

Explanatory Note

Planning Agreement

57 Henry St, Penrith

1 Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed Voluntary Planning Agreement (Planning Agreement) under s7.4 of the Environmental Planning and Assessment Act 1979 (NSW) (Act).

This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the Environmental Planning and Assessment Regulation 2021 (Regulations).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) Penrith City Council (ABN 43 794 422 563) (**Council**); and
- (2) By the Park Pty Ltd (ACN 606359344) (Developer).

3 Description of the Land to which the Planning Agreement applies

The Planning Agreement applies to the land comprising Lot 1 in DP 103609, Lot A and Lot B in DP 159402, Lot 1 in DP 724160, Lot 1 in DP 795083, Lot 1 in DP 905016 and Lot 1 in DP1122794, located at 57 Henry St, Penrith (**Land**).

4 Description of the Development to which the Planning Agreement applies

The Planning Proposal was gazetted on 22 December 2021 with a 'sunrise' clause. The effect of this clause was to delay the commencement of the Penrith Local Environmental Plan 2010 (PLEP) amendments to provide time for the Developer and Council to negotiate a Voluntary Planning Agreement (VPA).

The Planning Proposal amendments will commence on the 31 December 2022 and include the following changes to PLEP;

- a) Nominate the Land as a Key Site (13);
- b) Amendment of clause 8.7 (Community infrastructure on certain key sites), subclause (4), to allow a 6.5:1 Floor Space Ratio (**FSR**) to be developed on the Land if community infrastructure is provided in accordance with the requirements of this clause;
- c) To allow for additional permitted uses of residential flat buildings and shop top housing to occur on the Land if the development includes a minimum FSR of 0.75:1 for non-residential uses.
- d) The clause is repealed on 31 December 2027

The amendments to the planning controls are to facilitate a mixed-use development consisting of approximately 400 apartments, 1,500 sqm retail floor space, 4,000sqm of commercial floor space, associated basement parking, storage and servicing, and site landscaping (**the Proposed Development**).

5 Summary of Public Benefit, Objectives, Nature and Effect of the Planning Agreement

The Developer is required to provide the following Public Benefit in accordance with the Planning Agreement.

The Developer will provide:

- (a) The construction of a slip lane within the site frontage to Henry Street to the west of the intersection with Evan Street including the relocation of power poles, Telstra services, kerb and gutter and stormwater inlets, pipes and pits, and the construction of new footpaths as may be required;
- (b) General intersection works on the north western and north eastern portions of the intersection of Henry Street and Evan street within the site and the road reserve; and
- (c) Dedication of land within the Site to accommodate the slip lane and intersection works.

The intersection upgrades and the Dedication of Land will take place prior to the issue of an Occupation Certificate for the Proposed Development.

The Applicant will also provide an Archaeological Impact Assessment (prepared by a suitably qualified archaeologist), in accordance with the recommendations of the non-aboriginal archaeological assessment prepared by Artefact, June 2022. The Archaeological Impact Assessment will be submitted to Council for review prior to works commencing or the issue of any Construction Certificate (whichever occurs first).

The **objective** of the Planning Agreement is to provide a material public benefit to be applied towards community infrastructure.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Public Benefit.

The **effect** of the Planning Agreement is that the Developer will provide the Public Benefit in the manner provided for by the Planning Agreement (as applicable).

The Planning Agreement:

- does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Proposed Development;
- is required to be registered on the title to the Land;
- imposes restrictions on the Developer assigning an interest under the agreement or transferring any part on the Land; and
- provides a dispute resolution method for a dispute under the Agreement, being mediation.

Additionally the planning agreement specifies that prior to the issue of a Construction Certificate for the Development, the Developer must provide to the Council: (i) a report prepared by a suitably qualified quantity surveyor which estimates the cost of carrying out the Works (**Cost of Works**); and (ii) security in an amount equivalent to 125% of the Cost of Works.

6 Assessment of the Merits of the Planning Agreement and Impact on the Public

The Planning Agreement promotes:

- (1) the public interest; and
- (2) the Objects of the Act.

The Planning Agreement will provide a material public benefit in terms of an upgrade to public infrastructure and the dedication of land to Council.

7 Identification of how the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by ensuring that the intersection upgrade works are carried out to improve road infrastructure in the locality.

The Planning Agreement supports the public interest in the following ways:

- (1) By facilitating the improvement of public infrastructure to be utilised by the broader community.
- (2) By providing opportunity for community participation in environmental planning and assessment through public notification of this agreement and opportunity for the public to make submissions in response
- (3) Promote the orderly and economic use and development of land.

8 How the Planning Agreement promotes the Guiding Principles for Councils

The Planning Agreement promotes the Council's charter under section 8 of the Local Government Act 1993 by providing adequate, equitable and appropriate infrastructure to the community.