

Draft Second Deed of Variation to Planning Agreement

**Minister for Planning, Goodman Property Services (Aust) Pty Ltd,
BGAI 6 Pty Ltd, BGMG 8 Pty Ltd, and BGAI 2 Pty Ltd**

Explanatory Note

Introduction

On 12 March 2015, the Minister for Planning entered into a planning agreement with Goodman Property Services (Aust) Pty Ltd, BGAI 6 Pty Ltd, BGMG 8 Pty Ltd, and BGAI 2 Pty Ltd (**Planning Agreement**).

On 22 December 2016, the Planning Agreement was varied by the 'Deed of Variation to Planning Agreement' (**First Variation Deed**).

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed Second Deed of Variation to the Planning Agreement (**Second Variation Deed**), prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (**Act**).

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

Words appearing with initial capital letters in this note have the meanings given to them in this note or (if not defined in this note) in the further amended Planning Agreement.

Parties to the Second Variation Deed

The parties to the Second Variation Deed are Goodman Property Services (Aust) Pty Ltd (**GPS**), BGAI 6 Pty Ltd (**Oakdale Central Landowner**), BGMG 8 Pty Ltd (**Oakdale South Landowner**) and BGAI 2 Pty Ltd (**Erskine Park Landowner**) (together referred to as the **Developers**), and the Minister for Planning (**Minister**).

Purpose of the Second Variation Deed

The Developers are developing part of the Oakdale Land for the Oakdale South Development. On 4 November 2016, GPS lodged an application to modify the Oakdale South SSD Consent No 6917 determined on 26 October 2016 (**Oakdale South SSD MOD 1 Application**).

The purpose of the Second Variation Deed is to:

1. update the design of the Estate Road and the Subdivision Plan for the Oakdale South Land; and
2. update the indicative contribution amounts and the indicative NDA figures for the Oakdale South Land.

The Developers have offered to enter into the Second Variation Deed with the Minister to increase the Development Contributions having regard to the development now proposed as the Oakdale South Development.

Description of the Subject Land

The further amended Planning Agreement will continue to apply to the same land to which the amended Planning Agreement applied, being the Oakdale Central Land, the Oakdale South Land and the Erskine Park Land.

Description of the Proposed Development

The Developers have obtained SSD Consent No. 6078 for the subdivision of part of the Oakdale Central Land, the construction of warehouse buildings on Lot 1C, Lot 2B and Lot 3 on the Oakdale Central Land and the upgrade of Old Wallgrove Road. Other parts of the Oakdale Central Land have been, or are proposed to be, developed for warehouse distribution facilities and associated facilities, or dedicated for biodiversity conservation purposes.

The Developers have obtained SSD Consent No. 6917 to subdivide and develop the Oakdale South Land for industrial, manufacturing, warehousing, storage, research, ancillary office, and small-scale local service uses, the development of the associated infrastructure, parking and landscaping, and the dedication of part of the Oakdale South Land for biodiversity purposes. The Developers have sought to modify SSD Consent No. 6917, as described in the Oakdale South SSD MOD 1 Application.

The Erskine Park Land has been, or is proposed to be, subdivided and developed in part for a liquor distribution centre and associated facilities, and part of the Erskine Park Land has been dedicated for biodiversity conservation purposes.

Summary of Objectives, Nature and Effect of the further amended Planning Agreement

The further amended Planning Agreement provides that the Developers will make monetary contributions of \$180,000 per hectare of Net Developable Area (**NDA**) of the Oakdale Central Land and the Oakdale South Land (subject to indexation), and will make a monetary contribution in relation to the development of the Erskine Park Land which is set out in the planning approval for that land (subject to indexation).

The monetary contributions for the Oakdale Central Land and the Oakdale South Land will be payable in stages and will be calculated by reference to the NDA of the Land to which a Planning Application relates. The requirements for the calculation of the amount of and timing of all of these payments, and the payment for the Erskine Park Land, are set out in Schedule 4 to the further amended Planning Agreement.

The further amended Planning Agreement allows the Developers to provide works in kind, and to dedicate land, in lieu of their obligation to pay components of the Monetary Contribution.

The Developers are only able to provide a works in kind contribution or a land contribution for a component of the Oakdale Central Development or the Oakdale

South Development in accordance with clause 4.4 and Schedules 4 and 5 of the further amended Planning Agreement (**Offset**), where the Minister has approved the Offset.

The further amended Planning Agreement provides that the Minister has already approved an Offset comprising the construction of an upgrade of Old Wallgrove Road, which includes the following works:

- upgrade of the existing roadway from a one lane (each way) to a two lane (each way) carriage way with a central median, kerb and guttering on either side;
- traffic signalisation at intersections;
- landscape verge and pedestrian footpath;
- street lighting; and
- land acquisition and dedication to the relevant Roads Authority.

Details of the agreed Offset for the Old Wallgrove Road Upgrade are set out in Annexure B to the further amended Planning Agreement.

The approved Offset will be based initially on an estimate of the works in kind costs or the value of the land to be dedicated (or both), and will apply to one or more specific components of the Monetary Contribution for the Oakdale Central Development and/or the Oakdale South Development.

The further amended Planning Agreement allows the Developers to utilise credits for Excess Contributions to offset against their obligations to pay development contributions for development of land which the Developers own within the Western Sydney Employment area for the purpose of Regional Infrastructure. In general terms, Excess Contributions credits equate to any positive difference between the sum of the actual cost of all works in kind and land dedications (capped) and all monetary contributions provided by the Developers under the further amended Planning Agreement (on the one hand), and the sum of all monetary contributions which the Developers would have paid under the further amended Planning Agreement if they had not provided any works in kind or land contributions (on the other hand). Details of the provisions regarding Excess Contributions are set out in Schedule 4 of the further amended Planning Agreement.

While the Minister has no obligation to use or expend the monetary contribution for a particular purpose, the objective of the further amended Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of regional transport infrastructure and services (including the Old Wallgrove Road Upgrade) in accordance with clause 29 of *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.

The further amended Planning Agreement is required to be registered on title to the Oakdale Central Land and the Oakdale South Land.

To secure the obligation to provide the monetary contribution, or any approved Offset, the Developers have agreed to provide Bank Guarantees to the Minister in accordance with the further amended Planning Agreement.

Assessment of the Merits of the further amended Planning Agreement

The Planning Purpose of the further amended Planning Agreement

In accordance with section 93F(2) of the Act, the further amended Planning Agreement has the following planning purpose:

- the provision of (or the recoupment of the cost of providing) public amenities or public services.

The Minister and the Developers have assessed the further amended Planning Agreement and both hold the view that the provisions of the further amended Planning Agreement provide a reasonable means of achieving the planning purpose set out above. This is because it will ensure that the Developers make appropriate contributions towards the provision of regional transport infrastructure and services in the Western Sydney Employment Area.

How the further amended Planning Agreement Promotes the Public Interest

The further amended Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of regional transport infrastructure and services to satisfy needs that arise from development of the Oakdale Central Land and the Oakdale South Land.

How the further amended Planning Agreement Promotes the Objects of the Act

The further amended Planning Agreement promotes the objects of the Act by encouraging:

- the promotion and co-ordination of the orderly and economic use and development of land; and
- the provision of land for public purposes.

The further amended Planning Agreement promotes the objects of the Act set out above by requiring the Developers to make a contribution towards the provision of regional transport infrastructure and services in the Western Sydney Employment Area.

The Developers' offer to contribute towards the provision of regional transport infrastructure will have a positive public impact as funds from the Developers will be available towards the provision of regional transport infrastructure and services in the Western Sydney Employment Area. In the alternative, the Developers may provide certain regional transport infrastructure directly through the provision of works in kind, such as the Old Wallgrove Road Upgrade, as set out above.

Requirements relating to Construction Certificates and Subdivision Certificates

The further amended Planning Agreement provides that each component of the Monetary Contribution must be paid prior to a specified milestone in the operation of the further amended Planning Agreement or in the progress of the Oakdale Central Development or the Oakdale South Development (as the case may be). The development milestones include points such as before the issue of a subdivision certificate, construction certificate or occupation certificate, or before an application for a complying development certificate or the commencement of works (as appropriate) relevant to a particular component of the development.

Where the parties have agreed that the Developers will provide a works in kind contribution or a land contribution for a component of the development, the monetary contribution for that component of the development will be reduced, in part or in full, by the sum of the estimated cost of any works in kind or land contribution agreed between the parties in a Contributions Estimate Notice for that component of the development, in accordance with the mechanism set out in the further amended Planning Agreement.

Interpretation of further amended Planning Agreement and Second Variation Deed

This Explanatory Note is not to be used to assist in construing the further amended Planning Agreement or the Second Variation Deed.

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