

**8 Letter of Offer - 61-79 Henry Street Penrith**

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|---------------------------|--|
| <b>Outcome</b>            | <i>We plan and shape our growing City</i>  |
| <b>Strategy</b>           | <i>Undertake strategic planning that will ensure balanced growth and liveability</i>   |
| <b>Principal Activity</b> | <i>Facilitate appropriate land use outcomes for our city that are consistent with our Local Strategic Planning Statement</i> |

**Previous Items:** Planning Proposal for 61-79 Henry Street, Penrith (Henry Lawson Centre) - Councillor Briefing - 04 May 2020  
Planning Proposal for 61-79 Henry Street, Penrith - Councillor Briefing - 17 May 2021  
Planning Proposal for 61-79 Henry Street Penrith to Gateway - Ordinary Meeting - 26 Jul 2021

**Landowner:** Australian Foundation for Disability (AFFORD)

**Proponent:** Sutherland and Associates Consulting

**Executive Summary**

This report seeks Council's endorsement to publicly exhibit a Letter of Offer to enter into a Voluntary Planning Agreement (VPA) associated with a Planning Proposal for 61-79 Henry Street, Penrith.

The Letter of Offer outlines the landowner's intention to deliver affordable and accessible housing, public open space and road and infrastructure upgrades through a future VPA. The proposed works support a planning proposal which seeks to amend Penrith Local Environmental Plan (LEP) 2010 to allow residential accommodation as an Additional Permitted Use on the subject site.

Councillors were briefed on the Planning Proposal on 4 May 2020, 9 November 2020 and 17 May 2021. The planning proposal was also reported to Council at the Ordinary Meeting of 26 July 2021, seeking endorsement to forward the planning proposal to the Department of Planning and Environment (DPE) for a Gateway Determination. In addition, memorandums were provided to Councillors on 7 January 2020, 22 December 2020, 4 March 2022, 27 May 2022 and 27 July 2022 with respect to the Planning Proposal and VPA.

Should Council endorse the Letter of Offer for public exhibition, it will be exhibited concurrently with the Planning Proposal and in accordance with the *Environmental Planning and Assessment Regulation 2021* and *Penrith Developer Infrastructure Agreements Policy*.

Following public exhibition, a draft VPA will be prepared to secure the outcomes of the Letter of Offer. A further report will be prepared for Council to seek endorsement of the draft VPA for public notification. This report will also provide details of any submissions received on the Letter of Offer.

**Background**

At its meeting of 26 July 2021, Council resolved to endorse a Planning Proposal which seeks to amend Schedule 1 Additional Permitted Uses of Penrith LEP to permit residential accommodation at 61-79 Henry Street, Penrith.

A Gateway Determination was issued by DPE on 21 September 2021 which required additional information and further work to be completed before the Planning Proposal could be publicly exhibited. The Gateway conditions required further information to be provided on types of affordable and diverse housing, community infrastructure benefits and mitigation of any traffic and intersection impacts resulting from the development. Council officers have been working with the proponent to obtain the information required to satisfy the Gateway conditions and progress the planning proposal.

The planning proposal identifies the need for social infrastructure and transport infrastructure to support future development on the subject site. However, the planning proposal does not provide any mechanism to secure these works. Accordingly, the landowner has offered to enter into a VPA with Council to facilitate the delivery of the supporting infrastructure.

**Current Situation**

A Letter of Offer to enter into a VPA has been submitted to Council which outlines the landowner's intention to deliver a range of infrastructure works. The proposed works have been identified in the Planning Proposal and are necessary to support future development on the subject site. A copy of the Letter of Offer is provided in Appendix 1. The proposed infrastructure and key considerations are summarised below.

*Housing*

Diverse and affordable housing is proposed to be delivered on site in accordance with the following:

- A minimum of 15% of total approved dwellings on the site to be provided as seniors housing or housing for people with a disability (as identified in Part 5 of State Environmental Planning Policy (Housing) 2021); and
- A minimum of 5% of total approved dwellings on the site to be provided as affordable housing (as identified in Part 2 of State Environmental Planning Policy (Housing) 2021).

These dwellings will be provided as either seniors housing, housing for people with a disability or affordable housing for the lifespan of the development, which means they will not 'time out' after a certain number of years. The mechanism for securing these dwellings for the lifespan of the development will be determined in the draft VPA.

*Public Open Space*

Public open space is proposed on the site as a local park. The public open space will be at least 0.3 hectares in total area, however, is not required to be provided as an uninterrupted single area and may take the form of several smaller parks scattered across the site. The final design for the public open space will be determined as part of a future design competition for the proposed development.

The public open space will be publicly accessible, but privately owned and maintained. The public open space may be incorporated into the calculation of communal open space for residents of the proposed development, in addition to some communal open space being provided to residents of the development by way of rooftop or podium levels.

*Road and Infrastructure Upgrades*

The following road and infrastructure upgrades are proposed:

- A new roundabout at the intersection of Lawson Street and Soper Place, providing entry/exit to the site; and
- Road upgrades at the intersection of Lawson Street and Henry Street to help mitigate traffic.

Draft concept designs for the proposed road and infrastructure upgrades are provided at Appendix 1.

### **Assessment of Offer**

#### Public benefit

The Letter of Offer provides public benefit by securing social infrastructure and road infrastructure.

Provision of diverse and affordable housing aligns with the objectives of the *Penrith Local Housing Strategy* to provide housing that supports residents with particular needs, having regard to adaptability, location, tenure and cost.

The proposed public open space achieves the requirement of the *Penrith Sport and Recreation Strategy* to deliver a public park within 200 metres of residential development. The public open space will be utilised by future residents of the development, as well as being accessible to the broader community.

The road and infrastructure upgrades are necessary to mitigate potential traffic and intersection impacts generated by future development on the subject site.

The Letter of Offer has been reviewed in accordance with the *Penrith Developer Infrastructure Agreements Policy*. The Letter of Offer was also considered by Council's Local Infrastructure Contributions Working Group at its meeting on 26 April 2022 and 5 July 2022.

#### Matters for further consideration

Two matters have been identified during the assessment of the Letter of Offer that require further consideration. These matters will be addressed during preparation of the draft VPA and should not prevent the Letter of Offer from progressing to public exhibition. These matters are outlined below.

#### *Community Infrastructure – Clause 8.7 of Penrith LEP*

The subject site is identified as a 'Key Site' under clause 8.7 of Penrith LEP, which enables development to exceed maximum building height or floor space ratio controls if community infrastructure is provided on site. The proponent is seeking to utilise clause 8.7 to achieve additional floor space.

The Letter of Offer indicates that the proposed public open space meets the community infrastructure requirement of clause 8.7 and no further community infrastructure will be required. While this open space may be considered to contribute to the site's delivery of 'community infrastructure', the satisfaction of clause 8.7 cannot be guaranteed through a VPA. This is a matter to be determined by the consent authority during the assessment of the proposed development, having regard to the final design and size of the public open space.

This will be clarified further in the preparation of the draft VPA.

#### *Termination of Planning Agreement*

The Letter of Offer indicates that the VPA will contain a mechanism for termination of the VPA in circumstances where the Planning Proposal or proposed development is not approved on terms suitable to the landowner, is surrendered or lapses under the proposed sunset clause.

Conditions regarding termination, enforcement and resolution of disputes will be negotiated with the proponent during the preparation of the draft VPA. These conditions will also be reviewed by Council's Legal Services team to ensure the terms are satisfactory to Council and consistent with the *Penrith Developer Infrastructure Agreements Policy*.

### **Financial Implications**

The landowner will be responsible for the cost of the works associated with the VPA. The landowner agrees to pay the Council's costs in relation to the preparation and notification of the VPA.

If the proposed road and infrastructure upgrades require substantive work on any land owned by Council (outside of the roads and road reserve) or any land owned by a private entity, the landowner is to take steps to acquire that land.

The Letter of Offer and any subsequent planning agreement does not have the effect of excluding the application of Section 7.11, 7.12 or 7.24 of the Environmental Planning and Assessment Act 1979 in relation to any development application associated with the planning proposal.

### **Risk Implications**

Any risks to Council have been limited through the negotiation of the Letter of Offer in accordance with *Council's Penrith Development Infrastructure Agreements Policy* and review of the draft Letter of Offer by Council's Legal Services team.

### **Next Steps**

Should Council endorse the Letter of Offer for public exhibition, it will be placed on exhibition concurrently with the Planning Proposal and in accordance with the *Environmental Planning and Assessment Regulation 2021* and *Penrith Developer Infrastructure Agreements Policy*.

Following public exhibition, a draft VPA will be prepared to secure the outcomes of the Letter of Offer. Any matters in the Letter of Offer requiring further consideration will be addressed in the draft VPA to ensure the terms of the agreement are satisfactory to Council. A further report will be prepared for Council to seek endorsement of the draft VPA for public notification. This report will also provide details of any submissions received on the Letter of Offer and Planning Proposal.

It is noted that the Council resolution of 26 July 2021 does not require the Planning Proposal to be reported back to Council prior to public exhibition. However, the Planning Proposal would come back to Council after it is exhibited emphasising that it is not to be submitted to DPE for finalisation until the proposed infrastructure works provided in Appendix 1 have been secured in an executed VPA.

### **Conclusion**

Council has received a Letter of Offer which outlines the landowner's intention to deliver housing, public open space and road and infrastructure upgrades through a VPA. The proposed works are required to support a planning proposal for 61-79 Henry Street, Penrith.

It is recommended that Council endorse the Letter of Offer to be placed on public exhibition.

### **RECOMMENDATION**

That:

1. The information contained in the report on Letter of Offer - 61-79 Henry Street Penrith be received.

2. Council endorse for public exhibition the Letter of Offer for 61-79 Henry Street Penrith, provided in Appendix 1 of this report, in conjunction with the Planning Proposal for the subject site.
3. Following exhibition of the Letter of Offer, a draft VPA be prepared and reported to Council for endorsement for public notification.
4. The Planning Proposal for the subject site is not made until a draft VPA is executed in accordance with the terms of the Letter of Offer provided in Appendix 1.

**ATTACHMENTS/APPENDICES**

1. Letter of Offer for 61-79 Henry Street, Penrith 6 Pages Appendix

29 August 2022

The General Manager  
Penrith City Council  
PO Box 60  
PENRITH NSW 2751

**Attention:** Brooke Levingston

Dear Brooke

**Letter of Offer to enter into a Planning Agreement**

**Subject Land:** 61-79 Henry Street, Penrith (Henry Lawson Centre)  
**Planning Proposal:** To permit high density housing within the B3 Commercial Core in Penrith, where it is not currently a permitted use.

The Australian Foundation for Disability (also known as AFFORD) (**'the Owner'**) has submitted a Planning Proposal seeking to amend *Penrith Local Environmental Plan 2010* (**'the LEP'**) in respect of Lot 1 in DP 771927, also known as 61-79 Henry Street, Penrith (Henry Lawson Centre) (**'the Site'**). The Planning Proposal seeks an amendment to Schedule 1 of the LEP to include residential accommodation as an additional permitted use on the Site if a minimum Floor Space Ratio of 2:1 is provided for non-residential premises. A sunset clause is proposed where the LEP provision will cease to exist five years after the date of the proposed LEP amendment is made (**'the Planning Proposal'**).

The inclusion of residential accommodation as an additional permitted use by way of the Planning Proposal is necessary to:

- allow a viable mix of uses necessary to facilitate the redevelopment of the Site and thereby contribute to the revitalization of the Penrith City Centre; and
- encourage housing diversity and social inclusion by allowing the Owner to provide housing for people with a disability within a mixed-use development on the Site.

If the Planning Proposal is supported, so that the amendment to the LEP is made, the Owner proposes to lodge a staged development application for a mixed-use development at the Site. The mixed-use development will be the subject to a design excellence competition. Upon selection of a design excellence competition winner, a 'stage 1' development application for the proposed mixed-use development will be lodged with Council. It is not yet known how many staged development applications will be required for the proposed mixed-use development, nor what each staged development application will seek consent for (**'the Proposed Development'**).

The Owner proposes to enter into a Planning Agreement with the Council to undertake the works identified in the Offer below in circumstances where the Planning Proposal is supported and the LEP amendment is made, so that the Proposed Development can occur.

This Letter of Offer confirms the Owner's willingness to enter into such a Planning Agreement (**'Planning Agreement'**).

The terms of the offer are set out in more detail below.

**Offer to enter into a Planning Agreement**

The Owner offers to enter into a Planning Agreement with Council in accordance with s 7.4 and s 7.7 of the *Environmental Planning and Assessment Act 1979* (**the EP&A Act**), subject

to the following terms, which includes the matters prescribed at s 7.4(3) of the EP&A Act.

1. The Planning Agreement is to the Site.
2. The offer to enter in a Planning Agreement is made in connection with the Planning Proposal.

### **The Offer**

In connection with the Planning Proposal, the Owner offers to enter into a Planning Agreement with Council which provides for the provision of affordable housing and housing for seniors and people with a disability, the provision of public open space, and to undertake road upgrade works.

The terms of the Offer to enter into a Planning Agreement are made in circumstances where the Planning Proposal is supported and the LEP amendment is made, so that the Proposed Development can occur.

The terms of the Offer are as follows:

#### **1. Housing**

A minimum of 15% of the total number of dwellings approved as part of the Proposed Development will be either:

- a) housing for seniors (as identified by Part 5 of the *State Environmental Planning Policy (Housing) 2021*); or
- b) housing for people with a disability (as identified by Part 5 of the *State Environmental Planning Policy (Housing) 2021*)

In addition, a minimum 5% of the total number of dwellings on the site approved as part of the Proposed Development are to be provided for affordable housing (as identified by Part 2 of the *State Environmental Planning Policy (Housing) 2021*).

(**'the Nominated Dwellings'**).

The Nominated Dwellings will be provided as either affordable housing, seniors housing or housing for people with a disability for the lifespan of the Proposed Development.

At least 5% of the Nominated Dwellings are to be provided for people with a disability.

Those dwellings provided for affordable housing are to be a mix of 1 bedroom, 2 bedroom and 3 bedroom dwellings. No more than 40% of those dwellings provided for affordable housing are to be 1 bedroom dwellings, and at least 20% of those dwellings provided for affordable housing are to be 3+ bedroom dwellings.

#### **2. Public Open Space**

Public Open Space is to be provided by way of a local park (**'the Public Open Space'**). The Public Open Space is to be at least 0.3 hectares in total area, however is not required to be provided as an uninterrupted single area.

The Public Open Space will be privately owned and maintained, and accessible by the residents of the Proposed Development and by the general public.

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The concept design for the Public Open Space will be provided as part of the Design Competition for the Proposed Development.

The design of the Public Open Space will also be informed by:

- 'Greener Places: An urban green infrastructure design framework for NSW' developed by the Government Architect NSW.
- The relevant strategies, actions and guidelines for the design of open space (and specifically local parks) detailed in the Penrith Sport and Recreation Strategy.

A detailed staging plan for the delivery of the Public Open Space is to be confirmed by written letter from the Owner to the Council at the point in time when any Stage 1 Development Application is lodged with the Council. The timing of the completion of the public open space will be determined by the staging plan.

The Public Open Space may be incorporated into the calculation of 'communal open space' for the Proposed Development pursuant to the definition of 'communal open space' under the *Apartment Design Guide*.

In addition to the Public Open Space, the Owner notes that some communal open space will also be provided to residents as part of the Proposed Development by way of rooftop or podium levels. This communal open space will not be publicly accessible or part of the Public Open Space.

The Public Open Space meets the community infrastructure requirement of clause 8.7 of the LEP and no further community infrastructure is required for development on the Site to satisfy clause 8.7.

### 3. Road and Infrastructure Upgrades

Road and Infrastructure Upgrades are required to support the Proposed Development.

The Road and Infrastructure Upgrades will:

- ensure that the safety of pedestrians crossing Lawson Street is taken into consideration in the final concept design; and
- ensure that the crest level of the driveway to the basement achieves the required freeboard above the 1% AEP flood level pursuant to Council's *Stormwater Drainage Guidelines for Building Developments* (May 2018).

The Road and Infrastructure Upgrades to be provided are:

- Roundabout works at the intersection of Lawson Street and Soper Place.
- Lawson Street/Henry Street mitigation measures.

The Road and Infrastructure Upgrades are to be generally in accordance with the indicative designs provided at Figure 1 and Figure 2, subject to the final design and footprint of the Soper Place carpark and the surrounding sites at point in time when the Road and Infrastructure Upgrades are to be constructed.

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A detailed staging program for the Roads and Infrastructure Upgrades is to be submitted to the Council by the Owner, by way of written letter, at the point in time when any Stage 1 Development Application is lodged with the Council. The timing of the completion of works will be determined by the staging plan.

The final design of the Road and Infrastructure Upgrades will be subject to future traffic modelling prepared for the Proposed Development.

If the Road and Infrastructure Upgrades require substantive work on any land owned by Council (outside of the roads and road reserve) or any land owned by a private entity, the Owner is to take steps acquire that land that will be required to enable the construction of the Road and Infrastructure Upgrades.

The Owner will be responsible for the costs of the works associated with the provision of the Road and Infrastructure Upgrades.

### **Contributions**

This offer, and any subsequent Planning Agreement, does not have the effect of excluding the of s 7.11, 7.12 or 7.24 of the EP&A Act in relation to any development application associated with the Planning Proposal, as are lawfully applicable.

### **Procedure**

The Owner offers to provide the above benefits associated with the Planning Proposal within the terms of a Planning Agreement, in circumstances where the Planning Proposal is supported and the LEP amendment is made, so that the Proposed Development can occur.

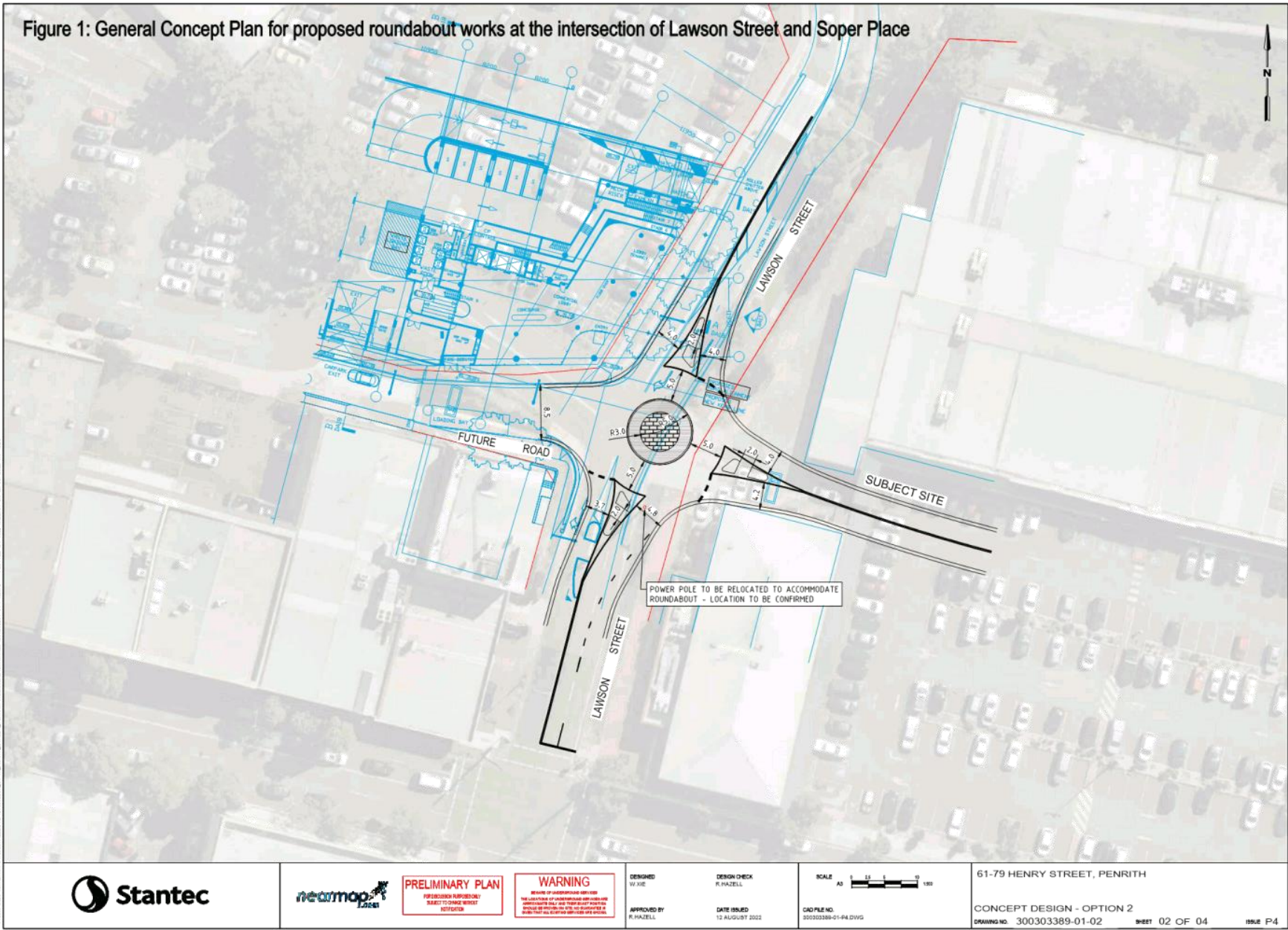
In circumstances where the Planning Proposal is approved, on terms acceptable to the Owner, the Planning Agreement will operate and be registered on the title of the Site by the Registrar-General.

The Planning Agreement will contain a mechanism for the termination of the Planning Agreement in circumstances where the Planning Proposal or the Proposed Development is not approved on terms suitable to the Owner, is surrendered or lapses under the proposed subset clause.

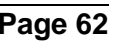
The Planning Agreement will contain any necessary provisions of security, and mechanisms for the resolution of disputes and the enforcement of the agreement by the parties.

The Owner agrees to pay the Council's costs in relation to the preparation and notification of the Planning Agreement.

We look forward to receiving your response.







Agreement and make any minor amendments where necessary to ensure its legality (e.g. typographic errors, dates, etc.).

7. The Common Seal of the Council of the City of Penrith be affixed to any necessary legal documents.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then called with the following result:

| <b>For</b>                   | <b>Against</b>               |
|------------------------------|------------------------------|
| Councillor Karen McKeown OAM | Councillor Kevin Crameri OAM |
| Councillor Robin Cook        | Councillor Sue Day           |
| Councillor Todd Carney       |                              |
| Councillor John Thain        |                              |
| Councillor Jonathan Pullen   |                              |
| Councillor Marlene Shipley   |                              |
| Councillor Bernard Bratusa   |                              |
| Councillor Mark Rusev        |                              |
| Councillor Mark Davies       |                              |
| Councillor Tricia Hitchen    |                              |

#### **8 Letter of Offer - 61-79 Henry Street Penrith**

267 RESOLVED on the MOTION of Councillor Bernard Bratusa seconded Councillor Todd Carney

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4. The Planning Proposal for the subject site is not made until a draft VPA is executed in accordance with the terms of the Letter of Offer provided in Appendix 1.

Councillor Ross Fowler OAM returned to the meeting, the time being 8:47pm.

Councillor Jonathan Pullen left the meeting, the time being 8:48pm and did not return.