

Minister for Planning
ABN 38 755 709 681

and

The Trust Company (Australia) Limited
ACN 000 000 993

and

Altis Bulky Retail Pty Limited
ACN 164 432 124

Planning Agreement

Environmental Planning and Assessment Act 1979



John Newby
Head of Custody


 
Alastair Wright

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THIS deed is dated 21st JUNE 2016

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PARTIES:

MINISTER FOR PLANNING (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales, 2000 (**Minister**)

and

THE TRUST COMPANY (AUSTRALIA) LIMITED (ACN 000 000 993) in its capacity as custodian and agent for **ALTIS BULKY RETAIL PTY LIMITED** c/- Level 14, 60 Castlereagh Street, Sydney, NSW 2000 (**Developer**)

and

ALTIS BULKY RETAIL PTY LIMITED (ACN 164 432 124) in its capacity as trustee for **ALTIS BULKY SUB TRUST 3** (ABN 36 578 558 601) of Level 14, 60 Castlereagh Street, Sydney, NSW 2000 (**Altis**)

INTRODUCTION:

- A** The Trust Company (Australia) Limited owns the Land.
- B** Altis Bulky Retail Pty Limited has sought a change to the State Environmental Planning Policy (Western Sydney Employment Area) 2009 to rezone the Development Land to zone IN1 General Industrial.
- C** Altis Bulky Retail Pty Limited intends to lodge a concept plan in 2016 for Development on the Development Land.
- D** Clause 29 of the SEPP provides that the Consent Authority must not grant Development Consent to the 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.
- E** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the SEPP.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

(a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2015.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Consent Authority means Penrith Council.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion.

CPI Adjustment Date means 1 July 2016 and each anniversary of 1 July 2016 thereafter.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

Development means the future subdivision of the Land in stages into approximately 9 lots, construction of internal estate road, earthworks, stormwater, infrastructure, services and construction of warehouses, ancillary office for a warehouse and a logistic hub precinct.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the total cash contributions towards regional transport infrastructure and services to be provided by the Developer in accordance with Schedule 4.

Development Land means that part of the Land which is rezoned to IN1 General Industrial.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Schedule 3 of this deed.

Net Developable Area means the net developable area of the Development Land as defined in Schedule 6 of this Deed or as calculated having regard to any determination made in accordance with s94EE of the Act with respect to the Development Land.

Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the development of the Land.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure in accordance with clause 29 of the SEPP.

Secretary means the Secretary of the Department of Planning and Environment from time to time (or nominee, whether nominated before or after the date of this deed).

SEPP means the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*

Special Infrastructure Contribution means a contribution determined in accordance with section 94EE of the Act with respect to the Land.

Stage of Development means the construction of a stage of the Development on a part of the Development Land as shown on the Stage of Development Plan (as amended from time to time).

Stage of Development Plan means the plan annexed and marked "Annexure A" to this Deed which may be varied from time to time with the parties agreement.

Subdivision Certificate has the same meaning as in the Act.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;

- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

This deed will commence from the date this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to:

- (a) the Development Land; and
- (b) the Development.

3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4 ROLE OF ALTIS

4.1 Altis to procure making of Development Contribution

- (a) Altis undertakes to procure the making of Development Contributions by the Developer to the Minister or the Minister's nominee in accordance with the provisions of Schedule 4 to this deed.

- (b) Altis undertakes to procure the performance of all other obligations being carried out by the Developer pursuant to this deed.

5 DEVELOPMENT CONTRIBUTION

5.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

5.2 Determination of Special Infrastructure Contribution

- (a) This clause will apply where:
 - (i) the Minister determines a Special Infrastructure Contribution; and
 - (ii) upon the date of determination of the Special Infrastructure Contribution, the Developer has not provided the Development Contribution in full.
- (b) If the determination of a Special Infrastructure Contribution specifies a rate or method of calculation for a contribution amount that if applied to this deed would result in a contribution amount that is less than the amount that would have been payable under this deed having regard to the rate and method of calculation of a Contribution Amount, then:
 - (i) the Special Infrastructure Contribution amount will be deemed to be the Contribution Amount for the purpose of this deed;
 - (ii) the Minister will not be required to refund any part of the Development Contribution paid by the Developer under this deed to the extent that such amounts exceed the Special Infrastructure Contribution; and
 - (iii) the Developer will be entitled to a credit to be offset against the balance of any unpaid Contribution Amounts payable under this deed as at the date of the determination for an amount equal to the difference between:
 - (A) all paid Contribution Amounts as at the date of the determination of the Special Infrastructure Contribution; and
 - (B) the Special Infrastructure Contribution.

5.3 Acknowledgement

The Developer acknowledges and agrees that the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

6 INTEREST

6.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

7 ENFORCEMENT

7.1 Developer to provide security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 5.

8 REGISTRATION

8.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything reasonably necessary to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
- to the registration of this deed on title and to the terms of this deed; and

- (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title;
 - (iv) the lodgement of this deed in a registrable form at the Land and Property Information for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably necessary to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

8.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 8.1(a)(iv) within 10 Business Days of such lodgement at the Land and Property Information.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

8.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

8.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 8.1 of this deed, and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 8.1(i) to assist, cooperate and to otherwise do all things necessary for the landowner to comply with its obligations under clause 8.

9 Dispute Resolution

9.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 9.

9.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

9.3 Attempt to resolve

On receipt of notice under clause 9.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

9.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 9.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

9.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 9.2 then any party which has complied with the provisions of this clause 9 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

9.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 9 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution

process undertaken under this clause 9 for any purpose other than in an attempt to settle the dispute.

9.7 No prejudice

This clause 9 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

10 GST

10.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

10.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

10.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

10.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 10.

10.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST

Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

10.6 Non monetary consideration

Clause 10.5 applies to non-monetary consideration.

10.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 10.5 the Developer will assume the Minister is not entitled to any input tax credit.

10.8 No merger

This clause will not merge on completion or termination of this deed.

11 ASSIGNMENT AND TRANSFER

11.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 11.1.

11.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.
- (b) Notwithstanding clause 11.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 11.2.

12 TRUSTEE (ALTIS)

- (a) Altis enters into this deed in its capacity as the trustee for the Altis Bulky Sub Trust 3 (ABN 36 578 558 601).
- (b) Altis' liability under this deed is limited to the Trustee's Capacity and Altis is not liable in any other capacity.
- (c) Subject to clause 12(e), the liability of Altis in respect of any cause of action, claim or loss arising:
 - (i) under or in connection with this deed;
 - (ii) in connection with any transaction, conduct or any other agreement contemplated by this deed; or
 - (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this deed,

(each, a **Trust Claim**), is limited to the Assets. The right of the Parties other than Altis to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which Altis is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against Altis personally.

- (d) The Parties other than Altis agree and acknowledge that they must not, in respect of any Trust Claim:
 - (i) subject to clause 12(e), bring proceedings against Altis in its personal capacity;
 - (ii) seek to appoint an administrator or liquidator to Altis;
 - (iii) commence the winding-up, dissolution or administration of Altis; or
 - (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of Altis,
 - (v) except to the extent that the steps taken affect any Assets or Altis' right of recourse against, and indemnity from, the Assets and nothing else.
- (e) If Altis acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:
 - (i) Altis' right of indemnity, exoneration or recoupment of the Assets; or
 - (ii) the actual amount recoverable by Altis in exercise of those rights,
 - (iii) is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, Altis may be personally liable.
- (f) Altis warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of the Trust; and
 - (iv) it has the power under the deed constituting the Trust and custody deed between the Developer and Altis to execute and perform its obligations under this deed and all necessary action has been taken to authorise the

execution and performance of this deed under the trust deed constituting the Trust.

- (g) If Altis is replaced in accordance with the Trust, then:
 - (i) the Minister and the replacement trustee will enter into a new deed on terms satisfactory to the Minister, acting reasonably, under which the replacement trustee agrees to be bound by the terms of this deed; and
 - (ii) Altis will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land as relevant.
- (h) In this clause 12:

Assets includes all assets, property and rights real and personal of any value whatsoever of the Trust;

Trust means Altis Bulky Sub Trust 3; and

Trustee's Capacity means the capacity in which Altis enters into this Agreement being as trustee or responsible entity as applicable.

13 DEVELOPER (THE TRUST COMPANY (AUSTRALIA) LIMITED)

- (a) The Developer enters into this deed as custodian and agent of the Trustee of the Trust and in no other capacity.
- (b) Subject to the provisions of clause 13(g), the parties other than the Developer acknowledge that the Obligations are incurred by the Developer solely in its capacity as a custodian of the Assets of the Trust and as agent of the Trustee and that the Developer will cease to have any obligation under this deed if the Developer ceases for any reason to be custodian of the assets of the Trust. Nothing in this clause releases the Developer from any liability that arose under this clause prior to the custodian ceasing to be the Developer of the assets of the Trust.
- (c) Subject to the provisions of clause 13(g), the Developer will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified by the Trustee or except out of the Assets against which it is entitled to be indemnified in respect of any liability incurred by it. The obligation of the Trustee to indemnify the Developer and the right of the Developer to be indemnified out of the Assets are limited.

- (d) The parties other than the Developer may enforce their rights against the Developer arising from non-performance of the Obligations only to the extent of the Developer's indemnity as provided above in clause 13(c).
- (e) Subject to the provisions of clause 13(g), if any party other than the Developer does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Developer in its personal capacity; or
 - (ii) applying to have the Developer wound up or proving in the winding up of the Developer.
- (f) Subject to the provisions of clause 13(g), the parties other than the Developer waive their rights and release the Developer from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - (A) breach of the Developer of any of its Obligations; or
 - (B) non-performance by the Developer of the Obligations; and
 - (ii) which cannot be paid or satisfied from the indemnity set out above in clause 13(c) in respect of any liability incurred by it.
- (g) The parties other than the Developer acknowledge that the whole of this deed is subject to this clause and the Developer shall in no circumstances be required to satisfy any liability arising under, or for non performance or breach of any Obligations under or in respect of, this deed or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this deed requires satisfaction out of the Assets of the Trust under the Developer's control and in its possession as and when they are available to the Developer to be applied in exoneration for such liability under the terms of the Custody Agreement between the Trustee and the Developer PROVIDED THAT if the liability of the Developer is not fully satisfied out of the Assets of the Trust as referred to in this clause, the Developer will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability but only to the extent of the total amount, if any, by which the assets of the Trust have been reduced by reasons of fraud, negligence or breach of the Custody Agreement between the Developer and Trustee in the performance of the Developer's duties.
- (h) If the Developer is replaced in accordance with the Custody Agreement dated 27 June 2013 between Altis Bulky Retail Pty Limited and The Trust Company (Australia) Limited, then:

- (i) the Minister and the replacement custodian and agent will enter into a new deed on terms satisfactory to the Minister, acting reasonably, under which the replacement custodian and agent agrees to be bound by the terms of this deed; and
 - (ii) the Developer will pay the reasonable costs and expenses of the Minister in relation to the replacement of a custodian and agent under this clause and the costs and expenses of registering any new deed on the title to the Land.
- (i) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this deed.
- (j) No attorney, agent or other person appointed in accordance with this deed has authority to act on behalf of the Developer in a way which exposes the Developer to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Developer for the purposes of clause 13(f).
- (k) In this clause 13:
- (i) **Assets** includes all assets, property and rights real and personal of any value whatsoever of the Trust;
 - (ii) **Constitution** means the constitution or the trust deed for the Trust;
 - (iii) **Custody Agreement** means the custody agreement or custody deed between the Developer and the Trustee
 - (iv) **Developer** means The Trust Company (Australia) Limited;
 - (v) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Developer under or in respect of this deed;
 - (vi) **Trust** means Altis Bulky Sub Trust 3; and
 - (vii) **Trustee** means Altis Bulky Retail Pty Ltd or any replacement Trustee of the Trust from time to time.

14 CAPACITY

14.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

14.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

15 REPORTING REQUIREMENT

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters , as applicable:
 - (i) details of all Development Consents, Construction Certificates and Subdivision Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

16 GENERAL PROVISIONS**16.1 Entire deed**

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

16.2 Variation

This deed must not be varied except by a later written document executed by all parties.

16.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

16.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

16.5 Time for doing acts

(a) If:

(i) the time for doing any act or thing required to be done; or

(ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

16.6 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this deed.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

16.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

16.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

16.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

16.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

16.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

16.13 No fetter

Nothing in this deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of

the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

16.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

16.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 16.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

16.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by email;
 - (iii) sent by facsimile transmission; or
 - (iv) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:

- (i) hand delivered, on the date of delivery;
- (ii) sent by email during any Business Day, on that day provided the sender does not receive a delivery failure notice;
- (iii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
- (iv) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) Yes (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	Amendment to Industrial Release Area Map, Western Sydney Employment Area to rezone the Development Land to zone IN1 General Industrial.
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 9

REQUIREMENT UNDER THE ACT	THIS DEED
Enforcement of this deed – (section 93F(3)(g))	See clause 7
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 16.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	See clause 7
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3 of Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3 of Schedule 4).

SCHEDULE 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6455

Developer

Contact: Stephen O'Connor
The Trust Company (Australia) Limited

Address: C/- Level 14, 60 Castlereagh Street, Sydney NSW 2001

**Facsimile No or
Email Address:** stephen.oconner@altisproperty.com.au

Altis

Contact: Stephen O'Connor
Altis Bulky Retail Pty Ltd

Address: Level 14, 60 Castlereagh Street, Sydney NSW 2001

Facsimile No or stephen.oconnor@altisproperty.com.au
Email Address:

SCHEDULE 3**Land (clause 1.1)****1 Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
2171	1153854	2171/1153854

SCHEDULE 4**Development Contributions (clause 4)****1. Development Contributions**

- (a) The parties agree that the Stage of Development Plan and Net Developable Area shown in the Stage of Development Plan are indicative only and that the details of those plans including the order and size of the stages (and therefore the Net Developable Area of each stage of the development) are subject to change. The parties agree that if the Stage of Development Plan is amended, then the Contribution Amount in column 2 of the table in clause 1(b) of Schedule 4 is taken to be amended to the Net Developable Area of the proposed stage in the amended Stage of Development Plan.
- (b) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Stage of Development	Contribution Amount (subject to clause 2)	Timing
Stage 1	The monetary value being the Net Developable Area of Stage 1 x \$182,898.	Pursuant to clause 3 of this Schedule 4
Stage 2	The monetary value being the Net Developable Area of Stage 2 x \$182,898.	Pursuant to clause 3 of this Schedule 4
Stage 3	The monetary value being the Net Developable Area of Stage 3 x \$182,898.	Pursuant to clause 3 of this Schedule 4
Stage 4	The monetary value being the Net Developable Area of Stage 4 x \$182,898.	Pursuant to clause 3 of this Schedule 4
Stage 5	The monetary value being the Net Developable Area of Stage 5 x \$182,898.	Pursuant to clause 3 of this Schedule 4
Stage 6	The monetary value being the Net Developable Area of Stage 6 x \$182,898.	Pursuant to clause 3 of this Schedule 4
Stage 7	The monetary value being the Net Developable Area of Stage 7 x \$182,898.	Pursuant to clause 3 of this Schedule 4
Stage 8	The monetary value being the Net Developable Area of Stage 8 x \$182,898.	Pursuant to clause 3 of this Schedule 4

- (c) The Minister and Developer acknowledge and agree that the sum of the Contribution Amounts form the Development Contribution under this deed.

- (d) The Developer undertakes and agrees to carry out Development in accordance with the Stage of Development Plan.

2. Calculation of the indexed value of a Contribution Amount

- (a) On each CPI Adjustment Date, the value of the Contribution Amount for a Stage of Development in the table in clause 1(b) is to be adjusted by multiplying that amount payable by an amount equal to the Current CPI divided by the Base CPI.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee the Contribution Amount in respect of a Stage of Development:
 - (i) before any Subdivision Certificate or Construction Certificate is issued for any part of the Development in that Stage of Development; or
 - (ii) if any part of the Development is to be carried out without the need for a Subdivision Certificate or a Construction Certificate, then both;
 - (A) before that Development is commenced in that Stage of Development; and
 - (B) before any application for a Complying Development Certificate is made in respect of that Development in that Stage of Development;

whichever is earlier.

- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act.
- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Construction Certificate within the meaning of section 109F(1) of the Act and clause 146A of the Regulation.
- (d) For the avoidance of doubt, the Developer agrees that it must pay each Contribution Amount irrespective of whether:
 - (i) it is the owner of the Land on the relevant due date for payment; or
 - (ii) it is the applicant for the relevant Subdivision Certificate, Construction Certificate or Complying Development Certificate.

SCHEDULE 5

1. Developer to provide Bank Guarantees

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide security in the form of Bank Guarantees.
- (b) The Bank Guarantee must:
 - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Bank Guarantees

- (a) At the time the Developer signs this deed, the Developer undertakes to provide a Bank Guarantee to the Minister having a face value amount of \$20,000 (**Initial Bank Guarantee**) in order to secure the payment of the Development Contribution.
- (b) Prior to applying for a Construction Certificate or Subdivision Certificate (whichever is the earlier) in respect of each and every Stage of Development, the Developer undertakes to provide a Bank Guarantee to the Minister for a face value equivalent to the Contribution Amount for that Stage of the Development in order to secure the payment of the Development Contribution as it relates to that Stage of Development (**Staged Bank Guarantee**).
- (c) From the date of receipt of the Staged Bank Guarantee in respect of a Stage of Development until the date the Developer pays the Contribution Amount for the equivalent Stage of Development the Minister will be entitled to retain the Staged Bank Guarantee for that Stage of Development and the Initial Bank Guarantee subject to clause 4 below.
- (d) From the date of execution of this deed until the date that the Developer has provided the Development Contribution in full, the Minister will be entitled to retain the Initial Bank Guarantee subject to clause 4 below.

3. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon the Initial Bank Guarantee or the Staged Bank Guarantee as relevant where the Developer has failed to pay a Contribution Amount for a Stage of Development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Initial Bank Guarantee or the Staged Bank Guarantee the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call on the Initial Bank Guarantee and/or the Staged Bank Guarantee.
- (c) If:
 - (i) the Minister calls upon the Initial Bank Guarantee; and

- (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
- (iii) has notified the Developer of the call upon the Initial Bank Guarantee in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Initial Bank Guarantee to ensure that at all times until the date that the Initial Bank Guarantee is released in accordance with clause 4 of this Schedule, the Minister is in possession of an Initial Bank Guarantee for a face value equivalent to \$20,000.

4. Release of Bank Guarantees

(a) If:

- (i) the Developer has paid the Contribution Amount for a Stage of Development, provided the Minister with the Initial Bank Guarantee and has satisfied all of its obligations under this deed secured by the equivalent Staged Bank Guarantee; and
- (ii) the whole of the monies secured by the Staged Bank Guarantee have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Minister will promptly return the Staged Bank Guarantee as it relates to that Stage of Development (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Staged Bank Guarantee (as the case may be), to the Developer.

(b) If:

- (i) the Developer paid the Development Contribution and has satisfied all of its obligations under this deed secured by the Initial Bank Guarantee; and
- (ii) the whole of the monies secured by the Initial Bank Guarantee has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

(c) then the Minister will promptly return the Initial Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Initial Bank Guarantee (as the case may be), to the Developer.

SCHEDULE 6

Definition of Net Developable Area (Schedule 4)

1. The net developable area of a part of the Development Land is the area of land, in hectares, for a Stage of Development, subject to the other provisions of this Schedule 6. For the avoidance of doubt, the net developable area of a part of the Development Land includes any land that the proposed development authorises or requires to be used as a road or reserved or dedicated as a public road.

2. The net developable area does not include the area of any land that the proposed development reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
 - (a) school,
 - (b) TAFE establishment,
 - (c) emergency services facility,
 - (d) health services facility owned or operated by a public authority,
 - (e) golf course,
 - (f) passenger transport facility,
 - (g) place of public worship,
 - (h) public open space, including a public reserve (within the meaning of the Local Government Act 1993),
 - (i) drainage reserve (within the meaning of the Local Government Act 1993),
 - (j) public utility undertaking,
 - (k) bus depot,
 - (l) recreation area,
 - (m) existing roads to which works (such as widening) are required to be carried out;
 - (n) cemetery (within the meaning of the Cemeteries and Crematoria Act 2013),
 - (o) public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
 - (p) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with any Special Infrastructure Contributions Determination made under section 94EE of the Act.

3. The following areas of land are not to be included in the calculation of the net developable area:
 - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the development by virtue of it being at or below that level,

- (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act,
 - (c) any area of land that is within Zone E2 Environmental Conservation,
 - (d) any area of land within the curtilage of a building listed on the State Heritage Register,
 - (e) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the development by virtue of the easement,
 - (f) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the development by virtue of it being within the public transport corridor.
4. The net developable area does not include the area of any lot in a proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
 5. The net developable area does not include the area of any lot in a proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
 6. If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this Deed commences) and:
 - (a) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
 - (b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare, for the purpose of calculating the net developable area.
 7. If a proposed lot is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area.
 8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.
 9. In this Schedule 6, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006):
 - (a) emergency services facility,
 - (b) health services facility,

- (c) passenger transport facility,
- (d) place of public worship,
- (e) public utility undertaking,
- (f) recreation area,
- (g) school.

10. In this Schedule, a reference to:

- (a) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone, and
- (b) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the Heritage Act 1977, and
- (c) a “strata scheme” means a reference to a strata scheme as that term is defined in the Strata Scheme (Freehold Development) Act 1973 or a leasehold strata scheme as that term is defined in the Strata Scheme (Leasehold Development) Act 1986.

EXECUTED as a deed

Signed sealed and delivered for and on behalf of
the **Minister for Planning** in the presence of:


Signature of Witness

Lucie Gerondis
Name of Witness in full


Signature of the Minister for Planning or
delegate

BRENDAN NELSON
Minister for Planning or delegate

**Signed sealed and delivered by The Trust
Company (Australia) Limited** (ACN 000 000
993) in accordance with section 127 of the
Corporations Act 2001:


Signature of Director

Stephen O'Connor
Signature of Director/Secretary

The Trust Company (Australia) Limited ACN 000 000 993
by its Attorney pursuant to Power of Attorney dated
18 September 2014 Registered No. 134 Book 4676
Who states that he/she has received no notice of
revocation of the Power of Attorney.

Attorney Name:

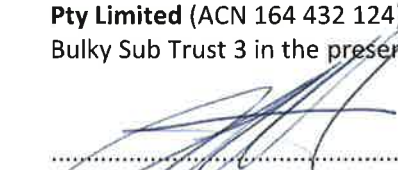
Position:


Name of Director

John Newby
Head of Custody

Name of Director/Secretary

**Signed, sealed and delivered by Altis Bulky Retail
Pty Limited** (ACN 164 432 124) as trustee for Altis
Bulky Sub Trust 3 in the presence of:


Signature of Director


Signature of Director/Secretary

SHAUN HARMAN
Name of Director

ALASTAIR WRIGHT
Name of Director/Secretary

