



25 March 2019

Our Reference: SYD12/00072/26)
DP&E Reference: SSD 7701

The Acting Deputy Secretary
Planning and Design
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Attention: **David Gainsford**

Dear Mr Whitworth,

MOOREBANK INERMODAL PRECINCT WEST STAGE 2- MOOREBANK AVENUE – EXECUTION OF VOLUNTARY PLANNING AGREEMENT.

Reference is made to the Department of Planning and Environment's (the Department) ongoing assessment of the Moorebank Intermodal Precinct West Stage 2 (MPW Stage 2) development application and Roads and Maritime's Services (Roads and Maritime) advice on the application.

Please find enclosed for your information a Voluntary Planning Agreement executed by the developer (SIMTA) and Roads and Maritime. The Planning Agreement requires the Developer to make Development Contributions in connection with the proposed MPW Stage 2 development and the Moorebank Intermodal Precinct West Development as a whole for the purpose of providing contributions towards relevant State public infrastructure, namely State and regional roads, within the meaning of clause 7.36 of the *Liverpool Local Environmental Plan 2008* (Liverpool LEP). The Development Contributions comprise:

- a) Monetary Contribution of \$48 million to be paid to RMS for regional road upgrades; and
- b) the carrying out and dedication as public road of the proposed Moorebank Avenue Realignment.

In circumstances where the Developer does not obtain all Approvals required for the proposed Moorebank Avenue Realignment by 31 December 2021 (or such other date agreed by Roads and Maritime in its absolute discretion), the Developer is required to instead carry out the Moorebank Avenue South Upgrade.

In assessing the appropriate Development Contributions to be provided under the Planning Agreement, Roads and Maritime undertook modelling of the anticipated regional road infrastructure impacts of the Moorebank Intermodal Precinct West Development as a whole, based on the size and form of the development previously approved by the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.

Roads and Maritime hold the view that the monetary regional contribution of \$48 million and the provision of the proposed Moorebank Avenue Realignment (or Moorebank Avenue South Upgrade) will assist to satisfy road impacts of development traffic from MPW Stage 2 by contributing to the provision

of increased network capacity and efficient traffic movements. The requirement in the Planning Agreement that the Developer also procure the dedication of the proposed Moorebank Avenue Realignment (or Moorebank Avenue South Upgrade) as public road under the *Roads Act 1991* (NSW) will support Roads and Maritime's future management and control of traffic generated by the Moorebank Intermodal Precinct West Development.

It is anticipated that the Development Contributions provided under the Planning Agreement will also cover future stages of the Moorebank Intermodal Precinct West Development, up to the capacity currently approved by the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval).

Notwithstanding this, Roads and Maritime will still be able to seek additional development contributions pursuant to clause 7.36 of the Liverpool LEP if the Developer modifies the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval in the future and obtains approval to increase the scale of the Moorebank Intermodal Precinct West Development. This is because the definition of "Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval" in the Planning Agreement is defined by reference to the development "in the form and scale approved as at the date of this deed."

The security provisions under the Planning Agreement require:

- a) the agreement to be registered on the title of existing Moorebank Avenue (Lot 2 in DP 1197707 owned by the Commonwealth of Australia), within 10 Business Days of the Planning Agreement becoming operative; and
- b) the Developer to provide a Bank Guarantee in the amount of \$15 million, within 5 Business Days of the Planning Agreement becoming operative, which will then be substituted for the Approved Security to be provided by the Developer to RMS under a future WAD for any relevant approved road works.

The Planning Agreement will become operative upon its execution by both parties (which has occurred) and the grant of Development Consent to the MPW Stage 2 application. If Development Consent is not granted by the Independent Planning Commission, the Planning Agreement will not come into force. This is because clause 7.36 of the Liverpool LEP links provision of the relevant contributions to development consent being granted on the relevant land. ie. to ensure contributions have been secured before the carrying out of approved development on land in the "IMT Area".

The draft Planning Agreement was publicly exhibited from Thursday 1 November 2018 until Thursday 29 November 2018, and a total of 11 public submissions were received. Roads and Maritime carefully considered the matters raised during the public exhibition and the submissions report has been provided separately for the Department's assistance. It was considered no amendments were required to the draft Planning Agreement in response to the public submissions received.

As the Planning Agreement is required to be registered on the title of Lot 2 in Deposited Plan 1197707 and also requires road works to be undertaken on land forming part of the Moorebank Intermodal Precinct West Development, Roads and Maritime requested that the Commonwealth and relevant Moorebank Intermodal Company Limited (MIC) and Qube related entities provide their land owner's consent endorsing the draft Planning Agreement. The Department of Infrastructure, Regional Development and Cities administers the Commonwealth's interest in the Moorebank Intermodal West Precinct land the subject of this Planning Agreement.

On 15 March 2019 Roads and Maritime received written agreement to the Planning Agreement from the Commonwealth. The Commonwealth has agreed to the registration of the Planning Agreement on Lot 2 in Deposited Plan 1197707 and also the carrying out of the Moorebank Avenue Realignment/Moorebank Avenue South Upgrade works and public land dedication on Commonwealth land, subject to the following terms:

1. Amendment of the draft Planning Agreement so that the Moorebank Avenue Realignment will not pass through Lot 3002 in Deposited Plan 1125930 (land owned by the Department of Defence);
2. Amendment to the wording of items 3.3 and 4.3 in Schedule 3 of the draft Planning Agreement so that compliance with the Works Access Deed is a matter for the Developer and not the Commonwealth; and
3. Acknowledgement in the draft Planning Agreement that the Developer will need to obtain relevant Commonwealth approvals prior to the dedication of any Commonwealth owned land as permanent public road.

Roads and Maritime has now reached agreement with the Commonwealth regarding these matters.


Roads and Maritime has worked closely with the legal firm Corrs Chambers Westgarth in relation to the drafting of the Planning Agreement. Following careful consideration of provisions of the *Environmental Planning and Assessment Act 1979* and the guidelines provided in the Department's *Draft Practice Note on Planning Agreements* (November 2016), it is considered the incorporation of the Commonwealth's requested amendments to the Planning Agreement post public notification of the draft Planning Agreement do not necessitate public re-notification of the revised draft Planning Agreement.

The Department, the Commonwealth, Qube, MIC and TfNSW have been included in the negotiation process. The Department also reviewed the draft Planning Agreement to ensure its compliance with the Environmental Planning and Assessment Act 1979 and provided relevant commentary and assistance throughout the drafting process.

It is Roads and Maritime's view that the proposed Planning Agreement provides satisfactory arrangements for the Developer to contribute to the provision of State and regional roads infrastructure to satisfy the needs that arise from the proposed MPW Stage 2 development on the land in the "IMT Area" for the purpose of clause 7.36 of the Liverpool LEP.

Thank you for your ongoing assistance with this application and should you have any inquiries in relation to this matter please do not hesitate to call Rachel Cumming on [REDACTED] or via development.sydney@rms.nsw.gov.au.

Yours sincerely,



Colin Langford
Director
North West Precinct

Encl: Planning Agreement