

Schedule 5

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW)

1 Parties

The Minister for Planning of the Department of Planning and Environment, 23-33 Bridge Street, Sydney NSW 2000 (**Minister**)

Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793 of Level 17, 60 Castlereagh Street, Sydney NSW 2000 (**Developer**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665 (**First Landowner**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320 (**Second Landowner**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229 (**Third Landowner**)

Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665

Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320

Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229

2 Description of subject land

Lots 16 to 19 and 23 to 28 in DP225350, Lot 200 in DP1160458, Lot 2 in DP234801 and Lot 301 in DP541070 (**Land**).

3 Description of proposed change to environmental planning instrument

A new State Environmental Planning Policy (**Proposed SEPP**) and associated Development Control Plan is proposed. The Proposed SEPP will amend the *Auburn Local Environmental Plan 2010 (ALEP)* to rezone the Land and vary the development controls for maximum allowable building heights and floor space ratios.

4 Summary of objectives, nature and effect of the draft planning agreement

4.1 Objectives of Planning Agreement

The objective of the Planning Agreement is to facilitate the development and improvement of public facilities within the Carter Street Priority Precinct and specifically to allow for:

- (a) the provision of a monetary contribution to the Minister at the rate of \$100 per square metre of Allowable GFA permitted under the ALEP (subject to CPI indexation); and
- (b) the dedication of the Education Land for the purpose of a primary school operated for the benefit of the public by the Department of Education & Communities and for the purpose of public sports and playing fields.

4.2 Nature and effect of Planning Agreement

The Planning Agreement constitutes a planning agreement under section 93F of the Act. The Planning Agreement will be registered on the title to the Land.

5 Assessment of the merits of the draft planning agreement

5.1 The planning purposes served by the Planning Agreement

The Planning Agreement:

- (a) promotes the orderly and economic use and development of the Land to which the Planning Agreement applies;
- (b) facilitates the provision of land for public purposes in connection with the Planning Proposal and the Development;
- (c) facilitates the provision of community services and facilities; and

- (d) promotes increased opportunity for the public in environmental planning and assessment.

5.2 How the Planning Agreement promotes the public interest

The Planning Agreement will promote the public interest by promoting the objects of the Act as set out in sections 5(a)(ii), (iv), (v) and 5(c) of the Act.

5.3 For Planning Authorities:

Development Corporations – How the Planning Agreement promotes its statutory responsibilities

Not Applicable

Other Public Authorities – How the Planning Agreement promotes the objects (if any) of the Act under which it is constituted

Not Applicable

Councils – How the Planning Agreement promotes the elements of the Council's Charter

Not Applicable

All Planning Authorities – Whether the Planning Agreement conforms with the Authority's Capital Works Program

Not applicable

5.4 Certain requirements of the Planning Agreement to be complied with before issue of Planning Approval or issue of a Complying Development Certificate, Construction Certificate or Subdivision Certificate

The Contribution Amount is to be paid in stages.

Prior to the issue of any Planning Approval in relation to any part of the Land in a Contribution Area or prior to the issue of any Complying Development Certificate, Construction Certificate or Subdivision Certificate for any part of the Land within that Contribution Area, whichever is the earlier, the Developer or the relevant Landowners must pay to the Minister the Contribution Amount for the whole of the Land within that Contribution Area. However the Developer or the relevant Landowners will not be required to pay any Contribution Amount prior to the issue of any Planning Approval, Complying Development Certificate, Construction Certificate or Subdivision Certificate for:

- (a) alterations or additions to any existing approved development or use of any part of the Land, being a development or use having the benefit of a Planning Approval that is valid and operative as at the date of commencement of the Planning Agreement;
- (b) a modification under section 96 of the Act to any existing approved development or use of any part of the Land, being a development or use having the benefit of a Planning Approval that is valid and operative as at the date of commencement of the Planning Agreement;

- (c) fitout or alterations to fitout of any buildings existing on any part of the Land as at the date of commencement of the Planning Agreement, provided that such fitout is not for the purposes of residential use of such buildings;
- (d) subdivision of the Land for the purpose of creating each Contribution Area and any roads which are required to be created for the purpose of creating each Contribution Area as identified in the Plan;
- (e) subdivision of Contribution Area 3 for the purpose of creating a separate title for the Education Land as identified in the Plan; or
- (f) remediation of the Education Land in accordance with the terms of the Planning Agreement.

The Third Landowner must provide to the Minister and the Developer must procure provision of, the form of transfer for the Education Land in accordance with the following timing:

- (i) within 30 Business Days of 9 September 2026; or
- (ii) where the leases that are registered on the Education Land as at the date of the Planning Agreement expire or are terminated (**Termination Date**) on a date earlier than 30 Business Days after 9 September 2026, within 12 months after the Termination Date.

The provision of the Development Contributions is secured through the requirement for a Bank Guarantee in respect of the Minister's enforcement costs, registration of a caveat supported by a charge over the Land until the Planning Agreement is registered on the title to the Land, the ability for the Minister to call for Bank Guarantees up to \$1 million per Lot comprising the Land where the Planning Agreement is not registered on all Lots comprising the Land within 90 Business Days (in addition to the charge and the caveat) and then by registration of the Planning Agreement on the title to the Land. The Minister also has the ability to compulsorily acquire the Education Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* if the Education Land is not dedicated in accordance with the Planning Agreement.