

**Explanatory Note**  
**Minister for Planning**  
**and**  
**Fitzpatrick Investments Pty Ltd**  
**Draft Planning Agreement**  
**(Auto Nexus Site)**

**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 known as the 'Auto Nexus Site'.

**Description of the Proposed Development**

The Developer is seeking to develop the Subject Land for a freight transport facility and ancillary uses, generally in accordance with Development Application DA17/0280 which has been lodged with the Consent Authority (**Proposed Development**).

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

The Planning Agreement provides that the Developer will make a monetary contribution of \$189,716 per hectare of Net Developable Area of the Subject Land (subject to indexation in accordance with the Planning Agreement) in connection with the Proposed Development 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 monetary contribution will be provided by the Developer as a lump sum:

- (i) before any Construction Certificate or Complying Development Certificate is issued for any part of the Proposed Development; or
- (ii) if any part of the Proposed Development is to be carried out without the need for a Construction Certificate or a Complying Development Certificate, then before the earlier of the following:

- A. commencement of that part of the Proposed Development; and
- B. 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 \$1,737,191.47 on signing of the Planning Agreement by the Developer, 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 the monetary contribution (for up to 12 months) if the Developer provides a further Bank Guarantee for 10% of the full face value of the deferred monetary contribution (clause 2.3 of Schedule 4). The Developer is required to pay interest on the deferred monetary contribution until it is paid.

The Planning Agreement also 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 the monetary contribution under the Planning Agreement.

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), to satisfy 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**

The Planning Agreement requires payment of the monetary contribution prior to the issue of a Construction Certificate and therefore contains a restriction on the issue a Construction Certificate within the meaning of section 109F of the Act.

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

**Interpretation of Planning Agreement**

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