

# EXPLANATORY NOTE

## Riverstone Scheduled lands

### Development Plan (Precinct A (Stages 1 - 3)) 2016

**IMPORTANT NOTE:**

*This Explanatory Note explains the content of the Development Plan for Precinct A (Stages 1-3) of the Riverstone Scheduled Lands*

***Landowners must read and understand the Development Plan in full.***

*This Explanatory Note is for assistance only, and does not in any way substitute the Development Plan itself. If there is any inconsistency between this Explanatory Note and the Development Plan, the terms of the Development Plan override this Explanatory Note. This Explanatory Note is not comprehensive, and does not cover every aspect of the Development Plan. Landowners must read and understand the Development Plan itself in full.*

*Landowners and interested persons must seek their own personal legal, financial and other advice about the Development Plan. They must rely entirely on their own enquiries about the Development Plan including the likely outcomes and effects.*

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### Development Plan (Precinct A (Stages 1 - 3)) 2016

#### Need for the development plan

UrbanGrowth NSW must adopt a development plan before the NSW Minister for Planning can make a subdivision order to enable UrbanGrowth NSW to carry out the subdivision.

The development plan is the legal mechanism that sets out how UrbanGrowth NSW will facilitate funding and construction of the subdivision on behalf of the landowners. The development plan documents essential aspects of the process, such as the roles of all parties, the physical and administrative aspects of the proposed subdivision and associated costs.

UrbanGrowth NSW is experienced in land and housing development and its staff are fully qualified and resourced to facilitate the subdivision works and implement the development plan on behalf of landowners. Without this expertise landowners may not be able to facilitate subdivision of the land.

#### Components of the development plan

Components of the development plan are known as parts and schedules. Within each part there are sections and clauses that are numbered. The parts describe what will be done and how it will be done, while the schedules provide specific information, such as the timetable and costs.

#### Preliminary (Part 1 of the development plan)

The preliminary is for administrative and descriptive purposes, giving the name of the plan and indicating how it is to be interpreted. In the preliminary, UrbanGrowth NSW is identified as the relevant authority and is, therefore, the authority nominated to carry out the subdivision, subdivision works and the development plan.

The development plan will come into force when the Board of UrbanGrowth NSW adopts it. However, UrbanGrowth NSW will not implement the development plan until the NSW Minister for Planning makes the subdivision order.

#### Defined terms and notes

Terms shown in bold in the development plan have a specific meaning, which is explained in the dictionary at the end of the development plan.

Notes in the development plan are there for clarification or explanation and do not affect the implementation of the plan.

Before UrbanGrowth can adopt a development plan it must be agreed to by at least 60% of the landowners and by the landowners of at least 60% of the subdivision land.

The process and components of the development plan are specified in the paper subdivisions legislation.

Figure 1 at the end of this explanatory note shows the development plan process

UrbanGrowth NSW can amend the clauses and schedules in the adopted development plan, subject to agreement of landowners and the paper subdivisions legislation

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## Proposed Plan of Subdivision (Part 2)

The paper subdivisions legislation requires a plan of subdivision to be included in the development plan.

### Plan of Subdivision (clause 2.1)

The plan of subdivision is a diagram that shows the layout of the proposed subdivision and identifies where the roads, drainage and open space will be, in addition to the boundaries of the new residential lots. The plan of subdivision shows the staging of the three stages of the Precinct A subdivision.

The development plan includes a number of other plans that provide detail about the location of services and where demolition and remediation works are required.

### Roads (clause 2.2)

Existing roads will be reconstructed and new roads will be created on land excised from the landholdings. The land to be excised from landholdings is described as **road land** in the development plan. UrbanGrowth NSW will acquire the **road land** under the terms specified in a voluntary contributions agreement (VCA), or if there is no VCA under the acquisition rules specified in the development plan and discussed later in this explanatory note.

UrbanGrowth NSW will acquire road parcels at market value (see explanation below) or at a value agreed to in a VCA. The landowner immediately before acquisition of a road parcel by UrbanGrowth NSW will continue to be responsible for individual costs of remediation and demolition on the land acquired as if they still owned the land.

### Market value

Market value is defined in the Just Terms Act and means 'the amount that would have been paid for the land if it had been sold by a willing but not anxious seller to a willing but not anxious buyer'. Any potential increase or decrease in the value of land, which would result from the works for which land is being acquired, is disregarded.

The NSW Valuer General has determined the market value of land which is set out in the schedules.

### Compensation

Landowners who have a part of a lot or lots acquired for road (road land) are not entitled to monetary compensation. Compensation for the road land acquired by UrbanGrowth NSW will be in the form of the carrying out of the subdivision works, and the performance of functions by UrbanGrowth NSW to achieve the planning purpose.

Acquisition and compensation are covered in Part 7 of the development plan and discussed in further detail below. Where a whole lot is acquired for road (road parcel) monetary compensation will be paid.

The layout shown in the proposed plan of subdivision is preliminary and may change as landowner consultations, further site investigation, detailed design and approval stages are undertaken.

Monetary compensation will be paid for road parcels where a whole lot (plus part of any adjoining lot) is acquired. Compensation for part of a lot acquired for road land will be the services and works done to construct the new subdivision.

Road parcels are coloured purple on the plan of subdivision at Schedule 3 of the development plan. All other road land is coloured grey.

Landowners will be able to comment on the plan of subdivision and choose which lots, if any, they will keep.

The full name of the Just Terms Act is the Land Acquisition (Just Terms Compensation) Act 1991 and it is the legal framework for considering land acquisition by public authorities in NSW

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## Subdivision Works (Part 3 of the development plan)

### Subdivision works (clause 3.1)

The types of works that will be required to complete the subdivision are identified in the development plan, and include site works such as clearing, levelling, demolition and remediation. These need to be undertaken before infrastructure can be constructed on the land.

The site needs to be prepared for the subdivision infrastructure.

Infrastructure includes roads, kerb and gutters, light poles, stormwater drains, water and sewer pipes and sewer drainage, services and utilities (such as electricity, gas and telecommunications). Most existing structures and vegetation will need to be removed for the proposed infrastructure. The site will need to be graded and levelled (for instance so that roads can be laid at appropriate gradients) and excavations required accommodating some of the infrastructure (such as sewer pipes).

Most subdivision costs will be shared between all landowners. However, the cost of remediation and demolition are individual costs to be borne by the landowner of the landholding where such work is required.

### Access to subdivision land for the purpose of the subdivision works (clause 3.2)

UrbanGrowth NSW and any person authorised by it can enter land to carry out the subdivision works once a subdivision order is made. This will include during the investigation and design phase as well as during construction, and sale of traded land.

UrbanGrowth NSW can also take vacant possession of any land if it needs to, where this has been established in a VCA or where the land is acquired compulsorily. Vacant possession means the landowner will have to leave the land on a specified date and will have no further access to it.

### Funding of subdivision works and development plan (Part 4)

The landowners will fund the full cost of the subdivision. UrbanGrowth NSW will only maintain its role through contributions from each landowner.

### Landowners Contribution (clause 4.1)

The total of the shared costs (subdivision costs - exclusive of remediation and demolition costs – plus development plan costs) is estimated in the development plan. The shared costs are apportioned between all landowners. Each landowner will pay a contribution based on the proportion of their land area (A) within the net subdivision area (NSA). The NSA is the total area of all land outlined red on the plan of subdivision.

The NSA is the area of land available for residential development. The NSA is exclusive of land zoned for road, trunk drainage and open space, and road parcels.

Individual costs include the actual cost of remediation and demolition on a landholding and will be paid by the landowner of that landholding.

The costs of subdivision works and development plan are shown in Tables to Schedules 4, 5 and 6 of the development plan – these are estimates and may change, as the project is refined through approval and construction. All shared subdivision cost will be fixed at the amount shown in the development plan voted on.

UrbanGrowth NSW may need to take vacant possession in for instance in circumstances where lack of access is likely to delay the construction of the subdivision

Individual costs will be estimated and shown in the VCA or contributions notice, in addition to shared costs, as the total landowner contribution. Individual costs may change once the work is undertaken and the actual cost is known

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## **Liability to pay contribution (clause 4.2)**

Landowners will make their landowner contribution under a VCA or (if no VCA is entered into) under a contributions notice issued by UrbanGrowth NSW. Landowners will have to pay their contribution by the date specified in the VCA or contributions notice, and by the method specified (monetary or land trade).

If a landowner does not enter into a VCA within 60 days of the subdivision order, or pay the monetary contribution, UrbanGrowth NSW may compulsorily acquire the landowner's land. UrbanGrowth NSW can use discretion and there may be opportunity for the landowner to still enter into a VCA. A monetary contribution required by a contribution notice will become a debt that is recoverable through the courts.

## **Landowner funding options (clause 4.3)**

Landowners can choose from two options to fund the subdivision, monetary contribution or land trade (see descriptions below). Landowners can choose the option that best suits them and may be able to use a combination of monetary contribution and land trade.

The landowner's chosen option and the amount of the contributions (that will include shared and individual costs) will be documented in a VCA. The amount of contribution will be specified in dollars and as the value of land where land is to be traded.

If a landowner does not enter into a VCA, the amount of contribution and the method of payment will be specified in a contributions notice.

## **Voluntary contributions agreement (clause 4.4)**

While the particulars of each VCA will be determined in consultation with landowners, the terms of the VCA will be identical and consistent for all landowners. The VCA will document:

- The landowner's chosen funding option, size of the landholding, land contamination, structures that need to be demolished
- The amount of contribution required to fund the subdivision
- The timing of payments/contributions
- Default mechanisms in the event that a commitment is not satisfied
- Commitment to registration of the VCA on title, to transfer title to land in an agreed land trade, and commitment to sign the relevant subdivision plan administration sheets
- Identification of the future lot(s) to be retained by the landowner if funding through land trading.
- Site access and security arrangements.
- Access arrangements for UrbanGrowth to enter the land or take vacant possession.

Agreements must be in place within 60 days of the subdivision order.

Once the subdivision order is made, as relevant authority, UrbanGrowth NSW will be able to demand payment or acquire land, should a landowner not enter into a VCA, or not pay the cash contribution or meet other obligations agreed to in the VCA

If UrbanGrowth NSW issues a contributions notice in relation to a required contribution, the landholder may agree to transfer part of their landholding to meet the contribution. In these circumstances the NSW Valuer General will determine the value of the land using the provisions of the Just Terms Act

If a landowner does not enter into a voluntary contributions agreement within 60 days of the subdivision order UrbanGrowth NSW can choose to acquire land compulsorily or require the landholder to make a monetary contribution

# EXPLANATORY NOTE

## Procedures in Respect of Monetary Contributions (Part 5)

### 5.1 Monetary contribution

Landowners may choose to make a monetary contribution. The monetary contribution will be paid before the subdivision works begin. As the subdivision works will be undertaken in three stages landowners who want to pay by cash contribution will be notified by way of a contributions notice before the subdivision works are scheduled to begin for the stage their land is within, and will be required to pay their monetary contribution not less than 90 days after the date of service of the notice.

The contribution will be paid in one initial sum and will be the total of a landowner's proportion of shared costs plus estimated individual costs. If a landowner does not pay the monetary contribution within the time specified in the notice or in the VCA UrbanGrowth NSW will either acquire an amount of land or issue a notice to cover the landowner's contribution and any additional administrative costs related to acquisition.

### 5.2 Individual costs

The cost of remediation, demolition of structures (required to construct the subdivision), s94 levies paid to Blacktown City Council and Special Infrastructure Levies paid to the State Government, are defined as individual costs and will be borne individually by the landowner.

The cost of remediation and demolition will be estimated in VCAs. The actual cost will only be known when the work has been undertaken and the landowner will be required to pay that actual cost. The cost of levies is finalised after development consent has been obtained.

If the actual cost exceeds the estimated cost in the landowner's VCA UrbanGrowth NSW will issue a contributions notice for the additional amount, specifying a payment date. If the actual amount is less than that estimated for the landowner's contribution, surplus will be distributed under the rules in the development plan (see below).

## Part 6 Procedures in Respect of Acquisitions, Land Trades and other matters

### 6.1 Compulsory acquisition

UrbanGrowth NSW will sell any land that is compulsorily acquired (except road land or road parcels). If there are net proceeds (profit) from the sale of compulsorily acquired land, the net proceeds will be returned to the landowner after the completion of the development plan.

### 6.2 Land trade

The land trade option was developed to help landowners who may not be able to obtain funds to contribute toward the subdivision. Landowners can transfer ownership of land to UrbanGrowth NSW. Through agreement with the landowner UrbanGrowth NSW will take ownership of land to fund the landowner's contribution and any specific costs.

Landowner's making a monetary contribution will retain ownership of any land they own that is not required for roads

If actual individual costs exceed those estimated and paid UrbanGrowth NSW will issue a notice to the landowner for the additional amount

The value of land traded by agreement will be as agreed to in the VCA or market value as determined by the NSW Valuer General in accordance with the rules established in the development plan

Landowners who choose the land trade option may have to make cash payment for small individual costs that are too difficult to recoup through land trade. It will not be possible for UrbanGrowth NSW to take part of a lot as payment

Landowners will need to produce a certificate of title and sign the administration sheet of the plan of subdivision. UrbanGrowth NSW will sell the land it acquires to meet the landowner's contribution.

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## 6.3 Sale of traded land

UrbanGrowth NSW will sell any land that it acquires through land trade. If there are net proceeds (profit) from the sale of land traded, the net proceeds will be returned to the landowner after the completion of the development plan.

UrbanGrowth NSW will not market or sell any lots that are retained by landowners. This will be the landowners' choice and responsibility.

## 6.4 Road parcels

UrbanGrowth NSW will acquire road parcels at a value agreed to in a VCA or at market value.

## 6.5 Landowner's principal place of residence

If UrbanGrowth NSW compulsorily acquires land that contains a landowner's principal place of residence, UrbanGrowth NSW will acquire the whole of that landowner's landholding. UrbanGrowth NSW will pay compensation equal to the market value of the landholding plus the maximum amount payable in respect of solatium.

## 6.6 Sale of land containing a landowner's principal place of residence

UrbanGrowth NSW will sell any land that it acquires that contains a landowner's principal place of residence. If there are net proceeds (profit) from the sale of the land, the net proceeds will be returned to the landowner after the completion of the development plan.

## 6.7 Ongoing business concern

If UrbanGrowth NSW compulsorily acquires land that contains an ongoing business concern, UrbanGrowth NSW will pay compensation for the relocation or extinguishment of the business equal to the maximum amount payable in respect of solatium .

## Part 7 – Acquisition of Land

### 7.1 Methods of Acquisition

UrbanGrowth NSW can compulsorily acquire land by agreement with the landowner, or through the standard compulsorily acquisition process, to cover shared costs and individual costs. If it is by agreement, the amount of land to be acquired, and its value, will be agreed with landowners and specified in the VCA.

The amount of land compulsorily acquired will be at least the amount necessary to recover all shared and individual costs and additional administrative costs incurred in the acquisition of the land. Given that compulsory acquisition will involve extra processes, the additional costs are likely to be more than for those landowners who trade land by voluntary agreement. UrbanGrowth NSW is still able to acquire land by agreement even if a VCA is not entered into with 60 days from the subdivision order, and this gives landowners another opportunity to enter into an agreement.

Any surplus from the sale of the land traded to UrbanGrowth NSW will be returned to individual landowner in accordance with the distribution of surplus rules in the development plan (clause 8.1)

Solatium is defined in section 60 of the Just Terms Act as compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

If a self-funder defaults on an agreement made in a VCA to pay cash contribution, land will be compulsorily acquired. The self-funder will receive compensation in the form of newly created, serviced lots (as agreed in the VCA default provisions) and distribution of any surplus of net revenue from the sale of any lots that have been traded to or acquired by UrbanGrowth NSW



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## 7.2 Rules regarding Compensation

Monetary compensation is only payable in limited situations. As noted above, this includes where a road parcel or principal place of residence is acquired by UrbanGrowth NSW. The amounts payable in those situations are set out in the Development Plan. For all other land acquired by UrbanGrowth, the compensation is the carrying out of the subdivision works, any remediation and demolition, and the implementation of the development plan scheme.

To assist landowners in the Riverstone Scheduled Lands, the land trade option has been introduced. This allows landowners to fund some or all of their contributions by providing land to UrbanGrowth. If there is any surplus after the sale of the relevant land, that surplus will be distributed to the relevant landowner in accordance with the formula in clause 8.1.

Additional compensation may be paid to landowners who can demonstrate land being acquired is their principal place of residence or business. UrbanGrowth NSW will have absolute discretion in determining whether land meets these criteria.

## Part 8 Rules Regarding Distribution of Surplus

### 8.1 Surplus

#### Savings

Surplus funds may result from any savings made in relation to subdivision works, development plan costs or individual costs. These costs can only be estimated before the work is undertaken, and will only be known when the works are completed. In the event the estimates exceed the actual costs, a surplus may be available for distribution to landowners.

In this case a refund will be paid to self-funders.

UrbanGrowth NSW does not own land in Precinct A (Stages 1-3) and are involved only to facilitate subdivision on behalf of landowners. UrbanGrowth NSW will recover the costs of acting as facilitator but will not take a profit.

#### Net revenue (land trade option or compulsory acquisition only)

UrbanGrowth NSW will sell land that has been traded or compulsorily acquired (other than road land or road parcels). The revenue from these sales will be deposited into the fund and will enable UrbanGrowth NSW to recoup funds that have been outlaid for the subdivision works, development plan costs and individual costs on behalf of landowners that chose the land trade option or have not paid a monetary contribution.

The distribution of net revenue will be based on the individual landowners landholding.

#### Distribution of surplus

UrbanGrowth NSW will only distribute a surplus (if any) from the fund when all commitments in relation to the subdivision have been satisfied and the development plan is completed.

The amount of the surplus will be reduced by any specific costs incurred by UrbanGrowth NSW in relation to a particular landowner and the amount of money (if any) already paid to the landowner under the plan.

Individual costs will be factored into the distribution of surplus – any surplus will be reduced if a landowner's individual costs exceed the estimated (paid) individual costs



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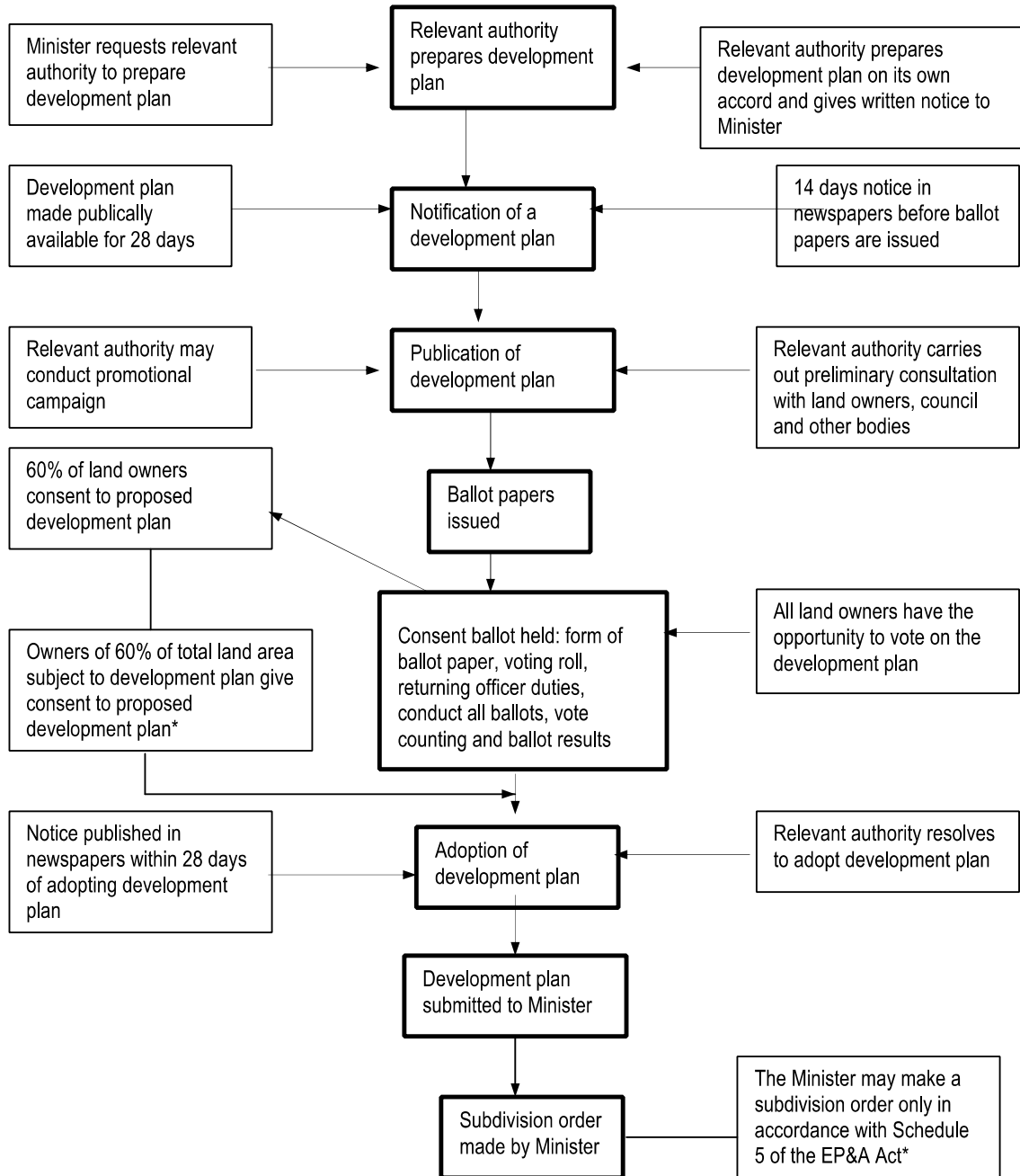


Figure 1: Development Plan Process