

## 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)

### Variation to Planning Agreement

#### Introduction

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

The First Variation Deed amended the Planning Agreement to release Minmi Land Pty Ltd (ACN 129 266 477) (the **Former Landowner**) from its obligations under the Planning Agreement and to provide for an additional contribution towards the upgrade of the Newcastle Link Road and Minmi Road intersection (the **Transport Monetary Contribution**).

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 Second Deed of Variation

The parties to the Second Variation Deed are the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468) (the **Minister**) and Winten (No 21) Pty Limited (ACN 096 449 393) (the **Developer**).

#### Description of the Subject Land

The Planning Agreement as varied by the Second Variation Deed applies to the same land to which the Planning Agreement applies (**Subject Land**).

#### Description of the Proposed Development

The proposed development is defined in the Planning Agreement, as amended by the Second Variation Deed, to mean the development of the Subject Land for the purposes of urban development generally in accordance with the Concept Plan including DA2015/10360, DA 2015/10393 and DA2018/01351, lodged with Newcastle City Council and DA 1936/2016 and DA/2087/2018, 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 Second Variation Deed**

The Developer has proposed, and the Minister has agreed, to further amend the Planning Agreement in accordance with the terms of the Second Variation Deed to provide for further monetary contributions as part of the Transport Monetary Contribution in connection with its development applications for stages 3, 4 and 5 of the Development.

The Planning Agreement as amended by the Second Variation Deed provides that the Developer will make the following additional Development Contribution as part of the Transport Monetary Contribution at the times provided:

<b>Development Contribution</b>	<b>Value</b>	<b>Timing</b>
Transport Monetary Contribution	\$5,000,000	Prior to the issue of a subdivision works certificate (excluding any certificate relating only to bulk earthworks or remediation) for either DA/2087/2018 or DA2018/01351, whichever is the first to occur.
	\$10,000,000	Prior to the issue of a subdivision certificate for the first Urban Lot in either DA/2087/2018 or DA2018/01351, whichever is the first to occur.

The proposed amendments to the Planning Agreement does not 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 requires the following security, in the form of bank guarantees:

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

## **Assessment of Merits of Planning Agreement as varied by the Second Variation Deed**

### **The Public Purpose of the Planning Agreement as amended by the Second Variation Deed**

In accordance with former section 7.4(2) of the Act, the Planning Agreement as varied by the Second 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 Second Variation Deed, and both hold the view that the Second Variation Deed provides 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 Second Variation Deed Promotes the Public Interest**

The Planning Agreement as amended by the Second 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 Second Deed of Variation requires a further monetary contribution as part of the Transport Monetary Contribution 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.