

**Meeting Date: Tuesday 13 December 2016**  
**Location: Council Chambers, Level 1A, 1 Pope Street, Ryde**  
**Time: 8.00pm**

*Council Meetings will be recorded on audio tape for minute-taking purposes  
as authorised by the Local Government Act 1993. Council Meetings will also be webcast.*

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**1 CONFIRMATION OF MINUTES - Council Meeting held on 22 November 2016**

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**Report prepared by:** Senior Coordinator - Governance  
**File No.:** CLM/16/1/1/2 - BP16/1517

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**REPORT SUMMARY**

In accordance with Council's Code of Meeting Practice, a motion or discussion with respect to such minutes shall not be in order except with regard to their accuracy as a true record of the proceedings.

**RECOMMENDATION:**

That the Minutes of the Council Meeting 13/16, held on 22 November 2016 be confirmed.

**ATTACHMENTS**

- 1 MINUTES - Ordinary Council Meeting - 22 November 2016**

**ITEM 1 (continued)**

**ATTACHMENT 1**

**Council Meeting  
MINUTES OF MEETING NO. 13/16**

**Meeting Date:** Tuesday 22 November 2016  
**Location:** Council Chambers, Level 1A, 1 Pope Street, Ryde  
**Time:** 7.05pm

**Councillors Present:** The Mayor, Councillor Pickering and Councillors Etmekdjian, Laxale, Li, Maggio, Pendleton, Perram, Stott and Yedelian OAM.

**Apologies:** Councillors Salvestro-Martin and Simon.

**Leave of Absence:** Nil.

**Staff Present:** Acting General Manager, Acting Chief Operating Officer, Acting Director – Corporate and Community Services, Acting Director – City Strategy and Planning, Director – City Works and Infrastructure, General Counsel, Acting Chief Financial Officer, Acting Manager – Communications, Customer Service and Events, Executive Officer – Ryde Civic Hub, Senior Coordinator – Parks and Recreation, Senior Coordinator – Traffic, Transport and Development, Senior Coordinator – Governance and Administration Officer – Councillor Support.

**PRAYER**

Reverend Nicholas Fried of the Eastwood Uniting Church was present and offered prayer prior to the commencement of the meeting.

**DISCLOSURES OF INTEREST**

Councillor Pendleton disclosed a Less than Significant Non-Pecuniary Interest in Item 2(3) – 6 and 10 Clermont Avenue and 7, 8 and 9 Jennifer Street, Ryde (LDA2016/0051) for the reason that some of the people who have made submissions are known to her.

Councillor Pendleton disclosed a Less than Significant Non-Pecuniary Interest in Item 3 – Report of the Ryde Civic Hub Committee Meeting 9/16 held on 8 November 2016 for the reason that her continued and consistent opposition to the sale/redevelopment of the Civic Centre public land with the inclusion of high rise residential development is consistent with her core commitment made to the electorate at the 2012 elections.

**TABLING OF PETITONS**

No Petitions were tabled.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**PUBLIC PARTICIPATION ON ITEMS LISTED ON THE AGENDA**

**RESOLUTION:** (Moved by Councillors Laxale and Pendleton)

That the speakers who submitted a Request to Address Council on Items Listed on the Agenda on an Item previously considered by the Planning and Environment Committee Meeting 9/16 held on 8 November 2016 be allowed to address the meeting, the time being 7.12pm.

**Record of Voting:**

For the Motion: Unanimous

**PUBLIC PARTICIPATION ON ITEMS LISTED ON THE AGENDA**

The following persons then addressed the Council:-

<b>Name</b>	<b>Topic</b>
Tina Catalano	<b>Item 2(3)</b> – 6 and 10 Clermont Avenue and 7, 8 and 9 Jennifer Street, Ryde – LDA2016/0051
Lyn Page	<b>Item 2(3)</b> – 6 and 10 Clermont Avenue and 7, 8 and 9 Jennifer Street, Ryde – LDA2016/0051
James Brooks	<b>Item 2(3)</b> – 6 and 10 Clermont Avenue and 7, 8 and 9 Jennifer Street, Ryde – LDA2016/0051

**PUBLIC PARTICIPATION ON ITEMS NOT LISTED ON THE AGENDA**

No addresses were made to Council.

**ORDER OF BUSINESS**

**RESOLUTION:** (Moved by Councillors Pendleton and Laxale)

That Council now consider the following Item, the time being 7.24pm:-

- **Item 2(3)** – 6 and 10 Clermont Avenue and 7, 8 and 9 Jennifer Street, Ryde - LDA2016/0051.

**Record of Voting:**

For the Motion: Unanimous

**ITEM 1 (continued)**

**ATTACHMENT 1**

**COUNCIL REPORT**

**2 REPORT OF THE PLANNING AND ENVIRONMENT COMMITTEE MEETING 9/16 held on 8 November 2016**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

That Council determine Item 3 of the Planning and Environment Committee report 9/16, held on 8 November 2016 noting that Items 1, 2 and 4 were dealt with by the Committee within its delegated powers.

**Record of Voting:**

For the Motion: Unanimous

**3 6 AND 10 CLERMONT AVENUE AND 7, 8 AND 9 JENNIFER STREET, RYDE - LOT Y & X IN DP 418160 AND LOTS 7, 8 & 9 DP 28069. Development Application – Demolition including tree removal; staged construction of seniors housing development comprising a residential care facility and in-fill self-care housing over basement parking. LDA2016/0051.**

Note: Councillor Pendleton disclosed a Less than Significant Non-Pecuniary Interest in this Item for the reason that some of the people who have made submissions are known to her.

Note: Tina Catalano, Lyn Page and James Brooks addressed the meeting in relation to this Item.

Note: A Memorandum from the Acting Director – City Strategy and Planning dated 17 November 2016 was tabled in relation to this Item and a copy is ON FILE.

Note: Documentation and two (2) photographs from Tina Catalano were tabled in relation to this Item and a copy is ON FILE.

**RESOLUTION:** (Moved by Councillors Etmekdjian and Pendleton)

That consideration of this matter be deferred until either the next Planning and Environment Committee Meeting or the first Planning and Environment Committee Meeting in 2017 to allow for a mediation to occur between the applicant and the objectors who addressed the Planning and Environment Committee Meeting on the 8 November 2016.

**Record of Voting:**

For the Motion: Unanimous

**ITEM 1 (continued)**

**ATTACHMENT 1**

**MAYORAL MINUTES**

**MM19/16 WEST RYDE TOWN CENTRE – CURRENT ISSUES AND FUTURE INITIATIVES**

**RESOLUTION:** (Moved by The Mayor, Councillor Pickering and Councillor Yedelian OAM)

- (a) That Council endorse a meeting prior to Friday, 2 December 2016 between The Mayor, interested Councillors, senior staff of the City of Ryde and representatives from West Ryde Chamber of Commerce, Coles and Woolworths West Ryde to discuss current issues and future initiatives for the West Ryde Town Centre.
- (b) That a further report on the agreed outcomes from the meeting be provided to Council at its meeting on 13 December 2016.

**Record of Voting:**

For the Motion: Unanimous

**COUNCIL REPORTS**

**1 CONFIRMATION OF MINUTES - Council Meeting held on 25 October 2016**

**RESOLUTION:** (Moved by Councillors Stott and Maggio)

That the Minutes of the Council Meeting 12/16, held on 25 October 2016 be confirmed.

**Record of Voting:**

For the Motion: Unanimous

**2 REPORT OF THE PLANNING AND ENVIRONMENT COMMITTEE MEETING 9/16 held on 8 November 2016**

- 3 6 AND 10 CLERMONT AVENUE AND 7, 8 AND 9 JENNIFER STREET, RYDE - LOT Y & X IN DP 418160 AND LOTS 7, 8 & 9 DP 28069. Development Application – Demolition including tree removal; staged construction of seniors housing development comprising a residential care facility and in-fill self-care housing over basement parking. LDA2016/0051.**

Note: This matter was dealt with earlier in the meeting as detailed in these Minutes.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**3 REPORT OF THE RYDE CIVIC HUB COMMITTEE MEETING 9/16 held on 8 November 2016**

Note: Councillor Pendleton disclosed a Less than Significant Non-Pecuniary Interest in this Item for the reason that her continued and consistent opposition to the sale/redevelopment of the Civic Centre public land with the inclusion of high rise residential development is consistent with her core commitment made to the electorate at the 2012 elections.

Note: Councillor Li left the meeting at 8.04pm and was not present for consideration or voting on this Item.

**RESOLUTION:** (Moved by Councillors Stott and Etmekdjian)

That Council determine all Items 1 and 2 of the Ryde Civic Hub Committee Meeting 9/16, held on 8 November 2016 in accordance with the Ryde Civic Hub Committee Terms of Reference.

**Record of Voting:**

For the Motion: Unanimous

**1 CONFIRMATION OF MINUTES - Ryde Civic Hub Committee Meeting held on 11 October 2016**

Note: Councillor Li was not present for consideration or voting on this Item.

**RESOLUTION:** (Moved by Councillors Stott and Etmekdjian)

That the Minutes of the Ryde Civic Hub Committee 8/16, held on 11 October 2016, be confirmed.

**Record of Voting:**

For the Motion: Unanimous

Note: Councillor Li returned to the meeting at 8.07pm.

**2 RYDE CIVIC HUB INTERNATIONAL DESIGN COMPETITION STATUS REPORT 13 (NOVEMBER 2016)**

Note: A Memorandum from the Acting Chief Operating Officer dated 18 November 2016 was tabled in relation to this Item and a copy is ON FILE.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**RESOLUTION:** (Moved by Councillors Stott and Etmekdjian)

- (a) That the Ryde Civic Hub Committee receives and notes the content of the Status Report 13 (November 2016), subject to the economic analysis being undertaken in relation to the car parking.
- (b) That the Ryde Civic Hub Committee notes and accepts the outcome of the public voting for the Ryde Civic Hub Naming Campaign.
- (c) That the Ryde Civic Hub Committee accepts the public announcement on Council's website on 9 November 2016, of the most popular name for the Civic Hub Site, identified in the Ryde Civic Hub Naming Campaign, including the names of the ten gift card winners.
- (d) That Council adopt the name 'Ryde Central' for the Ryde Civic Hub site, which was voted by the public as the most popular name from the recent Ryde Civic Hub Naming Competition.
- (e) That Council delegate authority to the Acting General Manager, to formally secure the name of the Ryde Civic Hub site as "Ryde Central" with the Geographical Names Board of New South Wales.

**Record of Voting:**

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Laxale, Li, Maggio, Perram, Stott and Yedelian OAM

Against the Motion: Councillor Pendleton

**4 REPORT OF THE WORKS AND COMMUNITY COMMITTEE MEETING 9/16 held on 15 November 2016**

Note: Councillor Yedelian OAM left the meeting at 8.13pm and was not present for consideration or voting on this Item.

**RESOLUTION:** (Moved by Councillors Stott and Laxale)

That Council determine Items 4, 5 and 8(h) of the Works and Community Committee report 9/16, held on 15 November 2016 noting that Items 1, 2, 3, 6, 7 and 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(i) and 9 were dealt with by the Committee within its delegated powers.

**Record of Voting:**

For the Motion: Unanimous

Note: Councillor Yedelian OAM returned to the meeting at 8.15pm.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**4 CONCEPT DESIGN FOR SHARED USE PATHWAY - Shrimptons Creek to Blaxland Road, Eastwood**

**RESOLUTION:** (Moved by Councillors Stott and Perram)

That this matter be referred to the Bicycle Advisory Committee for further consideration and then reported back to the Works and Community Committee.

**Record of Voting:**

For the Motion: Unanimous

**5 USER GROUP CONTRIBUTIONS - SYNTHETIC SPORTS SURFACE IMPLEMENTATION PLAN**

**MOTION:** (Moved by Councillors Stott and Perram)

- (a) That Council accept the financial contributions made for the construction of synthetic sports surfaces in the City of Ryde by the community sporting groups as detailed in this report.
- (b) That a total amount of \$375,000 made up of these contributions, as detailed in part (a), be added to the Synthetic Surfaces Expansion Program and be consolidated in the next quarterly review.
- (c) That future field allocation for the synthetic surfaces at ELS Hall Park Field 1 and Christie Park Field 1 and 2 is managed in accordance with Council's existing Sportsground Allocation Policy and consistent with the Christie Park Memorandum of Understanding where applicable.
- (d) That Council staff continue to explore further funding contribution options for this project and consider a more fair and equitable funding model for future projects.
- (e) That Council as part of its annual grounds allocation also includes the collection of the club or association financial statements.
- (f) That a further report be provided back to Council on the shared allocation arrangements of the soon to be completed synthetic surfaces.

**AMENDMENT:** (Moved by Councillors Laxale and Pendleton)

- (a) That Council accept the financial contributions made for the construction of synthetic sports surfaces in the City of Ryde by the community sporting groups as detailed in this report.

**ITEM 1 (continued)**

**ATTACHMENT 1**

- (b) That a total amount of \$375,000 made up of these contributions, as detailed in part (a), be added to the Synthetic Surfaces Expansion Program and be consolidated in the next quarterly review.
- (c) That future field allocation for the synthetic surfaces at ELS Hall Park Field 1 and Christie Park Field 1 and 2 is managed in accordance with Council's existing Sportsground Allocation Policy and consistent with the Christie Park Memorandum of Understanding.
- (d) That Council staff continue to explore further funding contribution options for this project.

On being put to the Meeting, the voting on the Amendment was one (1) for and eight (8) against. The Amendment was **LOST**. The Motion was then put and **CARRIED**.

**Record of Voting:**

For the Amendment: Councillor Laxale

Against the Amendment: The Mayor, Councillor Pickering, Councillors Etmekdjian, Li, Maggio, Pendleton, Perram, Stott and Yedelian OAM

**RESOLUTION:** (Moved by Councillors Stott and Perram)

- (a) That Council accept the financial contributions made for the construction of synthetic sports surfaces in the City of Ryde by the community sporting groups as detailed in this report.
- (b) That a total amount of \$375,000 made up of these contributions, as detailed in part (a), be added to the Synthetic Surfaces Expansion Program and be consolidated in the next quarterly review.
- (c) That future field allocation for the synthetic surfaces at ELS Hall Park Field 1 and Christie Park Field 1 and 2 is managed in accordance with Council's existing Sportsground Allocation Policy and consistent with the Christie Park Memorandum of Understanding where applicable.
- (d) That Council staff continue to explore further funding contribution options for this project and consider a more fair and equitable funding model for future projects.
- (e) That Council as part of its annual grounds allocation also includes the collection of the club or association financial statements.
- (f) That a further report be provided back to Council on the shared allocation arrangements of the soon to be completed synthetic surfaces.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**Record of Voting:**

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Li, Maggio, Pendleton, Perram, Stott and Yedelian OAM

Against the Motion: Councillor Laxale

**8 TRAFFIC AND PARKING MATTERS PRESENTED TO THE RYDE TRAFFIC COMMITTEE MEETING HELD ON 15 SEPTEMBER 2016**

**RESOLUTION:** (Moved by Councillors Stott and Perram)

- (h) (i) That Council installs delineated linemarking on driveways along the full length of both sides of Sobraon Road, Marsfield to help improve access.
- (ii) That a further review of this solution be undertaken in 12 months time and be reported back to the Works and Community Committee for its consideration.

**Record of Voting:**

For the Motion: Unanimous

**5 REPORT OF THE FINANCE AND GOVERNANCE COMMITTEE MEETING 9/16 held on 15 November 2016**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

That Council determine all Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Finance and Governance Committee Meeting 9/16, held on 15 November 2016 in accordance with the Finance and Governance Committee Terms of Reference.

**Record of Voting:**

For the Motion: Unanimous

**1 CONFIRMATION OF MINUTES - Finance and Governance Committee Meeting held on 20 September 2016**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Pendleton)

That the Minutes of the Finance and Governance Committee 8/16, held on 20 September 2016, be confirmed.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**Record of Voting:**

For the Motion: Unanimous

**2 INVESTMENT REPORT - September 2016**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That Council endorse the report of the Acting Chief Financial Officer dated 1 October 2016 on Investment Report – September 2016.
- (b) That Council invite its investment advisor to the next Finance and Governance Committee Meeting to further explain Council's investment returns and benchmark.

**Record of Voting:**

For the Motion: Unanimous

**3 INVESTMENT REPORT - October 2016**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That Council endorse the report of the Acting Chief Financial Officer dated 1 October 2016 on Investment Report – October 2016.
- (b) That Council invite its investment advisor to the next Finance and Governance Committee Meeting to further explain Council's investment returns and benchmark.

**Record of Voting:**

For the Motion: Unanimous

**4 SEPTEMBER QUARTERLY REVIEW REPORT - FOUR YEAR DELIVERY PLAN 2016-2020 AND 2016/2017 OPERATIONAL PLAN**

Note: Councillor Perram left the meeting at 8.53pm and was not present for consideration or voting on this Item.

Note: A Memorandum from the Acting General Manager dated 22 November 2016 was tabled in relation to this Item and a copy is ON FILE.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That the report of the Acting Chief Financial Officer dated 30 September 2016 on the September Quarterly Review Report - Four Year Delivery Plan 2016-2020 and One Year Operational Plan 2016/2017, *Quarter One, July – September 2016* be received and endorsed.
- (b) That the proposed budget adjustments included in this report resulting in a net increase of \$3.25 million to Council's Working Capital of a projected balance as at 30 June 2017 of \$7.48 million, be endorsed and included in the 2016/2017 Budget.
- (c) That, subject to Council endorsing part (b), Council endorse a transfer of \$3.4 million to the Accommodation Reserve for the future lease payment of the North Ryde Office Building (resulting in the available Working Capital having a projected balance of \$4.08 million as at 30 June 2017), and this to be included in the 2016/2017 Budget.
- (d) That the proposed transfers to and from Reserves as detailed in the report, and included as budget adjustments, totalling a net increase in Transfers to Reserves of \$1.12 million be endorsed.
- (e) That the Certificate of the Responsible Accounting Officer dated 3 November 2016 be endorsed.
- (f) That Council endorse the Projects recommended for cancellation, deferral, being placed on hold or proposed to be carried over as detailed in the Report.

**Record of Voting:**

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Li, Maggio, Pendleton, Stott and Yedelian OAM

Against the Motion: Councillor Laxale

Note: Councillor Perram returned to the meeting at 8.55pm.

**5 ANNUAL PECUNIARY INTEREST RETURNS**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

That the Register of Disclosure of Pecuniary Interest Returns is tabled as required under Section 450A of the *Local Government Act*.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**Record of Voting:**

For the Motion: Unanimous

**6 ANNUAL REPORTING OF CODE OF CONDUCT COMPLAINTS STATISTICS**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That Council note the **ATTACHED** table of Code of Conduct complaints for 1 September 2015 to 31 August 2016.
- (b) That Council provide these statistics to the Office of Local Government as required by the Model Code of Conduct – Complaints Procedure.

**Record of Voting:**

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Li, Maggio, Pendleton, Perram, Stott and Yedelian OAM

Against the Motion: Councillor Laxale

**7 CODE OF MEETING PRACTICE**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

That Council adopt the Code of Meeting Practice (**ATTACHED – CIRCULATED UNDER SEPARATE COVER**).

**Record of Voting:**

For the Motion: Unanimous

**8 CITY OF RYDE - END OF TERM REPORT**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That Council endorse this End of Term Report 2012-2016; and
- (b) That Council forward a copy of the End of Term Report 2012-2016 to the Office of Local Government and to the Local, State and Federal Government Members of Parliament; and

**ITEM 1 (continued)**

**ATTACHMENT 1**

- (c) That Council publish a copy of the End of Term Report 2012-2016 on its website.

**Record of Voting:**

For the Motion: Unanimous

**9 RYDE YOUTH COUNCIL ADVISORY COMMITTEE - MEMBERSHIP RESIGNATIONS AND NEW NOMINATIONS**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That Council endorse the nominations of the following individuals for membership on the Ryde Youth Council Advisory Committee:
- Mr James Kim
  - Mr Philip Mathew
  - Mr Brendon Zhu
  - Miss Sophie Xiao
  - Mr Joseph Koo
  - Miss Yan Zhai
- (b) That Council accepts the resignations of the following individuals from the Ryde Youth Council Advisory Committee:
- Miss Venetia Cameron
  - Miss Aigerim Tulekova
  - Miss Nicola Graham
  - Mr Edward Fang
- (c) That Council thanks the outgoing committee members for their contributions and service.

**Record of Voting:**

For the Motion: Unanimous

**10 OVERVIEW OF THE RYDE AQUATIC LEISURE CENTRE UPDATE AND SURF RYDER OPERATIONS - as at 30 September 2016**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That Council receive and note this Quarter 1 report on both the Ryde Aquatic Leisure Centre and Surf Ryder's performance.

**ITEM 1 (continued)**

**ATTACHMENT 1**

- (b) That Council note the update of the Strategic and Master Plan for the Olympic Park project precinct that includes the Ryde Aquatic Leisure Centre, Next Generation, tennis courts, car park and the adjoining facilities existing within Olympic Park.
- (c) That Council endorse an independent review of RALC's operations (including the operational effectiveness of the Surf Ryder), at a cost of approximately \$10,000, during Quarter 3 and report the results back to Council by June 2017.

**Record of Voting:**

For the Motion: Unanimous

**11 CLASSIFICATION OF LAND - 100-104 ROWE STREET, EASTWOOD**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

That the property located at 100-104 Rowe Street Eastwood be classified operational, to be reviewed at the earlier of, the expiration of the retail leases in 2024 *or* the completion of the flood mitigation works.

**Record of Voting:**

For the Motion: Unanimous

**12 REQUEST FOR TENDER - COR-RFT-11/16 - FIRE PROTECTION SERVICES PERIOD CONTRACT**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That Council accepts the tender from Chubb Fire and Security Pty Ltd, for the statutory programmed maintenance and testing of the fire protection equipment within the City of Ryde buildings to the amount of \$60,000 per annum for a three (3) year period with an option to extend for a further two (2) years as recommended in the Tender Evaluation Report.
- (b) That Council accepts the tenders from Newsound Fire Services Pty Ltd and Tyco International (Wormald) for quoting on reactive repairs of the fire protection equipment within the City of Ryde buildings.

**ITEM 1 (continued)**

**ATTACHMENT 1**

- (c) That Council delegate to the Acting General Manager the authority to enter into a contract with Chubb Fire and Security Pty Ltd, Newsound Fire Services Pty Ltd and Tyco International (Wormald Pty Ltd) on the terms contained within the tender and for minor amendments to be made to the contract documents that are not of a material nature.
- (d) That Council advise all the respondents of Council's decision.

**Record of Voting:**

For the Motion: Unanimous

**13 TRANSPORT INFRASTRUCTURE CONTRIBUTION DEED (TIC DEED) - NORTH RYDE STATION PRECINCT**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Pendleton)

That this matter be deferred for consideration in Closed Confidential Session.

**Record of Voting:**

For the Motion: Unanimous

**14 ADVICE ON COURT ACTIONS**

**RESOLUTION:** (Moved by Councillors Etmekdjian and Stott)

That this matter be deferred for consideration in Closed Confidential Session.

**Record of Voting:**

For the Motion: Unanimous

**PRECIS OF CORRESPONDENCE FOR CONSIDERATION**

**1 LACHLANS LINE DEVELOPMENT - LETTER OF APPRECIATION FROM URBANGROWTH NSW**

**RESOLUTION:** (Moved by Councillors Stott and Etmekdjian)

- (a) That the correspondence be received and noted.

**ITEM 1 (continued)**

**ATTACHMENT 1**

- (b) That Council acknowledges the efforts of Council staff, in particular that of Dyalan Govender, Council's Acting Manager - Strategic City and the City Strategy and Planning Directorate.

**Record of Voting:**

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Laxale, Li, Pendleton, Perram, Stott and Yedelian OAM

Against the Motion: Councillor Maggio

**LATE PRECIS OF CORRESPONDENCE FOR CONSIDERATION**

**2 OFFICE OF LOCAL GOVERNMENT - DETERMINATION REGARDING VACANT CIVIC OFFICE FOLLOWING RESIGNATION OF COUNCILLOR CRAIG CHUNG**

**RESOLUTION:** (Moved by Councillors Stott and Etmekdjian)

That the correspondence be received and noted.

**Record of Voting:**

For the Motion: Unanimous

**NOTICES OF RESCISSION**

**1 NOTICE OF RESCISSION: NOMINATION OF COUNCIL MEMBERS TO THE SYDNEY PLANNING PANELS - Councillor Jane Stott, Councillor Roy Maggio, The Mayor, Councillor Bill Pickering**

**MOTION:** (Moved by Councillors Stott and Maggio)

That Council rescind the previous resolution in relation to Precis of Correspondence 1 – NOMINATION OF COUNCIL MEMBERS TO THE SYDNEY PLANNING PANELS, passed at the Council Meeting held on 25 October 2016, namely:-

**PRECIS OF CORRESPONDENCE**

**1 NOMINATION OF COUNCIL MEMBERS TO THE SYDNEY PLANNING PANELS**

(a) *That the correspondence be received and noted.*

(b) *That Council endorse Councillor Pendleton and Councillor Perram with alternates Councillor Stott and Councillor Etmekdjian being confirmed as City of Ryde's representatives for the Sydney Planning Panels to be convened from 21 November 2016 replacing the Joint Regional Planning Panels.*

**ITEM 1 (continued)**

**ATTACHMENT 1**

- (c) *That a copy of the Planning Panels Code of Conduct be circulated to City of Ryde's nominated members.*

On being put to the Meeting, the voting on the Rescission Motion was six (6) for and three (3) against. The Rescission Motion was **CARRIED**.

**Record of Voting:**

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Li, Maggio, Stott and Yedelian OAM

Against the Motion: Councillors Laxale, Pendleton and Perram

Note: Councillor Li requested that the vote on the Notice of Rescission: Precis of Correspondence 1 – Nomination of Council Members to the Sydney Planning Panels be recommitted.

Note: At the request of Councillor Li, The Mayor agreed to recommit the vote regarding the Notice of Rescission: Precis of Correspondence 1 – Nomination of Council Members to the Sydney Planning Panels.

Note: The vote on the Notice of Rescission: Precis of Correspondence 1 – Nomination of Council Members to the Sydney Planning Panels was then recommitted.

On being put to the Meeting, the voting on the Rescission Motion was five (5) for and four (4) against. The Rescission Motion was **CARRIED**.

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Maggio, Stott and Yedelian OAM

Against the Motion: Councillors Laxale, Li, Pendleton and Perram

The matter was then **AT LARGE**.

**RESOLUTION:** (Moved by Councillors Stott and Maggio)

- (a) That the correspondence be received and noted.
- (b) That Council endorse the existing Joint Regional Planning Panel representatives (Councillor Yedelian OAM and Councillor Maggio with alternates Councillor Stott and Councillor Etmekdjian) being confirmed as City of Ryde's representatives for the Sydney Planning Panels to be convened from 21 November 2016 replacing the Joint Regional Planning Panels.

**ITEM 1 (continued)**

**ATTACHMENT 1**

- (c) That a copy of the Planning Panels Code of Conduct be circulated to City of Ryde's nominated members.
- (d) That Councillors representing City of Ryde on State Planning Panels receive payment of \$80 per hour for a minimum of three hours plus travel expenses for attending panel meetings. This payment acknowledges the personal costs incurred by Councillors to attend these meetings which are held in business hours.

**Record of Voting:**

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Maggio, Stott and Yedelian OAM

Against the Motion: Councillors Laxale, Li, Pendleton and Perram

**CLOSED SESSION**

**ITEM 6 - ORGANISATION REVIEW - Refinements to the City of Ryde Organisation Structure**

**Confidential**

This item is classified CONFIDENTIAL under Section 10A(2) of the Local Government Act, 1993, which permits the meeting to be closed to the public for business relating to the following: (a) personnel matters concerning particular individuals (other than councillors).

**ITEM 5(13) – TRANSPORT INFRASTRUCTURE CONTRIBUTION DEED (TIC DEED) – NORTH RYDE STATION PRECINCT**

This item is classified CONFIDENTIAL under Section 10A (2) of the Local Government Act, 1993, which permits the meeting to be closed to the public for business relating to the following: (g) advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

**ITEM 5(14) – ADVICE ON COURT ACTIONS**

This item is classified CONFIDENTIAL under Section 10A (2) of the Local Government Act, 1993, which permits the meeting to be closed to the public for business relating to the following: (g) advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**RESOLUTION:** (Moved by Councillors Maggio and Yedelian OAM)

That the Council resolve into Closed Session to consider the above matters.

**Record of Voting:**

For the Motion: Unanimous

Note: The Council closed the meeting at 9.34pm. The public and media left the chamber.

**CONFIDENTIAL COUNCIL REPORTS**

**6 ORGANISATION REVIEW - Refinements to the City of Ryde Organisation Structure**

**RECOMMENDATION:** (Moved by Councillors Stott and Etmekdjian)

- (a) That Council determines, pursuant to Section 332 of the Local Government Act 1993, that Council's organisation structure be as recommended in this report, and as presented in Attachment 2, including those positions within the organisation structure that are Senior Staff positions, namely General Manager, General Counsel, Director Corporate and Organisational Support Services, Director Customer and Community Services, Director City Planning and Development and Director City Works and Infrastructure.
- (b) That the Acting General Manager implement the organisation structure consistent with the consultation undertaken with Council to date and pursuant to Sections 332, 337, 338 and 340 of the Local Government Act.
- (c) That following endorsement of the revised structure by Council, the Acting General Manager implement the refinements to the organisation structure, as detailed in this report, as soon as practicable, having regard to the consultation obligations required by the NSW Local Government (State) Award 2014.

**Record of Voting:**

For the Motion: Unanimous

**ITEM 1 (continued)**

**ATTACHMENT 1**

**5 REPORT OF THE FINANCE AND GOVERNANCE COMMITTEE MEETING  
9/16 held on 15 November 2016**

**13 TRANSPORT INFRASTRUCTURE CONTRIBUTION DEED (TIC  
DEED) - NORTH RYDE STATION PRECINCT**

**RECOMMENDATION:** (Moved by Councillors Etmekdjian and Stott)

- (a) That Council fund its \$10 million commitment for the Transport Infrastructure Contribution (TIC) Deed from Section 94, noting all works included in the Deed will be incorporated into the revised Section 94 Contributions Plan, due to be reported to Council in March 2017.
- (b) That Council fund its \$10 million commitment to the Deed initially as follows;
  - i. Section 94 to fund the value (to be determined) of Rivett Street and Lucknow Road Intersection Works; and
  - ii. The remainder of the \$10 million to be funded from the Asset Replacement Reserve, noting this will be reimbursed from Section 94 in the future.
- (c) That the Acting General Manager be delegated authority to finalise and subsequently enter into the Transport Infrastructure Contribution (TIC) Deed with the Roads and Maritime Service, on behalf of Council.

**Record of Voting:**

For the Motion: Unanimous

**5 REPORT OF THE FINANCE AND GOVERNANCE COMMITTEE MEETING  
9/16 held on 15 November 2016**

**14 ADVICE ON COURT ACTIONS**

**RECOMMENDATION:** (Moved by Councillors Stott and Yedelian OAM)

That the report of the General Counsel be received.

**Record of Voting:**

For the Motion: The Mayor, Councillor Pickering, Councillors Etmekdjian, Laxale, Li, Pendleton, Perram, Stott and Yedelian OAM

Against the Motion: Councillor Maggio

**ITEM 1 (continued)**

**ATTACHMENT 1**

**OPEN SESSION**

**RESOLUTION:** (Moved by Councillors Stott and Yedelian OAM)

That Council resolve itself into open Council.

**Record of Voting:**

For the Motion: Unanimous

Note: Open Council resumed at 9.47pm.

**RESOLUTION:** (Moved by Councillors Stott and Maggio)

That the recommendations of Items considered in Closed Session be received and adopted as resolutions of Council without any alteration or amendment thereto.

**Record of Voting:**

For the Motion: Unanimous

**NATIONAL ANTHEM**

The National Anthem was sung at the conclusion of the meeting.

The meeting closed at 9.50pm.

CONFIRMED THIS 13TH DAY OF DECEMBER 2016

Chairperson

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**2 REPORT OF THE PLANNING AND ENVIRONMENT COMMITTEE MEETING  
10/16 held on 6 December 2016**

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**Report prepared by:** Senior Coordinator - Governance

**File No.:** CLM/16/1/3/2 - BP16/1518

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**REPORT SUMMARY**

The Minutes of the Planning and Environment Committee Meeting 10/16 held on 6 December 2016 are to be circulated on Thursday, 8 December 2016 after the meeting has been conducted. The Minutes will be listed for confirmation at the next Planning and Environment Committee Meeting.

A report detailing Items which were dealt with by the Committee within its delegated powers, together with any Committee recommendations will be circulated at the same time as the Minutes on Thursday, 8 December 2016.

**3 REPORT OF THE RYDE CIVIC HUB COMMITTEE MEETING 10/16 held on  
6 December 2016**

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**Report prepared by:** Senior Coordinator - Governance  
**File No.:** CLM/16/1/4/2 - BP16/1521

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**REPORT SUMMARY**

The Minutes of the Ryde Civic Hub Committee Meeting 10/16 held on 6 December 2016 are to be circulated on Thursday, 8 December 2016 after the meeting has been conducted. The Minutes will be listed for confirmation at the next Ryde Civic Hub Committee Meeting.

In accordance with the delegations set out in the Code of Meeting Practice relating to Charters, functions and powers of Committees, a report detailing the Committee recommendations will be circulated at the same time as the Minutes on Thursday, 8 December 2016.

**4 REPORT OF THE WORKS AND COMMUNITY COMMITTEE MEETING  
10/16 held on 13 December 2016**

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**Report prepared by:** Senior Coordinator - Governance**File No.:** CLM/16/1/2/2 - BP16/1522

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**REPORT SUMMARY**

The Minutes of the Works and Community Committee Meeting 10/16 held on 13 December 2016 are to be circulated on Tuesday, 13 December 2016 directly after the meeting has been conducted. The Minutes will be listed for confirmation at the next Works and Community Committee Meeting.

A report detailing Items which were dealt with by the Committee within its delegated powers, together with any Committee recommendations will be circulated at the same time as the Minutes on Tuesday, 13 December 2016.

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**5 REPORT OF THE FINANCE AND GOVERNANCE COMMITTEE MEETING  
10/16 held on 13 December 2016**

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**Report prepared by:** Senior Coordinator - Governance  
**File No.:** CLM/16/1/5/2 - BP16/1523

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**REPORT SUMMARY**

The Minutes of the Finance and Governance Committee Meeting 10/16 held on 13 December 2016 are to be circulated on Tuesday, 13 December 2016 directly after the meeting has been conducted. The Minutes will be listed for confirmation at the next Finance and Governance Committee Meeting.

In accordance with the delegations set out in the Code of Meeting Practice relating to Charters, functions and powers of Committees, a report detailing the Committee recommendations will be circulated at the same time as the Minutes on Tuesday, 13 December 2016.

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## 6 UPDATE ON PLANNING PROPOSAL - 176 BLAXLAND ROAD, RYDE

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**Report prepared by:** Acting Manager - Strategic City  
**File No.:** LEP2016/6/3 - BP16/1447

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### REPORT SUMMARY

In May 2016 Council received a Planning Proposal (PP) for the property at 176 Blaxland Road, Ryde (LOTS 22 and 23 in DP 6046) which proposed to change the zoning of the site from SP2 Infrastructure (Place of Public Worship) to R4 High Density Residential. A report considering the PP was presented to Council's Planning and Environment Committee on 11 October 2016 recommending that Council forward the PP for a Gateway Determination (at **ATTACHMENT 1**). This matter was deferred to the Council meeting of 25 October 2016.

On 25 October 2016 Council resolved:

*"That Council defer consideration of the Planning Proposal for the General Manager and Director to meet with the applicant to discuss provision of appropriate public benefit given the applicant has not complied with Council's resolution for the provision of Affordable Housing with the Planning Proposal".*

This meeting was held on 3 November 2016. The proponent has now indicated by letter dated 10 November 2016 (**ATTACHMENT 3 – CIRCULATED UNDER SEPARATE COVER – CONFIDENTIAL**) that they are not willing to enter into a Voluntary Planning Agreement (VPA) but would prefer to provide affordable housing as part of a future Development Application. This letter does not constitute a formal offer, and is not binding.

Should Council support forwarding the PP to the DPE for a Gateway Determination, it is recommended that Council request that a condition be imposed on the Gateway Determination requiring provision of affordable housing consistent with Council's interim policy position on affordable housing. This is consistent with the DPE's revised "*Guide to preparing Local Environmental Plans*".

Following the issue of a Gateway Determination, it is recommended that public exhibition of the PP commence, including exhibition of the associated draft amendments to Ryde Development Control Plan 2014.

### RECOMMENDATION:

- (a) That Council forward the planning proposal for 176 Blaxland Road, Ryde (LOT 22 and 23 DP 6046) with a request for a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act 1979 and that the Ministers delegation enabling Council to determine the LEP be requested. This will be accompanied by a request that a condition be imposed on the Gateway Determination requiring provision of affordable housing consistent with the adopted Ryde Affordable Housing Policy, including Council's Interim Policy Position.

**ITEM 6 (continued)**

- (b) That, in the event of a Gateway Determination being issued pursuant to Section 56 of the Environmental Planning and Assessment Act 1979, Council delegate authority to the Acting General Manager to place the proposal on public exhibition and a further report be presented to Council following the completion of the exhibition period. This report is also to address the provision of Affordable Housing in accordance with the adopted Ryde Affordable Housing Policy, including Council's Interim Policy Position.

**ATTACHMENTS**

- 1 Previous Council Report - 11 October 2016
- 2 Draft Practice Note and Circular relating to Planning Agreements
- 3 Letter from applicant confirming no VPA offer relating to Planning Proposal -  
CIRCULATED UNDER SEPARATE COVER - CONFIDENTIAL

Report Prepared By:

**Dyalan Govender**  
**Acting Manager - Strategic City**

Report Approved By:

**Liz Coad**  
**Acting Director - City Strategy and Planning**

## ITEM 6 (continued)

### History

On 12 April 2016 Council adopted the “City of Ryde Affordable Housing Policy 2016-2031”. At this meeting, Council adopted the following interim policy position with respect to affordable housing:

*“That Council adopt an interim position in relation to the delivery of affordable housing as part of the development and planning process with:  
2 % of dwellings in new residential and mixed use developments be affordable housing.  
4 % of dwellings constructed on land to be rezoned to permit residential / mixed use development be affordable housing”.*

In May 2016 Council received a Planning Proposal for the property at 176 Blaxland Road, Ryde (LOTS 22 and 23 in DP 6046). The Planning Proposal sought to change the zoning, height of buildings and floor space ratio controls applying to the site. This will facilitate the development of a residential flat building on the site in conjunction with the 3 sites located to the north of the site (182-186 Blaxland Road) which are currently zoned R4 High Density Residential.

A report considering the Planning Proposal was presented to Council’s Planning and Environment Committee on 11 October 2016 recommending that Council forward the Planning Proposal for a Gateway Determination (at **ATTACHMENT 1**). This matter was deferred to the Council meeting of 25 October 2016.

Where Council resolved:

*“That Council defer consideration of the Planning Proposal for the General Manager and Director to meet with the applicant to discuss provision of appropriate public benefit given the applicant has not complied with Council’s resolution for the provision of Affordable Housing with the Planning Proposal”.*

### Discussion

A meeting was held with the Acting General Manager, Acting Director City Strategy and Planning and the proponent on 3 November 2016, in accordance with Council’s resolution.

The proponent has now written to Council and advised by letter dated 10 November 2016 that they are not willing to enter into a Voluntary Planning Agreement as part of the rezoning (the letter is Commercial in Confidence and is provided under separate cover at **ATTACHMENT 3**). The proponent is however willing to provide affordable housing as part of a future Development Application for the development site. This letter does not constitute a formal offer or constitute a binding commitment.

## ITEM 6 (continued)

If the proponent were to provide affordable housing as part of the Planning Proposal, the relevant requirement (in accordance with Council's interim policy position) would be 4% of the floor space on the two lots which are subject to the rezoning (1315m<sup>2</sup>). This would result in the dedication of 26.3m<sup>2</sup> (Note: As this is less than a studio unit it could be provided as a cash contribution).

If the proponent were to provide affordable housing as part of the Development Application, the relevant requirement (in accordance with Council's interim policy position) would be 2% of the floor space of the combined development site, which would result in the dedication of 58.8m<sup>2</sup> (which could also be provided as a cash contribution).

A VPA is the only mechanism for the dedication of affordable housing in association with a Planning Proposal. Under the provisions of the Environmental Planning and Assessment Act, planning agreements are voluntary in nature. On 4 November 2016 the Department of Planning and Environment released a draft Planning Circular and Draft Practice Note relating to Planning Agreements (see **ATTACHMENT 2**). These documents (on exhibition until 27 January 2017) state that it is not acceptable for planning authorities to refuse to consider or refuse to forward a planning proposal for gateway determination because, regardless of its merit, a VPA related to land value uplift has not been entered into or offered to be entered into.

Where matters are unresolved, Gateway Determinations may be issued subject to conditions. In the event that Council forwards the Planning Proposal to the DPE to request a Gateway Determination this should be accompanied by a request that a condition be imposed on the Gateway Determination requiring provision of Affordable Housing consistent with Council's adopted Affordable Housing Policy including the interim policy position. This will allow further time to resolve the matter without unnecessarily delaying the Planning Proposal.

## Options

According to the DPE guidelines with respect to Planning Proposals, a decision should be made by the Planning Authority (in this case Council) within 90 days of receipt of all required documentation. This Planning Proposal has already been before Council in excess of 90 days. As a result further deferral of a decision is not put forward as an option for Council's consideration in this report.

1. That Council forward the planning proposal to the next stage (gateway determination and community consultation) accompanied by a request that a condition be imposed on the Gateway Determination requiring provision of affordable housing consistent with Council's Affordable Housing Policy. Should the Minister for Planning issue a Gateway Determination in accordance with Council's request, Council will have another opportunity to resolve the matter and also to decide whether to proceed, vary or reject the planning proposal after community consultation.

**ITEM 6 (continued)**

Option 1 allows the PP to proceed while requesting that the DPE consider requiring the proposal's compliance with Council's adopted Affordable Housing Policy and interim policy.

2. That Council not proceed with the Planning Proposal due to it not complying with City of Ryde strategic direction, in particular, the interim policy on affordable housing.

In this circumstance, the proponent may choose to seek a rezoning review with the Department of Planning and Environment. Rezoning reviews (formerly known as pre-gateway reviews) are considered by the relevant Planning Panel or Commission subject to a Strategic Merit Test, which assesses whether the proposal is:

- Consistent with the relevant regional or district plan; or
- Consistent with the relevant local planning strategy that has been endorsed by the Department of Planning and Environment; or
- Whether the proposal results in a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.

Unless the proposal can clearly justify that it meets the Strategic Merit Test, there is a presumption against a Rezoning Review request that seeks to amend LEP controls that are less than 5 years old, The City of Ryde LEP came into effect in 2014 and implemented the recommendations of the Ryde Local Planning Study 2010. Furthermore, Council's adopted Affordable Housing Policy, while not endorsed by the DPE, may be considered as part of this strategic review.

**Financial Implications**

Adoption of the recommendation will have no financial impact.

**ITEM 6 (continued)**

**ATTACHMENT 1**

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**5 PLANNING PROPOSAL - 176 BLAXLAND ROAD, RYDE**

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**Report prepared by:** Senior Strategic Planner  
**File No.:** LEP2016/6/3 - BP16/701

---

**REPORT SUMMARY**

Council has received a Planning Proposal (PP) to amend controls within Ryde Local Environmental Plan (RLEP) 2014 as they apply to 176 Blaxland Road, Ryde, LOTS 22 and 23 in DP 6046 (known as the “the site”). The PP has been prepared by the consultant planner Andrew Martin Planning on behalf of the property owner Community of Christ Limited.

The Planning Proposal seeks to change the zoning, height of buildings and floor space ratio controls applying to the site. This will facilitate the development of a residential flat building on the site in conjunction with the 3 sites located to the north of the site (182-186 Blaxland Road) which are currently zoned R4 High Density Residential.

This will require the following changes for 176 Blaxland Road:

- Amending LEP 2014 Land Zoning Map from SP2 Infrastructure (Place of Public Worship) to R4 High Density Residential;
- Amending LEP 2014 Height of Buildings Map to include a Maximum Building Height of 11.5 metres; and
- Amending LEP 2014 Floor Space Ratio (FSR) Map to include an FSR control of 1:1.
- Amending LEP 2014 Lot Size Map to include a Minimum Lot Size of 580m<sup>2</sup>.

The proposed changes to the planning controls are consistent with the adjacent site.

An assessment of the PP has been undertaken which included a review of:

- The consistency of the PP against objectives and actions of state, regional and local planning policies and strategies; and
- The environmental, amenity and traffic and parking impacts.

The PP is **ATTACHED (ATTACHMENT 1)**.

The proponent has also submitted draft amendments to Ryde Development Control Plan (RDCP) which are **ATTACHED (ATTACHMENT 2)**. The draft DCP controls address design, landscaping and streetscape considerations and provide specific side and rear setbacks in order to protect the amenity of neighbouring sites.

**ITEM 6 (continued)**

**ATTACHMENT 1**

This report recommends that Council support forwarding the PP to the Department of Planning and Environment for a Gateway Determination, community consultation and exhibiting the draft amendments to the RDCP concurrently with the exhibition of the Planning Proposal.

**RECOMMENDATION:**

- (a) That Council endorse forwarding the planning proposal for 176 Blaxland Road, Ryde (LOT 22 and 23 DP 6046) to receive a gateway determination in accordance with Section 56 of the Environmental Planning and Assessment Act 1979 and that the Ministers delegation enabling Council to determine the LEP be requested.
- (b) That, in the event of a gateway determination being issued pursuant to Section 56 of the Environmental Planning and Assessment Act 1979, Council delegate authority to the Acting General Manager to place the proposal on public exhibition and a further report be presented to Council following the completion of the exhibition period.
- (c) That Council exhibit the proposed amendments to Ryde DCP concurrently with the exhibition of the Planning Proposal.

**ATTACHMENTS**

- 1 Planning Proposal - 176 Blaxland Road, Ryde
- 2 Draft Ryde Development Control Plan 2014 - Part 6.6

Report Prepared By:

**Lara Dominish**  
**Senior Strategic Planner**

Report Approved By:

**Lexie Macdonald**  
**Senior Coordinator - Strategic Planning**

**Dyalan Govender**  
**Acting Manager - Strategic City**

**Liz Coad**  
**Acting Director - City Strategy and Planning**

## ITEM 6 (continued)

## ATTACHMENT 1

### Discussion

This report contains a description of the site, a description of the proposed amendments to Ryde Local Environmental Plan 2014 (RLEP2014) and Ryde Development Control Plan 2014 (RDCP2014), and an appraisal of the subject planning proposal. This appraisal forms the basis of a recommendation to forward the proposal to the Minister for Planning for a gateway determination and subsequent community consultation.

### Gateway Plan-Making Process

1. *Planning proposal* – this is an explanation of the effect of and justification for the proposed plan to change the planning provisions of a site or area which is prepared by a proponent or the relevant planning authority such as Council. The relevant planning authority decides whether or not to proceed at this stage.
2. *Gateway* – determination by the Minister for Planning or delegate if the planning proposal should proceed, and under what conditions it will proceed. This step is made prior to, and informs the community consultation process.
3. *Community Consultation* – the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days).
4. *Assessment* – the relevant planning authority considers public submissions. The relevant planning authority may decide to vary the proposal or not to proceed. Where proposals are to proceed, it is Parliamentary Counsel which prepares a draft local environmental plan – the legal instrument.
5. *Decision* – the making of the plan by the Minister (or delegate).

This proposal is at Step 1 of the process. Council is the relevant planning authority for this proposal which has been prepared by the consultant planner Andrew Martin Planning on behalf of the property owner Community of Christ Limited.

The proposal has been assessed by Council staff in respect of the information required to be included in a planning proposal.

### Site Description and Context

This planning proposal applies to land known as 176 Blaxland Road, Ryde being Lots 22 and 23 in DP 6046 (identified in Figure 1 and 2 below).

**ITEM 6 (continued)**

**ATTACHMENT 1**

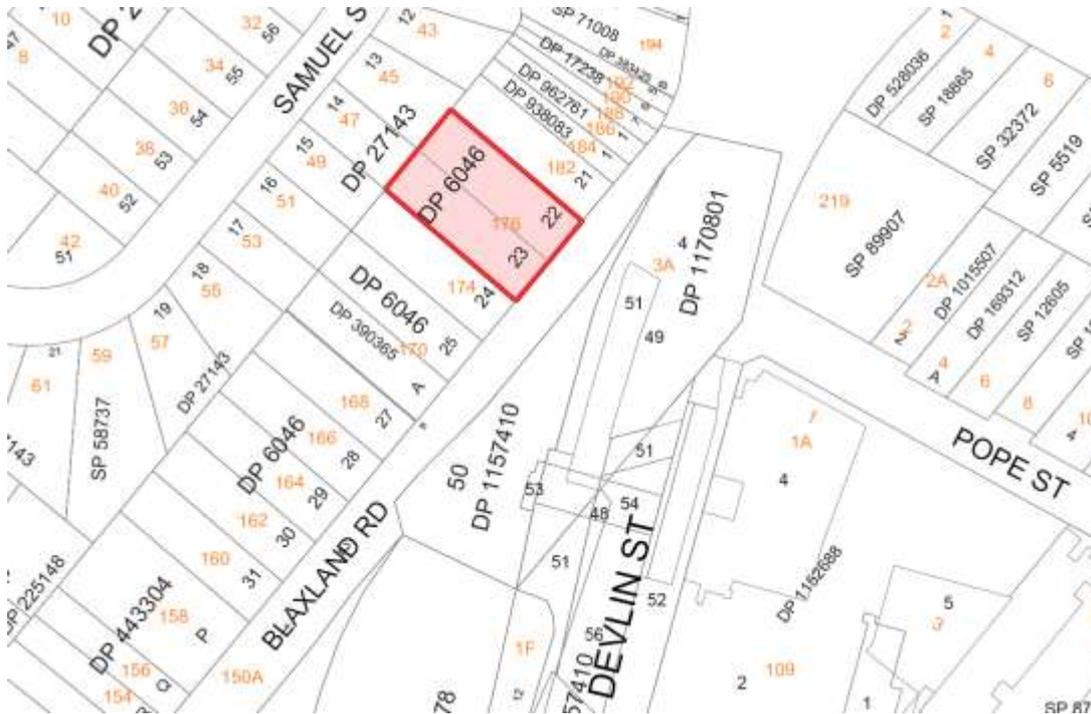


Figure 1- Site location



Figure 2- Site location

The site contains a single storey brick and tile building, currently used for community purposes (Northern Sydney Youth Support Service) and religious services. The site is owned by Community of Christ Ltd. Photographs of the existing building on the site are shown below in Figure 3.

**ITEM 6 (continued)**

**ATTACHMENT 1**



*Figure 3- 176 Blaxland Road, Ryde*

The site area of 176 Blaxland Road is 1525m<sup>2</sup>. The site has a 4 metre crossfall towards Samuel Street. The property is accessed from a portion of Blaxland Road which ends in a cul-de-sac. The site is zoned SP2 Infrastructure (Place of Public Worship) under RLEP2014.

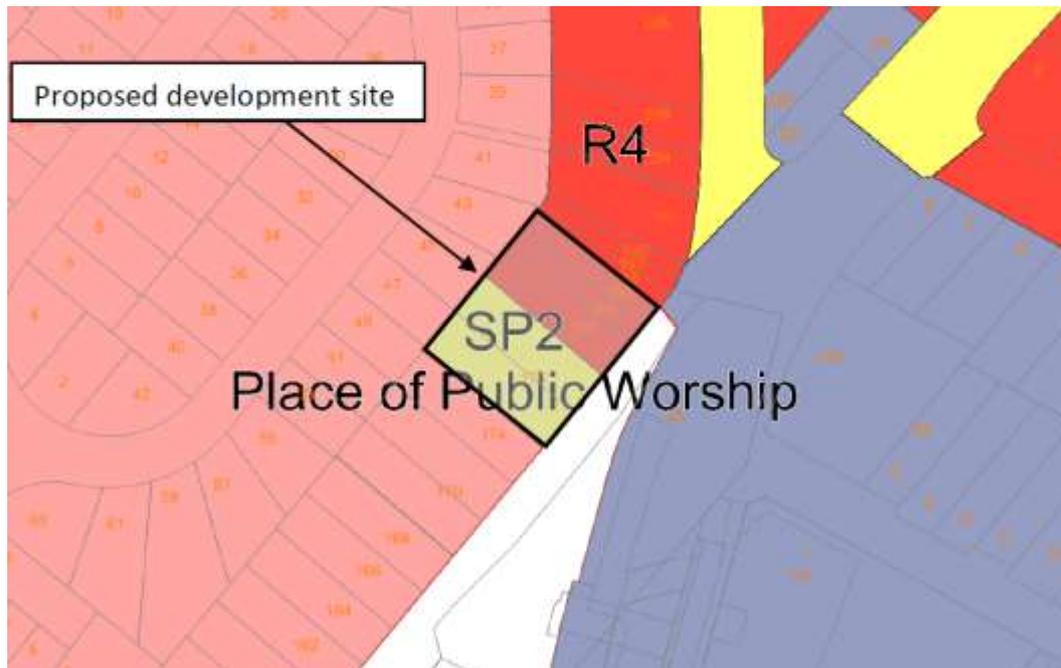
To the north is a single storey dwelling house (182 Blaxland Road), a vacant lot (184 Blaxland Road) and a single storey shop (186 Blaxland Road). The shop at 186 Blaxland Road is detached from the adjacent shops at 188-192 Blaxland Road.

The properties at 182-192 Blaxland Road are zoned R4 High Density Residential. 182-186 Blaxland Road forms part of a proposed development site in conjunction with the subject site at 176 Blaxland Road. The proposed development site has a combined site area of 2989m<sup>2</sup>.

Further to the north is a row of shops (186-192 Blaxland Road). Approximately 100 metres to the north on Blaxland Road is a residential flat building developed in accordance with the controls for the R4 zone (208 Blaxland Road).

**ITEM 6 (continued)**

**ATTACHMENT 1**



*Figure 4- Proposed development site*

To the south of the site is a single storey dwelling house (174 Blaxland Road) which is zoned R2 Low Density Residential. 45 and 47 Samuel Street adjoin the site to the rear (west) and are zoned R2 Low Density Residential.

To the east is the Ryde Civic Centre site which is a deferred matter from RLEP2014.

**Current Planning Controls**

*Zoning*

176 Blaxland Road is zoned SP2 Infrastructure under RLEP2014. The SP2 Infrastructure zone permits specific purposes shown on the Land Zoning Map (in this case, place of public worship).

*Building Height*

The site does not currently have a maximum building height as per RLEP 2014 Height of Buildings Map. This is consistent with the approach for all land zoned SP2 Infrastructure. The adjoining sites at 182-186 Blaxland Road have a building height of 11.5 metres.

*Floor Space Ratio*

There is no currently maximum floor space ratio control for the site. This is consistent with other land zoned SP2 Infrastructure. The adjoining sites at 182-186 Blaxland Road have an FSR control of 1:1.

**ITEM 6 (continued)**

**ATTACHMENT 1**

**Proposed amendments to Ryde Local Environmental Plan 2014**

The Planning Proposal seeks to amend RLEP 2014 by rezoning the site for high density residential.

The planning proposal seeks to make the following amendments to RLEP2014 for 176 Blaxland Road by:

- Amending the Land Zoning Map from SP2 Infrastructure (Place of Public Worship) to R4 High Density Residential;
- Amending the Height of Buildings Map by requiring a maximum building height of 11.5 metres;
- Amending the Floor Space Ratio (FSR) map by imposing a maximum FSR of 1:1; and
- Amending the Lot Size Map by requiring a minimum lot size of 580m<sup>2</sup>.

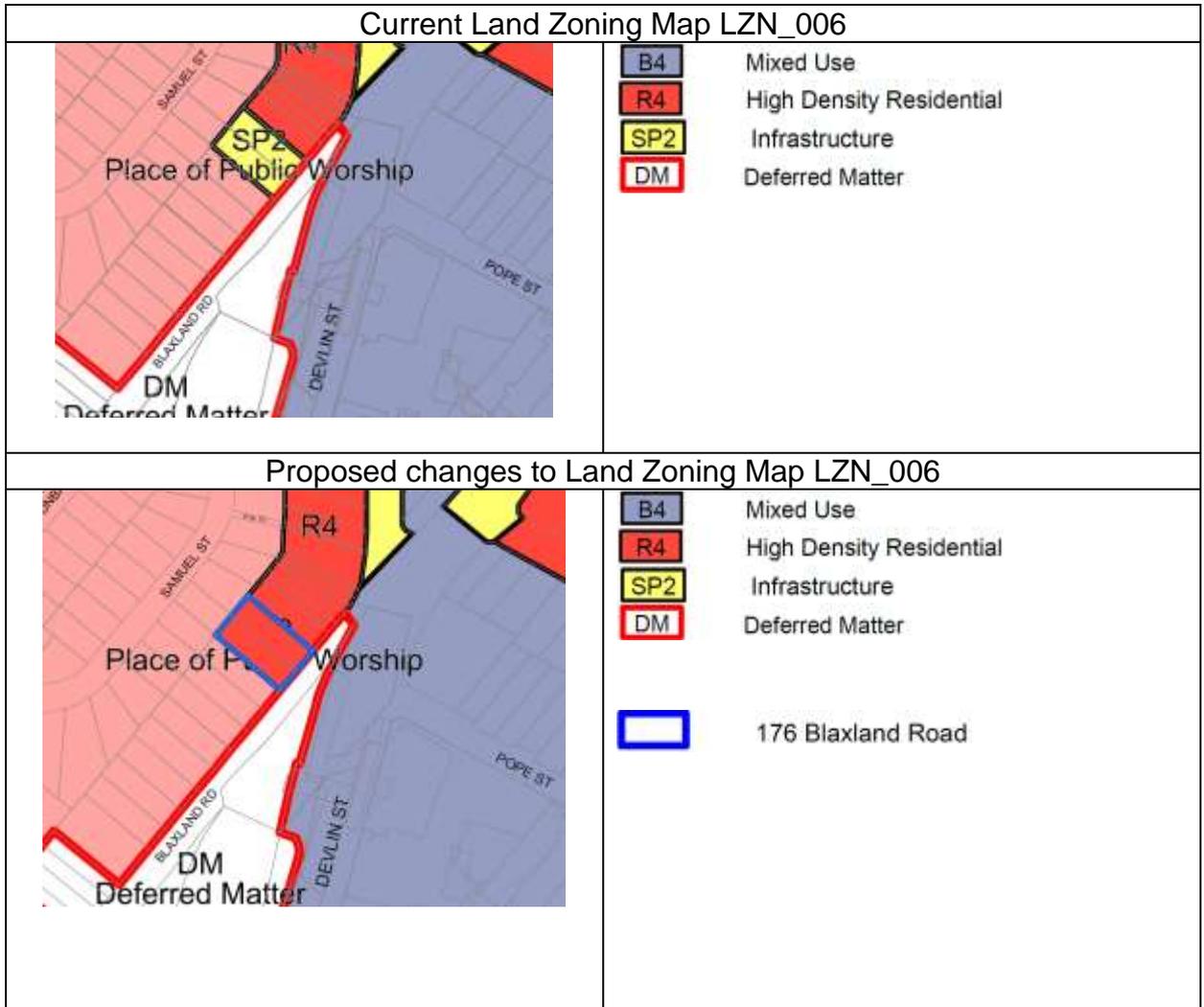
An FSR of 1:1 and a height limit of 11.5 metres is consistent with all other land zoned R4 in the City of Ryde, including adjacent land to the subject site.

The following maps show the existing planning controls for the site under Ryde LEP 2014, and the proposed planning controls for the site envisaged in the Planning Proposal, including zoning, height, FSR and lot size.

**ITEM 6 (continued)**

**ATTACHMENT 1**

*Mapping*



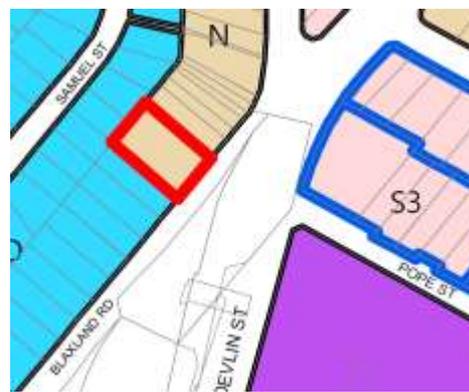
**ITEM 6 (continued)**

**ATTACHMENT 1**



**ITEM 6 (continued)**

**ATTACHMENT 1**

Current Floor Space Ratio Map FSR_006											
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Proposed changes to Floor Space Ratio Map FSR_006											
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**ITEM 6 (continued)**

**ATTACHMENT 1**

Current Lot Size Map LSZ_006	
	<p><b>Minimum Lot Size (sq m)</b></p> <p> 580</p>
Proposed changes to Lot Size Map LSZ_006	
	<p><b>Minimum Lot Size (sq m)</b></p> <p> 580</p>

Justification

The Planning Proposal submitted by the applicant provides the following justification:

- The development concept for the site aligns with Council's vision for the Ryde Town Centre (although it is noted that the site is located outside the edge of the Ryde Town Centre as marked on the RLEP2014 Centres Map);
- The Planning Proposal is consistent with the metropolitan plan, A Plan for Growing Sydney;
- The Planning Proposal contributes to housing choice in the City;
- The Planning Proposal will allow amalgamation with adjoining land parcels to form a development site; and
- The site is located opposite a major retail, community and employment node and can provide density close to transport and employment.

**ITEM 6 (continued)**

**ATTACHMENT 1**

**Assessment of the planning proposal**

This section of the report provides an appraisal of the PP against the criteria for justifying a Planning Proposal in the Department of Planning and Environment's "A Guide to preparing Local Environmental Plans".

Is this Planning Proposal the result of any strategic study or report?

The Planning Proposal is not the subject of any strategic study or report.

The Planning Proposal is consistent with Action 2.2.1 of the metropolitan plan "A Plan for Growing Sydney", to accelerate housing supply and local housing choices, in particular in and around centres. The provisions of A Plan for Growing Sydney for the North Subregion identifies Lane Cove Road as a potential growth corridor and identifies accelerating housing supply, choice and affordability and building great places to live as a priority for the North subregion.

Is the Planning Proposal consistent with a local strategy or other local strategic plan?

The City of Ryde 2025 Community Strategic Plan sets out the future vision for the City of Ryde. The plans set the desired outcomes and the aspirations of the community, and the goals and strategies on how they will be achieved.

The Planning Proposal is in line with the following goals and strategies of the Community Strategic Plan:

- Our neighbourhoods thrive and grow through sustainable design, planning and regulation that support community needs; and
- To design our city to reflect the unique character, identity and housing needs of our community.

The Local Planning Study (adopted 7 December 2010) which informed the preparation of RLEP2014 recognised the need to provide a diverse range of housing within the Local Government Area including residential units. The Local Planning Study identified five town centres (including Ryde Town Centre) which are to function as genuine mixed use precincts. The centres are capable of absorbing additional residential development as they provide complementary and supportive uses, services, facilities and amenities such as open space. This has been captured and reflected in Council's existing planning controls.

The site is also supported by good public transport being on the strategic bus corridors from the City to Parramatta and Hurstville to Macquarie Park.

The PP represents a minor extension of the existing R4 High Density Residential zoning to facilitate the formation of a development site, in close proximity to the Ryde Town Centre.

**ITEM 6 (continued)**

**ATTACHMENT 1**

The subject PP proposes the same scale of development as that in the adjoining R4 High Density Residential zone, being an FSR of 1:1 and height of 11.5 metres, and is consistent with the planning controls for R4 zones generally.

Is the Planning Proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

*SEPP 55 - Remediation of Land*

Clause 6 of SEPP 55 requires that a planning authority is not to permit a change in use of land unless the planning authority has considered whether the land is contaminated.

The preliminary site investigation submitted as part of the Planning Proposal package indicates that the potential for significant contamination from current and previous activities within the site is generally low.

Advice received from Council's Environmental Health section indicate that there are no further requirements with respect to contamination at this stage.

*State Environmental Planning Policy 65- Design Quality of Residential Flat Development*

The Planning Proposal outlines how the proposed future development design is capable of meeting the requirements of SEPP 65 and the Apartment Design Guide, including compliance with the solar access and cross ventilation requirements.

Further assessment of the proposal against SEPP65 would occur at Development Application stage.

Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 Directions)?

The following s.117 Directions apply to the consideration of the PP:

Direction	Assessment
<p><b>3.1 Residential Zones</b></p> <p>(1) The objectives of this direction are:</p> <p>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p>	<p>The Proposal is consistent with this Direction.</p>

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Direction	Assessment
<p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) to minimise the impact of residential development on the environment and resource lands.</p>	
<p><b>3.4 Integrating Land Use and Transport</b></p> <p>1. The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <p>(b) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(c) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(d) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(e) supporting the efficient and viable operation of public transport services, and</p> <p>(f) providing for the efficient movement of freight.</p>	<p>The proposal is generally consistent with this Direction.</p>
<p><b>7.1 Implementation of A Plan for Growing Sydney</b></p> <p>The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.</p>	<p>The proposal is consistent with this Direction.</p>

**ITEM 6 (continued)**

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**Assessment of the Planning Proposal**

Built form

The PP seeks to amend Ryde LEP 2014 to amend the maximum building height to 11.5m and Floor Space Ratio control to 1:1. This would allow for the construction of a 4 storey building with 2989m<sup>2</sup> gross floor area (on all 5 lots 176-186 Blaxland Road). The indicative concept accompanying the Planning Proposal estimates that the resultant development would comprise 7 x 1 bedroom units, 25 x 2 bedroom units and 7 x 3 bedroom units (a total of 39 units).



Figure 5: Site plan- as submitted with Planning Proposal (Urbanlink plans p.7)

**ITEM 6 (continued)**

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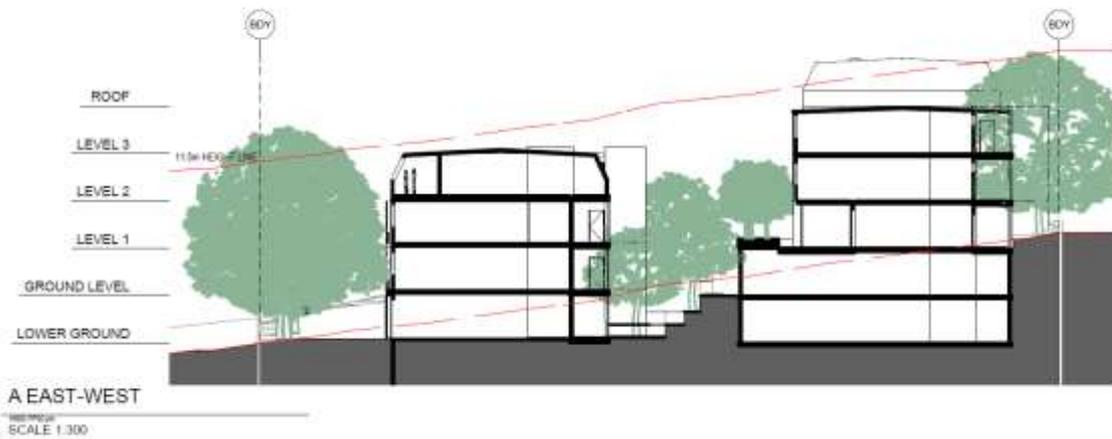


Figure 6: East-West Site Section (as submitted with Planning Proposal (Urbanlink plans p.15))



Figure 7: Conceptual 3D view, as submitted with Planning Proposal (Urbanlink plans p.19)

## ITEM 6 (continued)

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The applicant articulates the merits for greater height and FSR based on the consolidated site providing an opportunity for development that will complement the existing and future amenity of the Top Ryde area, can occur without significant environmental impacts and responds to the site constraints by stepping the building height.

The proposed building height and Floor Space Ratio are consistent with that of the adjoining R4 zone.

The development concept submitted with the Planning Proposal includes shadow diagrams showing minimal shadowing of the adjoining residential lot to the south of the site at 174 Blaxland Road at mid-winter. There is no shadowing of the residential properties at 43-47 Samuel Street in midwinter.



*Figure 7: Shadow diagrams, as submitted with Planning Proposal (Urbanlink plans p.21)*

The shadowing impacts of the proposal are considered acceptable and a further analysis of the shadow impacts will be undertaken at Development Application stage.

### Traffic

The site has a frontage to the cul-de-sac created when this portion of Blaxland Road was severed from Blaxland Road following the construction of Top Ryde City. The site has access to Land Cove Road at the Devlin Street/ Blaxland Road/ Parkes Street intersection.

A Traffic and Parking Impact Assessment was submitted with the PP. In summary, the Assessment indicates that 56 basement car parking spaces would be provided. The parking rates in Council's DCP require between 44 and 56 spaces to be provided and as such the proposal complies with the car parking requirements of the DCP.

## ITEM 6 (continued)

## ATTACHMENT 1

The Assessment states that the anticipated traffic generation is 8 vehicle trips per hour in the AM peak and 6 vehicle trips per hour in the PM peak. The Assessment also states that there will not be any adverse traffic implications due to the traffic signal controlled access provision at the Devlin Street/ Blaxland Road/ Parkes Street intersection.

Council's Traffic section provided the following comments:

- Adopting a more conservative traffic generation rate of 0.29 trips per hour would result in around 11 vehicle trips per hour or 1 trip per 6 minutes which is considered negligible on the road network.
- The proponent will need to reconstruct the existing footpath along the Blaxland Road frontage to the site to be fully shared path compliant for its entire frontage length. Further comments relating to this will be provided at Development Application stage.

The proposal is therefore acceptable from a traffic perspective.

It is noted that any future redevelopment of the Civic Centre site may result in an alternate traffic solution for this area.

### Waste management

Council's waste section noted that there may be issues for the garbage truck to turn around and that bins would need to be presented to the kerbside. In general, Council is trying to get all bins off the road for collection where there is more than 25-30 units for noise and aesthetics however the topographical constraints of the block may not allow even a small truck down the driveway and into the basement for collection.

The proposed provisions of Ryde DCP 2014 require any future Development Application to be in accordance with the provisions of Ryde DCP Part 7.2 Waste Management and Minimisation.

### **Other matters**

#### Use as a community facility

The site is owned by Community of Christ Limited. The building is currently occupied by Northern Sydney Youth Support Services who use the site on a part-time basis and would need to relocate as a result of the Planning Proposal. The remaining 2/3 of the site is vacant land. It is understood that the Youth Support Services no longer have funding and have largely relocated their operations to Western Sydney.

## ITEM 6 (continued)

## ATTACHMENT 1

### Affordable housing

The City of Ryde Affordable Housing Policy was adopted by Council in April 2016. At this time, Council adopted an interim position in relation to the delivery of affordable housing as part of new development and planning process with:

- 2 % of dwellings in new residential and mixed use developments be affordable housing.*
- 4 % of dwellings constructed on land to be rezoned to permit residential/ mixed use development be affordable housing.*

In a letter to the applicant on 2 June 2016, Council outlined the Affordable Housing Policy and the interim policy position and stated that Council would welcome a discussion regarding the inclusion of affordable housing within the development through a Voluntary Planning Agreement (VPA).

Council officers met with the applicant on 1 September 2016 to explain Council's position. The applicant responded by letter following the meeting of 1 September that they do not believe the size of the PP warrants a VPA, for the following reasons:

- The proposal involves a minor extension of the R4 zoned land to the north;
- The current planning controls in the SP2 zone do not restrict height and FSR, and redevelopment of the site for community purposes could result in a building of a greater scale than that proposed through the PP;
- A rear setback of 8 metres has been provided which is a community benefit (this is discussed below);
- The PP only results in an additional 19 apartments;
- Any Ryde LEP 2014 requirements with regards to affordable housing can be met at Development Application stage.

Comment: Council is currently preparing a Planning Proposal which will amend the planning controls to require applicants for Planning Proposals to provide affordable housing. Council is not in a position to mandate the provision of affordable housing through a VPA.

### **Draft amendments to Ryde Development Control Plan 2014**

Ryde DCP 2014 Part 6 provides controls for specific sites in the City.

The applicant prepared and submitted draft DCP controls. The DCP controls outline the proposed built form including setbacks, height and density which support the height and FSR controls identified in the Planning Proposal, including specific side and rear setbacks. The draft DCP controls also address design, landscaping and streetscape considerations and require that car parking, stormwater, tree preservation and waste minimisation be in accordance with the relevant parts of Ryde DCP 2014. These controls form the basis for the attached Draft Ryde DCP 2014 Part 6.6- 176-186 Blaxland Road, Ryde.

**ITEM 6 (continued)**

**ATTACHMENT 1**

The development concept diagrams originally submitted with the Planning Proposal indicated a 6 metre setback to the rear boundary to allow for a deep soil zone and boundary planting. Following discussions with Council officers, the applicant has increased the rear setback to 8 metres in the draft DCP amendments to provide increased separation to the low density residential buildings to the rear of the site, and to remove any shadowing of the properties at 43-47 Samuel Street at any time of the day in midwinter. The diagram in the draft DCP amendments at Attachment 2 reflects the increased rear setback.



*Figure 8: Draft Ryde DCP Part 6.6- Setbacks diagram*

The current building has a setback of approximately 5 metres. The proposed front setback control is 3 metres. The shops located to the north of the subject site have a zero setback to the street, and the property to the south of the site at 174 Blaxland Road has a front setback of approximately 7.5 metres. The proposed setback control is considered acceptable and has been reduced to compensate for the additional rear setback which has been provided.

The indicative design incorporates some encroachments into the setback area to allow for staircases. The applicant wrote to Council proposing the following clause be inserted into the DCP controls:

*“To assist with and encourage articulation of the design, no more than 25% of the frontage of the site is to encroach beyond the front setback of 3 metres”.*

## **ITEM 6 (continued)**

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This draft clause has been amended in the draft DCP amendments to allow a 20% encroachment into the front setback which will accommodate the proposed design.

The front setback (and any encroachments into this setback) will be further assessed as part of a future Development Application for the proposed development.

The DCP controls prepared by the applicant were amended to include a section diagram (submitted by the applicant with the Planning Proposal), and adding the requirement for the upper level of the building at the rear to be setback a minimum of 2 metres.

It is recommended that the draft amendments to Ryde DCP 2014 be exhibited concurrently with the Planning Proposal, following the issue of a gateway determination. The draft DCP amendments are at Attachment 2.

### **Consultation**

Under the gateway plan-making process, a gateway determination is required before community consultation on the planning proposal takes place. The consultation process will be determined by the Minister and stipulated as part of the gateway determination.

The Department of Planning's guidelines stipulate at least 28 days community consultation for a major plan, and at least 14 days for a low impact plan. If the PP is approved and a gateway determination given, consultation will include the following:

- written notice given:
  - in the local newspaper circulating in the area,
  - on Council's webpage and
  - to adjoining landowners (where this involves strata's a letter will be sent to the body corporate)
  - to local state government representatives
  - consultations considered necessary by the Department of Planning and Environment with relevant State and Commonwealth authorities
  
- the written notice will:
  - provide a brief description of the objectives and intended outcomes,
  - indicate the land affected,
  - state where the planning proposal can be inspected,
  - indicate the last date for submissions and
  - confirm whether the Minister has chosen to delegate the making of the LEP.

During the consultation period, two drop-in information sessions will be held.

**ITEM 6 (continued)**

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**Critical Dates**

Time periods for preparation of amending LEPs apply upon the issue of the Gateway Determination by the Minister. The Planning Proposal does not provide an anticipated timeline, however a proposed timeline will be forwarded to the Department of Planning and Environment accompanying the request for a Gateway Determination.

Planning Proposal submitted to Gateway	October 2016
Gateway determination received by Council	November 2016
Community consultation (4 weeks)	January/ February 2016
Outcomes of community consultation presented to Council	March 2016
PP submitted to DPE requesting notification on Government website	May 2017

**Financial Impact**

The cost of the exhibition is covered by the fee for the Planning Proposal.

**Options**

1. That Council proceed with the planning proposal to the next stage (gateway determination and community consultation). Should the Minister for Planning determine that the planning proposal can proceed to community consultation Council has another opportunity to decide whether to proceed, vary or reject the proposal after community consultation; or
2. That Council not to proceed with the Planning Proposal.
3. That Council defer consideration of the Planning Proposal for the General Manager and Director to meet with the applicant to discuss provision of appropriate public benefit given the applicant has not complied with Council's resolution for the provision of Affordable Housing with the Planning Proposal.

Option 1 is the recommended option because the proposal represents an extension of the existing R4 zone and is in accordance with the metropolitan planning context.

ITEM 6 (continued)

ATTACHMENT 2



## DRAFT PLANNING circular

### PLANNING SYSTEM

#### Policy and Strategy

# Strategic planning and infrastructure funding

The purpose of this draft circular is to provide advice to councils, industry and the community on ensuring strategic land use and infrastructure planning considers fair and reasonable mechanisms for funding infrastructure and other public benefits.

## Introduction

This draft circular provides advice to councils, industry and the community on:

- The importance of strategic infrastructure planning to inform planning decisions;
- The appropriate use of voluntary planning agreements (VPAs) in association with planning proposals and development applications.
- Ensuring the full range of contributions mechanisms are considered by councils in determining the best way to fund infrastructure and other public benefits.

## Background

VPAs are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals or development applications.

VPAs authorise development contributions for a variety of public purposes, some of which extend beyond the scope of section 94 or 94A of the Environmental Planning and Assessment Act (EP&A Act).

A developer may offer to enter into a VPA with a planning authority such as a council. The planning authority may then choose whether to accept the offer and to agree on the public benefits that it will deliver, including public amenities and services, affordable housing, infrastructure, or the conservation or enhancement of the natural environment.

## Strategic land use and infrastructure funding

The planning process enables planning authorities to work with stakeholders and the community to identify the infrastructure need associated with growth.

Infrastructure and public benefit is likely to be planned and delivered in a more comprehensive way if linked to broad strategic planning, rather than determining planning impacts and potential public benefits on a site-by-site basis.

Strategic planning for precinct or local government areas should be the preferred approach for planning authorities. However, where site specific proposals arise, proper consideration of infrastructure needs must still be undertaken by the planning authority.

## Planning proposals and infrastructure

A planning proposal must be assessed by a planning authority on its merit having regard to, among other things, the adequacy of public infrastructure to support the development. As part of the planning proposal process, it is appropriate to consider the needs and opportunities for infrastructure.

## Negotiating VPAs associated with a planning proposal

VPAs are suited to large development sites with limited ownership where a rezoning may generate need for public benefits, and where there are clear benefits in the managed delivery of public benefits in association with development.

For other situations, mechanisms such as section 94 or section 94A local infrastructure contributions at the development assessment stage may provide for a more efficient and reasonable distribution of the costs of infrastructure associated with growth.

The procedures for negotiating and entering into planning agreements should be identified by the planning authority and made clear to a developer.

It is not acceptable for planning authorities to refuse to consider or refuse to forward a planning proposal for

## ITEM 6 (continued)

## ATTACHMENT 2

gateway determination because, regardless of its merit, a VPA related to land value uplift has not been entered or offered to be entered into.

VPAs associated with a planning proposal need to provide a public benefit that has a clear link to the development and should not be wholly unrelated (concept of *de minimis*).

Consideration of a planning proposal should not be premised on the financial outcome achievable through a VPA. This may undermine the fair consideration of relevant planning matters in assessing the impact of development arising from a rezoning or changes to planning controls

Planning authorities should also identify when money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate. To support transparency, in these situations it is appropriate for these infrastructure objectives to be set out in an adopted plan or policy.

---

**Important note:** This draft circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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**ATTACHMENT 2**



# Draft Practice Note

*Planning Agreements  
November 2016*

**ITEM 6 (continued)**

**ATTACHMENT 2**

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# Introduction

## Planning agreements

This practice note provides advice on matters surrounding planning agreements. It provides an overview of current trends and practices, sets out the statutory framework for planning agreements and deals with issues such as the fundamental principles governing the use of planning agreements. It also outlines public interest and probity considerations and the NSW Government's policy position on the use of planning agreements.

## Legislative basis

Subdivision 2 of Division 4 of Part 6 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the statutory framework for planning agreements.

The *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) provides a framework for planning agreements under Division 1A, Planning Agreements. The EP&A Regulation outlines the procedural requirements for the use of planning agreements as well as the making, amending and revocation of planning agreements and the public notice of planning agreements.

## About this practice note

This draft practice note is made for the purposes of clause 25B(2) of the EP&A Regulation to assist parties in the preparation of planning agreements.

This draft practice note is prepared to revoke and replace the previous 'Practice Note – Planning Agreements' practice note which was issued by the former Department of Infrastructure, Planning, and Natural Resources in July 2005.

## How to use this practice note

The practice note is structured as follows:

**Part 1** provides the rationale for planning agreements.

**Part 2** provides best practice guidelines for planning agreements by identifying and explaining fundamental principles and key public interest and probity considerations. It also sets out policy considerations in how planning agreements can be used to support broader strategic land use and infrastructure planning objectives.

**Part 3** provides a basic outline of the statutory procedure for negotiating, entering into and administering planning agreements.

**Part 4** provides examples of the use of planning agreements.

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### Terminology

The following terminology is used to convey key concepts in relation to planning agreements:

- **development application** has the same meaning as in the EP&A Act
- **development consent** has the same meaning as in the EP&A Act
- **development contribution** means the provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used for or applied towards a public purpose
- **planning benefit** means a development contribution that confers a public benefit, that is, a benefit that exceeds the benefit derived from measures that would fairly and reasonably address the impacts of particular development on surrounding land or the wider community
- **planning obligation** means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution
- **planning proposal** has the same meaning as in the EP&A Act
- **public benefit** is the benefit enjoyed by the public as a consequence of a development contribution
- **public facilities** means public infrastructure, amenities and services

### Updates to this practice note

This practice note will be periodically updated. More detailed information or guidance on specific matters in this practice note may also be the subject of future separate practice notes.

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## **Part 1 – Introduction to planning agreements**

Negotiation and agreement between planning authorities and developers to exact public benefits from the planning process have long been a part of the NSW planning system. However, prior to the commencement of *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*, the practices were largely unregulated. The negotiation process often occurred without the involvement of all interested stakeholders, and agreements were entered into without any opportunity for public participation.

Since 2005, the use of planning agreements has steadily grown across NSW. There are a range of reasons why the use of planning agreements has become widespread, including:

- development consent conditions, including infrastructure contributions under section 94 and section 94A, are primarily designed to ensure development makes a fair and reasonable contribution to respond to the additional demands on infrastructure that it creates;
- the nature of development in NSW is changing, as new housing and employment opportunities are delivered in infill or urban renewal locations, which makes the use existing infrastructure to accommodate development in these areas complex;
- developers are appreciating how their own developments benefit from the provision of public facilities and are seeking greater involvement in determining the type, standard and location of these facilities;
- negotiation tends to promote co-operation and compromise over conflict and can provide a more effective means for public participation in planning decisions;
- agreements provide a flexible means of achieving tailored development outcomes and focused public benefits, including agreement by communities to the redistribution of the costs and benefits of development;
- agreements can provide enhanced and more flexible infrastructure funding opportunities and better planning implementation; and
- agreements allow for the flexible delivery of infrastructure for a development proposal which may have good planning merit but be out of sequence with broader strategic planning processes.

Planning agreements also provide a flexible framework under which the State and local councils can share responsibility for the provision of infrastructure in new release areas or in major urban redevelopment projects. They permit tailored governance arrangements to suit particular cases and the provision of infrastructure by the different levels of government in an efficient, co-operative and co-ordinated way.

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## Part 2 – Principles and policy for planning agreements

### 2.1. Fundamental principles

Planning agreements provide a facility for planning authorities and developers to negotiate flexible outcomes in respect of development contributions. They enable the NSW planning system to deliver sustainable development while achieving key economic, social and environmental objectives.

Planning agreements authorise development contributions for a variety of public purposes, some of which extend beyond the scope of section 94 or section 94A of the EP&A Act. These additional purposes include the recurrent funding of public facilities provided by councils, the capital and recurrent funding of transport and other State infrastructure and affordable housing, the protection and enhancement of the natural environment, and the monitoring of the planning impacts of development.

Planning agreements facilitate the provision of planning benefits by developers by contributing part of the development profit for a public purpose.

Planning agreements are negotiated between planning authorities and developers in the context of applications by developers for changes to environmental planning instruments or for consent to carry out development. In many cases, the planning authority will be a person charged with the exercise of statutory functions in respect of the subject matter of the agreement, such as the Minister or a council having functions relating to the making, amendment or repeal of an instrument or the determination of a development application.

Accordingly, planning agreements must be governed by the fundamental principle that planning decisions may not be bought or sold. A planning agreement should not fetter a planning authority's exercise of other statutory functions, in particular the function of a relevant planning authority in relation to a planning proposal or as the consent authority for a development application. Unacceptable development should not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.

That is not to say that development contributions provided for in a planning agreement must bear the same nexus with development as required by s94. The nexus principle applies to s94 because development contributions can be compulsorily charged under that section. Because planning agreements, by contrast, are voluntary and facilitate planning benefits, they can allow for a redistribution of the costs and benefits of development subject to the above fundamental principles.

#### **Planning authorities that are participating in planning agreements should follow the following fundamental principles:**

- Planning agreements must be governed by the fundamental principle that planning decisions may not be bought or sold
- Planning authorities should not allow planning agreements to improperly fetter the exercise of statutory functions with which they are charged
- Planning authorities should not use planning agreements as a means of revenue raising, to overcome spending limitations, or for other improper purposes

## ITEM 6 (continued)

## ATTACHMENT 2

- Planning authorities should not be party to planning agreements in order to seek public benefits that are unrelated to particular development
- Planning authorities should not, when considering applications to change environmental planning instruments or development applications, take into consideration planning agreements that are wholly unrelated to the subject-matter of the application, or attribute disproportionate weight to a planning agreement
- Planning authorities should not allow the interests of individuals or interest groups to outweigh the public interest when considering planning agreements
- Planning authorities should not improperly rely on their statutory position in order to extract unreasonable public benefits from developers under planning agreements
- Planning authorities should ensure that their bargaining power is not compromised or their decision-making freedom is not fettered through a planning agreement
- Planning authorities should avoid, wherever possible, being party to planning agreements where they also have a stake in the development covered by the agreements.

### 2.2. Public interest and probity considerations

This section discusses the public interest and probity issues that arise in connection with the use of planning agreements. It aims to lift the general level of awareness of these issues, and outlines best practice principles, policies and procedures.

A critical consideration in whether to enter into a planning agreement is whether the agreement is in the public interest. Generally speaking, the public interest is directed towards securing the fair imposition of planning controls for the benefit of the community. Planning agreements are matters of public interest and this is a relevant consideration in negotiating outcomes.

In some cases, the public interest public may be measured in terms of the need to mitigate any adverse impacts of development on the public domain or the desirability of providing a planning benefit to the wider community.

The statutory bargaining framework for planning agreements raises the fundamental issue of what is an appropriate planning agreement. The bargaining process involves the exercise of discretion on both sides, giving planning authorities and developers room to accommodate subjective values and varying concepts of the public interest, private interests and other standards.

The ability for a planning agreement to wholly or partly exclude the application of local infrastructure contributions (in the case of councils) or special infrastructure contributions (SICs) (in the case of the State Government) to development gives a planning authority scope for trade-offs under an agreement. This means that the financial, social and environmental costs and benefits of development can be redistributed through an agreement.

However, there is no guarantee that these costs and benefits will be equitably distributed within the community and what may be a specific benefit to one group in the community may be a loss to another or the remainder of the community.

Safeguards in the form of best practice principles, policies and procedures protect the public interest and the integrity of the process. They also guard against misuse of planning discretions and processes, which would seriously undermine good planning outcomes and public confidence in the planning system.

**Secretary's Practice Note - Planning Agreements**



## ITEM 6 (continued)

## ATTACHMENT 2

This also ensures that planning decisions are exercised openly, honestly, freely and fairly in any given case and fairly and consistently across the board. This also protects planning agreements from the natural suspicion that changes to environmental planning instruments and development consents can be bought by the highest bidder.

Misuse of planning agreements can occur for a variety of reasons and produce a variety of unwelcome results including:

- where a planning authority seeks inappropriate public benefits because of opportunism or to overcome revenue-raising or spending limitations that exist elsewhere;
- where there is insufficient analysis of the likely planning impacts of proposed development because a planning authority is determined to enter into, or to give effect, to a planning agreement;
- where a planning authority allows the interests of individuals or small groups to demand particular public benefits, which otherwise outweigh the public interest; and
- where a planning authority takes advantage of an imbalance of bargaining power between the planning authority and developer. For example, abuse would occur if a planning authority sought to improperly rely on its peculiar statutory position in order to extract unreasonable public benefits under a planning agreement.

On the other hand, misuse can also occur if the planning authority's bargaining power is compromised or its decision-making freedom fettered by a planning agreement.

The potential for misuse also exists where a planning authority, acting as consent authority or in another regulatory capacity for development, is both party to a planning agreement and also a development joint venture partner under the agreement, for example as a landowner. Special safeguards, such as the intervention of a disinterested third party in the development assessment process, would be needed in such circumstances.

For these reasons, the safeguards applying to the use of planning agreements should:

- provide a generally applicable test for determining the acceptability of a planning agreement, which embraces among other things the concept of reasonableness;
- contain specific measures to protect the public interest and prevent misuse of planning agreements;
- have published rules and accessible procedures;
- provide for effective formalised public participation;
- extend fairness to all parties affected by a planning agreement; and
- guarantee regulatory independence of the planning authority.

The generally applicable acceptability test should require that planning agreements:

- are directed towards proper legitimate planning purposes, that can be identified in the statutory planning controls and other adopted planning policies applying to development;
- provide for public benefits that bear a relationship to development that is not *de minimis* (that is benefits that are not wholly unrelated to development);
- produce outcomes that meet the general values and expectations of the public and protect the overall public interest;

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- provide for a reasonable means of achieving the desired outcomes and securing the benefits; and
- protect the community against planning harm.

### **Planning agreements and public participation**

Public participation in the planning agreement process is critical to ensure the wider community has an opportunity to provide input into decisions being made relating to public benefit and development. Planning agreements distribute the costs and benefits of a development, and it is critical the public can comment on whether they think the balance between development and public benefit is achieved successfully.

Planning agreements are legal documents and are therefore not easily understood by the public. An explanatory note is required to be prepared to accompany public notice of a planning agreement and they should be written in easy to understand.

Parties to a planning agreement should make sure explanatory notes are written in plain English. The explanatory note should help the community to simply and clearly understand what a planning agreement is proposing, how it delivers public benefit, and why it is acceptable and in the planning interest.

Parties should consider if other types of consultation material can help with this process.

### **Amendment to proposed planning agreement after public notification**

Any material changes that are proposed to be made to a planning agreement after a public notice has been given should be the subject of re-notification. This would be the case where proposed changes would materially affect:

- how any of the matters specified in section 93F(3) of the EP&A Act are dealt with by the planning agreement;
- other key terms and conditions of the planning agreement;
- the planning authority's interests or the public interest under the planning agreement; or
- whether a non-involved member of the community would have made a submission objecting to the change if it had been exhibited.

### **Planning agreements and development applications**

Section 79C(1)(a)(iii) of the EP&A Act requires a consent authority, when determining a development application, to take into consideration any relevant planning agreement or draft agreement that has been entered into under section 94F.

Section 79C(1)(d) requires the consent authority to take into consideration any public submissions made in respect of the development application which may include submissions relating to a planning agreement.

Section 93(2) precludes a consent authority refusing to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.

Section 93(3) authorises a consent authority to require a planning agreement (or any agreement containing provisions similar to those that are contained in an agreement referred to in section 93F) to be entered into as a condition of development consent, but only if it requires an agreement that is in the terms of an offer made by the developer in connection with the development application or a change to an environmental planning instrument.

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### **Relationship between planning agreements and varying development standards (Clause 4.6 or SEPP 1)**

In recent years, the Land and Environment Court has handed down decisions limiting the ability of consent authorities and developers to rely on planning agreements to justify dispensations from development standards contained in local environmental plans proposed by development applications: see *Jubilee Properties v Warringah Council* [2015] NSWLEC 1042; *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312.

The Land and Environment Court decisions reinforce the principle that the benefits provided under a planning agreement should not be used to justify a variation from a development standard unless the benefit is directed towards achieving the planning objective of the relevant development standard.

Under no circumstances should the benefits provided under a planning agreement be exchanged for a variation from a development standard under clause 4.6 where the variation is not justified on planning grounds and the benefit is not directed towards achieving the planning objective of the development standard.

### **Planning agreement or conditions of development consent?**

Planning authorities and developers must make a judgement in each particular case about whether the use of a planning agreement is beneficial and otherwise appropriate. However, planning agreements should never be used to require compliance with or re-state obligations imposed by conditions of development consent as it may create unnecessary duplication.

## **2.3. Using planning agreements**

This section sets out a best practice policy and practice framework on the use of planning agreements. Planning agreements should comply with the specific requirements in this section to the fullest extent possible.

### **Fundamental principles and acceptability**

It is critical that all planning agreements meet the fundamental principles in Part 2.1 and considerations of acceptability set out in Part 2.2. Whether a particular planning agreement is acceptable and reasonable can only be judged on the circumstances of the case and considering State, regional or local planning policies.

### **Objectives of planning agreements**

The objectives of planning agreements will be dictated by the circumstances of individual cases and the policies of planning authorities in relation to their use. However, as a general indication, planning agreements may be directed towards achieving the following broad objectives:

- meeting the demands created by development for new public infrastructure, amenities and services;
- prescribing the nature of development to achieve specific planning objectives;
- securing off-site planning benefits for the wider community so that development delivers a net community benefit;
- compensating for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.

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**Competing proposals to provide planning benefits**

Situations may arise where planning authorities are faced with competing applications each accompanied by offers to enter into planning agreements providing planning benefits. In such cases, provided the planning benefits offered are not wholly unrelated to development, they may be considered in connection with the applications and it may be perfectly rational for the planning authority to approve the proposal which offers the greatest planning benefit in related external public benefits where the planning benefits of the development itself are equal.

**Planning agreements or other contributions mechanisms**

Planning agreements should complement other contribution mechanisms, including section 94 contributions and section 94A levies for local infrastructure, or SICs. They can be used to deliver infrastructure outcomes specified in these mechanisms, or additional public benefit.

However, planning agreements should not be used as *de facto* substitutes for contributions plans. There is a clear legislative, regulatory and policy framework supporting contributions plans which does not apply to planning agreements. Where there is need for public infrastructure across a development area with a range of land owners, a contributions plan maybe more appropriate because it simplifies transactions and has clearer underpinning strategic planning.

The table on page 13 identifies some factors in development outcomes and infrastructure needs that may be considered when identifying an appropriate contribution mechanism.

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Method	Application/issues
<b>Section 94 development contributions</b>	<ul style="list-style-type: none"> <li>• In urban release areas and major urban renewal precincts</li> <li>• In areas where growth is faster and higher levels of contributions are able to offset the considerable administration costs, financial risks and inefficiencies of managing money amongst and within the funds</li> <li>• In areas with multiple owners who are unable to coordinate offering dedications or provision of a material public benefit</li> <li>• Where the council can access supplementary funds to meet the non-development demand for the infrastructure included in the contributions plan</li> <li>• Areas where the overall rate of growth is uncertain but different landholders are likely to proceed with development at rates different to other landholders</li> </ul>
<b>Section 94A levy</b>	<ul style="list-style-type: none"> <li>• In established urban areas where supplementary funding of infrastructure to meet non-development demands is uncertain</li> <li>• In high growth urban centres where infrastructure needs are mixed and where a high number of development can contribute to shared costs</li> <li>• In areas where both the rate, and the infrastructure impacts, of future development is relatively low, difficult to predict, or spread over time</li> <li>• Where the provision of the infrastructure benefits a dispersed set of contributors and nexus is difficult to identify</li> <li>• Where resources to manage the development contributions are limited</li> <li>• In areas with multiple ownership with little scope for land dedications or provision of a material public benefit as alternatives to paying a monetary contribution</li> <li>• Where the costs of needed infrastructure are relatively low and spread over time</li> </ul>
<b>Planning agreements</b>	<ul style="list-style-type: none"> <li>• In relation to a major development site or precinct that is owned by a single land owner or a consortium of land owners</li> <li>• Where the owner or owners have an incentive to be directly involved in the delivery of community infrastructure, such as quicker timeframes for delivery of infrastructure are important for the developer to bring the product to market</li> <li>• Where a proposed development is unanticipated by Council and thus works and facilities to cater for this development have not been identified. A planning agreement can be prepared to specifically target the needs of the development and community</li> <li>• Where the owners agree to be involved in the provision of public infrastructure, rather than just community infrastructure</li> <li>• Where the owners want to provide community infrastructure additional to, or at a higher standard than, what has been specified under the contributions plan</li> <li>• Where a council and the developer(s) can, by negotiation, achieve different and better or more innovative outcomes than can be achieved through imposing direct or indirect contributions</li> </ul>

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### Planning benefits

The provision of planning benefits for the wider community through planning agreements involves capturing part of development's profit. The value of planning benefits should always be restricted to a reasonable share of development profit.

Planning benefits should never be obtained through planning agreements that are or could be considered to be a form of taxation on development for revenue raising.

Accordingly, planning benefits, though primarily directed to the wider community, must never be wholly unrelated to development contributing the benefit. How and when public benefit will be spent should be made transparent by the planning authority to the developer.

### Planning agreements and strategic infrastructure planning

Planning agreements should not be used to explicitly capture windfall gain in connection with the making of planning decisions under the EP&A Act, in particular in relation to changes to planning instruments.

Planning authorities should always have regard to a developer's entitlement to a share of development profit, while continuing to ensure new development is appropriately serviced by infrastructure. Should a planning agreement result in a developer's share of the profit dropping below a point where the development is no longer feasible, the development may not proceed and benefits would not be realised.

Planning authorities should ensure that:

- planning agreements are not used as a mechanism to capture windfall gain;
- planning agreements are evidence based and preferably independently peer reviewed and should be used as a mechanism to introduce agreed public benefit developed through appropriate processes of strategic planning and community consultation;
- a proposed development gives opportunity for public benefit and infrastructure, including affordable housing, to be delivered by development with regard to the fair apportionment of costs;
- the method of apportioning infrastructure costs is clearly set out, justified and ensures the developer an entitlement to profit that enables the development to proceed; and
- proper investigation and consideration of development feasibility and capacity to pay is carried out, preferably on an 'open-book' basis, if raised as an issue by the developer.

When seeking to implement strategic infrastructure planning through a planning agreement and when determining charges, planning authorities should allow for flexibility.

When considering opportunities to deliver agreed infrastructure objectives through planning agreements, consideration should be given to apportionment for different development types or in development circumstances, and include thresholds and exemptions.

If planning authorities seek to link planning agreements to planning incentives, density bonuses, planning trade-offs or the like, details of the relevant scheme and its implementation should preferably be contained in an environmental planning instrument or development control plan. This is to avoid parallel, non-statutory and largely unregulated planning processes, which can undermine the proper functioning of the planning system established by the EP&A Act.

When considering a 'bon us scheme' planning authorities should carry out public consultation, consider the apportionment of funding, look at the feasibility impact and determine the need for the infrastructure. Such a

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scheme should also satisfy the fundamental principles and considerations for acceptability set out in Part 2 of this practice note.

Planning authorities should not use any bargaining power accruing to them by reason of their regulatory functions under the EP&A Act to force or attempt to force developers to enter into planning agreements providing for any windfall gain on the terms sought by the planning authority.

Planning authorities should consider all applications for planning proposals, development consents or modifications on their merits. The unwillingness of a developer to offer to enter into a planning agreement related to land value increase should not be a reason why a proposal is refused. Equally, a planning proposal that may have negative planning outcomes cannot be justified solely on the basis of an opportunity to enter into a planning agreement related to windfall gain.

It is not appropriate for a planning authority to prioritise site specific planning proposals on the basis they provide for opportunity to capture windfall gain, over undertaking precinct-, centre-, or LGA-wide strategic planning initiatives. Infrastructure and public benefit, including affordable housing, is likely to be planned and delivered in a more comprehensive way if linked to broad strategic planning exercises, rather than determining planning impacts and potential public benefits on a site-by-site basis. Other contributions mechanisms can also provide for a more efficient and reasonable distribution of the costs of infrastructure associated with growth, rather than focusing on individual large developments. These considerations are not inconsistent with the role of a council to assess site specific planning proposals on their planning merits.

### 2.4. Planning agreements policies and procedures

Planning authorities, particularly councils, should publish policies and procedures concerning their use of planning agreements that reflect the following fundamental principles. These should set out:

- the use of planning agreements by the planning authority within the context of its broader corporate strategic planning and land use planning policies, goals, and strategies;
- the circumstances in which the planning authority would ordinarily consider entering into a planning agreement;
- the land use planning and development objectives that are sought to be promoted or addressed by the use of planning agreements;
- the role served by planning agreements in the development contributions and infrastructure funding systems of the planning authority;
- the types of development to which planning agreements will ordinarily apply, how their use may be differentiated between different types of development;
- whether any thresholds or exemptions apply to the use of planning agreements in relation to particular types of development or in particular circumstances;
- the matters ordinarily covered by a planning agreement;
- the form of development contributions ordinarily sought under a planning agreement;
- the kinds of public benefits sought and, in relation to each kind of benefit, whether it involves a planning benefit;

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- the method for determining the value of public benefits and whether that method involves standard charging;
- whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate;
- when, how and where public benefits will be provided. A register of planning agreements could be made available online or incorporated into the online planning register of the planning authorities website;
- the procedures for negotiating and entering into planning agreements; and
- the planning authority's policies on other matters relating to planning agreements, such as review and modification, discharging of the developer's obligations under agreements, the circumstances, if any, in which refunds may be given, dispute resolution and enforcement mechanisms, and payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

Planning agreement policies should be sufficiently detailed to address the particular circumstances and intentions of the planning authority relating to its use of planning agreements. They should not be formulaic nor merely represent an attempt at formal compliance with the requirement of this practice note for a policy to exist.

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## **Part 3 – Planning agreement procedures and decision making**

### **3.1. Offer and negotiation**

#### **Offer to enter into a planning agreement**

The EP&A Act does not define what constitutes an 'offer' for the purpose of section 93F(3) of the EP&A Act. An offer should:

- be in writing;
- be addressed to the planning authority to whom it is made;
- be signed by or on behalf of all parties to the planning agreement other than the planning authority to whom the offer is made;
- outline in sufficient detail to allow proper consideration by the planning authority the matters required to be included in a planning agreement as specified in section 93F(3) of the EP&A Act;
- address in sufficient detail to allow proper consideration by the planning authority any relevant matters required to be included in an offer as specified in any applicable planning agreements policy published by the planning authority to whom the offer is made; and
- outline in sufficient detail to allow proper consideration by the planning authority all other key terms and conditions proposed to be contained in the planning agreement.

#### **Efficient negotiation systems**

Planning authorities, particularly councils, should implement measures to create fast, predictable, transparent and accountable negotiation systems for planning agreements. The systems should ensure that the negotiation of planning agreements do not unnecessarily delay ordinary planning processes. The systems should contain measures to ensure that the negotiation of planning agreements run in parallel with applications to change environmental planning instruments or development applications, including through pre-application negotiation in appropriate cases. Negotiation systems should be based on principles of co-operation, full disclosure, early warning, and agreed working practices and timetables.

#### **Involvement of independent third parties**

Independent third parties could be used in a variety of situations involving planning agreements. Planning authorities and developers are encouraged to make appropriate use of them during negotiation. The situations include:

- where an independent assessment of a proposed change to an environmental planning instrument or development application is necessary or desirable;
- where factual information requires validation;
- where sensitive financial or other confidential information must be verified or established in the course of negotiations;

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- where facilitation of complex negotiations are required for large projects or where numerous parties or stakeholders are involved; and
- where dispute resolution is required under a planning agreement.

### **Dispute Resolution**

Different kinds of dispute resolution mechanisms may suit different kinds of disputes and this should be reflected in a planning agreement. For example, mediation may be suitable to deal with disputes arising from grievances while expert determination may be most suitable to resolve disputes of a technical nature. Similarly, arbitration may be suitable for resolving commercial disputes.

### **Standard-form planning agreements**

Planning authorities are also encouraged to publish and use standard forms of planning agreements or standard clauses for inclusion in planning agreements to improve process efficiency.

### **Past deficiencies in infrastructure provision**

Planning agreements may be used to overcome past deficiencies in infrastructure provision that would otherwise prevent development from occurring. This may frequently involve the conferring of a planning benefit under the agreement.

## **3.2. Costs and charges**

### **Costs**

There is no comprehensive policy on the extent to which a planning authority may recover costs for negotiating, preparing, executing, registering, monitoring, enforcing and otherwise administering planning agreements. Wherever possible, planning authorities and developers should negotiate and agree costs at the earliest opportunity.

### **GST considerations**

The parties to planning agreements should obtain advice in every case on whether a potential GST liability attaches to the agreement. An agreement potentially involves two taxable supplies: the supply of development rights from the planning authority to the developer and the supply of public benefits by the developer to the planning authority. In other words, both parties have a potential GST liability.

### **Standard charges**

Planning authorities are encouraged to standardise development contributions sought under planning agreements in order to streamline negotiations and provide predictability and certainty for developers. However, this does not prevent public benefits being negotiated on a case by case basis, particularly where planning benefits are also involved.

### **Standard form planning agreements**

Planning authorities are also encouraged to publish and use standard forms of planning agreements or standard clauses for inclusion in planning agreements in the interests of process efficiency. Where possible, councils are encouraged to use the template planning agreement at Attachment A.

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### **Recurrent costs and maintenance payments**

Planning agreements may require developers to make contributions towards the recurrent costs of facilities that primarily serve the development to which the planning agreement applies or neighbouring development in perpetuity. However, where the facilities are intended to serve the wider community, planning agreements should only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

### **Pooling of monetary contributions**

Planning authorities should disclose to developers, and planning agreements should specifically provide, that monetary contributions paid under different planning agreements are to be pooled and progressively applied towards the provision of public benefits that relate to the various agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

### **Refunds**

Planning agreements may provide that refunds of monetary development contributions made under the agreement are available if public benefits are not provided in accordance with the agreement.

### **Documentation of planning agreements**

The parties to a planning agreement should agree on which party is to draft the agreement to avoid duplication of resources and costs.

## **3.3. Registration and administration of planning agreements**

### **Registration of planning agreement**

Registration is important to inform people dealing with land of the existence of a planning agreement affecting the land and for the enforcement of a planning agreement.

There is no requirement that a planning agreement must be registered over the whole of the land covered by the agreement.

In order to ensure that the intention of the parties to a planning agreement to register the agreement is not defeated, the written agreement to the registration of the agreement of each person with an estate or interest in the land to which the planning agreement applies should be furnished by the developer to the planning authority as a precondition to the execution of the planning agreement by the planning authority.

Provision should ordinarily be made in a registered planning agreement about when the notation of the planning agreement on the title to land can be removed. This may, for example, occur when:

- the developer has complied with all obligations under the planning agreement relating to the land and is discharged from the planning agreement;
- the developer has complied with all relevant obligations under the planning agreement relating to a stage of development and the notation about that stage in the planning agreement on the title to the land is removed;
- land the subject of the planning agreement is subdivided and titles for new lots are created and the developer has complied with all relevant planning agreement obligations relating to the subdivision; or

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- additional valuable security for performance of the planning agreement acceptable to the planning authority is provided by the developer in exchange for removal of the notation of the planning agreement from the title to land.

### **Security for enforcement of developer's obligations**

The EP&A Act does not prescribe any particular means by which the developer's performance of a planning agreement may be enforced. What is a suitable means of enforcement of the planning agreement depends on the circumstances and in particular the nature and extent of the developer's obligations under the planning agreement and the planning authority's reasonable assessment of the risk and consequences of non-performance.

Tying the performance of the developer's obligations to the issuing of certificates under Part 4A of the EP&A Act may provide a suitable means of enforcement of planning agreement obligations in some cases. The EP&A Act and the regulations made under that Act restrict the issuing of a construction certificate, occupation certificate or subdivision certificate by a certifier until any preconditions to the issuing of the certificate specified in a planning agreement have been complied with.

Where a developer requests that a Part 4A certificate be issued even though all preconditions to the issuing of the certificate specified in a planning agreement have not been fulfilled, the planning agreement would ordinarily require the developer to provide financial security, such as a bond or bank guarantee, to secure the performance of the unfulfilled obligations as a condition of agreeing to the developer's request. An amendment to the planning agreement would ordinarily be required in such circumstances unless the planning agreement already makes provision for such an arrangement.

Where a planning agreement requires land to be dedicated to the planning authority, a suitable means of enforcement of such obligation may well be for the planning agreement to contain a pre-acquisition agreement for the purposes of the *Land Acquisition (Just Terms Compensation) Act 1991* enabling the planning authority to compulsorily acquire the land to be dedicated for nominal or an agreed value in the event of default by the developer.

Where a planning agreement requires the carrying out of works by the developer, the suitable means of enforcement of such obligation will ordinarily be a financial security, such as a bond or bank guarantee, which can be called on by the planning authority in the event of default, coupled with step-in rights by the planning authority. The value of the financial security to the planning authority should relate to the potential costs that may be incurred by the planning authority in carrying out the relevant works obligations of the developer in the event of default by the developer.

Provision by the developer of a financial security or additional financial security, such as a bond or bank guarantee, would ordinarily be appropriate where the developer seeks to postpone obligations under a planning agreement to a time later than the time originally specified for performance. An amendment to the planning agreement would ordinarily be required in such circumstances unless the planning agreement already makes provision for such an arrangement.

### **Monitoring and review of planning agreements**

Planning authorities should use standardised systems to monitor the implementation of planning agreements in a systematic and transparent way. This may involve co-operation by different parts of planning authorities. Monitoring systems should enable information about the implementation of planning agreements to be made readily available to public agencies, developers and the community. Planning agreements should contain a mechanism for their periodic review that should involve the participation of all parties.

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### Modification and discharge of developer's obligations

Planning agreements should not impose obligations on developers indefinitely. Planning agreements should set out the circumstances in which the parties agree to modify or discharge the developer's obligations under the agreement. The modification or discharge should be effected by an amendment to the agreement. The circumstances that may require planning agreements to be modified or discharged may include the following:

- material changes to the planning controls applying to the land;
- a material modification to the development consent;
- the lapsing of the development consent;
- the revocation or modification by the Minister of a development consent; and
- other material changes in the overall planning circumstances of an area affecting the operation of the planning agreement.

### 3.4. Basic statutory procedure for entering into a planning agreement

The nature of planning agreements and requirements for their public notification and consideration in determining applications dictate the basic procedures for entering into planning agreements.

Planning agreements may be entered into between planning authorities and developers (and associated persons) in relation to changes sought by developers to environmental planning instruments (including the making, amendment or repeal of instruments), or development applications or proposed development applications.

Planning agreements must be publicly notified and made available for public inspection before they can be entered into.

Planning agreements and public submissions relating to them should where possible be considered, when deciding to make changes to environmental planning instruments to which they relate or when determining planning applications to which planning agreements relate.

Where possible, planning agreements should be negotiated between planning authorities and developers before applications are made so that applications may be accompanied by copies of draft agreements. The basic procedures relating to planning agreements are therefore as follows:

**Step 1.** Before the making of an application, the planning authority and developer decide whether to negotiate a planning agreement. The parties consider whether other planning authorities and other persons associated with the developer should be additional parties to the agreement. If the developer is not the owner of the relevant land, the landowner should be an additional party to the agreement.

**Step 2.** If an agreement is negotiated, it is documented as a draft planning agreement and the parties agree on the terms of the accompanying explanatory note required by the EP&A Regulation. The parties also agree on the content of the application to which the draft agreement relates.

**Step 3.** The developer makes the application to the relevant authority, accompanied by the draft planning agreement and the explanatory note. The application must clearly record the developer's offer to enter into the planning agreement if the application is approved. Preferably, the draft agreement should be executed by the developer to indicate the developer's commitment to enter into the agreement if the application is approved. In the case of an application to change an environmental planning instrument, the application may record the

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developer's offer as being to enter into the planning agreement if consent is subsequently granted to a development application relating to the change to the instrument.

**Step 4.** Relevant public authorities are consulted in relation to the application and draft planning agreement and any consequential amendments required to the application and draft agreement are made.

**Step 5.** The application, draft planning agreement and explanatory note are publicly notified and exhibited in accordance with the EP&A Act and EP&A Regulation. Any consequential amendments required to the application and draft agreement are made and, if necessary, the amended application, draft planning agreement and explanatory note are re-exhibited.

**Step 6.** The draft planning agreement and public submissions are considered in the determination of the application so far as relevant to the application. The weight given to the draft agreement and public submissions is a matter for the relevant authority acting reasonably.

**Step 7.** If the application, being a change to an environmental planning instrument, is approved, the agreement may be entered into immediately. Alternatively, it can be entered into if consent is subsequently granted to a development application relating to the change to the instrument. If the application, being a development application, is granted consent, a condition may be imposed requiring the planning agreement to be entered into but only in terms of the developer's offer made in connection with the application. The planning authority would resolve to execute the agreement when approving the application. If the application is approved on terms different to the developer's offer, the agreement could not be required to be entered.

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## Part 4 - Examples of the use of planning agreements

Planning agreements have the potential to be used in a wide variety of planning circumstances and to achieve many different planning outcomes. Their use will be dictated by the circumstances of individual cases and the policies of planning authorities in relation to their use. Accordingly, it is not possible to prescribe their use, nor would this be appropriate.

The examples given in this section serve only to provide an indication of the potential breadth of their scope and application.

### Compensation for loss or damage caused by development

Planning agreements can provide for development contributions that compensate for increased demand on the use of a public amenity, service, resource or asset that will or is likely to result from the carrying out the development.

For example, development may result in the loss of or increased impact on the provision of public open space, public car parking, public access, water and air quality, bushland, wildlife habitat or other natural areas.

The planning agreement could impose planning obligations directed towards replacing, substituting, or restoring the public amenity, service, resource or asset to an equivalent standard to that existing before the development is carried out.

In this way, planning agreements can offset development impacts that may otherwise be unacceptable.

### Meeting demand created by development

Planning agreements can also provide for development contributions that meet the demand for new public infrastructure, amenities and services created by development. For example, development may create a demand for public transport, drainage services, public roads, public open space, streetscape and other public domain improvements, community and recreational facilities.

The public benefit provided under the agreement could be the provision, extension or improvement of public infrastructure, amenities and services to meet the additional demand created by the development.

### Prescribing inclusions in development

Planning agreements can be used to secure the implementation of particular planning policies by requiring development to incorporate particular elements that confer a public benefit.

Examples include agreements that require the provision of open space, community or recreational facilities or the retention of urban bushland, or agreements that require development, in the public interest, to meet aesthetic standards, such as design excellence.

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### **Providing planning benefits to the wider community**

Planning agreements can also be used to secure the provision of broader planning benefits for the wider community.

The provision of planning benefits through planning agreements necessarily involves an agreement between a developer and a planning authority to allow the wider community to share in part of the development profit to achieve specified public benefits.

The planning benefit may be provided in conjunction with planning obligations or other measures that address the impacts of particular development on surrounding land or the wider community.

Alternatively, the planning benefit could wholly or partly replace such measures if the developer and the planning authority agree to a redistribution of the costs and benefits of development in order to allow the wider community, the planning authority and the developer to realise their specific preferences for the provision of public benefits.

Planning benefits may take the form of additional or better quality public facilities than is required for a particular development. Alternatively, planning benefits may involve the provision of public facilities that, although not strictly required to make the development acceptable in planning terms, are not wholly unrelated to the development. An example of this might be development contributions towards the provision or retention of off-site affordable housing.

### **Recurrent funding**

Planning agreements may provide for public benefits that take the form of development contributions towards the recurrent costs of infrastructure, facilities and services.

Such benefits may relate to the recurrent costs of items that primarily serve the development to which the planning agreement applies or neighbouring development. In such cases, the planning agreement may establish an endowment fund managed by a trust, to pay for the recurrent costs of the relevant item. In addition, it may bind future owners in a development to make periodic payment to the fund for the recurrent costs of the item.

For example, a planning agreement may fund the recurrent costs of habitat protection where development will have a demonstrated impact on nearby sensitive habitat. Further, a planning agreement may fund the recurrent costs of water quality management in respect of development that will have a demonstrated impact on a natural watercourse that flows through or nearby to the development.

Planning benefits may also take the form of interim funding of the recurrent costs of infrastructure, facilities and services that will ultimately serve the wider community. The planning agreement would only require the developer to make such contributions until a public revenue stream is established to support the on-going costs of the facility.

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## Attachment A – Template planning agreement

PLANNING AGREEMENT

*Parties*

## of ##, New South Wales (**Council**)  
and  
## of ##, New South Wales (**Developer**).

*Background*

(For Development Applications)

A. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

(For Changes to Environmental Planning Instruments)

A. On, ##, the Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.

B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities that Development Consent was granted.

C. The Instrument Change was published in NSW Government Gazette No. ## on ## and took effect on ##.

D. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

*Operative Provisions*

1 *Planning agreement under the Act*

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

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2 Application of this Agreement

[Drafting Note 2: Specify the land to which the Agreement applies and the development to which it applies]

3 Operation of this Agreement

[Drafting Note 3: Specify when the Agreement takes effect and when the Parties must execute the Agreement]

4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

**Act** means the Environmental Planning and Assessment Act 1979 (NSW).

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Development** means ##

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Instrument Change** means ## Local Environmental Plan ##.

**Land** means Lot ## DP ##, known as ##.

**Party** means a party to this agreement, including their successors and assigns.

**Public Facilities** means ##.

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

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

(a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

(b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

(c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

(d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

**ITEM 6 (continued)**

**ATTACHMENT 2**

- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

**5 Development Contributions to be made under this Agreement**

*[Drafting Note 5: Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made]*

**6 Application of the Development Contributions**

**6.1** *[Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied]*

**7 Application of s94 and s94A of the Act to the Development**

**7.1** *[Drafting Note 7: Specify whether and to what extent s94 and s94A apply to development the subject of this Agreement]*

**8 Registration of this Agreement**

*[Drafting Note 8: Specify whether the Agreement is to be registered as provided for in s93H of the Act]*

**9 Review of this Agreement**

**(a)** *[Drafting Note 9: Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur.]*

**ITEM 6 (continued)**

**ATTACHMENT 2**

<b>10</b>	<b>Dispute Resolution</b>
	<i>[Drafting Note 10: Specify an appropriate dispute resolution process]</i>
<b>11</b>	<b>Enforcement</b>
	<i>[Drafting Note 11: Specify the means of enforcing the Agreement]</i>
<b>12</b>	<b>Notices</b>
12.1	Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
(a)	Delivered or posted to that Party at its address set out below.
(b)	Faxed to that Party at its fax number set out below.
(c)	Emailed to that Party at its email address set out below.
	<b>Council</b>
	Attention: ##
	Address: ##
	Fax Number: ##
	Email: ##
	<b>Developer</b>
	Attention: ##
	Address: ##
	Fax Number: ##
	12.1.2 Email: ##
12.2	If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
12.3	Any notice, consent, information, application or request is to be treated as given or made at the following time:
	(a) If it is delivered, when it is left at the relevant address.
	(b) If it is sent by post, 2 business days after it is posted.
	(c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
12.4	If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.
<b>13</b>	<b>Approvals and consent</b>

**ITEM 6 (continued)**

**ATTACHMENT 2**

*Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.*

**14 Assignment and Dealings**

*[Drafting Note 14: Specify any restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restrictions apply]*

**15 Costs**

*[Drafting Note 15: Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties]*

**16 Entire agreement**

*This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.*

**17 Further acts**

*Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.*

**18 Governing law and jurisdiction**

*This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.*

**19 Joint and individual liability and benefits**

*Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.*

**20 No fetter**

*Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.*

**21 Representations and warranties**

*The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.*

**ITEM 6 (continued)**

**ATTACHMENT 2**

**22 Severability**

*If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.*

**23 Modification**

*No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.*

**24 Waiver**

*The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.*

**25 GST**

*If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.*

**Execution**

**Dated: ##**

**Executed as an Agreement: ##**

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**7 DRAFT MEDIUM HOUSING CODE AND DRAFT MEDIUM DENSITY  
DESIGN GUIDE**

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**Report prepared by:** Strategic Planner

**File No.:** URB/08/1/2/3 - BP16/1495

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**NOTE:**

**Please be advised that the City of Ryde's Draft Submission relating to the proposed Medium Density Housing Code and Design Guide is currently being finalised.**

**The Submission has wide ranging impacts for the City of Ryde's planning framework and has required input from a number of Council Departments.**

**This report will be circulated to Councillors by Friday, 9 December 2016.**

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## **PRECIS OF CORRESPONDENCE**

### **1 REPORT ON DOMESTIC WASTE MANAGEMENT REASONABLE COST CALCULATIONS**

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**Report prepared by:** Acting Chief Financial Officer  
**File No.:** CSG/14/3/37 - BP16/1467

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#### **CORRESPONDENCE:**

Submitting correspondence from PricewaterhouseCoopers dated 10 November 2016, providing their report in relation to OLG Circular No 16-07, 22 March 2016, reporting the Domestic Waste Management (DWM) reasonable cost calculations for the 2016/17 financial period, which has been presented fairly.

In accordance with the OLG Circular No. 16-07, the reasonable cost calculations are to be reported directly to Council.

#### **RECOMMENDATION:**

That the correspondence be received and noted.

#### **ATTACHMENTS**

- 1 Domestic Waste Management DWM Reasonable Cost Calculations Independent Auditors Report**

Report Prepared By:

**Christine Joyce**  
**Acting Chief Financial Officer**

Report Approved By:

**Steven Kludass**  
**Director - Corporate and Community Services**

## PRECIS OF CORRESPONDENCE 1 (continued)

## ATTACHMENT 1



## City of Ryde Council

Domestic Waste Management Reasonable Cost Calculations  
Independent Auditors' Report**Report on Domestic Waste Management Reasonable Cost Calculations**

We have audited the accompanying special purpose financial statement comprising the Domestic Waste Management (DWM) reasonable cost calculations of City of Ryde Council for the 2016/17 financial period.

**Responsibility of Council for DWM Reasonable Cost Calculations**

The Council is responsible for the preparation and fair presentation of DWM reasonable cost calculations in accordance with the Council Rating and Revenue Raising Manual 2007. This responsibility includes the maintenance of adequate accounting records and internal controls designed to prevent and detect fraud and error; designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of DWM reasonable cost calculations that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

**Auditors' Responsibility**

Our responsibility is to express an opinion on the DWM reasonable cost calculations based on our audit. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the DWM reasonable cost calculations are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the DWM reasonable cost calculations. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the DWM reasonable cost calculations, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the DWM reasonable cost calculations.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, there is an unavoidable risk that some material misstatements may not be detected, even though the audit is properly planned and performed in accordance with Australian Auditing Standards.

In making our risk assessments, we consider internal controls relevant to the entity's preparation of the DWM reasonable cost calculations in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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**PricewaterhouseCoopers, ABN 52 780 433 757**  
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Liability limited by a scheme approved under Professional Standards Legislation.

PRECIS OF CORRESPONDENCE 1 (continued)

ATTACHMENT 1



***Independence***

In conducting our audit, we followed applicable independence requirements of Australian professional ethical pronouncements.

***Audit Opinion***

In our opinion, the DWM reasonable cost calculations of City of Ryde Council for 2016/17 are properly drawn up in all material respects in accordance with the requirements of the Council Rating and Revenue Raising Manual 2007 and in accordance with the books and records of the Council.

***Restriction on distribution***

Without modifying our opinion, we advise that this statement has been prepared for the City of Ryde Council for the purpose of confirming that Council's DWM reasonable cost calculations are presented fairly. As a result, the statement may not be suitable for another purpose.

A handwritten signature in blue ink, appearing to read 'PricewaterhouseCoopers'.

PricewaterhouseCoopers

A handwritten signature in blue ink, appearing to read 'Peter Buchholz'.

Peter Buchholz  
Partner

Sydney

10 November, 2016

**CONFIDENTIAL ITEMS****8 OFFER TO ENTER INTO A VOLUNTARY PLANNING AGREEMENT FOR DEVELOPMENT AT 101 WATERLOO ROAD, MACQUARIE PARK**

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**Confidential**

This item is classified CONFIDENTIAL under Section 10A(2) of the Local Government Act, 1993, which permits the meeting to be closed to the public for business relating to the following: (c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

**Report prepared by:** Development Contributions Coordinator

**File No.:** VPA2016/3/2 - BP16/1350

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