

## **Explanatory Note**

Clause 205 of the *Environmental Planning and Assessment Regulation 2021*

### **Draft Planning Agreement**

This Explanatory Note aims to provide a plain English summary to support the notification of a draft Voluntary Planning Agreement (**Draft Planning Agreement**), how it delivers public benefits, and why it is acceptable and in the public interest under s7.4 of the *Environmental Planning and Assessment Act 1979*.

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

This Explanatory Note supports the public notification and exhibition of the Draft Planning Agreement as required by section 7.5(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) and section 204(1) of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**Regulation**).

This Explanatory Note has been prepared jointly between the parties as section 205 of the Regulation requires.

### **Parties**

The parties to the Planning Agreement are:

<b>Council</b>	<b>Penrith City Council</b> ABN 43 794 422 563 of 601 High Street, Penrith, NSW 2750
<b>Developer</b>	<b>HB &amp; B Property Pty Ltd</b> ACN 604 992 458 of Ground Floor, 55-59 Regent Street, Chippendale, NSW 2008
<b>Landowner</b>	<b>Atilol Holdings Pty Ltd</b> ACN 163 060 759 of Level 8, 91 Phillip Street, Parramatta, NSW 2150

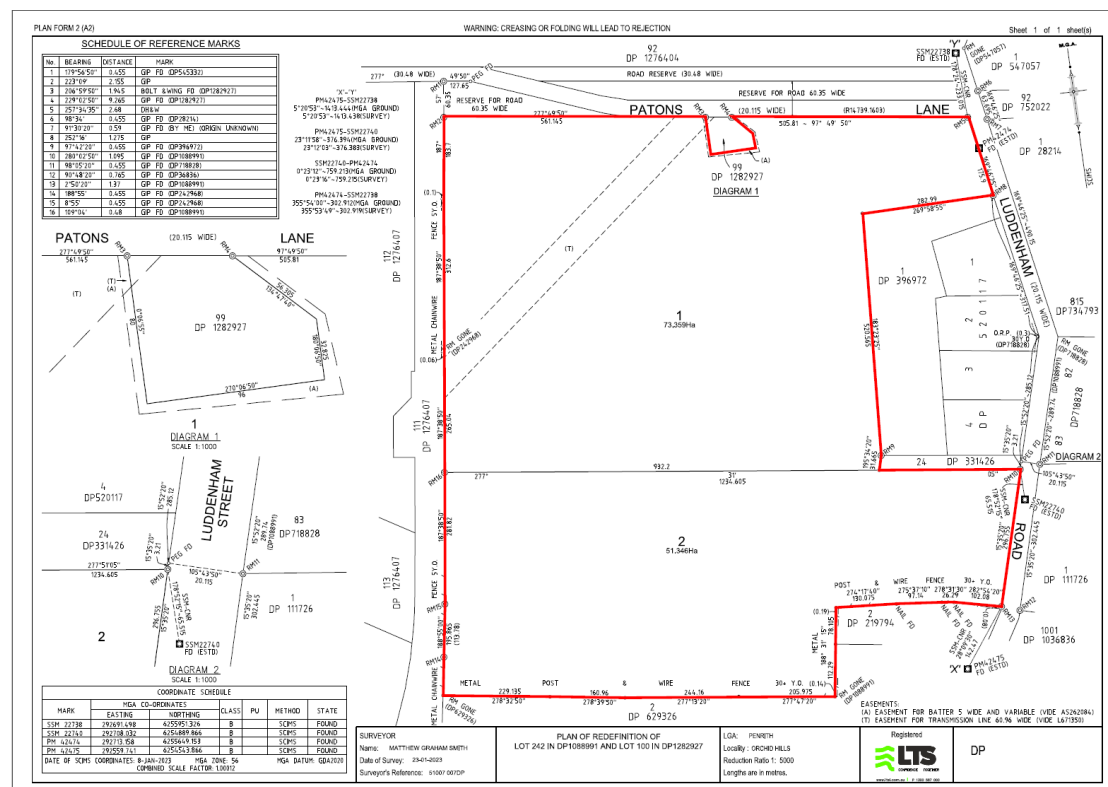
### **Description of the Land to which the Draft Planning Agreement Applies**

The land to which the Draft Planning Agreement applies is:

- Lot 1 DP 1293805, known as 221-227 Luddenham Rd, Orchard Hills, and
- Lot 2 DP 1293805, known as 289-317 Luddenham Rd, Orchard Hills,

as shown edged in red in the survey plan below (**Land**).

**Luddenham Road Planning Agreement**  
**Penrith City Council**  
**HB & B Property Pty Ltd**  
**Atilol Holdings Pty Ltd**



### Description of Proposed Development and Instrument Change

The development to which the Draft Planning Agreement applies is the proposed development on the Land comprising the “Alspeck Industrial Business Park” (**Development**), which incorporates the following:

- the construction of thirty-two (32) high-quality warehouse buildings across thirty-two (32) lots, each accompanied by an ancillary office, associated parking and business identification signage for legibility and easy way-finding,
- landscaping of internal estate roads, including roundabouts, cul-de-sacs and entry roads for improved amenity,
- the construction of water quality and on-site detention basins,
- retention of the existing electricity easement benefiting Transgrid,
- retention of the existing C2 Environmental Conservation Zone in the north-western corner of the Land, and
- setting aside an undeveloped southern portion of the Land of approximately 16.6ha for future environmental conservation.

The Draft Planning Agreement relates to Planning Proposal PP-2022-1052, also known as the *Luddenham Road, Planning Proposal at 221-325 Luddenham Road, Orchard Hills (Planning Proposal)*, made by the Developer.

**Luddenham Road Planning Agreement**  
**Penrith City Council**  
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**Atilol Holdings Pty Ltd**

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The Planning Proposal proposes changes to the *Penrith Local Environmental Plan 2010 (LEP)* to make the Development permissible on the Land with development consent under the Act.

The changes to the LEP sought by the Planning Proposal include:

- rezoning the Land from RU2 Rural Landscape to part E4 General Industrial and part C2 Environmental Conservation,
- reserving a 40-metre wide corridor on the western side of Luddenham Road to allow for the future widening of Luddenham Road,
- reducing the minimum lot size requirements that apply to the Land from 40 hectares to 1000m<sup>2</sup> to facilitate the Development,
- introducing a building height control of 24 metres on the parts of the Land to be zoned E4 General Industrial, and
- introducing a minimum lot density provision on parts of the Land to promote greater diversity in lot sizes.

## **Description of Development Contributions**

The Planning Agreement requires the Developer to provide the following:

<b>Contribution/Type</b>	<b>Details</b>	<b>Timing</b>
<b>Works</b>		
Upgrade of Patons Lane from Luddenham Road through to the new western estate entry roundabout that provides access into the Land	As shown in the Works in Kind Plan at Annexure D of the Draft Planning Agreement	Prior to the issue of the first Occupation Certificate (as defined in the Act) for the Development
Construction of one (1) new roundabout at the estate entry on Patons Lane and one (1) new intersection on Luddenham Road to the satisfaction of Council and Transport for NSW		Prior to the issue of the first Occupation Certificate for the Development
Construction of an intersection at the secondary site access to the satisfaction of Council and Transport for NSW		Prior to 1 January 2026

<b>Dedication of Land</b>		
Dedication of land to Council for the widening of Luddenham Road	As shown in Land Dedication Plan at Annexure B of the Draft Planning Agreement	Prior to the issue of any Occupation Certificate for the Development
<b>Other Benefits</b>		
Provision of road access to the 'Additional Lands' in the eastern and southern parts of the Land	As shown in Land Dedication Plan at Annexure B of the Draft Planning Agreement	

## **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

### **Objectives of Draft Planning Agreement**

The objective of the Planning Agreement is to record the terms of the offer made by the Developer to provide the Development Contributions in relation to the Development.

### **Nature and Effect of Draft Planning Agreement**

The Draft Planning Agreement excludes the application of section 7.11 of the Act to the Development.

The Draft Planning Agreement does not exclude section 7.12 (local infrastructure contributions) or Division 7.1, Subdivision 4 of the Act to the Development.

The benefits under the Draft Planning Agreement are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.

The Draft Planning Agreement provides for registration of the agreement on title to the Land.

The Draft Planning Agreement also includes provisions regarding:

- the Developer providing a security (Bank Guarantee or Bond) to the Council equal to 125% of the agreed value of the Works in the table above before any Construction Certificate or Subdivision Works Certificate (as defined in the Act) for any part of the Development is issued,
- the resolution of disputes arising under the agreement through independent mediation or expert determination, as appropriate to the nature of the particular dispute, and

- the Developer paying Council's reasonable legal costs associated with the agreement, and Council's administration costs of \$185,700.

## **Assessment of the Merits of the Draft Planning Agreement**

### **The Planning Purposes Served by the Draft Planning Agreement**

The Development Contributions provided under the Draft Planning Agreement will help achieve the public purpose of improved road infrastructure, public roads, and traffic management facilities. This will improve traffic in the local area surrounding the Land.

### **How the Draft Planning Agreement Promotes the Public Interest**

The Draft Planning Agreement promotes the public interest by ensuring that appropriate contributions are made towards providing road infrastructure and other public purposes to satisfy needs arising from the Development.

The Developer's offer to contribute towards the provision of road infrastructure will positively impact the public who ultimately use it.

### **Assessment of the positive or negative impact of the Draft Planning Agreement on the public or relevant section of the public**

The Draft Planning Agreement does not cause any negative impacts on the community and is not adverse to the public interest.

### **Whether the Draft Planning Agreement Conforms with the Planning Authority's Capital Works Program**

The proposed works are not part of a capital works program for the Land or surrounding area.

### **Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

Yes:

- the Developer is to provide the security to Council as outlined above before any Construction Certificate or Subdivision Works Certificate for any part of the Development is issued, and
- as noted in the table above, the works and land dedication are to be finalised before an Occupation Certificate for the Development is issued.