

Explanatory Note

Planning Agreement for Aldington Road works, Kemps Creek

1 Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed Voluntary Planning Agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

This Explanatory Note has been prepared jointly between the parties as required by section 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW).

This Explanatory Note is not to be used to assist in construing the Planning Agreement. Where words and phrases are capitalised in this Explanatory Note and not defined, reference is to be had to those words and phrases as defined in the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- Penrith City Council (ABN 43 794 422 563) (**Council**);
- Stockland Fife Kemps Creek Pty Limited (ACN 628 770 141) in its capacity as trustee of the Stockland Fife Kemps Creek Trust (ABN 47 273 439 938) (**SFKC**);
- Stockland Development Pty Limited (ACN 000 064 835) (**SDL**) and Fife Land 3 Pty Limited (ACN 651 694 790) in its capacity as trustee of the Fife Land 3 Trust (ABN 64 318 343 693) (together, **SFL3**);
- SDL and Fife Land 2 Pty Limited in its capacity as trustee for Fife Land 2 Trust (ABN 89 561 962 630) (together, **SFL2**);
- Australand C & I Land Holdings Pty Ltd (ACN 107 356 641) in its capacity as trustee of the Frasers Property C&I Land Holdings (Kemps Creek No. 2) Trust (ABN 58 649 084 762) (**Frasers Landowner**); and
- FPI Developments NSW Pty Limited (ACN 648 326 676) (**Frasers**).

3 Description of the Land

The Planning Agreement applies to the land specified in Annexure A to the Planning Agreement, comprising:

- 37/258949, 10/253503; 24/255560, 25/255560, 26/255560, 27/255560, 28/255560, and 33/258949 (**Frasers Land**);
- 200/1285691 (**SFKC Land**);
- 16/253503 and Lot 17/253503 (**SFL2 Land**); and
- 90/1289463 (**SFL3 Land**),

collectively, the **Land**.

4 Description of the Development to which the Planning Agreement applies

Each of SFKC, SFL3, SFL2, Frasers Landowner and Frasers (**LOG-NE**) is (or is associated with) a person who has made or proposes to make a development application to carry out industrial developments on each entities' respective part of the Land (**Development**).

The Mamre Road Precinct Development Contributions Plan 2022 (**Contributions Plan**) proposes road upgrades to Aldington Road (referred to in the Contributions Plan as part of '**Distributor Road DR1**'), which fronts the Development. It also provides that Council may accept the provision of works in kind and dedication of land in lieu of the payment of monetary contributions.

Accordingly, the LOG-NE has offered to enter into the Planning Agreement with Council to provide a significant part of Distributor Road DR1 in connection with the Development (**Road Upgrade**). The development contributions will partially offset the section 7.11 monetary contributions that would otherwise be payable by the relevant LOG-NE entities pursuant to the Contributions Plan upon the grant of future development consents for the Development. The development contributions provided for by the Planning Agreement comprise the Road Upgrade (Works as defined in the Planning Agreement), the dedication or transfer of land for use as a public road and the payment of monetary contributions.

5 Summary of the Public Benefit, Objectives, Nature and Effect of the Planning Agreement

5.1 Objective

The objective of the Planning Agreement is to deliver the public purpose of the Road Upgrade to Aldington Road, by the LOG-NE in a coordinated and efficient manner to accommodate the Development. The upgrade of Aldington Road will also benefit neighbouring landowners within the Mamre Road Precinct and service the broader community by unlocking key industrial lands in western Sydney.

5.2 Nature of the Planning Agreement

The nature of the Planning Agreement is as a deed entered into between the Council and the LOG-NE..

5.3 Effect of the Planning Agreement

The effect of the Planning Agreement is that the LOG-NE entities will provide the public benefit (the Road Upgrade and associated land dedication or transfer), as well as contributions required under the Contributions Plan, in the manner provided for by the Planning Agreement.

5.4 Public Benefit

The LOG-NE entities (as developers, applicants and/or landowners) are variously required to provide the following public benefits in accordance with the Planning Agreement:

(a) Monetary contributions

SFKC, SFL3, SFL2 and Frasers are (or will be) required to each pay a monetary contribution to Council under the Contributions Plan, minus the value of its

respective part of the Road Upgrade and land dedication or transfer that will be delivered under the Planning Agreement.

The balance of the monetary contribution payable by each of SFKC, SFL3, SFL2 and Frasers following provision of the material public benefits required by the Planning Agreement will be:

- (i) calculated in accordance with clause 6 of the Planning Agreement; and
- (ii) required to be paid prior to the earlier of:
 - (A) the final subdivision certificate being issued in respect of that party's respective Development; and
 - (B) the third calendar year from that party's provision of security for that contribution.

(b) Carrying out of works

Frasers, SFKC and SFL3 (referred to as the 'Road Developer' in the Planning Agreement) are required to carry out the Road Upgrade (including the pavement and verge area) as generally shown in the plans and specifications attached to the Planning Agreement.

The works are to be delivered in stages, linked to occupation certificates issued for the Development.

(c) Dedication of land

The respective LOG-NE owners of the parts of the Land required to be dedicated or transferred to Council are to dedicate or transfer that land to Council, at no cost to Council.

The relevant parts of the Land (excluding the relevant part of the SFL2 Land) may be dedicated or transferred to Council at any time following commencement of the Road Upgrade, but in any event must be dedicated or transferred to Council prior to the issue of any occupation certificate for the Development.

The relevant part of the SFL2 Land required for the delivery of the ultimate upgrade of Aldington Road pursuant to the Contributions Plan will be dedicated or transferred to Council following the carrying out of those works on the SFL2 Land and prior to the issue of an occupation certificate for Development on that land. The ultimate Aldington Road upgrade works are not the subject of the Planning Agreement and no offsets for delivery of those works are provided under the Planning Agreement.

5.5 Other matters

The Planning Agreement:

- does not exclude the application of sections 7.11, 7.12, 7.24 or subdivision 4 of division 7.1 of the Act;
- includes a security clause which requires:

- Frasers, SFKC and SFL3 to provide security in an amount equivalent to 125% of the agreed value of works, upon commencement of the Planning Agreement; and
- Frasers, SFKC, SFL2 and SFL3 to each provide security for its applicable monetary contribution amount payable at the time, within 7 days following the payment of its Plan Administration Component;
- is required to be registered on the title of the Land which means that it will be binding on, and enforceable against, the respective owners of the Land. Each landowner must provide documentary evidence that the Planning Agreement has been registered on title;
- imposes restrictions on the transfer of land or the assignment of any interest in the Land under the Planning Agreement; and
- provides a dispute resolution method for a dispute under the Planning Agreement, being mediation or expert determination.

6 Assessment of the Merits of the Planning Agreement and Impact on the Public

The Planning Agreement will provide material public benefits by providing upgrades to existing roads for public use, servicing the broader community as well as the neighbouring landowners within the Mamre Road Precinct, as identified in the Contributions Plan.

In particular, the Planning Agreement will facilitate the coordinated development by the LOG-NE of high priority transport infrastructure identified in the Contributions Plan, which is critical to facilitating the timely and orderly development of rezoned employment land in the Mamre Road Precinct.

The Planning Agreement provides a reasonable means of achieving the public benefit, as described in section 5 above and set out in the Planning Agreement.

7 Identification how the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by:

- promoting the orderly and economic use and development of land (section 1.3(c) of the Act); and
- providing increased opportunity for community participation in environmental planning assessment through public notification of this agreement and opportunity for the public to make submissions in response to it (section 1.3(j) of the Act).

8 How the Planning Agreement promotes the Guiding Principles for Councils

The Planning Agreement promotes the Council's charter under Chapter 3 of the *Local Government Act 1993* by providing adequate, equitable and appropriate infrastructure to the community.

9 Capital Works Program

The works are not part of Council's current Capital Works Program.