

Explanatory Note

Minister for Planning and Public Spaces (ABN 20 770 707 468)

and

The Trust Company (Australia) Limited (ACN 000 000 993)

and

Altis Bulky Retail Pty Limited (ACN 164 432 124)

**Draft Deed of Variation to Planning Agreement – 585-649 Mamre Road,
Orchard Hills**

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft Deed of Variation to amend a planning agreement within the meaning of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979*.

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**).

Parties to the Draft Deed of Variation

The parties to the Draft Deed of Variation are The Trust Company (Australia) Limited ACN 000 000 993 (the **Developer**) in its capacity as custodian and agent of Altis Bulky Retail Pty Limited and Altis Bulky Retail Pty Limited ACN 164 432 124 (**Altis**) in its capacity as trustee for Altis Bulky Sub Trust 3 and the Minister for Planning and Public Spaces ABN 20 770 707 468 (the **Minister**).

Description of the Land to which the Draft Deed of Variation Applies

The Draft Deed of Variation applies to Lots 2-9 in DP271141 (being former part Lot 2171 DP 1153854) and Lot 1 DP1233392 (being former part Lot 2172 DP 1153854).

The Subject Land is located at Mamre Road, Orchard Hills, NSW.

Description of Proposed Development

The Draft Deed of Variation applies to the development the subject of the Planning Agreement entered to by the parties on 21 June 2016 in relation to land at Mamre Road, (Planning Agreement). The development includes subdivision and development of the former Lot 2171 DP1153854, construction of internal estate road, earthworks, stormwater, infrastructure, services and construction of warehouses, ancillary office for a warehouse and a logistic hub precinct, and additionally, development of Lot 1 DP1233392.

Summary of Objectives, Nature and Effect of the Draft Deed of Variation

The main objective of the Draft Deed of Variation is to amend the Planning Agreement to require the dedication or transfer of land to RMS for the widening of Mamre Road (**Mamre Road Land**), in lieu of certain monetary contributions, for the purpose of the provision of regional transport infrastructure and services referred to in clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.

The Draft Deed of Variation has the following effect:

- includes Lot 1 DP1233392 as additional land to which the Planning Agreement relates;
- includes a requirement for the Developer to dedicate or transfer the Mamre Road Land to RMS;
- allows the compulsory acquisition of the Mamre Road Land by the Minister's nominee if the Mamre Road Land is not dedicated or transferred to RMS by the agreed date;
- requires the balance of monetary contributions required under the Planning Agreement to be paid in the following manner:
 - within 5 business days of the date of the Deed of Variation, the Developer is required to pay the estimated balance of the monetary contributions. This amount has been calculated by subtracting the following from the amount of the monetary contributions that remain unpaid:
 - the estimated value of the Mamre Road Land (based on the estimated area of the Mamre Road Land),
 - the amount of the monetary contribution that has been paid for Stage 2 of the development where a training facility for Fire and Rescue NSW has been built, and
 - after the Mamre Road Land is dedicated, the actual balance of monetary contributions is to be calculated based on the actual area of Mamre Road Land that is dedicated or transferred, and
 - the Developer is to pay the difference if the actual balance of monetary contributions is higher than the estimated balance of the monetary contributions that was paid, and
 - the Minister is to provide an offset certificate for the difference if the actual balance of monetary contributions is lower than the estimated balance of the monetary contributions. The offset amount can be applied by Altis or its associated entities, at the discretion of the Minister, to discharge any obligation of Altis (or the associated entity) to make a development contribution relating to the provision of regional transport infrastructure and services on other land (not being the land to which the Planning Agreement applies) to which *State Environmental Planning Policy (Western Sydney Employment Area) 2009* applies,
- acknowledges securities that have already been provided and requires securities that have been provided to the Minister to be held by the Minister until the Mamre Road Land is vested in the RMS (or other roads authority) and any outstanding monetary contributions have been paid, and
- amends the definition of 'Net Developable Area'.

No relevant capital works program by the Minister is associated with the Draft Deed of Variation or Planning Agreement as proposed to be amended by the Draft Deed.

Assessment of the Merits of the Draft Deed of Variation

The Planning Purposes Served by the Draft Deed of Variation

The Draft Deed of Variation ensures that development contributions, being monetary contributions and land dedication, are provided for the purposes of transport or other infrastructure relating to the Land.

The Minister, Altis and the Developer have assessed the Draft Deed of Variation and are of the view that the provisions of the Planning Agreement, as proposed to be amended by the Draft Deed, provide a reasonable means of achieving the planning purpose set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of regional transport infrastructure.

How the Draft Deed of Variation Promotes the Public Interest

The Planning Agreement, as proposed to be amended by the Draft Deed of Variation, promotes the public interest by ensuring that appropriate regional transport infrastructure or contributions towards the provision of that infrastructure is made to satisfy needs that arise from development of the land concerned.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement, as proposed to be amended by the Draft Deed of Variation, promotes the objects of the Act by encouraging the promotion and co-ordination of the orderly and economic use and development of land through requiring contributions towards the provision of regional transport infrastructure.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement as amended by the draft Deed of Variation does not require payment of monetary contributions or dedication of land prior to the issuing of specific subdivision certificates or construction certificates. However, the requirement to pay a monetary contribution is a restriction on the issue of any relevant subdivision certificate or construction certificate.