

Second Deed of Variation to Oakdale Central and Oakdale South, Horsley Park Planning Agreement

Parties

Minister for Planning

(ABN 38 755 709681)

Goodman Property Services (Aust) Pty Ltd

(ACN 088 981 793)

BGAI 6 Pty Ltd

(ACN 128 775 799)

BGMG 8 Pty Ltd

(ACN 161 602 768)

BGAI 2 Pty Ltd

(ACN 120 605 718)

Reference: VPA # 6807 Variation # 8039

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Date

Parties

MINISTER FOR PLANNING (ABN 38 755 709681)
of Level 15, 52 Martin Place, Sydney NSW 2000
(**Planning Minister**)

GOODMAN PROPERTY SERVICES (AUST) PTY LTD (ACN 088 981 793)
of Level 17, 60 Castlereagh Street, Sydney NSW 2000
(**GPS**);

BGAI 6 PTY LTD (ACN 128 775 799)
of Level 17, 60 Castlereagh Street, Sydney NSW 2000
(**Oakdale Central Landowner**);

BGMG 8 PTY LTD (ACN 161 602 768)
of Level 17, 60 Castlereagh Street, Sydney NSW 2000
(**Oakdale South Landowner**); and

BGAI 2 PTY LTD (ACN 120 605 718)
of Level 17, 60 Castlereagh Street, Sydney NSW 2000
(**Erskine Park Landowner**)

(collectively **the Developers**)

Introduction

- A** On 12 March 2015, the Planning Minister and the Developers entered into the Planning Agreement relating to the Oakdale Central and Oakdale South Industrial Estates.
- B** On 22 December 2016, the Planning Agreement was varied by the First Variation Deed.
- C** Lot 87 was transferred to the Oakdale South Landowner within 90 days of the date of the First Variation Deed.
- D** GPS has proposed further amendments to the Planning Agreement in an offer to the Planning Minister, in connection with the Oakdale South SSD Mod 1 Application.
- E** The parties have agreed to further vary the Planning Agreement, as set out in this deed.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this deed:

- (1) **First Variation Deed** means the 'Deed of Variation to Planning Agreement' dated 22 December 2016.
- (2) **Lot 87** means Lot 87 in DP 752041.

- (3) **Oakdale South SSD Consent** means the SSD Consent No 6917 determined on 26 October 2016, for the staged development of the Oakdale South Development.
- (4) **Oakdale South SSD Mod 1 Application** means Application No. SSD 6917 MOD 1, being the application lodged on behalf of the Developers on 4 November 2016 seeking to modify the Oakdale South SSD Consent.
- (5) **Planning Agreement** means the voluntary planning agreement entered into between the Minister and the Developers dated 12 March 2015, as varied by the First Variation Deed.

1.2 Interpretation

In this deed, unless the contrary intention appears:

- (1) expressions and phrases used but not defined in this deed will have the same meanings as they have in the Planning Agreement;
- (2) clause 1 of the Planning Agreement will apply to the interpretation and construction of this deed.

2 Variation of Planning Agreement

2.1 Variation

On and from the date of this deed, the Planning Agreement is varied as set out in this clause 2.

2.2 Clause 1.1 Definitions

The definition of 'Oakdale South Lot 3' in clause 1.1 is replaced with:

Oakdale South Lot 3 means the lots within the Oakdale South Development which are marked '3A', '3B' and '3C' on the plan of subdivision at Annexure A.

2.3 Annexure A – Oakdale Central and Oakdale South lots

The plans at Annexure A to the Planning Agreement and Schedule II to the First Variation Deed are of no effect, and are replaced with the plan at Schedule I to this deed.

2.4 Annexure C - Altered Design of the Estate Road

On and from the date of this deed, the plan at Annexure C to the Planning Agreement is of no effect and is replaced with the plan at Schedule II to this deed.

2.5 Monetary Contributions

- (1) The table at Clause 1(b) of Schedule 4 to the Planning Agreement is deleted, and replaced with the table at Schedule III to this deed.
- (2) The table entitled "Monetary Contribution Component estimates and offsets" which appears on the second page of Annexure B (being the page numbered 65), is deleted, and replaced with the table at Schedule IV to this deed.

3 Registration of this deed

3.1 Registration

- (1) As contemplated by section 93H of the Planning Act, the Developers agree to lodge this deed for registration under the Real Property Act in the relevant folios of the Register for all of the Oakdale Land within 10 Business Days after the date on which a counterpart of this deed which the Planning Minister has executed is returned to the Developer.
- (2) The Developers will provide the Planning Minister with a copy of the relevant folio of the Register and a copy of the registered dealing which provide evidence that clause 3.1(1) has been satisfied, within 10 Business Days after the date of registration.

4 General

- 4.1 This deed and the Planning Agreement constitute the entire agreement between the parties regarding the matters set out in those documents and supersede any prior representations, understandings or arrangements between the parties, whether orally or in writing.

5 Expenses

- 5.1 The Developers must pay their own, and the Planning Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- 5.2 The Developers must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Planning Regulation.
- 5.3 The Developers must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- 5.4 The Developers must provide the Planning Minister with bank cheques in respect of the Planning Minister's costs pursuant to clauses 5.1 and 5.2 above:
 - (1) where the Planning Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (2) where the Planning Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by the Planning Minister for payment.

6 Variations not to affect accrued rights and obligations

- 6.1 The variations to the Planning Agreement do not affect the validity or enforceability of the Planning Agreement as varied.
- 6.2 Nothing in this deed:
 - (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this deed; or

- (2) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this deed.

7 Trustees

Clause 11.3 and Schedule 7 of the Planning Agreement are incorporated as though fully set out in this deed.

8 Confirmation

Each party is bound by the Planning Agreement as varied by this deed.

Schedule I



Schedule II



Schedule III

Land Component	Indicative NDA (as at date of this deed)	Indicative contribution amount (based on indicative NDA)
Oakdale Central Land		
Oakdale Central Lot 1C	4.6417 hectares	\$835,506 calculated pursuant to clause 2 of this Schedule 4.
Oakdale Central Lot 2B	6.001 hectares	\$1,080,180 calculated pursuant to clause 2 of this Schedule 4.
Oakdale Central Lot 3	15.5894 hectares	\$2,806,092 calculated pursuant to clause 2 of this Schedule 4.
Oakdale Central Lot 4	2.161 hectares	\$389,070 calculated pursuant to clause 2 of this Schedule 4.
Oakdale South Land		
Oakdale South Lot 1	8.9603 hectares	\$1,612,854 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 2	15.7663 hectares	\$2,837,934 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 3	21.4196 hectares	\$3,855,528 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 4	15.1268 hectares	\$2,722,824 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 5	6.5163 hectares	\$1,172,934 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 6	6.8433 hectares	\$1,231,794 calculated pursuant to clause 2 of this Schedule 4

Schedule IV

Site	Land area (m ²)	Contribution
Erskine Park		
Interlink Contribution	N/A	\$3,414,056
Oakdale Central		
Site 1C	46,417	\$835,506
Site 2B	60,010	\$1,080,180
Site 3	155,894	\$2,806,092
Site 4	21,615	\$389,070
Total (Central)	283,936	\$5,110,848
Oakdale South		
Site 1	89,603	\$1,612,854
Site 2	157,663	\$2,837,934
Site 3 (being 3A, 3B and 3C)	214,196	\$3,855,528
Site 4	151,268	\$2,722,824
Site 5	65,163	\$1,172,934
Site 6	68,433	\$1,231,794
Total (South)	746,326	\$13,433,868
TOTAL	1,032,262	\$21,958,772

Execution pages

Executed as a deed.

Signed sealed and delivered for and on
behalf of the **Minister for Planning**
in the presence of:

Signature of Witness

Signature as delegate of the Minister for
Planning

Name of Witness in full

Full name of delegate

Signed, sealed and delivered for and on behalf
of **BGAI 6 Pty Ltd** (ABN 19 128 775 799) by its
attorneys under a power of attorney
dated _____ registered in
Jurisdiction _____ with
No. _____ in the presence of:

Signature of attorney who declares that the
attorney has not received any notice of the
revocation of the power of attorney

Full name of attorney

Signature of witness

Signature of attorney who declares that the
attorney has not received any notice of the
revocation of the power of attorney

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **BGMG 8 Pty Ltd** (ABN 65 161 602 768) by its attorneys under a power of attorney dated_____ registered in Jurisdiction_____ with No._____ in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **BGAI 2 Pty Ltd** (ABN 49 120 605 718) by its attorneys under a power of attorney dated_____ registered in Jurisdiction_____ with No._____ in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **Goodman Property Services (Aust) Pty Limited** (ABN 40 088 981 793) by its attorneys under a power of attorney dated_____ registered in Jurisdiction_____ with No._____ in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of witness

Full name of witness

Annexure: Conformed Planning Agreement

(excluding the documents at Annexure B to the Planning Agreement behind the page numbered 67).

Oakdale Central and Oakdale South, Horsley Park

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning

ABN 38 755 709681

Goodman Property Services (Aust) Pty Ltd

ACN 088 981 793

BGAI 6 Pty Ltd

ACN 128 775 799

BGMG 8 Pty Ltd

ACN 161 602 768

BGAI 2 Pty Limited

ACN 120 605 718

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Our reference 751/17849/80155083

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Date**Parties**

MINISTER FOR PLANNING (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales, 2000 (**Planning Minister**)

GOODMAN PROPERTY SERVICES (AUST) PTY LTD (ACN 088 981 793) of level 17, 60 Castlereagh Street, Sydney, New South Wales, 2000 (**GPS**);

BGAI 6 PTY LTD (ACN 128 775 799) of Level 17, 60 Castlereagh Street, Sydney, New South Wales, 2000 (**Oakdale Central Landowner**);

BGMG 8 PTY LTD (ACN 161 602 768) of Level 17, 60 Castlereagh Street, Sydney, New South Wales, 2000 (**Oakdale South Landowner**); and

BGAI 2 PTY LTD (ACN 120 605 718) of Level 17, 60 Castlereagh Street, Sydney, New South Wales, 2000 (**Erskine Park Landowner**)

Introduction

- A. The Oakdale Central Landowner owns the Oakdale Central Land.
- B. The Oakdale South Landowner owns the Oakdale South Land.
- C. GPS is developing part of the Oakdale Land for the Oakdale South Development. As at the date of this deed, the Developers have not submitted a development application for the Oakdale South Development.
- D. GPS is developing part of the Oakdale Land for the Oakdale Central Development, jointly with related entities and with Brickworks Industrial Development Pty Limited. The Oakdale Central Concept Plan Approval and the Oakdale Central SSD Approval authorise parts of the Oakdale Central Development. In addition, GPS lodged the Oakdale Central SSD Application with the Planning Minister for part of the Oakdale Central Development but this application has not been determined as at the date of this deed.
- E. A related body corporate of GPS obtained the Oakdale Central Project Approval in respect of Oakdale Central Lot 1A and Oakdale Central Lot 2A, for part of the Oakdale Central Development. Oakdale Central Lot 1A and Oakdale Central Lot 2A are the subject of a separate Planning Agreement dated 25 March 2011 between GPS, the Oakdale Central Landowner and the Planning Minister, and the relevant development contributions under that Planning Agreement have been provided to the Planning Minister.
- F. The Erskine Park Landowner owns the Erskine Park Land (except the land for which the Ministerial Corporation is the registered proprietor). The Erskine Park Approval authorises parts of the Erskine Park Development.
- G. The Developers are prepared to make the Development Contributions to the Planning Minister for the provision of infrastructure for public purposes in connection with the Oakdale Central Development, the Oakdale South Development and the Erskine Park Development in accordance with this deed.
- H. The Developers have offered to enter into this deed with the Planning Minister to provide for and secure the Development Contributions.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

Acquisition Cost means any loss, cost, expense, fee, charge, tax, rate, fine or penalty in connection with the acquisition by any person or the transfer to the Nominated Transferee (including any other transfers which occur prior to that transfer) of any Land Contribution.

Actual Land Contribution Value for a Land Contribution means the market value of that Land Contribution at the time of the transfer of that Land Contribution from the registered proprietor of that Land Contribution to the Nominated Transferee, as agreed between the parties or otherwise as determined in accordance with clause 12 of Schedule 4, to the extent that it does not exceed the Maximum Land Value (as provided by clause 6 of Schedule 4).

Actual WIK Costs for a WIK Contribution means the actual costs incurred by the Developers to provide that WIK Contribution, as agreed between the parties or otherwise as determined in accordance with clause 10 of Schedule 4, to the extent that it does not exceed the Maximum WIK Value (as provided by clause 6 of Schedule 4).

Address for Service for a party means the address, contact or facsimile number (as the case may be) of that party appearing in Schedule 2 or any new address, contact or facsimile number (as the case may be) notified by that party to all other parties as its new Address for Service.

Authorisation means a consent, approval, licence, permit, certificate or other form of statutory authorisation, and includes that authorisation as modified, varied or amended from time to time.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Planning Minister, in the Planning Minister's absolute discretion,

to pay the face value of that undertaking on demand.

Base CPI means the CPI number for the quarter ending:

- (a) for the Oakdale Central Lot 1B Contribution - 31 March 2013;
- (b) for the Erskine Park Contribution - 31 March 2007;
- (c) for each other Monetary Contribution Component - either:
 - (i) 31 March after the date on which this deed is executed; or
 - (ii) if the amount of the Monetary Contribution Component has been replaced by the amount of a SIC Amount in accordance with

clause 4.5(c)(iv) - 31 March before the date on which that replacement occurs;

- (d) for a SIC Credit - 31 March after the date on which the SIC Credit is generated in accordance with clause 4.5; and
- (e) for an Excess Contributions Credit - 31 March after the date on which the Excess Contributions Credit is generated in accordance with clause 14 of Schedule 4.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Complying Development Certificate has the same meaning as in the Planning Act.

Construction Certificate has the same meaning as in the Planning Act.

Contributions Estimate Notice has the meaning given to that expression in clause 8 of Schedule 4.

CPI number means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the parties agree, acting reasonably, will apply.

CPI Adjustment Date means

- (a) for the Erskine Park Contribution - 1 July in each year after 31 March 2007;
- (b) for the Oakdale Central Lot 1B Contribution - 1 July in each year after 31 March 2013;
- (c) for each other Monetary Contribution Component - 1 July in each year after the date on which this deed is executed;
- (d) for a SIC Credit - 1 July in each year after the date on which the SIC Credit is generated in accordance with clause 4.5; and
- (e) for an Excess Contributions Credit - 1 July in each year after the date on which the Excess Contributions Credit is generated in accordance with clause 14 of Schedule 4.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

Dealing has the meaning given to that expression in clause 10.2.

Developers means any or all of GPS, the Erskine Park Landowner, the Oakdale Central Landowner and the Oakdale South Landowner.

Development Contribution means a contribution to be provided by the Developers in accordance with clause 4 and the provisions of Schedule 4.

Erskine Park Approval means the project approval for application no MP06_0253, granted by the Planning Minister under Part 3A of the Planning Act on 1 March 2007 for the Erskine Park Development.

Erskine Park Contribution means the Monetary Contribution Component of that name which is specified in the Monetary Contributions Table.

Erskine Park Development means the subdivision of the Erskine Park Land and associated works, the development of one of the subdivided lots as a liquor distribution centre, and dedication of part of the Erskine Park Land for biodiversity conservation purposes.

Erskine Park Land means the land identified as the Erskine Park Land in Schedule 3.

Estimated Land Contribution Value for a Land Contribution means the estimated value of that Land Contribution, as agreed between the parties or otherwise as determined in accordance with clause 8 of Schedule 4.

Estimated WIK Costs for a WIK Contribution means the cost estimate for providing that WIK Contribution, including reasonable contingencies, as agreed between the parties or otherwise as determined in accordance with clause 8 of Schedule 4.

Excess Contributions Credit has the meaning given to that expression in clause 14 of Schedule 4.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Planning Act, as required by the Planning Regulation.

GST includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any other State or Territory).

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST law has the same meaning as in the GST Act.

Key Estimate Matters has the meaning given to that expression in clause 8 of Schedule 4.

Key Land Reconciliation Matters has the meaning given to that expression in clause 12 of Schedule 4.

Key Road Work Terms has the meaning given to that expression in clause 4.4(d).

Key WIK Reconciliation Matters has the meaning given to that expression in clause 10 of Schedule 4.

Land means the Oakdale Land and the Erskine Park Land.

Land Actual Contributions Report has the meaning given to that expression in clause 12 of Schedule 4.

Land Component means a part of the Land in respect of which the Monetary Contributions Table specifies a Monetary Contribution Component.

Land Contribution means:

- (a) the land which is the subject of a WIK Contribution, and which is transferred or proposed for transfer (as the case may be) to a Nominated Transferee at no cost to the Planning Minister in accordance with clause 9 of Schedule 4, and in the case of the OWR Upgrade Contribution means:
 - (i) land currently owned by TransGrid;

- (ii) land currently owned by Sydney Catchment Authority; and
 - (iii) land currently owned by the Austral Brick Company Proprietary Limited,
- as described in Annexure B to this deed, each to be treated as a separate Land Contribution for the purposes of this deed; and

- (b) any additional land which the Developers transfer or propose to transfer (as the case may be), or procure another person to transfer to a Nominated Transferee at no cost to the Planning Minister in accordance with clause 9 of Schedule 4,

and which the Planning Minister approves for transfer in a WIK Approval.

Land Contribution Difference has the meaning given to that expression in clause 13 of Schedule 4.

Liabilities means claims, actions, demands, proceedings, losses, costs, expenses, fines, penalties and other liabilities (including legal costs on an indemnity basis).

Maximum Land Contribution Value for a Land Contribution means the maximum value for that Land Contribution for the purposes of this deed, as agreed between the parties or otherwise as determined in accordance with clause 8 of Schedule 4.

Maximum WIK Value for a WIK Contribution means the maximum value for that WIK Contribution for the purposes of this deed, as agreed between the parties or otherwise as determined in accordance with clause 8 of Schedule 4, and as revised from time to time in accordance with clause 9 of Schedule 4.

Ministerial Corporation means the Minister Administering the Environmental Planning and Assessment Act 1979, a corporation sole constituted under section 8 of the Planning Act.

Monetary Contribution means all of the total Monetary Contribution Components which are specified in the numbered items of the Monetary Contributions Table, as adjusted from time to time in accordance with this deed.

Monetary Contribution Component means a component of the Monetary Contribution which is specified as an item in the Monetary Contributions Table, as adjusted from time to time in accordance with this deed.

Monetary Contribution Security means the security which the Planning Minister holds, or is entitled to hold, from time to time under this deed as security for the payment of Monetary Contribution Components under this deed. It includes the Oakdale Central / Erskine Park Security and the Oakdale South Security.

Monetary Contributions Table means the table in clause 1(a) of Schedule 4.

Net Developable Area or **NDA** means the net developable area of a Land Component, as calculated in accordance with clause 2 of Schedule 4.

Nominated Monetary Contribution Components has the meaning given to that expression in clause 4 of Schedule 4.

Nominated Transferee has the meaning given to that expression in clause 9 of Schedule 4.

Nominated WIK and Land Contribution has the meaning given to that expression in clause 4 of Schedule 4.

Oakdale Central Concept Plan Approval means the concept plan in application no. MP08_0065 for the Oakdale Central Development, as approved by the Planning Minister under Part 3A of the Planning Act on 2 January 2009.

Oakdale Central Development means the subdivision of the Oakdale Central Land into Oakdale Central Lot 1A, Oakdale Central Lot 1B, Oakdale Central Lot 2A, Oakdale Central Lot 1C, Oakdale Central Lot 2B, Oakdale Central Lot 3, Oakdale Central Lot 4 and other lots, and associated works, the development of two of the subdivided lots as a DHL Logistics Hub and associated infrastructure, the development of four of the remaining subdivided lots as warehouse distribution facilities with associated parking, and the dedication of part of the Oakdale Central Land for biodiversity conservation purposes.

Oakdale Central Land means the land identified as the Oakdale Central Land in Schedule 3.

Oakdale Central Lot 1A means the lot within the Oakdale Central Development which is marked 1A on the plan of subdivision at Annexure A.

Oakdale Central Lot 1B means the lot within the Oakdale Central Development which is marked 1B on the plan of subdivision at Annexure A.

Oakdale Central Lot 1B Contribution means the Monetary Contribution Component of that name which is specified in the Monetary Contributions Table.

Oakdale Central Lot 1C means the lot within the Oakdale Central Development which is marked 1C on the plan of subdivision at Annexure A.

Oakdale Central Lot 2A means the lot within the Oakdale Central Development which is marked 2A on the plan of subdivision at Annexure A.

Oakdale Central Lot 2B means the lot within the Oakdale Central Development which is marked 2B on the plan of subdivision at Annexure A.

Oakdale Central Lot 3 means the lot within the Oakdale Central Development which is marked 3 on the plan of subdivision at Annexure A.

Oakdale Central Lot 4 means the lot within the Oakdale Central Development which is marked 4 on the plan of subdivision at Annexure A.

Oakdale Central Part 4 Consent means development consent no. 1084.1/2011 for the construction of a warehouse distribution facility with associated parking and landscaping works on Oakdale Central Lot 1B as part of the Oakdale Central Development, granted by Fairfield City Council under Part 4 of the Planning Act on 12 August 2013.

Oakdale Central Project Approval means the major project approval MP08_0066 for the establishment of a DHL Logistics Hub and associated infrastructure for the Oakdale Central Development, approved by the Planning Minister under Part 3A of the Planning Act on 2 January 2009.

Oakdale Central SSD Application means State Significant Development application no. SSD 6078 for the subdivision of part of the Oakdale Central Land, the construction of warehouse buildings on Oakdale Central Lot 1C, Oakdale Central Lot 2B and Oakdale Central Lot 3, and the upgrade of Old Wallgrove Road as part of the Oakdale Central Development, lodged with DP&E under Part 4 of the Planning Act, as amended from time to time.

Oakdale Central / Erskine Park Security has the meaning given to that expression in clause 2(a) of Schedule 5.

Oakdale Central SSD Approval means any approval granted under Part 4 of the Planning Act in respect of the Oakdale Central SSD Application.

Oakdale Development means the Oakdale Central Development and the Oakdale South Development.

Oakdale Land means the Oakdale Central Land and the Oakdale South Land, and which is identified in Schedule 3.

Oakdale South Development includes the subdivision and development of the Oakdale South Land for industrial, manufacturing, warehousing, storage, research, ancillary office, and small-scale local service uses, generally in accordance with the plan of subdivision at Annexure A provided that the number and identification marking of lots is as shown in that plan unless the Secretary in her absolute discretion agrees otherwise, the development of the associated infrastructure, parking and landscaping, and the dedication of part of the Oakdale South Land for biodiversity conservation purposes.

Oakdale South Land means the land identified as the Oakdale South Land in Schedule 3.

Oakdale South Lot 1 means the lot within the Oakdale South Development which is marked 1A on the plan of subdivision at Annexure A.

Oakdale South Lot 2 means the lot within the Oakdale South Development which is marked 1B on the plan of subdivision at Annexure A.

Oakdale South Lot 3 means the lots within the Oakdale South Development which ~~is~~ are marked ~~2~~ '3A', '3B' and '3C' on the plan of subdivision at Annexure A.

Oakdale South Lot 4 means the lot within the Oakdale South Development which is marked 3 on the plan of subdivision at Annexure A.

Oakdale South Lot 5 means the lot within the Oakdale South Development which is marked 4A on the plan of subdivision at Annexure A.

Oakdale South Lot 6 means the lot within the Oakdale South Development which is marked 4B on the plan of subdivision at Annexure A.

Oakdale South Preliminary Works means:

- (a) infrastructure works which are carried out for the purpose of the OWR Upgrade Contribution; or
- (b) bulk earthworks and other site preparation works which do not include the laying of slabs or floors or the carrying out of any other works above the surface of the ground,

which the Secretary of the Department of Planning and Environment, in her absolute discretion, has certified in writing as "Oakdale South Preliminary Works".

Oakdale South Security has the meaning given to that term in clause 2(b) of Schedule 5.

Oakdale Transferee has the meaning given to that expression in clause 10.2.

Occupation Certificate has the same meaning as in the Planning Act.

OWR Upgrade Contribution means the WIK Contribution comprising the upgrade of Old Wallgrove Road as depicted in the drawings and as described at Annexure B.

Planning Act means the Environmental Planning and Assessment Act 1979 (NSW).

Planning Agreement has the same meaning as in the Planning Act.

Planning Approval means a development consent under Part 4 of the Planning Act or a project approval under (former) Part 3A of the Planning Act.

Planning Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

Practical Completion for a WIK Contribution has the meaning given to that expression in a Road Works Agreement for that WIK Contribution.

Real Property Act means the Real Property Act 1900 (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Required Obligations has the meaning given to that expression in clause 10.2.

RMS means Roads and Maritime Services, being the Authority constituted under section 46 of the Transport Administration Act 1988 (NSW).

Roads Authority has the same meaning as in the Roads Act 1993 (NSW).

Road Works Agreement:

- (a) means a works authorisation deed or other legally binding agreement between the Developers and RMS (or other relevant Roads Authority) which governs the carrying out and Practical Completion of a WIK Contribution; and
- (b) in the case of a Roads Authority other than RMS, includes an Authorisation granted by the Roads Authority under section 138 of the Roads Act 1993 (NSW) instead of such a deed or agreement, if the Secretary, in her absolute discretion, has certified that Authorisation in writing as a "Road Works Agreement" for the purposes of this deed.

Secretary means the Secretary of the Department of Planning and Environment.

SIC Amount has the meaning given to that expression in clause 4.5(b).

SIC Credit means a credit against other development contributions which:

- (a) is calculated in accordance with clause 4.5(d) or clause 14 of Schedule 4; and
- (b) is adjusted, and may be used, in accordance with clause 4.6.

SIC Determination means a determination by the Planning Minister of a Special Infrastructure Contribution for a special contributions area which includes the Oakdale Land.

Special Infrastructure Contribution means a contribution determined in accordance with section 94EE of the Planning Act which applies to development on any part of the Oakdale Land.

Stage of the Oakdale Central Development or the Oakdale South Development means the development of a Land Component in the Oakdale Central Development or the Oakdale South Development (as the case may be).

Subdivision Certificate has the same meaning as in the Planning Act.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Trustee means each person defined as a "Trustee" in a clause in Schedule 7.

Western Sydney Employment Area means the land to which State Environmental Planning Policy (Western Sydney Employment Area) 2009 applies.

WIK means works-in-kind.

WIK Actual Contribution Report has the meaning given to that expression in clause 10 of Schedule 4.

WIK Approval has the meaning given to that expression in clause 4.4(f).

WIK Contribution means:

- (a) the OWR Upgrade Contribution; and
- (b) any other road and related works the subject of a current WIK Proposal or a WIK Approval.

WIK Contribution Difference has the meaning given to that expression in clause 11 of Schedule 4.

WIK and Land Contribution Security has the meaning given to that expression in clause 2 of Schedule 5.

WIK Proposal has the meaning given to that expression in clause 4.4.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **Planning Minister** includes a reference to the Secretary and also a reference to any person nominated by the Planning Minister for the purposes of this deed specifically or for Planning Agreements to which the Planning Minister is a party generally;
- (b) a reference to **this deed** or another document means this deed or that other document as varied, supplemented, replaced, assigned or novated from time to time, and includes any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (c) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (d) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (e) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (f) **clause headings**, **the introduction** and the **Contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;

- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (m) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed will commence on and from date this deed is signed by all the parties.

2.2 Planning agreement under the Planning Act

This deed constitutes a Planning Agreement within the meaning of section 93F of the Planning Act.

2.3 Application

This deed applies to:

- (a) the Oakdale Land excluding Oakdale Central Lot 1A and Oakdale Central Lot 2A;
- (b) the Erskine Park Land;
- (c) the Oakdale Development excluding development in respect of Oakdale Central Lot 1A and Oakdale Central Lot 2A; and
- (d) the Erskine Park Development.

3. Application of Sections 94, 94A and 94EF of the Planning Act

The application of sections 94, 94A and 94EF of the Planning Act is excluded to the extent stated in Schedule 1.

4. Development Contributions

4.1 Developer to provide Development Contributions

The Developers agree to provide, or procure the provision of, the Development Contributions to the Planning Minister in accordance with this clause 4 and the provisions of Schedule 4.

4.2 Acknowledgement

The Developers acknowledge and agree that the Planning Minister:

- (a) has no obligation to use or expend the Development Contributions for a particular purpose, and has not made any representation or warranty that she will use or expend the Development Contributions for any particular purpose; and
- (b) has no obligation to repay, or provide any compensation or payment for, the Development Contributions (noting that the provision of any credit to the Developer under clause 4.5 or Schedule 4 is not a repayment, compensation or payment); and
- (c) has not made any representation or warranty that, if the Development Contributions are transferred or provided in any way to another Authority, the Development Contributions will or must be used for any particular purpose by that or any other Authority.

4.3 Monetary Contribution

Subject to clause 4.4, the Developers must provide the Monetary Contribution to the Planning Minister:

- (a) in the amount which is:
 - (i) specified in the Monetary Contributions Table and indexed in the manner specified in the Monetary Contributions Table; or
 - (ii) calculated in the manner specified in the Monetary Contributions Table (which will incorporate indexation in the manner specified in the Monetary Contributions Table), if no amount is specified in the Monetary Contributions Table;
- (b) in the manner specified as the "Manner of Delivery" in the Monetary Contributions Table; and
- (c) at or before the time specified as the "Timing" in the Monetary Contributions Table.

4.4 Works-in-Kind Contribution and Land Contribution

- (a) The Developers may, by written notice to the Planning Minister in accordance with this clause 4.4, propose that the Developers provide a WIK Contribution and (if applicable) Land Contribution instead of providing one or more Monetary Contribution Components (including part of a Monetary Contribution Component) except the Oakdale Central Lot 1B Contribution, and as an offset for those Monetary Contribution Components (and part of a Monetary Contribution Component, if relevant), in accordance with this clause 4.4 and Schedule 4 (**WIK Proposal**).
- (b) If the Developers intend to submit a WIK Proposal to the Planning Minister, the Developers must give the Planning Minister 15 Business Days' written notice of that intention before submitting the WIK Proposal.

- (c) The Developers must, in the WIK Proposal:
- (i) describe the WIK Contribution which the Developers propose to provide;
 - (ii) specify the estimated cost of that WIK Contribution;
 - (iii) specify, for all of the land which is the subject of that WIK Contribution (**Relevant Land**) and any other Land Contribution in that WIK Proposal:
 - A. the title details of that land and a plan showing that land;
 - B. the registered proprietor of that land; and
 - C. the estimated value of that land;
 - (iv) confirm:
 - A. that one or more of the Developers is the registered proprietor of all of the Relevant Land and any other Land Contribution in that WIK Proposal; or
 - B. if one or more of the Developers is not the registered owner of any parts of the Relevant Land, that the Developers have obtained the written consent of each owner of each of those parts of the Relevant Land to the transfer of that part to the Nominated Transferee, on or before Practical Completion of the relevant WIK Contribution, either unconditionally or subject to valuation of the part (and if subject to valuation, the Developers must specify which part is subject to valuation and the terms on which the valuation issue is to be resolved);
 - (v) specify the Monetary Contribution Components (and part of a Monetary Contribution Component, if relevant) in respect of which the Developers are electing to provide the WIK Contribution and (if applicable) the Land Contribution as an offset; and
 - (vi) specify whether the provision of the WIK Contribution and (if applicable) the Land Contribution is intended to be a complete or partial offset for each of the specified Monetary Contribution Components and, if a partial offset, the amount of the proposed offset.
- (d) The Developers must, when providing the WIK Proposal, also provide:
- (i) a statement of the key terms which will be incorporated in the proposed Road Works Agreement for the relevant WIK Contribution, including:
 - A. the nature and amount of security to be provided for the WIK Contribution;
 - B. the definition of "Practical Completion" for the WIK Contribution; and
 - C. the process for achieving Practical Completion**(Key Road Work Terms)**; and
 - (ii) written evidence:

- A. that the Relevant Roads Authority agrees in principle to the provision of the WIK Contribution which is described in the WIK Proposal; and
- B. of the Relevant Roads Authority's comments on the Key Road Works Terms as described in the WIK Proposal,

and the following process will apply:

- (iii) the Planning Minister must notify the Developers in writing, within 20 Business Days after receiving a WIK Proposal and the material specified in clause 4.4(d)(i) and (ii), whether or not the Planning Minister agrees with those Key Road Work Terms;
- (iv) if the Planning Minister notifies the Developers that the Planning Minister does not agree with those Key Road Work Terms, then the parties must negotiate in good faith and use their best endeavours to agree the Key Road Work Terms;
- (v) if 20 Business Days (or such other period as the parties may agree) have passed since the Developers' statement of Key Road Work Terms and the material specified in clause 4.4(d)(ii) have been provided to the Planning Minister and the parties have not reached agreement on the Key Road Work Terms, then the Planning Minister may, within a further 10 Business Days, and if the Planning Minister has consulted with the relevant Roads Authority for the proposed Road Works Agreement, and by written notice to the Developers, determine the Key Road Work Terms which must be incorporated in the Road Works Agreement.
- (e) The Developers may withdraw a WIK Proposal at any time up to the date on which the Key Road Work Terms are agreed under clause 4.4(d)(iii) or 4.4(d)(iv) or the date which is 20 Business Days after or the Planning Minister provides notice of the Key Road Work Terms under clause 4.4(d)(v). If the Developers withdraw a WIK Proposal, then the Developers must provide the Monetary Contribution to the Planning Minister in accordance with this deed.
- (f) If one of the dates specified in clause 4.4(d) has passed and the Planning Minister has not received a withdrawal of the WIK Proposal, then the Planning Minister may, in her absolute discretion, approve the WIK Contribution and (if applicable) the Land Contribution specified in the WIK Proposal, as varied to include the Key Road Work Terms as agreed or determined in accordance with clause 4.4(d) (**WIK Approval**).
- (g) If the Planning Minister issues a WIK Approval for a WIK Contribution, the Developers must ensure that any Road Works Agreement with the relevant Roads Authority for that WIK Contribution incorporates the Key Road Work Terms agreed or determined in accordance with clause 4.4(d).
- (h) To avoid doubt, the parties agree that the Developers may provide a WIK Contribution and (if applicable) Land Contribution as an offset for a Monetary Contribution Component even if the Monetary Contribution Component relates to a part of the Oakdale Development which has not been approved or carried out at the time at which the Developers submit a relevant WIK Proposal or any time after that.
- (i) Despite anything in this clause 4.4 or in Schedule 4:
 - (i) the Developers cannot provide a WIK Contribution or Land Contribution as an offset for the Oakdale Central Lot 1B Contribution; and
 - (ii) the Developers cannot provide a WIK Contribution or Land Contribution as an offset for any Monetary Contribution Component relating to the

Oakdale Development until they have provided a WIK Contribution or Land Contribution as an offset for all of the Erskine Park Contribution.

- (j) The Planning Minister and the Developers acknowledge and agree that:
 - (i) the Planning Minister has issued a WIK Approval for the OWR Upgrade Contribution adopting the matters set out in Annexure B; and
 - (ii) the Planning Minister and the Developers have satisfied this clause 4.4 in respect of the OWR Upgrade Contribution.

4.5 Adjustment for Special Infrastructure Contributions

- (a) Despite anything else in this deed, this clause 4.5 applies to the Oakdale Development (other than development on Oakdale Central Lot 1B) if the Planning Minister makes a SIC Determination after the execution of this deed.

This clause 4.5 applies to allow a Monetary Contribution Component to be re-calculated, or a SIC Credit to be claimed, whether a Planning Approval for the relevant part of the Oakdale Development is granted before or after the SIC Determination takes effect.

- (b) For the purposes of this clause 4.5:
 - (i) reference to a **SIC Amount** for a part of the Oakdale Development on any Land Component is a reference to the amount of a Monetary Contribution calculated in accordance with the SIC Determination for that part of the Oakdale Development as if a separate Planning Approval had been granted for that part and had imposed an obligation to make a Special Infrastructure Contribution in accordance with the SIC Determination; and
 - (ii) a SIC Amount is to be calculated as if it were due at the time that it is proposed to replace the Monetary Contribution Component with that amount in the Monetary Contributions Table, in the circumstances referred to in clause 4.5(c)(ii);
 - (iii) a SIC Amount is to be calculated as if it were due at the time the SIC Determination comes into effect, in the circumstances referred to in clause 4.5(d)(ii);
 - (iv) the SIC Determination, despite any terms to the contrary, is to be treated as applying to complying development; and
 - (v) except in clauses 4.5(e) and 4.5(f), a reference to a Monetary Contribution Component is a reference to the amount of the Monetary Contribution Component which would have been payable if it had not been reduced on the basis of any WIK Contributions and Land Contributions in accordance with clause 4 of Schedule 4.
- (c) If:
 - (i) the SIC Amount for a part of the Oakdale Development on any Land Component is less than the Monetary Contribution Component specified for that part of the Oakdale Development; and
 - (ii) the Developers either:
 - A. have not paid the Monetary Contribution Component that would be payable for that part of the Oakdale Development,

and that Monetary Contribution Component has not become due and payable, at the time the SIC Determination comes into effect; or

- B. have obtained one or more WIK Approvals to provide a WIK Contribution and (if applicable) Land Contribution instead of that Monetary Contribution Component (or part of that Monetary Contribution Component) in accordance with clause 4.4, but Practical Completion has not been achieved in respect of any of those WIK Contributions and Land Contributions at the time the SIC Determination takes effect,

then:

- (iii) the Developers may, by notice in writing to the Planning Minister, elect to substitute the SIC Amount for that Monetary Contribution Component in the Monetary Contributions Table; and
- (iv) if the Developers provide a notice under clause 4.5(c)(iii), then the amount of that Monetary Contribution Component is replaced in the Monetary Contributions Table with the SIC Amount, and is then reduced in accordance with clause 4 of Schedule 4 for each WIK Contribution and (if applicable) Land Contribution the subject of a WIK Approval which relates to that Monetary Contribution Component.

(d) If:

- (i) the SIC Amount for a part of the Oakdale Development on any Land Component is less than the amount of a Monetary Contribution Component specified for that part of the Oakdale Development; and
- (ii) the Developers either:
 - A. have paid in full the Monetary Contribution Component for that part of the Oakdale Development at the time the SIC Determination takes effect; or
 - B. have obtained one or more WIK Approvals to provide a WIK Contribution and (if applicable) Land Contribution instead of that Monetary Contribution Component (or part of that Monetary Contribution Component) in accordance with clause 4.4, and Practical Completion has been achieved in respect of all of those WIK Contributions and Land Contributions at the time the SIC Determination takes effect,

then the Developers will be entitled to a SIC Credit which:

- (iii) if it relates to a Monetary Contribution Component which has been paid - equals the amount of that Monetary Contribution Component less that SIC Amount;
- (iv) if it relates to a WIK Contribution and (if applicable) Land Contribution in respect of which Practical Completion has been achieved - is determined in accordance with clause 14 of Schedule 4; and
- (v) only becomes available to the Developers when the Planning Minister has issued a notice in writing confirming the amount of the SIC Credit.

- (e) To avoid doubt, nothing in this clause 4.5 affects the Developers' obligation to provide Monetary Contribution Components or WIK Contributions and Land Contributions, in accordance with this deed.
- (f) The SIC Amount (as may be reduced in accordance with clause 4 of Schedule 4) which replaces the Monetary Contribution Component in the Monetary Contributions Table is to be that amount as calculated by the Planning Minister in accordance with this clause 4.5 and notified to the Developers in writing.

4.6 Status and use of SIC Credits

If the Developers are entitled to a SIC Credit under this deed:

- (a) the Developers must, by notice in writing to the Planning Minister, nominate which of them is to hold the SIC Credit, and the nominated Developer will be taken to be the holder of that SIC Credit, unless the SIC Credit is transferred to another person with the prior written consent of the Planning Minister;
- (b) the holder of the SIC Credit may, by notice in writing to the Planning Minister, use the SIC Credit to offset an obligation to provide development contributions to the Planning Minister, in respect of other development by the Developers or a company related to the Developers, within the Western Sydney Employment Area, in the amount (if the development contribution is a payment of money) or to a value (if the development contribution is the provision of works or land) which equals the amount of the SIC Credit as calculated in accordance with this deed; and
- (c) any SIC Credit which has been generated under this deed, and which has not been allocated for use in an executed Planning Agreement, will be adjusted on each CPI Adjustment Date until that SIC Credit has been allocated, using the following formula:

$$CC = PC \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

Where

CC is the newly adjusted SIC Credit

the terms **Current CPI** and **Base CPI** are defined in clause 1.1

and **PC** means the amount of the SIC Credit on the date on which that SIC Credit was generated.

and a SIC Credit is taken to have been allocated under a Planning Agreement when the Planning Agreement provides for the use of the SIC Credit.

5. Interest for late provision of Monetary Contribution

- (a) If the Developers fail to provide a Monetary Contribution Component to the Planning Minister under this deed on the due date for provision of that Monetary Contribution Component, the Developers must also pay to the Planning Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for provision of those amounts until all outstanding amounts (including interest on those amounts) have been provided to the Planning Minister.

6. Security

The Developers have agreed to provide security to the Planning Minister for the Developers' obligations to provide the Development Contribution by:

- (a) registering this deed on the title to the Oakdale Land in accordance with clause 7; and
- (b) providing Bank Guarantees to the Planning Minister in accordance with the terms and procedures set out in Schedule 5.

7. Land ownership and registration of this deed

7.1 Land ownership

The Developers represent and warrant that, for each part of the Oakdale Land, one or more of the Developers is:

- (a) the registered proprietor of that part of the Oakdale Land, as specified in Schedule 3; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.2(b)(i) to assist, cooperate and to otherwise do all things necessary for the Developers to comply with their obligations under clause 7.2.

7.2 Registration of deed

- (a) As contemplated by section 93H of the Planning Act, the Developers agree to lodge this deed for registration under the Real Property Act in the relevant folios of the Register for all of the Oakdale Land within 10 Business Days after the date on which a counterpart of this deed which the Planning Minister has executed is returned to the Developer.
- (b) The Developers, at their own expense, will take all practical steps to procure:
 - (i) the consent of each person who:
 - A. has an estate or interest in the Oakdale Land which is registered under the Real Property Act; or
 - B. is seized or possessed of an estate or interest in the Oakdale Land,
 to the registration of this deed on the title to the Oakdale Land; and
 - (ii) the execution of any documents which are required to enable the registration of this deed on the title to the Oakdale Land; and
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register,
- (c) The Developers will provide the Planning Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days after the date of registration of this deed.

7.3 Release and discharge of deed

Once the Developers have satisfied all of their obligations under this deed, the Planning Minister agrees to do all things reasonably required by the Developers in order to have the Registrar-General remove this deed from the relevant folio of the Register.

8. Dispute resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute under or in relation to the deed unless it has complied with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other parties specifying the nature of the dispute and requiring that the dispute be addressed in accordance with this clause 8.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques (such as mediation, expert evaluation or other techniques).

8.4 Mediation

If the parties do not either resolve the dispute or agree in writing as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for implementation of those procedures; or
- (c) the selection and remuneration of any independent person required for such technique,

within 21 Business Days of receipt of notice under clause 8.2 (or any other period agreed in writing by them) then, subject to clause 8.6, the parties must mediate the dispute in accordance with the Mediation Program of the Law Society of NSW. The parties must, as soon as possible, request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Costs of alternative dispute resolution

Each party will be responsible for its own legal and other costs in relation to any process under this clause 8 but the parties must bear equally the costs of an independent person appointed under clause 8.4. This clause 8.5 does not apply to court proceedings.

8.6 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 (or any other period agreed in writing by the parties) then any party which has complied with the provisions of this clause 8 may, by written notice to the other parties, terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.7 Use of information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to resolve the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than undertaking the dispute resolution process itself or an attempt to resolve the dispute.

8.8 Continued performance of obligations

Despite the existence of a dispute or any process under this clause 8, but subject to any order of a court or the agreement of the parties, the parties will (so far as it is reasonably practicable) continue to perform and comply with their respective obligations under this deed.

8.9 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

In this clause 9:

- (a) words and phrases used in this clause 9 that are defined in the GST Act have the same meaning as in that Act except that:
 - (i) **GST** has the meaning provided in clause 1.1;
 - (ii) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise; and
 - (iii) **Recipient** means a party who provides or is liable to provide consideration under this deed for a supply;
- (b) unless otherwise expressly stated, all consideration to be provided under any other provision of this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9;
- (c) a reference to a supply is to a supply made under or in connection with this deed;
- (d) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9;
- (e) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (f) a reference to input tax credits includes input tax credits to which an entity is notionally entitled in accordance with Division 177 of the GST Act and a reference to input tax credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled.

9.2 Intention of the parties

The parties intend that subject to the following paragraphs of clause 9:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed that is calculated by reference to an amount paid or incurred will be limited to the total amount less any input tax credit to which an entity is entitled for an acquisition to which the amount relates.

9.4 GST payable

Subject to clause 9.6, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Recipient must pay to the Supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**);
- (b) the Supplier must issue a valid tax invoice to the Recipient in respect of that supply;
- (c) the GST Amount must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid tax invoice for the supply to which the GST amount relates, whichever is the later.

9.5 Variation of GST

If the GST Amount recovered by the Supplier from the Recipient under clause 9.4(a) for a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within 14 days after the date of the adjustment event.

9.6 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 9.4 applies is a taxable supply made by the Recipient (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9.4 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9.4 (or the time at which such GST Amount would have been payable in accordance with 9.4 but for the operation of clause 9.6(a)).

9.7 No Merger

This clause will not merge on completion or termination of this deed.

10. Assignment

10.1 Assignment of rights or benefits of this deed

- (a) None of the Developers may assign the rights or benefits of this deed to any person except:
 - (i) to a related body corporate, after obtaining the consent of the Planning Minister, which the Planning Minister must not withhold if she is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
 - (ii) to any other person, with the prior consent of the Planning Minister, which the Planning Minister must not unreasonably condition or withhold.
- (b) The Planning Minister may require, as a condition of any consent given under clause 10.1(a), that the proposed assignor and assignee of rights or benefits of this deed enter into a deed with the Planning Minister and (if the Planning Minister wishes) the other parties to this deed, giving the Planning Minister such assurance of ongoing satisfaction of the proposed assignor's obligations under this deed as the Planning Minister (acting reasonably) considers appropriate.

That assurance may include provisions under which the proposed assignee agrees to comply with the proposed assignor's obligations as if the proposed assignee were the proposed assignor (including the provision of appropriate security in accordance with Schedule 5 of this deed and other obligations which arose before the date of assignment) and to indemnify the Planning Minister in respect of any breach of this deed by the proposed assignor.
- (c) The Planning Minister may assign the rights and benefits of this deed in her absolute discretion, without the need for consent from any of the Developers.

10.2 Dealings with Oakdale Land

- (a) None of the Developers may sell, transfer, assign, dispose of or mortgage the whole or any part of the Oakdale Land (**Dealing**) unless, before a Developer enters into a Dealing with another person (**Oakdale Transferee**):
 - (i) the Developer satisfies the Planning Minister (acting reasonably) that the proposed Oakdale Transferee is financially capable of complying with those of the Developer's obligations under this deed which the Planning Minister (acting reasonably) specifies, by notice in writing to the Developer, must be adopted by the Oakdale Transferee (**Required Obligations**);
 - (ii) the Oakdale Transferee signs a deed in favour of the Planning Minister under which the Oakdale Transferee agrees to comply with the Required Obligations as if it were the Developer (including the provision of appropriate security in accordance with Schedule 5 of this deed and other obligations which arose before the Dealing) and to indemnify the Planning Minister in respect of any breach of this deed by the Developer;
 - (iii) any default by the Developers has been remedied by the Developers, unless that default has been waived expressly by the Planning Minister; and
 - (iv) the Developer and the Oakdale Transferee pay the Planning Minister's reasonable costs in relation to that Dealing.

- (b) If the Developer enters into a Dealing and fully satisfies the requirements of clause 10.2(a) with respect to that Dealing, the Developer will be released from its obligations under this deed with respect to the land the subject of that Dealing.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11.3 Trustees

Each Trustee enters into this deed in the capacity, and on the terms, relating to that Trustee which are set out in Schedule 7.

12. General provisions

12.1 Entire agreement

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

12.2 Variation

- (a) This deed must not be varied except by a later written document executed by all parties.
- (b) The parties acknowledge that in circumstances where the Developers are entitled to a SIC Credit and the State adopts administrative arrangements which permit a refund of credit amounts, the parties will enter into negotiations to effect a variation of this deed to reflect the adopted administrative arrangements.
- (c) The parties acknowledge that in circumstances where there is any inconsistency between any provision of this deed and the conditions of the SSD Approval or any other development approval under the Planning Act in respect of the Oakdale Development which is granted after the date of this deed, the parties will enter into negotiations to effect a variation of this deed to conform the rights and obligations under the deed to the SSD Approval (or other development approval under the Planning Act) conditions (to the extent of the inconsistency).

12.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

12.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

12.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

12.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

12.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

12.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

12.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

12.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and

- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

12.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

12.13 No fetter

Nothing in this deed shall be construed as requiring either the Planning Minister to do anything that would cause the Planning Minister to breach any of the Planning Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Planning Minister in exercising any of the Planning Minister's statutory functions, powers, authorities or duties.

12.14 Explanatory Note

The Explanatory Note must not be used to assist in construing this deed.

12.15 Expenses and stamp duty

- (a) The Developers must pay their own and the Planning Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developers must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Planning Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Planning Minister with bank cheques in respect of the Planning Minister's costs pursuant to clauses 12.15(a) and 12.15(b) above:
 - (i) where the Planning Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Planning Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by the Planning Minister for payment.

12.16 Notices

- (a) Any notice, demand, consent, approval, report, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:

- (i) hand delivered - on the date of delivery; or
- (ii) sent by facsimile transmission during any Business Day - on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
- (iii) sent by prepaid ordinary mail within Australia - on the date that is 2 Business Days after the date of posting.

Schedule 1

Table 1 - Requirements under section 93F of the Planning Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of this deed complying with the Planning Act.

REQUIREMENT UNDER THE PLANNING ACT	THIS DEED
Planning instrument and/or project application - (section 93F(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a project/development application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (GPS) (c) Yes (Oakdale Central Landowner and Oakdale South Landowner and Erskine Park Landowner)
Description of land to which this deed applies - (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this deed applies - (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed - (section 93F(3)(c))	See clause 4 and Schedule 4
Applicability of sections 94 and 94A of the Planning Act - (section 93F(3)(d))	The application of sections 94 and 94A is not excluded in respect of the Oakdale Development or the Erskine Park Development.
Applicability of section 94EF of the Planning Act - (section 93F(3)(d))	The application of section 94EF is excluded in respect of the Oakdale Development and the Erskine Park Development (except in relation to Oakdale Central Lot 1A and Oakdale Central Lot 2A).
Consideration of benefits under this deed if section 94 applies - (section 93F(3)(e))	No
Mechanism for Dispute Resolution - (section 93F(3)(f))	See clause 8
Enforcement of this deed - (section 93F(3)(g))	See clause 6
Registration of the Planning Agreement - (section 93H)	Yes (see clauses 6 and 7)
No obligation to grant consent or exercise functions - (section 93F(10))	See clause 12.13

Schedule 2**Address for Service (clause 1.1)****Planning Minister**

Contact: The Secretary

Address: Department of Planning and Environment
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6191

GPS

Company: Goodman Property Services (Aust) Pty Ltd

Contact: Samantha Evans, General Counsel Australia

Address: Level 17
60 Castlereagh Street
SYDNEY NSW 2000

Facsimile No: (02) 9230 7444

Oakdale Central Landowner

Company: BGAI 6 Pty Ltd

Contact: Samantha Evans, General Counsel Australia

Address: Level 17
60 Castlereagh Street
SYDNEY NSW 2000

Facsimile No: (02) 9230 7444

Oakdale South Landowner

Company: BGMG 8 Pty Ltd

Contact: Samantha Evans, General Counsel Australia

Address: Level 17
60 Castlereagh Street
SYDNEY NSW 2000

Facsimile No: (02) 9230 7444

Erskine Park Landowner

Company: BGAI 2 Pty Ltd

Contact: Samantha Evans, General Counsel Australia

Address: Level 17
60 Castlereagh Street
SYDNEY NSW 2000

Facsimile No: (02) 9230 7444

Schedule 3

Land (clause 1.1)

Land		Lot	Deposited Plan	Registered proprietor
Oakdale Land	Oakdale Central Land	21	1173181	BGAI 6 Pty Ltd
	Oakdale South Land	12	1178389	BGMG 8 Pty Ltd
		87	752041	BGMG 8 Pty Ltd
Erskine Park Land		1	1124329	BGAI2 Pty Ltd
		2	1124329	BGAI2 Pty Ltd
		3	1124329	BGAI2 Pty Ltd
		4	1124329	BGAI2 Pty Ltd
		5	1124329	BGAI2 Pty Ltd
		6	1124329	Ministerial Corporation

Schedule 4

Development Contributions (clause 4)

1. Development Contribution

(a) The following table provides details of the Development Contribution.

Item	Monetary Contribution and Land Component	Amount / Value (subject to clause 2)	Indexation	Manner of Delivery	Timing
1.	The Monetary Contribution Component payable in relation to Oakdale Central Lot 1B (Oakdale Central Lot 1B Contribution).	\$1,058,400	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
2.	The Monetary Contribution Component payable in relation to the Erskine Park Land (Erskine Park Contribution).	\$3,414,056	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
3.	The Monetary Contribution Component payable in relation to Oakdale Central Lot 1C (Oakdale Central Lot 1C Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
4.	The Monetary Contribution Component payable in relation to Oakdale Central Lot 2B (Oakdale Central Lot 2B Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
5.	The Monetary Contribution Component payable in relation to Oakdale Central Lot 3 (Oakdale Central Lot 3 Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
6.	The Monetary Contribution Component payable in relation to Oakdale Central Lot 4 (Oakdale Central Lot 4 Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
7.	The Monetary Contribution Component payable in relation to Oakdale South Lot 1 (Oakdale	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.

Schedule 4

Item	Monetary Contribution and Land Component	Amount / Value (subject to clause 2)	Indexation	Manner of Delivery	Timing
	South Lot 1 Contribution).				
8.	The Monetary Contribution Component payable in relation to Oakdale South Lot 2 (Oakdale South Lot 2 Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
9.	The Monetary Contribution Component payable in relation to Oakdale South Lot 3 (Oakdale South Lot 3 Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
10.	The Monetary Contribution Component payable in relation to Oakdale South Lot 4 (Oakdale South Lot 4 Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
11.	The Monetary Contribution Component payable in relation to Oakdale South Lot 5 (Oakdale South Lot 5 Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.
12.	The Monetary Contribution Component payable in relation to Oakdale South Lot 6 (Oakdale South Lot 6 Contribution).	To be calculated pursuant to clause 2 of this Schedule 4.	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clause 5 of this Schedule 4.

- (b) The following table provides the indicative NDA and indicative contribution amount for the Monetary Contribution Components in each of items 3-12 in the Monetary Contributions Table, as at the date of this deed. These indicative figures are subject to change in accordance with clause 2 of this Schedule 4.

Land Component	Indicative NDA (as at date of this deed)	Indicative contribution amount (based on indicative NDA)
Oakdale Central Land		
Oakdale Central Lot 1C	4.6417 hectares	\$835,506 calculated pursuant to clause 2 of this Schedule 4.
Oakdale Central Lot 2B	6.001 hectares	\$1,080,180 calculated pursuant to clause 2

Schedule 4

Land Component	Indicative NDA (as at date of this deed)	Indicative contribution amount (based on indicative NDA)
		of this Schedule 4.
Oakdale Central Lot 3	15.5894 hectares	\$2,806,092 calculated pursuant to clause 2 of this Schedule 4.
Oakdale Central Lot 4	2.161 hectares	\$389,070 calculated pursuant to clause 2 of this Schedule 4.
Oakdale South Land		
Oakdale South Lot 1	8.9603 hectares 8.9522 hectares	\$1,612,854 calculated pursuant to clause 2 of this Schedule 4 \$1,611,396 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 2	15.7663 hectares 14.7010 hectares	\$2,837,934 calculated pursuant to clause 2 of this Schedule 4 \$2,646,180 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 3	21.4196 hectares 17.7950 hectares	\$3,855,528 calculated pursuant to clause 2 of this Schedule 4 \$3,203,100 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 4	15.1268 hectares 10.3750 hectares	\$2,722,824 calculated pursuant to clause 2 of this Schedule 4 \$1,867,500 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 5	6.5163 hectares 4.2935 hectares	\$1,172,934 calculated pursuant to clause 2 of this Schedule 4 \$2,572,830 calculated pursuant to clause 2 of this Schedule 4
Oakdale South Lot 6	6.8433 hectares 7.1040 hectares	\$1,231,794 calculated pursuant to clause 2 of this Schedule 4 \$1,278,720 calculated pursuant to clause 2 of this Schedule 4

2. Monetary Contribution

- (a) The parties acknowledge and agree that the Monetary Contribution is a cash contribution towards the provision of regional infrastructure within the Western Sydney Employment Area.
- (b) Each Monetary Contribution Component is subject to indexation in accordance with:
- (i) clause 3(a) of this Schedule 4 for the Erskine Park Contribution;
 - (ii) clause 3(b) of this Schedule 4 for the Oakdale Central Lot 1B Contribution;
 - (iii) clause 3(c) of this Schedule 4 for each other Monetary Contribution Component.

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- (c) With the exception of the Erskine Park Contribution, and subject to clause 2(b) of this Schedule 4, each Monetary Contribution Component:
 - (i) is to be calculated on the basis of \$180,000 per hectare of the NDA of the relevant Land Component (as calculated in accordance with this clause 2); and
 - (ii) is subject to any relevant reduction in accordance with clause 4 of this Schedule 4.
- (d) No earlier than 30 Business Days, and no later than 10 Business Days, prior to the date on which a Monetary Contribution Component is payable under clause 5(c) and 5(d) of this Schedule 4, or would be payable under clause 5(c) and 5(d) of this Schedule 4 if the Planning Minister had not approved a WIK Proposal to offset that Monetary Contribution Component in full under clause 4.4, the Developer must provide to the Planning Minister a written notice which:
 - (i) specifies the amount of the Monetary Contribution Component owing as at that date, calculated in accordance with this deed, and explains the basis on which that amount has been determined; and
 - (ii) specifies the NDA for the Land Component to which that Monetary Contribution Component relates, as determined by an independent surveyor or other qualified person, who is appointed with the consent of the Planning Minister (such consent not to be withheld unreasonably); and
 - (iii) attaches a certification from that surveyor or other qualified person confirming that NDA.
- (e) Subject to clause 2(f) of this Schedule 4, the **NDA** of a Land Component is the area of that Land Component, measured in hectares, which:
 - (i) is subject to a Planning Approval;
 - (ii) includes the area of any land which the Planning Approval for that Land Component authorises, or requires, to be used as a road, or reserved or dedicated as a public road, other than a road referred to in subclause (iii) or (iv);
 - (iii) does not include:
 - A. any area of the Land which forms part of the regional road network servicing the Western Sydney Employment Area;
 - B. the existing road identified in purple colour and marked 'Existing Road' on the plan at Annexure C (**Purple Road**);
 - (iv) to avoid doubt, does not include the area of any Land Component to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
 - A. government school (within the meaning of the Education Act 1990 (NSW));
 - B. TAFE establishment;
 - C. emergency services facility;

Schedule 4

- D. health services facility owned or operated by a public authority;
 - E. golf course;
 - F. passenger transport facility;
 - G. public reserve or drainage reserve (within the meaning of the Local Government Act 1993 (NSW));
 - H. public transport corridor (other than a road corridor);
 - I. public utility undertaking;
 - J. bus depot, whether or not owned or operated by a public authority;
 - K. recreation area;
 - L. roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Planning Act or may be imposed in accordance with a contribution plan approved under section 94EA of the Planning Act, or may be imposed in accordance with a Planning Agreement with the relevant local council, and
 - M. roads or other infrastructure in connection with which Special Infrastructure Contributions have been, or may be, imposed in accordance with a SIC Determination.
- (v) does not include the following areas of any Land Component:
- A. any part of the Land Component to which the Planning Approval for the development on that Land Component relates that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if that part of the Land Component is unsuitable for that development by virtue of it being at or below that level,
 - B. any part of the Land Component to which the Planning Approval for the development on that Land Component relates that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Planning Act.
- (vi) is taken to be reduced by 0.1 hectare where the development of the Land Component comprises subdivision of land for the purpose only of creating a lot of more than 0.1 hectare in area to contain an existing lawful habitable dwelling;
- (vii) does not include any lot in a Land Component which the Secretary has, having regard to relevant planning controls, certified to the consent authority is a lot that will be further subdivided in accordance with further Planning Approval for the purpose of the orderly development of the land for urban purposes in the future; and

Schedule 4

- (viii) where the development of the Land Component involves the creation of a lot of land under a Planning Approval for that Land Component which includes (wholly or partly):
- A. land that is within the curtilage of a building listed on the State Heritage Register, or
 - B. land that is within Zone E4 Environmental Living -
- excludes the area of any such lot that is more than 0.1 hectare
- (and for the purpose of this paragraph (viii), **curtilage**, in relation to a building, means the curtilage of that building, or that site of that building, as specified or described in the listing of the building on the State Heritage Register).
- (f) If the Developers:
- (i) demonstrate, to the Planning Minister's satisfaction, that the parts of the road marked in yellow on the plan in Annexure C and described on that plan as an "Estate Road" (**Yellow Road**) provides a public road connection from the road described on that plan as the "Southern Link Road" to a public road on land to the east of the Oakdale South Land; and
 - (ii) provide plans for the construction of the Yellow Road which are approved in principle by the relevant Roads Authority for construction,
- then:
- (iii) the Planning Minister must issue a written notice to the Developers stating that the Planning Minister accepts the parts of the Yellow Road which do not overlap with any other road are an NDA exclusion for this deed; and
 - (iv) those parts of the Yellow Road which are identified in the Planning Minister's notice will be excluded from the NDA of the next Land Component for which NDA is to be calculated after the date of the Planning Minister's notice.

3. Indexation of the Monetary Contribution

On each CPI Adjustment Date until provision of all Development Contributions in accordance with this deed, the total amount of each Monetary Contribution Component which is not paid in full, and for which Practical Completion of a WIK Contribution and (if applicable) Land Contribution the subject of a WIK Approval has not been achieved, will be adjusted using the following formula:

$$CC = PC \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

Where

CC is the newly adjusted Monetary Contribution component

the terms **Current CPI** and **Base CPI** are defined in clause 1.1

and **PC** means:

Schedule 4

- (a) for the Erskine Park Contribution - the amount of the Monetary Contribution specified for the Erskine Park Contribution in the Monetary Contributions Table;
- (b) for the Oakdale Central Lot 1B Contribution - the amount of the Monetary Contribution specified for the Oakdale Central Lot 1B Contribution in the Monetary Contributions Table, as may be reduced in accordance with this deed prior to that CPI Adjustment Date; and
- (c) for each other Monetary Contribution Component - either:
 - (i) \$180,000 multiplied by the number of hectares in the NDA of the relevant Land Component (as determined in accordance with clause 2 of this Schedule 4 or, if no determination has been made, as specified in the table in clause 1(b) of this Schedule 4), as may be reduced in accordance with this deed prior to that CPI Adjustment Date; or
 - (ii) if the amount of the Monetary Contribution Component has been replaced by the amount of a SIC Amount in accordance with clause 4.5(c)(iv) of this deed - the replacement amount, as may be reduced in accordance with this deed prior to that CPI Adjustment Date.

4. Reduction of a Monetary Contribution Component

Where:

- (a) the Developers have provided a WIK Proposal which specifies Monetary Contribution Components (**Nominated Monetary Contribution Components**) which the Developers propose be offset, or partially offset, by a WIK Contribution and, if applicable, a Land Contribution (**Nominated WIK and Land Contribution**) in accordance with clause 4.4 and clause 8 of this Schedule 4;
- (b) the Planning Minister has issued a WIK Approval for the offset of those Nominated Monetary Contribution Components by a Nominated WIK and Land Contribution;
- (c) the parties have agreed on Estimated WIK Costs and, if applicable, an Estimated Land Contribution Value, in accordance with clause 8 of this Schedule 4 for the Nominated WIK and Land Contribution before the Developers are required to provide any of the Nominated Monetary Contribution Components in accordance with clause 5 of this Schedule 4; and
- (d) the Developers have provided the Planning Minister with the WIK and Land Contribution Security in accordance with clause 2 of Schedule 5,

then:

- (e) the total amount of the Nominated Monetary Contribution Components will be reduced by:
 - (i) the amount of the Estimated WIK Costs; and
 - (ii) the amount of the Estimated Land Contribution Value,

on and from the date on which the Developers are required to provide the first of the Nominated Monetary Contribution Components whose due date under the Monetary Contributions Table has not yet occurred, in the following way:

 - (iii) the Nominated Monetary Contribution Components will be reduced in the sequence in which they appear in the Monetary Contributions Table;

Schedule 4

- (iv) a Nominated Monetary Contribution Component cannot be reduced to an amount which is less than \$0; and
- (v) to the extent that the total amount of the Estimated WIK Costs and the Estimated Land Contribution Value is less than the total amount of the Nominated Monetary Contribution Components, the last Monetary Contribution Component to be reduced may be reduced only partially; and
- (vi) to avoid any doubt, where a Monetary Contribution is reduced only partially, the Developers are required to provide the remaining part of the Monetary Contribution Component in accordance with clause 5 of this Schedule 4.

5. Provision of the Monetary Contribution

- (a) The Developers must provide to the Planning Minister the Oakdale Central Lot 1B Contribution upon the Developers signing this deed.
- (b) As soon as practicable and, in any event, within 20 Business Days, after payment of the Oakdale Central Lot 1B Contribution, the Planning Minister will return to the Developers the Bank Guarantee dated 14 June 2013 and issued by Westpac Banking Corporation in the sum of \$1,058,400, which the Developers provided to the Planning Minister in respect of the Oakdale Central Lot 1B Contribution (less any costs, charges, duties and Taxes payable).
- (c) Subject to clause 4 of this Schedule 4, the Developers must provide to the Planning Minister the Erskine Park Contribution, the Oakdale Central Lot 1C Contribution, the Oakdale Central Lot 2B Contribution, the Oakdale Central Lot 3 Contribution and the Oakdale Central Lot 4 Contribution:
 - (i) before any Occupation Certificate is issued for any part of the Oakdale Central Development;
 - (ii) before any Subdivision Certificate or Construction Certificate is issued for any part of the Oakdale South Development (except a Construction Certificate for any Oakdale South Preliminary Works); or
 - (iii) if any part of the Oakdale South Development (except any Oakdale South Preliminary Works) is to be carried out without the need for a Subdivision Certificate or a Construction Certificate, then both:
 - A. before that development is commenced; and
 - B. before any application for a Complying Development Certificate is made in respect of that development,

whichever is earlier.
- (d) Subject to clause 4 of this Schedule 4, the Developers must provide to the Planning Minister the Monetary Contribution Component for each Stage of the Oakdale South Development:
 - (i) before any Subdivision Certificate or Construction Certificate is issued for that Stage or any later Stage of the Oakdale South Development (except a Construction Certificate for any Oakdale South Preliminary Works); or

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- (ii) if any part of that stage or any later stage Oakdale South Development (except any Oakdale South Preliminary Works) is to be carried out without the need for a Subdivision Certificate or a Construction Certificate, then both:
 - C. before that development is commenced; and
 - D. before any application for a Complying Development Certificate is made in respect of that development,

whichever is earlier.

- (e) The parties agree that each of the requirements to provide a Monetary Contribution under clause 5(c) and clause 5(d) of this Schedule 4 is a restriction on the issue of:
 - (i) an Occupation Certificate within the meaning of section 109H(2) of the Planning Act;
 - (ii) a Subdivision Certificate within the meaning of section 109J(c1) of the Planning Act; and
 - (iii) a Construction Certificate, within the meaning of section 109F of the Planning Act and clause 146A of the Planning Regulation.

6. WIK Contribution and Land Contribution

The parties acknowledge and agree that:

- (a) the WIK Contribution and Land Contribution are contributions towards the provision of regional infrastructure within the Western Sydney Employment Area;
- (b) the Actual WIK Costs for a WIK Contribution must not exceed the Maximum WIK Value for that WIK Contribution; and
- (c) the Actual Land Contribution Value for a Land Contribution must not exceed the Maximum Land Contribution Value for that Land Contribution.

7. Provision of WIK Contribution and Land Contribution

- (a) The parties acknowledge and agree that if the Planning Minister issues a WIK Approval for a WIK Contribution and (if applicable) a Land Contribution in accordance with clause 4.4, the process for determining the offset value of each of the WIK Contribution and the Land Contribution will follow a three step process, set out below in clauses 8, 9, 10 and (if applicable) 12 of this Schedule 4, which, in summary only, follows these steps:
 - (i) **(Step 1 - Estimates)** reaching agreement on, or otherwise having determined as outlined below, suitable estimates of the value of the WIK Contribution or the Land Contribution (as the case may be);
 - (ii) **(Step 2 - Delivery)** undertaking the necessary works to achieve Practical Completion of the WIK Contribution or complying with the necessary requirements to transfer, or procure the transfer of, the Land Contribution to the Nominated Transferee (as the case may be); and
 - (iii) **(Step 3 - Reconciliation)** reaching agreement on, or otherwise having determined as outlined below, a reconciliation of actual expenses incurred by the Developers for the WIK Contribution or the actual value

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of the Land Contribution (as the case may be) with the applicable estimate agreed in Step 1 above.

8. Step 1- Contributions Estimates

- (a) Prior to commencing work for a WIK Contribution, the Developers must:
- (i) obtain all necessary Authorisations to carry out the works for that WIK Contribution;
 - (ii) enter into a Road Works Agreement for that WIK Contribution in accordance with clause 4.4(g);
 - (iii) give written notice to the Planning Minister (**Contributions Estimate Notice**) proposing, and seeking agreement to:
 - A. the Estimated WIK Costs, including reasonable contingencies;
 - B. the Maximum WIK Value;
 - C. the Estimated Land Contribution Value (if applicable);
 - D. the Maximum Land Contribution Value (if applicable); and
 - E. the relevant Monetary Contribution Components which the Developers propose to offset (in whole or in part),

(Key Estimate Matters),

and providing details of:

 - F. the Authorisations obtained to carry out the works for the WIK Contribution;
 - G. any security which the relevant Roads Authority requires for the WIK Contribution and (if applicable) the Land Contribution under the proposed Road Works Agreement; and
 - H. the provision of the WIK and Land Contribution Security;
 - (iv) provide a copy of the executed Road Works Agreement to the Planning Minister with the Contributions Estimate Notice; and
 - (v) give the Planning Minister written notice of the Developers' intention to provide a Contributions Estimate Notice at least 15 Business Days before they provide that Notice.
- (b) As soon as practicable after the Planning Minister has received a Contributions Estimate Notice, the parties must negotiate in good faith and use their best endeavours to agree on the Key Estimate Matters.
- (c) If the parties cannot agree on the Key Estimate Matters within 20 Business Days after the Planning Minister has received a Contributions Estimate Notice, either the Planning Minister or the Developers may refer the matter for expert determination in accordance with Schedule 6.

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- (d) For the purposes of this clause 8 of Schedule 4, the Planning Minister and the Developers acknowledge and agree, as at the date of this deed, that the Key Estimate Matters for the OWR Upgrade Contribution, are as set out in Annexure B.

9. Step 2 - Delivery - Works-in-Kind Contribution and Land Contribution

- (a) The Developers must:
- (i) comply in all respects with the Road Works Agreement for a WIK Contribution;
 - (ii) notify the Planning Minister if the Developers become aware that there has been, or is likely to be, a non-compliance with the Road Works Agreement, specifying:
 - A. the nature of the non-compliance or likely non-compliance; and
 - B. how and when the Developers will ensure that the non-compliance is rectified or the likely non-compliance is avoided (as the case may be); and
 - (iii) give the Planning Minister written notice 40 Business Days prior to the date of Practical Completion of a WIK Contribution.
- (b) If, after the date on which the Key Estimate Matters have been agreed or determined in accordance with clause 8 of this Schedule 4, and prior to the date of Practical Completion of the WIK Contribution, the Developers become aware of any:
- (i) latent condition of the land the subject of the WIK Contribution; or
 - (ii) requirement of a third party (other than a contractor or subcontractor of a Developer) which the parties did not know, and could not reasonably have known, at the time of executing this deed,
- that will have a materially adverse impact on the Maximum WIK Value:
- (i) the parties agree to discuss, with the relevant Roads Authority, in good faith, the issue of whether a revised amount for the Maximum WIK Value should be adopted; and
 - (ii) if the Planning Minister, acting reasonably and having regard to those discussions, forms the view that the Maximum WIK Value should be increased by a specified amount as a result of that latent condition or third party requirement, the Planning Minister must, by written Notice to the Developers, increase the Maximum WIK Value accordingly.
- (c) If the Planning Minister issues a WIK Approval which relates to a Land Contribution (including the OWR Upgrade), the following applies:
- (i) Within 20 Business Days after the date on which the Key Estimate Matters have been agreed or determined in accordance with clause 8 of this Schedule 4, the Planning Minister must give notice to the Developers nominating the Ministerial Corporation or the Roads Authority as the person to which the Land Contribution is to be transferred (**Nominated Transferee**).

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- (ii) The Developers must (at their cost) prepare and register a plan of subdivision to create a separate lot or lots for any Land Contribution.
- (iii) The Developers must:
 - A. procure the transfer of any Land Contribution to the Nominated Transferee for \$1; and
 - B. deliver to the Nominated Transferee:
 - 1) a form of transfer in respect of the Land Contribution executed by the registered proprietor of that land and in registrable form; and
 - 2) the certificates of title for the Land Contribution;
 - C. promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of any Land Contribution; and
 - D. take any other necessary action (including paying stamp duty associated with the transfer or contract for sale) to give effect to the transfer of the title of the Land Contribution to the Nominated Transferee free of all encumbrances and affectations (including any, charge or liability for rates, Taxes and charges) except as agreed with the Nominated Transferee and the Planning Minister.
- (iv) The Developers will pay, or shall procure that the registered proprietor of the relevant land pays, all rates and Taxes owing in respect of any Land Contribution up to and including the date on which the Developers deliver the form of transfer and certificates of title for the Land Contribution to the Nominated Transferee, after which time the Nominated Transferee will be responsible for all rates and Taxes in relation to the land subject to the Land Contribution.
- (v) The Developers indemnify and agree to keep indemnified the Planning Minister and the Nominated Transferee from and against all Liabilities connected in any way to any contamination which existed on or before the date on which the Land Contribution is transferred to the Nominated Transferee.
- (vi) The Developers must:
 - A. ensure that the Land Contribution is transferred to the Nominated Transferee without the Planning Minister incurring any Acquisition Cost in connection with that Land Contribution or its acquisition or transfer; and
 - B. indemnify the Planning Minister in relation to any failure to comply with clause 9(c)(vi)A above.

10. Step 3 - WIK Contribution Reconciliation

- (a) Within 10 Business Days after Practical Completion of a WIK Contribution has been achieved, the Developers must submit a report to the Planning Minister (**WIK Actual Contribution Report**) which:

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- (i) provides accounts for the actual costs incurred by the Developers in providing the WIK Contribution;
 - (ii) provides a reconciliation of the actual costs incurred by the Developers in providing the WIK Contribution with the Estimated WIK Costs and Maximum WIK Value, together with a report by an independent quantity surveyor who is appointed with the consent of the Planning Minister (such consent not to be withheld unreasonably) which supports that reconciliation;
 - (iii) specifies the amount of any WIK Contribution Difference, calculated in accordance with clause 11 of this Schedule 4.
- (b) As soon as practicable after the Planning Minister has received a WIK Actual Contribution Report, the parties must negotiate in good faith and use their best endeavours to agree on:
- (i) the Actual WIK Costs (which cannot exceed the Maximum WIK Value); and
 - (ii) if applicable, the WIK Contribution Difference
- for that WIK Contribution (**Key WIK Reconciliation Matters**).
- (c) If the parties cannot agree on the Key WIK Reconciliation Matters within 20 Business Days after the Planning Minister has received a WIK Actual Contribution Report, either the Planning Minister or the Developers may refer the matter for expert determination in accordance with Schedule 6.

11. WIK Top up Contribution

Where:

- (a) the amount of the Actual WIK Costs for a WIK Contribution, as agreed or determined in accordance with clause 10 of this Schedule 4;

is less than:

- (b) the amount of the Estimated WIK Costs for that WIK Contribution, as agreed or determined in accordance with clause 8 of this Schedule 4,

then:

- (c) the amount of the difference between (a) above and (b) above is the **WIK Contribution Difference**;
- (d) the Monetary Contributions Components which were reduced under clause 4 of this Schedule 4 in respect of that WIK Contribution are reinstated to the amount of the WIK Contribution Difference, in the reverse of the sequence in which they were reduced under clause 4 of this Schedule 4;
- (e) the reinstated parts of the Monetary Contribution Components are indexed in accordance with clause 3 of this Schedule 4 so that those parts represent the amount which they would have been if those parts had never been reduced under clause 4 of this Schedule 4;
- (f) if the date for provision of those reinstated parts of the Monetary Contribution Components has not passed, then the Developers must provide to the Planning

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Minister those parts of the Monetary Contribution Components in accordance with clause 5 of this Schedule 4; and

- (g) if the date for provision of those reinstated parts of the Monetary Contribution Components has passed, then the Developers must provide to the Planning Minister those parts of the Monetary Contribution Components:
 - (i) within 20 Business Days after the date on which the WIK Contribution Difference is determined in accordance with this clause 11; and
 - (ii) in any event, before:
 - A. any further Subdivision Certificate, Construction Certificate or Occupation Certificate is issued for any part of the Oakdale South Development; and
 - B. any further application for a Complying Development Certificate is made in respect of any part of the Oakdale South Development,
- (h) The parties agree that each of the requirements to provide a Monetary Contribution under clause 11(g) of this Schedule 4 is a restriction on the issue of:
 - (i) an Occupation Certificate within the meaning of section 109H(2) of the Planning Act;
 - (ii) a Subdivision Certificate within the meaning of section 109J(c1) of the Planning Act; and
 - (iii) a Construction Certificate, within the meaning of section 109F of the Planning Act and clause 146A of the Planning Regulation.

12. Step 3 - Land Contribution Reconciliation

- (a) Within 5 Business Days after a Land Contribution has been transferred to the Nominated Transferee in accordance with clause 9(c) of this Schedule 4, the Developers must submit a report to the Planning Minister (**Land Actual Contribution Report**) which:
 - (i) provides a reconciliation of the value of the land the subject of the Land Contribution at the date of transfer with the Estimated Land Contribution Value and the Maximum Land Value, together with a report by an independent valuer who is appointed with the consent of the Planning Minister (such consent not to be withheld unreasonably) which supports that reconciliation;
 - (ii) specifies the amount of any Land Contribution, calculated in accordance with clause 13 of this Schedule 4.
- (b) As soon as practicable after the Planning Minister has received an Land Actual Contribution Report, the parties must negotiate in good faith and use their best endeavours to agree on:
 - (i) the Actual Land Contribution Value (which cannot exceed the Maximum Land Contribution Value); and
 - (ii) if applicable, the Land Contribution Difference

for that Land Contribution (**Key Land Reconciliation Matters**).

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- (c) If the parties cannot agree on the Land Contribution Key Reconciliation Matters within 20 Business Days after the Planning Minister has received an Land Actual Contributions Report, either the Planning Minister or the Developers may refer the matter for expert determination in accordance with Schedule 6.

13. Land Top up Contribution

Where:

- (a) the amount of the Actual Land Contribution Value for a WIK Contribution, as agreed or determined in accordance with clause 12 of this Schedule 4;

is less than:

- (b) the amount of the Estimated Land Contribution Value for that WIK Contribution, as agreed or determined in accordance with clause 8 of this Schedule 4,

then:

- (c) the amount of the difference between (a) above and (b) above is the **Land Contribution Difference**;
- (d) the Monetary Contributions Components which were reduced under clause 4 of this Schedule 4 in respect of that Land Contribution are reinstated to the amount of the Land Contribution Difference, in the reverse of the sequence in which they were reduced under clause 4 of this Schedule 4;
- (e) the reinstated parts of the Monetary Contribution Components are indexed in accordance with clause 3 of this Schedule 4 so that those parts represent the amount which they would have been if those parts had never been reduced under clause 4 of this Schedule 4;
- (f) if the date for provision of those reinstated parts of the Monetary Contribution Components has not passed, then the Developers must provide to the Planning Minister those parts of the Monetary Contribution Components in accordance with clause 5 of this Schedule 4; and
- (g) if the date for provision of those reinstated parts of the Monetary Contribution Components has passed, then the Developers must provide to the Planning Minister those parts of the Monetary Contribution Components:
 - (i) within 20 Business Days after the date on which the Land Contribution Difference is determined in accordance with this clause 13 of this Schedule 4; and
 - (ii) in any event, before:
 - A. any further Subdivision Certificate, Construction Certificate or Occupation Certificate is issued for any part of the Oakdale South Development; and
 - B. any further application for a Complying Development Certificate is made in respect of any part of the Oakdale South Development,
- (h) The parties agree that each of the requirements to provide a Monetary Contribution under clause 13(g) of this Schedule 4 is a restriction on the issue of:

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- (i) an Occupation Certificate within the meaning of section 109H(2) of the Planning Act;
- (ii) a Subdivision Certificate within the meaning of section 109J(c1) of the Planning Act; and
- (iii) a Construction Certificate, within the meaning of section 109F of the Planning Act and clause 146A of the Planning Regulation.

14. Credit for Excess Contributions

Where the sum of:

- (a) the Actual WIK Costs, as agreed or determined in accordance with clause 10 of this Schedule 4, for all of the WIK Contributions provided under this deed;
- (b) the Actual Land Contribution Value, as agreed or determined in accordance with clause 10 of this Schedule 4, for all of the Land Contributions provided under this deed; and
- (c) the total of the Monetary Contribution provided, or yet to be provided, by the Developers in accordance with this Schedule 4 (calculated as at the date of the agreement or determination of the Actual WIK Costs and (if applicable) the Actual Land Contribution Value under clause 10 of this Schedule 4 for the final WIK Contribution and (if applicable) the final Land Contribution which the Developer proposes to provide under this deed),

exceeds:

- (d) the Monetary Contributions which the Developers would have paid in accordance with this Schedule 4 if the Developers had not received any WIK Approvals (calculated as at the date of the agreement or determination of the Actual WIK Costs and (if applicable) the Actual Land Contribution Value under clause 10 of this Schedule 4 for the final WIK Contribution and (if applicable) the final Land Contribution which the Developer proposes to provide under this deed):

then:

- (e) the Developers will be entitled to a credit in the amount of:

the sum of items (a), (b) and (c) above

less

the amount of item (d) above

(Excess Contributions Credit), but only when:

- (i) all the Monetary Contribution Components which this deed requires the Developers to pay have been paid;
- (ii) Practical Completion of all WIK the subject of all WIK Approvals has been achieved; and
- (iii) all requirements of the Road Works Agreements for WIK Contributions which relate to the completion of those WIK Contributions, or the standard and quality of those WIK Contributions as delivered, have been satisfied (including, for example, the expiry of all defects liability periods

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and the rectification of all defects to the satisfaction of the relevant roads authority), unless otherwise agreed with the Planning Minister;

- (f) clause 4.6 of this deed applies to the Excess Contributions Credit as if a reference in that clause to a SIC Credit were a reference to an Excess Contributions Credit, except that an Excess Contributions Credit may be used to offset development contributions for development on any other land which any of the Developers owns within the Western Sydney Employment Area; and
- (c) any Excess Contributions Credit which has been generated under this deed, and which has not been allocated for use in an executed Planning Agreement, will be adjusted on each CPI Adjustment Date until that SIC Credit has been allocated, using the following formula:

$$CC = PC \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

Where

CC is the newly adjusted Excess Contributions Credit

the terms **Current CPI** and **Base CPI** are defined in clause 1.1

PC means the amount of the Excess Contributions Credit on the date on which that Excess Contributions Credit was generated

and an Excess Contributions Credit is taken to have been allocated under a Planning Agreement when the Planning Agreement provides for the use of the Excess Contributions Credit.

Schedule 5

Security (clause 6(b))

1. Bank Guarantees

Each Bank Guarantee provided by the Developers under this Schedule 5 must:

- (a) name the "Minister for Planning and Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
- (b) not have an expiry date.

2. Developers to provide security

- (a) Upon execution of this deed, the Developers must provide to the Planning Minister one or more Bank Guarantees with a total face value equivalent to the sum of the Erskine Park Contribution, the Oakdale Central Lot 1C Contribution, the Oakdale Central Lot 2B Contribution, the Oakdale Central Lot 3 Contribution and the Oakdale Central Lot 4 Contribution, as security for the provision of those Monetary Contribution Components (**Oakdale Central / Erskine Park Security**).
- (b) The Developers must provide to the Planning Minister one or more Bank Guarantees with a total face value equivalent to the total of the Monetary Contribution Components for the Oakdale South Land (**Oakdale South Security**):
 - (i) before any Subdivision Certificate or Construction Certificate is issued for any part of the Oakdale South Development;
 - (ii) if any part of the Oakdale South Development is to be carried out without the need for a Subdivision Certificate or a Construction Certificate, then both:
 - A. before that development is commenced; and
 - B. before any application for a Complying Development Certificate is made in respect of that Development,

whichever is earlier.
- (c) If the Planning Minister issues a WIK Approval in accordance with clause 4.4 of this deed, then the Developers must provide to the Planning Minister one or more Bank Guarantees with a total face value equivalent to the sum of the Estimated WIK Costs and 110% of the Estimated Land Contribution Value, as security for the provision of the approved WIK Contribution and, if applicable, Land Contribution (**WIK and Land Contribution Security**).
- (d) The WIK and Land Contribution Security must be provided:
 - (i) prior to the Nominated Monetary Contribution Components being reduced as an offset for the approved WIK Contribution and, if applicable, Land Contribution in accordance with clause 4 of Schedule 4; and
 - (ii) prior to the commencement of the approved WIK Contribution.
- (e) If the Developers are required to provide security to a Roads Authority under a Road Works Agreement in relation to a WIK Contribution and (if applicable) a Land Contribution, then the Developers must provide to the Planning Minister, on or before the date on which they are required to provide the WIK and Land

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Contribution Security for that WIK Contribution and (if applicable) Land Contribution, evidence satisfactory to the Planning Minister (acting reasonably):

- (i) that the terms in the Road Works Agreement on which security must be provided for that WIK Contribution and (if applicable) Land Contribution are in accordance with the Key Road Work Terms;
 - (ii) of the amount of security which the Road Works Agreement requires for that WIK Contribution and (if applicable) Land Contribution, and whether it is at least the amount of the WIK and Land Contribution Security for that WIK Contribution and (if applicable) Land Contribution or only a proportion of the amount of the WIK and Land Contribution Security for that WIK Contribution and (if applicable) Land Contribution; and
 - (iii) that the security which the Road Works Agreement requires for that WIK Contribution and (if applicable) Land Contribution has been provided in full.
- (f) If the Developers have complied with clause 2(e) of this Schedule 5 for a WIK Contribution and (if applicable) a Land Contribution, then the amount of the WIK and Land Contribution Security which the Developers need to provide under clause 2(c) and clause 2(d) of this Schedule 5 is reduced by the amount of the security which the Developers have provided to the Roads Authority under the relevant Road Works Agreement for the WIK Contribution and (if applicable) Land Contribution.
- (g) If the Developers have complied with clauses 2(c) and 2(d) (in each case, where the time for compliance with that clause has arisen), or clauses 2(e) and 2(f), of this Schedule 5 for a WIK Contribution and (if applicable) Land Contribution, then the amount of Monetary Contribution Security which the Developers are required to provide under this deed is reduced by the same amount as the reduction of the Monetary Contribution Components for that WIK Contribution and (if applicable) Land Contribution, pursuant to clause 4 of Schedule 4.
- (h) The parties agree that the requirements to provide the Oakdale South Security under clause 2(b) of this Schedule 5, the WIK and Land Contribution Security under clause 2(c) and clause 2(d) of this Schedule 5, and the evidence specified in clause 2(e) of this Schedule 5, are a restriction on the issue of:
- (i) a Subdivision Certificate within the meaning of section 109J(c1) of the Planning Act; and
 - (ii) a Construction Certificate, within the meaning of section 109F of the Planning Act and clause 146A of the Planning Regulation.
- (i) The Developers must ensure that, at any given time, the value of the security which the Planning Minister holds under this deed is for a total of:
- (i) the amounts of Monetary Contribution Security which this deed requires the Developers to provide in accordance with this deed at that time; and
 - (ii) the amounts of all WIK and Land Contribution Security which the Developers are required to provide in accordance with this deed at that time,

so that the Planning Minister is always in a position to make claims on the security which the Planning Minister would be entitled to make under this deed in the circumstances described in clause 4 of this Schedule 5.

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- (j) If the value of the security which the Planning Minister holds is for less than that total (for example, if the total increases as a result of a CPI adjustment), the Developers must provide further Bank Guarantees to cover the shortfall in value within 10 Business Days after the shortfall occurs.

3. Planning Minister entitled to retain security

- (a) The Planning Minister will be entitled to retain the Monetary Contribution Security for the provision of a Monetary Contribution Component in accordance with this deed until the Developers have satisfied in full their obligations relating to the provision of that Monetary Contribution Component in accordance with this deed.
- (b) Subject to clause 3(c) of this Schedule 5, the Planning Minister will be entitled to retain the relevant part of the WIK and Land Contribution Security for a WIK Contribution until the earlier of the following (**Relevant Retention Date**):
 - (i) if the WIK Contribution is provided under a single Road Works Agreement, then the Relevant Retention Date is the date of Practical Completion of that WIK Contribution;
 - (ii) if the WIK Contribution is provided under more than one Road Works Agreement, then the Relevant Retention Date for the part of the WIK and Land Contribution Security which relates to the part of WIK Contribution under a Road Works Agreement is the date of Practical Completion of that part of that WIK Contribution under that Road Works Agreement; and
 - (iii) if the Developers are required to provide evidence to the Planning Minister under clause 2(e) of this Schedule 5, then the Relevant Retention Date for the amount of the WIK and Land Contribution Security for which the Developers provide satisfactory evidence under that clause is the date on which the Planning Minister (acting reasonably) notifies the Developers in writing that the Planning Minister is satisfied with the evidence which the Developers have provided.
- (c) If any part of the WIK and Land Contribution Security relates to a Land Contribution, then the Planning Minister will be entitled to retain that part of the WIK and Land Contribution Security up to an amount which is equal to 110% of the Estimated Land Contribution Value for a Land Contribution to which that security relates until the earlier of:
 - (i) the date of registration of the transfer of that Land Contribution to the Nominated Transferee;
 - (ii) if the Planning Minister (acting reasonably) notifies the Developers in writing on or before the date of registration that the Planning Minister believes that she may incur some Acquisition Cost in connection with that Land Acquisition, the date on which the Planning Minister (acting reasonably) notifies the Developers in writing that she no longer has that belief.

4. Calls upon security

- (a) The Planning Minister may call upon any Monetary Contribution Security where the Developers have failed to comply with;
 - (i) clause 2 of this Schedule 5; or

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- (ii) the obligations in this deed to provide a Monetary Contribution Component at or before the time specified in this deed,

and the Planning Minister may retain monies obtained from that security and apply those monies towards the costs and expenses incurred by the Planning Minister in rectifying such failures by the Developers.

- (b) The Planning Minister may call upon any WIK and Land Contribution Security:

- (i) where the Developers have failed:
 - A. to provide a WIK Contribution on or before the date required under this deed (including, if a date is specified in the relevant Road Works Agreement, that date);
 - B. to transfer, or procure the transfer of, a Land Contribution to the Nominated Transferee on or before the date required under this deed (including, if a date is specified in the relevant Road Works Agreement, that date) and in accordance with this deed;
 - C. otherwise to comply with this deed in relation to a WIK Contribution or a Land Contribution; or
 - D. to provide security to ensure that at all times the value of the security held by the Planning Minister for all approved WIK Contributions and Land Contributions is for a face value at least equivalent to the sum of the Estimated WIK Costs and that Estimated Land Contribution Value for those WIK Contributions and Land Contributions; or
- (ii) to recover any Acquisition Cost which the Planning Minister may incur in connection with a Land Contribution (including any compensation or other amount payable in connection with an acquisition of that Land Contribution),

and the Planning Minister may retain monies obtained from any WIK and Land Contribution Security and apply those monies towards either the costs and expenses incurred by the Planning Minister in rectifying any such failures by the Developers or providing reasonable compensation for any failures or recovering any such Acquisition Cost (as the case may be).

- (c) Prior to calling upon any security provided by the Developers under this Schedule 5, the Planning Minister must give the Developers not less than 10 Business Days' written notice.
- (d) In the case of a call upon any WIK and Land Contribution Security to recover any amount in relation to a Land Contribution pursuant to clause 4(b) of this Schedule 5:
 - (i) the Developers may elect within the notice period in clause 4(c) of this Schedule 5 to pay to the Planning Minister an amount equivalent to the amount of the call; and
 - (ii) if payment is made by the Developers in accordance with clause 4(d)(i) of this Schedule 5 within 5 Business Days of such an election by the Developers, the Planning Minister shall no longer be entitled to call upon the Security in relation to that Land Contribution.
- (e) If the Planning Minister:

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- (i) calls upon any security in accordance with this clause 4 of this Schedule 5; and
- (ii) applies all or part of the monies obtained from that call in the manner authorised in this clause 4 of this Schedule 5,

then:

- (iii) the Planning Minister must notify the Developers in writing of the amount of the call; and
- (iv) promptly after receiving that notice, the Developers must provide to the Planning Minister replacement security to ensure that the Developers comply with clause 2(i) of this Schedule 5.

5. Release of the Bank Guarantees

- (a) If:
 - (i) the circumstances described in:
 - A. clause 3(a) of this Schedule 5 for the Monetary Contribution Security; or
 - B. clause 3(b) of this Schedule 5 for the WIK and Land Contribution Security; or
 have occurred;
 - (ii) the Developers provide the Planning Minister with a written notice containing:
 - A. evidence that those circumstances have occurred;
 - B. a request for return of the Bank Guarantees for the security to which those circumstances relate; and
 - C. evidence that, if those Bank Guarantees are returned, the Developers will still comply with clause 2(i) of this Schedule 5; and
 - (iii) the Planning Minister is satisfied that:
 - A. those circumstances have occurred; and
 - B. if the Planning Minister returns those Bank Guarantees, the Developers will still comply with clause 2(i) of this Schedule 5,

then the Planning Minister must promptly return those Bank Guarantees (less any costs, charges, duties and Taxes payable), or the remainder of the monies secured by those Bank Guarantees, to the Developers.
- (b) If the Developers believe that the amount of security which they have provided exceeds the amount of security which they are required to provide under this Schedule 5, then they may, by written notice to the Planning Minister:
 - (i) provide a detailed reconciliation of:

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- A. the amount and type of security which the Planning Minister currently holds under this deed; with
 - B. the amount and type of security which the Developers believe the Planning Minister is entitled to hold under this deed;
- (ii) provide a detailed explanation for any difference in amount and type of security which the reconciliation shows, and documents to support that explanation;
- (iii) provide a proposal to resolve that difference.
- (c) The Planning Minister must, within 20 Business Days after receiving a notice in accordance with clause 5(b) of this Schedule 5, provide the Developers with a written notice stating:
 - (i) whether the Planning Minister agrees with the Developers' reconciliation and proposal; and
 - (ii) if not, reasons for the disagreement.
- (d) If the Planning Minister disagrees with the Developers' reconciliation and proposal, the Planning Minister and the Developers must use their best endeavours to meet and resolve the disagreement.
- (e) If the parties agree, or it is determined in accordance with this deed, that the Planning Minister holds security in an amount which is different from the amount which the Planning Minister is entitled to hold under this deed, the parties, acting reasonably, must do what is necessary to resolve the difference, so that the situation described in clause 2(i) of this Schedule 5 is maintained.
- (f) The release of a Bank Guarantee under this Schedule 5 may involve the substitution of a Bank Guarantee with another Bank Guarantee having a different face value.

Schedule 6

Expert Determination (Schedule 6)

1. Application of this Schedule 6

- (a) This Schedule applies if the parties cannot agree on the Key Estimate Matters in accordance with clause 8 of Schedule 4, the Key WIK Reconciliation Matters in accordance with clause 10 of Schedule 4, or Key Land Reconciliation Matters in accordance with clause 12 of Schedule 4.
- (b) A party who wishes to refer a matter for expert determination in accordance with this deed must provide a written notice to the other parties which specifies the issues which that party wishes to have determined by an expert in accordance with this Schedule 6.

2. Agreement on or nomination of expert

- (a) If a notice has been given under clause 1(b) of this Schedule 6, the parties must use all reasonable endeavours to agree on a person who is independent of all the parties, and is qualified in fields which are relevant to the determination of the issues specified in the notice, as the expert to determine the issues .
- (b) If the parties have not reached agreement on an expert within 10 Business Days after a notice has been given under clause 1(b) of this Schedule 6:
 - (i) any party may, by written notice (a copy of which the party must provide to the other parties), request the president of the Law Society of NSW or the president's delegate to nominate an expert; and
 - (ii) if a notice is issued in accordance with clause 2(b)(i) of this Schedule 6, each of the Planning Minister and one of the Developers may propose three persons for the president to consider in nominating an expert.

3. Appointment of expert

- (a) The parties must use their best endeavours to finalise the terms of the expert's retainer as soon as possible and, in any event, within 10 Business Days after the expert has been agreed or nominated under clause 2 of this Schedule 6.
- (b) If the expert appointed under clause 3(a) of this Schedule 6 dies or resigns, or the parties agree to replace the expert, before the expert issues a determination under this Schedule 6, then clauses 2 and 3(a) of this Schedule 6 re-apply as if a notice was given under clause 1(a) of Schedule 6 in respect of the same issues on the day on which all parties become aware that the expert has died or resigned or they agree to replace the expert.
- (c) If the expert becomes aware at any stage of any circumstance that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially:
 - (i) the expert must inform the parties immediately; and
 - (ii) in much circumstances, the appointment of the expert will terminate unless the parties agree otherwise; and
 - (iii) if they agree to replace the expert, the parties must promptly do all things necessary to do so, unless the expert resigns before the parties have terminated the expert's engagement.

Schedule 6

4. Role and powers of the expert

The parties acknowledge and agree that the expert should, and they will use their best endeavours to ensure that expert will:

- (a) act as an expert and not as an arbitrator;
- (b) act independently of the parties, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of presenting its case and countering any arguments of any opposing party, and a reasonable opportunity to make submissions on the matters for expert determination and the procedure for the expert determination;
- (c) proceed in any matter he or she thinks fit;
- (d) determine whether it is appropriate to co-opt legal or other technical expertise to assist his or her coordination of the dispute;
- (e) conduct any investigation which he or she considers necessary to resolve the dispute;
- (f) examine such documents, and interview such persons, as he or she may require; and
- (g) make such directions for the conduct of the expert determination as he or she considers necessary.

5. Steps leading to commencement of expert determination

The parties agree to comply with any procedural directions the expert may give in the preparation for or in the course of a preparatory conference

6. Representation and attendance

During any conference or any stage of the expert determination, the parties may be represented by a legal representative and other persons with information or knowledge relevant to the expert determination.

7. Obligation of parties

The parties shall take all reasonable steps for the expeditious and cost-effective conduct of the expert determination. These steps include, but are not limited to, complying without delay with any direction or ruling by the expert as to the procedural or evidentiary matters.

8. Confidentiality

The parties must do, and must ensure that their representatives do, and must use their best endeavours to ensure that the expert and his or her representatives do, the following:

- (a) keep confidential any information which is provided to the expert and the other parties in the course of the expert determination process on the basis that it is confidential; and
- (b) not disclose or otherwise use that information other than for the purposes of the expert determination.

Schedule 6

9. Determination of expert

- (a) The parties acknowledge and agree that determination of the expert, in order to be valid under this deed:
 - (i) must be in writing, accompanied by reasons;
 - (ii) subject to subclause (b) below, will be final and binding on the parties; and
 - (iii) is not an arbitration within the meaning of any statute.
- (b) If the determination of the expert contains a clerical mistake, an error arising from an accidental inclusion or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then:
 - (i) the party which noticed the relevant matter must notify the other parties in writing promptly,
 - (ii) the parties must use their best endeavours to ensure that the expert corrects the determination within 10 Business Days after they receive notice under clause 9(b) of this Schedule 6; or
 - (iii) if the expert does not correct the determination within that time, the parties may agree to appoint a substitute expert in accordance with the procedures established by clause 2 of this Schedule 6.

10. Costs

Each party will:

- (a) bear its own costs in respect of any preparation and/or representation at any expert determination; and
- (b) pay one-half of the expert's costs and any incidental costs of facilitating the expert determination.

11. No suspension of contractual obligations

The referral of a dispute for expert determination under this Schedule 6 does not suspend the contractual obligations of the parties under this deed.

12. No prejudice

This Schedule 6 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

Schedule 7

1. Limitation of Trustee's liability – Erskine Park Landowner

(a) Definitions

In this clause:

Assets includes all assets, property and rights real and personal of any value whatsoever of the Trust.

Trust means BGAI Erskine Trust

Trustee means BGAI 2 Pty Limited

Trustee's Capacity means as trustee of the Trust

(b) Capacity

The Trustee's liability under this document is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

(c) Limitation

Subject to clause 1(e) of this Schedule 7, the liability of the Trustee in respect of any cause of action, claim or loss arising:

- (i) under or in connection with this document;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**), is limited to the Assets. The right of the parties other than the Trustee to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally.

(d) Acknowledgment of limitations

The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (i) subject to clause 1(e) of this Schedule 7, bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

Schedule 7

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(e) **Exception**

If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee may be personally liable.

2. Limitation of Trustee's liability –Oakdale Central Landowner

(a) **Definitions**

In this clause:

Assets includes all assets, property and rights real and personal of any value whatsoever of the Trust.

Trust means BGAI1 Oakdale Trust

Trustee means BGAI 6 Pty Limited

Trustee's Capacity means as trustee of the Trust

(b) **Capacity**

The Trustee's liability under this document is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

(c) **Limitation**

Subject to clause 2(e) of this Schedule 7, the liability of the Trustee in respect of any cause of action, claim or loss arising:

- (i) under or in connection with this document;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**), is limited to the Assets. The right of the parties other than the Trustee to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally.

Schedule 7

(d) Acknowledgment of limitations

The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (i) subject to clause 2(e) of this Schedule 7, bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(e) Exception

If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee may be personally liable.

3. Limitation of Trustee's liability –Oakdale South Landowner

(a) Definitions

In this clause:

Assets includes all assets, property and rights real and personal of any value whatsoever of the Trust.

Trust means BGMG1 Oakdale South Trust

Trustee means BGMG 8 Pty Limited

Trustee's Capacity means as trustee of the Trust

(b) Capacity

The Trustee's liability under this document is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

(c) Limitation

Subject to clause 3(e) of this Schedule 7, the liability of the Trustee in respect of any cause of action, claim or loss arising:

- (i) under or in connection with this document;

Schedule 7

- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**), is limited to the Assets. The right of the parties other than the Trustee to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally.

(d) **Acknowledgment of limitations**

The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (i) subject to clause 3(e) of this Schedule 7, bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(e) **Exception**

If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee may be personally liable.

EXECUTED AS A DEED

Signed sealed and delivered for and on
 behalf of the **Minister for Planning**
 in the presence of:

 Signature of Witness

 Signature

 Name of Witness in full

 CAROLYN MCNALLY

Secretary General of the Department of Planning
 and Environment as delegate of the Minister for
 Planning

Signed, sealed and delivered for and on behalf
 of **BGAI 6 Pty Ltd** (ABN 19 128 775 799) by its
 attorneys under a power of attorney dated 18
 November 2013 registered in New South Wales
 with No.705 Book No. 4659 in the presence of:

 Signature of attorney who declares that the attorney
 has not received any notice of the revocation of the
 power of attorney

 Full name of attorney

 Signature of witness

 Signature of attorney who declares that the attorney
 has not received any notice of the revocation of the
 power of attorney

 Full name of witness

 Full name of attorney

Signed, sealed and delivered for and on behalf of **BGMG 8 Pty Ltd** (ABN 65 161 602 768) by its attorneys under a power of attorney dated 19 February 2013 registered in New South Wales with No. 963 Book No. 4644 in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **BGAI 2 Pty Ltd** (ABN 49 120 605 718) by its attorneys under a power of attorney dated 18 November 2013 registered in New South Wales with No. 701 Book No. 4659 in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **Goodman Property Services (Aust) Pty Limited** (ABN 40 088 981 793) by its attorneys under a power of attorney dated 18 December 2006 registered in New South Wales with No. 75 Book No. 4507 in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of witness

Full name of witness

Annexure A - Oakdale Central and Oakdale South lots



Annexure B - OWR Upgrade Contribution

Description

The OWR Upgrade Contribution is the construction of an upgrade to 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,

as set out in the drawings and documents listed in the table below and attached to this Annexure B.

Drawing No.	Description	Revision	Date
C350	Old Wallgrove Road Upgrade - General Arrangement Plan	Rev E	08 August 2014
C351	Old Wallgrove Road - Plan and Longitudinal Section - Sheet 1	Rev E	08 August 2014
C352	Old Wallgrove Road - Plan and Longitudinal Section - Sheet 2	Rev E	08 August 2014
C353	Link Road - Plan and Longitudinal Section - Sheet 3	Rev D	08 August 2014
C354	Old Wallgrove Road - Plan and Longitudinal Section - Sheet 4	Rev E	08 August 2014
C355	Old Wallgrove Road - Plan and Longitudinal Section - Sheet 5	Rev E	08 August 2014
C356	Old Wallgrove Road - Plan and Longitudinal Section - Sheet 6	Rev E	08 August 2014
C357	Old Wallgrove Road - Plan and Longitudinal Section - Sheet 7	Rev E	08 August 2014
C358	Typical Sections	Rev F	08 August 2014
C359	Typical Bridge Crossing Section	Rev D	08 August 2014
C360	Land Acquisition Plan	Rev H	08 August 2014
R002	OWR Upgrade - Road Design Report	Rev 07	August 2014

Estimated and Maximum WIK Contribution and Land Contribution values

Estimated WIK Costs	\$15,439,075
Estimated Land Contribution Value	\$1,364,750
Total estimated contribution costs and value	\$16, 803,825
Maximum WIK Value	\$20,795,484
Maximum Land Contribution Value	\$1,641,875
Total maximum contribution costs and value	\$22,437,359

Land Contribution details

Title details	Registered proprietor	Land area (m ²)	Area to be acquired (m ²)	Consent to transfer?	Estimated value
Lot 13 DP 1157491	TransGrid	437,101	4,790	Yes	\$479,000
Lot 6, DP 229769		212,212			
Lot 7, DP 229769	Sydney Catchment Authority	16,878	1,170	In principle	\$117,000
Lot 1, DP 87907		10,700			
Lot 1, DP 843901	The Austral Brick Company Proprietary Limited	884,022	5,125	Yes	\$768,750
Totals		1,560,913	11,085		\$1,364,750

Monetary Contribution Component estimates and offsets

Site	Land area (m ²)	Contribution
Erskine Park		
Interlink Contribution	N/A	\$3,414,056
Oakdale Central		
Site 1C	46,417	\$835,506
Site 2B	60,010	\$1,080,180
Site 3	155,894	\$2,806,092
Site 4	21,615	\$389,070
Total (Central)	283,936	\$5,110,848
Oakdale South		
Site 1	89,603 89,522	\$1,612,854 \$1,611,396
Site 2	157,663 147,010	\$2,837,934 \$2,646,180
Site 3 (being 3A, 3B and 3C)	214,196 177,950	\$3,855,528 \$3,203,100
Site 4	151,268 103,750	\$2,722,824 \$1,867,500
Site 5	65,163 142,935	\$1,172,934 \$2,572,830
Site 6	68,433 71,040	\$1,231,794 \$1,278,720
Total (South)	746,326 732,207	\$13,433,868 \$13,179,726
TOTAL	1,032,262 1,016,143	\$21,958,772 \$21,704,630

Key Road Work Terms

Term	RMS	Fairfield City Council	Blacktown City Council
Relevant document	"Major" or "Minor" Works Authorisation Deed (WAD)	Section 138 Roads Act Consent (The Secretary acknowledges and agrees that, for the purposes of the OWR Upgrade, the Section 138 Roads Act Consent will constitute a "Road Works Agreement").	Section 138 Roads Act Consent (The Secretary acknowledges and agrees that, for the purposes of the OWR Upgrade, the Section 138 Roads Act Consent will constitute a "Road Works Agreement").
Practical Completion	Issue of Notice of Practical Completion not later than 19 October 2016	Issue of Engineering Compliance Certificate not later than 19 October 2016	Issue of Engineering Compliance Certificate not later than 19 October 2016
Process for achieving Practical Completion	<p>Unless otherwise agreed in writing with RMS and the Secretary (in her absolute discretion):</p> <ul style="list-style-type: none"> • The Developer is to give RMS 20 Business Days' notice prior to anticipated Practical Completion. • The Developer is to give RMS notice when it considers Practical Completion has been achieved. • RMS is to inspect and determine that Practical Completion has been achieved, and issue a Notice of Practical Completion. 	<p>Unless otherwise agreed in writing with Fairfield City Council and the (in her absolute discretion):</p> <p>All conditions of the Section 138 Roads Act Consent must be satisfied prior to issue of an Engineering Compliance Certificate.</p>	<p>Unless otherwise agreed in writing with Blacktown City Council and the Secretary (in her absolute discretion):</p> <p>All conditions of the Section 138 Roads Act Consent must be satisfied prior to issue of an Engineering Compliance Certificate.</p>

<p>Security</p> <p>(Provision of security under a Road Works Agreement may reduce the amount of security which the Developers need to provide under clauses 2(c) and clause 2(d) of Schedule 5 - see clauses 2(e) and 2(f) of Schedule 5).</p>	<p>Unless otherwise agreed in writing with RMS and the Secretary (in her absolute discretion):</p> <p>Amount of security: The cost of completing the works under the WAD and satisfying the Developer's other obligations under the WAD.</p> <p>Provision of security: To be provided to RMS, in a form acceptable to RMS, prior to commencing the construction of the works under the WAD.</p> <p>Release of security: To be returned 12 months after Practical Completion.</p>	<p>Unless otherwise agreed in writing with Fairfield City Council and the Secretary (in her absolute discretion):</p> <p>Amount of security: The value equivalent to 10% of the project cost.</p> <p>Provision of security: Provision of a maintenance bond to Fairfield City Council following the submission of Works as Executed Plans.</p> <p>Release of security: To be returned 12 months after Practical Completion.</p> <p>(Note: To avoid any doubt, provision of the above security will not reduce the amount of security which the Developers need to provide under clauses 2(c) and clause 2(d) of Schedule 5. However if the Section 138 Roads Act Consent requires security to be provided prior to commencing the construction of the works, the provision of that security may reduce the amount of security which the Developers need to provide under clauses 2(c) and clause 2(d) of Schedule 5 - see clauses 2(e) and 2(f) of Schedule 5).</p>	<p>Unless otherwise agreed in writing with Blacktown City Council and the Secretary (in her absolute discretion):</p> <p>Amount of security: The value equivalent to 10% of the project cost.</p> <p>Provision of security: Provision of a maintenance bond to Blacktown City Council following the submission of Works as Executed Plans.</p> <p>Release of security: To be returned 12 months after Practical Completion.</p> <p>(Note: To avoid any doubt, provision of the above security will not reduce the amount of security which the Developers need to provide under clauses 2(c) and clause 2(d) of Schedule 5. However if the Section 138 Roads Act Consent requires security to be provided prior to commencing the construction of the works, the provision of that security may reduce the amount of security which the Developers need to provide under clauses 2(c) and clause 2(d) of Schedule 5 - see clauses 2(e) and 2(f) of Schedule 5).</p>
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Authorisations required for OWR Upgrade WIK Contribution

The Authorisations include:

- State Significant Development Approval;
- Section 138 Roads Act Consent;
- Construction Certificate (if required by the State Significant Development Approval).

[\[Note: Refer to the sheets behind page 67, at Annexure B to the Planning Agreement\]](#)

Annexure C

