

Explanatory Note

Exhibition of draft Deed of Variation to Orchard Hills North Planning Agreement Stages 4a, 5 & 6

Environmental Planning and Assessment Regulation 2021 (section 205)

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Second Deed of Variation to the Orchard Hills North Planning Agreement dated 4 August 2025 (as amended by the First Deed of Variation dated 8 December 2025) (**Amended 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 section 205 of the *Environmental Planning and Assessment Regulation 2021 (NSW)*.

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

1. Parties

- (a) Penrith City Council (**Council**).
- (b) LegPro Orchard Hills Stage 1 Pty Ltd (ACN 673 136 206) as trustee for LegPro Orchard Hills Stage 1 Unit Trust;
- (c) LegPro Orchard Hills Stage 2 Pty Ltd (ACN 673 759 209) as trustee for LegPro Orchard Hills Stage 2 Unit Trust;
- (d) LegPro Orchard Hills Stage 3 Pty Ltd (ACN 673 754 026) as trustee for LegPro Orchard Hills Stage 3 Unit Trust (ABN 62 562 494 829);
- (e) LegPro Orchard Hills Stage 4 Pty Ltd (ACN 673 754 213) as trustee for LegPro Orchard Hills Stage 4 Unit Trust (ABN 41 872 064 332);
- (f) LegPro Orchard Hills Stage 5 Pty Ltd (ACN 673 754 651) as trustee for LegPro Orchard Hills Stage 5 Unit Trust (ABN 36 168 482 136); and
- (g) LegPro Orchard Hills Stage 6 Pty Ltd (ACN 673 753 565) as trustee for LegPro Orchard Hills Stage 6 Unit Trust (ABN 31 557 084 123).

(together, **Developer**).

2. Description of Subject Land

The original Planning Agreement applied to the following land:

- (a) Lot 10 DP 1302833 being the land known as 124 Caddens Rd, Orchard Hills;
- (b) Lot 11 DP1309130 being the land known as 146 Caddens Rd, Orchard Hills;
and
- (c) Lot 20 DP1304679 being the land known as 148 Caddens Rd, Orchard Hills;

On 8 December 2025, the Planning Agreement was varied by the First Deed of Variation to apply to the following land:

- (a) Lot 6 DP1344 being the land known as 2 Kingswood Road, Orchard Hills;
- (b) Lot 71 DP1302829 being the land known as Part 90-96 Caddens Road, Orchard Hills;
- (c) Lot 73 DP1302829 being the land known as Part 90-96 Caddens Road, Orchard Hills;
- (d) Lot 8 DP1344 being the land known as 98-104 Caddens Road, Orchard Hills;
- (e) Lot 9 DP1344 being the land known as 106-112 Caddens Road, Orchard Hills; and
- (f) Lot 2 DP1302831 being the land known as 114 Caddens Road, Orchard Hills.

The Planning Agreement is proposed to be further varied to apply to the following land:

- (a) Lot 100 DP1302830, being the land known as 126-164 Castle Road, Orchard Hills;
- (b) Lot 50 DP1317537, being the land known as 166 Castle Road, Orchard Hills;
- (c) Lot 51 DP1317537, being the land known as 77 Kingswood Road, Orchard Hills;
- (d) Lot 33 DP1344, being the land known as 75-81 Castle Road, Orchard Hills;
- (e) Lot 34 DP1344, being the land known as 83-89 Castle Road, Orchard Hills;
- (f) Lot 36 DP1344, being the land known as 99-105 Castle Road, Orchard Hills;
- (g) Lot 37 DP1344, being the land known as 107 Castle Road, Orchard Hills
- (h) Lot 38 DP1344, being the land known as 117-123 Castle Road, Orchard Hills;
- (i) Lot 39 DP1344, being the land known as 125-131 Castle Road, Orchard Hills;
- (j) Lot 40 DP1344, being the land known as 133-139 Castle Road, Orchard Hills;
- (k) Lot 21 DP1304679, being the land known as 25 Ulm Road, Orchard Hills;
- (l) Lot 12 DP1309130, being the land known as 146A Caddens Road, Orchard Hills;
- (m) Lot 34 DP1056800, being the land known as 106-108 Castle Road, Orchard Hills;
- (n) Lot 52 DP1317537, being the land known as 77 Kingswood Road, Orchard Hills; and
- (o) Lot 7 DP857982, being the land known as 7-11 Frogmore Road, Orchard Hills.
- (p)

3. Description of the Proposed Development

The original Planning Agreement applied to the first and second stage of the Proposed Development as set out below:

- (a) Stage 1 proposes Torrens title subdivision to create 87 residential lots and two residue lots, including upgrade works to Caddens Road and a portion of Mariposa Circuit, drainage works in Braeburn Street, earthworks, new roads, landscaping, retaining walls, stormwater works and associated civil works, as approved by development consent DA23/0969.
- (b) Stage 2 proposes the Torrens title subdivision to create 72 residential lots and one residue lot and lot for a drainage reserve including demolition of existing structures, retention of one dwelling, tree and vegetation removal, earthworks, new roads and footpaths, landscaping, retaining walls, stormwater works and associated works as approved by development consent DA/24/0041.

On 8 December 2025, the Planning Agreement was varied to apply to the third stage of the Proposed Development as set out below:

- (a) Stage 3 proposes the Torrens title subdivision to create 155 residential lots, 1 drainage reserve lot, and 1 residue lot, including civil works being bulk earthworks, stormwater management, vegetation removal, new roads and upgrade of existing Kingswood Road, landscaping and associated works as approved by development consent DA24/0085.

The Developer has since made further Development Applications relating to Stages 4-6 of the Proposed Development. The Planning Agreement is proposed to apply to Stages 4-6 of the Proposed Development as set out below:

- (a) Stage 4 proposes the construction and embellishment of recreation space (Open Space 8 in Orchard Hills North) including stormwater management works, playground equipment, landscaping, amenities building, and parking under DA25/0567;
- (b) Stage 4A proposes the staged Torrens title subdivision of stage 4A to create four residue lots and one lot for road widening, including demolition, tree removal, dewatering of three dams, realignment of part of Kingswood Road, bulk earthworks, construction of new roads, stormwater and civil works and landscaping under DA24/0431; and
- (c) Stages 5 & 6 propose the staged Torrens title subdivision creating 192 residential lots, three residue lots and a boundary adjustment over three stages (stages 5.1, 5.2 and 6) including Castle Road and Kingswood Road upgrade works, interim Kingswood Road and Castle Road intersection works (potential), construction of two interim stormwater management basins, stormwater works, new local roads, demolition, dam dewatering, tree removal, bulk earthworks, retaining walls, land remediation, landscaping and street trees under DA24/0536.

4. Summary of Objectives, Nature and Effect of the Draft Amended Planning Agreement

The objective of the Amended Planning Agreement is to incorporate the third stage of the Proposed Development into the agreement and facilitate the Developer's provision of monetary contributions, dedication of land and delivery of works to ensure the needs of the incoming population of Orchard Hills North are met.

The Amended Planning Agreement is the legal means by which this occurs. Delivery of all the contributions in the Amended Planning Agreement will be secured by the registration of Planning Agreement on the titles of the land.

The nature of the public benefits are as follows.

4.1 Monetary Contributions

The original Planning Agreement requires the provision of the following monetary contributions for Stage 1 and 2:

- (a) Stage 1
 - (i) Monetary contribution in the amount of \$52,235.04 for contribution plan administration.
 - (ii) Monetary contribution in the amount of \$83,006.35 for district open space.
- (b) Stage 2
 - (i) Monetary contribution in the amount of \$43,424.31 for contribution plan administration.
 - (ii) Monetary contribution in the amount of \$69,005.28 for district open space.
- (c) Other monetary contributions
 - (i) Monetary contribution in the amount of \$750,000 to be applied towards to community facilities delivered by Council.
 - (ii) Monetary contribution in the amount of \$211,985 to be applied towards the resurfacing of Frogmore Road to be delivered by Council.

On 8 December 2025, the Planning Agreement was varied to incorporate the following monetary contributions for Stage 3 into the agreement:

- (a) Stage 3
 - (i) Monetary contribution in the amount of \$95,659.68 for contribution plan administration.
 - (ii) Monetary contribution in the amount of \$152,012.16 for district open space.

The Planning Agreement is proposed to be further varied to incorporate the following monetary contributions for Stages 4-6 into the agreement:

- (a) Stage 5

- (i) Monetary contribution in the amount of \$73,003.44 for contribution plan administration.
 - (ii) Monetary contribution in the amount of \$116,009.28 for district open space.
- (b) Stage 6
 - (i) Monetary contribution in the amount of \$47,829.84 for contribution plan administration.
 - (ii) Monetary contribution in the amount of \$76,006.08 for district open space.
- (c) Stages 4a-6
 - (i) Monetary contribution in the amount of \$17,158,584 as required under the Orchard Hills North Development Contributions Plan 2025.

4.2 Dedication of Land

The original Planning Agreement requires the following dedication of land for Stages 1 and 2:

- (a) Stage 1
 - (i) Dedication of approximately 876m² of land for purpose of a half road fronting public open space.
 - (ii) Dedication of approximately 628m² of land for purpose of a half road fronting public open space.
- (b) Stage 2
 - (i) Dedication of approximately 11,450m² of land for purpose of drainage infrastructure, being contributions plan item WB1 (CP 3.06).
 - (ii) Dedication of land for purpose of contributions plan item WB1 (CP 3.07).
 - (iii) Dedication of approximately 882m² of land for purpose of a half road fronting public open space.
 - (iv) Dedication of approximately 2311m² of land for purpose of the future East-West Collector Road.
 - (v) Dedication of approximately 6,384m² of land for purpose of the future North-South Collector Road.

On 8 December 2025, the Planning Agreement was varied to incorporate the following land dedication for Stage 3 into the agreement:

- (a) Stage 3 - Dedication of approximately 6,152sqm of land for Basin B2 for the purpose of the Water Cycle Management Facility (CP 3.10).

The Planning Agreement is proposed to be further varied to incorporate the following land dedication for Stages 4-6 into the agreement:

- (a) Stage 4A:
 - (i) Dedication of approximately 1,900m² of land for half road works around Open Space 8 (AOS - OS8).
 - (ii) Dedication of approximately 3,724m² of land required for public school half road.
 - (iii) Dedication of approximately 1,000m² of land required for Kingswood Road realignment.
 - (iv) Dedication of approximately 344m² of land required for roundabout.
 - (v) Dedication of approximately 20,000m² of land being part of Lot 100 DP1302830 (AO8).

4.3 Delivery of Works

The original Planning Agreement requires the delivery of the following works for Stages 1 and 2:

- (a) Stage 1
 - (i) Delivery of approximately 470 lineal metres of works to Caddens Road.
 - (ii) Delivery of approximately 100 lineal metres of half road fronting public open space (Park OS5).
 - (iii) Delivery of approximately 80 lineal metres of half road fronting public open space (Park OS1).
- (b) Stage 2
 - (i) Delivery of detention basin (WB1) and part drainage channel.
 - (ii) Provision of gross pollutant traps for detention basin WB1.
 - (iii) Provision of raingardens for detention basin (WB1).
 - (iv) Delivery of approximately 100 lineal metres of half road fronting public open space (Park OS5).
 - (v) Delivery of 204 lineal meters comprising a four land section of the East-West Collector Road.
- (c) Other works
 - (i) Delivery of public artwork to be provided within public open space (Park OS8).
 - (ii) Delivery of the resurfacing of Caddens Road between Kingswood Road and Cadda Ridge Drive.
 - (iii) Delivery of a pedestrian connection to Caddens Rd.

On 8 December 2025, the Planning Agreement was varied to incorporate the following works for Stage 3 into the agreement:

- (a) Stage 3
 - (i) Delivery of Water Cycle Management Facility (B2).
 - (ii) Delivery of Raingarden for B2 including media bed, access and planting (B2).
 - (iii) Delivery of Gross Pollutant Traps (GPT) for Basin B2 (P1009)
 - (iv) Delivery of Kingswood Road (west side - Castle Road to Caddens Road) (EEKR1).

The Planning Agreement is proposed to be further varied to incorporate the following works for Stages 4-6:

- (a) Stage 4A
 - (i) Delivery of Avenue Road (SR1).
 - (ii) Delivery of Local (Major) Road (SR2).
 - (iii) Delivery of Kingswood Road (SR3).
 - (iv) Delivery of Half Road Works around Open Space 8 (OSHR81).
 - (v) Delivery of Half Road Works around Open Space 8 (OSHR82).
 - (vi) Delivery of Half Road Works around Open Space 8 (OSHR83).
 - (vii) Delivery of Shared paths (SPCWR).
 - (viii) Landscape embellishment and park infrastructure works (OS8).
- (b) Stage 5 & 6
 - (i) Delivery of Castle Road (EECR3).
 - (ii) Delivery of Shared Paths (WP).
 - (iii) Delivery of Kingswood Road upgrade (EEKR1).

5. Assessment of the Merits of the Draft Planning Agreement

5.1 The Public Purposes Served by the Planning Agreement

The Amended Planning Agreement will provide a material public benefit to be applied towards community infrastructure and provides a benefit by way of payment monetary contributions, dedication of land and the delivery of works.

The provisions of the Amended Planning Agreement provide a suitable means of achieving the public purpose set out above.

5.2 How the Planning Agreement Promotes the Public Interest

The Amended Planning Agreement promotes the public interest by achieving the objectives of the Act by promoting:

- (a) certainty for the Developer and Council as to the provision of public benefit within Orchard Hills North;

- (b) the social and economic welfare of the community by requiring the payment of monetary contributions and the delivery of local infrastructure;
- (c) delivery of infrastructure, facilities and services to benefit and satisfy needs of the community; and
- (d) the orderly and economic use and development of land and good design and amenity of the built environment by ensuring improved amenity and infrastructure.

5.3 How the Amended Planning Agreement promotes Council's guiding principles

The Amended Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (a) The exhibition of the Amended Planning Agreement facilitates the involvement of members of the public in the consultation process for the Amended Planning Agreement.
- (b) To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (c) To act fairly, ethically and without bias to the interests of the local community.
- (d) To have regard to the long term and cumulative effects of its decisions on future generations.
- (e) To engage in long-term strategic planning on behalf of the local community.
- (f) To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- (g) The Amended Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the Development Application and that the Amended Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

5.4 Whether the Agreement Conforms with Council's Capital Works Program

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

5.5 Whether the agreement specifies certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Amended Planning Agreement at clauses 6.1, 6.2, 6.3 and Schedule 1 identifies requirements that must be complied with prior to the issuing of subdivision certificates.

The Amended Planning Agreement does not otherwise specify requirements that must be complied with prior to the issue of a construction certificate, occupation certificate or subdivision certificate.