

Heads of Agreement
Lindfield Village Green

KMC

TfNSW

Intention of the Parties

- TfNSW desires to create approximately 240 commuter car parking spaces to serve Lindfield Transport Interchange.
- KMC intends to develop Lindfield Village Green (LVG), a multi-level facility with sub surface car parking and rooftop plaza with café, on its land at Tryon St Lindfield.
- This non-binding Memorandum describes the manner in which TfNSW intends to participate in the proposed LVG development and to identify the basic agreements between the parties regarding the proposed project.
- These agreements are intended to form the basis for formal documentation of the proposed project.

Lindfield Village Green Development Arrangements

1. KMC intends to develop a three level below ground car park to a specification suitable for occupation by TfNSW commuters as well as visitors to the LVG facility.
2. TfNSW intends to occupy approximately [105] spaces for commuters subject to detailed design, in the KMC car park by way of a 50 year lease to commence upon completion of construction of the proposed car park facility.
3. Prior to KMC entering into a Construction Contract for the project it is intended TfNSW and KMC will enter into an Agreement to Lease and if required a separate project agreement that will set out the relevant funding and operational arrangements.
4. KMC will own, operate and maintain the LVG facility excluding nominated tenants fittings.
5. KMC may, from time to time, appoint third party operators to operate and maintain the LVG facility.
6. TfNSW intends to make a capital contribution equivalent to the development cost of the spaces it will lease in lieu of periodic lease payments.
7. TfNSW represented by Sydney Trains will pay a proportion of the annual outgoings in respect of the whole of the car park, for operational and maintenance costs in proportion to the number of car parking spaces it occupies in the proposed development. (currently estimated to be in the order of 105/241 or 44%)
8. TfNSW will contribute in proportion to the number of car parking spaces it occupies in the proposed development to capital replacement costs for major

items such as passenger lifts.

9. The parties will resolve a process for identifying, costing, funding and implementing outgoings and capital replacement requirements for the car park during the lease period. The parties will explore the extent to which it may be practical to separately meter utilities between components of the LVG project.

Design

10. KMC will procure that the facility is designed to be constructed to reasonable standards in accordance with Australian building codes. Responsibility for defects in design will ultimately rest with the Contractor engaged by KMC.
11. TfNSW will provide KMC with a general specification for the commuter car parking spaces which KMC will include in its specification for the proposed development
12. KMC and TfNSW will liaise to resolve an access control system which includes control of commuter spaces by use of Opal card technology and vehicle registration number recognition.
13. TfNSW's commuter spaces will be located on the lowest floor(s) of the facility.
14. KMC will decide design and construct matters at its discretion but in consultation with TfNSW regarding matters which may substantially effect the TfNSW general specification for commuter car parking spaces and generally manage the design, tendering, construction and delivery of the project.
15. KMC will provide the opportunity for TfNSW to comment on the design at the 30% design complete stage.
16. TfNSW must not unreasonably withhold agreement to the proposed design if it meets the general specification for commuter car parking provided by TfNSW.
17. If the parties do not agree that the design is suitable for the provision of commuter car parking then an appropriate dispute resolution mechanism will be implemented to resolve the disputed design items.
18. The parties will agree the target number and proportion of spaces for TfNSW and those for KMC's use and both parties acknowledge that part of a proposed L2 of three car parking levels may have some parking for TfNSW.
19. The parties agree that the access point to the car park from the surface will be shared by KMC users and TfNSW users.

TfNSW and KMC Financial Arrangements

20. A principle of reasonable actual cost sharing is to be applied to calculating each party's share of costs to construct the LVG. KMC will be responsible for leading the design, engaging a Constructor and managing completion of the project. TfNSW will have opportunities to review design before completion and review tender evaluations for builders prior to appointment. KMC will keep TfNSW informed of construction progress through providing opportunities to attend Project Control Group meetings.

21. TfNSW will make a payment to KMC intended to equate to TfNSW's proportionate share (currently estimated to be in the order of 105/241 or 44%) of Project Costs including variations.
22. Project Costs will be defined in the Agreement to Lease or Project Agreement as required. The definition of Project Costs will be separated into three categories:
 - Direct Costs – Park and Street: relate to costs that can be directly attributable to the above ground Council park and surrounding streets. These costs will be paid by KMC and will not be shared with TfNSW.
 - Direct Costs – Basement: relate to costs that can be directly attributable to the basement car park and access (including excavation, disposal, lift, ramps and other vehicle access works). These costs will be shared with TfNSW.
 - Indirect Costs: are all other costs attributable to design, management and construction of the LVG. These costs will be shared with TfNSW.
23. The amount of the payment for the car parking areas as a proportion of the total project costs will be agreed by the parties based on quantity surveyor estimates.
24. Both TfNSW and KMC can withdraw from the project if the pre tender estimates too high in their respective opinion, acting reasonably.
25. TfNSW's fittings such as operable access control systems, CCTV and signage will be the responsibility of TfNSW and excluded from the calculation of cost to KMC, unless such responsibilities and costs are agreed to be shared by KMC.
26. KMC will confirm and/or adjust the amount of the payment in consultation with TfNSW following a public tender process to confirm the cost of the project.
27. The parties reserve the right to withdraw from the project if the public tender results in a price of delivering the car parking facility which is too high in their respective opinion, acting reasonably. KMC's ability to proceed with the project is at all times subject to Council approval.
28. The payment will be made in tranches within 14 days of receipt of a tax invoice from KMC equating to 30% (at project documentation stage, 50% at construction completion of the lowest level of car parking, 20% at completion of TfNSW works.
29. TfNSW will meet the cost of its proportion of any reasonable variation to the project cost.
30. Each party will bear their own proportion of costs incurred to date where either party withdraws under clause 24 or under clause 27.

Lease Commencement

31. TfNSW occupancy will commence upon receipt of a Certificate of Occupancy for the whole of the car park.
32. At least 14 days prior to expected issuance of a Certificate of Occupancy for the whole of the car park, KMC will advise completion of the facility and

provide TfNSW with the opportunity to inspect the facility including common access ways and the lease area.

33. The Contractor will be responsible for design and defects managed by KMC which will use reasonable endeavours with respect to resolving defects in the lease area and common access ways.

Occupation and Redevelopment

34. The parties acknowledge that the LVG facility (note this includes both timed and commuter spaces) is intended to be available for use 24/7, subject to any required maintenance and/or emergency interruptions.
35. KMC will install the required TfNSW wayfinding signage and commuter car parking space availability signage at appropriate locations.
36. TfNSW may manage access to its lease area at its discretion in accordance with changing transport requirements and this may include “opalization” of access arrangements and the introduction of an enforcement regime which would include penalties for non-commuters and overstay of vehicles not utilizing the TfNSW public transport system.
37. The permitted use under the lease will be time limited managed commuter parking including implementation of a cost penalty system for infringements and any change to this permitted use (including to general parking) will require KMC's consent.
38. KMC and/or its designated third party operator will not be responsible for the operation and maintenance – including life cycle maintenance or capital repairs - of the TfNSW Opal technology system.
39. The parties agree to cooperate to integrate car park entry technology as and when appropriate.
40. Should TfNSW seek to introduce a revenue generating car parking system rather than an enforcement regime the parties agree to confer acting reasonably with a view to establishing what proportion of net revenue could reasonably apply to KMC and as to how such an outcome could be achieved.
41. The lease period will be 50 years commencing at issue of a Certificate of Occupation for the whole of the car park.
42. TfNSW and KMC shall maintain appropriate insurance reflecting their respective status and roles in the facility. KMC and TfNSW may investigate joint insurance, if considered appropriate.
43. KMC may propose and TfNSW will not unreasonably fail to approve redevelopment, upgrading or replacement of the facility prior to the end of the lease period if KMC provides an acceptable alternative for Transport commuters for the interim construction period in the instances of upgrading or replacement, or for the remaining lease period if replacement commuter spaces are not incorporated in the instance of a redevelopment.

Lindfield Community Hub Acknowledgement

44. TfNSW intends to consider delivery of the remaining target commuter car parking spaces as part of a future Lindfield Community Hub (LCH) project located on the west side of the Pacific Highway on Woodford Lane.

45. The parties acknowledge that the LCH project is yet to be fully designed or costed and that accordingly TfNSW is unable to make any formal commitment to future investment in the LCH project at this time.

Signed by

Transport for NSW representative

Dated September 2018

KMC representative

Dated September 2018