



## COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA  
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333  
CUPERTINO.ORG

### PLANNING COMMISSION STAFF REPORT

Meeting: June 11, 2019

#### Subject

Consider approving a new 185 room 5-story hotel (24-hour operations) with underground parking, event meeting rooms, a restaurant with a separate bar and rooftop lounge with a separate bar at the Cupertino Village Shopping Center by demolishing two commercial buildings with an area of 13,429 sq. ft. and the removal of 41 trees. City Actions would include a General Plan Amendment to consider increasing the development allocation of hotel rooms to 185 hotel rooms in the North Vallco Special Area; Other permits include: Development, Architectural and Site Approval, Tree Removal, and Use Permits. A Development Agreement is also proposed; (Application No(s): GPA-2017-05, DP-2018-04, ASA-2017-09, DA-2017-01, TR-2017-46, U-2018-03, EA-2017-06; Applicant(s): Kimco Realty (Michael Strahs); Location: 10801 and 10805 North Wolfe Road; APN #316-45-017, 316-05-056

#### Recommended Actions

Staff recommends that the Planning Commission, in accordance with draft resolutions (Attachments 1-7), recommend that the City Council:

1. Adopt the Mitigated Negative Declaration (EA-2017-05);
2. Approve the General Plan Amendment (GPA-2017-05);
3. Approve the Development Permit (DP-2017-09);
4. Approve the Architectural and Site Approval (ASA-2017-09);
5. Approve the Tree Removal Permit (TR-2017-46);
6. Approve the Use Permit (U-2018-03);
7. Approve the Development Agreement (DA-2017-01).

#### Discussion

#### **Project Data:**

<b>General Plan Designation:</b>	Commercial/Residential
<b>Special Area:</b>	North Vallco Park Special Area
<b>Zoning Designation:</b>	P (CG, Res) Planned Development Zoning with General Commercial and Residential Uses

	Existing		Proposed
<b>Property Area:</b>			
<b>Gross Area</b>	89,600 sq. ft. (2.06 acres)		No Change
<b>Net Area</b>	63,787 sq. ft. (1.46 acres)		No Change
<b>Floor Area (sq. ft.)</b>	13,429 sq. ft.		115,394 sq. ft.
<b>Floor Area Ratio (sq. ft.)</b>	0.15		1.81
	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>
<b>Building Height:</b>	60'	One-story (18')	59'6"
	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
<b>Setbacks*:</b>			
Front*	Maximum Building Height of 60', must maintain primary bulk below 1:1 slope line drawn from arterial/boulevard curb line	~59'	60', maintain primary building bulk below 1:1 slope line drawn from arterial/boulevard curb line
Rear*	Greater of 20 feet, or setback equal to one and one-half feet for each foot of height measured from eave line or top of parapet.*	~108'*	90'*
Street side* ( <i>Pruneridge Ave.</i> )	0 feet*	~79'*	8'2 1/2''*
Interior Side * ( <i>Cupertino Village Shopping Center (allows mixed-use residential uses)</i> )	Greater of 12 feet, or setback equal to one foot for each foot of height measured from eave line or top of parapet.*	~7'*	11'*
	<b>Required</b>	<b>Proposed</b>	
<b>Auto Parking (Parking Study):</b>	141	206	
<b>Bicycle Parking: (1/20,000 sq. ft.)</b>	6	8	

Project Consistency with	
General Plan:	Yes
Zoning:	Yes
Environmental Assessment:	Initial Study / Mitigated Negative Declaration

*\* The site is located in a Planned Development (P) zoning district. Chapter 19.80 of the Municipal Code allows the establishment of specific development standards and regulations with the approval of definitive plans for a site.*

## **Background:**

### *General Plan Authorization*

The applicant submitted a General Plan Amendment Authorization (GPAAAuth-2017-03) application to construct a 185-room hotel with certain voluntary community amenities. The City Council authorized the applicant to submit an application that included a General Plan Amendment in substantial compliance with the proposal by a 5-0 vote at its August 1, 2017 meeting.

### *Application Requests*

The applicant, Kimco Realty, representing the property owner, Cupertino Village, LP, is requesting permits to allow construction of a hotel on a 1.72-acre site in the Cupertino Village Shopping Center. The project would involve demolition of two existing commercial buildings on the site. The development would be a new 5-story, 185-room hotel including underground parking, event meeting rooms, a restaurant with separate bar, and rooftop lounge and bar. The proposed development would include associated site and landscaping improvements; tree removals; a development agreement; a use permit; and a development permit.

### *Site Description*

Land uses surrounding the project include the Cupertino Village Shopping Center to the north, residential apartments (Arioso Apartments) to the west, a hotel to the south (Hilton Garden Inn), and office (Apple Park) and residential apartments (Hamptons Apartments) to the west.



**Figure 1: Surrounding Uses**

#### *Existing Use and Proposed Changes*

The site is currently developed with two commercial buildings: a 3,385 sq. ft. building currently occupied by the Duke of Edinburgh Pub and Restaurant, and a vacant 10,044 sq. ft. commercial building. The applicant proposes the following development and improvements, as indicated in Attachment 12:

- A new 5-story, 185 room upscale hotel;
- New restaurant with separate bar on the ground floor;
- Rooftop lounge with separate bar;
- Conference Meeting Rooms; and
- Updated landscaping along the perimeter of the property, including updated frontage improvements to provide pedestrian accessibility.

#### **Analysis:**

##### General Plan and Zoning Use Compliance

The proposed use is consistent with the General Plan Land Use Designation of Commercial/Residential. The City's General Plan uses a development allocation system

when evaluating development projects. This allows the City flexibility in developing project and site specific mitigation measures when reviewing projects. Currently, there are no hotel rooms available for allocation in the North Vallco Park Special Area in the City's General Plan. The applicant has proposed a General Plan Amendment to allow an increase in the number of hotel rooms available for development. No other General Plan amendments to the project are requested as part of the project.

Staff has evaluated the proposed General Plan Amendment and concludes that based on the net positive fiscal impacts of the project (see Attachment 8) and minimal environmental impacts of the project, the proposed amendment supports several General Plan goals including:

- ***Policy LU-1.3: Land Use in All City wide Mixed-Use Districts*** - Encourage land uses that support the activity and character of mixed-use districts and economic goals.
- ***Strategy LU-9.1.3: Economic Development and Business Retention*** - Encourage new businesses and retain existing businesses that provide local shopping and services, add to municipal revenues, contribute to economic vitality and enhance the City's physical environment.
- ***(North Vallco Park Special Area) Goal LU-20*** – Support a sustainable environment that is served by a mix of pedestrian oriented retail and commercial uses in a walkable and environment.
  - ***Policy LU-20.1: Land Use*** - This area is a major employment node with office, and research and development uses. Retail and hotel uses are allowed on the west side of Wolfe Road. Redevelopment of the retail site at the corner of Wolfe and Homestead Roads should be based on the “neighborhood commercial centers” concept described earlier in this Element. Retail uses are not required on the Hamptons site.
  - ***Policy LU-20.2: Streetscape and Connectivity*** - Future roadway improvements on Wolfe Road, Homestead Road and Tantau Avenue should be coordinated with planned improvements to improve pedestrian, bike and transit connections. Streetscape improvements will enhance the pedestrian environment with street trees, attractive bus shelters and street furniture. The campus site should provide an attractive landscaped edge along the street. Future improvements to the Wolfe Road bridge should be coordinated to preserve the vision for this area.
  - ***Policy LU-20.3: Building Form*** – Buildings in the retail and hotel area should provide active, pedestrian-oriented uses along the street. Buildings

should transition to fit the scale of the surrounding area. Taller buildings should provide appropriate transitions to fit into the surrounding area. In addition to the height limits established in the Community Form Diagram, buildings abutting the campus shall incorporate appropriate setbacks, landscaped buffering, and building height transitions to minimize privacy and security impacts.

- ***Policy LU-20.4: Pedestrian and Bicycle Connections*** – Pedestrian-oriented retail and hotel development will support a diverse population of workers and residents in the area. Trail routes, and alternate trail routes to address security and privacy concerns of major employers, shall be developed to provide pedestrian and bicycle connections to other destinations.
- ***Policy LU-20.5: Gateway Concept*** – Building and landscape design should be of high quality and reflect the fact that this area is a gateway into Cupertino from Interstate 280 and points north. The project should provide gateway signage and treatment.
- ***Policy LU-20.6: Neighborhood Buffers*** - Provide building transitions, setbacks and/or landscaping to buffer development from adjoining single-family residential uses.

The amendments to the General Plan are indicated in Attachment 2 (see Exhibit GPA-1.)

Upon adoption of the proposed General Plan Amendment to increase the hotel allocation in the North Vallco Park Special Area to 185 hotel rooms, the project will be compliant with the General Plan. In addition, upon project approval, the project will be granted a Development Allocation of 185 hotel rooms from the North Vallco Park Special Area through the Development Permit.

The hotel use is permitted as a conditional use in the General Commercial zone that the property is located within. To ensure that the project maintains net positive fiscal impacts to the City, the conditions of approval for the hotel also require that the hotel not allow reservations longer than 29 days to ensure that the operator retains the ability to collect Transient Occupancy Tax (TOT).

The applicant has proposed a Use Permit to allow the hotel, associated 24-hour operations and separate bar at the hotel restaurant and on the roof top. The proposed use has been evaluated by staff and other City agencies, including the Sheriff's Department. With the incorporation of standard conditions of approval, such as 24-hour security surveillance and ensuring that reimbursements are made in the event more than usual service calls are received as a result of the operations, the project is considered to be compliant with the City's Zoning Ordinance. Other conditions of approval include

review of the Use Permit in the event there are repeated complaints as a result of the operations which allows the authority to impose additional conditions and restrictions on the operations – particularly those related to the bar.

*Development Regulations, Site Planning and Architectural Design*

Automobile access to the proposed hotel, which faces North Wolfe Road, will be via an existing private street/driveway off Pruneridge Avenue. This will provide access to limited on-grade parking, the underground parking garage, the main entrance at the hotel porte-cochere at the rear of the property and continued access to the Cupertino Village Shopping Center. There are pedestrian entrances on the North Wolfe Road building frontage and at the main entrance at the rear.

The property is located within a Planned Development Zoning District, which allows the development standards for a property to be developed in conjunction with approval of a project. Since the proposed project is a commercial project, the base zoning standards used for development of the standards for this project are the General Commercial Zoning standards.

The hotel will have a net floor area of 115,934 sq. ft. The General Commercial zoning development standards do not have any minimum or maximum lot coverage or floor area ratio requirements. Since the proposal will receive an allocation of 185 hotel rooms in compliance with the General Plan, the project is compliant with the City's Municipal Code requirements.

In the General Commercial zone, the required front yard setback is established upon policies in the General Plan. In this case, the project maintains the required 1:1 slope line from the curb along North Wolfe Road (see attachment 11). The height of the building will measure 59'6" from natural grade, below the maximum height of sixty 60 feet allowed.

The rear yard setback in the General Commercial zone for when a property abuts a residential zone is a minimum of twenty (20) feet, or a total setback equal to one (1) and one-half (1.5) feet of additional setback for each foot of height of a commercial building. The project is 59'6" in height and requires a setback of 89'3". The project proposes a rear setback of 90 feet from the rear setback line.

There is no side yard setback required in the General Commercial zone unless the property abuts a residential or agricultural residential zone in which case the minimum setback is twelve (12) feet, or a total setback equal to one foot of additional setback for each foot of height. Along Pruneridge Avenue, the project proposes a setback of 8'8 1/2"

where none is required. Cupertino Village Shopping Center is zoned Planned Development Zoning District with Mixed-use General Commercial and Residential intent. However, the project is proposing a setback of 11 feet, where in a General Commercial Zoning District, the required setback could be 59'6" feet. Since the entire Cupertino Village Shopping Center is considered one development, the applicant is proposing the flexibility allowed under the Planned Development Zoning District. Additionally, since there is no residential development currently at the Cupertino Shopping Center, the proposed setback is acceptable.

The building façade and landscaping have been designed to minimize the impacts of the massing. This has been accomplished by increasing the landscape area and trees between the adjacent properties. The building incorporates high quality materials such as window walls, glass windows, spandrel glass, and porcelain tile veneer to aid with the massing of the building. The proposal has been reviewed by the City's Consulting Architect. Overall, no major architectural adjustments were necessary for the proposed project.

The City's Consulting Architect's comments regarding activation of the frontage of North Wolfe Road have been incorporated into the project. The applicant has worked with staff and the Consulting Architect to activate the frontage along North Wolfe Road by:

- Incorporating outdoor seating for the restaurant that faces North Wolfe Road
- Adding a secondary pedestrian entrance to the restaurant and a proposed coffee/market area without having to go through the hotel
- Planning meeting room break out areas along North Wolfe Road
- Moving the active interior areas such as the restaurant, meeting rooms, and coffee bar/market toward North Wolfe Road.

A buffer is provided for the outdoor uses to allow comfort in use of the space by maintaining some of the existing trees along the North Wolfe Road.

#### *Landscaping and Trees*

The applicant proposes a total landscape area on site of 16,810 sq. ft. (26% of the net lot area.) In addition, the applicant proposes some landscaping within the public right-of-way. Improvements along North Wolfe Road include new street furniture (tables and chairs), bicycle racks, seat walls, and built in-seating surrounding existing trees onsite.

The City's Municipal Code considers trees that are approved as part of a development, protected trees. As part of the project, the applicant proposes the removal and replacement of 41 protected trees on site. The trees proposed for removal are located throughout the perimeter of the project site. Species of trees proposed for removal include



Evergreen Ash, European Hornbeam, Crape Myrtle, Coast Redwood, Southern Magnolia, Honey Locust, Purple-Leaf Plum, Valley Oak, Big Leaf Maple, and Maidenhair. In total, the applicant proposes to plant 41 36-inch box trees, consistent with the City's tree replacement requirements.

The applicant has worked with the City's Arborist to ensure that the mature Evergreen Ash trees in the public right-of-way are maintained. However, a row of Evergreen Ash trees located on the site are proposed to be removed mainly due to health and life span issues, but also due to conflicts with construction. These trees will be replaced by oak trees of different species – chosen due to their suitability to the climate in the area.

#### *Transportation and Connectivity*

The project does not have any transportation impacts based on the traffic analysis prepared for the project (*see Environmental Review section below*). As required by the General Plan and the City Municipal Code, the applicant is required to pay the City Transportation Impact Fee (TIF).

The applicant has voluntarily proposed a Transportation Demand Management Program (TDM) program to further reduce traffic to and from the site. This includes transit passes, rideshare facilitation, and a transportation coordinator. The applicant has also proposed a hotel shuttle that will offer complimentary rides to users of the meeting event space and the public (on an as available basis). The applicant has further agreed to implement the TDM program and the hotel shuttle as an ongoing obligation of the Development Agreement (*discussed further in the Development Agreement section below*). These, including all the other ongoing obligations discussed in the Development Agreement, have been included as conditions of approval of this project.

There are three driveway curb cuts allowing access to the Cupertino Shopping Center on North Wolfe Road in addition to the access at Pruneridge Avenue. One of the driveways is located between the proposed hotel and shopping center. The applicant proposes to modify this to a right in only driveway. This driveway does not align well with the intersection of Apple Park Way and N. Wolfe Road. This driveway has been of concern to the Traffic Division due to its location, the potential for conflicts with pedestrian and bike movements and observed poor driving behavior.

Staff has evaluated the intersection and recommends closing this driveway curb cut in compliance with General Plan Policy M-3.5 that seeks to minimize the number and the width of driveway openings. This recommendation is based on the following observed driver behavior that is potentially unsafe and illegal:

1. Left turns into the site from northbound North Wolfe Road and
2. Crossing three lanes of through traffic to drive to the lane that allows U-turns to go in the northbound direction on North Wolfe Road.

The transportation analysis has reviewed the impact of closing this driveway and concluded that the closure would not impact the Level of Service (LOS) at the study intersections during both peak hours under all traffic scenarios. As a condition of approval, staff has conditioned the project to close the vehicular access from North Wolfe Road, see Attachment 5.

### *Parking*

The City's Municipal Code requires parking to be provided at a rate of one (1) space per hotel and one (1) space per unit, for a parking total of 247 (185 hotel rooms and 62 employees). However, since the property is located within a Planned Development Zoning District, which allows development standards, including parking requirements, to be developed in conjunction with approval of a project. The applicant requested that an alternative parking standard be determined that reflects actual observed parking demand for hotels.

The City retained Hexagon Transportation Consultants, Inc., a transportation-engineering firm, to prepare a parking analysis to determine parking standards for the proposed use (see Appendix D of Attachment 9). Parking demand was determined by analyzing six (6) sites throughout Santa Clara and San Mateo counties. The analysis concluded that the recommended parking ratio be 0.76 parking spaces per room, or 141 parking spaces. The applicant has proposed a total of 206 parking spaces onsite, exceeding the estimated parking demand by 65 parking spaces.

### *Signage*

Signage details are excluded from this permit application. As is standard practice, when the applicant applies for a sign permit for proposed signs, they will be reviewed for compliance.

### *Demolition*

The project would involve the demolition of the two (2) buildings onsite totaling 13,429 sq. ft. of commercial and restaurant buildings. The construction of the project is estimated to take place over a period of approximately two (2) years. The project will be required to comply with the mitigation measures identified in the Final Draft Initial Study/Mitigated Negative Declaration (see Attachment 1) and the City's demolition and construction requirements (see Attachment 3).

### *Environmental Review*

A Draft Initial Study and Mitigated Negative Declaration (IS/MND) has been prepared for the project (See Attachment 9.) The Mitigated Negative Declaration (MND) identifies mitigation measures in the following areas, to reduce the potential environmental impacts of the project to less than significant levels:

- *Air Quality:* Construction shall comply with BAAQMD's recommendations for reducing construction emissions of fugitive dust, and shall ensure construction emissions are reduced.
- *Biological Resources:* The project shall protect nests of raptors and other birds when in active use.
- *Cultural and Tribal Resources:* The project shall incorporate mitigations in the event any cultural resources or archaeological are found on site. This includes consulting with tribal resources as well as paleontologist.
- *Temporary Noise Levels:* Construction shall comply with the Noise Ordinance and best management practices for noise mitigation.
- *Utilities:* Demonstrate to the City and Cupertino Sanitary District that the hotel would not exceed peak wet weather flow capacity of the Santa Clara sanitary sewer system.

The mitigation measures have been added as condition of approval for this project.

The project's impact on transportation was analyzed as part of the environmental analysis. The analysis indicates that the project would generate total of 96 AM net new peak hour trips, and a total of 89 PM peak hour trips (See Attachment 9: Table 4-16 - Project Trip Generation Estimates). Of the 13 intersections analyzed, one intersection (Lawrence Expressway and Homestead Road) would continue to operate at an unacceptable LOS F during the PM peak hour. However, since the project would not trip the threshold for the intersection's critical-movement delay<sup>1</sup> when compared to Background without Project conditions, the transportation analysis concluded that this is not an environmental impact.

The Notice of Intent (NOI) to adopt a MND was placed in the newspaper. In addition, the NOI was mailed to notify neighbors and interested parties that a Draft MND had been prepared which the City intends to adopt. The 30-day Public Review Period for the Draft MND was between November 8, 2018 and December 7, 2018.

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<sup>1</sup> The threshold for intersection critical-movement delay is an increase by four (4) or more seconds and the volume-to-capacity (V/C), the sufficiency of an intersection to accommodate vehicular demand, to increase by one percent or more for this particular intersection.

The Environmental Review Committee (ERC) heard the item at its December 2018 meeting and after a public hearing, recommended that the City Council adopt a Mitigated Negative Declaration (EA-2017-06) on a 5-0-0 vote with the identified mitigation measures (see Attachment 8).

Responses to the comments received during the 30-day Public Review Period and up until the date of production of this staff report are attached in the Response to Comments Memo for the IS/MND (see Attachment 10). The Draft IS/MND has been updated to address comments received by the City regarding the project's potential impact to the environment. However, even with the minor changes to address comments received, the updated IS/MND concludes that the project will have a less than significant effect on the environment with the proposed mitigation measures.

#### *Other Department/Agency Review*

The City's Building Division, Public Works Department, Environmental Services Division, Sheriff's Department, Cupertino Sanitary District and the Santa Clara County Fire Department have reviewed the project and have no objections.

#### Development Agreement

The applicant is proposing a development agreement (DA) as part of the project, see Attachment 7. The DA includes voluntary community amenities offered by the project applicant during the General Plan Amendment Authorization process. These are offered in exchange for certainty regarding standards and conditions that will apply to the project during the proposed life of the DA. The current term of the DA is five (5) years.

Public amenities are characterized as those voluntary contributions beyond required fees, outlined as follows and included in the DA. Required impact fees, such as those for housing and schools, are not included in this DA. Key public amenities in the DA include:

1. Community Amenity Funding: Pay the City \$1,850,000 (\$10,000 per room) that may be used to benefit residents, businesses, and visitors, including on projects that will enhance and enrich the experience of the most proximate City residents, retail and restaurant customers, and hotel guests.
2. Transportation Demand Management (TDM) Program: Fund and fully implement a TDM program including transit passes, rideshare facilitation, and bicycle facilities.
3. Transportation Management Association (TMA): In the event a TMA is formed, commitment to pay an annual participation fee, which initially shall not exceed \$10,000 and may be increased annually by the Consumer Price Index.

4. Shuttle Service: Access to a shuttle service available to hotel guests, to people traveling to or from the hotel that use the hotel's meeting rooms for functions, and, subject to availability, for nearby residents, businesses and the general public to travel between the hotel and area destinations.
5. Meeting Rooms: Allow the City to use the hotel's meeting rooms for official City business purposes, subject to availability.
6. Reduced Rates: All people visiting Cupertino for official City business, and dignitaries visiting for City purposes and events, reduced room rates by at least 10% lower than the hotel's lowest rates.
7. Internships: Offer non-paid educational internships to students from the Fremont High School District, De Anza College or other local colleges interested careers in the hospitality industry.

The developer is also obligated to designate the City as the Sales Tax Point of Sale to the extent allowed by law.

#### Public Outreach and Noticing

##### *City Outreach:*

The following table is a brief summary of the noticing done for this project:

Notice of Public Hearing and Intent, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"><li>▪ Site Signage (<i>10 days prior to the hearing</i>)</li><li>▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)</li><li>▪ 55 public hearing notices mailed to property owners within 300 feet of the project site (<i>10 days prior to the hearing</i>)</li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)</li><li>▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)</li></ul>

No new public comments have been received as of the date of production of this staff report (June 6, 2019).

#### Permit Streamlining Act

This application is not subject to the Permit Streamlining Act (Government Code Section 65920-65964) because the General Plan Amendment and Development Agreement is a legislative and shall be enacted by only after a public hearing before the City Council.

### Conclusion

Staff recommends approval of the project since the project and conditions of approval address all concerns related to the proposed development and all of the findings for approval of the proposed project, consistent with Chapters 19.144, 19.156, 19.168, 19.60, and 14.18 of the Cupertino Municipal Code, may be made.

### Next Steps

The Planning Commission's recommendation will be forwarded to the City Council for its decision on the project. The City Council's decision will be final unless reconsidered within 10 days of the decision. The applicant may apply for building permits at that time.

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Prepared by: Erick Serrano, Associate Planner

Reviewed by: Piu Ghosh, Principal Planner

Approved by: Benjamin Fu, Interim Director of Community Development

### **ATTACHMENTS:**

- 1 – Draft Resolution for EA-2017-06
- 2 – Draft Resolution for GPA-2017-05
- 3 – Draft Resolution for DP-2017-01
- 4 – Draft Resolution for ASA-2017-09
- 5 – Draft Resolution for U-2018-03
- 6 – Draft Resolution for TR-2017-46
- 7 – Draft Resolution for DA-2017-01
- 8 - Fiscal Analysis of the Cupertino Village Boutique Hotel GPA Application
- 9 – Initial Study/Mitigated Negative Declaration
- 10 – Environmental Review Committee Recommendation
- 11 – Response to Comments Memo for IS/MND
- 12 – Project Plans