

Explanatory Note
Minister for Planning
and
Goodman Property Services (Aust) Pty Ltd
and
BGMG 11 Pty Limited as trustee for the BGMG 1 Oakdale West Trust
Draft Planning Agreement
Oakdale West Estate

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the Environmental Planning and Assessment Act 1979 (the **Act**).

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

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

Parties to the Planning Agreement

The parties to the Planning Agreement are Goodman Property Services (Aust) Pty Ltd (the **Developer**), BMG 11 Pty Ltd as trustee for the BGMG 1 Oakdale West Trust (the **Landowner**) and the Minister for Planning (the **Minister**).

Description of the Subject Land

The Planning Agreement applies to:

- Lot 11 in Deposited Plan 1178389 as shown in the plan at Annexure A to the Planning Agreement; and
- Lot 1 in Deposited Plan 663937 as shown in the plan at Annexure A to the Planning Agreement,

(together, the **Subject Land**).

The Subject Land is located at Erskine Park.

Description of the Proposed Development

The Developer is seeking to develop the Subject Land in the Stages for the purposes of a warehouse and logistics estate known as the 'Oakdale West Estate', including as proposed in State significant Development Application SSD7348 (**Proposed Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of regional transport infrastructure and services (including the Erskine Park Link

Road Network) within the meaning of clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP)*, in connection with the Proposed Development.

The Planning Agreement requires the Developer to make Development Contributions in connection with the Proposed Development based on the contribution rate of \$193,636 per hectare of Net Developable Area of the Subject Land (subject to indexation in accordance with the Planning Agreement) for the purposes of the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) as referred to in clause 29 of the WSEA SEPP

The Development Contributions may comprise:

- the payment of Monetary Contributions; or
- if approved by the Minister, the provision of a works-in-kind contribution (**WIK Contribution**) and Land Contribution, which includes the design, construction and dedication of a public road between Lenore Drive and the Future Southern Link Road, or a portion of that public road (there are two available portions which can be delivered, known as Separable Portion 1 and Separable Portion 2) and the transfer of land the subject of a WIK Contribution to the person nominated by the Minister.

Specific obligations to make Development Contributions are triggered before a Trigger Event occurs. A Trigger Event occurs each time:

- (a) a Subdivision Certificate is issued;
- (b) a Construction Certificate is issued; or
- (c) if any part of the Proposed Development may be carried out without the need for a Subdivision Certificate or a Construction Certificate, then on the earlier of the following:
 - (i) commencement of that part of the Development;
 - (ii) the issue of a Complying Development Certificate in respect of that part of the Development.

Before the occurrence of a Trigger Event, the Developer must:

- pay a monetary contribution for the portion of the Proposed Development which that Trigger Event would allow the Developer to carry out (Contribution Amount), (the Contribution Amount is calculated by reference to the contribution rate and the Net Developable Area of the land to be developed in connection with that Trigger Event); or
- demonstrate to the Minister that the value of the Development Contributions which the Developer has made under the Planning Agreement, and which are recognised by the Minister as Offset Credits, equals or exceeds the value of the Contribution Amount. In that event, the Developer must obtain an updated Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased by the value of the Contribution Amount; or
- demonstrate to the Minister that the value of the Development Contributions which the Developer has made under the Planning Agreement, and which are recognised by the Minister as Offset Credits, is less than the value of the Contribution Amount (but is more than zero). In that event, the Developer must pay a monetary contribution in the amount of the difference and obtain an updated Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased to zero.

The Planning Agreement contains a mechanism which allows the Developer, while it is delivering a WIK Contribution, to obtain an extension of time to pay a monetary contribution that would otherwise have been payable because the Developer has insufficient Offset Credits to discharge an obligation to provide a Contribution Amount (Deferred Contribution). An extension of time is only available if the Minister has

approved a WIK Proposal for the WNSL Road (or at least Separable Portion 1), the date for practical completion of that WIK Contribution has not passed, and the Developer has provided a further Bank Guarantee with a face value of 10% of the value of the Deferred Contribution. In that event, the time for payment of the Deferred Contribution will be extended until the earlier of the date of practical completion and the date for practical completion of the approved WIK Contribution. This provides the Developer with an opportunity to discharge the obligation to provide the Contribution Amount via the surrender of Offset Credits to be generated upon the delivery of the WIK Contribution.

The Developer is required to pay interest on a Deferred Contribution Amount in specified circumstances.

The Planning Agreement contains a mechanism which allows the Minister to treat an obligation of the Developer (or entities related to it) to pay a monetary contribution under the Oakdale Central and Oakdale South, Horsley Park Planning Agreement dated 12 March 2015 as though it were an obligation on the Developer to pay a monetary contribution under the Planning Agreement, and to extend the time for payment of that monetary contribution (Oakdale Central Deferred Contribution Amount) while a WIK Contribution is being delivered by the Developer. The Developer must provide a further Bank Guarantee with a face value equivalent to 110% of the value of the Oakdale Central Deferred Contribution Amount, and must pay interest on the Oakdale Central Deferred Contribution Amount.

The Developer intends that the Planning Agreement would enable the Secretary to issue a Satisfactory Arrangements Certificate under the WSEA SEPP for each Stage of the Proposed Development. However, before the Secretary issues a Satisfactory Arrangements Certificate for a Stage of the Proposed Development, the Developer must provide to the Planning Minister one or more Bank Guarantees with a face value equivalent to 100% of the Monetary Contributions which the Minister estimates would be payable under the Planning Agreement for that Stage of the Proposed Development.

The Developer is required to register the Planning Agreement on the titles to the Subject Land in accordance with section 7.6 of the Act.

The Planning Agreement has a sunset date of 30 June 2040, at which time, the Developer must pay to the Planning Minister an amount representing the value of the Development Contributions required for the whole of the Subject Land, less the value of any Development Contributions already delivered.

No relevant capital works program by the Minister is associated with this Planning Agreement.

Assessment of merits of Planning Agreement

The planning purpose of the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

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

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

How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network), having regard to needs that arise from the Proposed Development on the Subject Land.

How the Planning Agreement promotes the objects of the Act

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

- the promotion and co-ordination of the orderly and economic use and development of land.

The Planning Agreement promotes this object of the Act by requiring the Developer to make a contribution towards the provision of regional transport infrastructure and services in the Western Sydney Employment Area.

The Developer's offer to contribute towards the provision of regional transport infrastructure and services will have a positive public impact as funds from the Developer will be available towards the provision of regional transport infrastructure and services in the Western Sydney Employment Area.

Requirements relating to Construction, Occupation and Subdivision Certificates

Each of the requirements to provide a monetary contribution and/or to obtain an updated Offset Credits Schedule from the Minister is:

- (a) where the Trigger Event relates to a Construction Certificate - a restriction on the issue of a Construction Certificate within the meaning of section 6.8 of the Act and clause 146A of the Environmental Planning and Assessment Regulation 2000; and
- (b) where the Trigger Event relates to a Subdivision Certificate - a restriction on the issue of a Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.

The Planning Agreement does not specify requirements that must be complied with prior to the issue of an Occupation Certificate.

Interpretation of Planning Agreement

This Explanatory Note is not to be used to assist in construing the Planning Agreement.