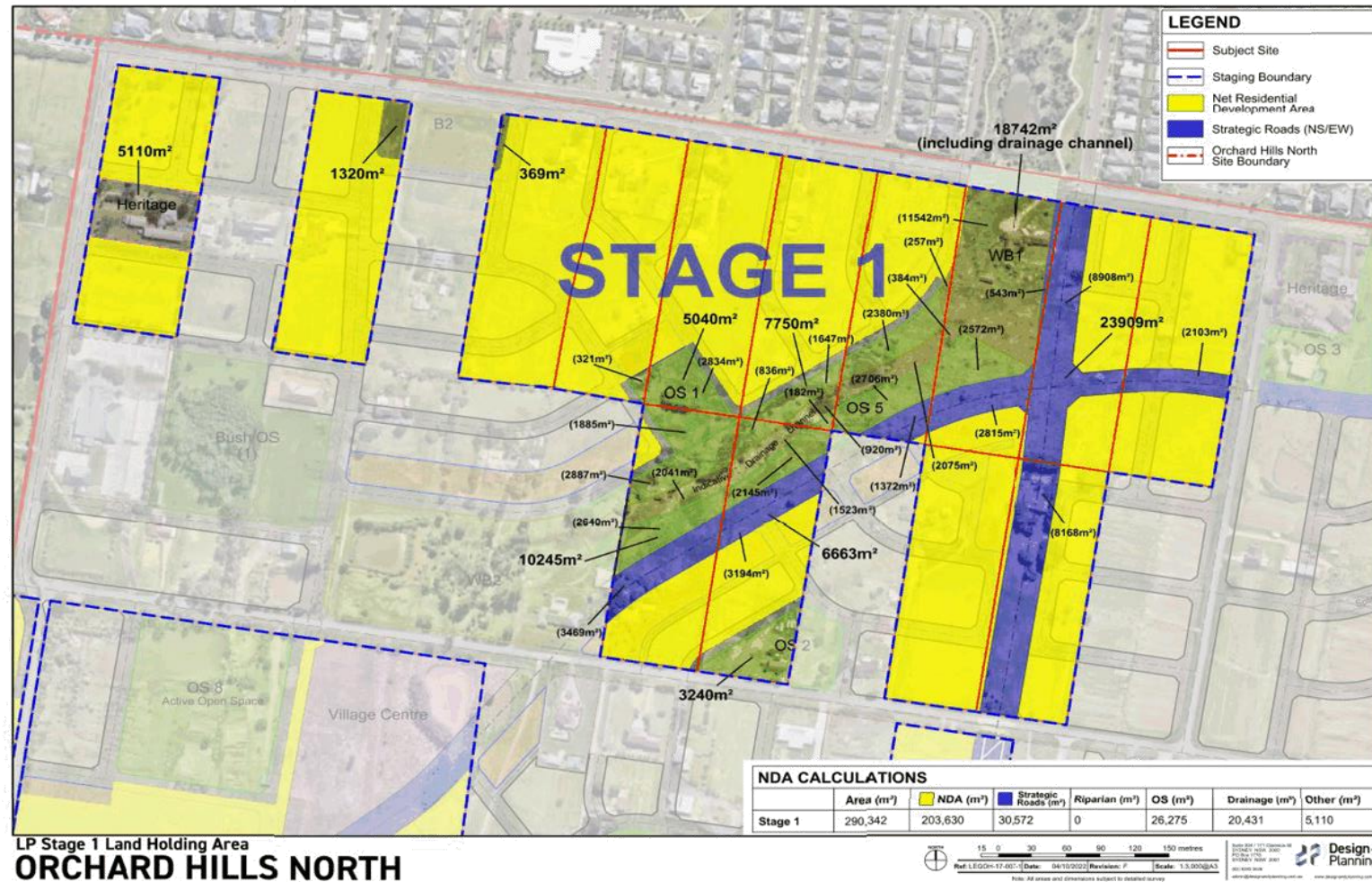
Item	Description/Public Purpose	Values		Timing
		Land	Works	
Plan Administration	» Costs involved in preparation of Local Contributions Plan and supporting technical studies	n/a	\$575,000	Not applicable – cost already incurred
District Park OS1	» Dedication of a minimum 5,040sqm of land being Part of Lot 12 & 37 DP1344 and Lot 101 DP700141	\$2,017,438	n/a	Prior to or in conjunction with the Subdivision Certificate for any Final Lots within Stage 1.  The section being part of Lot 37 DP1344 to be dedicated prior to on in conjunction with Subdivision Certificate for the 400 <sup>th</sup> Final Lot within Stage 1.
	» Landscape embellishment works		\$660,800	Prior to or in conjunction with the Subdivision Certificate for the 400th Final Lot within Stage 1.
	» 12 month maintenance period			From practical completion
Informal Recreation OS2	» Dedication of (part OS2 land) being a minimum 3,240sqm of land for informal recreation being Part of Lot 36 DP1344	\$1,354,781	n/a	Dedication of land Prior to or in conjunction with Subdivision Certificate for 400th Final Lot within Stage 1
Informal Recreation OS5	» Dedication of a minimum 17,995sqm of land for drainage and informal recreation being Part of Lot 13,14,15,36 & 37 DP1344	\$7,524,475	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for 400th Final Lots within Stage 1.
Water Cycle Management Facility	» Dedication of a minimum 369sqm of land for drainage channel being Part of Lot 101 DP1344	\$154,295	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 1
Basin B2 Riparian Land	» Dedication of a minimum 1,320sqm of land for Basin B2 being Part of Lot 8 DP1344	\$551,945	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 1.

Item	Description/Public Purpose	Values		Timing
		Land	Works	
Water Cycle Management Facility	» Dedication of a minimum 11,399sqm of land for drainage channel being Part of Lot 15 DP1344.	\$4,766,378	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 1.
Basin WB1 Riparian Land	» Approximately 344sqm of flood liable with non-residential rate applied for land value	\$23,000	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 1.
Water Cycle Management Facility	» Embellishment works (basin works, walls, outlet structures and raingardens)	n/a	\$4,138,000	Prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 1.
Basin WB1 and Riparian Land	» Werrington Creek drainage channel embellishment works	n/a	\$1,509,000	Prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 1. From practical completion.
	» 12 months maintenance period			
Traffic & Transport Management Facilities	» Concept Design for E/W Road through entire Estate (The Northern Road to Caddens Road)	n/a	\$675,160	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 1
Traffic & Transport Management Facilities	» Concept Design for N/S Road through entire Estate (Caddens Road to E-W Road)	n/a	\$330,000	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 1
Traffic & Transport Management	» Dedication of a minimum *14,670sqm of land being part of Lot 14,15,16,17,36 & 37 DP1344, for a four-lane section of the east/west collector road	\$6,134,115	n/a	Dedication of land prior to or in conjunction with a Subdivision Certificate for Final Lot within Stage 1.
	» <i>*If additional or lesser land required, the cost of land, works and offset will be adjusted on a pro-rata basis.</i>			The section being part of Lot 37 DP1344 to be dedicated prior to on in conjunction with Subdivision Certificate for the 400 <sup>th</sup> Final Lot within Stage 1.

Item	Description/Public Purpose	Values		Timing
		Land	Works	
Traffic & Transport Management	» Dedication of a minimum *5,624sqm of land being part of Lot 16 DP1344, for a north/south collector road (Caddens Road to E-W Road)	\$2,351,635	n/a	Dedication of land prior to or in conjunction with a Subdivision Certificate for Final Lot within Stage 1.
	» <i>*If additional or lesser land required, the cost of land, works and offset will be adjusted on a pro-rata basis.</i>			
Traffic & Transport Management	» Construction of a three-lane Collector Road to PCC standards.	n/a	\$1,012,200	Prior to or in conjunction with a Subdivision Certificate for Final Lot within Stage 1.
	» 12-month maintenance period			Upon practical completion of works.
Professional & Authority Fees, and Contingency	» In accordance with the rates nominated in the Local Contributions Plan	n/a	\$2,581,050	Progressively with works to be delivered
Stage 1 Sub-total		\$24,878,062	\$11,481,210	TOTAL = \$36,359,270



### Stage 1 Plan



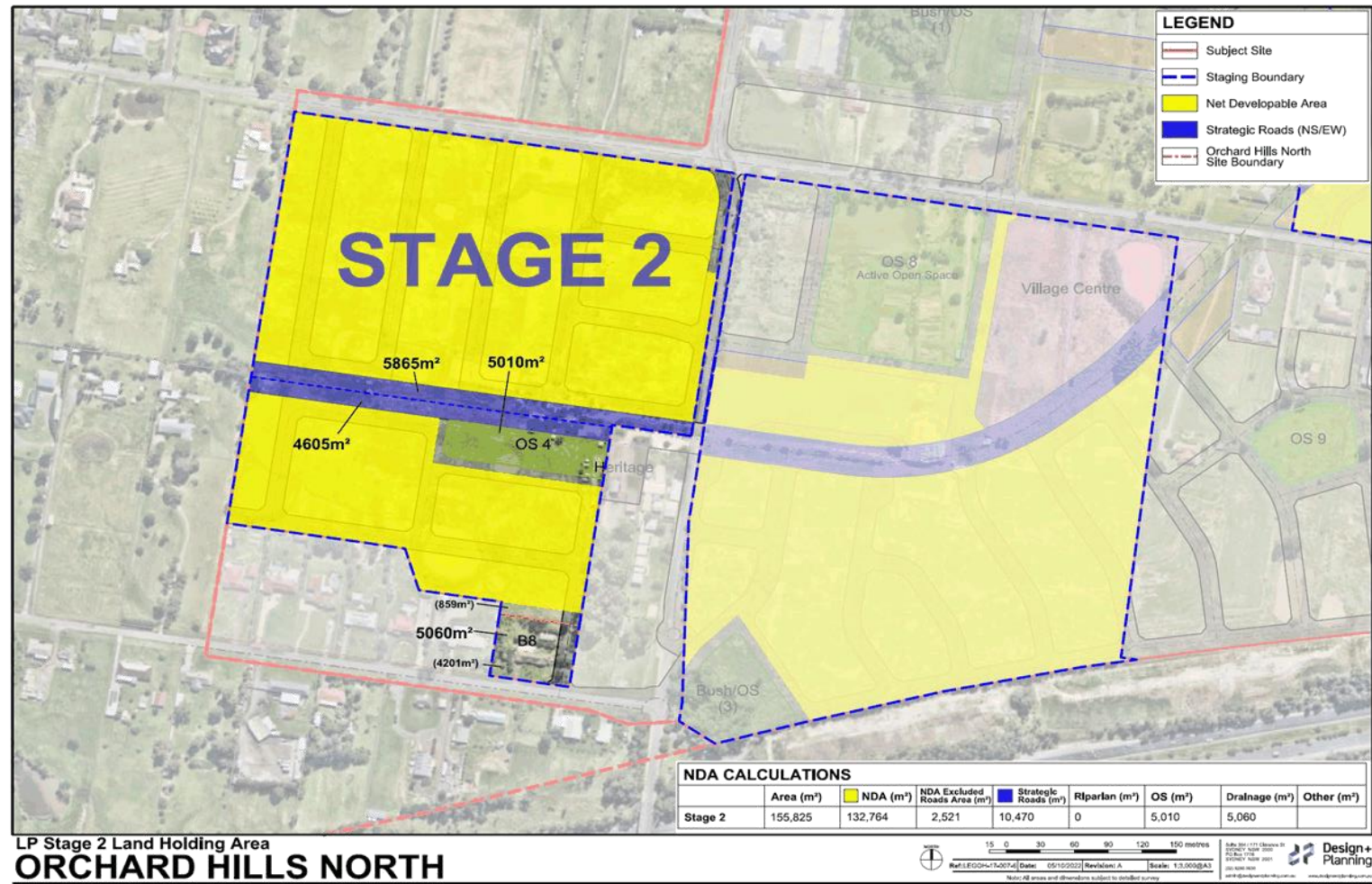
**Stage 2: Proposed Land & Works Contributions**

Item	Description/Public Purpose	Values		Timing
		Land	Works	
Informal Recreation Park	» Dedication of a minimum 5,010sqm of land being Part of Lot 8 DP857982	\$2,094,000	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for the 200th Final Lot within Stage 2.
OS4	» Landscape embellishment works	n/a	\$656,867	Prior to Subdivision Certificate for the 200th Final Lot within Stage 2.
	» 12-month maintenance period			From practical completion.
Water Cycle Management Facility Basin B8	» Dedication of a minimum 5,200sqm of land for drainage channel being Part of Lot 7 DP857982	\$2,174,328	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for the 200th Final Lot within Stage 2.
Water Cycle Management Facility Basin B8	» Embellishment works.	n/a	\$1,380,844	Prior to or in conjunction with Subdivision Certificate for the 200th Final Lot within Stage 2.
	» 12 months maintenance period.			From date of Practical Completion.
Traffic & Transport Management	» Dedication of a minimum *10,470sqm of land being part of Lot 8 DP857982 for a four-lane section of the east/west collector road.  <i>*If additional or lesser land required, the cost of land, works and offset will be adjusted on a pro-rata basis.</i>	\$4,377,925	n/a	Dedication of land prior to or in conjunction with a Subdivision Certificate for the 200th Final Lot within Stage 2.
Traffic & Transport Management	» Construction of a four-lane road to PCC standards.	n/a	\$2,397,300	Prior to or in conjunction with a Subdivision Certificate for the 200th Final Lot within Stage 2.
	» 12-month maintenance period			From date of Practical Completion.



Item	Description/Public Purpose	Values		Timing
		Land	Works	
Professional & Authority Fees, and Contingency	» In accordance with the rates nominated in the Local Contributions Plan	n/a	\$1,286,155	Progressively with works to be delivered
Stage 2 Sub-total		\$8,646,255	\$5,721,165	TOTAL = \$14,367,420

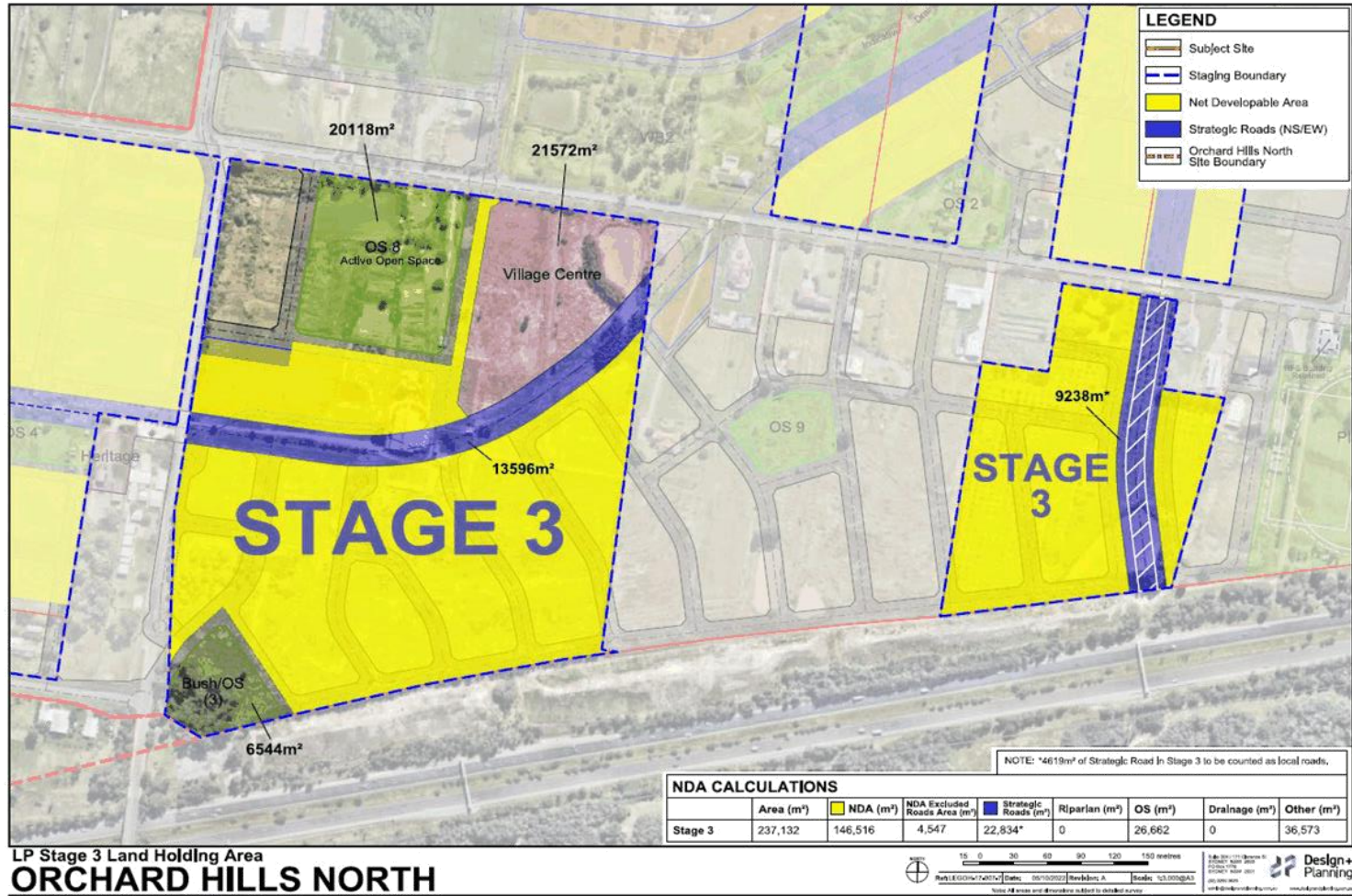
Stage 2 Plan



**Stage 3: Proposed Land & Works Contributions**

Item	Description/Public Purpose	Values		Timing
		Land	Works	
Natural Recreation Space	» Dedication of a minimum 6,544sqm of land being Part of Lot 1 in DP239091	\$588,960	n/a	Prior to or in conjunction with Subdivision Certificate for 250th Final Lot within Stage 3.
Bush OS (3)	» Landscape embellishment works	n/a	\$285,953	Prior to Subdivision Certificate for 250th Final Lot within Stage 3.
	» 12-month maintenance period			From practical completion.
Active Open Space	» Dedication of a minimum 20,000sqm of land being Part of Lot 1 DP239091	\$8,362,800	n/a	Prior to or in conjunction with Subdivision Certificate for the 150th Final Lot within Stage 3.
OS8	» Landscape embellishment and park infrastructure works	n/a	\$2,981,220	Prior to or in conjunction with Subdivision Certificate for the 150th Final Lot within Stage 3.
	» 12-month maintenance period			From practical completion.
Traffic & Transport Management Facilities	» Dedication of a minimum 13,596sqm of land, being part of Lot 1 DP239091	\$5,685,065	n/a	Prior to or in conjunction with Subdivision Certificate for 150th Final Lot within Stage 3.
	» Construction of a four-lane road to PCC standards	n/a	\$2,801,878	Prior to or in conjunction with Subdivision Certificate for 150th Final Lot within Stage 3.
	» 12-month maintenance period			From practical completion.
<b>Stage 3 Sub-total</b>		<b>\$14,636,825</b>	<b>\$6,069,050</b>	<b>TOTAL = \$20,705,875</b>

Stage 3 Plan







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**Schedule C: Additional Public Benefits**

Item	Contribution	Timing
Monetary contribution towards public art	<ul style="list-style-type: none"> <li>Monetary contribution of \$335,000 to deliver public artwork within OS8.</li> <li>The artwork will be designed and themed following consultation with the existing Orchard Hills primary school children and Council. The budget will include costs for consultation, design development, approvals, construction and project management</li> </ul>	In conjunction with delivery of OS8
Contribution to community facility	<ul style="list-style-type: none"> <li>A monetary contribution of \$615,000 based on a proportional contribution relating to Land covered by this VPA.</li> <li>The amount is based on a construction cost estimate of \$1,090,000 for a 432sqm community facility to meet needs, based on the entire Orchard Hills North rezoning area.</li> </ul>	Prior to any subdivision certificate in Stage 3
Frogmore Road resurfacing in Area B	<ul style="list-style-type: none"> <li>A monetary contribution of \$211,985 towards resurfacing of Frogmore Road within Area B.</li> </ul>	Prior to any subdivision certificate in Stage 3
Affordable housing	<ul style="list-style-type: none"> <li>A monetary contribution of \$4,250 per residential lot, in accordance with the Penrith Affordable Housing Contributions Scheme for Orchard Hills North.</li> <li>Alternatively, Legacy may elect to deliver 29 dwellings, representing 3% of the forecast dwelling yield for the Land, outside of the Orchard Hills North area but within the Penrith LGA in partnership with a registered Community Housing Provider.</li> </ul>	Progressively with a subdivision certificate creating a final residential lot

Schedule D: Summary of Requirements (Section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Landowners have:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> No</p>
<p><b>Description of the land to which the Planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>Refer Schedule A.</p>
<p><b>Description of the change to the environmental planning instrument or development to which the Planning Agreement applies – Section 7.4(3)(b)</b></p>	<p>The VPA relates to the proposed amendment of the <i>Penrith Local Environmental Plan 2010</i> in relation to the Planning Proposal.</p> <p>The Planning Proposal seeks to amend <i>Penrith Local Environmental Plan 2010</i> to rezone approximately 151.9ha of land in the Orchard Hills North area from RU4 Primary Production Small Lots to R1 General Residential, B2 Local Centre, RE1 Public Recreation, E2 Environmental Conservation and E3 Environmental Management.</p>
<p><b>The scope, timing and manner of delivery of contributions required by the Planning Agreement applies – Section 7.4(3)(c)</b></p>	<p>Refer Schedule B.</p>

<b>Application of section 7.11 of the Act –</b> Section 7.4(3)(d)	The VPA <b>excludes</b> the application of section 7.11 of the EP&A Act to the Land and any subsequent development.
<b>Application of section 7.12 of the Act –</b> Section 7.4(3)(d)	The VPA <b>excludes</b> the application of section 7.12 of the EP&A Act to the Land and any subsequent development.
<b>Application of section 7.24 of the Act –</b> Section 7.4(3)(d)	The application of section 7.24 of the EP&A Act is <b>not excluded</b> .
<b>Whether the benefits are or not to be taken into consideration in determining a development contribution under section 7.11 –</b> Section 7.4(3)(e)	N/A  The VPA excludes the application of section 7.11 of the EP&A Act.
<b>Mechanism for dispute resolution –</b> Section 7.4(3)(f)	A standard dispute resolution mechanism and relevant clauses shall be incorporated into the VPA, including but not limited to:  (a) Written notice of dispute (b) Attempt to resolve (c) Mediation (d) Court proceedings
<b>Enforcement of the Planning Agreement by a suitable means –</b> Section 7.4(3)(g)	A standard enforcement mechanism and relevant clauses shall be incorporated into the VPA, including but not limited to the developer providing security to the planning authority for the performance of the developers obligations under the VPA by providing:  (a) The registration of the VPA on each certificate of title for Lot 12 DP1344 and Lot 7 DP857982 on execution;



	<ul style="list-style-type: none"><li>(b) Registration of the VPA on the titles of the balance on the Land on Legacy becoming the registered proprietor;</li><li>(c) restriction on the issue of relevant certificates under Part 6 of the EP&amp;A Act prior to the relevant obligation(s) being satisfied; and</li><li>(d) inclusion of a mechanism which allows Council to compulsorily acquire land to be dedicated for \$1.</li></ul>
<b>Registration of the Planning Agreement -</b> Section 7.6	The VPA will include an obligation which requires the VPA, at the developer's cost, to be registered on each title of the Land, on Legacy becoming the registered proprietor.

**Schedule E: Risks**

<b>Risk</b>	<b>Responsibility</b>
Contamination on Land being dedicated to Council	Legacy to remediate prior to dedication.
Contamination on any existing Council owned land subject to works	Council to meet cost of remediation
Costs of additional embellishment scope that exceeds the Contributions Plan if required / conditioned through development application	Council to meet cost of additional scope
Market / procurement risk for cost of works	Legacy

**Schedule F: Limitation of Liability Clause**

(1) Definitions

In this clause:

- (a) Trust means the LegPro Orchard Hills Unit Trust; and
- (b) Trust Deed means the trust deed establishing the Trust.

(2) Limitation of Liability

- (a) The Developer warrants that:
  - (i) it enters into this deed in its capacity as trustee of the Trust and in no other capacity; and
  - (ii) it is empowered by the terms of the Trust Deed or any other instrument constituting the Trust to enter into this deed in accordance with its provisions; and
  - (iii) it is entitled to be indemnified out of the assets of the Trust in respect of the obligations and liabilities assumed by it under the terms of this deed.
- (b) The Council acknowledges and agrees that, despite any other provision of this deed, any liability or obligation of the Developer arising under or in connection with this deed can only be enforced to the extent to which they are entitled to be, and are in fact, indemnified for that liability or obligation out of the assets of the Trust. This includes without limitation any representation, warranty or conduct by the Developer.
- (c) Clause 1(b) does not apply to any liability or obligation of the Developer to the extent there is a reduction in their ability to be indemnified for that liability or obligation out of the assets of the Trust as a result of the Developer's fraud, negligence or breach of trust.







Department of Planning and Environment

IRF 22/3317

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Dear Ms Powell

I write to you in relation to your letter dated 27 September 2022 regarding funding for the construction of the ultimate North-South Road corridor at Orchard Hills North. As you are aware, the NSW Government are taking a proactive approach to planning in the broader Orchard Hills area. With this approach Orchard Hills North Planning Proposal PP-2020-1693 and the proposed State Planning Agreement (SPA) with Legacy Property represents an opportunity to secure a potential strategic transport link across the M4 motorway to Orchard Hills metro station and adjoining lands, should this link be required.

While the need and funding for the delivery of the ultimate road (including M4 motorway crossing) is to be determined through strategic planning for the Orchard Hills metro station and adjoining lands, we note the uncertainty around the funding for the ultimate road is a significant concern for Council. From conversations with you and your staff, we appreciate that the dedication of ultimate road land to Council prior to confirmation of funding may set community expectations for the delivery of the road and bridge, representing a substantial liability to Council.

In order to address Council's concerns, we propose to draft the SPA to reflect the following principles with regard to the future North-South Road corridor.

1. The Minister will benefit from a call option requiring Legacy Property to dedicate the ultimate road land to the Minister's nominee and to an agreed standard and timeframe. While Council have agreed in principle to be the relevant authority for the dedication, the nominee will not be identified in the SPA.
2. The Minister's call option can only occur once the following are published:
  - o A strategic plan confirming the need for the transport link and land, and
  - o A funding or contributions framework that includes the ultimate road and M4 crossing.
3. A 5-year sunset period will apply to the call option. The Minister may shorten this period on the basis of the above planning outputs.
4. Should the land not be required, the Minister may request Legacy Property to make an alternative contribution toward State and regional infrastructure.

These principles ensure that the ultimate road land will not be dedicated to Council until there is a demonstrable need for and funding plan for delivery, whilst maintaining an opportunity for a future transport link should planning determine the need for one. I trust

this approach provides Council sufficient comfort on this matter and Council can work towards the finalisation of the Planning Proposal.

In addition to the above, Council should be aware that we are negotiating with Legacy to secure part of the interim (or local) North South road component through the SPA. Should this be successful this will reduce the scope of the Section 7.11 Contribution Plan to be reviewed by IPART.

Should you want to discuss the above principles or have any further questions in relation to this matter, please contact Jeremy Dwyer, Manager, Infrastructure Partnerships and Agreements, at the Department on 02 9995 6940 or [jeremy.dwyer@planning.nsw.gov.au](mailto:jeremy.dwyer@planning.nsw.gov.au).

Yours sincerely



20/10/2022

**Catherine Van Laeren**  
**Executive Director, Western Parkland City**