

Annexure B

Explanatory Note

Planning Agreement for public benefits

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (the "**Planning Agreement**") prepared under Section 7.4 of the *Environmental Planning & Assessment Act 1979* (the "**the Act**").

This Explanatory Note has been prepared jointly by the Parties as required by clause 25E of the *Environmental Planning & Assessment Regulation 2000* ("**the Regulation**").

This explanatory note is not to be used to assist in construing the deed.

Parties to the Planning Agreement

The Parties to the Planning Agreement are Bega Valley Shire Council ("**Council**") and Merimbula Central Pty Ltd ("**Developer**"). The Developer has made a Planning Proposal to amend the Bega Valley Local Environmental Plan 2013 for land at 29-33 Market Street, Merimbula (**the Planning Proposal**). The Planning Proposal seeks to amend the LEP Height of Buildings Map as it applies to the subject land by increasing the maximum building height of the site from 13 metres to 18 metres.

The Council has resolved to support the Planning Proposal following the execution of a planning agreement.

On 28 May 2023 the Developer made a formal offer to enter into a planning agreement with the Council to provide the following matters of material public benefit in connection with the Planning Proposal:

3. the widening of the Market Street public domain by 3m;
4. the provision of street beautification works; and
5. the provision of an accessway between Market Street and the Palmer Lane carpark, as detailed in Attachments E and F to the planning proposal

(collectively, the **Public Benefit**)

Summary of the objectives, nature and effect of the Planning Agreement

The objective of the Planning Agreement is to record the terms of the offer made by the Developer and its obligations to provide the Public Benefit.

The effect of the agreement is that the Developer will be required to incorporate the Public Benefits into any development of the Land which complies with a maximum height development standard as a consequence of the making of the Planning Proposal (provided the amendment resulting from the making of the Planning Proposal is to allow a maximum development height of not less than 18m) .

Assessment of the Merits of the Planning Agreement

The benefits of the Planning Agreement are that any development of the land which complies with a maximum height development standard as a consequence of the making of the Planning Proposal (provided the amendment resulting from the making of the Planning Proposal is to allow a maximum development height of not less than 18m) will provide greater and higher quality areas for public use will provide greater and higher quality areas for public use.

Identification of how the Planning Agreement promotes the public interest and the objects of the Act

The Planning Agreement promotes the public interest and the objects of the Act by providing additional, high quality public areas.

Identification of how the Planning Agreement promotes elements of the Council's Charter under the *Local Government Act 1993*

The Planning Agreement is consistent with the following guiding principles for Councils in section 8A of the *Local Government Act 1993* (which have replaced the Council Charter):

- In exercising functions generally:
 - Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
 - Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
 - Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- In decision making:
 - Councils should recognise diverse local community needs and interests.
 - Councils should consider the long term and cumulative effects of actions on future generations.
 - Councils should consider the principles of ecologically sustainable development.

The Planning Agreement is consistent with these principles in that it requires the Developer to provide street beautification works and additional areas for public access as part of its Development.

Identification of the planning purpose served by the Planning Agreement and whether the Planning Agreement provides for a reasonable means of achieving that purpose

The planning purpose served by the Planning Agreement is the provision of public spaces within the Developer's proposed development.

The Planning Agreement provides a reasonable means of achieving these public purposes by requiring that a design for public spaces which has been approved by the Council form part of any application for a Development which complies with a maximum height development standard as a consequence of the making of the Planning Proposal (provided the amendment resulting from the making of the Planning Proposal is to allow a maximum development height of not less than 18m)

Identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any),

The Planning Agreement is not inconsistent with Council's Capital Works Program.

How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by providing publicly accessible spaces for the benefit of the community.

Enforcement of the contribution

The benefits under the agreement are suitably secured as the deed will be registered on the title of the Land and will be considered in the assessment of any development application in relation to the Land.