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15/14593

Department Generated Correspondence (Y)

DEPARTMENT OF PLANNING AND ENVIRONMENT

Finance and Operations

SUBJECT: CSR HORSLEY PARK PLANNING AGREEMENT - RESPONSE TO REQUEST FOR EARLY SATISFACTORY ARRANGEMENTS CERTIFICATE

PURPOSE

- To request that the Chief Financial and Operating Officer issue a Satisfactory Arrangements Certificate for DA893.1/2013.

RECOMMENDATION

That the Chief Financial and Operating Officer:

- **agrees** that a Satisfactory Arrangements Certificate can be issued for DA893.1/2013 on the basis that CSR Building Products Limited provide a revised irrevocable letter of offer to enter into the signed planning agreement;
- **signs** the attached letter (Tab A) to CSR Building Products Limited informing the developer that a revised irrevocable letter of offer is required to be provided prior to a Satisfactory Arrangements Certificate for DA893.1/2013 being issued;
- **notes** that Fairfield City Council will only be issued with a letter and Satisfactory Arrangements Certificate for DA893.1/2013 when the developer provides the revised irrevocable letter of offer; and
- **signs** the attached letter and Satisfactory Arrangements Certificate for DA893.1/2013 (Tab B and Tab C) to Fairfield City Council, if approved.

CURRENT POSITION

- The Developer Contributions team is currently negotiating a planning agreement with CSR Building Products Limited (the developer) in respect of DA893.1/2013 lodged with Fairfield Council for the staged subdivision into 14 industrial lots and one residue lot. The development application is currently before the Land and Environment Court (LEC) for determination.
- Gadens, acting on behalf of the developer, requested an early Satisfactory Arrangements Certificate be issued for DA893.1/2013 (Tab D) because the draft planning agreement is on notification and is subject to the court proceedings.
- The LEC requires a satisfactory arrangements certificate to resolve the court proceedings for DA893.1/2013. The draft planning agreement is on notification from the 7 October 2015 to 4 November 2015.
- Gadens' understanding was that a satisfactory arrangements certificate for DA893.1/2013 could be issued immediately following the notification of the planning agreement. The Department provided no written confirmation of this to the developer.
- The Department does not typically issue early satisfactory arrangements certificates for development applications in the Western Sydney Employment Area (WSEA).
- The Department's standard policy for issuing a satisfactory arrangements certificate is when the relevant planning agreement has been executed. This policy provides comfort to the Minister and the Department that the developer has satisfactorily made arrangements to provided contributions towards, in the instance of development in WSEA, regional transport infrastructure and services.

Land and Environment Court proceedings

- The LEC handed down an interim judgement on the 30 July 2015. The LEC will not determine the development application until it receives a satisfactory arrangements certificate that satisfies Clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.
- Upon the LEC receiving the required satisfactory arrangements certificate, development consent for DA893.1/2013 will be issued.

Requirements for the issuing of an early satisfactory arrangements certificate for DA893.1/2013

- It is considered appropriate for the developer provide a revised letter of offer stating that CSR Building Products Limited irrevocably offers to enter into the signed planning agreement.
- Once the Department has received the revised letter of offer, it is considered appropriate that a satisfactory arrangements certificate be issued for DA893.1/2013. This is due to the unique circumstances of DA893.1/2013 being subject to LEC proceedings and the draft planning agreement has been approved for notification.

Precedent

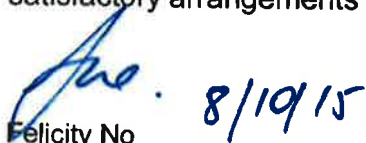
- The Department has previously issued an early satisfactory arrangements certificate for DA11/2921. DA11/2921 was lodged with Maitland Council in October 2012. Investa commenced proceedings in the LEC appealing the deemed refusal.
- In this instance, the draft planning agreement constituted an irrevocable offer and a satisfactory arrangements certificate was issued for DA11/2921 to resolve the Court proceedings (Tab E).

Risk to Government

- The risk to Government in issuing a Satisfactory Arrangements Certificate without an executed planning agreement in place relates to the lack of security or enforcement measures in the interim period prior to the execution of the planning agreement.
- However, this risk is mitigated if the revised irrevocable letter of offer is provided. Once the planning agreement is notified, is executed by the Minister or Minister's delegate and security is provided, the usual enforcement measures apply.
- In this instance, it is therefore considered the risk to Government is minimal.

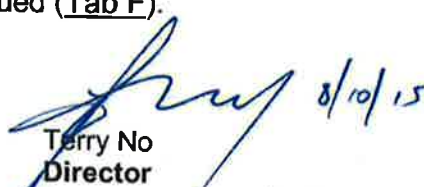
GIPA enquiry

- Gadens separately wrote to the Department on the 1 October 2015 enquiring about the lodgement of a GIPA request for information relating to the Department's policy of when satisfactory arrangements certificate are issued (Tab F).


Felicity No
Team Leader


9-10-15

Simon Officer
Chief Financial and Operating Officer


Terry No
Director
Developer Contributions

Approved/Not Approved

Contact Officer: Yasmin Campbell
Developer Contributions (DP&E)
Phone: 02 9228 6226



CSR Building Products Limited
C/O:- CSR Limited

15/14593



Dear 

REQUEST FOR SATISFACTORY ARRANGEMENTS CERTIFICATE – DA893.1/2013

I refer to Gadens' correspondence, dated 1 October 2015, requesting a Satisfactory Arrangements Certificate be issued for DA893.1/2013 upon the notification of the Draft CSR Horsley Park Planning Agreement.

I note that DA893.1/2013 is currently before the Land and Environment Court and an interim judgment has been handed down by the Court. The Court requires a satisfactory arrangements certificate to resolve the court proceedings for DA893.1/2013.

The Department considers that additional information is required in order for a satisfactory arrangements certificate to be issued. This includes a revised letter of offer stating that CSR Building Products Limited irrevocably offers to enter into the signed planning agreement. The revised letter of offer will need to be signed by Power of Attorney who signed the draft planning agreement.

Once the Department has received the revised letter of offer, I consider it appropriate that a Satisfactory Arrangements Certificate for DA893.1/2013 can be issued.

Should you have any further enquiries, please contact Yasmin Campbell, at the Department on 02 9228 6226.

Yours sincerely

A handwritten signature in blue ink that reads 'Simon Officer'.

9-10-15

Simon Officer
Chief Financial and Operating Officer



**Planning &
Environment**

Fairfield City Council
The General Manager
Mr Alan Young
PO Box 21
Fairfield NSW 1860

15/14593

Dear Mr Young

SATISFACTORY ARRANGEMENTS CERTIFICATE – DA893.1/2013

I note that CSR Building Products Limited (the developer) has a development application (DA893.1/2013) for the staged subdivision of land into 14 industrial lots and one residue lot lodged with Fairfield City Council.

As you are aware, Clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009* requires that development consent must not be granted for development unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services in relation to that development.

As the developer has irrevocably offered to enter into the planning agreement and the draft CSR Horsley Park Planning Agreement has been placed on notification, in this instance the Department considers that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services.

As such, I enclose a copy of the signed Satisfactory Arrangements Certificate for DA893.1/2013.

Should you have any further enquiries, please contact Yasmin Campbell, at the Department on 02 9228 6226.

Yours sincerely

Simon Officer
Chief Financial and Operating Officer



Secretary's Certificate

**Satisfactory Arrangements for regional transport
infrastructure and services**

Development Application DA893.1/2013

In accordance with the provisions of Clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*, I, Simon Officer, Chief Financial and Operating Officer, as delegate for the Secretary of the Department of Planning and Environment, certify that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services in relation to:

Development application number:	DA893.1/2013
Development application description:	Staged subdivision of land into 14 industrial lots and one residue lot.
Map at Attachment A:	Yes
Relevant Planning Agreement:	CSR Horsley Park Planning Agreement

Chief Financial and Operating Officer
(as delegate for the Secretary)

Date:

**the satisfactory arrangements certificate is being issued in relation to the above development application only.*



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**Secretary's Certificate
Development Application DA893.1/2013
Attachment A**

