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## ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

### CCL 28/07/2020- SUPPLEMENTARY REPORT - 41 AND 47 THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING AGREEMENT

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# Ordinary Council Meeting

28 July 2020

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### **CCL 28/07/2020- SUPPLEMENTARY REPORT - 41 AND 47 THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING AGREEMENT**

**ITEM-XX**      **Attachment A:**      Item 28 of CCL 16/04/19 - 41 And 47 Throsby Street, Wickham - Endorsement of Amendment to Newcastle LEP 2012 and Proposed Planning Agreement

# Ordinary Council Meeting

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**SUBJECT: CCL 16/04/19 - 41 AND 47 THROSBY STREET, WICKHAM -  
ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP  
2012 AND PROPOSED PLANNING AGREEMENT**

**REPORT BY: GOVERNANCE  
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

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## **PURPOSE**

To seek Council's endorsement of a Planning Proposal to commence the process for amending Newcastle Local Environmental Plan 2012 (NLEP 2012), to allow an increase in the maximum height of building (HOB) and floor space ratio (FSR) on land at 41 and 47 Throsby Street, Wickham and to commence preparation of a Planning Agreement for the construction and dedication of a laneway and public domain works.

## **RECOMMENDATION**

That Council:

- 1 Endorses the Planning Proposal (**Attachment A**) prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- 2 Forwards the Planning Proposal to the Department of Planning and Environment (DPE) seeking Gateway Determination pursuant to Section 3.34 of the EP&A Act.
- 3 Prepares a draft Planning Agreement, as per section 7.4 of the EP&A Act, consistent with the terms outlined in the attached Letter of Offer from Fidem Property Group (proponent) (**Attachment B**).
- 4 Exhibits the draft Planning Agreement for a period of 28 days, subject to Gateway approval of the aforementioned Planning Proposal.
- 5 Receives a report back on the outcomes of the public exhibition of both the Planning Proposal and draft Planning Agreement.

## **KEY ISSUES**

### **Summary of proposal**

- 6 City of Newcastle (CN) received a request to amend NLEP 2012 with a Letter of Offer from the proponent to enter into a Planning Agreement with CN with respect to land at 41 Throsby Street, Wickham (described as Lot 63 DP 579890, Lots 1 and 2 DP 112816, and Lot200 DP 534787) and 47 Throsby Street, Wickham (described as Lot 62 DP 579890) currently owned by FPG Wickham Pty Ltd.

- 7 The Letter of Offer seeks to include the following aspects within a Planning Agreement as per section 7.4 of the EP&A Act 1979:
  - i) Proponent dedicates land to accommodate a laneway and pedestrian linkage between Furlong Lane and Throsby Street.
  - ii) Proponent designs and constructs the proposed laneway and associated public domain to CN specifications.
  - iii) Proponent adheres to maintenance period (for a minimum of 12 months) of assets transferred to CN.
  
- 8 The Letter of Offer also seeks to amend NLEP 2012 as follows:
  - i) An increase in FSR from 1.5:1 to 3.5:1 (excluding the area to be dedicated as laneway); and
  - ii) An increase in HOB from 10m to 28m (with a maximum of eight storeys).
  
- 9 The Letter of Offer resulted after initial discussions with CN regarding the public interest with respect to:
  - i) The suitability of the amendments to NLEP 2012 sought by proponent with respect to matters outlined in the Planning Proposal:
    - a) Consistency with the broader strategic framework of State and CN strategies and / or plans, including the Wickham Master Plan (WMP).
    - b) Ensuring resultant development is compliant with State Environmental Planning Policies and Ministerial Directions.
    - c) Addressing potential impacts on adjoining area and ensuring potential development is compliant with Newcastle Development Control Plan 2012 (NDCP 2012) and the NSW Residential Apartment Design Guidelines.
  - ii) The proposed community benefit from the proponent delivering a new laneway connection between Furlong Lane and Throsby Street in Wickham:
    - a) Cost saving to CN of the proponent delivering the identified laneway.
    - b) Further savings from bringing forward delivery of the laneway with respect to reducing inflation on land and construction cost.
    - c) Improved access enabling redevelopment of adjoining land.

### **Letter of Offer / Proposed Planning Agreement**

- 10 The amendments to NLEP 2012 sought by the proponent's Letter of Offer are based on the principles of 'Value Capture Sharing' detailed in the Background of this report and as explored in relation to the WMP.
- 11 Essentially, with value capture, the increase in potential development is only applied to the land where part of the land value uplift is shared between the landowner / developer and the community / Council. To implement this, a developer enters into agreement with the Council to share in the value uplift by means of a cash contribution, land and / or works in kind.
- 12 The proponent proposes to share the land value uplift (resulting from the potential increase in Gross Floor Area (GFA) if the amendments to FSR and HOB in the NLEP 2012 are made) by:
  - i) Dedicating land (laneway) to CN.
  - ii) Constructing a new laneway and associated public domain works to CN's standards.
- 13 To calculate this the proponent has:
  - i) Identified the total cost of delivering the benefit.
  - ii) Determined the land value uplift needed (ie. twice the cost of delivering the benefit assuming a 50/50 share).
  - iii) Established the GFA required to increase the land value above the current (base) land value.
  - iv) Converted the GFA into FSR based on the reduction of land area due to area of the laneway.
- 14 The proponent is willing to offer a bond / guarantee on consent of a future DA to safeguard delivery of the constructed laneway and public domain works to CN. The timeframe for the delivery of the laneway will also be included in the Planning Agreement.

### **Planning Proposal**

- 15 CN has reviewed the appropriateness of the amendments to NLEP 2012 for land at 41 and 47 Throsby Street, Wickham, requested by the proponent in their Letter of Offer.
- 16 In considering the appropriateness of the proposed amendments, CN considered the following:
  - i) Consistency with the strategic intent of WMP for the land.

- ii) The appropriateness of the proposed 'value capture sharing' arrangement.
  - iii) The ability of the land to accommodate the potential additional GFA.
  - iv) Potential impact on the character and amenity of the surrounding area based on compliance with NDCP 2012 and the NSW Residential Apartment Design Guidelines.
  - v) The public good.
- 17 The WMP envisaged 'value capture sharing' arrangements would be delivered through an amendment to the NLEP 2012 (see Background) to enable CN to consent to a variation of development standards (on certain land) where CN is satisfied that the variation is:
- i) Justifiable of planning grounds; and
  - ii) Necessary to achieve an identified and quantifiable public benefit.
- 18 A Planning Proposal has been prepared by CN that will result in the following:
- i) Amendment to the HOB map to reflect an increase from 10m to 28m on the land.
  - ii) Amendment to the FSR map to reflect an increase from 1.5:1 to 3.5:1 on the land. The increase in FSR will not apply to the proposed laneway.

#### **Variation from Wickham Master Plan**

- 19 The subject land spans across two character precincts outlined in the WMP. The Eastern portion (41 Throsby Street) is within the Village Hub and the Western portion (47 Throsby Street) being within the Emerging Industry Quarter. However, the potential redevelopment density identified by the WMP for both sites is of a lower scale (4 storeys) in comparison to adjoining land to the south (11 storeys) and to the west (8 Storeys).
- 20 47 Throsby Street was nominated at a lower scale than adjoining land within the Emerging Industry Quarter Precinct due to the lack of a nominated public benefit (which could be delivered through a development incentive), such as the proposed laneway at 55 Throsby Street. The WMP nominated the North-South connection at 55 Throsby Street due to its location at the end of the laneway and as a larger land parcel, the site could accommodate both a laneway and still achieve a large development floorplate.
- 21 However, discussion with the owners of 55 Throsby Street has confirmed that this site contains a viable business that is not seeking to relocate in the



foreseeable future and therefore, the laneway is unlikely to be developed in that location.

- 22 In addition the proponent has demonstrated that a North-South connection linking the end of Furlong Lane through to Throsby Street is also achievable at 47 Throsby Street. The WMP nominated an FSR for 55 Throsby Street of 2.1:1. However, due to the smaller land area of 47 Throsby Street a greater FSR of 3.5:1 is required to achieve a similar uplift in GFA as nominated in the WMP.
- 23 Design analysis of 47 Throsby Street prepared by EJE Architects has demonstrated that despite a greater FSR, redevelopment of 47 Throsby Street could still produce a development that complies with CN's planning controls and the SEPP65 Residential Apartment design guidelines.

### **FINANCIAL IMPACT**

- 24 The Letter of Offer from the proponent, identifies that the cost of preparing a draft Planning Agreement will be funded by the proponent. CN will incur cost of staff negotiating with the proponent, exhibiting the Planning Agreement (together with the Planning Proposal) and reporting the outcomes to Council.
- 25 The cost saving to CN from the proponent delivering the identified laneway will enable CN to spend future section 7.12 contributions received from this development on the delivery of other infrastructure projects in the City Centre.
- 26 Without the proposed agreement the cost to CN for delivering a new laneway is estimated at \$1.87M at current rates.
- 27 This amount is based on the following:
  - i) The cost to acquire the land required for the laneway is equal to the land value rate of \$1,385/sqm (identified by AEC - Value Capture Land Economic Study, dated 20/11/2018) being applied to the area of land required for the laneway (260sqm), which equates to \$360,000. However, the AEC study identified that additional compensatory costs are likely to be applied under the Land Acquisitions (Just Terms Compensation) Act 1991 to address severance and disturbance, especially if applied to 55 Throsby Street as nominated within the Wickham Master Plan. The additional cost of compensation is difficult to approximate without a detailed assessment of the existing structures and business on the land, but AEC asserted that the total compensation for the land is more realistically in the order of \$500,000.
  - ii) The cost for designing and constructing the laneway and public domain works, based on Cost Plan prepared by Quantity Surveyors Napier and Blakely (dated 22/10/2018) would equate to \$1.37M.

### **COMMUNITY STRATEGIC PLAN ALIGNMENT**

- 28 The Planning Proposal aligns with the following Community Strategic Plan Directions:

### **Liveable Built Environment**

- 5.4b Plan, provide and manage infrastructure that continues to meet community needs.

### **Open and Collaborative Leadership**

- 7.1a Encourage and support long term planning for Newcastle, including implementation, resourcing, monitoring and reporting.
- 7.2a Conduct CN business in an open, transparent and accountable manner.
- 7.3a Provide opportunities for genuine engagement with the community to inform CN's decision-making.

### **IMPLEMENTATION PLAN/IMPLICATIONS**

- 29 Implementation of the recommendations of this report is consistent with the intent of the WMP and will realise a new public laneway which would otherwise not likely be delivered.

### **RISK ASSESSMENT AND MITIGATION**

- 30 Implementation of the recommendations will be carried out in accordance with the requirements of the EP&A Act and CN's Voluntary Planning Agreements Policy, <http://intranet/Service-Units/Strategy-and-Engagement/Corporate-and-Community-Planning/Resources/Policies/Voluntary-Planning-Agreements-Policy>, hence mitigating any risk to CN supporting the amendment to NLEP 2012 or the proposed Planning Agreement.
- 31 The DPE's Gateway process will identify any requirements to consult with state agencies, hence providing further opportunity for any outstanding risks being identified and addressed.
- 32 Were the proposal not to proceed, CN may risk the timely provision of a new laneway connection. While this may be addressed by maintaining a reservation acquisition (in NLEP 2012) across 55 Throsby Street Wickham, until such time as the land is redeveloped, this is likely to be at a cost to CN considerably higher than under the current proposal.

### **RELATED PREVIOUS DECISIONS**

- 33 At the Ordinary Council Meeting held on 28 November 2017, Council adopted the WMP which outlined the potential development opportunities within Wickham based on the future vision for change in the area over the next 25 years and beyond.
- 34 At the Ordinary Council Meeting held on 22 May 2018, Council endorsed a Planning Proposal to enable several amendments to the NLEP 2012, as identified within the WMP. The Planning Proposal included introduction of a

land reservation acquisition on the map over land at 55 Throsby Street Wickham. This report does not seek to make any changes to the ongoing processing of that Planning Proposal.

## **CONSULTATION**

- 35 The WMP was publicly exhibited prior to its adoption, which included CN's intention to provide a new laneway between Throsby Street and Furlong Laneway.
- 36 Subject to Gateway support and the preparation of a Planning Agreement, both the Planning Proposal and the draft Planning Agreement will be publicly exhibited simultaneously and subsequently reported to Council for consideration and appropriate action.

## **BACKGROUND**

### **Wickham Master Plan (WMP)**

- 37 The WMP adopted by Council at the Ordinary Council Meeting held in November 2017 identified:
  - i) Vision and redevelopment opportunities for the next 25 years and beyond.
  - ii) Infrastructure and other public benefits that may be achieved through developer incentives (increased HOB and FSR).
  - iii) Identified indicative densities based on the above, which would be implemented by a formalised mechanism within the NLEP 2012.
- 38 The vision identified six interconnecting precincts that identify the envisaged character, built form, land use mix, and preferred public domain outcomes for redevelopment.
- 39 The WMP included a number of strategies and actions for achieving benefits to the community through provision of developer incentives. The approach put forward recommended that CN maintain the existing development standards (ie HOB and FSR) but introduce a mechanism to enable these to be increased where development results in a quantifiable public benefit. Public benefits would include provision of items either not able to be funded by developer contributions (due to statutory limitations) or as a means of bringing forward the delivery of items for which contributions are being collected. Items identified in the master plan include:
  - i) 'Urban activation areas' including additional land and embellishment within the public domain.
  - ii) Public car parking.

- iii) Affordable rental accommodation administered by a registered service provider.
- iv) Infrastructure and / or community facilities.
- v) Crucial vehicle and / or pedestrian connections.

### **Value Capture Sharing Approach**

40 An economic assessment prepared by AEC group, in preparation of the WMP recommended the mechanism being based on 'value capture', as explained below:

- i) Land value is largely influenced by the redevelopment potential of the land.
- ii) Amending development standards can substantially increase land values, which only benefits the current landowner.
- iii) With value capture, the increase in potential development is only applied to the land where part of the land value uplift is shared between the landowner / developer and the community / Council.
- iv) To implement this, a developer enters into agreement with the Council to share in the value uplift (from an LEP amendment) by means of a cash contribution, land, and / or works in kind.
- v) The developer benefits in that (despite having a greater risk and construction cost) can achieve a greater GFA which equals greater return on investment (as the land cost was equal to the original value plus half of the uplift, within their feasibility calculations).
- vi) Council and the community benefit by:
  - a) Sharing in the uplift gained through a public policy decision.
  - b) Receiving additional funding and / or infrastructure delivered ahead of schedule compared to Council funding this through general revenue or standard s7.12 contributions (hence also saving Council the higher cost of inflation if delivered in the future).
  - c) Increased s7.12 Local Infrastructure Contributions from the redevelopment of 41- 47 Throsby Street to account for the increase in HOB and FSR.

- d) Being in a position where the potential impact of development may be weighed up against the benefit to be delivered.

41 The mechanism envisaged within the WMP proposes an amendment to the NLEP 2012 which enables CN to consent to a variation of development standards (on certain land) where CN is satisfied that the variation is:

- i) Justifiable on planning grounds; and
- ii) Necessary to achieve an identified and quantifiable public benefit.

42 This will also require an amendment to the NDCP 2012 that identifies:

- i) Nominated land.
- ii) Potential public benefits.
- iii) Means of determining variation to development standards including:
  - a) Standards that may be varied (eg. HOB, FSR).
  - b) Planning principals for determining maximum variation:

Strategic intent (eg. Wickham Master Plan)

Compliance with residential apartment design guidelines

Compliance with the NDCP 2012

Acceptable level of impact (overshadowing, traffic, capacity of infrastructure).

- iv) Calculations required for justifying variations:
  - a) Increase in GFA.
  - b) Land value uplift from increased development standard (documented by a suitably qualified professional ie. land valuer / property economist).
  - c) Cost to developer of delivering public benefit to CN (documented and verified by a suitably qualified professional ie. land valuer, economist and / or QS report) or monetary contribution to CN to administer or deliver an identified public benefit in the vicinity of the development site.
- v) Implementation:

- a) Planning Agreement.
- b) Conditions of consent.
- c) Bank guarantee / bond.

43 To identify and clarify how this approach may work in reality, and to expedite CN implementing such a mechanism, the proponent funded a further report also prepared by AEC group that demonstrates how this method applied to the proponent's land at 41 and 47 Throsby Street, Wickham.

## **OPTIONS**

### **Option 1**

44 The recommendation as at Paragraph 1 – 5. This is the recommended option.

### **Option 2**

45 Council does not support the Planning Proposal and / or the Letter of Offer. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Planning Proposal - 41 and 47 Throsby Street, Wickham

**Attachment B:** Letter of Offer from Fidem Property Group

**Attachment A**

**[Attachment A - CCL160419 - 41 and 47 Throsby ...](#)**

**Attachment B**

**[Attachment B - CCL160419 - 41 and 47 Throsby ...](#)**

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### **CCL 28/07/2020- SUPPLEMENTARY REPORT - 41 AND 47 THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING AGREEMENT**

**ITEM-XX    Attachment B:**    Council resolution to Item 28 of 16/04/19 - 41 and  
47 Throsby Street, Wickham

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# Ordinary Council Meeting

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[Agenda Report](#)

**SUBJECT: CCL 16/04/19 - 41 AND 47 THROSBY STREET, WICKHAM -  
ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP  
2012 AND PROPOSED PLANNING AGREEMENT**

**RESOLVED:** (Councillors White/Church)

That Item 28 lays on the table until a public briefing is held on the proposal, the public benefit and principles of value capture.

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**CCL 28/07/2020- SUPPLEMENTARY REPORT - 41 AND 47  
THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT  
TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING  
AGREEMENT**

**ITEM-XX**    **Attachment C:**    Planning Proposal - 41 and 47 Throsby Street,  
Wickham

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THROSBY STREET, WICKHAM – ENDORSEMENT OF AMENDMENT  
TO NEWCASTLE LEP 2012 AND PROPOSED PLANNING  
AGREEMENT**

**ITEM-XX    Attachment D:**    Letter of Offer from Fidem Property Group

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# Ordinary Council Meeting

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**Chief Executive Officer**

Jeremy Bath

**City of Newcastle****28 King Street****Newcastle NSW 2300**26<sup>th</sup> May 2020

Dear Mr David Clarke,

**PROPOSED PLANNING AGREEMENT - PROPOSED AMENDMENT TO  
NEWCASTLE LEP 2012 – 41 & 47 Throsby Street, Wickham NSW 2293**

We refer to your letter dated the 14<sup>th</sup> April 2020 and subsequent email correspondence, to which CN requested we amend our original letter of offer dated 26<sup>th</sup> March 2019 to reflect the outcomes of an economic review of the proposal and our negotiation. After careful consideration and consultation with our external advisors we wish to provide an amended offer, detailed herein.

**1. Introduction**

Fidem Property Group acting as development manager confirms FPG Wickham Pty Ltd is willing to enter into a Planning Agreement with an amendment to the Newcastle LEP 2012 effecting land at 41 and 47 Throsby Street, Wickham, pursuant to Section 7.4 (3) of the Environmental Planning and Assessment Act 1979, post Gateway determination.

In this regard, Fidem Property Group, as applicant, wishes to deal directly with Council in relation to any Planning Agreement over that part of the Land, which is currently owned by FPG Wickham Pty Ltd being:

41 Throsby Street, Wickham

- Lot 63 DP 579890
- Lot 1 DP 112816
- Lot 2 DP 112816
- Lot 200 DP 534787

47 Throsby Street, Wickham

- Lot 62 DP 579890

**2. Planning Agreement**

Fidem Property Group is seeking to enter into a Planning Agreement with the City of Newcastle in connection with an amendment to the Newcastle LEP 2012 effecting land at 41 and 47 Throsby Street, Wickham, pursuant to Section 7.4 (3) of the Environmental Planning and Assessment Act 1979.

We wish to enter into discussions post Council's endorsement of our offer, amendment to the Planning Proposal and Gateway determination which introduce a:

- FSR of 3:1 and the following heights of building:

- HOB 28m – 8 Storey
  - 47 Throsby Street Lot 62 DP 579890
  - 41 Throsby Street Lot 63 DP 579890
  
- HOB 22m – 6 Storey
  - 41 Throsby Street Lot 1 DP 112816
  - 41 Throsby Street Lot 2 DP 112816
  - 41 Throsby Street Lot 200 DP 534787

Based on the Planning Proposal to be submitted, we believe that the proposed Planning Agreement will include, but not be limited to, the following aspects:

- Design and Construction of the proposed laneway being no less and no more than 6.5m wide along the western portion of 47 Throsby Street linking between Throsby Street and Furlong Lane, Wickham. Through the Planning Agreement, the quantum and value of this cost contribution should be recognised.
  
- Dedication of the land proposed for the laneway and pedestrian linkage purposes to Council. Through the Planning Agreement, the quantum and value of this land should be recognised.
  
- The maintenance period of assets being transferred to Council

Fidem Property Group is committed to working with Council on the planning and design of the laneway.

#### **Application of s7.11 and s7.12**

The Planning Agreement will not exclude s7.11 or s7.12 contributions to development of the land for any future development application.

#### **Timing and provision**

As is standard practice, the timing and provision of land dedication and delivery of completed works included as part of the agreed public benefits are to be negotiated post Gateway determination.

#### **Resolution of disputes**

Any dispute under the Planning Agreement would be resolved by expert determination or mediation in accordance with the process specified in the Planning Agreement.

#### **Security**

The EP&A Act requires the Planning Agreement to provide provisions of a suitable security such as insurance bonds or bank guarantee. We acknowledge the requirements of the Legislation and understand a bond or bank guarantee will be required as security.

#### **Legal costs**

Fidem Property Group will appoint a legal professional, at no cost to CN to document the negotiated Planning Agreement and any subsequent versions arising from CN's legal review, public exhibition, or Council resolution.



### **Timing for when the Planning Agreement would be entered into**

Fidem Property Group seeks to commence preparing and negotiating a draft Planning Agreement, post Council's endorsement of our offer, amendment to the Planning Proposal and Gateway determination.

The draft Planning Agreement and Planning Proposal should then be exhibited concurrently. The final execution of the Planning Agreement will be required to be signed prior to gazettal of the LEP amendment. The Planning Agreement would operate from such time as Council executes it.

### **3. Conclusion**

We are committed to working with Council throughout the LEP amendment process. We confirm that we are willing to enter into a Planning Agreement with Council post Gateway determination, when some certainty surrounding Council's support and Gateway requirements are known. Fidem Property Group is willing to invest the resources and capital to achieve the right outcome, however it needs more certainty on the likely outcome of the Planning Proposal before we can continue with negotiations.

We trust the above supports your assessment and recommendations to Council.

Please do not hesitate to contact me if you have any additional queries or require further clarification.

Yours Faithfully,



Michael Ghobrial

Managing Director

M: 0411 062 281

E: [mghobrial@fidem.com.au](mailto:mghobrial@fidem.com.au)

W: [www.fidem.com.au](http://www.fidem.com.au)