

# Explanatory Note

## Lowes Creek and Maryland Parts Precinct

### Planning Agreement

#### Introduction

The Lowes Creek and Maryland Parts Precinct is proposed to be released under the Government's Precinct Acceleration Protocol (**PAP**). The PAP has been developed by Government to allow the early release of precincts of the Growth Centres for development. A key condition of the PAP is that the early release of these precincts is to be at no cost to Government.

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the "**Regulation**"). The Lowes Creek and Maryland Parts Precinct Planning Agreement is a contractual arrangement between the Minister for Planning (ABN 38 755 709 681) (the "**Minister**") representing the NSW Government; Macarthur Developments Pty Ltd (ACN 162 581 900); Arnold Daniel Vitocco; Cameron Brae Pty Ltd (ACN 000 637 525); D.Vitocco Constructions Pty Ltd (ACN 001 681 465); Irene Vitocco; Maryland Homestead Pty Ltd (ACN 160 523 535) and Nonorrah Farm Pty Ltd (ACN 160 533 353) (the "**Developer**").

The Lowes Creek and Maryland Parts Precinct Planning Agreement is authorised under Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the "**Act**"). The Lowes Creek and Maryland Parts 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**") to rezone the land in the Lowes Creek and Maryland Part Precinct (the "**Precinct**"), and in particular that the Precinct's early release for development will be at no cost to Government.

The effect of any proposed amendment to the SEPP would be to rezone the Land for urban purposes.

In order to secure the accelerated release of the Lowes Creek and Maryland Part Precinct, the Developer has offered to enter into the Planning Agreement to provide contributions to fully fund the Precinct Planning process (and the Minister's costs of preparing the Planning Agreement) to ensure that if the early release of the precinct occurs, it will occur at no cost to Government.

The Precinct Planning Process will be undertaken by the Department of Planning with due regard to the Probity principles of impartiality, accountability, transparency and obtaining value for money.

The Planning Agreement provides that the Developer will fund the planning process for the Precinct (at an estimated cost of up to \$2,500,000) (**Precinct Planning Contribution**) and will prepare a Services Infrastructure Strategy and Services Infrastructure Implementation Plan to plan for servicing of the Precinct to support its orderly development.

The Developer seeks accelerated release of the Precinct, at its own cost, as the Developer is committed to the development and growth of the precinct.

Once the Precinct Planning process is completed, an amendment to the SEPP to rezone the Land for urban purposes will be considered by the Minister. The Developer proposes to offer to enter into a further planning agreement to deliver essential infrastructure to support the Precinct, including regional transport infrastructure and services infrastructure, in connection with the proposed future rezoning of the Precinct.

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

If the SEPP amendment is made to rezone the Lowes Creek and Maryland Parts Precinct for urban purposes the Developer will be entitled to "offset amounts" (**SIC Offset Amounts**) for a portion of its Precinct Planning Contribution under the Planning Agreement (as determined by the Minister), which could be applied towards its future Special Infrastructure Contribution obligations. Such entitlement will be the actual cost of the Precinct Planning process and will not exceed \$2,500,000.

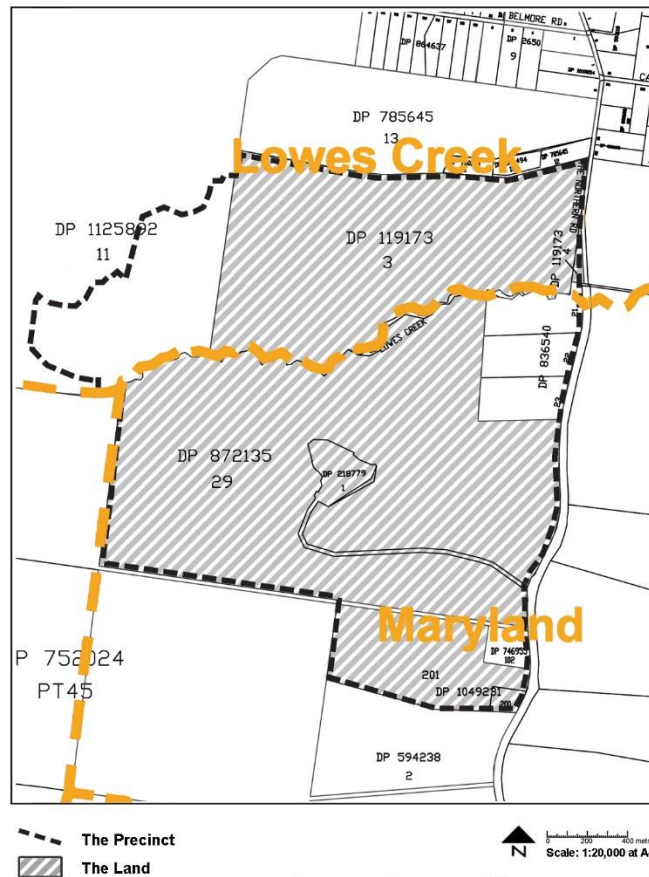
All of the SIC Offset Amounts are subject to indexation.

## **Description of the Subject Land**

The Planning Agreement applies to:

- Lot 3 DP 119173;
- Lot 4 DP 119173;
- Lot 1 DP 218779;
- Lot 29 DP 872135;
- Lot 200 DP 1049231;
- Lot 201 DP 1049231.

and shown hatched in grey on the Subject Land Map below:



If any SEPP Amendment is made to rezone the Land for urban purposes, the Developer intends to make development applications under the Act to develop the Land consistent with the gazetted Lowes Creek and Maryland Parts Precinct (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.

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 Agreement

### The Planning Purpose of the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following planning purpose:

- The provision of (or the recoupment of the cost of providing) public amenities or public services.

The Planning Agreement provides for the detailed planning of the precinct and planning for the provision of the essential infrastructure that will be required to meet the demands generated by the Development and other development in the precinct.

The Planning Agreement will:

- facilitate the release of land for residential, employment and other urban development in the South West Growth centres of the Sydney Region;
- provide for comprehensive planning for the precinct (which will be consistent with the Growth Centre aims); and
- provide comprehensive planning and strategies for the orderly and economic provision of infrastructure that will be required in the precinct.

The Minister and Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement 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 Agreement Promotes the Public Interest and the Objects of the Environmental Planning and Assessment Act 1979**

The Planning Agreement 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 infrastructure required for the new precinct;
- 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;
- Section 5(a)(iii) "*the protection, provision and co-ordination of communication and utility services*" by identifying the land needed for State and local level infrastructure delivery and developing a detailed strategy for the coordinated provision of such services; and
- Section 5(a)(iv) "*the provision of land for public purposes*" by undertaking detailed studies and consultation with relevant authorities to ensure that the land needed for that infrastructure can be made available within the precinct.

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to provide the contributions 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 NSW Department of Planning and Environment;

- Funding studies to identify the services and infrastructure that will be necessary to service the whole Precinct, as well as plans and strategies for the staged provision of those services and infrastructure.

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 will ultimately use the infrastructure and services to which these purposes relate.