

22 March 2022

The General Manager
Penrith City Council
PO Box 60
Penrith NSW 2751

Attn: Ms Natasha Borgia, City Planning Manager

Dear Natasha,

**RE: OFFER TO ENTER INTO A PLANNING AGREEMENT
THE YARDS ESTATE - 657-769 MAMRE ROAD, KEMPS CREEK
(LOT 1 DP1018318 AND LOT 1 DP1271677)**

The Trust Company (Australia) Ltd ACN 652 872 880 (**the Landowner**) and Altis Frasers JV Pty Ltd as trustee for the ARET Frasers Project Trust ACN 652 872 880 (**the Developer**) formally offer to enter into a planning agreement with Penrith City Council (**Council**) in connection with the Yards Estate at 657-769 Mamre Road, Kemps Creek (being Lot 1 in DP 1018318 and Lot 1 in DP 1271677) (**the Land**).

The planning agreement will apply to the whole of the Land and will require dedication and embellishment of that part of the Land zoned 'RE1 Public Recreation' in the *State Environmental Planning Policy (Industry and Employment) 2021*.

In recognition of the public benefits proposed in this offer and the legislative framework outlined in paragraph 1.3, the planning agreement will facilitate the Council's granting of development consents in connection with development of the Land.

An indicative Concept Design Drawing of the proposed public benefits, is provided at **Annexure A**.

This letter of offer has been prepared having regard to section 4.2 of the *Penrith Development Agreement Policy* adopted on 30 November 2020.

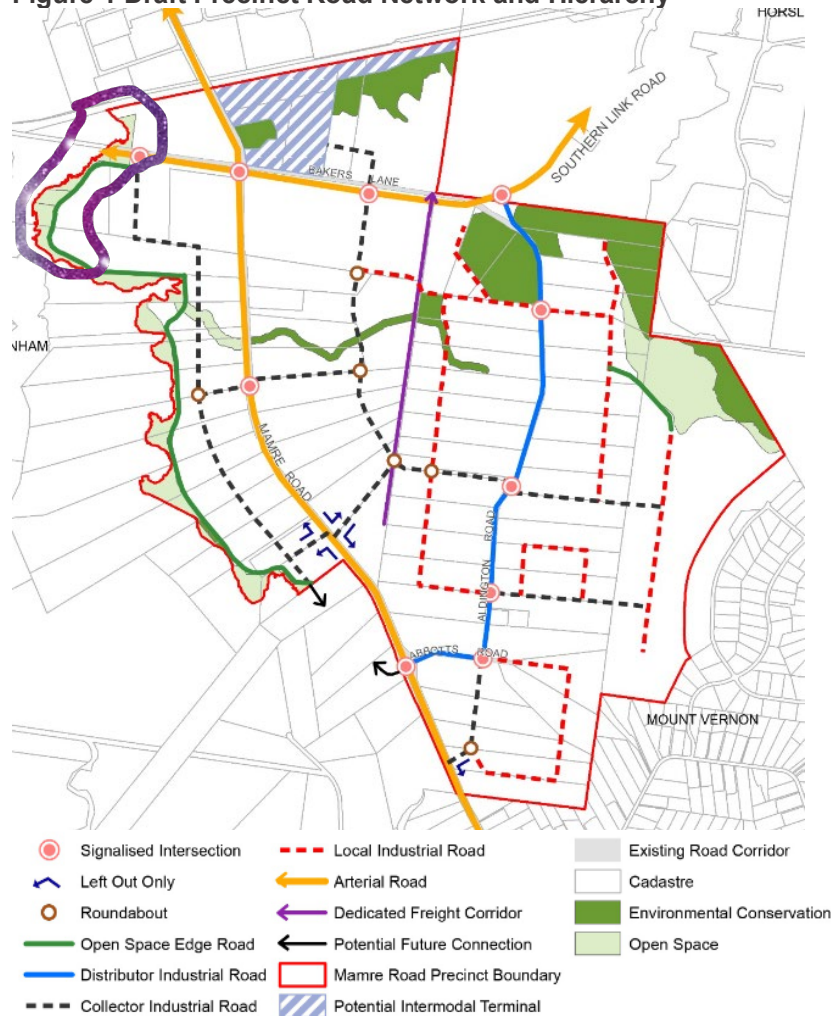
1. Background

1.1 Mamre Road Precinct Development Control Plan

The Mamre Road Precinct was rezoned in June 2020 under the *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP)*. The WSEA SEPP was repealed and replaced with the *State Environmental Planning Policy (Industry and Employment) 2021 (IE SEPP)* on 1 March 2022. Under both the WSEA SEPP and IE SEPP, part of the Land is zoned 'RE1 Public Recreation'

On 19 November 2021, the *Mamre Road Precinct Development Control Plan 2021 (Mamre Road Precinct DCP)* was adopted. Below is an excerpt from the Mamre Road Precinct DCP with the area of RE1 land circled in purple to indicate the extent of the land proposed to be dedicated by the Landowner under the planning agreement.

Figure 1 Draft Precinct Road Network and Hierarchy



1.2 Draft Mamre Road Precinct Section 7.11 Contribution Plan

Council resolved on 22 November 2021 to re-exhibit a the Draft Mamre Road Precinct Section 7.11 Contribution Plan (**Draft Contributions Plan**). The Draft Contributions Plan proposes to exclude the Land from the Draft Contributions Plan and states that all infrastructure located within the Land is expected to be provided by the developer.

Notwithstanding the Land's exclusion from the plan, the Draft Contributions Plan is relevant as it notes the proposed infrastructure costs and contribution rates for the Mamre Road Precinct as set out below.

Table 1 Draft Mamre Road Precinct Infrastructure Costs and Contribution Rates

	Costs	Rate per ha of NDA
Transport works	\$123,612,745	\$170,418
Transport land acquisition	\$166,307,500	\$229,279
Open space works	\$20,904,288	\$28,820
Open space land acquisition	\$127,051,800	\$175,160
Plan Administration	\$2,167,755	\$2,989
Total	\$440,044,089	\$606,666

1.3 Relationship with Development Applications

Part of the Land is zoned IN1 General Industrial under the IE SEPP. Clause 66(1)(a) of the *Environmental Planning and Assessment Regulation 2021 (EP&A Reg)* precludes the determination of a development application in relation to land that is zoned IN1 under Chapter 2 of the IE SEPP, unless a contributions plan has been approved for land to which the application relates. A consent authority may dispense with the requirement of a contributions plan if:

- a) *the consent authority considers the development application is of a minor nature, or*
- b) ***the developer has entered into a planning agreement with a planning authority for the matters that may be subject of a contributions plan.***¹

The Draft Contributions Plan remains under consideration and is yet to be finalised. If it is finalised in its current form, it will not apply to the Land. Therefore, by virtue of clause 66(1)(a) of the EP&A Reg a planning agreement is required to enable determination of any relevant development applications for the Land.

2. Land Affected by this Agreement

The Planning Agreement applies to all of the land described in Table 2.

Table 2 Land Affected by this Agreement

LOT	DEPOSITED PLAN
1	1018318
1	1271677

3 Parties to this Agreement

The following parties seek to enter into a planning agreement with Council:

¹ The *Environmental Planning and Assessment Regulation 2000 (Old Regulation)*, continues to apply instead of the EP&A Reg to development applications made but not finally determined before 1 March 2022. In that circumstance, clause 270 of the Old Regulation, which has the same overall practical application of clause 66(1)(a) of the EP&A Reg, would apply.

- Altis Frasers JV Pty Ltd as trustee for the ARET Frasers Project Trust (ACN 652 872 880), being the Developer; and
- The Trust Company (Australia) Ltd (ACN 000 000 993), being the Landowner.

4. Relevant Applications

The Planning Agreement will apply to the development of the Land in accordance with any future development consent. Relevantly, this includes, but is not limited to, the following development applications:

- **SSD – 25725029 ARDEX WAREHOUSE AND MANUFACTURING FACILITY**
Description: Construction and operation of a manufacturing plant to produce 48,000 tonnes per annum of powder and 25,000 tonnes per annum of liquid chemicals for cement works and related products and subdivision
Status: Response to Submissions
- **SSD – 10101987 KEMPS CREEK DATA CENTRE**
Description: Construction and operation of a data centre comprising: - two data hall buildings - high voltage electrical switchyard - one substation - 61 generators - 32 fuel storage tanks - ancillary office - associated infrastructure, carparking, loading areas and landscaping.
Status: Response to Submissions
- **Proposed Lot 9 (Approved under SSD9522)**
Description: Construction and Use of a Warehouse Distribution Centre
Status: Recently lodged

5. Description of Proposed Public Benefits

The Landowner and Developer propose the following framework to deliver the proposed public benefits.

5.1 Land Dedication

The Landowner proposes to dedicate to Council (free of charge) that part of the Land identified as 'RE1 Public Recreation' in the IE SEPP (being approximately 7.6ha), for the purpose of public open space.

The relevant land will be dedicated to Council prior to the issue of an occupation certificate for the building contained on the last development lot on the Land. A draft subdivision plan will be prepared to define the land to be dedicated and the development lots which apply to the planning agreement.

Council will be responsible for the maintenance of the land to be dedicated and all landscaping and exercise equipment as from the date of dedication.

5.2 Civil and Landscaping Works

The developer proposes to carry out civil and landscaping works on the land to be dedicated. A general Concept Design Drawing of the civil and landscaping works is included at **Annexure A** and a general description of the works is below.

5.2.1 Civil Works

The Developer proposes to complete civil works on the land to be dedicated so that the finished surface levels will reflect free draining of a flat pad adjacent to the land the subject of development consent SSD9522 IN1 bulk earthwork levels falling towards the creek with a 1:5 batter between the adjacent land zoned under *State Environmental Planning Policy (Precincts – Western Sydney Parkland City) 2021* as generally shown on the Section in Annexure 1

All works will be undertaken in accordance with Council's relevant construction specifications, being the *Engineering Construction Specification for Civil Works*.

5.2.2 Landscaping Works

The Developer proposes to embellish the land to be dedicated as follows:

- base grass areas;
- tree planting (1 every 20 metres along the IN1 frontage);
- basic landscaping around each tree with the species nominated in the Mamre Road Precinct DCP; and
- exercise equipment (1 every 800 metres along the park frontage) of a kind nominated in the Draft Contributions Plan.

5.2.3 Detailed design

Detailed design will be prepared following execution of the Planning Agreement for Council's approval as part of the relevant development application.

5.4 Application of sections 7.11 and 7.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act)

The Planning Agreement will exclude the application of section 7.11 and 7.12 of the EP&A Act to the development on the Land.

5.5 Design Specification

The design of the civil and landscaping works on the land to be dedicated will be undertaken in accordance with the documentation described below:

- *Design Guidelines for Engineering Works for Subdivisions and Developments* (as amended on 20 November 2013);
- Section 'C6 Landscape Design' of the *Penrith Development Control Plan 2014*; and
- Mamre Road Precinct DCP (in respect of species selection).

5.6 Proposed Staging / Timing

The proposed phasing and timing of the proposed public benefits is as follows:

- **Development Application**
Preparation, Lodgement and Approval
Completed Works Timeframe: Q4 2022

- **Civil Works**
All Bulk Earthworks
Completed Works Timeframe: Q4 2023
- **Landscaping Works**
All landscaping Works
Completed Works Timeframe: Q4 2024
- **Land Dedication**
Dedication of Land
Completed Works Timeframe: Q1 2025

The below program sets out target milestones for the planning agreement and delivery of the phased works.

Table 5 Indicative Program

Item	Timing/ Completion
Concept design for Open Space Civil and Landscaping completed	15 April 2022
Voluntary Planning Agreement for approval	15 April 2022
LOO and VPA presented to Local Infrastructure Working Group	May 2022
LOO and VPA presented to Council	May 2022*
VPA to be placed on Public Notification	June 2022
VPA to be executed by all parties	31 July 2022
Development Application for Open Space Civil and Landscaping	May – September 2022
Construction of Open Space Civil and Landscaping	As above – Section 5.6
Land Dedication	As above – Section 5.6

* Subject to confirmation of Council meeting dates for 2022.

6 Capacity to deliver and experience in delivering infrastructure

The Developer has experience in delivering the public benefit of this nature as evidenced through construction of the adjacent First Estate, completed earthworks and public domain landscaping.

7 Risks associated with the offer and which party will bear those risks

The planning agreement would be as per Council's pro forma. The Landowner will agree to provisions to the effect that if the Land Dedication is not completed in accordance with the obligations in the planning agreement, Council may compulsorily acquire the Land for \$1.

Conclusion

The Landowner and Developer value Council's role in the delivery of infrastructure to support Mamre Road Precinct and seek to work jointly on the delivery of the proposed public benefits.

We look forward to continuing discussions on the planning agreement.

In order to progress discussions on this matter, we seek a meeting with relevant Council representatives to discuss the drafting of the planning agreement and progressing the concept design of the proposed works.

If you have any questions, please do not hesitate to contact us.

Regards,



Stephen O'Connor
Development Manager

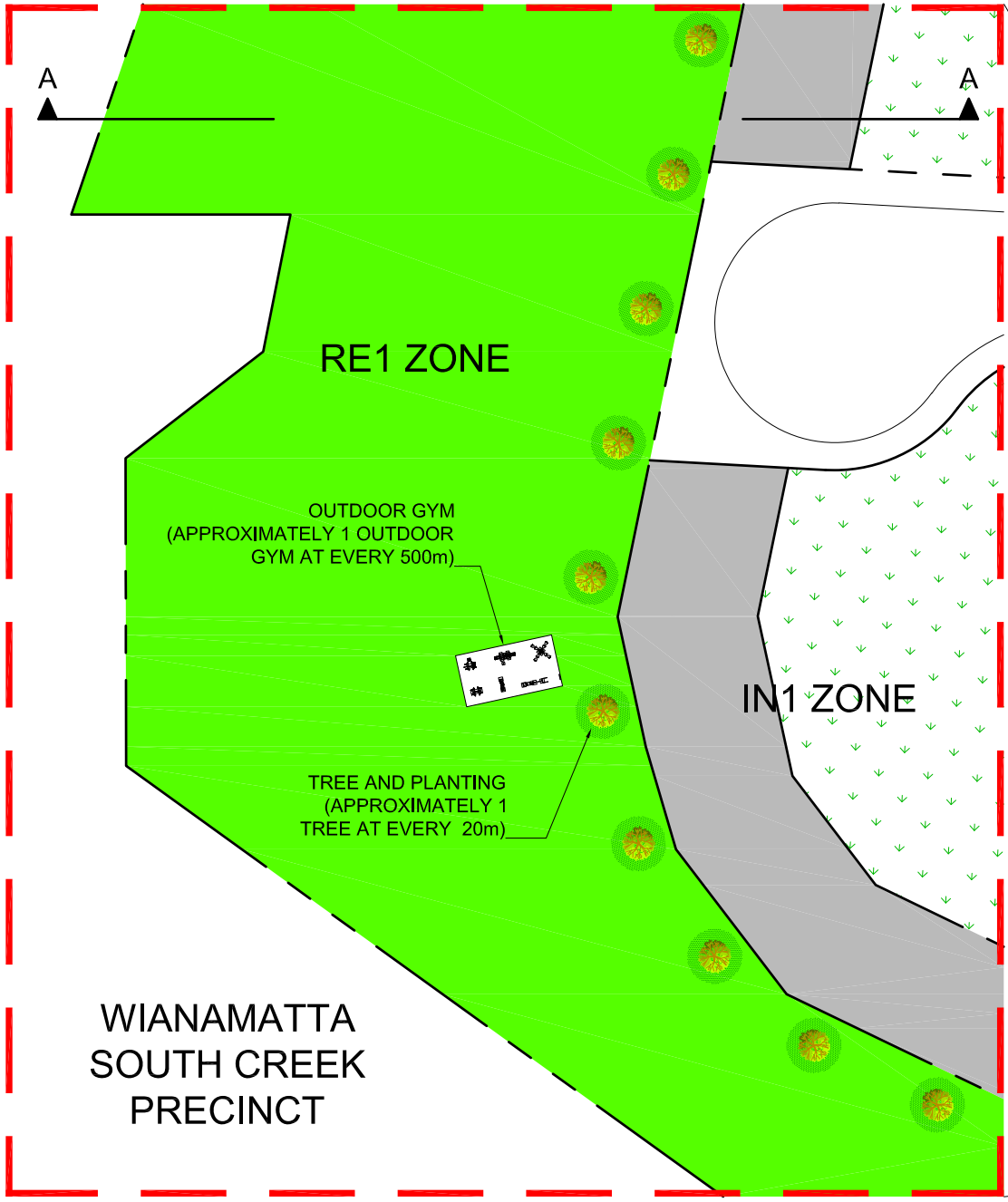
ALTIS
PROPERTY PARTNERS



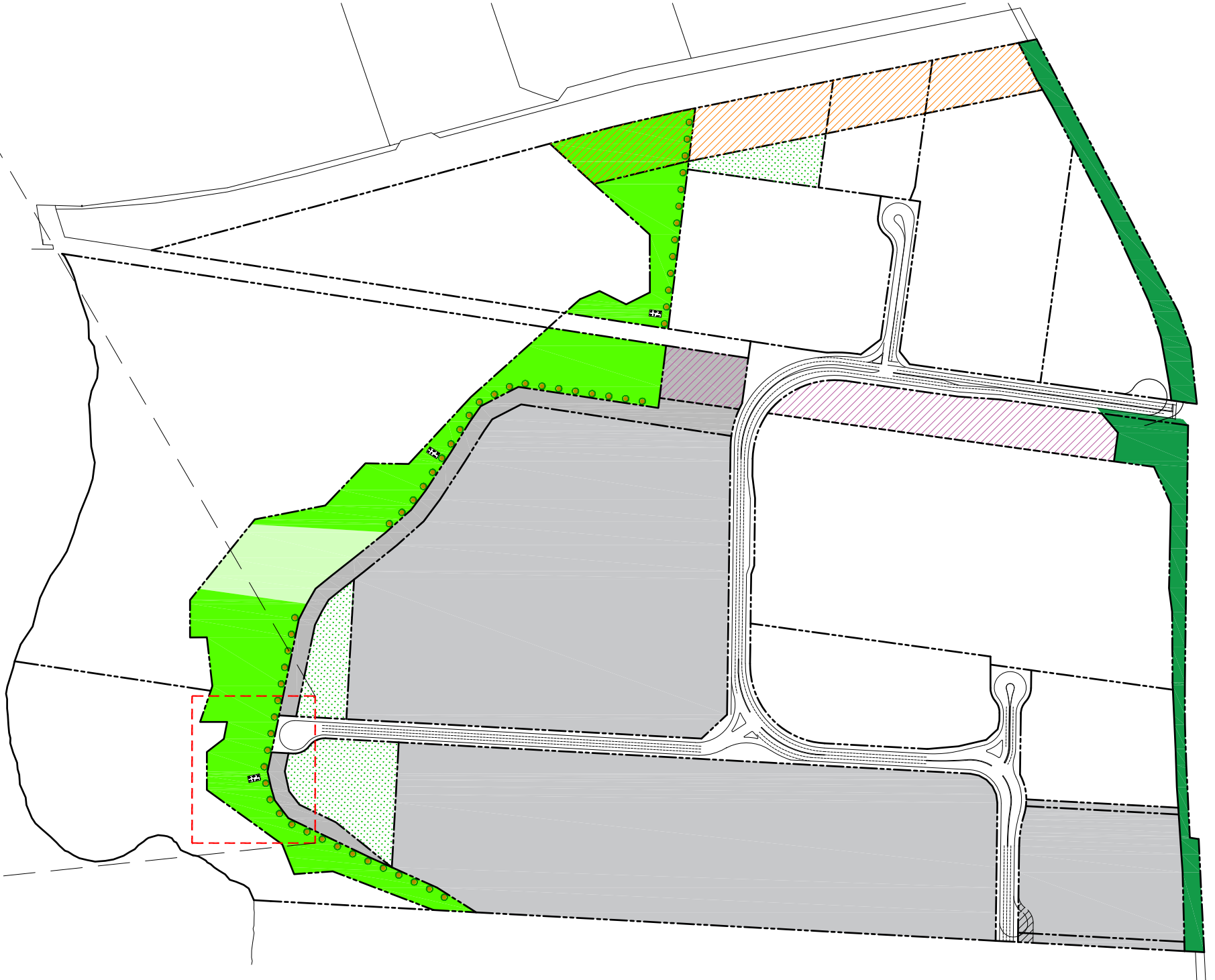
Paul Solomon
Planning and Infrastructure Manager

 **FRASERS**
PROPERTY

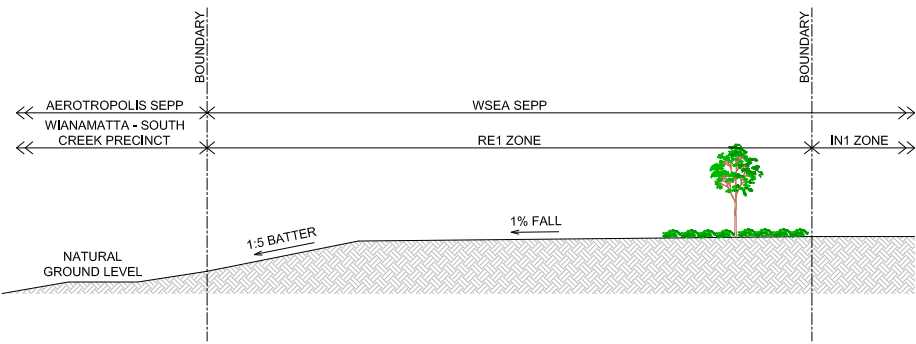
Attachment A: Concept Design Drawing – RE1 Open Space Dedication and Embellishment



02 SCHEMATIC PLAN - RE1 ZONE
NOT TO SCALE



01 STATE SIGNIFICANT DEVELOPMENT APPLICATION PLAN
NOT TO SCALE



03 SCHEMATIC SECTION AA - RE1 ZONE
NOT TO SCALE