

Explanatory Note

Hornsby Shire Council and Goldmap Two Pty Ltd

Planning Agreement – 90-92 Franklin Road, Cherrybrook

Introduction

This Explanatory Note has been prepared jointly between the parties in accordance with clause 205 of the *Environmental Planning & Assessment Regulation 2021* (NSW).

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft voluntary planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

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

Parties to the Planning Agreement

The parties to the Planning Agreement are Goldmap Two Pty Limited ABN 45 621 535 653 (the **Developer**) and Hornsby Shire Council ABN 20 706 996 972 (the **Council**).

Description of the Subject Land

The Planning Agreement applies to Lot 18 in Deposited Plan 16975 known as 90-92 Franklin Road, Cherrybrook NSW 2126 (**Land**).

Description of the Proposed Development

The Planning Agreement applies to the development (as generally described in DA/1146/2020) comprising of the subdivision of the Land into nine (9) residential lots, and one further lot (being Lot 1 in a plan of subdivision) currently zoned R2 Residential (Low Density) and identified as future road reserve under the *Hornsby Local Environmental Plan 2013* that has, or will, be acquired by Council under a separate contract of sale between Council and the Developer (**Proposed Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

The **objective** of the Planning Agreement is to provide community infrastructure by facilitating the construction and delivery of necessary road infrastructure so that the community does not need to bear that cost, and thereby provide a major benefit to road users and the community at large.

The **intent** and **effect** of the Planning Agreement is to facilitate the timely delivery of civil road and drainage works on the part of the Land reserved for Local Road at John Road and Franklin Road, Cherrybrook (at an estimated cost \$500,000) in lieu of paying Section 7.11 contributions applicable to the Proposed Development (**Works**).

The Works will be completed by professional contractors in accordance with Hornsby Shire Council's standards, policies, procedures and approvals and delivered either on the date which is twelve (12) months after the issue of a Subdivision Works Certificate for the Proposed Development or the issue of a subdivision certificate with respect to the Proposed Development (whichever occurs earlier).

The Developer will be required to:

- (1) provide financial security prior to completion of the Works (by way of bank guarantee) for an amount equivalent to ten percent (10%) of the indexed contribution value of the Works (the relevant contribution value being \$500,000 as at the date of the Planning Agreement) to secure the cost for the rectification of any defects in the Works up to a period of twelve (12) months after completion; and
- (2) register the Planning Agreement on the title to the Land in accordance with section 7.6 of the Act.

Council will be able to withhold Subdivision Certificates and Occupation Certificates in connection with the Proposed Development until such time as those Works are delivered.

Upon completion of the Works, the relevant road will be trafficable subject to acquisition by the Council and dedication as a public road.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer to facilitate the provision of the Works as development contributions in connection with the Proposed Development.

Assessment of Merits of Planning Agreement

The Public Purposes Served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

- The provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Council 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.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by achieving the objectives of the Act by promoting:

- certainty for the Developer and Council as to the provision of development contributions directed towards community infrastructure within the Cherrybrook community;
- the social and economic welfare of the community by requiring construction of local infrastructure as determined by the General Manager of Council from time to time;
- delivery of infrastructure, facilities and services to satisfy needs of the community including those that arise from the Proposed Development; and
- the orderly and economic use and development of land and good design and amenity of the built environment by ensuring improved infrastructure.

How the Planning Agreement promotes Council's guiding principles

The Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement.
- To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- To act fairly, ethically and without bias to the interests of the local community.
- To have regard to the long term and cumulative effects of its decisions on future generations.
- To engage in long-term strategic planning on behalf of the local community.
- To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the Proposed Development and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

Whether the Agreement Conforms with Council's Capital Works Program

The Planning Agreement does not conform to Council's capital works program.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement specifies standards as to construction of the roads infrastructure with which the Developer must comply prior to the issue of a subdivision works certificate or final subdivision certificate under the Act (as relevant) for the Proposed Development.