

Explanatory Note

Deed of Amendment to St Marys Development Agreement
Environmental Planning and Assessment Regulation 2021 (Regulation) clause 205.

1. Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the Deed of Amendment to St Marys Development Agreement (the **Deed of Amendment**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note issued under clause 205 of the Regulation and its contents have been agreed by the parties.

Capitalised terms that are not defined in this explanatory note have the meanings given to them in the Original Agreement as varied by the First Deed of Amendment, Second Deed of Amendment and Deed of Amendment, unless the context indicates otherwise.

2. Background

The St Marys Development Agreement was entered into on 13 December 2002 (**Original Agreement**) and has been amended twice; firstly by the Deed of Amendment to St Mary's Development Agreement dated 24 May 2004 (**First Deed of Amendment**), and secondly, by the Deed of Variation of St Marys State Development Agreement dated 7 May 2013 (**Second Deed of Amendment**). This Deed of Amendment represents the third time the Original Agreement has been varied.

3. Parties

Minister for Planning (ABN 20 770 707 468) of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (**Minister**).

St Marys Land Limited (ACN 088 278 602) of Level 14, Tower 3, International Towers 300 Barangaroo Avenue, Barangaroo NSW 2000 (**Landowner**).

Lendlease Development Pty Ltd (ACN 000 311 277) of Level 14, Tower 3, International Towers, 300 Barangaroo Avenue, Barangaroo NSW 2000 (**LLD**).

Transport for NSW (ABN 18 804 239 602) of 231 Elizabeth Street, Sydney NSW 2000 (**TfNSW**).

Comland Limited (ABN 85 088 278 451) of Level 14, Tower 3, International Towers, 300 Barangaroo Avenue, Barangaroo NSW 2000 (**Comland**).

Lendlease Corporation Limited (ABN 32 000 226 228) of Level 14, Tower 3, International Towers, 300 Barangaroo Avenue, Barangaroo NSW 2000 (**LLC**).

4. Description of the Land to which the Deed of Amendment Applies

The land to which the Deed of Amendment applies is Lot 20 in DP1287299 and part Lot 7 in DP31908 (together, the **Land**), forming part of the land to which the Original Agreement applies.

5. Description of Proposed Changes to the Original Agreement

Under the terms of the Original Agreement, the Landowner agreed to transfer to TfNSW the 2002 Proposed Transit Corridor, or if the Landowner did not acquire the 2002 Proposed Transit Corridor, to transfer an equivalent 12 metre wide strip of land within the 2002 Existing Rail Corridor (**Existing Alternate Corridor**).

The Landowner did not acquire the 2002 Proposed Transit Corridor and has not transferred any land within the Existing Alternate Corridor to TfNSW. TfNSW has advised that it no longer proposes to construct a transitway within either the 2002 Proposed Transit Corridor or the 2002 Existing Rail Corridor.

The Landowner has requested that TfNSW remove the requirement to transfer the Existing Alternate Corridor from the Original Agreement.

TfNSW has agreed to remove the requirement to transfer the Existing Alternate Corridor from the Development Agreement on the basis that the Landowner agrees to transfer equivalent parcels of land in the New Corridor to ensure the public benefit to be delivered under the Original Agreement is realised.

The Landowner has also agreed to remove all Contamination (including flytipping and stockpiling/mounding of soils) on or under the New Corridor identified in the Contamination Reports to TfNSW's satisfaction by 31 December 2025.

This Deed of Amendment amends clause 16.21 of the Original Agreement to give effect to the agreement outlined above, and to include new corresponding definitions.

6. Summary of Objectives, Nature and Effect of the Deed of Amendment

[Section 205(1)(a) of the Regulation]

Objectives: The objective of the Original Agreement has not been changed by the Deed of Amendment.

Nature: The Land allocated for the provision of the public benefit stipulated in the Original Agreement has been varied by the Deed of Amendment to reflect the updated needs of TfNSW.

Effect: The public benefits to be provided under the Original Agreement have not been materially changed by the Deed of Variation, and are summarised as follows:

- a) the dedication of a transit corridor to TfNSW; and
- b) the remediation of the Land.

The timing for the transfer of the Land has been varied by the Deed of Amendment to reflect the needs of TfNSW.

7. Assessment of the Merits of the Deed of Amendment

[Section 205(1)(b) of the Regulation]

The Public Purpose of the Deed of Amendment: In accordance with section 7.4 of the Act (former section 93F(2)), the Deed of Amendment has the following public purpose:

- a) the provision of (or the recoupment of the cost of providing) public services relating to land; and
- b) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Parties have assessed the Deed of Amendment and agree that the provisions of the Deed of Amendment provide a reasonable means of achieving the public purpose set out above.

How the Deed of Amendment Promotes the Public Interest: The Deed of Amendment promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure, facilities and services to satisfy needs that arise from the development of the land under the Original Agreement.

8. Whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or certificate of subdivision certificate issued.

[Section 4.6 of the Practice Note]

The Deed of Amendment does not specify that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.