

30 November 2018

Our Ref: 11016 Baudinet Group advice

Penrith Lakes Business Park Pty Ltd
Attn: The Director
Suite 5, level 5
66 Hunter St
Sydney NSW 2000

Dear Sir,

PENRITH LAKES EMPLOYMENT ZONED LAND INFRASTRUCTURE CONTRIBUTIONS REQUIREMENTS

I refer to our recent discussions on this matter.

You have requested our advice on whether the proposed subdivision development of the Penrith Lakes Scheme Employment zoned land would be subject to State and local infrastructure contributions.

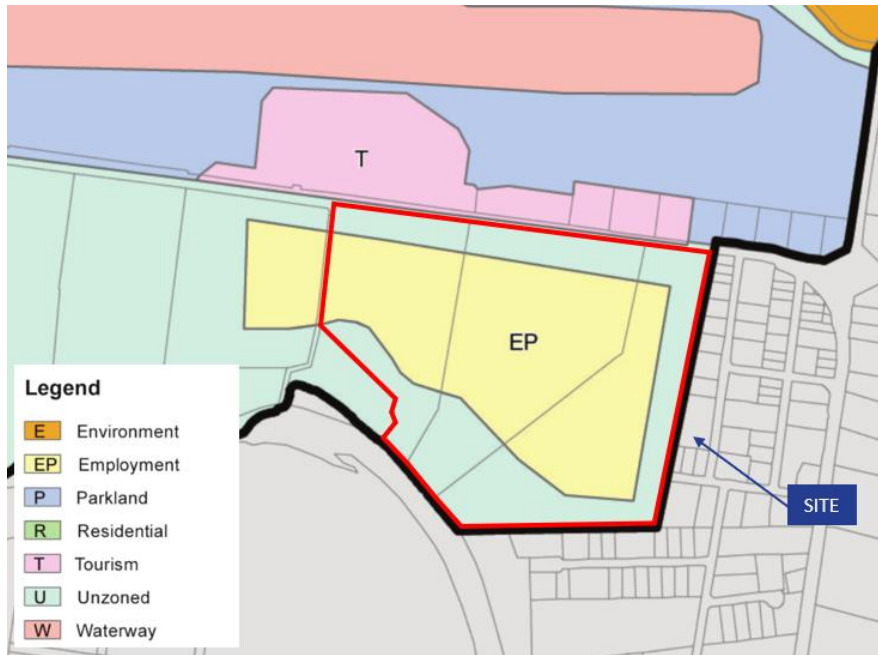
Background

Penrith Lakes Business Park Pty Ltd (PLBP) is intending to purchase approximately 49 hectares of land from the Penrith Lakes Development Corporation (PLDC).

The subject land's property description is Lot 308, Lot 309 & Lot 310 in DP 752021, 14-28 Old Castlereagh Road, Castlereagh.

The land fronts Old Castlereagh Road to the north, PLDC land and the Nepean River to the west, and existing industrial development to the east and south.

The site is part unzoned and part zoned 'Employment' under *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* (PLS SEPP). Land use zones applying to the site are shown in the map below.



Source: State Environmental Planning Policy (Penrith Lakes Scheme) 1989 - Land Use Zone Map Tile_001

Should the purchase proceed, PLBP intends to subdivide the land to enable its future development for employment-related land uses. A preliminary lot layout for the proposed subdivision is shown in the image below.



Source: GCA Engineering Solutions, October 2018



Requirements for developer to make contributions toward State infrastructure or to deliver State infrastructure works

In NSW, requirements for developers to make monetary or in-kind contributions toward State public infrastructure are generally enabled through either one of the following mechanisms:

- a. The consent authority requiring a Special Infrastructure Contribution (SIC) to be made where the development is within a Special Contributions Area and that particular development is subject to a SIC determination made by the Minister for Planning under s7.23 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- b. An environmental planning instrument applying to the site specifies that, before development consent is granted, the Secretary of the Department of Planning and Environment (DPE) is to certify that 'satisfactory arrangements' have been made for contributions toward State public infrastructure. It has been the general practice that certification of satisfactory arrangements is achieved by the applicant offering to enter into a planning agreement under s7.4 of the EP&A Act to provide the contributions.

In respect to a., the subject land is not within a Special Contributions Area nor the subject of a determination under section 7.23 of the EP&A Act. Therefore, at the present time no SIC can be imposed on any development on the land.

In respect to b., clause 34(2) of the PLS SEPP states as follows:

Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the commencement of this Part, unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.

The land is in an 'urban release area' as defined in clause 5 of the PLS SEPP.

However, there was no minimum lot size requirement applying to the land immediately prior to the commencement of this part (Part 7) of the PLS SEPP. Part 7 commenced on 20 January 2017. Immediately before that date neither the PLS SEPP or the Penrith Development Control Plan contained any provisions requiring any lot to be created on the land to have a minimum area.

We therefore consider that clause 34 would not apply to any development application involving the subject land, and thus there would be no need for the developer to obtain the certification of satisfactory arrangements from the DPE Secretary.

In summary, based on the planning controls currently applying to the subject site, there is no power for the consent authority to require the developer of Employment zoned land in the area covered by the PLS SEPP to make any monetary contribution toward State infrastructure. This view relies on our interpretation of clause 34 of the PLS SEPP being correct.

The above observation does not prevent the developer voluntarily negotiating the provision of contributions or public benefits through a planning agreement or agreements with either the Minister or the local council.

Should you require clarification in relation to this advice, please do not hesitate to contact me on (02) 9249 4100.

Yours faithfully

GLN PLANNING PTY LTD



**GREG NEW
DIRECTOR**