

NOTIFICATION / EXHIBITION VERSION

Outline of Proposed Deed of Variation of St Marys State Development Agreement

The Minister for Planning and Infrastructure

Roads and Maritime Services

St Marys Land Limited

Lend Lease Development Pty Limited

ComLand Limited

Lend Lease Corporation Limited

August 2012

NOTIFICATION / EXHIBITION VERSION

1. Parties to St Marys State Development Agreement and Deed of Variation

The relevant parties to the existing St Marys State Development Agreement and the proposed Deed of Variation are:

- The Minister for Planning and Infrastructure (the **Minister**);
- The Roads and Maritime Services (the **RMS**);
- The **Joint Venture** parties – comprised of St Marys Land Limited and Lend Lease Development Pty Limited; and
- The **Guarantor** parties – comprised of Lend Lease Corporation Limited and ComLand Limited.

2. Introduction

The *St Marys Environmental Planning Strategy 2000* and the *Sydney Regional Environmental Plan No 30 – St Marys* require that the development of the land regulated by those documents (the **Site**) is supported by a legally enforceable agreement to which St Marys Land Limited, as landowner is a party together with one or more of the State, Blacktown City Council and Penrith City Council.

In compliance with this requirement, the following Agreements have been entered into and subsequently amended:

- On 13 December 2002, the St Marys State Development Agreement (**SDA**) was entered into by the Joint Venture parties, the Guarantor parties, the Minister and RMS for regional level contributions.
- On 24 May 2004 the SDA was amended by a Deed of Amendment entered into by the Joint Venture parties, the Guarantor parties, the Minister and RMS.
- On 15 November 2004 as part of the SDA, the St Marys Blacktown Development Agreement was entered into by the Joint Venture parties and Blacktown City Council for local level contributions relevant to the part of the Site within the Blacktown City Council local government area.
- On 20 December 2006 as part of the SDA, a Planning Agreement was entered into by the Joint Venture parties and Penrith City Council for local level contributions relevant to the part of the Site within the Penrith City Council local government area.

This Outline of the St Marys Deed of Variation of the SDA describes the approach to make necessary further amendments to the SDA in order to:

1. Identify and incorporate into the SDA, as required by the existing SDA, the Balance Road Works, being road works which are identified by the 2007 St Marys Development Transport

Management Study (**2007 TMS**) and to reflect the agreement reached in relation to other transport priorities and plans (the **Balance Road Works Amendments**).

2. Identify changes to regional contributions arising from a decision of the Premier of New South Wales in December 2008 to implement a series of reforms designed to stimulate the State's housing industry. The Premier's decision prompted the publication of Planning Circular PS 08-017 entitled *Review of Infrastructure Contributions* by the Department of Planning and Infrastructure on 23 December 2008 (the **Planning Circular**).
3. Identify and incorporate into the SDA the following amendments, as required by the existing SDA:
 - updates in relation to residual remediation works to certain minor parts of the Site which were required under the SDA; and
 - updates in relation to the obligations of the Guarantor parties which were required under the SDA.

Each of the amendments is dealt with in further detail in section 3. A summary of the amendments is also set out in Table 1 below.

3. Details of amendments to SDA made by proposed Deed of Variation

3.1 Balance Road Works Amendments

The existing SDA documented the State road works required for the development of the Eastern Precinct at the Site, and included a process to determine the State road works required for the development of the Site in addition to the Eastern Precinct road works.

That process resulted in the 2007 TMS which specified the remaining State road works required under the existing SDA (the **Balance Road Works**). These are:

- The Northern Road and Southern access to St Marys Western Village;
- The Northern Road, Borrowdale Way and Northern Access to St Marys Western Village; and
- The Northern Road, Borrowdale Way to Andrews Road (4 lanes).

The transport committee established in accordance with clause 16.4 of the existing SDA, comprising the Department of Planning, RTA, Ministry of Transport, Penrith City Council, Blacktown City Council and the Joint Venture parties, endorsed the assessment of the Balance Road Works made within the 2007 TMS.

Accordingly, in recognition of this endorsement, it is necessary to vary the existing SDA to incorporate the Balance Road Works as part of the required works to be undertaken by the Joint Venture parties under the existing SDA and provide for the timing of delivery of those works.

3.2 Planning Circular Amendments

The purpose of the Planning Circular was to "*provide advice on the implementation of the recent reforms to infrastructure levies announced by the State Government*".

The Planning Circular was issued after the announcements contained in the 2008-2009 Mini-Budget in relation to the review of State infrastructure levies and contributions under sections 94 and 94A of the *Environmental Planning and Assessment Act 1979*.

The Planning Circular provides that:

"The refined scope of infrastructure contributions will be applied to all State infrastructure contributions whether they are set under the State's special infrastructure contributions framework or are negotiated in a State developer agreement."

It also provides for specific transitional arrangements as follows:

"Appropriate transitional arrangements for each of the new measures will be developed. Included in these arrangements will be the ability to re-negotiate existing State developer agreements to encourage the expedited release of land from existing development sites."

The Planning Circular also states that the Government's intention is that there will be no reduction in the type, amount or delivery of infrastructure to be provided, only in how this will be funded.

The parties have agreed to vary the SDA to reflect the Planning Circular to ensure that the initiatives of the Planning Circular are available to expedite release of land from existing development sites, as follows:

- Reduction in monetary contributions for Regional Park improvements to be made after the date of the Planning Circular;
- Deletion of public transport contributions to be made after the date of the Planning Circular; and
- Works in kind after the date of the Planning Circular attract a credit at rates detailed in State Government Policy and are to be offset by reduced Affordable Housing contributions.

There is no change to the following existing SDA obligations:

- Regional Park and Open Space land dedications;
- Regional Road Upgrades; and
- The Project Employment Development Strategy.

3.3 Required Amendments

Decontamination works

Clauses 15.6 and 15.7 of the SDA acknowledged that St Marys Land Limited, as land owner, had commissioned the preparation of a remediation action plan in relation to land described in the SDA as the Eastern Precinct Regional Park, the Special Uses Corridor, the QEL Area and certain boundary anomalies identified in the plan forming Annexure E to the SDA in order to achieve the following:

- to ensure consistency between boundaries of the Regional Park, urban areas, the RNE Land and site audit statements relating to the Land (as those terms were defined in the SDA);
- to ensure the site audit statement conditions reflect land use requirements;
- to provide for unfettered access to the Eastern Precinct Regional Park; and

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- to remove the requirement for sampling for the QEL Area after final earthworks.

As a result of the remediation action plan being implemented and new site audit statements being issued, the provisions of clause 15 are to be modified in the Deed of Variation to reflect the conditions of the new statements

Guarantee

Clauses 23 and 24 of the SDA, and a new clause 25 introduced by a Deed of Amendment dated 24 May 2004, provide for guarantees by the Guarantor parties of the obligations of the Joint Venture parties under the SDA.

In accordance with clauses 23.12, 24.12 and 25.12 of the SDA, the Parties have agreed to vary the guarantees in clauses 23, 24 and 25 to reflect the balance of the remaining obligations of the Joint Venture parties.

4. General purpose

The parties to the existing SDA and the proposed Deed of Variation are committed to ensuring that development on the Site continues to achieve its environmental, social and economic outcomes. The SDA as varied by the proposed Deed of Variation contributes to achieving these outcomes by:

- 1 identifying the facilities, services and infrastructure needed to support development on the Site and providing the mechanism for the consideration of innovative delivery models for them;
- 2 securing the community benefits offered by all parties as part of the development;
- 3 identifying when the facilities, services and infrastructure will be required, and who will be responsible for providing them. As a general principle, the provision of facilities, services and infrastructure will be progressive in proportion with the rate of development;
- 4 ensuring that the existing community is not required to inappropriately fund infrastructure facilities and services required to accommodate the impact of the development; and
- 5 establishing a cooperative relationship between the Joint Venture, the State Government and Blacktown and Penrith Councils.

Table 1: Summary of amendments to the SDA

SDA CLAUSE NO AND TITLE	BASIS AND SCOPE OF VARIATION
Clause 1.15 - Indexation	Minor procedural variation. Expanded to apply to Clause 11 works and payments.
Clauses 1.17 and 1.18 - Indexation (for Clause 16 Works and Payments)	Minor procedural variation. Replaced with existing Clause 1.15 indexation formula as certain indices in Clause 1.18 indexation formula discontinued.
Clause 11.21 – Monetary contributions to Regional Park improvements	Planning Circular variation. Reduction in payments or contributions after the date of the Planning Circular in accordance with State policy.
Clause 29 (new) – Indexation of Regional Park payments	Negotiated variation. 4 year suspension of indexation on payments.
Clause 15 – Decontamination Works	Variation in accordance with SDA. Reflects completion of certain works and obligations.
Clauses 16.4 – 16.8 Balance Roadworks	Variation in accordance with SDA Document "Balance Roadworks" obligations and application of relevant works-in-kind offsets in accordance with Planning Circular.
Clause 16.8 (b) – Penrith Bus Priority	Planning Circular variation. Deletion of obligation.
Clause 16.18 (c) (new) – Primacy of SDA over RMS WAD	Negotiated variation. Provision to maintain integrity of existing planning framework.
Clauses 16.9 – 16.10 St Marys/St Druitt Bus Priority Works	Planning Circular variation. Deletion of obligation.
Clause 16.18 (c) – Second Public Transport Contribution	Planning Circular variation. Reduction in payments or contributions after the date of the Planning Circular in accordance with State policy.
Clause 16.18 (e) (ii) and (iii) – External Cycleways	Planning Circular variation. Reduction in payments or contributions after the date of the Planning Circular in accordance with State policy.
Clause 17 – Affordable Housing	Planning Circular / negotiated variation. Government has agreed that works in kind offset credits will be used to reduce the Affordable Housing obligation. Provision of certainty added regarding number of lots and timing of delivery.
Clauses 17.18 to 17.22 and Annexure M – Mortgage	Negotiated variation. Deletion of Mortgage on basis of performance and Guarantee.
Clause 22A.5 – Future changes in contributions policy	Negotiated variation Provision for further renegotiation if Government extends revised contributions offset / discount policy.
Clauses 23, 24 and 25 - Guarantee	Negotiated variation. Guarantee amounts in Clauses 23.12, 24.12 and 25.12 to be reset to reflect delivery to date, revised obligations and fact that obligations are incurred progressively.