

**Explanatory Note**  
**Minister for Planning**  
**and**  
**Fitzpatrick Investments Pty Ltd**  
**Draft Planning Agreement**  
**Fitzpatrick Industrial Estate (Part)**

**Introduction**

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the Environmental Planning and Assessment Act 1979 (the **Act**).

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**).

Words appearing with initial capital letters in this note have the meanings given to them in this note or (if not defined in this note) in the Planning Agreement.

**Parties to the Planning Agreement**

The parties to the Planning Agreement are Fitzpatrick Investments Pty Ltd (the **Developer**) and the Minister for Planning (the **Minister**).

**Description of the Subject Land**

The Planning Agreement applies to Part Lot 2 in Deposited Plan 1215268 as shown in the plan at Annexure A to the Planning Agreement (the **Subject Land**).

The Subject Land is located at Lenore Drive, Erskine Park and is part of land known as the 'Fitzpatrick Industrial Estate'.

**Description of the Proposed Development**

The Developer is seeking to develop the Subject Land for the purposes of a warehouse and logistics estate, including as contemplated by:

- (a) Development Application DA18/0294 - for a six (6) lot subdivision, including two boundary adjustments, construction and dedication of Grady Crescent;
- (b) Development Application DA18/0153 - for the erection of two industrial warehouse buildings and associated hardstand, car parking and landscaping;
- (c) Development Application DA17/0154 - for bulk earthworks and trunk stormwater infrastructure;
- (d) Development Application DA15/0843 - for, among other things, hardstand areas, industrial building, office and a two (2) lot subdivision; and
- (e) future Development Applications.

**(Proposed Development).**

## Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement requires the Developer to make Development Contributions in connection with the Proposed Development based on the contribution rate of \$189,716 per hectare of Net Developable Area of the Subject Land (subject to indexation in accordance with the Planning Agreement) for the purposes of the provision of regional transport infrastructure and services as referred to in clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP)*.

The Development Contributions comprise:

- the provision of a Land Contribution, which involves, among other things, the dedication of land referred to in the Planning Agreement as the 'Road Work Land';
- the irrevocable surrender of the Developer's Existing Credits; and
- the payment of monetary contributions.

Before the occurrence of a Trigger Event, the Developer must either:

- pay a monetary contribution in the amount of the Contribution Amount (which is calculated by reference to the contribution rate and the Net Developable Area comprised in each relevant Land Parcel); or
- demonstrate to the Minister that the value of the Development Contributions which the Developer has made under the Planning Agreement, and which are recognised by the Minister as Offset Credits, equals or exceeds the value of the Contribution Amount. In that event, the Developer must obtain an updated Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased by the value of the Contribution Amount.

A Trigger Event occurs each time:

- (a) a Subdivision Certificate is issued;
- (b) a Construction Certificate is issued; or
- (c) if any part of the Proposed Development may be carried out without the need for a Subdivision Certificate or a Construction Certificate, then on the earlier of the following:
  - (i) commencement of that part of the Proposed Development;
  - (ii) the issue of a Complying Development Certificate in respect of that part of the Development.

The Developer is required to provide a Bank Guarantee in the amount of \$888,921.22 on signing of the Planning Agreement, and to register the Planning Agreement on the title to the Subject Land in accordance with section 93H of the Act.

The Planning Agreement contains a mechanism which allows the Minister to grant the Developer an extension of time to pay a monetary contribution in limited circumstances if the due date for delivery of the Land Contribution has not passed and the Land Contribution has not been made, provided that the Developer provides a further Bank Guarantee for 110% of the full face value of the deferred monetary contribution (clause 2.4 of Schedule 4). The Developer is required to pay interest on the deferred monetary contribution until it is paid.

The Planning Agreement contains a mechanism which allows the Minister to recognise the surrender by the Developer of Eligible Offset Credits generated under another WSEA VPA as discharging the Developer's obligation to pay part or all of a monetary contribution under the Planning Agreement.

The Planning Agreement also contains a mechanism allowing the Developer to make a request to deliver Road Works (which comprise part of the Western North South Link Road) in specified circumstances, and if the Minister accepts the Developer's request, for the delivery of those Road Works to constitute a Works In Kind Contribution.

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) within the meaning of clause 29 of the WSEA SEPP.

No relevant capital works program by the Minister is associated with this agreement.

### **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 public purpose:

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

The Minister and the 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 purpose set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of regional transport infrastructure and services in the Western Sydney Employment Area.

#### **How the Planning Agreement promotes the public interest**

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network), having regard to needs that arise from the Proposed Development on the Subject Land.

#### **How the Planning Agreement promotes the objects of the Act**

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion and co-ordination of the orderly and economic use and development of land.

The Planning Agreement promotes this object of the Act by requiring the Developer to make a contribution towards the provision of regional transport infrastructure and services in the Western Sydney Employment Area.

The Developer's offer to contribute towards the provision of regional transport infrastructure and services will have a positive public impact as funds from the Developer will be available towards the provision of regional transport infrastructure and services in the Western Sydney Employment Area.

#### **Requirements relating to Construction, Occupation and Subdivision Certificates**

Each of the requirements to provide a monetary contribution and/or to obtain an updated Offset Credits Schedule from the Minister is:

- (a) where the Trigger Event relates to a Construction Certificate - a restriction on the issue of a Construction Certificate within the meaning of section 109F of the Planning Act; and
- (b) where the Trigger Event relates to a Subdivision Certificate - a restriction on the issue of a Subdivision Certificate within the meaning of section 109J(c1) of the Planning Act.

The Planning Agreement does not specify requirements that must be complied with prior to the issue of an Occupation Certificate.

## **Interpretation of Planning Agreement**

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