

Marsden Park Industrial Precinct Planning Agreement

Introduction

The Marsden Park Industrial Precinct is the first Precinct to be released under the Government's Precinct Acceleration Protocol (**PAP**). The PAP has been developed by Government to allow the early release of land within the Growth Centres for development. The VPA addresses the key condition of the PAP in that the early release of these precincts are to be at no cost to Government.

The Marsden Park Industrial Precinct Planning Agreement is a contractual arrangement between the Minister for Planning (the "**Minister**") representing the NSW Government and Marsden Park Developments Pty Ltd (the "**Developer**") that is expressly authorised by statute. Planning Agreements are the creation of Division 6 of Part 4 of the Environmental Planning and Assessment Act (Act). The Marsden Park Industrial Precinct Planning Agreement outlines the conditions under which the Minister will consider amending the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (the "**SEPP**")

The effect of the amendment to the SEPP, would be to rezone the Land for urban purposes to, as indicated by the Marsden Park Industrial Precinct Indicative Layout Plan.

Stage 2 (Approval and Implementation) of the PAP requires the Developer to accept a Government prepared Requirements Package. The Requirements Package requires the Developer to fund the Precinct Planning process as well as fund and deliver essential infrastructure to support the precinct, including regional transport infrastructure and services infrastructure. The Marsden Park Industrial Precinct Planning Agreement formally commits the Developer to the delivery of the Requirements Package.

The Marsden Park Industrial Precinct Planning Agreement contains two Planning Agreements.

The first Planning Agreement will be operative and entered into following execution of that document by the Minister and the Developer (**First Planning Agreement**). The First Planning Agreement provides that the Developer will fund the planning process for the Precinct (at an estimated cost of \$1,930,000) (**Precinct Planning Contribution**) and will prepare a Servicing Strategy and Implementation Plan.

Within this document is an irrevocable offer by the developer to enter into a second Planning Agreement, which will be taken to be operative on and from the date that the Minister accepts the Developer's offer following issue of the first planning consent within the Precinct but no later than one year after the execution of the First Planning Agreement (**Second Planning Agreement**). This offer and acceptance mechanism is to utilise provisions within the Goods and Services Tax legislation (A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999) for the provision of infrastructure to be exempt from GST.

The Second Planning Agreement provides that the Developer will fund or provide the road works infrastructure (**Road Works**) and **Servicing Infrastructure** given the demands created by the development of the Precinct.

The Road Works to be provided under the Marsden Park Industrial Precinct Planning Agreement generally comprise the upgrade of a 1.7km section of Richmond Road between Townson Road and Grange Avenue to a four lane principal arterial road including intersections. The staged delivery of the Richmond Road upgrade is linked to development milestones of the Precinct.

The Marsden Park Industrial Precinct Planning Agreement defines an orderly process by which the Developer will plan and deliver infrastructure as required in consultation with the relevant service authorities to support the orderly development of the whole of the precinct. The Marsden

Park Industrial Precinct Planning Agreement requires that appropriate contracts be entered into with the relevant authorities as components of services infrastructure are planned and delivered.

The Marsden Park Industrial Precinct Planning Agreement requires the Developer:

1. to prepare a Services Infrastructure Strategy within six months of the SEPP Amendment;
2. to prepare a Services Infrastructure Implementation Strategy within eighteen months of the SEPP Amendment;
3. to enter fund, construct and provide for the ultimate handover of all services related land and services infrastructure to the relevant service authority.

Summary of Objectives, Nature and Effect of the Planning Agreements

A key objective of the NSW Government is the supply of land for urban development to the market as quickly as possible consistent with the most efficient use of government funds.

The Road Works will be undertaken in accordance with the Second Planning Agreement and on a staged basis (and in separate work portions known as "**Milestones**").

The Road Works generally comprise the upgrade of Richmond Road between Townson Road and Grange Avenue to a four lane principal arterial road. These works are to include:

1. construction of the western spur of a four-way signalised intersection proposed at Townson Road to provide an entrance into the Precinct;
2. signalised four-way intersection at South Street;
3. left-in / left-out non-signalised intersection at Grange Avenue;
4. the road cross section to be in accordance with the RTA Route Strategic Master Plan for Richmond Road Corridor; and
5. the design and construction of bus stop(s) as determined by the Department of Planning and NSW Roads and Traffic Authority.

The Second Planning Agreement also provides that the Developer must provide services infrastructure to the Precinct to meet the needs created by the future development of the entire Precinct at no cost to Government. The provision of the services infrastructure must be timed to support the orderly development of the Precinct in that adequate services capacity is to be provided for use by other developers within the Precinct

In addition, the Second Planning Agreement includes obligations designed to encourage the Developer to subdivide and develop the Land for uses and purposes specified within the SEPP Amendment in accordance with certain nominated Milestones.

The Developer may become liable to pay the Special Infrastructure Contribution in connection with the Development or other developments within the Sydney Region Growth Centres.

- The Second Planning Agreement provides that the Developer may be entitled to 'offset amounts' (**SIC Offset Amounts**) which could be applied towards its Special Infrastructure Contribution obligations (in part or in whole) as a result of the Developer having achieved a Milestone (or which enables the Developer to apply those SIC Offset Amounts towards the partial or full satisfaction of the Developer's obligations to make a Special Infrastructure Contribution). Accordingly, if the Developer achieves a

Milestone to the satisfaction of the Minister, the Developer will be entitled to SIC Offset Amounts for a value attributable to that Milestone; and

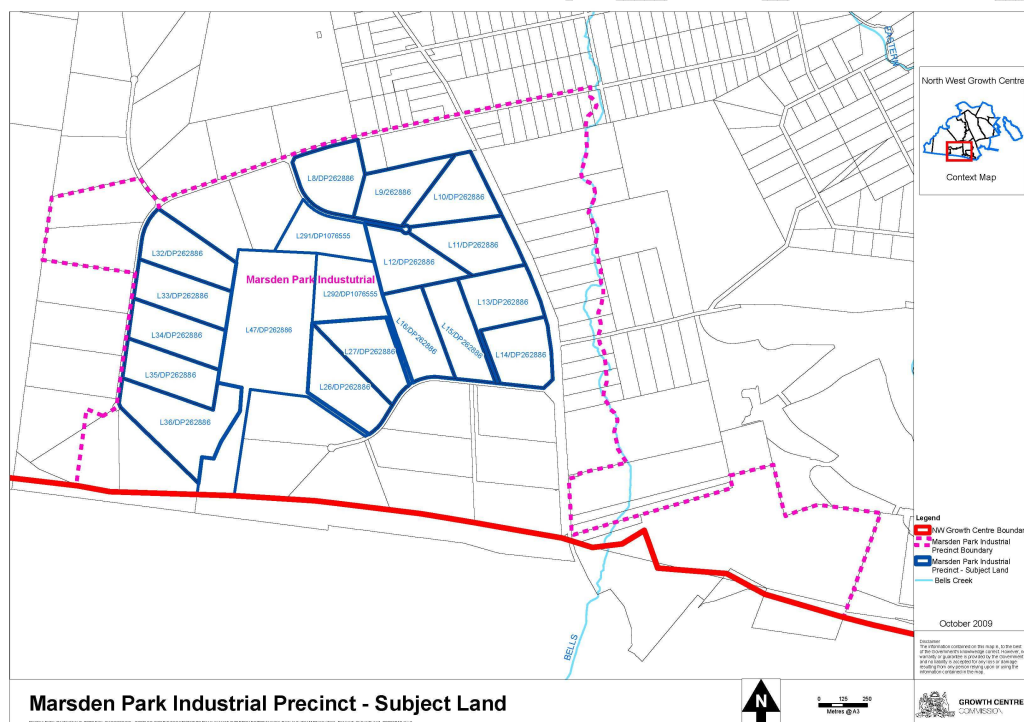
- if the Developer becomes liable to make Special Infrastructure Contributions in respect of the Development or any other development undertaken by the Developer within the Sydney Region Growth Centres, the Developer will be entitled to apply those SIC Offset Amounts towards the partial or full satisfaction of the Developer's obligations to make those Special Infrastructure Contributions.

The Developer will also be entitled to SIC Offset Amounts for a portion of its Precinct Planning Contribution (as determined by the Minister). Such entitlement will not exceed \$1,930,000.

All of the SIC Offset Amounts are subject to indexation.

Description of the Subject Land

The Planning Agreements apply to those parcels of land owned by the Developer within the Marsden Park Industrial Precinct, shown edged in dark blue ink on the Subject Land Map below:



If the SEPP Amendment is made, the Developer intends to make development applications under the Act to develop the Land consistent with the gazetted Marsden Park Industrial Precinct, Indicative Layout Plan (the "**Development**").

It is noted that Section 93F(9) of the Act states that:

A Planning Agreement cannot impose an obligation on a planning authority:

(a) to grant development consent, or

(b) to exercise any function under this Act in relation to a change to an environmental planning instrument.

As such, the Planning Agreements have no bearing on whether the SEPP Amendment is made. Rather many of the commitments made in the Second Planning Agreement are made subject to the SEPP Amendment.

The Planning Agreements provide for the Developer to register the Planning Agreements on title to the Land in accordance with section 93H of the Act.

Assessment of Merits of Planning Agreements

The Planning Purpose of the Planning Agreements

In accordance with section 93F(2) of the Act, the Planning Agreements have the following planning purposes.

The Planning Agreements provide for the provision of infrastructure to meet the demands generated by the Development for new State public infrastructure.

The Planning Agreements will:

- enable the Land to be developed in a timely and efficient manner to promote economic development;
- enable the provision of public road improvements; and
- enable the provision of the essential services infrastructure to service the Precinct at no cost to Government.

The Minister and Developer have assessed the Planning Agreements and both hold the view that the provisions of the Planning Agreements provide a reasonable means of achieving the public purposes set out above. This is because the Planning Agreements describe an appropriate mechanism by which planning outcomes can be achieved without causing additional costs to Government due to the early release of the Land.

How the Planning Agreements Promote the Public Interest and the Objects of the *Environmental Planning and Assessment Act 1979*

The Planning Agreements promotes the public interest and following objects of the *Environmental Planning and Assessment Act 1979* as contained in section 5 of that Act:

- Section 5(a) (i) *“the proper management, development and conservation of natural and artificial resources for the purpose of promoting the social and economic welfare of the community and a better environment.”* by providing the resources needed for proper co-ordinated planning of the precinct and the essential upgrades needed for the State road system;
- Section 5(a)(ii) *“the promotion and co-ordination of the orderly and economic use and development of the land”* by ensuring that the land use planning and infrastructure co-ordination occurs prior to rezoning and that the delivery of the State road network is tied to key milestones in the urban development of the Precinct;
- Section 5(a)(iii) *“the protection, provision and co-ordination of communication and utility services”* by setting aside the land needed for State and local level infrastructure delivery;

- Section 5(a)(iv) “*the provision of land for public purposes*” by undertaking preliminary designs for Richmond Road to ensure that the land needed for widening and upgrading is available.
- Section 5(b) “*to promote the sharing of the responsibility for environmental planning between the different levels of Government in the State*” by creating a transparent and permanent means of obligating the Developer to contribute to State transport infrastructure in the same way that Blacktown City Council’s Section 94 plan creates obligations in relation to local transport and drainage infrastructure; and
- Section 5(c) “*to provide increased opportunity for public involvement and participation in environmental planning and assessment*” by making drafts of the proposed Planning Agreements publicly available for inspection at the same time that the explanation of intended effect of the SEPP Amendment is placed on exhibition. This means that the relationship between the scale of the development proposed by the rezoning in the SEPP Amendment and the infrastructure to be provided under the Planning Agreements can be appreciated by the community. This process allows for more informed public submissions to be made to the Department of Planning about the SEPP Amendment.

The Planning Agreements promote the objects of the Act set out above by requiring the Developer to provide the contribution works set out in this explanatory note under the heading “*Summary of Objectives, Nature and Effect of the Planning Agreements*” for the following purposes:

- Funding for the planning process for the Precinct by the Department of Planning;
- The Richmond Road upgrade; and
- The staged provision of services and infrastructure necessary to service the whole Precinct.

Each of these purposes represents an important public benefit, and the Developer’s offer to contribute towards these purposes will provide an important positive impact on the public who use the infrastructure and services to which these purposes relate.