

# 1 Planning Proposal to amend Penrith Local Environmental Plan 2010 - Orchard Hills North

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<b>Outcome</b>	<i>We plan for our future growth</i>
<b>Strategy</b>	<i>Facilitate development in the City that considers the current and future needs of our community</i>
<b>Service Activity</b>	<i>Facilitate appropriate land use outcomes for our city that are consistent with our Local Strategic Planning Statement</i>

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

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

**Proponent:** Legacy Property

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

## Executive Summary

The purpose of this report is to make recommendations regarding progressing the Planning Proposal to amend the Penrith Local Environmental Plan (LEP) 2010 for Orchard Hills North to a public exhibition. Assessment of the recently submitted draft Section 7.11 Development Contributions Plan (draft OHN CP), draft letter of offer to enter into a Voluntary Planning Agreement (VPA), and draft Development Control Plan (DCP) has enabled Council to consider that the matter can be progressed to a public exhibition. The report identifies risks to Council and the community, and how these risks are intended to be mitigated prior to future consideration to adopt the proposed plans.

Since the Planning Proposal received a Gateway Determination to publicly exhibit the Planning Proposal, several significant changes have occurred to the Planning Proposal in response to State agency feedback, particularly the need for regional infrastructure as identified by Transport for NSW (TfNSW). These changes are detailed in this report, for Council's information.

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

1. 29 March 2018 – Lodgement of Planning Proposal
2. 4 August 2021 – Advising on the progress of the project
3. 2 September 2021 - Response to landowner enquiries expressing concerns over perceived delays of the exhibition of the Planning Proposal
4. 25 February 2022 – Advising of the updated timeframes issued by amended Gateway Determination
5. 4 March 2022 – Advising of the Gateway Determination timeframe
6. 29 April 2022 – Advising of Orchard Hills North Facebook posts regarding proposed north-south road corridor
7. 11 May 2022 – Regarding the Councillor Briefing of 16 May 2022
8. 16 May 2022 – Regarding correspondence received from Legacy Property on 16 May 2022
9. 25 May 2022 – Regarding change to intended reporting date to Council

In March 2018, the Planning Proposal was lodged with Council to rezone the subject land. At its Policy Review Committee meeting of 4 June 2018, Council resolved to prepare and forward the Planning Proposal to the Minister for Planning to request the issuing of a Gateway Determination to publicly exhibit the Planning Proposal. A Gateway Determination was issued by the NSW Department of Planning and Environment (DPE) in February 2019.

Council has been working closely with DPE and other State agencies including TfNSW and the proponent to resolve outstanding issues with the Planning Proposal as required by the Gateway Determination conditions, prior to public exhibition. These issues have largely been related to the identification and funding of local and state infrastructure requirements, and the need to prepare a draft Development Control Plan (DCP) and draft OHN CP to be placed alongside the Planning Proposal on public exhibition. The most challenging issue to resolve prior to public exhibition has been the need to identify and preserve a North-South road corridor through the subject land. This corridor was first identified by DPE and TfNSW in July 2019 and has only recently been resolved. As a result, the Planning Proposal has had to respond to this new corridor and subsequently, changes to the Master Plan and proposed zoning of land have occurred. Council was also required to address all Gateway Determination conditions prior to public exhibition.

The finalised studies, draft DCP and draft OHN CP were submitted by the proponent in February 2022, and it is not until this time Council officers have been able to review and understand the full extent of infrastructure requirements and the associated financial implications to advance the Planning Proposal.

In an amendment to the Gateway conditions in February 2022, DPE included milestone dates within which Council is required to progress and complete the Planning Proposal process. The dates require public exhibition to commence by 4 April 2022, a report to be made to Council post-exhibition for final consideration by 30 June 2022, and for the LEP to be Gazetted by 31 July 2022. On 23 May 2022, DPE advised Council officers that the matter may be reported to the 27 June 2022 Ordinary Meeting of Council for decision to progress to public exhibition. DPE noted that it is unlikely that any further extensions to the Gateway timeframes will be granted and that the Minister for Planning may take action if the timeframes are not met.

Given the DPIE timeframes associated with the Planning Proposal, the Council officer recommendation is that the Planning Proposal proceed to public exhibition, and that the risks and financial implications identified in this report are worked through with the proponent and other relevant stakeholders to minimise the financial risks to Council. It is important to note that the risks are not realised until the Planning Proposal is actually made, and the land is

rezoned. Therefore, it is also strongly recommended that if these risks cannot be further mitigated prior to any future consideration by Council post-exhibition for adoption of the proposed plans that the rezoning does not proceed. Some of the mitigating factors to these implications are reliant on future planning and rezoning outcomes in the context of the broader Greater Penrith to Eastern Creek (GPEC) Growth Area, and more specifically Orchard Hills South and the planning around the future Metro rail station. At this point in time there is no certainty that these outcomes will occur, however with the assessment of the broader planning for GPEC, it is possible that the risks to Council could be mitigated. There is also a reliance on attaining State Government commitment to acquisition of land for the north-south road through the subject land, and the construction of that roadway, which to date has not been obtained.

There has been a number of discussions with proponents since identifying the financial risks and there has been significant progress in addressing these risks. Advancing the proposal to public exhibition would enable the community to provide its feedback in relation to the proposal, based on the information prepared to date. Given Council officers have only had limited time to work through the responses from the proponent on the financial implications of the proposal, the time during and post-exhibition can be used to work further with the proponent and other stakeholders to further mitigate the financial risks and update the relevant documentation. Therefore, as part of the exhibition material, Council officers will include a fact sheet which will explain the changes that will likely be made to all the relevant documentation in response to the proposed mitigation measures. It is recommended that the draft DCP, draft OHN CP and Letter of Offer are placed on public exhibition for a period of 28 days in accordance with the requirements outlined in the *Environmental Planning and Assessment Act 1979* (EP&A Act), alongside the Planning Proposal and associated technical studies.

## **Background**

At the Ordinary Meeting of 27 November 2017, Council considered a report on the Accelerated Housing Delivery Program (AHDP). The purpose of the AHDP was to identify land suitable for the delivery of new release housing over the following 5 years, through an open and transparent submission process.

The AHDP was open to landowners with land approximately 100 hectares in size (or more), capable of producing 1,000+ lots, and with access to immediate infrastructure, to make a submission. Council received 11 submissions, which were then considered against the AHDP assessment criteria. As an outcome of this process, 2 sites (Glenmore Park Stage 3 and Orchard Hills North) were recommended to be pursued as accelerated housing delivery sites, as they demonstrated consistency with the assessment criteria.

Councillors endorsed the 27 November 2017 report recommendation, which required that discussions be undertaken with the proponents to commence a statutory planning process. Council officers subsequently undertook extensive consultation with the proponent of Orchard Hills North (Legacy Property) and relevant government agencies to facilitate lodgement of a Planning Proposal.

On 27 March 2018, Council received a Planning Proposal (RZ18/0004) from Legacy Property which seeks to amend Penrith LEP 2010 for a 146.1ha site located at Caddens Road, Kingswood Road, Frogmore Road and Castle Road in Orchard Hills, known as Orchard Hills North (the rezoning area). At present the rezoning area is zoned RU4 Primary Production Small Lots under Penrith LEP 2010 and is utilised predominantly for rural residential lifestyle properties. A site location map may be found at Attachment 1.

The rezoning area contains a total of 54 existing lots and consists of multiple land holdings. It is envisaged that the development of the rezoning area would deliver approximately 1,729 dwellings in a broad mix of housing types, and a population of around 5,187 people. The majority of housing would be standard detached dwellings. There would also be a medium density housing area central to the rezoning area around the village centre and east-west road corridor. A large lot housing area is envisaged in the south-east corner of the rezoning area. New parks, sportsfields, stormwater facilities and roads are planned to support the additional population. A draft structure plan map may be found at Attachment 2.

It is noted that the lands to the west of the rezoning area, broadly between Kingswood Road and The Northern Road, are not subject to the Planning Proposal and are therefore not proposed to be rezoned. For the purposes of this report, references to the 'Structure Plan area' mean both the rezoning area (Area A) and the land west of the rezoning area to The Northern Road (Area B).

At its Policy Review Committee meeting of 4 June 2018, Council considered a report on the Orchard Hills North Planning Proposal and resolved to endorse the Planning Proposal, and that it be forwarded to the Minister for Planning with a request to issue a Gateway Determination. The resolution also requires that, following the issuing of a Gateway Determination, a report is to be presented to Council to seek resolution to publicly exhibit a DCP and Section 7.11 Development Contributions Plan alongside the Planning Proposal.

Following the 4 June 2018 Council meeting, Council officers and the proponent resolved outstanding issues relating to an agreed sportsfield configuration, in accordance with the Council resolution. On 31 July 2018, Council submitted the updated Planning Proposal to DPE to request a Gateway Determination.

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

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

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

The Planning Proposal was presented to Council's Local Planning Panel (LPP) at its meeting of 10 April 2019. The Planning Proposal was generally supported to proceed in terms of its strategic consistency, noting the current State and local planning strategies. The LPP advice stated a preference that the minimum lot size control be incorporated into LEP 2010 as a development standard, with some allowance for flexibility in lot sizes. The LPP advice also sought that Council closely consult with the NSW Department of Education / Schools Infrastructure NSW in respect to future educational needs arising from the rezoning

and to consult with TfNSW, particularly regarding access to and from The Northern Road. The LPP also recommended that appropriate road widths are accommodated for bus routes, service vehicles, street parking and access.

### **Key changes to the Planning Proposal**

Since the issue of the original Gateway Determination in February 2019, Council has been working closely with DPE, the proponent and State agencies (largely TfNSW) to enable the Planning Proposal to proceed to public exhibition. As a result of these discussions, several significant changes to the Planning Proposal have occurred as a result of responding to and addressing State agency issues.

The changes made to the Planning Proposal since its original endorsement in June 2018 are outlined below. It should be noted that the changes presented below have not changed the original intent of the Planning Proposal including the maximum number of dwellings originally anticipated and considered by Council in 2018.

### **Preservation of a North-South road corridor**

Since the original Gateway Determination was issued by DPE in February 2019, Council, DPE, TfNSW and the proponent have been working on the preparation of a Transport Management and Accessibility Plan (TMAP) to identify any required traffic and transport-related infrastructure upgrades arising from the development. It was during the development of the TMAP that Council and the proponent were first notified by TfNSW and DPE that the subject land would need to plan for a future major road connection with a North-South alignment, given the sites' location between the Great Western Highway and the future growth areas to the south of the M4 Motorway. The need for this corridor was first tabled by DPE and TfNSW in July 2019, following their initial planning for the GPEC Growth Area and the regional traffic modelling being undertaken for this area identifying a need for a new north-south connection between Orchard Hills South and the Great Western Highway given the location of the future Metro station in Orchard Hills. The full extent of this corridor would not need to be built now, but importantly, preserved and not developed, so that in the future when needed, the full extent of the corridor could be constructed.

To date, there has been considerable effort by DPE, TfNSW, Council and the proponent to determine the alignment and width of the corridor, and to find a mechanism to preserve it for future important transport connections, prior to the release of the planning and transport modelling for GPEC. This has been a challenging exercise due to the following:

- DPE, TfNSW and Council agreed that the ultimate (long term) width of the corridor should provide for a total of four lanes, with two lanes in each direction, and associated pedestrian facilities.
- Identifying the alignment of the North-South road corridor, so that it did not unfairly burden affected landowners. TfNSW and Council have recommended the proposed corridor width and alignment.
- Traffic modelling indicated that the proposed development / rezoning would mostly generate a need for a total of two lanes only, one lane in each direction. This meant, that under the Local Development Contributions framework (and the need to demonstrate nexus between the development and any developer levies for local infrastructure), Council would only be able to fund the acquisition of land and construction costs of two lanes instead of all four lanes, through the draft OHN CP.
- The need to identify a planning mechanism within the LEP to preserve the land for the remaining two lanes. Given that there is currently no commitment or funding mechanism by State Government to fund the acquisition and construction of the remaining two lanes, it was agreed that a mechanism needed to be identified to

enable the land for the remaining two lanes to be preserved. As detailed above, the full extent of the road corridor does not need to be funded now and future funding source may be identified at a later stage through future planning of Orchard Hills South, which is an Urban Investigation Area under Council's Local Strategic Planning Statement (LSPS) and part of GPEC, or through State Government funding.

Council, DPE and TfNSW have worked closely over the past two years to identify and develop a planning mechanism to preserve the remaining two lanes. It wasn't until March 2022, Council received written correspondence from DPE confirming the mechanism to preserve the future North-South road corridor. The DPE advice states that the Penrith LEP 2010 is to include a 'hatching' area on the Land Zoning Map that follows the proposed alignment of the ultimate extent of the North-South corridor, to be labelled as a Transport Investigation Area. A supporting clause would need to be inserted into Penrith LEP 2010 that outlines that development cannot be carried out on land where the Transport Investigation Area overlay applies, unless TfNSW provides concurrence (or agreement). This clause is based upon an existing precedent that applies to land in the Western Sydney Employment Area which is governed by State Environmental Planning Policy (SEPP) (Industry and Transport) 2021.

If the Planning Proposal was to proceed, land subject to funding by the local draft OHN CP would need to be zoned SP2 Infrastructure - Local Road and identified on the Land Reservation Acquisition Map. The proposed Land Zoning Map, including the Transport Investigation Area overlay, would also need to be placed on public exhibition as part of the Planning Proposal.

#### Introduction of minimum lot sizes

Following a recommendation of the LPP, and in response to the Gateway Determination condition to consider the application of minimum lot sizes to be within the LEP instead of the DCP, the following lot sizes are proposed within the LEP if the Planning Proposal was to proceed:

- A minimum lot size of 300m<sup>2</sup> applied through the Minimum Lot Size map where low density dwellings are envisaged.
- A minimum lot size of 220m<sup>2</sup> applied through the Minimum Lot Size map where medium density dwellings are envisaged.
- A LEP clause is proposed to be introduced that will outline for any development proposed that is of a lot size equal to or less than 300m<sup>2</sup>, an Integrated Development Application must be made. This means that a Development Application to subdivide the land must also include the construction of a dwelling, to better assess the proposed development and its impacts.
- For lots where the finished slope is greater than 10%, a minimum lot size of 450m<sup>2</sup> will apply. This is proposed to be inserted into the LEP as a clause.
- A minimum lot size of 2000m<sup>2</sup> applied through the Minimum Lot Size map for land zoned C3 Environmental Conservation.

In addition to the Minimum Lot Size map, it is noted that the LEP amendment seeks to place a maximum cap of 1,729 lots to be delivered within the rezoning area. The proposed LEP amendment also seeks to break the rezoning into 6 precincts, where within each precinct a mix of lot sizes must be provided to ensure diversity in lot sizes is delivered.

#### Quantity of Open Space

Following the issuing of the original Gateway Determination in February 2019, and due to changes to the development Master Plan and zoning as a result of other planning matters

such as the introduction of the road corridors, the proposed open space provision across the rezoning area was further revised by Legacy Property and addresses Council's requirements.

The overall provision of open space in the rezoning area has now reduced from the original 20.8 ha (14.9ha passive, 5.9ha active) proposed in 2018, to a current proposed total of 15.7ha (8.5ha passive, 7.2ha active). The reduction in quantum relates to passive local open space, which was over-provided for in the original Planning Proposal. The current Planning Proposal reflects an increase in the active open space component, and more appropriately located open space parcels.

Although the open space has reduced, it is still consistent with Council's previous Open Space provision rates under the PLANS 2004 and Open Space Action Plan 2007 (now superseded by the Penrith Sport and Recreation Strategy 2020) which was in effect at the time of the Planning Proposal's lodgement. In resolving the proposed provision of open space, the proposed rezoning provides open space at a provision of 3.04ha/1000 persons, which is acceptable. The open space strategy supporting the Planning Proposal has been endorsed by Council officers.

#### Orchard Hills Rural Fire Brigade

The existing Orchard Hills Rural Fire Brigade is situated on Council-owned land known as Lot 6 DP 239091 (58-64 Castle Road, Orchard Hills). This lot forms part of the proposed sportsfields site.

The endorsed open space strategy which supports the Planning Proposal seeks to retain the existing Orchard Hills Rural Fire Brigade building in its current location with a curtilage, adjacent to the proposed sportsfields and facilities.

Council officers recently consulted formally with the NSW Rural Fire Service (RFS) in relation to the Planning Proposal. In written advice received in March 2022 the RFS made no objections to the Planning Proposal, nor did it make comment or outline its requirements around the existing Orchard Hills Rural Fire Brigade or future operational requirements, given the future introduction of the sportsfields.

#### Reduction in the size of the village centre

The proponent has reduced the size of the village centre following the introduction of the North-South road corridor and other changes to the Master Plan. Given the change in the size of the village centre, further urban design analysis work will be required from the proponent to ensure the size and shape of the village centre can produce an appropriate urban design outcome.

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

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

Under planning reforms led by the State Government, DPE introduced a new 'Cohort' Planning Proposal program, where Planning Proposals that had been in the system and were experiencing challenges were assisted by the DPE's Planning Delivery Unit to assist in unlocking any obstacles and working towards a resolution. Councillors were briefed on these proposals at the Councillor Briefing of 14 February 2021. These Planning Proposals were

issued timeframes for completion by DPE and if these timeframes were not achieved, the Minister for Planning has the ability to 'call in' the Planning Proposal to be refused or made. Whilst this Planning Proposal has been identified as a Cohort Planning Proposal for some time, the need to find a resolution to the North-South road corridor has meant that timeframes for completion have needed to be flexible and therefore, the Minister has not yet called in the Planning Proposal.

DPE wrote to Council on 24 February 2022 with an alteration to the Gateway Determination which included additional milestone dates to progress the Planning Proposal. The alteration states that the Planning Proposal is to be publicly exhibited by 4 April 2022, a report to be made to Council post-exhibition for final consideration by 30 June 2022, and for the LEP to be Gazetted by 31 July 2022. The alteration also stated that if these timeframes were not met, consideration may be given to whether the Planning Proposal should proceed.

On 3 March 2022, Council officers wrote to DPE to convey concerns over the new timeframes issued by DPE, stating that they are unrealistic and unachievable. The correspondence requested that DPE amend the timeframes to enable sufficient time for completion of the necessary work required for a public exhibition.

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

On 23 May 2022, DPE advised Council officers that the matter may be reported to the 27 June 2022 Ordinary Meeting of Council for decision to progress to public exhibition. DPE requested that they be provided with an update regarding the progress of the Planning Proposal as soon as possible after that meeting. DPE noted that it is unlikely that any further extensions to the Gateway timeframes will be granted and that the Minister for Planning may take action if the timeframes are not met.

### **Draft Development Control Plan**

The proponent has prepared a draft site-specific DCP to form a chapter of Penrith DCP 2014 that provides detailed planning and development controls and guidelines for specific types of development. The proposed draft DCP has been separately enclosed to this report.

Whilst Council has been working with the proponent in preparing the draft DCP, due to the timeframes set by DPE in finalising the Planning Proposal, there is still further review to be undertaken including:

- An acoustic assessment of impacts of the M4 Motorway and the proposed North South corridor on nearby residential land is required. This assessment will help identify any specific controls required to insert into the DCP to mitigate the impacts of noise on new dwellings. The results of this assessment may result in changes to the final zoning or development controls post-exhibition, if the Planning Proposal was to proceed.
- As highlighted earlier in this report, the village centre has been reduced in size following the introduction of the North-South road corridor. Council will need to analyse the revised configuration to ensure it can be developed with appropriate land use and urban design outcomes. The results of this analysis may result in changes to the final zoning or development controls post-exhibition, if the Planning Proposal was to proceed.



It is noted these matters can be resolved with the proponent and be undertaken during the exhibition period.

### Draft Section 7.11 Development Contributions Plan

A draft site-specific Section 7.11 Development Contributions Plan (draft OHN CP) has been prepared in order to deliver the infrastructure required to support future development within the rezoning area. The draft OHN CP has been informed by specialist studies such as the TMAP, Open Space Strategy and Stormwater and Flood Management Strategy which were finalised and submitted to Council in February 2022. The draft OHN CP applies only to Area A (rezoning area) and not to Area B. The proposed draft OHN CP has been separately enclosed to this report.

Council officers engaged consultants to provide a peer review of the draft OHN CP given the limited timeframes to finalise the Planning Proposal and the need to understand any financial implications for Council and the community.

The draft OHN CP facilitates the delivery of the following items, that relate to the rezoning area only:

Infrastructure Items	Costs (approximate)
<ul style="list-style-type: none"> <li>Collector and sub-arterial roads</li> <li>Certain local roads adjacent to public infrastructure</li> <li>Bus stops</li> <li>Off-site road upgrades</li> <li>Widening or resurfacing of existing roads</li> </ul>	<b>\$95,508,455</b>
<ul style="list-style-type: none"> <li>Active and passive open space, including playgrounds, sporting fields and bushland parks</li> </ul>	<b>\$69,538,193</b>
<ul style="list-style-type: none"> <li>Detentions Basins</li> <li>Drainage channel</li> <li>Raingarden</li> <li>Gross Pollutant Traps</li> </ul>	<b>\$51,553,381</b>

### *Works Apportioned to other development*

The draft OHN CP includes some works that are apportioned to both the rezoning area and to future growth external to the site. This means that the draft OHN CP will not collect all the contributions required to deliver certain works as you can only include works that relate directly to the rezoning area. Certain infrastructure items are located in Area B but are also required to service Area A. These include part of the East-West Road, Frogmore Road resurfacing and Basin B7. As such these items are partly apportioned to Area B, which is not within the draft OHN CP. This creates a **\$29.3m shortfall** in being able to deliver the full extent of the infrastructure if Area B does not progress to a rezoning and a contributions plan developed.

In addition, the North-South Road, located in Area A, is also apportioned to Area B (\$4m) and off-site infrastructure (\$2.3m) has also been apportioned to Area B. This creates a further **shortfall of \$6.3m** pending the progression of Area B.

The shortfall outlined above equates to **\$35.6 million** that would be needed to deliver the full extent of works detailed in the contributions plan and technical documents. This also

provides a risk that works that need to occur within Area A (East-West Road and North-South Road) are not fully funded due to the proposed apportionment.

#### *Works apportioned to background growth*

The cost of a number of road works is also apportioned to broader background growth across Penrith Local Government Area (LGA). This equates to a **\$5.5m shortfall** that has no funding source at this stage and cannot be included in a contributions plan to enable upgrade and intersection works to be completed. Although this was identified in the traffic modelling undertaken in relation to Orchard Hills North, this relates to general LGA wide growth, therefore there is no direct nexus to include this in any funding mechanism attributed to this rezoning.

#### *Funding for preserved North South Road Corridor*

Whilst the hatching on the North-South Road corridor is essential for the preservation of the road corridor, this does not secure a funding source. This still needs to be investigated regarding what can be included in a future contributions plan and what can be borne by the State, but the funding gap currently is estimated to be **over \$8.2m** based on current costs and comparable rates.

#### *Essential Works List and IPART Approval*

The total cost per dwelling/lot under draft OHN CP is \$102,310. This cost exceeds the cap on development contributions set through a Direction by the Minister for Planning which is \$30,000 for Greenfield areas. In order for Council to be able to charge the full rate of contributions under the draft OHN CP, it must only fund 'Essential works' and be reviewed by IPART. Recommendations from IPART are provided to the Minister for Planning, where Council may be directed to make amendments to the draft OHN CP before it is approved. While this process is common for development contribution plans for release areas, it would be Council's first IPART reviewed development contributions plan and carries the risk that works items may be amended or removed if not accepted by IPART. This may result in changes to what items are delivered, costs of land and works and the apportionment of these costs. This risk may result in changes to the plan that could lead to a shortfall in funding for local infrastructure.

In order to manage the potential risks, draft OHN CP has been prepared to comply with the essential works list and the costs of the works have been peer reviewed. If the Planning Proposal was to proceed, it would be proposed that the rezoning of the land is not finalised until such time as the draft OHN CP is IPART reviewed so that Council can understand the impact of any changes to the plan.

Should IPART not accept the full contribution amount, the financial risk to Council would be a funding gap of approximately \$72,000 per lot. With Orchard Hills North, potentially delivering 1,729 dwellings, this equates to an approximate **\$124m gap**.

#### *Outstanding Matters*

Whilst Council has been working with the proponent in preparing the draft OHN CP, due to the timeframes set by DPE in finalising the Planning Proposal, the draft OHN CP has been peer reviewed to understand the financial implications. It is unlikely that the list of infrastructure items will change.

If the Planning Proposal was to proceed, the following matters still need to be worked through in the OHN CP:

- The inclusion of monetary contributions towards the citywide recreation facility at Gipps Street.
- Review of apportionment of transport items.
- Inclusion of works specifications.
- Review of proposed land values.
- Review of indexation.
- Adjustment of items to ensure compliance with the essential works list.
- Review of staging and sequencing.

The above does not change the financial risk outlined in this report.

### *Staging and Delivery*

As Orchard Hills North has fragmented ownership, the draft OHN CP will be critical to guiding the appropriate staging and delivery of infrastructure. Unlike other housing release areas within Penrith LGA, it is likely that Council will need to assist with the delivery of infrastructure in this precinct because the proponent does not control all land in the rezoning area. Council's ability to deliver works will be dependent on the availability of funds within the Contributions Plan.

The above identified financial risks were initially flagged with the proponent at a meeting of the 6 April 2022, and further discussed in several meetings in May and June 2022. There has been significant progress in addressing the financial risks and these will continue to be explored during the exhibition of the planning proposal.

### **Offer to enter into Voluntary Planning Agreement (local)**

A letter of offer for Council and Legacy Property to enter into a local Voluntary Planning Agreement (local VPA) has been submitted by the proponent. The offer seeks to wrap up obligations the developer would be subject to under the draft OHN CP and also provide additional public benefits that are not on the essential works list and are in addition to any development contributions. Noting that the negotiations and offer are only applicable to land that Legacy will have ownership of which is currently 34% of the land (781 dwellings) or about 45% of the dwellings / contribution value within the rezoning area. A copy of the VPA letter of offer is provided at Attachment 3.

The offer provided to Council includes the following items within the draft OHN CP:

- A total of \$78.59m in development contributions, to be delivered through a monetary contribution of \$39.73m and works in kind (WIK) to the value of \$38.85m including:
  - Part delivery of open spaces 1 & 5.
  - Full delivery of open space 4 & 8.
  - Full delivery of bush open space 3.
  - Part delivery of Basin 2 and riparian corridor.
  - Preparation of concept designs for certain parts of the North-South and East-West roads.
  - Part delivery of the East-West road.
  - Part delivery of the North-South road.

In addition, the offer also provides the following additional benefits:

- \$335,000 for public artworks in open space 8.
- \$440,000 towards an off-site community facility.
- 23 affordable housing dwellings, representing 3% of the forecast dwelling yield for the land, or a monetary contribution based on a future rate.

The offer was reviewed by Council's internal Local Infrastructure Contributions Working Group (LICWG), as required by Council's adopted *Penrith Developer Infrastructure Agreements Policy*. The group recommended that:

- Further detailed discussion should be held internally regarding the offer in relation to the public art and community facility contribution.
- Further discussion to be held in relation to the proposed staging of works.
- That maintenance period complies with the VPA template or longer, where required.
- That the affordable housing contributions be consistent with Councils current work in this.
- That further work be undertaken to understand the impact of interim works to the financial status of the future Contributions Plan.

Matters for consideration on the offer are:

- Ensure that contributions obligations captured in the offer are fair and any possible contribution credits are understood and supported.
- How the works can be delivered in an orderly and economic manner.
- Whether any interim or rectification works are required due to the part delivery of work and the impacts on the contributions plan funding.
- The acceptability of the contributions to public art and a community facility.
- Whether the proposed security for the offer suitably manages the risk of non-delivery of the agreement.
- Maintenance periods.

If the Planning Proposal were to proceed, the acceptability of the offer will be determined on its compliance with *Penrith Developer Infrastructure Agreements Policy*. It is noted that a draft VPA will be required to be prepared and reported to Council for notification and any requirement of finalising the Planning Proposal will be that the VPA is executed for the land.

#### *Affordable Housing*

Council is currently working on determining an affordable housing rate for rezoning areas at Orchard Hills North and Glenmore Park Stage 3, and this may be incorporated through a formal Affordable Housing Scheme. This is an additional contribution applied and is also developed in consideration of feasibility and the ability to pay. This work will be used to assess the suitability of the offer and address affordable housing more broadly, particularly for fragmented land such as that in Orchard Hills North.

#### **Offer to enter into a Voluntary Planning Agreement (State)**

There is a need to secure State and regional infrastructure required to support the Planning Proposal and broader region.

On 13 April 2022, DPE indicated in correspondence to Council that a letter of offer for Legacy Property and DPE to enter into a State Voluntary Planning Agreement (State VPA) has been submitted by Legacy Property. It is understood that the offer includes monetary contributions toward upgrades to the intersections of the regional road network and a land contribution towards a new primary school being 1.5ha of land. It is noted that DPE has not provided Council with a copy of the Legacy Property letter of offer to DPE to enter into a State VPA, at the time of writing this report. The offer also includes the dedication of land for a portion of the North-South road corridor, that will be in the ownership of Legacy Property.

DPE has indicated it has sought additional information from Legacy Property in relation to the offer. The offer has also been forwarded to TfNSW so that the offer aligns with TfNSW's preferred design option for the North-South road corridor.

### Public Exhibition

Should Council endorse the draft DCP, draft OHN CP and Letter of Offer to proceed to exhibition, the following information will be publicly exhibited for a period of 28 days in accordance with the requirements outlined in the EP&A Act:

- The Planning Proposal and associated technical studies;
- Draft site-specific amendment Penrith Development Control Plan 2014 relating to Orchard Hills North;
- Draft Orchard Hills North Contributions Plan;
- Letter of Offer;
- Fact Sheet outlining proposed changes to the various planning documents to mitigate the risks outlined in this report;
- Gateway Determination issued by DPE; and
- Any other relevant plans and strategies.

The package of information will be publicly exhibited via various methods including on Council's website, through newspaper advertisements, and notices at Penrith and St Marys libraries.

It is also proposed to write to affected landowners of the proposed rezoning advising of the public exhibition and to seek their views on the Planning Proposal.

### Financial Implications

There are financial implications for Council's consideration, relating to the draft OHN CP and infrastructure delivery.

#### *External Funding Required*

The draft OHN CP includes some works that are apportioned to both the rezoning area and to future growth external to the site. Certain infrastructure items are located in Area B but are also required to service Area A. These include part of the East-West Road, Frogmore Road resurfacing and Basin B7. As such these items are partly apportioned to Area B, which is not within the draft OHN CP. This creates a **\$29.3M shortfall** in being able to deliver the full extent of the infrastructure if Area B does not progress to a rezoning and a Contributions Plan developed.

In addition, the North-South corridor, located in Area A, is also apportioned to Area B (\$4m) and off-site infrastructure (\$2.3m) has also been apportioned to Area B. This creates a further **shortfall of \$6.3m** pending the progression of Area B.

The shortfall outlined above **equates to \$35.6 million** that would be needed to deliver the full extent of works detailed in the Contributions Plan and technical documents. This also provides a risk that works that need to occur within Area A (East-West Road and North-South Road) are not fully funded due to the proposed apportionment.

Further, whilst the hatching on the North-South Road corridor is essential for the preservation of the road corridor, this does not secure a funding source. This still needs to be investigated regarding what can be included in a future Contributions Plan and what can be borne by the State, but the funding gap currently is in order of **over \$8.2m**. This would be needed to be accounted for in the future planning for GPEC which has no timeframes for

delivery. Council officers have raised with DPE and TfNSW the need for secure funding commitment for this road's construction, however no commitment has been provided. Council officers will continue to work with TfNSW to obtain a commitment from State Government towards funding of the North-South road corridor construction.

*Independent Pricing and Regulatory Tribunal (IPART) review and potential funding gap*

The draft OHN CP needs to be referred to IPART as it exceeds the cap of \$30,000. Although we are developing draft OHN CP with the essential works list in mind, there is still a risk that IPART will not support the draft OHN CP over the cap and a funding gap in the plan may occur. In this regard and based on an approximate contribution rate of \$102,000 per dwelling, this would leave a \$72,000 per lot shortfall equating to **a potential \$124m shortfall** (based on 1729 dwellings).

Due to the complexity of the draft OHN CP between Area A and Area B, Council met with DPE and IPART on 5 May 2022 and again with IPART on 10 June 2022 to flag the high contributions rate and commence conversations regarding the infrastructure items and apportionment.

Please refer to the map of unfunded infrastructure works presented at Attachment 4.

*Councils' role in delivering infrastructure in areas of fragmented ownership*

As the rezoning area is fragmented and not in single ownership, it is likely that Council will be responsible for the delivery of some of the infrastructure contained in the draft OHN CP, particularly on landholdings where public amenities are located, and no residential development is proposed. The delivery of infrastructure will be dependent on the ability of Council to fund land acquisition and works from contributions received in the plan.

*Intent of the AHDP for infrastructure provision at no cost to Government*

One of the assessment criteria objectives/principles which informed the key matters for consideration in Council's review of site nominations received for the AHDP, was that the development would need to demonstrate that all services will be provided on the land at no cost to Government.

In its site nomination application for the AHDP, Legacy Property addressed the key matters for consideration in meeting this objective/principle by stating that:

- It has demonstrated capacity to fund and enter into a development agreement for provision of infrastructure and services.
- The immediate availability of essential services supports the rezoning and development of the land, and the ability to deliver short to medium term housing supply.
- It is committed to delivering affordable housing.

Council's review of the Legacy Property site nomination application concluded that the applicant had not specifically provided evidence of the required social, community or state infrastructure that may be required as a result of development of the land, however a commitment to the provision of open space & monetary contributions for community facilities was presented. At the time, it was noted that further discussion on this infrastructure would be required during the Planning Proposal process.

**Legacy Property's response to financial implications**

In June 2022, Council officers provided Legacy Property with the opportunity to address the five key issues identified in the financial implications discussion presented above in this

report. Legacy provided responses and offered potential mitigation measures to pursue. This is presented in the table below.

<b>Issue 1</b>	<p><i>\$35.6 million shortfall required to deliver the full extent of works detailed in the Section 7.11 plan and technical documents. This relies on Area B to be rezoned, which is not part of the proposed rezoning or Section 7.11 plan.</i></p> <ol style="list-style-type: none"> <li>1. <i>Infrastructure Items to deliver that are reliant on Area B to be rezoned: \$29.3m</i> <ol style="list-style-type: none"> <li>a) <i>Part of the East-West Road</i></li> <li>b) <i>Frogmore Road resurfacing</i></li> <li>c) <i>Basin B7</i></li> </ol> </li> <li>2. <i>Delivery of North-South road apportioned to Development in Area B: \$4m</i></li> <li>3. <i>Off site infrastructure apportioned to development in Area B: \$2.3m</i></li> </ol>
<b>Legacy Property's response</b>	<ol style="list-style-type: none"> <li>1. <i>Infrastructure Items to deliver that are reliant on Area B to be rezoned: \$29.3m</i> <ol style="list-style-type: none"> <li>a) <i>Part of the East-West Road:</i> <ul style="list-style-type: none"> <li>• Legacy is of the view that the rezoning area (Area A) can function at full development without requiring the section of the east-west road within Area B, or requiring a new intersection at The Northern Road.</li> <li>• Using this approach, the existing road reserves in Area B can be utilised, whilst only the section of the east-west road within Area A would be constructed, which will achieve cost savings in the draft OHN CP.</li> <li>• It is proposed that the relevant sections of the east-west road are 100% apportioned to their respective areas (Area A or Area B), instead of the current proposed cross-apportionment approach. This allows for the rezoning area to fully fund just the section of the east-west road within Area A required to support the development.</li> </ul> </li> <li>b) <i>Frogmore Road resurfacing:</i> <ul style="list-style-type: none"> <li>• Legacy proposes to include in its VPA offer the cost of this item that is currently apportioned to Area B in the draft OHN CP, to eliminate the financial risk associated with Area B.</li> </ul> </li> <li>c) <i>Basin B7:</i> <ul style="list-style-type: none"> <li>• Legacy proposes to alter its current approach. The new proposal is that a separate, permanent basin is created within Area A, north of Frogmore Road, to service Area A, whilst another separate basin would be created and located within Area B, to service Area B. Each basin would be 100% apportioned to each respective Area. This approach would eliminate the financial risk associated with Area B.</li> <li>• The proposed new approach replaces the previous proposal, where ultimately there would be only 1 basin in this area in the long term to service Area A and Area B.</li> </ul> </li> </ol> </li> <li>2. <i>Delivery of North-South road apportioned to Development in Area B:</i> <ul style="list-style-type: none"> <li>• Legacy is of the view that the north-south road has no nexus to the rezoning area, except for a small section of the road located north of the east-west road.</li> <li>• The north-south road could be removed from the draft OHN CP because the 'future transport corridor' LEP notation could be applied to the full corridor width. This would achieve savings within the draft OHN</li> </ul> </li> </ol>

	<p>CP.</p> <ul style="list-style-type: none"> <li>The ultimate funding for acquisition and construction of the North-South Road should be resolved as part of the broader contributions framework for Orchard Hills South / GPEC.</li> </ul> <p>3. <i>Off-site infrastructure apportioned to development in Area B:</i></p> <ul style="list-style-type: none"> <li>The need for many of these road works items would only be triggered with the development of Area B. There is no nexus between these works and the development of Area A.</li> <li>These upgrades would be prioritised and undertaken in a staged manner as Council collects funds.</li> </ul>
<b>Council officer comment on Legacy's response</b>	<p>1. <i>Infrastructure Items to deliver that are reliant on Area B to be rezoned: \$29.3m</i></p> <p>a) <i>Part of the East-West Road:</i></p> <ul style="list-style-type: none"> <li>Additional traffic modelling was undertaken and submitted by Legacy to Council on 10 June 2022 to demonstrate that the rezoning area (Area A) can function at full development without requiring the section of the east-west road within Area B. This is currently being reviewed.</li> <li>Should the additional modelling be supported, a revised draft OHN CP will be prepared and submitted to reflect the newly-proposed approach sought by Legacy.</li> </ul> <p>b) <i>Frogmore Road resurfacing:</i></p> <ul style="list-style-type: none"> <li>Council is satisfied that the Frogmore Road resurfacing costs can be delivered through the VPA offer instead of the draft OHN CP and will remove this from the plan prior to exhibition.</li> </ul> <p>c) <i>Basin B7:</i></p> <ul style="list-style-type: none"> <li>A revised stormwater strategy was submitted by Legacy to Council on 14 June 2022 to present a revised proposal to create a separate basin for each of Area A and Area B. This is currently being reviewed.</li> <li>Two separate basins ensure that the costs are attributed to each area.</li> </ul> <p>2. <i>Delivery of North-South road apportioned to Development in Area B:</i></p> <ul style="list-style-type: none"> <li>The draft OHN CP submitted by Legacy has not correctly reflected the outcomes of the TMAP and the requirements around the north-south road in the rezoning area. Part of the north-south roadway is required to support the rezoning area. The draft OHN CP must be amended to include 3 lanes to be delivered for the northern part of the north-south road within the rezoning area. It currently identifies 4 lanes for the northern section of the North-South road therefore, a small reduction in the cost of the OHN CP can be expected.</li> <li>For Council to ensure that the area is future-proofed, to support this Planning Proposal a State VPA must be executed that includes the dedication of land for the outer 2 lanes of the North-South road corridor.</li> <li>There is still a financial risk relating to the construction of the road corridor. Legacy property and another two major land owners have indicated a commitment to dedicating the land for the corridor. Therefore, the remaining financial risk potentially will be less than \$4M as it relates to the construction component only and not the land component.</li> <li>Council officers are also in discussions with TfNSW regarding how we</li> </ul>



	<p>can further mitigate the risk to Council in relation to the construction of the corridor.</p> <p>3. <i>Off-site infrastructure apportioned to development in Area B:</i></p> <ul style="list-style-type: none"> <li>• Council would need to investigate a Section 7.12 Contributions Plan for background growth upgrades on an LGA wide basis.</li> </ul>
<b>Issue 2</b>	<i>\$5.5m shortfall for off-site road works required as a result of background growth, with no funding source at this stage. These works cannot be included in a Section 7.11 plan to enable upgrade and intersection works to be completed.</i>
<b>Legacy Property's response</b>	Background growth has not nexus to the rezoning area. The risk of background growth exists regardless of whether the rezoning proceeds or not. It is unreasonable to consider this as a financial risk associated with the rezoning. This matter should be addressed through general advocacy for State contributions towards local infrastructure needs.
<b>Council officer comment on Legacy's response</b>	<p>Council accepts Legacy's response.</p> <p>However, to mitigate this, Council would need to investigate a Section 7.12 Contributions Plan for background growth upgrades on an LGA wide basis.</p>
<b>Issue 3</b>	<i>\$8.2m shortfall in funding of land acquisition and construction for the North-South road corridor. Nor any commitment it will be a State road.</i>
<b>Legacy Property's response</b>	The North-South road corridor has no nexus to the rezoning area and does not meet IPART requirements for inclusion in the draft OHN CP. The only requirement for the Orchard Hills North rezoning is to implement an appropriate mechanism that protects this corridor, which is achieved through the 'future transport corridor' notation.
<b>Council officer comment on Legacy's response</b>	<p>The TMAP identifies that part of the North-South road corridor is required to support the rezoning area. The draft OHN CP submitted by Legacy has not correctly reflected the outcomes of the TMAP and must be amended.</p> <p>The implementation of the 'future transport corridor' notation through the LEP amendment would not guarantee a commitment from State Government to acquire the necessary land or construct the roadway.</p> <p>For Council to ensure that the area is future-proofed, to support this Planning Proposal a State VPA must be executed that includes the dedication of land for the outer 2 lanes of the north-south road corridor, including a construction commitment.</p> <p>There is still a financial risk relating to the construction of the road corridor. Legacy property and two other major landowners have indicated a commitment to dedicating the land for the corridor, which still needs to be discussed and negotiated. Therefore, the remaining financial risk would potentially be half this amount as it relates to the construction component only and not the land component. Council officers will continue to work with the proponent and TfNSW to understand the full extent of the costs associated with the construction.</p>

<b>Issue 4</b>	<i>Up to a \$124m shortfall in funding should IPART not approve the draft Section 7.11 plan following its review, given the draft plan exceeds the \$30,000 cap per lot on contributions imposed by the Minister.</i>
<b>Legacy Property's response</b>	<p>There are several examples of IPART approving Section 7.11 Plans above the cap. The draft OHN CP has been prepared in accordance with relevant IPART guidelines. Council's peer review of the draft OHN CP has confirmed that the plan was prepared in accordance with relevant IPART guidelines. The draft OHN CP should be considered robust with negligible risk that IPART would simply reject the plan.</p> <p>Legacy has identified certain items in the draft OHN CP that may not satisfy IPART requirements. Legacy has suggested that these items be reconsidered (changed or removed) so as to provide for cost savings in the Plan. These are detailed below:</p> <ul style="list-style-type: none"> <li>• Combine Water Sensitive Urban Design (WSUD) and detention components instead of required separation of these – estimated cost reduction \$6.1m</li> <li>• Remove of North-South road corridor from Section 7.11 Plan due to no nexus to rezoning area – estimated cost reduction \$6.8m</li> <li>• Use of an alternative alignment for the east-west road corridor, mainly in a diagonal direction, within Area B, that impacts less priorities by utilising more of existing road reserves and requiring less land acquisition – estimated cost reduction \$7m</li> <li>• Reduce the required corridor width for the east-west road corridor – estimated cost reduction \$5.7m</li> <li>• Apply a reduced open space provision rate typical to the NSW Growth Centres standard instead of Council's adopted standard, resulting in less open space required to be provided – estimated cost reduction \$5.6m</li> </ul> <p>Legacy acknowledges that a potential solution is for Council to delay progression of the Planning Proposal until the IPART review is complete.</p>
<b>Council officer comment on Legacy's response</b>	<p>Council officers do not support the cost saving measures proposed by Legacy, for the following reasons:</p> <ul style="list-style-type: none"> <li>• It is Council standard and best practice to combine WSUD and detention components, and therefore those elements cannot be separated</li> <li>• Parts of the North-South road corridor do in fact have a nexus to the rezoning area, and therefore part of the roadway can be included from the draft OHN CP.</li> <li>• The proposed alternative alignment of the east-west roadway is not suitable in respect to requirements around traffic movements, safety and general access to and from the village centre and The Northern Road</li> <li>• Council's standard open space provision rate is to be enforced. IPART do not hold the Growth Centres standard as the ultimate authority but are just as likely to consider Council's adopted standard as the appropriate approach to apply</li> </ul> <p>Council officers welcome Legacy's acknowledgement that a potential solution is for Council to delay progression of the Planning Proposal until the IPART review is complete.</p> <p>It is also noted that Council officers have had further meetings with IPART and will continue to do so throughout this process. IPART have indicated that they have reviewed plans that exceed \$100,000 per lot. Council officers have received general feedback from IPART in respect to this matter. IPART is</p>

	<p>open to receiving further information to assist in its assessment.</p> <p>As Legacy and two other major land owners collectively account for 70% of the contributions value, and those owners have committed to deliver these contributions potentially through VPAs. This would therefore reduce the maximum risk to Council to approximately \$37.2m, should the cap be imposed by IPART.</p>
<b>Issue 5</b>	<p><i>There is no significant single landowner in the rezoning area (or Area B). This may result in unorderedly development rollout/sequence, unorderedly delivery of supporting infrastructure, and potentially a slow development rollout on some lands. Council will likely play a large role in delivery of supporting infrastructure. The delivery of infrastructure will be dependent on the ability of Council to fund land acquisition and works from contributions received in the plan.</i></p>
<b>Legacy Property's response</b>	<p>Legacy acknowledges that this is an inherent challenge with fragmented land holdings, but this is the reality for most new release areas across Sydney.</p> <p>Legacy's current holdings equate to ~45% of the draft contributions plan value, calculated based on the NDA and forecast yield.</p> <p>Legacy has initiated a direct approach to Council from two landowners that collectively represent a further ~25% of the contributions plan value.</p> <p>Collectively this would give Council certainty for 70% of the draft contributions plan through VPAs.</p> <p>Legacy is actively seeking to secure agreement with a number of other smaller landowners. While these discussions are ongoing, Legacy has a level of confidence of securing further agreements that could secure another 5-10% of the overall contributions plan value.</p> <p>Legacy's VPA letter of offer submitted 14 April 2022 presents the financial information necessary to demonstrate the statement that Legacy's current holdings equate to ~45% of the draft contributions plan value.</p>
<b>Council officer comment on Legacy's response</b>	<p>Council officers are considering the financial information presented in Legacy's VPA letter of offer, to verify the points made by Legacy in respect to this matter.</p> <p>Council officers will also be writing to the two other major landowners, in response to their approaches, regarding their commitment to infrastructure delivery as outlined by Legacy.</p>

While there has been significant progress made, there still remains some risk to Council, however there is still opportunity to work with the proponent and the relevant stakeholders to reduce the financial risk. It is also noted that the risk is not realised until the planning proposal is actually made, and the land is rezoned. There is also opportunity to not proceed with the planning proposal after it is exhibited should the financial risk not be fully mitigated to Council's satisfaction.

Given the need to progress the Planning Proposal to exhibition to meet the DPE timeframes, should Council resolve to exhibit, it is recommended that the public exhibition commence with the information submitted to date. Throughout the exhibition period, Council officers, State agencies and the public would have the opportunity to provide feedback, which may

result in changes to the documentation post-exhibition. It is noted that any significant changes may result in the documents being required to be re-exhibited.

As part of the exhibition material, Council officers will include a fact sheet which will explain the changes that will likely be made to all the relevant documentation in response to the proposed mitigation measures. Changes would likely be required to the draft DCP, draft LEP maps including zoning locations, draft OHN CP and relevant supporting technical studies as needed.

### **Risk Implications**

There are several risk implications for Councils' consideration, and these are detailed below:

#### *Legacy Property land control*

At the time of lodgement of the Planning Proposal in March 2018, Legacy Property indicated within the Planning Proposal that "The rezoning area consists of multiple land holdings, approximately 70% of which is controlled by Legacy under a combination of option agreements and development management arrangements". Further correspondence submitted to Council by Legacy Property in April 2018 confirmed that there were "agreements" with 73.6% of land within the rezoning area, with a further 15.1% under "ongoing negotiation".

At this current time, Legacy Property has agreements in place to purchase approximately 34% of land (or 45% of the lots) within the rezoning area. This percentage is anticipated to further reduce throughout 2022 as existing agreements in place with landowners expire. As a result, there is no significant single landowner in the rezoning area. This fragmented ownership may result in unordered development rollout/sequence, unordered delivery of supporting infrastructure, and potentially a slow development rollout on some lands.

#### *Achievement of housing delivery targets*

The purpose of the AHDP was to identify land suitable for the delivery of new release housing over the following 5 years, through an open and transparent submission process. At the time of Council's endorsement of the AHDP in November 2017, it was identified that the population of the Penrith LGA was continuing to grow, and that the remaining capacity of Penrith's existing new release areas was less than 4,500 dwellings.

Since lodgement of the Planning Proposal, other projects have been progressed which have realigned Council's approach in respect to addressing housing supply. The first of these was the State Government's announcement of the new Sydney Metro Western Sydney Airport alignment and station locations in 2020, which included a proposal to include a new Metro station at Orchard Hills South, to service a commercial and mixed-use precinct. Planning around this new Metro station is underway and forms part of the wider planning work being undertaken for the Greater Penrith to Eastern Creek (GPEC) growth area by DPE. The GPEC area is likely to house the majority of our City's greenfield development over the coming 20 years. Consequently, Council has prepared a revised draft of the Local Housing Strategy (LHS), which has been publicly exhibited during April and May this year. The draft LHS indicates that there will be a demand for an additional 36,000 dwellings over the 20 year timeframe of the plan (i.e. 2016-2036), with around 8,000 dwellings having already been delivered. The draft LHS also estimates that there is theoretical capacity for over 45,000 dwellings in our City. In this respect, there is sufficient housing capacity available in Penrith LGA with the focus of growth around existing centres and future Metro stations. It is considered that the approximate 1,729 dwellings proposed for Orchard Hills North could be reasonably made-up elsewhere.

Therefore, Council's ability to achieve its housing targets is not at risk if the Planning Proposal for Orchard Hills North does not proceed.

#### *Community expectation*

The public exhibition of the Planning Proposal will place a draft LEP on the subject land, thereby raising community and developer expectations that the Orchard Hills North development project is progressing to a state where development applications for subdivision and development of the land may soon commence. The risk is that there will be impetus to Gazette the LEP soon after completion of the public exhibition, to achieve DPE's timeframes. Should Gazettal occur without having in place the supporting draft DCP, draft OHN CP, local VPA and State VPA, the outcome would be that the rezoning would not be supported by the necessary infrastructure or quality planning controls required.

To address the risk of potentially enabling completion and Gazettal of the draft LEP post-exhibition without first having in place a supporting draft DCP, draft OHN CP, local VPA and State VPA, it's imperative that Council does not provide its endorsement to the Planning Proposal post-exhibition until:

- The IPART review process for the draft OHN CP has been completed.
- The supporting draft DCP, draft OHN CP (after IPART review), and local VPA have been considered and endorsed by Council post-exhibition.
- The State VPA has been drafted, publicly notified and executed.

An alternative solution may be suggested by DPE, where the LEP is allowed to be Gazetted but with an attached delayed commencement timeframe. This is not recommended to be pursued, because such a solution guarantees that the LEP and rezoning will occur, but does not guarantee that the supporting draft DCP, draft OHN CP, local VPA and State VPA will also occur/take effect.

#### **Conclusion**

The purpose of this report is to make recommendations regarding progressing the Planning Proposal to amend the Penrith Local Environmental Plan (LEP) 2010 for Orchard Hills North to a public exhibition. Assessment of the recently submitted draft Section 7.11 Development Contributions Plan (draft OHN CP), draft letter of offer to enter into a Voluntary Planning Agreement (VPA), and draft Development Control Plan (DCP) has enabled Council to consider that the matter can be progressed to a public exhibition. The report identifies risks to Council and the community, and how these risks are intended to be mitigated prior to future consideration to adopt the proposed plans.

Since the issue of the Gateway Determination in February 2019, Council has been working closely with DPE, the proponent and State agencies (largely TfNSW) to enable the Planning Proposal to proceed to public exhibition. Many strategic planning issues have been resolved, and the Planning Proposal has been amended in response to resolution of these issues.

The draft DCP and draft OHN CP have been informed by specialist studies such as TMAP, Open Space Strategy and Stormwater and Flood Management Strategy which were finalised and submitted to Council in February 2022. It was not until this time that Council officers have been in a position to understand the requirements and extent of local infrastructure delivery and the financial implications associated with this.

In an amendment to the Gateway conditions in February 2022, DPE included milestones dates within which Council is required to progress and complete the Planning Proposal process. The dates require public exhibition to commence by 4 April 2022, a report to be

made to Council post-exhibition for final consideration by 30 June 2022, and for the LEP to be Gazetted by 31 July 2022. On 23 May 2022 DPE advised Council officers that the matter may be reported to the 27 June 2022 Ordinary Meeting of Council for decision to progress to public exhibition. DPE noted that it is unlikely that any further extensions to the Gateway timeframes will be granted and that the Minister for Planning may take action if the timeframes are not met.

Given the DPE timeframes associated with this Planning Proposal, the Council officer recommendation is that the planning proposal proceed to public exhibition. Advancing the proposal to public exhibition would enable the community to provide its feedback in relation to the proposal, based on the information prepared to date. Given Council officers have only had limited time to work through the responses from the proponent on the financial implications of the proposal, the time during and post-exhibition can be used to work further with the proponent and other stakeholders to further mitigate the financial risks and update the relevant documentation.

## RECOMMENDATION

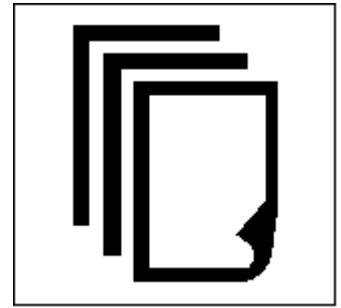
That:

1. The information contained in the report on Planning Proposal to amend Penrith Local Environmental Plan 2010 - Orchard Hills North be received.
2. The Planning Proposal for Orchard Hills North (RZ18/0004) be placed on public exhibition and agency consultation as soon as practical, concurrently with the draft Section 7.11 Contributions Plan, draft Development Control Plan, and VPA Letter of Offer which are attached or enclosed to this report.
3. A report is prepared for Council to present the outcomes of the public exhibition and agency consultation.
4. After exhibition of the Letter of Offer, a draft Voluntary Planning Agreement be reported to Council for endorsement for public notification.
5. The Department of Planning and Environment be provided with an update on Council's decision.
6. Council officers investigate the development of a Section 7.12 plan for the LGA to deliver traffic works attributed to background growth.

## ATTACHMENTS/APPENDICES

1. Site Location Map	1 Page	Attachments Included
2. Draft Structure Plan Map	1 Page	Attachments Included
3. VPA Letter of Offer from Legacy Property	18 Pages	Attachments Included
4. Map of unfunded infrastructure works	2 Pages	Attachments Included

# ATTACHMENTS



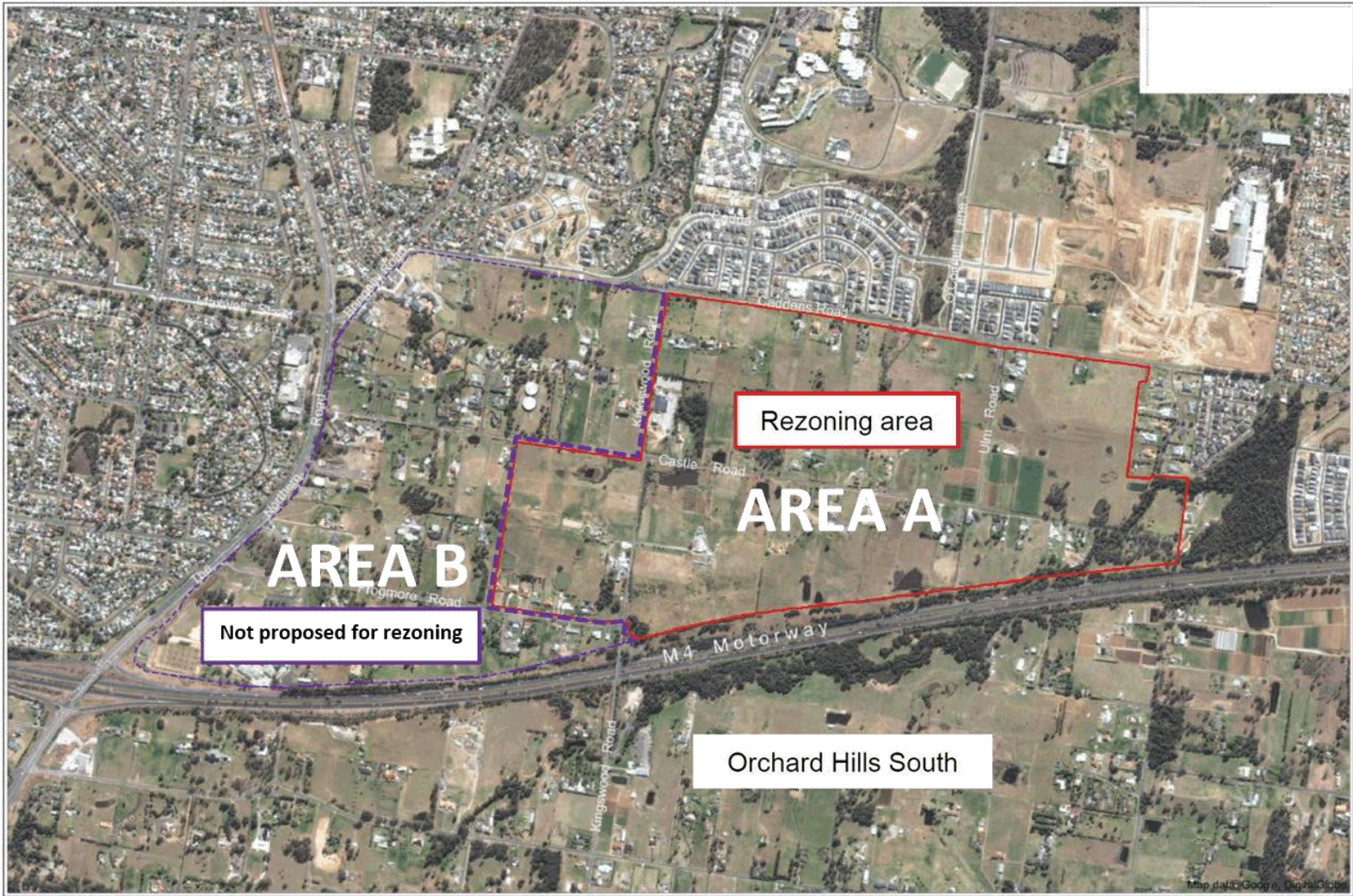
Date of Meeting: Monday 27 June 2022

Report Title: Planning Proposal to amend  
Penrith Local Environmental Plan  
2010 - Orchard Hills North

Attachments: Site Location Map  
Draft Structure Plan Map  
VPA Letter of Offer from Legacy  
Property  
Map of unfunded infrastructure  
works

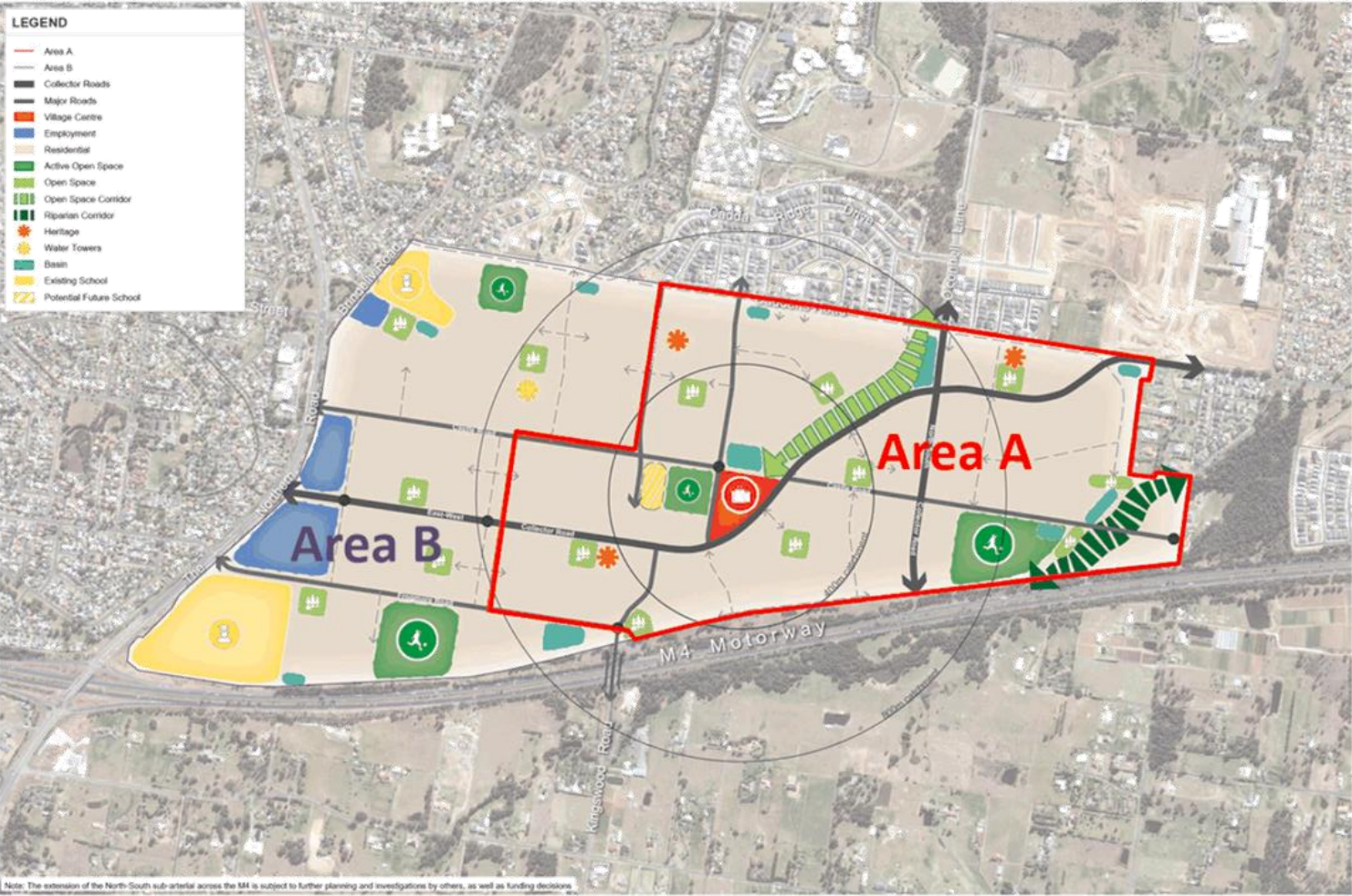


ORCHARD HILLS NORTH LOCATION MAP





STRUCTURE PLAN



LEGEND

- Area A
- Area B
- Collector Roads
- Major Roads
- Village Centre
- Employment
- Residential
- Active Open Space
- Open Space
- Open Space Corridor
- Riparian Corridor
- Heritage
- Water Towers
- Basin
- Existing School
- Potential Future School

Rezoning  
area  
(Area A)



Indicative Structure Plan  
ORCHARD HILLS NORTH PRECINCT



14 April 2022

General Manager  
Penrith City Council  
PO Box 60  
PENRITH NSW 2751

Attention: Natalie Stanowski

Dear Natalie,

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

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

The Offer supersedes Legacy's previous offer dated 25 February 2022.

**1 Application**

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

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

**2 The Land**

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

Where not already owned, Legacy controls the Land under legally binding option agreements. Each option is unable to be exercised until the date on which the relevant amended *Penrith Local Environmental Plan 2010* is published on the NSW Legislation website to give effect to the Planning Proposal (**Option Date**).

Completion (i.e. settlement) of the Land is structured such that it is expected to occur six months following the Option Date.

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MLC Centre, Level 45  
19 Martin Place Sydney, NSW 2000  
+61 2 9252 1111  
legacyproperty.com.au



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**3 Sections 7.11 Contributions**

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

These contributions are applicable to the Land in accordance with the Orchard Hills North – ‘Area A’ Development Contributions Plan 2022 dated 13 April 2022, or as determined by IPART.

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

**4 Additional Public Benefits**

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

**5 Operation**

The VPA will operate on and from the date that Legacy becomes the registered proprietor of all of the Land, being six months following the Option Date.

**6 Enforcement and security**

Security will be provided through:

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

**7 Registration**

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

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

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



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**8 Infrastructure delivery capability**

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

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

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

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

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

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

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

**11 Risks**

Potential risks are identified in Schedule E.

**12 Limitation of liability**

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

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

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

Yours sincerely,

**Matthew Hyder**  
Chief Executive Officer



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**Schedule A: Land**

Land currently owned by Legacy:

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

Land currently controlled by Legacy:

Address	Folio Identifier
2 Kingswood Road, Orchard Hills	6/1344
98-104 Caddens Road, Orchard Hills	8/1344
114-122 Caddens Road, Orchard Hills	100/700141
124-130 Caddens Road, Orchard Hills	101/700141
140-146 Caddens Road, Orchard Hills	13/1344
78-88 Castle Road, Orchard Hills	42/881960
126-164 Castle Road, Orchard Hills	1/239091
166-204 Castle Road, Orchard Hills	8/857982



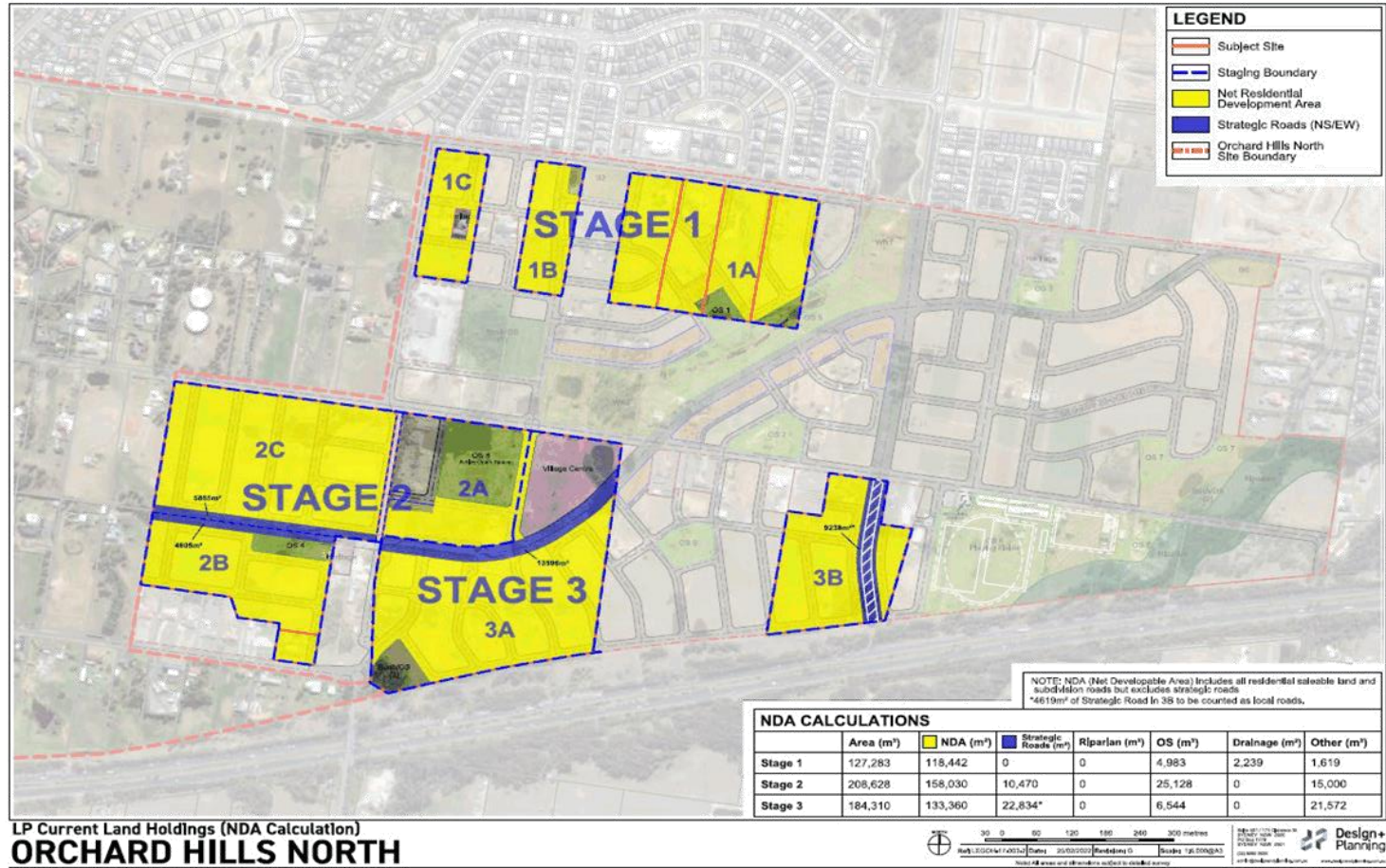
Schedule B: Contributions

Summary of Contributions

Stage	Indicative Lot Yield	Amount of Required Contributions*	Proposed Value of Land & Works	Proposed Monetary Contribution
1	222	\$22,421,568	\$3,594,478	\$18,827,090
2	266	\$27,573,939	\$25,065,860	\$2,508,079
3	293	\$28,597,077	\$10,198,100	\$18,398,977
	<b>781</b>	<b>\$78,592,584</b>	<b>\$38,858,438</b>	<b>\$39,734,146</b>

- Based on a contribution rate of \$77,578 per final lot/dwelling plus \$439,126 per hectare of net developable area.
- The contributions have been calculated based on forecast yields. The monetary component will ultimately be adjusted to reflect the final yield approved through development applications.

Overall Plan

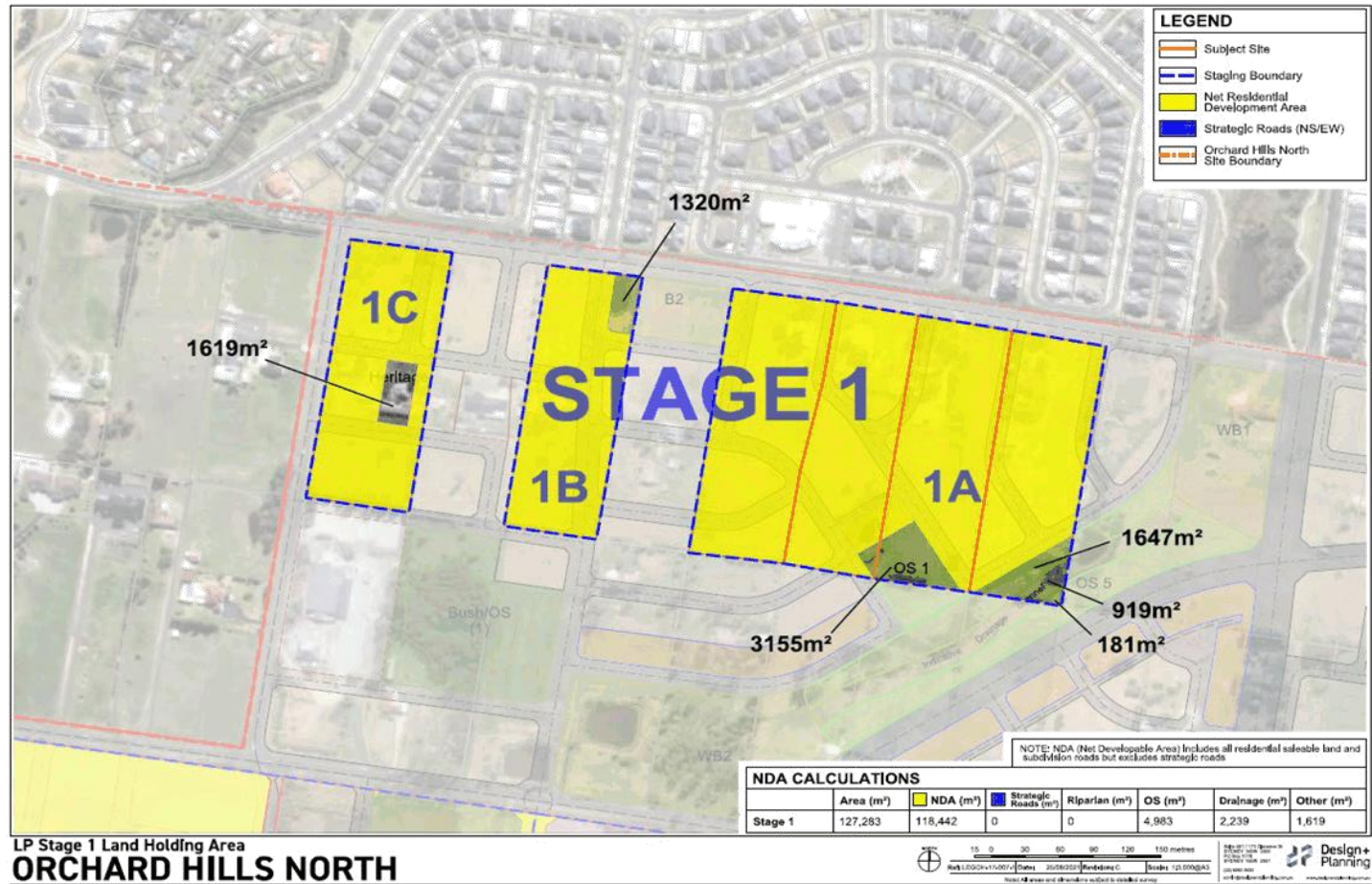


**Stage 1: Proposed Land & Works Contributions**

Item	Description/Public Purpose	Values		Timing
		Land	Works	
Plan Administration	Costs involved in preparation of Local Contributions Plan and supporting technical studies	n/a	\$475,000	Not applicable – cost already incurred
District Park OS1	Dedication of a minimum 3,155sqm of land being Part of Lot 12 DP1344 and Lot 101 DP700141	\$1,262,000	n/a	Prior to or in conjunction with the Subdivision Certificate for any Final Lots within Stage 1A.
Water Cycle Management Facility	Dedication of a minimum 919sqm of land for drainage channel being Part of Lot 13 DP1344	\$50,545	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 1B.
Basin B2 Riparian Land	Dedication of a minimum 1,320sqm of land for Basin B2 being Part of Lot 13 DP1344	\$72,600	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 1A.
Informal Recreation OS5	Dedication of a minimum 1,828sqm of land for drainage channel being Part of Lot 13 DP1344	\$731,200	n/a	Dedication of land prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 1A.
Traffic & Transport Management Facilities	Concept Design for E/W Road through entire Estate (The Northern Road to Caddens Road)	n/a	\$675,160	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 1
Traffic & Transport Management Facilities	Concept Design for N/W Road through entire Estate (The Northern Road to Caddens Road)	n/a	\$327,973	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 1
Stage 1 Sub-total		\$2,116,345	\$1,478,133	TOTAL = \$3,594,478



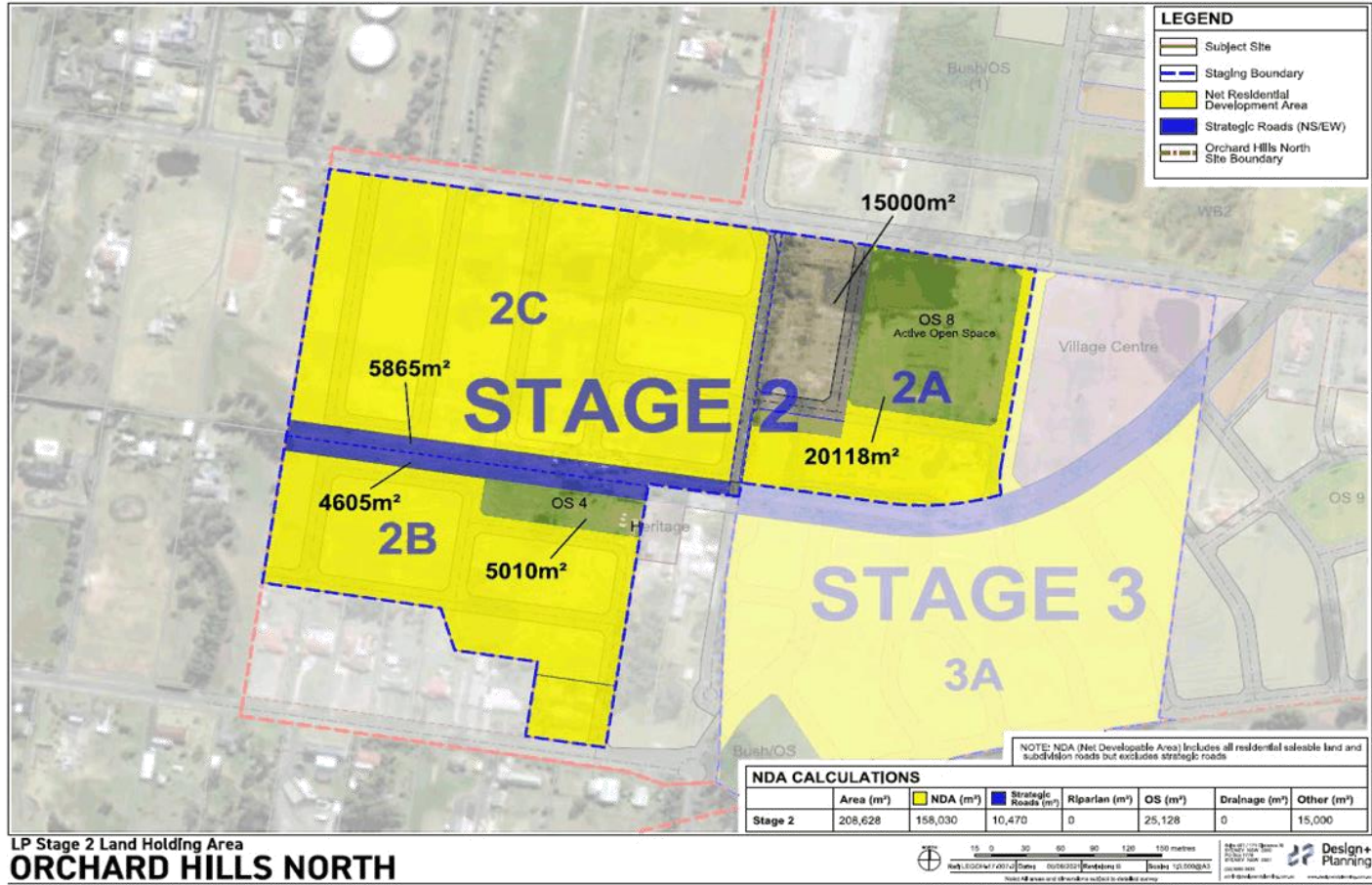
Stage 1 Plan



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

Item	Description/Public Purpose	Values		Timing
		Land	Works	
Informal Recreation Park	Dedication of a minimum 5,010sqm of land being Part of Lot 8 DP857982	\$2,004,000	\$601,200	Prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 2B.
OS4	Landscape embellishment works 12-month maintenance period			Prior to Subdivision Certificate for any Final Lots within Stage 2B. From practical completion.
Active Open Space	Dedication of a minimum 20,118sqm of land being Part of Lot 1 DP239091	\$8,047,200	n/a	Prior to or in conjunction with Subdivision Certificate for any Final Lots within Stage 2A.
OS8	Landscape embellishment and park infrastructure works 12-month maintenance period	n/a	\$2,414,160	Within 1 year after Subdivision Certificate for 200th Final Lot within Stage 2. From practical completion.
Traffic & Transport Management	Dedication of a minimum *10,470sqm of land being part of Lot 8 DP857982 for a four land section of the east/west collector road	\$4,188,000	n/a	Prior to or in conjunction with a Subdivision Certificate for 100th Final Lot within Stage 2C.
	Construction of a four-lane road to PCC standards	n/a	\$2,372,900	Prior to or in conjunction with a Subdivision Certificate for 100th Final Lot within Stage 2C.
	12-month maintenance period	n/a		From practical completion.
	Dedication of a minimum *13,596sqm of land being part of Lot 1 DP239091 for a four land section of the east/west collector road <i>*If additional or lesser land required, the cost of land, works and offset will be adjusted on a pro-rata basis.</i>	\$5,438,400	n/a	
Stage 2 Sub-total		\$19,677,600	\$5,388,260	TOTAL = \$25,065,860

Stage 2 Plan

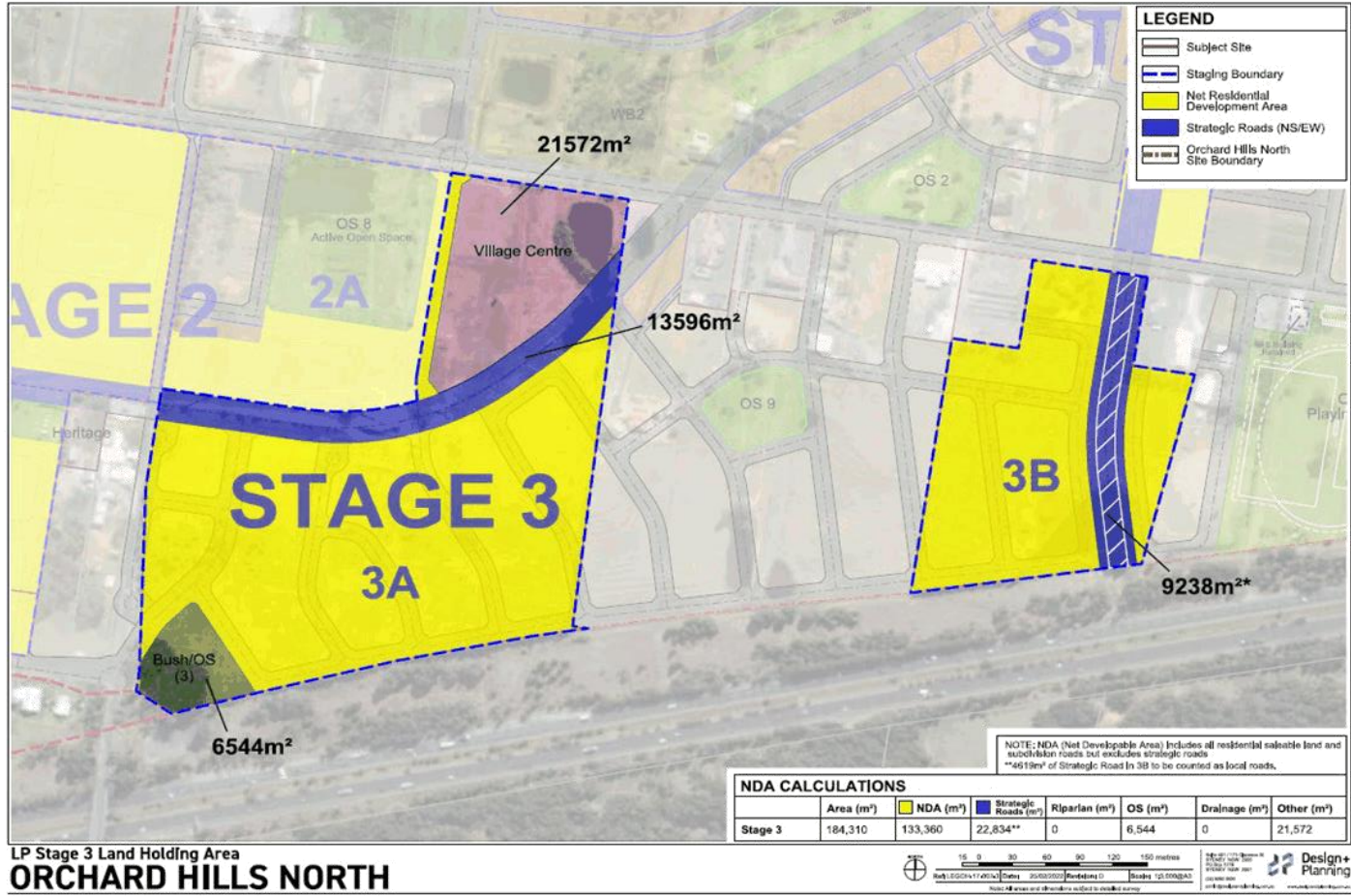


**Stage 3: Proposed Land & Works Contributions**

Item	Description/Public Purpose	Values		Timing
		Land	Works	
Natural Recreation Space	Dedication of a minimum 6,570sqm of land being Part of Lot 1 in DP239091	\$591,300	n/a	Prior to or in conjunction with Subdivision Certificate for 100th Final Lot within Stage 3A.
Bush OS (3)	Landscape embellishment work 12-month maintenance period	n/a	\$262,800	Prior to Subdivision Certificate for 100th Final Lot within Stage 3A. From practical completion.
Traffic & Transport Management Facilities	Dedication of a minimum 13,596sqm of land, being part of Lot 1 DP239091	-	n/a	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 3A.
	Construction of a four-lane road to PCC standards 12-month maintenance period	n/a	\$2,879,200	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 3A. From practical completion.
Traffic & Transport Management	Dedication of a minimum *800sqm of land for a new four-way roundabout being Part of Lot 1 DP239091 <i>*If additional or lesser land required, the cost of land, works and offset will be adjusted on a prorate basis.</i>	\$320,000	n/a	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 3A.
	Construction of four-way roundabout 12-month maintenance period	n/a	\$1,400,000	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 3A. From practical completion.
Traffic & Transport Management	Dedication of a minimum 4,619sqm of land, being part of Lot 42 DP881960 for a future four-lane north-south road	\$1,847,600	n/a	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 3A.
	Road Construction (to PCC Standards) of N/S road through Stage 3B 12-month maintenance period	n/a	\$2,897,200	Prior to or in conjunction with Subdivision Certificate for 200th Final Lot within Stage 3A. From practical completion.
Stage 3 Sub-total		\$2,758,900	\$7,439,200	TOTAL = \$10,198,100



Stage 3 Plan





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**Schedule C: Additional Public Benefits**

Item	Contribution	Timing
Monetary contribution towards public art	<ul style="list-style-type: none"> <li>A monetary contribution of \$335,000 based on 10% of the embellishment works costs for OS3, OS4 and OS8.</li> <li>This contribution is to deliver public artwork within OS8. The artwork will be designed and themed following consultation with the existing Orchard Hills primary school children and Council. The budget will include costs for consultation, design development, approvals, construction and project management</li> </ul>	In conjunction with delivery of OS8
Contribution to community facility	<ul style="list-style-type: none"> <li>A monetary contribution of \$440,000 based on a proportional contribution relating to Land covered by this VPA.</li> <li>The amount is based on a construction cost estimate of \$1,090,000 for a 432sqm community facility to meet needs, based on the entire Orchard Hills North rezoning area.</li> </ul>	Prior to any subdivision certificate in Stage 2C
Affordable housing	<ul style="list-style-type: none"> <li>23 dwellings, representing 3% of the forecast dwelling yield for the Land, to be delivered outside of the Orchard Hills North area but within the Penrith LGA in partnership with a registered Community Housing Provider.</li> <li>Provision of Affordable Housing in accordance with the VPA will be satisfy all requirements and obligations to provide affordable housing in relation to the development of the Land.</li> <li>Alternatively, at Legacy's election this may be provided by monetary contribution to Council based on a future rate to be determined by Council in accordance with Chapter 2 of <i>State Environmental Planning Policy (Housing) 2021</i>.</li> </ul>	Prior to any subdivision certificate in Stage 3A

Schedule D: Summary of Requirements (Section 7.4)

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

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



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

**Schedule E: Risks**

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

**Schedule F: Limitation of Liability Clause**

(1) Definitions

In this clause:

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

(2) Limitation of Liability

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

ORCHARD HILLS NORTH

MAP OF UNFUNDED INFRASTRUCTURE WORKS

