

Explanatory Note

Planning Agreement for 61-79 Henry Street, 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 (**Regulation**).

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

2 Parties to the Agreement

The parties to this Planning Agreement are:

- a) Penrith City Council (ABN 43 794 422 563) (**Council**)
- b) The Australian Foundation for Disability (ABN 99 000 112 729) (**Landowner**)

3 Description of the Land

The Planning Agreement applies to the land comprising Lot 1 DP 771927, known as 61-79 Henry Street, Penrith NSW 2750 (the **Land**).

4 Description of the Planning Proposal and Development to which the Planning Agreement applies

At its Ordinary meeting of 26 July 2021, Council resolved to endorse a planning proposal for the Land and submit it to the NSW Department of Planning and Environment seeking a gateway determination.

The planning proposal seeks the following amendments to the *Penrith Local Environmental Plan 2010 (PLEP)*:

- Amend Schedule 1 to permit residential accommodation as an additional permitted use on the Land if the development includes a minimum Floor Space Ratio of 2:1 for non-residential development; and
- Amend clause 4.6 to provide that the minimum floor space ratio standards in the above amendment to Schedule 1 cannot be varied under clause 4.6.

The Landowner proposes to lodge development applications to the Council to carry out a mixed-use development on the Land which includes residential accommodation permitted by the proposed amendment to the PLEP and non-residential development with a minimum Floor Space Ratio of 2:1 (**Development**).

The proposed amendments to the PLEP would facilitate a mixed-use development within the E2 Commercial Centre zone (formerly known as B3 Commercial Core) with the retention of a non-residential component to ensure the objectives of the E2 Commercial Centre zone are maintained. The inclusion of residential accommodation as an Additional Permitted Use is proposed to:

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- Allow a viable mix of commercial, community and residential uses necessary to facilitate the redevelopment of the Land and thereby contribute to the revitalisation of the Penrith City Centre.
 - Encourage housing diversity and social inclusion through the provision of seniors housing, housing for people with a disability and affordable housing within a mixed-use development on the Land.

The Planning Proposal identifies the need for social infrastructure and transport infrastructure but does not provide a mechanism to facilitate these works. Accordingly, the Landowner has offered to enter into a Planning Agreement with Council to deliver the social and transport infrastructure and public open space.

At its Ordinary meeting of 20 March 2023, Council resolved to endorse the Planning Proposal for finalisation, subject to the execution of a Planning Agreement.

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

5.1 Objective

The objective of the Planning Agreement is to provide a material public benefit by securing social infrastructure and transport infrastructure to support future development on the Land and provide public open space with the Penrith commercial centre to benefit workers and residents.

5.2 Nature of the Planning Agreement

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

5.3 Effect of the Planning Agreement

The effect of the Planning Agreement is that the Landowner will provide the Public Benefit in the manner provided for by the Planning Agreement.

5.4 Public Benefit

The Landowner is required to provide the following Public Benefit in accordance with the Planning Agreement:

Housing

- Diverse and affordable housing is proposed to be delivered in accordance with the following:
 - A minimum of 10% of the total dwellings on the Land must be housing for seniors;
 - A minimum of 5% of the total dwellings on the Land must be housing for people with a disability;
 - A minimum of 5% of total dwellings on the Land must be affordable housing. A mix of 1, 2 and 3 bedroom dwellings are required to ensure this housing caters to a range of household types.
- The affordable and diverse housing will be secured by a positive covenant, which will require the dwellings to be used as either seniors housing, housing for people with a disability or affordable housing for the lifetime of the development. This means that the use of the dwellings for those specific purposes will not cease after a certain number of years.
- The dwellings shall be managed as follows:
 - Affordable housing will be managed by a registered community housing provider.

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- The Landowner will nominate how the seniors housing and housing for people with a disability will be managed.
 - The Landowner is required to undertake annual reporting.

The diverse and affordable housing may be provided in stages over the course of the Development and must be provided prior to any occupation certificate for the stage of the Development in which that portion of the housing will be delivered.

Public Open Space

- Public open space shall be provided on the Land by way of a local park/s, with a total combined area of at least 0.3ha.
- The public open space will be publicly accessible, but privately owned and maintained. The public open space may be provided in the form of one or more parks, with at least one of the parks having:
 - Frontage to a public road to ensure visibility and ease of access to members of the public;
 - Opportunities for deep soil planting or sufficient soil depth to support large trees to promote cooling benefits of green infrastructure and to provide natural shade; and
 - Recreation facilities to cater for a range of ages and abilities.
- The design of the public open space must have regard to:
 - Greener Places: An urban green infrastructure design framework for NSW, developed by the Government Architect NSW;
 - Penrith Sport and Recreation Strategy; and
 - Social Needs Analysis prepared by Cred Consulting and submitted with the Planning Proposal for the Land.

The public open space must be provided in stages throughout the Development, prior to the release of the occupation certificate for the stage of the Development to which that portion of the public open space relates.

Road Infrastructure Upgrades

The following road infrastructure upgrades will be provided:

- A new roundabout at the intersection of Lawson Street and Soper Place, providing entry/exit to the Land;
- Road upgrades at the intersection of Lawson Street and Henry Street to help mitigate traffic; and
- Dedication of land required for road infrastructure upgrades to Council as a public road.

The road and infrastructure upgrades must be provided prior to the release of the first occupation certificate for any part of the Development.

5.5 Other matters

The Planning Agreement:

- Does not exclude the application of s7.11, s7.12 or s7.24 of the Act in relation to any development application associated with the Planning Proposal.
- Includes a security clause which requires a bank guarantee, bond or cash deposit to be paid to Council in an amount equivalent to 125% of the cost of works before a Construction Certificate can be issued for any component of the development that comprises residential development.

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- Is required to be registered on the title of the Land, which means it will be binding on, and enforceable against, the owner of the Land. The Landowner must submit evidence to Council that they have registered the Planning Agreement on title with NSW Land Registry Services.
 - Imposes restrictions on the Landowner assigning an interest under the agreement or transferring any part on the Land.
 - Provides a dispute resolution method for a dispute under the Agreement, being mediation.

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

The Planning Agreement will provide material public benefit by securing social infrastructure and transport infrastructure which are necessary to support future development on the Land.

The Planning Agreement provides a reasonable means of achieving the Public Benefit as described in Section 5 above.

7 Identification of how the Planning Agreement promotes the public interest

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

- By promoting the orderly and economic use and development of land (1.3(c) of the Act).
- By promoting the delivery and maintenance of affordable housing (1.3(d)) of the Act.
- By promoting good design and amenity of the built environment (1.3(g) of the Act).
- By providing increased opportunity for community participation in environmental planning assessment through public notification of this agreement and opportunity for the public to make submissions in response to it (section 1.3(j) of the Act)

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.

9 Capital Works Program

The works are not part of Council's current Capital Works Program.