

From: [Matthew Daniel](#)
To: [Stephen Clements](#)
Cc: [James Matthews](#); council@strathfield.nsw.gov.au
Subject: RE: PP2018.1 - Revised Letter of Offer Homebush.
Date: Friday, 13 May 2022 8:59:50 AM
Attachments: [image001.png](#)
[Draft VPA version 1 - 12 May 2022\(26261431.5\).docx](#)
[S9.1 Direction Homebush Better Planning Outcome 20220512.pdf](#)

Hello Stephen

I trust your week has gone well. Please find attached the following items:

1. Draft VPA (we have used a template based off the more recent legislation requirements and guides).
2. Revised cl 9.1 Better Planning Outcome report.

As discussed in the below email we will also provide the council a revised economics reports.

Please note one item that will require further discussion as we progress to the exhibition of the VPA is the need to bed down the mechanism to ensure the value of the affordable housing equals \$5 million.

Accordingly, we will be drafting a clause to deal with this in the future. One way this might work is:

- The Landowner may identify a selection of units in the Development (**Units for Dedication**). – (We propose this as we are not yet clear the specific uses of each building precisely such can only be finalised in the DA process. Some of the matters of allocation, dwelling type will also be guided by the social impact analysis report which will travel with the future DA).
- Council and the Landowner will jointly instruct an independent valuer to value the Units for Dedication.
- Taking into account the findings of the valuation, the Landowner may:
 - Add additional unit(s) to the Units for Dedication if required.
 - Remove unit(s) included in the Units for Dedication to ensure the Contribution meets \$5 million.
- Any shortfall between the value of the Units for Dedication and \$5 million is to be paid in cash within an agreed timeframe.

If the team would like to have any discussion on this or any other aspects of the project we look forward to discussion. We look forward to the progression of the report to the SLPP and working with you and the team further to progress the PP to the gateway.

Many thanks

Matthew

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From: Matthew Daniel
Sent: Wednesday, 11 May 2022 6:22 PM
To: Stephen Clements <stephen.clements@strathfield.nsw.gov.au>
Cc: James Matthews <jmatthews@pacificplanning.com.au>
Subject: RE: PP2018.1 - Revised Letter of Offer Homebush.

Hi Stephen

I hope you are having a good week.

I am glad to advise we have finalised the draft VPA and the revised s9.1 direction report to support the better planning outcome. There are some very minor changes to the VPA I have asked CBP lawyers to make and this will be back to me tomorrow. We look forward to submitting these to you tomorrow as a package for review.

Please note at this time we are also updating the economics report to adjust to the changed dedication proposal, however, it is noted this is not as vital for the SLPP process as is the VPA and the s 9.1 report. We will however have that submitted to you in the coming days.

Kind regards

Matt

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From: Matthew Daniel
Sent: Thursday, 5 May 2022 1:08 PM
To: Stephen Clements <stephen.clements@strathfield.nsw.gov.au>
Cc: James Matthews <jmatthews@pacificplanning.com.au>
Subject: RE: PP2018.1 - Revised Letter of Offer Homebush.
Importance: High

Dear Stephen

Thank you for your and your staff time today at the SSLEP meeting.

We note the advice from the panel today to defer the item to the next meeting of the SSLEP. We agree with the panel that the deferral is the best course of action at this time.

We understand this deferral recommendation from the SSLP is to assist us as applicants to work with council staff to update our documentation in the PP application to align with the recent offer to the council from the applicant on behalf of the landowner on public benefit. We note which revised in a letter to the Acting General Manager late yesterday prior to the meeting of the SSLP.

To assist you with your staff resources over the coming days I can confirm we will be providing to council the following updated documents:

1. A revised section 9.1 report supporting the better planning outcome include the proposed dedication of property to council to assist council achieve the aims of its draft housing strategy and LSPS.
2. We will progress a draft planning agreement deed to council that provides a proposed legal structure to facilitate the delivery of the public benefits.

We look to have this back to council by next Wednesday and we would as required welcome any further discussions or meetings with you and your staff.

Kind regards

Matthew

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From: Stephen Clements <stephen.clements@strathfield.nsw.gov.au>
Sent: Wednesday, 4 May 2022 9:21 PM
To: Matthew Daniel <mdaniel@pacificplanning.com.au>
Subject: Re: PP2018.1 - Revised Letter of Offer.

Thank you Daniel

I will advise the panel chair of the proposed VPA offer at tomorrow meeting and advise you of their decision after the public hearing

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From: Matthew Daniel <mdaniel@pacificplanning.com.au>
Sent: Wednesday, May 4, 2022 9:15:32 PM
To: Strathfield Municipal Council <council@strathfield.nsw.gov.au>
Cc: Joseph Gillies <joseph.gillies@strathfield.nsw.gov.au>; Lily Parker <lily.parker@strathfield.nsw.gov.au>; Anthony Hewton <anthony.hewton@strathfield.nsw.gov.au>; Stephen Clements <stephen.clements@strathfield.nsw.gov.au>; James Matthews <jmatthews@pacificplanning.com.au>
Subject: PP2018.1 - Revised Letter of Offer.

Dear Acting General Manager

Please find attached a letter of Offer for PP2018.1 which is being considered tomorrow by the SLP prior to consideration by the meeting of council.

Kind regards

Matthew Daniel

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Planning Agreement - 11 – 16 Loftus Crescent, 2 Subway Lane, 5 & 9 –11 Knight Street and 88 – 92A Parramatta Road, Homebush

Strathfield Municipal Council (ABN 52 719 940 263) (**Council**)
and

Homebush Linx Pty Ltd (ABN 98 168 804 206) (**Landowner**)

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Planning Agreement

Parties

Council	Name	Strathfield Municipal Council (Council)
	Address	65 Homebush Road Strathfield NSW 2135
	ABN	52 719 940 263
Landowner	Name	Homebush Linx Pty Ltd (Landowner)
	Address	3/54 Beach Street, Kogarah NSW 2217
	ABN	98 168 804 206

Background

- A** The Landowner is the registered proprietor of the Land.
- B** The Land is the subject of PP2018.1 (**Planning Proposal**). The Planning Proposal is under consideration by Council for progression to the Minister for Planning for a gateway determination.
- C** The Planning Proposal seeks the following amendments to the *Strathfield Local Environmental Plan 2012*:
1. increase the maximum building height from part 16 metres and part 29 metres to 80 metres;
 2. increase the maximum floor space ratio (**FSR**) control from part 2:1 to part 2.7:1 and part 3.15:1 to 5:1; and
 3. amend the key site provisions to remove existing height and floor space provisions, and provide for an additional 2:1 floor space provision (7:1 total) where better planning outcomes are achieved.
- D** Following the amendment of the *Strathfield Local Environmental Plan 2012* contemplated in the Planning Proposal, the Landowner proposes to carry out the Development and to provide the Contributions on and subject to the terms of this document.
- E** The Development Manager offered on behalf of the Landowner to enter this planning agreement by letter to Council on 4 May 2022.

Operative Provisions

1 AGREEMENT

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 DEFINITIONS

2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of Schedule 2 have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of Schedule 2 apply in the interpretation of this document.

3 APPLICATION AND OPERATION OF DOCUMENT

3.1 Planning Agreement

This document is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

3.2 Application

This document applies to both the Land and the Development.

3.3 Operation

- (1) Subject to paragraph (2), this document operates from the date it is executed by both parties.
- (2) The following clauses of this document will only operate if and when the Instrument Change is published on the NSW Legislation Website on terms that facilitate the Development to be carried on the Land by the Developer.
 - (a) Clause 4 – Application of sections 7.11 & 7.12.
 - (b) Clause 5 – Provision of Contributions.
 - (c) Clause 6 – Completion of Works.
 - (d) Clause 7 – Defects Liability.
 - (e) Clause 8 – Variation of Scope or Timing For Provision of Works.
 - (f) Clause 9.2 - Care of the Works and Indemnity by Developer.
 - (g) Clause 9.3 – Developer Indemnity.
 - (h) Clause 10 – Contamination.
 - (i) Clause 11 – Security.
- (3) For the avoidance of doubt, the obligation under this Agreement to deliver the Contributions in accordance with clause 5 does not take effect until the Instrument Change is made.

4 APPLICATION OF SECTIONS 7.11 & 7.12

4.1 Application

This document does not exclude the application of section 7.11 or section 7.12 of the Act to the Development.

4.2 Section 7.24

This document excludes the application of section 7.24 to the Development.

5 PROVISION OF CONTRIBUTIONS

5.1 Total Development Contribution

- (1) The Total Contribution Amount is \$11,839,878 (**Total Contribution Amount**) and includes the Contribution Value.
- (2) Subject to and in accordance with this document, the Landowner will provide the Total Contribution Amount through the Contributions which comprise:

(a)	Works amounting to:	\$1,044,878.65
(b)	Dedication of the Designated Land amounting to a value of:	\$5,795,000
(c)	Affordable Housing Dedication:	\$5,000,000

5.2 Designated Land

- (1) The Landowner must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in Schedule 4.
- (2) The Landowner must meet all legal and registration costs associated with the dedication of the Designated Land in accordance with clause 5.2(1), including any legal costs reasonably incurred by Council in relation to that dedication.
- (3) For the purpose of this document, Designated Land is dedicated to Council:
 - (a) if the relevant land is dedicated in a plan registered at the NSW Land Registry Services, when that plan is so registered; or
 - (b) otherwise when the Landowner delivers to Council:
 - (i) a transfer of the relevant land in registrable form;
 - (ii) any consent required by an interested party in the land;
 - (iii) the original Certificate of Title for the relevant land; and
 - (iv) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Designated Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

5.3 Works

The Landowner, at its cost, must:

- (1) obtain Development Consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
- (2) procure the carrying out and completion of the Works in accordance with this document by the time specified in **Error! Reference source not found.**; and
- (3) procure the carrying out and completion of the Works:
 - (a) in accordance with the specifications referred to in **Error! Reference source not found.** for the relevant item of Work;
 - (b) in accordance with any relevant Development Consent;
 - (c) in accordance with the requirements of, or consents issued by, any Authority;
 - (d) ensuring that:
 - (i) all necessary measures are taken to protect people, property, and the Environment;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are prevented; and
 - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW) are complied with,
 - (e) where relevant, in accordance with applicable Australian Standards, performance solution or the National Construction Code; and
 - (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.4 Design and specification

- (1) The Landowner must arrange for:
 - (a) consultation with Council with respect to the development of the detailed design and specification of each item of the Works; and
 - (b) the inclusion of the reasonable requirements of Council in any such detailed design, provided that they are not inconsistent with this document.
- (2) The design and specification for the item of Work must be prepared having specific regard to:
 - (a) the specification for that Work set out in Schedule 4;

-
- (b) any prior written agreement between Council and the Landowner with respect to the design of that item of Works; and
 - (c) the Contribution Value of the relevant item of Work.
 - (3) Before commencing construction of an item of Work, Council must be provided:
 - (a) for its approval, the detailed design and specification for that item of Work; and
 - (b) a report from a Quantity Surveyor which estimates the cost to complete the relevant item of Work in accordance with the detailed design.
 - (4) If, within thirty (30) days of the date of submission referred to in clause 5.4(3):
 - (a) Council notifies the Landowner in writing of its approval of the design and specification, the Landowner is to carry out and complete the item of Work in accordance with that design and specification; or
 - (b) Council notifies the Landowner in writing that it does not approve of the design and specification and provides reasons and reasonable details and suggested modifications with respect to the submitted design and specification, the Landowner may:
 - (i) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 5.4 applies to that amendment; or
 - (ii) refer the relevant matter for dispute resolution in accordance with this document.
 - (5) If Council fails to notify the Landowner in writing that it approves or does not approve of the design and specification within the time required under clause 5.4(4), then Council is deemed to have accepted the relevant design and the Developer may proceed to carry out and complete the item of Work in accordance with its design and specification.

5.5 Access to the Land by Council

- (1) The Landowner is to permit Council, its authorised officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.
- (2) Council must give the Landowner prior reasonable notice before it enters the Land and ensure that Council and its employees comply with all reasonable directions of the Landowner and all site construction requirements including without limitation all workplace health and safety requirements and reporting to a site office or site superintendent.
- (3) If Council complies with clause 5.5(2), the Landowner must enable Council, its authorised officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.
- (4) Nothing in this document creates or gives Council any estate or interest in any part of the Land.

5.6 Access to the Council Land by Landowner

- (1) Provided the Landowner:
 - (a) obtains any necessary Approvals, including without limitation approvals under the Roads Act 1993 and any other Laws; and
 - (b) gives the Council reasonable written notice; and
 - (c) complies with those Approvals and Laws,

Council authorises the Landowner, its agents and contractors, to enter, occupy and use the Council Land for the purpose of performing its obligations under this document in respect of the Council Land including the temporary placement of materials and equipment on and restriction of access to the Council Land in order to enable the Landowner to carry out the Work and properly perform its obligations under this document in respect of the Council Land.

- (2) Nothing in this document creates or gives the Landowner any estate or interest in any part of the Council Land.

5.7 Construction cost offset

- (1) The Council acknowledges that the amounts inserted in Schedule 4 in the column headed "Contribution Value" for each item of the Contributions have been based on cost estimates prepared by the Landowner's quantity surveyor in 2018.
- (2) The Landowner may produce evidence to the Council demonstrating that the construction cost to deliver the Contribution items specified in Schedule 4 has increased compared to the amounts specified in Schedule 4 (**Landowner's QS evidence**).
- (3) If the Landowner produces the Landowner's QS evidence, the Council must consider the Landowner's evidence, and acting reasonably, determine whether it accepts that evidence within 30 days.
- (4) If the Council determines to accept the Landowner's QS evidence, the Affordable Housing Contribution contained within Item 4 of Schedule 4 will be reduced by the amount specified in the Landowner's QS evidence, and this VPA will be amended by the parties to reflect the updated Affordable Housing Contribution payable and the changes in costs specified in Schedule 4.

6 COMPLETION OF WORKS

6.1 Issue of Completion Notice

If the Landowner considers that any particular item of the Works is complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of the Works to which it relates; and
- (3) specifies the date on which the Landowner believes the relevant item of the Works was completed,

(**Completion Notice**).

6.2 Inspection by Council

- (1) Council must inspect the Works set out in a Completion Notice within ten (10) Business Days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under clause 6.2(1) the Works referred to in the relevant Completion Notice will be deemed to be Complete.

6.3 Certificate of Completion or Rectification Notice

- (1) Within fourteen (14) Business Days of inspecting the Works set out in a Completion Notice Council must provide notice in writing to the Landowner that the Works set out in the Completion Notice:
 - (a) have been Completed (**Certificate of Completion**); or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Works which have not been Completed (if any); and
 - (ii) Defects in the Works (if any),
(Rectification Notice).
- (2) If Council does not provide the Landowner with a Certificate of Completion or a Rectification Notice in accordance with clause 6.3(1), the Works set out in the Completion Notice will be deemed to have been Completed.
- (3) Where Council serves a Rectification Notice on the Landowner, the Landowner must:
 - (a) complete or rectify the Works (as the case may be) the subject of that notice; or
 - (b) serve a Dispute Notice on Council in respect of the Rectification Notice.
- (4) Where the Landowner:
 - (a) serves a Dispute Notice on Council in accordance with clause 6.3(3)(b), the provisions of clause 13 apply; or
 - (b) completes or rectifies the Works (as the case may be) in accordance with clause 6.3(3)(a), it must serve upon Council a new Completion Notice for the Works it has rectified in which case the process in this clause 6.3 is repeated.

6.4 Acceptance of Works

Council accepts ownership, possession and control of, and risk in, any Works carried out on Designated Land or Council Land when:

- (1) those Works are Completed; and
- (2) where the Works are carried out on Designated Land, the relevant land is dedicated to Council.

7 DEFECTS LIABILITY

7.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a Defect, Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect; and
 - (b) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) Business Days).

7.2 Landowner to Rectify Defects

- (1) Where Council serves a Defects Notice on the Landowner, the Landowner must:
 - (a) comply with the Defects Notice; or
 - (b) serve a Dispute Notice on Council in respect of the Defects Notice.
- (2) Where the Landowner:
 - (a) serves a Dispute Notice on Council in accordance with clause 7.2(1)(b), the provisions of clause 13 apply; or
 - (b) complies with the Defects Notice in accordance with clause 7.2(1)(a), the parties must follow the procedure set out in clauses 6.1 to 6.3 in respect of the satisfaction of the Defects Notice.
- (3) Council must do such things as are reasonably necessary to enable the Landowner to comply with a Defects Notice that has been given to it including without limitation providing access to Council Land or Designated Land.
- (4) Upon the expiry of the Defects Liability Period in respect of the Works (or part thereof), the Landowner will cease to be responsible for Defects in such Works (or part thereof) under this document or otherwise.

7.3 Right of Council to Step-In

- (1) If:
 - (a) the Landowner has failed to:
 - (i) comply with a Defects Notice; or
 - (ii) serve a Dispute Notice on Council in respect of the Defects Notice; and
 - (b) Council has thereafter given the Landowner ten (10) Business Days prior written notice of its intention to do so, Council may, acting reasonably, enter upon the Land for the purpose of rectifying the Defects the subject of that Defects Notice.

-
- (2) Where the Landowner has served a Dispute Notice on Council in respect of the Defects Notice, the provisions of clause 13 will apply.

7.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
- (a) enter upon any part of the Land that it requires access to in order to rectify the Defects the subject of the Defects Notice; and
 - (b) rectify the Defects the subject of the Defects Notice; and
- (2) the Landowner must not impede or interfere with Council in undertaking that work.

7.5 Costs of Council

Where Council exercises its step-in rights in accordance with clause 7.3, Council may by notice in writing to the Landowner demand payment of all reasonable costs actually incurred by Council in rectifying the relevant Defects within 14 Business Days from the date of such notice and may, if the costs have not been paid by the Landowner, thereafter have recourse to the Defects Security provided by the Landowner pursuant to clause 10 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs the subject of the notice of demand.

8 VARIATION OF SCOPE OR TIMING FOR PROVISION OF WORKS

8.1 Variation to the scope of an item of Work

- (1) The Landowner may request that Council approve in writing a variation to the scope, design or specification of any item of Work.
- (2) The scope, design or specification of an item of Work is not to be varied unless Council and the Landowner agree in writing to the variation.
- (3) Council is not to unreasonably delay or withhold its approval to a request made by the Landowner under clause 8.1(1).
- (4) Council may make a written request to the Landowner to agree to a reasonable variation to the scope, design or specification of a Work.
- (5) The Landowner is not to unreasonably delay or withhold its agreement to a request made by the Council under clause 8.1(4).

8.2 Deferral of the timing of Completion of an item of the Works

- (1) Notwithstanding any other provision of this document, if the Landowner forms the view at any time, that:
 - (a) it is unable to Complete any item of the Works by the time specified in Schedule 4; or
 - (b) it believes that there is a risk of damage to any item of the Works if they are delivered by the time required in Schedule 4,

(Proposed Deferral), then the Landowner may seek Council's approval to defer the Completion of the relevant item of the Works or obligation (as the case may be) by providing written notice to Council:

- (c) identifying the relevant item of Work or obligation that the Landowner proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of that item of the Works or obligation; and
 - (e) identifying the anticipated time for Completion of the relevant item of Work or obligation.
- (2) Council, acting reasonably, must give the Landowner a written notice within thirty (30) days of the date upon which the Landowner serves written notice upon Council in accordance with 8.2(1) stating:
- (a) whether or not it consents to the Proposed Deferral;
 - (b) the revised date for Completion assessed by Council; and
 - (c) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, but only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant item of the Works),
- (3) If Council consents to the Proposed Deferral, then the following applies:
- (a) The Landowner must comply with any conditions required by Council under clause 8.2(2)(c) above.
 - (b) Provided the Landowner satisfies those conditions, the Landowner will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Works or other obligation the subject of the Proposed Deferral by the time for Completion specified in this document.
 - (c) The time for completion of the Works or other obligation (as the case may be) the subject of the Proposed Deferral under this document is the revised date for Completion assessed by Council.

9 DEVELOPER WARRANTIES AND INDEMNITIES

9.1 Warranties

The Landowner warrants to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

9.2 Care of the Works and Indemnity by Landowner

- (1) To the extent that the Works are being performed on Council Land, the Landowner shall be responsible for the care of the Works (or the relevant part thereof):
 - (a) from and including the date of commencement of the Works (or the relevant part thereof) until the date on which Council accepts ownership, possession and control of, and risk in, such Works; and
 - (b) in respect of Work involved in the rectification of Defects, during the performance of the rectification works.
- (2) To the extent that the Works are being performed other than Council Land or the Land, the Landowner shall be responsible for the care of the Works (or the relevant part thereof):
 - (a) from and including the date of commencement of the Works (or the relevant part thereof) until the date of Completion of such Works; and
 - (b) in respect of Work involved in the rectification of Defects, during the performance of the rectification works.

9.3 Developer Indemnity

Subject to clause **Error! Reference source not found.**, the Landowner indemnifies Council against:

- (1) loss or damage to Council's property;
- (2) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of the Works whilst such Works are in the care of the Landowner, but the indemnity shall be reduced proportionally to the extent that the act or omission of Council, its employees, agents or contractors (not being engaged by the Landowner for the performance of the Works) may have contributed to the loss, damage, injury or death.

10 SECURITY

10.1 Provision of Security

Primary Security

- (1) The Landowner must deliver to Council a Security Instrument prior to the issue of a Construction Certificate in respect of the Development for the amount equivalent to the Security Value (**Primary Security**) for those items of Work where Security is required as stipulated in column 7 of the table at **Error! Reference source not found.**
- (2) For the purpose of calculating the Security Value of the Primary Security, if a Quantity Surveyor has on behalf of the Landowner valued the Works as specified in Council's approval of design and specifications under clause 5.4, the value so determined by that Quantity Surveyor is the Contribution Value.

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- (3) If:
- (a) an item of the Works with respect to which Primary Security is required to be provided under this clause 10.1 has been partially completed at the time that Primary Security is required; and
 - (b) the Landowner provides Council with a report from a Quantity Surveyor which estimates the cost to complete the relevant item of the Works **(Estimated Cost to Complete)**,

then the amount of the Primary Security required to be provided by the Landowner with respect to that item of the Works under this clause 10.1 is reduced to the Estimated Cost to Complete.

Defects Security

- (4) The Landowner must deliver to Council a Security Instrument within 14 days of the date on which Work is Completed - for an amount equivalent to fifteen per cent (15%) of the Primary Security, **(Defects Security)**.
- (5) The Landowner may satisfy its obligations under this clause 10.1 (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.

10.2 Replacement of Security Instrument

- (1) The Landowner may replace any Security Instrument provided by it at any time with another form of Security Instrument, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security Instrument, Council must immediately release the Security Instrument being replaced and return it to the Landowner.

10.3 Council may call on Security

- (1) If the Landowner commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Landowner.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

10.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Landowner, may require the Landowner to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

10.5 Release of Primary Security

- (1) Provided that the Landowner is not in breach of this document at the relevant time, Council must release and return the Primary Security, or any part of it to which recourse has not been made in accordance with this document, to the Landowner within the later of:
 - (a) 14 days of the date on which the Works to which the Primary Security relates are Completed; and

-
- (b) receipt of the Defects Security for the Works to which the Primary Security relates.

10.6 Release of Defects Security

- (1) Provided that the Landowner is not in breach of this document at the relevant time, Council must release and return the Defects Security, or any unused part of it to the Landowner within 14 days of the later of:
 - (a) if no Defects Notice has been issued, the end of the Defects Liability Period; or
 - (b) if one or more Defects Notices have been issued, the date that all Defects the subject of those Defects Notices have been rectified.

10.7 Indexation of value of Security Value

- (1) The Security Value for the Works and any Security provided for the Works will be indexed quarterly in accordance with [insert building and construction index (to be confirmed)] provided by the Australian Bureau of Statistics.
- (2) The Landowner must ensure that the Security held by Council at all times equals the indexed amount notified to the Landowner by Council.

10.8 Release of Security on sale or transfer

- (1) If the Landowner sells or transfers the Land, or assigns its rights and obligations under this document or novates this document in accordance with clause 12 "Assignment", Council must release and return the Primary Security or the Defects Security (as the case may be) or any part of them to which recourse has not been made in accordance with this document to the Landowner within 14 days after the date the purchaser, transferee, assignee or novatee provides Council a replacement Primary Security or Defects Security (as the case may be) following such a sale, transfer, assignment or novation in the full amount of the Primary Security or Defects Security (as the case may be) that Council is entitled to hold under this document.

10.9 Compulsory acquisition of the Designated Land

- (1) The Landowner consents to the compulsory acquisition of the Designated Land:
 - (a) in accordance with the Acquisition Act; and
 - (b) on the terms set out in this clause 10.9.
- (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Landowner has committed an Event of Default with respect the dedication of that land under this document.
- (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
 - (a) the Landowner agrees that the compensation payable to it on account of that acquisition under the Acquisition Act will be \$1.00; and
 - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.

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- (4) The parties agree that the provisions of this clause 10.9 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
- (5) If Council:
- (a) acquires the Designated Land under paragraph (3); and
 - (b) is required to pay any compensation to a third party as a result of that acquisition,
- then the Landowner must pay Council the amount of that compensation as a Monetary Contribution:
- (c) within ten (10) Business Days of demand for payment being made by Council; and
 - (d) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

10.10 must not deal with property

- (1) This clause 10.10 only applies during any period in which this document is not registered on the title of the Land.
- (2) The Landowner must not during the term of this document sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Designated Land without first obtaining Council's consent in writing which must not be unreasonably refused.
- (3) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

10.11 Council may withhold Subdivision Certificate

- (1) The Landowner may only make, cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Landowner is not in breach of its obligation to make any Contribution under this document.
- (2) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Landowner is in breach of any obligation to make any Contribution under this document until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Landowner in respect of the Contribution to which the breach relates.

10.12 Council may withhold Occupation Certificate

- (1) The Landowner may only make, or cause, or suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Landowner is not in breach of its obligations to make any Development Contribution under this document.
- (2) An Occupation Certificate must not be issued for any stage of the Development until:

-
- (a) each Development Contribution referent to that stage of the Development in "Timing" in Column 5 of Schedule 4 is made; and
 - (b) where a Development Contribution is not made and Council calls upon the Security provided by the Landowner in respect of that Development Contribution in accordance with clause 10.3, the Security called upon is applied towards provision of that Development Contribution.

11 REGISTRATION OF THIS DOCUMENT

11.1 Registration of this document

The Landowner acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 11.2, Council will undertake that registration at the cost of the Landowner.

11.2 Obligations of Landowner

- (1) The Landowner, at its own expense, will promptly after this document comes into operation, take all practical steps, and otherwise do anything that Council reasonably requires, to procure:
 - (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
 - (b) the execution of any documents; and
 - (c) the production of the relevant certificates of title,to enable the registration of this document in accordance with clause 11.1.
- (2) The Landowner, at its own expense, will take all practical steps, and otherwise do anything that Council reasonably requires:
 - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) Business Days after that date; and
 - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

11.3 Discharge from the Register

- (1) The parties must do such things as are reasonably necessary to remove any notation relating to this document from the title to the Land on the earlier of:

-
- (a) the Landowner's obligations under this document have been satisfied; and
 - (b) this document is terminated or otherwise comes to an end for any other reason.
- (2) For the purposes only of clause 11.3(1), Council must do what is reasonably necessary (at the Landowner's cost) to facilitate the removal of any notation relating to this document from the title to the Land in accordance with clause 11.3(1) promptly upon receiving a request from the Landowner to do so including, without limitation signing and delivering to the Landowner in registrable form an instrument requesting cancellation or removal of this document on the title to the Land.

12 ASSIGNMENT

12.1 Restriction on Assignment

Other than in accordance with this clause 12 the Landowner may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

12.2 Procedure for Assignment

- (1) If the Landowner:
 - (a) wishes to Assign any part of the Land; and/or
 - (b) wishes to Assign its rights or obligations under this document,then the Landowner must:
 - (c) provide a written request to Council for the consent of Council to the relevant Assignment;
 - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
 - (e) obtain written consent of Council to the relevant Assignment; and
 - (f) at no cost to Council, procure:
 - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
 - (ii) the provision of all Securities to Council by the Assignee that the Landowner is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Landowner under clause 12.2(1)(c) if, at the time the request is made, the Landowner is in breach of this document.

13 DISPUTE RESOLUTION

13.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
 - (a) is in writing;
 - (b) adequately identifies and provides details of the Dispute;
 - (c) stipulates what the First Party believes will resolve the Dispute; and
 - (d) designates its representative (**Representative**) to negotiate the Dispute, (**Dispute Notice**).
- (2) The Second Party must, within five (5) Business Days of receipt of the Dispute Notice, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

13.2 Conduct pending resolution

- (1) The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to perform or complete (as the case may be) the matter which is the subject of the Dispute until its final resolution.
- (2) For the purpose of clarity, nothing in this clause 13 affects the operation of clauses 5.2(1), 5.3(2), **Error! Reference source not found.**, 10.11, 10.12 and the Landowner is not relieved of its obligation under this document to provide any Contribution by the time required under this document.

13.3 Further steps required before proceedings

Subject to clauses 13.11 and 13.12 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 13.5 or determination by an expert under clause 13.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 13.1(2) is served.

13.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute within the period referred to in clause 13.3, or such later period as may be agreed by the parties, then the parties must endeavour to agree within five (5) Business Days to either refer the matter to mediation under clause 13.5 or expert determination under clause 13.6.

13.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 13.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, in the absence of agreement within a further 5 Business Days, by a person appointed by the Chair of Resolution Institute, or the Chair's designated representative.

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- (2) The Resolution Institute Mediation Rules will apply to the mediation.
 - (3) If the mediation referred to in clause 13.5(1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 13.6.

13.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 13.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of agreement as to the independent expert within five (5) Business Days after the date that the matter is agreed to be referred to expert determination pursuant to clause 13.4 or 13.5, either party may request a nomination or the expert from the Chair of Resolution Institute or the Chair's designated representative,
 - (c) subject to clause 13.9 and 13.10, the expert determination shall be conducted in accordance with the Resolution Institute Expert Determination Rules.

13.7 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 13.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 13.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

13.8 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (a) subject to clause 13.8(2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and

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- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
 - (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

13.9 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of manifest error, fraud or misfeasance by the expert.

13.10 Costs

- (1) Except to the extent otherwise specified in the expert's determination, each party must:
 - (a) bear its own costs of the expert determination; and
 - (b) contribute equally to the expert's costs in making the determination.

13.11 Remedies available under the Act

This clause 13 does not operate to limit the availability of any remedies available to Council under the Act.

13.12 Urgent relief

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

14 FORCE MAJEURE

14.1 Definition

In this clause 14, force majeure (**Force Majeure**), means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

14.2 Consequences of Force Majeure Event

- (1) If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this document, it must:

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- (a) give to the other party prompt notice of the Force Majeure with all material particulars; and
 - (b) suggest an alternative method, if any, of satisfying its obligations under this document.
- (2) If a party is unable to satisfy its obligations under this document by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.

14.3 Inability to complete Works

- (1) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
- (2) If the Landowner is unable to Complete any part of the Works due to a Force Majeure event the Landowner must pay to Council the Contribution Value of Works apportioned, if necessary, in such manner as may be fair and reasonable, including by taking into consideration the extent and value of any Complete or partially Complete Works.
- (3) In reference to paragraph (2), Council may call on the Bank Guarantees (or any part of it) pursuant to clause 10.3.

14.4 Exclusion of operation

The parties agree that this Force Majeure provision does not apply to an obligation of a party to transfer land or to pay money.

14.5 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 13.

15 BREACH OF THIS DOCUMENT

15.1 Breach Notice

- (1) If the Landowner breaches this document, Council may serve a notice on the Landowner (**Breach Notice**) specifying:
 - (a) the nature and extent of the alleged breach;
 - (b) if:
 - (i) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Landowner to do in order to rectify the breach; or
 - (ii) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Landowner to pay in order to rectify the breach;

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- (c) the time within which Council requires the breach to be rectified or compensation to be paid (as the case may be), which must be a reasonable time of not less than forty (40) Business Days.
 - (2) Where Council serves a Breach Notice on the Landowner, the Landowner must:
 - (a) comply with the Breach Notice; or
 - (b) within fourteen (14) Business Days of receipt of the notice, serve a Dispute Notice on Council.
 - (3) Where the Landowner serves a Dispute Notice on Council in accordance with clause 15.1(2)(b), the dispute resolution provisions of this document apply and the Landowner is not in breach and no Event of Default will be deemed to have occurred until the dispute resolution procedures in this document have been exhausted.

15.2 Events of Default

The Landowner only commits an **Event of Default** if it:

- (1) following receipt of a Breach Notice, fails to comply with a Breach Notice;
- (2) following receipt of a Breach Notice, fails to issue a Dispute Notice in accordance with clause 15.1(2)(b); or
- (3) becomes subject to an Insolvency Event.

15.3 Consequences of Events of default

Where the Landowner commits an Event of Default, Council may, in addition to any rights it has at Law:

- (1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
- (2) call on any Security to the extent of any compensation claimed in a Breach Notice and not paid by the Landowner.

16 TERMINATION, RESCISSION OR DETERMINATION

16.1 Termination

This document terminates in the following events:

- (1) the parties agree in writing to terminate the operation of this document at any time, including where the parties agree that the Instrument Change will not be made; or
- (2) Council serves notice on the Landowner terminating this document as a consequence of the Landowner committing an Event of Default.

16.2 Consequence of termination

Upon termination of this Planning Agreement:

- (1) all future rights and obligations of the parties are discharged; and

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- (2) all accrued rights and obligations of the parties continue to subsist.

17 POSITION OF COUNCIL

17.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

17.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,
(Discretion).

17.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 17 is substantially satisfied; and
 - (b) in the event that clause 17.3(1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

17.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent or Instrument Change, the Land or the Development in a certain manner.

18 CONFIDENTIALITY

18.1 Document not Confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

18.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to clauses 18.2(2) and 18.2(3), each party agrees:
 - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

19 GST

19.1 Defined GST Terms

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

19.2 GST to be Added to Amounts Payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

19.3 GST Obligations to Survive Termination

This clause 19 will continue to apply after expiration of termination of this document.

20 MISCELLANEOUS

20.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

20.2 Legal costs

The Landowner agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay the reasonable legal costs and disbursements referred to in clause 20.2(1) within ten (10) Business Days of receipt of a Tax Invoice from Council; and
- (3) except to the extent otherwise provided in this document, pay or reimburse the reasonable legal costs and disbursements of Council arising from the enforcement of this document to the extent resulting from the breach by the Landowner of its obligations under this document.

21 ADMINISTRATIVE PROVISIONS

21.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by email to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and

-
- (c) if transmitted by email to a person's email address at the time of being sent provided that the sender does not receive notice of delayed or uneffected delivery.
 - (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

21.2 Entire Document

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

21.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

21.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

21.5 Counterparts

This document may be executed electronically and in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

21.6 Amendment

This document may only be amended or supplemented in writing signed by the parties.

21.7 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

21.8 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

21.9 Governing law

The law in force in the State of New South Wales governs this document. The parties:

-
- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
-

Schedule 1

Requirements under section 7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (i) sought a change to an environmental planning instrument. (ii) made, or proposes to make, a Development Application. (iii) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (i) Yes (ii) Yes (iii) N/A.
Description of land to which this agreement applies – (Section 7.4(3)(a))	Lot A in DP 335908; Lots A and B in DP 419854; Lots 1 and 2 in DP 201286; Lot 2 in DP 314354; Lot 101 in DP 846306; Lot A in DP 335091; Lot C in DP 336700; SP1702; Lot 7 in DP 18702; Lot B in DP 403083; Lots 1, 2, and 3 in DP201120; and Lot A in DP419617.
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Planning Proposal PP2018.1 (Planning Proposal).
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Applies
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Applies
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	Does not apply
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 13.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 10.

No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	See clause 16.
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Schedule 2

Defined Terms and Interpretation

Part 1 – Definitions

Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act</i> 1991.
Act	means the <i>Environmental Planning and Assessment Act</i> 1979 (NSW).
Affordable Housing Contribution	Means item 4 in Schedule 4.
Approval	includes approval, consent, licence, permission or the like.
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ul style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ul style="list-style-type: none">(1) Australia and New Zealand Banking Group Limited.(2) Commonwealth Bank of Australia.(3) Macquarie Bank.(4) National Australia Bank Limited.(5) St George Bank Limited.(6) Westpac Banking Corporation.(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Landowner.
Breach Notice	has the meaning ascribed in clause 15.1.
Business Day	means a day other than: <ul style="list-style-type: none">(1) a Saturday, Sunday or public holiday in the state of New South Wales; or(2) 27, 28, 29, 30 or 31 December in any year.
Certificate of Completion	has the meaning ascribed to it in clause 6.3.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or

	future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Completed or Completion	means completed in accordance with the requirements of this document.
Completion Notice	has the meaning ascribed in clause 6.1.
Confidential Information	<p>means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:</p> <ol style="list-style-type: none"> (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; (4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate	has the same meaning as in section 6.4(d) of the Act.
Contributions	means the contributions specified in Error! Reference source not found.
Contribution Value	means the amount specified in Error! Reference source not found. in the column headed "Contribution Value" for each item of the Contributions as adjusted in accordance with this document from time to time.
Contribution Value of Works	means the total amount specified in the column headed "Contribution Value" in Error! Reference source not found. comprising a total of \$1,044,878.65 for the Works, which excludes the cost of Item 1B, Item 2B, and Item 4 as adjusted in accordance with this document from time to time.
Council Land	Means land owned by the Council and adjoining the part of the Land relevant to the delivery of Items 1-3 in Schedule 4 by the Landowner.
Defect	means any part of the Works which is defective or otherwise not in accordance with this document.
Defects Notice	has the meaning ascribed to it in clause 7.1.
Defects Liability Period	means 12 months.
Defects Security	has the meaning ascribed to it in clause 10.
Designated Land	means the land identified in item 1B and item 2B of Schedule 4
Development	means the development of the Land after the Instrument Change is made for the redevelopment of the Land comprising mixed use buildings for retail and commercial uses, and residential apartments.
Development Application	means an application for the Development Consent.

Development Consent	means a consent issued under the Act for the Development.
Development Manager	means Pacific Planning Pty Ltd.
Dispute	has the meaning ascribed to it in clause 13.1.
Dispute Notice	has the meaning ascribed to it in clause 13.1.
Encumbrance	<p>means an interest or power:</p> <ol style="list-style-type: none"> (1) reserved in or over an interest in any asset; (2) arising under, or with respect to, a bio-banking Agreement; (3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
Encumber	means to grant an Encumbrance.
Event of Default	has the meaning ascribed to it in clause 15.2.
Force Majeure	has the meaning ascribed to it in clause 14.
Gross Floor Area	has the meaning ascribed to that term in the <i>Strathfield Local Environmental Plan 2012</i> .
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Index	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.
Insolvency Event	<p>means the happening of any of the following events:</p> <ol style="list-style-type: none"> (1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up. (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order. (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a

	reorganisation, moratorium or other administration involving any of them.
	(4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
	(5) A body corporate is or states that it is insolvent.
	(6) As a result of the operation of section 459F(1) of the <i>Corporations Act 2001</i> (Cth) (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand;
	(7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
	(8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
	(9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
	(10) A receiver, manager or receiver and manager is appointed to the Company.
	(11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
	(12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
Instrument Change	means the amendments to the <i>Strathfield Local Environmental Plan 2012</i> contemplated in Planning Proposal PP2018.1 (Planning Proposal), which is under consideration by Council for progression to Gateway Determination to facilitate the Development to be carried out on the Land.
Land	means the lands legally described in Schedule 3.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
NSW Legislation Website	means a website with the URL www.legislation.nsw.gov.au
Occupation Certificate	has the same meaning as in section 6.4(c) of the Act.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Planning Proposal	Means the planning proposal known as PP2018.1 relating to the Land.

Primary Security	has the meaning ascribed to it in clause 10.
Proposed Deferral	has the meaning ascribed to it in clause 8.2(1).
Quantity Surveyor	<p>means a person who:</p> <ol style="list-style-type: none"> (1) is a member of their respective professional organisation and has been for at least five (5) years; (2) practises as a quantity surveyor for works of the same nature as the relevant Works; (3) is active as a quantity surveyor at the time of his appointment; (4) has at least three (3) years' experience in valuing works of the same nature as the relevant Works; and (5) undertakes to act fairly and promptly in accordance with the requirements of this document.
QS Agreement	<p>means an agreement between the Landowner and a Quantity Surveyor which includes the following provisions:</p> <ol style="list-style-type: none"> (1) a provision obliging the Quantity Surveyor to warrant that no conflict of interest exists or is likely to arise in connection with its performance of its role; (2) a provision obliging the Quantity Surveyor immediately to notify the Landowner and the Council immediately upon becoming aware of any conflict or risk of conflict arising and complying with all reasonable requests or directions of the parties jointly in relation to such conflict or risk of conflict; (3) a representation and warranty to the Landowner and Council that it owes a duty of care and professional responsibility to the Landowner and the Council in connection with the performance of its role; (4) an obligation to act independently, impartially, diligently, fairly and honestly in the performance of its role; (5) an obligation to exercise reasonable skill, care and diligence expected of a reasonably competent and diligent quantity surveyor performing such a role on comparable projects; (6) an obligation to comply with the confidentiality provisions under this document; (7) an obligation to effect and maintain workers compensation insurance as required by law for the duration of its appointment; and (8) an obligation to effect and maintain professional indemnity insurance of an amount which is not less than

\$10 million for the duration of its appointment and thereafter for a period of 7 years.

Rectification Notice	has the meaning ascribed to it in clause 6.3.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW)
Security	means collectively the Primary Security and the Defects Security.
Security Instrument	means: <ul style="list-style-type: none">(1) Bank Guarantees;(2) Insurance Bonds; or(3) any other form of Security Instruments approved by the person with the benefit of the Security (acting reasonably).
Security Value	means the amount specified in Schedule 4 in the column headed "Security Value" for each item of the Works.
Subdivision Certificate	has the same meaning as in section 6.4(d) of the Act.
Total Contribution Amount	has the meaning given to it in clause 5.1.
Works	means the works specified or described in item 1A, item 2A, and item 3 of Error! Reference source not found..

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.

agreement

a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.

Gender

a reference to one gender extends and applies to the other and neuter gender.

Schedule 3 Land

Address	Legal title details
10 Loftus Crescent	Lot A DP 335908
11 Loftus Crescent	Lot B DP 419854
12 Loftus Crescent	Lot A DP 419854
13 Loftus Crescent	Lot 2 DP 201286
14 Loftus Crescent	Lot 1 DP 201286
15 Loftus Crescent	Lot 2 DP 314354
16 Loftus Crescent	Lot 101 DP 846306
5 Knight Street	Lot A DP 335091
9 Knight Street	Lot C DP 336700
11 Knight Street	SP 1702
2 Subway Lane	Lot 7 DP 18702 and Lot B DP 403083
92A Parramatta Road	Lot 1 in DP201120
92 Parramatta Road	Lot 2 in DP201120
90 Parramatta Road	Lot 3 in DP201120
88 Parramatta Road	Lot A in DP419617

Schedule 4 Contributions

Item	Contribution Type	Works Description	Specification	Timing	Contribution Value	Security Value
1A	Works	Construction of Laneway	A laneway with 7m carriageway and 2m verge on either side of the carriageway in the location specified in the plan at Schedule 5, the indicative area of which will be not less than 901m ² (Laneway).	Prior to the issue of any Occupation Certificate for the Development.	\$704,710.40	50% of the Contribution Value
1B	Dedication	Dedication of Laneway	Dedicate the Laneway identified in Item 1A to Council.	Prior to the issue of any Occupation Certificate for the Development.	\$4,505,000	Nil
2A	Works	Verge Widening	Widen the verge identified on the plan at Schedule 6 and construct six parking spaces, footpaths and an on-road cycle way (Verge Widening).	Prior to the issue of any Occupation Certificate for the Development.	\$259,167	50% of the Contribution Value
2B	Dedication	Dedication of Verge	Dedicate the Land affected by the Verge Widening in Item 2A to Council.	Prior to the issue of any Occupation Certificate for the Development.	\$1,290,000	Nil.
3	Works	Construction of Bus Shelter	Construct a bus shelter for Council and Transport for New South Wales in the location marked on the plan at Schedule 7 to the specification of ## .	Prior to the issue of any Occupation Certificate in Stage 1 of the Development.	\$81,001.25	50% of the Contribution Value
4	Contribution	Affordable Housing Contribution	<p>Make an Affordable Housing Contribution to Council to the value of \$5,000,000 comprised of the dedication of dwellings.</p> <p>Any shortfall in the value of a dwelling is to be paid by the Landowner in cash so that the total Contribution Value of \$5,000,000 is achieved (but not exceeded).</p>	On or before the issue of any Occupation Certificate for the Development.	\$5,000,000	Nil

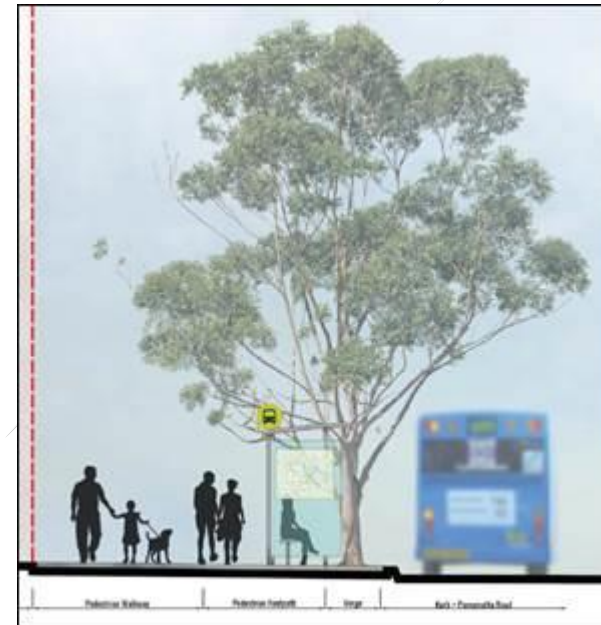
Schedule 5 Laneway plan



Schedule 6 Verge widening plan



Schedule 7 Bus Shelter plan



Execution page

Executed as an agreement.

Dated:

Executed by Strathfield Municipal Council by its duly appointed attorney under Power of Attorney Book No

Witness (Signature)

Attorney (Signature)

Name of Witness (Print Name)

Name of Attorney (Print Name)

Executed by Homebush Linx Pty Ltd ABN 98 168 804 206 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Section 9.1 Direction 7.3

Parramatta Road Corridor Urban Transformation Strategy

STATEMENT OF BETTER PLANNING OUTCOME



Submitted to Strathfield Council

September 2018

Updated May 2022

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1. Introduction

Section 9.1 Direction 7.3 Parramatta Road Corridor Urban Transformation Strategy

(5) Consistency

A planning proposal may be inconsistent with the terms of this Direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning & Environment (or an officer of the Department nominated by the Secretary) that the planning proposal is:

- (a) consistent with the Out of Sequence Checklist in the Parramatta Road Corridor Implementation Plan 2016 – 2023 (November 2016), or*
- (b) justified by a study (prepared in support of the planning proposal) that clearly demonstrates better outcomes are delivered than identified in the Parramatta Road Corridor Urban Transformation Strategy (November 2016) and Parramatta Road Corridor Implementation Plan 2016-2023 (November 2016) having regard to the vision and objectives, or*
- (c) of minor significance.*

Note: Local Planning Direction 9.1(2) – 1.5 Parramatta Road Corridor Urban Transformation Strategy commenced on 1 March 2022. The direction applies to ‘*planning proposals lodged with the Department of Planning and Environment on or after the date the particular direction was issued and commenced*’.

It is noted that as of May 2022, the planning proposal has not been submitted to the Department of Planning and Environment and therefore the former direction applies. Notwithstanding, the provisions of Clause 5 of 1.5 Parramatta Road Corridor Urban Transformation Strategy remain substantially the same.

1.1 Planning Proposal

The Planning Proposal seeks to amend the principal development controls for land at 10-16 Loftus Crescent, 2 Subway Lane, 5 & 9-11 Knight Street & 88-92A Parramatta Road, Homebush, as follows:

- Increase the maximum building height control from part 16 metres and part 29 metres to 80 metres;
- Increase the maximum floor space ratio control from part 2:1, part 2.7:1, and part 3.15:1 to 5:1; and
- Provide a site specific clause that provides for an FSR up to 7:1 where certain public benefits are provided.

The Parramatta Road Corridor Urban Transformation Strategy (PRCUTS) recommends a maximum building height of 80 metres and a preferred maximum floor space ratio control of 5:1 for the subject site. The Planning Proposal seeks to facilitate a bonus provision that supports a greater FSR than that preferred by the PRCUTS, provided certain public benefits are achieved, in accordance with council’s Draft Value Sharing Contributions Policy.

This report demonstrates a better planning outcome associated with a FSR of up to 7:1.

1.2 Justification for any inconsistency with the terms of the Direction

(a) Out of Sequence Checklist

A number of factors combine to justify inconsistencies with the terms of the Direction. This includes any numerical standards contained within the PRCUTS.

While the planning proposal does facilitate jobs and housing in accordance with the PRCUTS and commences the incremental transformation of the Corridor, the planning proposal does seek to facilitate a different floor space ratio (FSR) to that ‘*preferred*’ by the Strategy.

While the existing B4 Mixed Use zone and the proposed maximum building height of 80 metres is the same as that 'recommended' by the PRCUTS, the maximum FSR achievable is up to 7:1, provided certain public benefits are provided. The 'preferred' FSR in the PRCUTS is 5:1.

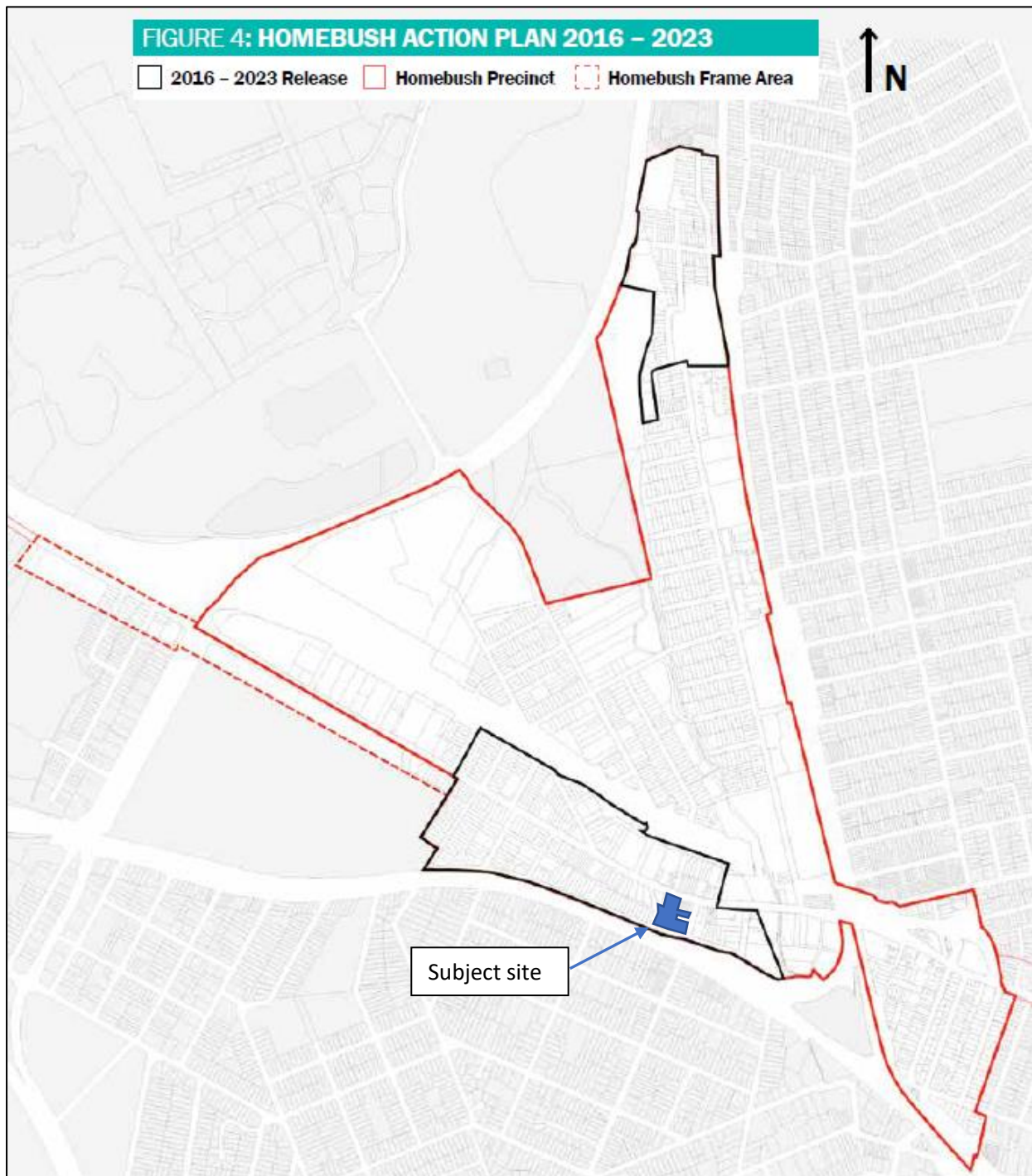


Figure 1: PRCUTS Implementation Plan 2016-2023

The *Parramatta Road Corridor Implementation Plan 2016-2023* provides for proponent led planning proposals or amendments to LEPs. In order to effectively work towards the success of the Strategy, the Implementation Plan provides the framework for the first stage of delivery from 2016 to 2023. While the long-term vision projects forward 30 years, actual change will occur incrementally over time: the Plan identifies how change will occur over the next seven years. Thus, a 'Precinct Release Process' has been developed to guide the way in which Precincts will be planned and delivered.

In this regard, the subject site is within the area identified for 2016-2023 Precinct release under the Homebush Action Plan as can be seen within Figure 1 on page 2. The planning proposal has also been prepared in accordance with the Action Plan as can be seen in Table 1 below.

Therefore, the planning proposal is within sequencing for the release of the Homebush Precinct and the Out of Sequence Checklist in the Parramatta Road Corridor Implementation Plan 2016 – 2023 does not apply.

The Implementation Update 2021 provided a supplement to the 2016-2023 Implementation Plan. The existing actions still apply provided they do not conflict with new and amendment actions in the 2021 Update. The table below incorporates the updated actions.

Homebush Precinct Plan 2016-2023	
Timing of release	<p>The subject site is within the ‘from 2016’ sequencing area within the Homebush Precinct and is therefore consistent with the timing of release.</p> <p>The amended action provides a pathway to progress to Gateway determination notwithstanding the status of any precinct wide traffic study as follows:</p> <p><i>“From the date of the Implementation Update, the progression of planning proposals in the 2016-2023 Release Area, or planning proposals for whole precincts can progress to a Gateway determination notwithstanding the status of any precinct wide traffic study”.</i></p>
Strategic land uses	<p>Under the better planning outcome scenario, the Planning Proposal will facilitate an FSR of up to 7:1 through a site-specific clause. While the mapping of the site will indicate a maximum FSR of 5:1, the LEP Clause will facilitate a maximum FSR of up to 7:1, which will provide for the following:</p> <ul style="list-style-type: none"> • 39,028 sq.m of residential floorspace (481 units); • 1,278sq.m of commercial floorspace; • A new laneway, built and dedicated, intersecting the site; • Dedication of land within the southern, eastern and western setbacks, facilitating the provision of footpaths, verge widening, parking bays and a cycle way; • The dedication of residential dwellings to the council to the value of \$5,000, 000 for the purpose of affordable housing; and • New bus shelter/facilities on Parramatta Road. <p>The better planning outcome will deliver dedication of a 7 metre carriageway/laneway, with a 2 metre verge either side. The laneway will not only strengthen east-west movements through the site, extending Loftus Lane eastwards, but will also unlock the ability of adjoining properties along Parramatta Road to redevelop in the future and not require access from Parramatta Road.</p> <p>Further, land is to be dedicated to Council along the southern, eastern and western boundaries. Six parking spaces are also proposed – these are located within land currently owned by Council and an on-road cycle lane.</p>
Public Transport	<p>The site is within approximately 200 metres from Homebush railway station. Homebush station is serviced by the Inner West & Leppington Line, which connects the site to the Parramatta Metropolitan Centre within less than 20 minutes and to the Harbour City CBD (Sydney) within between 20 and 30 minutes.</p>

	<p>Consultation will occur with Transport for NSW in accordance with the Gateway process and the Action Plan. The planning proposal will need to consider and be amended to have regard to <i>“any relevant published plans by Transport for NSW for improved public transport in the corridor”</i>, in accordance with the Implementation Update 2021.</p>
Active Transport	<p>The planning proposal will complement and support the delivery of new and existing cycle routes. A Green Travel Plan will set targets for alternative transport use and encourage alternate modes by:</p> <ol style="list-style-type: none"> 1. Complying with relevant Council bicycle parking rates and required facilities for the retail/commercial tenancies. 2. Provision of a Transport Access Guide (residents) and a Workplace Travel Plan (employees) outlining the available alternative transport modes. 3. Consideration of car-share facilities. <p>The development of a Green Travel Plan will assist in encouraging travel behaviour change and would be developed at the relevant subsequent planning stages.</p> <p>While the above already considers alternative active transport provisions in accordance with the Implementation Update 2021, the planning proposal will also need to consider and be amended to have regard to <i>“any relevant published plans by Transport for NSW for improved public transport in the corridor”</i>.</p>
Open Space and Recreation	<p>The PRCUTS seeks to facilitate new public open space and improvements to existing parks and reserves to support the transformation of the Precinct. In relation to the subject site, the Strategy seeks to facilitate an east-west through site link and a prioritised walking link along Loftus Crescent. Rather than this land being acquired, it is proposed to dedicate a laneway to provide the desired through site link and provide significant setbacks to Loftus Crescent to allow for a strong public realm and allow for improved vehicular movements.</p> <p>The value of the laneway and verge widening, including land and construction costs is \$6,758,877.</p> <p>The planning proposal may also need to consider and be amended in the future to <i>“have regard to any relevant open space plans published by NSW Government or endorsed by council”</i>.</p>
Community Facilities	<p>The planning proposal will contribute to relevant community facilities listed under the Action Plan.</p> <p>As discussed above, wider footpaths and a new laneway will provide for better access, easier movement and activated streets.</p>
Education Facilities	<p>The planning proposal will contribution towards primary and secondary schools in accordance with the Infrastructure Schedule. Consultation will be undertaken with the Department of Education in accordance with the requirements of a future Gateway determination.</p>
Health facilities	<p>Consultation with the Department of Health will be undertaken in accordance with the conditions of a future Gateway determination and the Action Plan. Satisfactory arrangements will be entered into where necessary.</p>
Road Improvements and upgrades	<p>A Traffic Impact Assessment has been prepared by Lyle Marshall and Partners in support of the Planning Proposal. The Assessment concludes that:</p>

	<p><i>“Network Analysis modelling using SIDRA 7.1 computer software shows that the proposed increase in FSR from 5:1 to 7:1 will not change the level of service of any intersection surrounding the site.</i></p> <p><i>The proposed development at FSR 7:1 with the public benefit schemes will provide good infrastructure connections to the surrounding transport network. We support this development on traffic and parking grounds.”</i></p> <p>Under existing conditions, the majority of intersections surrounding the development site operate at Level of Service A. Under the future development scenario at either 5:1 or 7:1, the majority of intersections operate at Level of Service A and therefore provide plenty of capacity in the surrounding road network.</p> <p>Under the 7:1 better planning outcome scenario, a number of public infrastructure benefits are facilitated, as outlined in the Traffic Impact Assessment, including:</p> <ul style="list-style-type: none"> • Bicycle travel path and facilities – road widening to Loftus Crescent; • On-Street parking bays – road widening to Loftus Crescent; • Pedestrian pathways; • Land dedication to Parramatta Road; • Bus shelter upgrade; and • Loftus Lane 2-way land dedication. <p>It is noted that the Implementation Update 2021 provides that <i>“the progression of planning proposals in the 2016-2023 Release Area, or planning proposals for whole precincts can progress to a Gateway determination notwithstanding the status of any precinct wide traffic study”</i>.</p> <p>However, the planning proposal will be required to consider and be amended where required <i>“to address recommendations of completed traffic studies, including but not limited to setbacks to support active, public or private transport improvements, or controls to manage traffic and parking impacts”</i>.</p> <p>It is anticipated that the better planning outcome has future proofed the development to create a better outcome for the local pedestrian and traffic network to be a benefit of is \$6,758,877 to council.</p>
Funding framework or satisfactory arrangements	<p>It is noted that the Department of Planning and Environment <i>“may impose a Gateway condition or otherwise amend a planning proposal to address State infrastructure requirements”</i>.</p>

Table 1: Homebush Action Plan 2016-2023**(b) Preparation of a Study in support of the Planning Proposal**

Detailed urban design analysis and traffic/transport infrastructure improvement reports have been undertaken and tested over a number of years to inform the current controls proposed for the site. The design concept includes 3 principal towers, two of which reach the 80 metre height limit recommended by the PRCUTS. Within this footprint, the density achieved is 7:1. This facilitates numerous opportunities to provide a better planning outcome, both physically through visible community benefits, and economically.

2. Background

The PRCUTS was launched by the Minister for Planning on 9 November 2016, and a S117 Direction (now 9.1 Direction) was released on 19 December 2016. The final PRCUTS provided for a maximum building height of 80 metres and a maximum FSR of 5:1. The 9.1 Direction allows for a planning proposal to be inconsistent with the terms of the Direction with the Secretary's agreement and adequate justification in the form of a better outcome.

On 17 September 2018, a planning proposal was lodged with council seeking amendments to the Strathfield LEP 2012. The planning proposal seeks the following:

- Increase the maximum building height control from part 16 metres and part 29 metres to 80 metres;
- Increase the maximum floor space ratio control from part 2:1, part 2.7:1, and part 3.15:1 to 5:1; and
- Provide a site specific clause that provides for an FSR up to 7:1 where certain public benefits are provided (a better planning outcome).

Better Planning Outcome

A better planning outcome has been proposed under a 7:1 FSR scenario. This better planning outcome will include the following:

- a new laneway intersecting the site, totalling 901sq.m;
- 258sq.m of land dedicated to facilitate increased parking in Loftus Street, the provision of a on-road bicycle lane and improved pedestrian facilities;
- the dedication of residential dwellings to the council to the value of \$5,000,000 for the purpose of affordable housing; and
- a bus shelter upgrade in Parramatta Road.

Economic Benefits of Proposed Contributions

Council's draft Value Sharing Contributions Policy seeks to implement a Value Sharing Policy to capture 30% of the difference between:

- 1) *the highest and best use value of the site permitted by the controls set out under the Strathfield Local Environment Plan (SLEP) 2012 and*
- 2) *the value of the site as a result of the approved development on the site derived from a Planning Proposal or a proposal to increase the development potential of a site above that permitted under the SLEP 2012.*

At a density of 5:1, the Policy, against a baseline land value of \$1,500 per square metre, would capture **\$5,313,735** in contribution. However, under a scenario of 7:1, the Policy would capture a contribution of **\$10,502,235**. While council's Value Sharing Policy is a draft document, is not available to view on council's website, and is not coupled with provisions under the LEP or other planning control, the better planning outcome nevertheless achieves an amount greater than that under the draft Policy.

The landowner is prepared to enter into a VPA with terms set out in the below table. The offer supersedes and revokes any previous offers made in relation to this site in any planning submissions submitted to date with this Planning Proposal.

	Item of benefit Land	Land area	Description	Considered Value
1	Laneway built and dedicated	901sq.m	7 metre carriageway with 2 metre verge either side. Part of the 2 metre verge on the northern side is located outside of the site boundary.	<u>Land:</u> \$4,505,000 <u>Construction Cost:</u> \$704,710.40
2	Verge widening with new parking spaces, footpaths and on-road cycle way and dedication to Council	258sq.m	Land dedication to Council along the southern, eastern and western boundaries. Six parking spaces are also proposed – these are located within land currently owned by Council and an on-road cycle lane.	<u>Land:</u> \$1,290,000 <u>Construction:</u> \$259,167
3	Bus Shelter	N/A	A bus shelter on behalf of Council and Transport for NSW on Parramatta Road, adjacent to the development. No land would be dedicated to the bus stop.	Land: N/A Construction: \$81,001.25
4	Affordable Housing – Dedication of completed dwellings	TBA	Dedication of residential dwellings to the council to the value of \$5,000,000.	\$5,000,000
Total				\$11,839,878

Table 2: Better Planning Outcome Items and Values

The new laneway intersecting the site would be built and dedicated, and allow the eastwards continuation of Loftus Lane. The land dedicated for the laneway would total 901sq.m. Based on an assumed value of land contribution of \$5,000 per sq.m, the value of land contribution of the laneway would be \$4.5 million. The lane will also provide some (unquantified) economic benefits, by:

- allowing access to basement parking, rather than off Parramatta Road, Loftus Street, Knight Street or Subway Lane.
- providing a loading dock within the development, removing the need for trucks accessing the site to park along Parramatta Road, Loftus Street, Knight Street or Subway Lane.
- Providing for the future development of other sites along Parramatta Road, and allowing for vehicular access away from Parramatta Road for these properties also in a future development.

Further, under the better planning outcome scenario, it is proposed to dedicate residential dwellings to council to the value of \$5,000,000 for the purpose of affordable housing. This is achieved directly as a result of the better planning outcome. This is consistent, and as a result of councils ambitious affordable housing targets to Collaborate with the NSW Government and industry to facilitate the delivery of affordable housing.

3. Planning Outcome

The PRCUTS aims to “*deliver a high quality, multi-use corridor with improved transport choices, better amenity, and balanced growth of housing and jobs*”. It aims to achieve this through seven key principles for transformation as follows:

Principle	Assessment
1. Housing Choice and Affordability	<p>The Planning Proposal at 7:1 will facilitate an additional 481 dwellings on the site, this is 154 more than would be facilitated under the final Strategy at 5:1.</p> <p>The lower yield is considered a lost opportunity in the context of the need to provide additional housing supply. Increased supply will assist with the issue of affordable housing. Importantly, under the 7:1 scenario, affordable housing is able to be dedicated to council to the value of \$5,000,000.</p>
2. Diverse and resilient economy	<p>The site is within the heart of Homebush, close to the train station and the traditional town centre, which is on the south side of the railway line.</p> <p>The growth in population will reinvigorate the local economy by supporting businesses and creating new retail areas encouraging a vibrant and creative local centre, supporting job growth and new businesses.</p> <p>The mixed-use development facilitates ground floor commercial uses, revitalising Loftus Crescent. A new laneway also facilitates access away from main roads, and facilitates the potential redevelopment or other sites along Parramatta Road in the future.</p>
3. Accessible and connected	<p>The site is within less than 200 metres walking distance from the Homebush railway station ensuring the site has access to available rail capacity and optimises future investment in infrastructure. The Inner West and Leppington Line connects the site to the City of Sydney and Parramatta within 30 minutes, an objective of the Metropolis of Three Cities strategic planning framework.</p> <p>The Planning Proposal supports walking and cycling upgrades and an integrated transport network to support a sustainable community within the site.</p>
4. Vibrant community spaces	<p>The Planning Proposal seeks to achieve a high standard of architecture built around quality public and community spaces, including an 11 metre wide laneway and pedestrian spaces, and significant setbacks and planting/landscaping along Subway Lane, Loftus Crescent and Knight Street.</p> <p>The interface to Parramatta Road is also not omitted from the public benefits, with the setback providing the opportunity to provide an upgraded and purpose-built bus shelter, achievable in front of the site in association with the setback. This will be further progressed in consultation with Transport NSW during the Part 3 process.</p> <p>The better planning outcome associated with an FSR of 7:1 is therefore clearly focussed on providing a better outcome for the existing and future community.</p>

5. Green spaces and links	<p>While the site is close to proposed new open spaces along Powells Creek, which will connect along the Creek to Bicentennial Park, the proposal is supported by a better planning outcome that supports a laneway through link and green edges to development through pavement and road widening. However, the proposed through links would not be dedicated under the 5:1 scenario identified by the PRCUTS.</p>
6. Sustainability and resilience	<p>The Planning Proposal provides for a setback to Parramatta Road to support the vision of the PRCUTS of an active street frontage. Due to heritage constraints and established existing development, the frontage of the subject block is not identified as “green edge setback”, however, a 3 metre setback can still be provided to allow for the bus stop improvement, some embellishment, and active uses to Parramatta Road.</p> <p>Further, generous setbacks and land dedication is proposed to Subway Lane, Knight Street and most importantly Loftus Crescent to provide a soft transition and generous landscaping and tree planting. The vision for the development will be to make the area a much more attractive pedestrian environment for people to move around.</p> <p>The Planning Proposal will achieve car parking rates in accordance with the RMS Guide to Traffic Generating Developments, however will support green transport through a Transport Plan, encouraging use of nearby cycleways and rail network reducing car dependency (page 20 of Traffic Impact Assessment).</p> <p>Importantly, housing affordability is a particular issue in the Strathfield government area, as identified by the Strathfield LSPS. The better planning outcome proposes to dedicated residential development to the value of \$5,000,000 for the purpose of affordable housing.</p>
7. Delivery	<p>The urban design concept was originally prepared in 2014 and submitted to UrbanGrowth NSW during the exhibition of the draft Strategy. It has now been four years since the concept was first proposed, which is a significant time in the provision of housing in a key location. Notwithstanding, the Planning Proposal has been able to respond and align with the emerging strategic planning framework since the release of the PRCUTS.</p> <p>The subject site is within the Precinct release 2016-2023 area and the concept has been rigorously tested over a period of time. The Planning Proposal will allow for further interrogation across all Government sectors and the community. Further assessment will continue during the Part 3 and Part 4 processes. Notwithstanding, the delivery of much needed housing in this location can be realised in the short term with a number of public and infrastructure benefits that create a better planning outcome.</p>

Table 3: PRCUTS key principles for transformation

The Homebush Precinct is located immediately northwest of Strathfield Town Centre and Strathfield Rail Station. It is the largest of the eight Precincts along the Corridor and extends from the Western Rail Line northwards along the Northern Rail Line into Concord West.

The Planning Proposal also aims to contribute to the vision for the Homebush Precinct by providing a mix of housing, commercial and retail spaces to activate Parramatta Road and Loftus Crescent, and improve permeability and connectivity through the site:

Vision: “Homebush Precinct will become a new, mixed use precinct for the Corridor, housing a new community of residents attracted to the area for its high amenity and access to employment at Parramatta CBD and Sydney Olympic Park. The precinct will provide a long term supply of housing stock to meet increasing demand as Sydney Olympic Park grows into a new city”.

The planning and development concept has therefore been prepared in accordance with the objects of the Strategy and the requirements of the Apartment Design Guide, as follows:

- Define streets through built-form scale that addresses and defines the streetscape.
- Develop sites with landscape setbacks.
- Limit height on street frontages
- Locate taller building elements away from the street or public domain using setbacks above the low scale street walls or podiums
- Setback a minimum of 4m above lower level streetwall elements
- Provide appropriate setbacks to adjoining development

In doing so the Strategy seeks to strengthen links and connections in order to improve access to urban spaces, open space, public transport and nearby nodes such as Parramatta; activate building frontages; reinforce key streets; and break up long blocks with new lanes and high-quality pedestrianised priority links. The figure below is an extract of the desired ‘Homebush Open Space and Active Transport’ requirements from the Strategy.

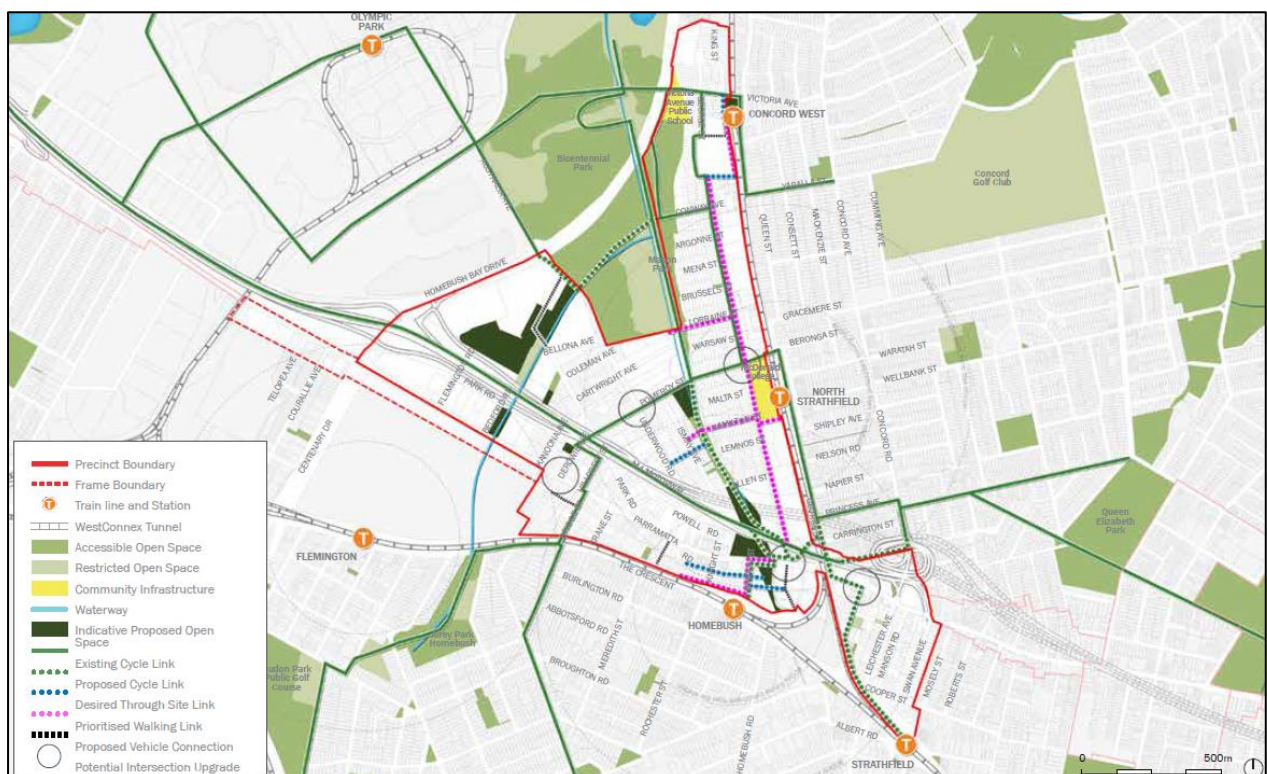


Figure 2: PRCUTS Homebush Open Space and Active Transport' requirements

The relationship of future development facilitated by the Planning Proposal has undergone a rigorous design process of the relationship of the built form to the public realm. A Landscape Plan has been prepared by Geoscapes Landscape Architects to support the urban design outcomes identified by Aleksandar Projects, both attached to the Planning Proposal.

The Planning Proposal has been able to facilitate the objectives identified in the 'Open Space and Active Transport' diagram above, in addition to active frontages and facilitating wider pedestrian spaces to accommodate the high pedestrian movement areas identified by the 'Homebush Street Function' diagram under the PRCUTS.

4. Public Benefit

The Parramatta Road Corridor Urban Transformation Strategy identified a number of opportunities and desired outcomes in relation to open space, linkages and connections and the public domain within the Homebush Precinct (page 97). The better planning outcome has sought to deliver these objectives central to the justification against the Section 9.1 Direction:

- Leverage new development to provide new open space, high quality and active public domains and new through-site links,
- Capitalise on development potential around transport nodes, including Strathfield, Flemington, Homebush,
- Reduce car dependency by improving access to public and active transport infrastructure,
- Break up large blocks with laneways and through site links where possible, and
- Facilitate site amalgamation to provide opportunities for master-planned redevelopment which delivers good public open space outcomes and other benefits

The site is extremely close to the Homebush station, providing access to public transport infrastructure. Further, the above objectives are delivered through the better planning outcome as follows:

Affordable Housing

In an interview in March 2017, the Planning Minister reinforced the government's housing strategy was a priority and would be framed around the principles of affordability, choice and growth.

In developing this strategy, the Minister suggested that extra dedicated affordable housing units could be encouraged by allowing developers to build higher, such as allowing developers to build two additional storeys on their developments, with one dedicated to affordable housing.

The better planning outcome proposes such a bonus incentive provision. Where a density of 7:1 is achieved, a dedication of affordable housing to council is proposed. The quantum of residential development to be dedicated is to be to the value of \$5,000,000. This achieves the Governments objectives to facilitate housing affordability, choice and growth.

Dedicated Public Laneway

The public laneway is a desired connection through the site, acting as an extension to Loftus Lane. The better planning outcome seeks to dedicate 901sq.m of land to Council to facilitate the laneway extension. With pedestrian landscaping this will create up to potentially a 16-metre-wide, two way vehicular and pedestrian connection. Based on an assumed value of land contribution of \$5,000 per sq.m, the value of land contribution of the laneway would be \$4.5 million.

This provides a huge community benefit by connecting Knight Street to Subway Lane in addition to providing access to all other properties that front Parramatta Road and unlocking their future development.

Further, future development will also facilitate a through link to Parramatta Road where future development will be setback 3 metres at the ground level. This will support an active frontage and a proposed upgrade to bus shelter facilities. Given the constrained nature of Parramatta Road (heritage and existing established development) and the unknown timing of future development, this provides an excellent opportunity to provide a through link connecting a new bus shelter with Loftus Crescent and up to Homebush train station.



Figure 3: Loftus Land dedication and embellishment

Wide Active Frontages

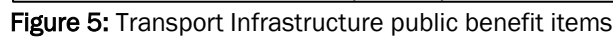
Buildings are proposed to be setback at least 4 metres to provide for wide active spaces with dedicated sections to Council. It is proposed to dedicate land on the site, which will facilitate the creation of six new parking spaces on the northern side of Loftus Street (the southern boundary of the site), an on-road cycle lane and a wider footpath for pedestrians. This will remove parking from Loftus Crescent and improve vehicular movements and access. The land dedicated could total 258m². It is estimated that the value of the land contribution and provision of the new parking bays and the bicycle lane would be approximately \$1.3 million.



Figure 4: Street Sections – Parramatta Road and Loftus Crescent

Infrastructure requirements

The Traffic Impact Assessment submitted with the planning proposal considers a number of public benefit recommendations associated with transport infrastructure. These benefits are considered in detail in the report and summarised in the diagram below, extracted from the report.



1. Bicycle travel path and facilities associated with the widening of Loftus Crescent. This facilitates a separated on road cycleway path in each direction achieved through the removal of on-street parking as parking bays are achieved. This has been discussed with Transport NSW at a meeting of 22 March 2018. The concept was supported.
2. Provision of parking bays. Loftus Crescent has been widened to allow for six 2.4 metre wide indented parking bays along the frontage to Loftus Crescent.
3. New pedestrian pathways along Knight Street, Loftus Crescent and Subway Lane associated with the setback, which is proposed to be dedicated to Council.
4. New bus shelter and upgrades on Parramatta Road.
5. Car share spaces.
6. End user trip facilities for cyclists.

5. Government Policy

Since the then Minister for Planning announced the PRCUTS on 9 November 2016, the NSW Government has experienced new Premier's and new Planning Minister's over the 7 years.

The consistent theme of NSW Premier's and Planning Minister's has been, amongst other things, to boost the economy through the creation of jobs and increase the amount of affordable housing with a renewed emphasis on supply side solutions.

The Planning Minister has committed to working across Government to make housing more affordable. NSW is currently struggling with affordability of housing in a state where the Sydney median house price has topped \$1.1 million and where the state capital has been labelled as the world's second-least affordable city, behind Hong Kong (*US Demographia International Housing Affordability Survey, 2016*).

This emphasis on supply side solutions to affordable housing has occurred following the release of the Parramatta Road Corridor Urban Transformation Strategy. There is a very real opportunity to meet the objectives of the Government on a large site within walking distance to the Homebush train station and well connected to Parramatta and the City of Sydney. While many sites within the Parramatta Road Corridor may be fragmented, contain complex strata ownership or be constrained by heritage items or already developed, the subject site has the ability to provide significant housing growth beyond that identified by the final Strategy, while providing significant amenity and infrastructure benefits to the community and economic benefits to Council.

The COVID-19 pandemic has also had an impact on the supply solutions. the 'Supporting Economic Recovery in NSW' report, released on 14 May 2020 to help the state recover from the COVID-19 pandemic argues the most immediate challenges are rapidly rising unemployment, the widespread failure of small and medium enterprises, falling incomes and wealth, and rising inequality and disadvantage. The ideal policy response would simultaneously address these issues, with greater investment in social and affordable housing presenting a possible solution, the report states.

"This is a prime opportunity for the NSW government to work with the community housing sector and the construction industry to invest in social and affordable housing, and support jobs, SMEs and NSW's vulnerable citizens", NCOSS chief executive Joanna Quilty is quoted as saying when the report was released.

Therefore, the inconsistency with the Strategy and Section 9.1 Direction is considered minor in the context of the Government's renewed policy principle to increase housing supply. The subject site is an appropriate location and can be redeveloped in the short term given the amalgamated land ownership pattern.

(c) Is of minor significance

As discussed, this brief has demonstrated that the 'out of sequence' checklist does not apply, and the Planning Proposal achieves a better planning outcome than that recommended by the Strategy. Further, infrastructure improvements can be achieved through the Planning Proposal in accordance with the Section 9.1 Direction in relation to a different FSR to that preferred by the PRCUTS.

Notwithstanding, this brief has also demonstrated that the difference between a concept at 5:1 and 7:1 being 154 units, is of minor significance. The Traffic Impact Assessment has demonstrated that the surrounding intersections continue to perform well under both traffic generating scenarios, but the better planning outcome provides for additional infrastructure improvements; community amenity provisions; affordable housing; and significant economic benefits to Council.

6. Conclusion

It is therefore requested that the Secretary (or delegate) of the Department of Planning and Environment agree to any inconsistency with S9.1 Direction 7.3 Parramatta Road Corridor Urban Transformation Strategy for the following reasons:

- The Planning Proposal is consistent with the Strategic Vision, Actions and Principles of the Parramatta Road Corridor Urban Transformation Strategy.
- The subject site is identified as being within the Precinct release 2016-2023 and therefore is considered to be 'in sequence' for the purpose of staging of planning proposals and redevelopment.
- The Planning Proposal is consistent with the Parramatta Road Corridor Urban Transformation Strategy.
- The Planning Proposal (at 7:1) will facilitate a better planning outcome as follows:
 - Dedication to council of residential development, to a value of \$5,000,000 for the purpose of affordable housing.
 - A dedicated public laneway connecting Subway Lane to Knight Street. 901sq.m will be dedicated to Council worth \$4.5 million. This would otherwise need to be acquired under a 5:1 scenario.
 - Dedication of land within the setbacks to provide for additional pedestrian spaces, landscaping and road improvements to Loftus Crescent, including two way cycleway and parking bays.
 - New and upgraded bus facilities and shelter on Parramatta Road.
- The Homebush Precinct seeks to promote laneways and through site links with the purpose of breaking up large blocks and street walls. The better planning outcome has been able to achieve this through the dedication of a two-way laneway. This will create significant social benefits.
- The dedication of a laneway, the dedication of setback space for pedestrian improvements and the dedication of affordable housing will have significant economic benefits to Council and the State.
- The Traffic Impact Assessment has demonstrated that the difference between an FSR of 5:1 to 7:1 will not change the level of service of any intersection surrounding the site.
- The difference between a concept at 5:1 and 7:1 is 154 apartments. This is not significant in the context of the site's location close to public transport within an urban renewal area. The additional dwelling yield will be supported by the outcomes sought through this proposal, including the laneway and considerable affordable housing provision
- If the proposed incentive control is applied to this site, significantly better outcomes can be achieved for the site as discussed throughout this submission.