

Explanatory Note

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)

Winten (No 21) Pty Limited (ACN 096 449 393)

Minmi Land Pty Ltd (ACN 129 266 477)

Variation to Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the First Deed of Variation to Planning Agreement in relation to SVPA-2017-8779 Minmi Link Road, Minmi (the **First Variation Deed**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**). The First Variation Deed amends the planning agreement entered into by the parties on 26 September 2018 under section 7.4 of the Act (the **Planning Agreement**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties.

Capitalised terms used but not defined in this explanatory note will have the meanings assigned to them in the Planning Agreement.

Parties to the First Deed of Variation

The parties to the First Variation Deed are the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468) (the **Minister**), Winten (No 21) Pty Limited (ACN 096 449 393) (the **Developer**) and Minmi Land Pty Ltd (ACN 129 266 477) (the **Former Landowner**).

The Former Landowner has transferred all of the land it owned specified in Schedule 3 to the Planning Agreement to the Developer and from the commencement of the First Variation Deed the Former Landowner is released from its obligations under the Planning Agreement.

Description of the Subject Land

The Planning Agreement as varied by the First Variation Deed applies to the same land to which the Planning Agreement applies (**Subject Land**), but there have been some changes to the description of the Subject Land in Schedule 3 to the Planning Agreement as follows:

- Lot 6 DP 1044574 is now known as Lot 4 DP 1253716; and
- Lot 4 DP 1230960 is now known as Lots 100 and 101 in DP 1252590.

Description of the Proposed Development

The proposed development is defined in the Planning Agreement to mean the development of the Subject Land for the purposes of urban development generally in accordance with the Concept Plan including DA2015/10360 and DA 2015/10393, lodged with Newcastle City

Council and DA 1936/2016, lodged with Lake Macquarie City Council and any development approved under Part 4 of the Act pursuant to the Concept Plan.

Summary of Objectives, Nature and Effect of the Planning Agreement as amended by the Deed of Variation

The Developer has proposed, and the Minister has agreed, to amend the Planning Agreement in accordance with the terms of the First Variation Deed to:

- provide for an additional contribution towards the upgrade of Newcastle Link Road and Minmi Road intersection to support the proposed development (**Transport Monetary Contribution**); and
- make administrative updates to the terms of the Planning Agreement.

The Planning Agreement as amended by the First Variation Deed provides that the Developer will make the following additional Development Contribution at the times provided:

Development Contribution	Value	Timing
Transport Monetary Contribution	\$5,000,000	Prior to the issue of a Subdivision Certificate for the first Urban Lot within the Link Road South Precinct.

The proposed amendments to the Planning Agreement does necessitate a change to the security provided by the Developer to secure the performance of the obligations of the Developer under the Planning Agreement. The Planning Agreement now requires the following security, in the form of bank guarantees:

Security Amount	Secured Obligation
\$200,000	The requirement to provide the Development Contributions

Assessment of Merits of Planning Agreement as varied by the First Variation Deed

The Public Purpose of the Planning Agreement as amended by the First Variation Deed

In accordance with former section 7.4(2) of the Act, the Planning Agreement as varied by the First Variation Deed has the following public purpose:

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

The Minister and the Developer have assessed the First Variation Deed, and both hold the view that the First Variation Deed provide a reasonable means of achieving the public purpose of the Planning Agreement. This is because it will ensure that the Developer makes

an appropriate contribution towards the provision of regional transport infrastructure and services.

How the Planning Agreement as amended by the Deed of Variation Promotes the Public Interest

The Planning Agreement as amended by the First Variation Deed promotes the public interest by ensuring that the Developer provides an appropriate contribution towards the provision of infrastructure and services to satisfy needs that arise from development of the Subject Land.

The Developer's offer to contribute towards the provision of regional transport infrastructure and services will have a positive impact on the public who will ultimately use that infrastructure and those services.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate or occupation certificate.

The Planning Agreement as amended by the Deed of Variation requires the Development Contributions to be made prior to the issue of the relevant subdivision certificates and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15(1)(d) of the Act.