

Oakdale West Estate

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning
Planning Minister

Goodman Property Services (Aust) Pty Ltd
Developer

BGMG 11 Pty Limited as trustee for the BGMG 1 Oakdale West Trust
Landowner

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Oakdale West Estate, Erskine Park

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Planning Agreement

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 (ABN 40 088 981 793) of level 17, 60 Castlereagh Street, Sydney, New South Wales, 2000 (**Developer**)

BGMG 11 PTY LTD (ABN 73 616 276 076) **as trustee for the BGMG 1 OAKDALE WEST TRUST** (ABN 79 264 172 511) of Level 17, 60 Castlereagh Street, Sydney, New South Wales, 2000 (**Landowner**)

Background

- A. The Landowner owns the Land.
- B. The Developer proposes to carry out the Development on the Land.
- C. The Developer has made one or more Development Applications to the Consent Authority in respect of the Development on the Land.
- D. Clause 29 of *State Environmental Planning Policy (Western Sydney Employment Area) 2009* (**WSEA SEPP**) provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) in relation to the land to which the WSEA SEPP applies.
- E. The Developer has offered to enter into this deed with the Planning Minister to secure the Development Contributions in order to enable the Secretary to provide the certification required by clause 29 of the WSEA SEPP.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Acceptable Contractor means a Construction Contractor which:

- (a) is appointed pursuant to an arm's length competitive tender process which meets the requirements of the Planning Minister; and
- (b) satisfies the requirements of RMS for a contractor to construct regional public roads.

Actual Costs means:

- (a) the final certified contract cost paid by the Developer to the Construction Contractor following compliance with all of the Developer's obligations under the relevant Road

Works Agreement in respect of the construction of the works comprising the WIK Contribution; and

- (b) costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred in the delivery of the WIK Contribution and paid by the Developer to third parties for:
 - (i) design of road works, project management, investigations, consultant fees, studies or reports specifically required for the road works; and
 - (ii) other matters where the approval of the Planning Minister to the inclusion of such costs has been given in writing to the Developer,

to the extent that they are reasonable in quantum and do not exceed the Maximum WIK Value.

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

Address for Service for a party means the contact details of that party appearing in Schedule 2 or any other contact details which that party notifies to all other parties as its Address for Service.

Agreed Valuation Rate has the meaning given to that term in clause 3.6(g) of Schedule 4.

Approved Actual Costs has the meaning given to that expression in clause 3.5(c) of Schedule 4.

Associate of a person means that person's officer, employee, adviser, contractor (including any other person with whom that person has a contractual relationship), subcontractor or invitee, or any related entity of that person (within the meaning of the *Corporations Act* 2001 (Cth)).

Authorisation means any consent, approval, authorisation, determination, licence, registration, order, permission or concurrence.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, authority, 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;
- (b) on terms acceptable to the Planning Minister, in the Planning Minister's absolute discretion;
- (c) naming the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries;
- (d) without an expiry date;

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2018.

Business Day means any day on which banks are open for business generally in Sydney, but does not include a Saturday, Sunday or public holiday, or any day between 25 December and 1 January inclusive.

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

Consent Authority has the same meaning as in the Planning Act.

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

Construction Contract means a contract under which a Construction Contractor is engaged by the Developer to deliver the works comprising a WIK Contribution to which this deed relates.

Construction Contractor means a contractor engaged to deliver the works comprising a WIK Contribution to which this deed relates.

Contamination has the same meaning as in the *Contaminated Land Management Act* 1997 (NSW).

Contribution Amount means, for a particular Trigger Event, the amount of contribution which the Developer is required to make under this deed before the occurrence of that Trigger Event, as described in Schedule 4.

Council means Penrith City Council.

CPI 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 Planning Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2018 and each anniversary of 1 July 2018.

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

Development means the development of the Land in the Stages for the purposes of a warehouse and logistics estate known as the 'Oakdale West Estate', including as contemplated by:

- (a) State significant Development Application SSD7348; and
- (b) any future Development Applications for that development on the Land.

Development Application has the same meaning as in the Planning Act.

Development Consent has the same meaning as in the Planning Act.

Development Contributions means the total contributions to be provided by the Developer in accordance with 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.

External WSEA Obligation means an obligation to make a development contribution relating to the provision of regional transport infrastructure and services on other land (not being the Land) to which the WSEA SEPP applies including any such land owned by an entity which is not a party to this deed.

Fitzpatrick Developer means the developer of the Fitzpatrick Industrial Estate, which as at the date of this deed is Fitzpatrick Investments Pty Ltd (ABN 42 001 662 862).

Fitzpatrick Industrial Estate means the land known as 177 - 299 Lenore Drive, Erskine Park.

Fitzpatrick Road Land means the part of the Fitzpatrick Industrial Estate as generally shown on the plan at Annexure B, or a replacement plan agreed by the Planning Minister, that is:

- (a) required for the Northern WNSL Road Section; and
- (b) required for the part of the Southern WNSL Road Section that will be situated on the Fitzpatrick Industrial Estate,

but does not include any land on which batters and other support structures which are outside the paved surface of the road and verge, unless the Planning Minister determines otherwise.

Fitzpatrick VPA means a planning agreement between the Planning Minister and the Fitzpatrick Developer relating to the development of the eastern part of the Fitzpatrick Industrial Estate dated 30 August 2018.

Future Southern Link Road means the future road known as the "Southern Link Road" as generally shown on the plan at Annexure B.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

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

Key Road Work Terms means the key terms which are agreed or determined in accordance with clause 4.3(e).

Land means the land described in Schedule 3, as generally depicted in the plan at Annexure A.

Land Contribution means any land (excluding land owned by the Fitzpatrick Developer as at the date of this deed) 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 by or on behalf of the Developer, at no cost to the Planning Minister, in accordance with clause 3.6 of Schedule 4, and which the Planning Minister approves for transfer in a WIK Approval.

Land Parcel means an allotment which contains part of the Land.

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

Maximum WIK Value for a WIK Contribution means the maximum value for that WIK Contribution for the purposes of this deed, as determined by the Planning Minister in accordance with Schedule 4.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Ministerial Corporation means the Planning Ministerial Corporation, being the corporation constituted under Part 2 of the Planning Act.

Monetary Contribution means the contribution described in Schedule 4.

NDA or Net Developable Area means the net developable area of the Land or the relevant part of the Land calculated in accordance with Schedule 6 or, in the event of a dispute or ambiguity, as determined by the Secretary.

Nominated Transferee has that meaning given to that term in clause 3.6(b) of Schedule 4.

Northern WNSL Road Section means the part of the WNSL Road between Lenore Drive (also known as the Erskine Park Link Road) and Lockwood Road generally as shown in blue on the plan at Annexure C, including connection of the WNSL Road to Lockwood Road (which is currently a cul-de-sac) between Lenore Drive and Lockwood Road.

Oakdale Central Deferred Contribution Amount has the meaning given to that term in clause 4.2(a)(ii) of Schedule 4.

Oakdale Central VPA means the Oakdale Central and Oakdale South, Horsley Park Planning Agreement dated 12 March 2015 between the Planning Minister, Goodman Property Services (Aust) Pty Ltd, BGAI 6 Pty Ltd, BGMG 8 Pty Ltd and BGAI 2 Pty Ltd, as amended from time to time.

Offset Credits means the value, as determined in accordance with this deed, of any of the Development Contributions which the Developer has delivered in accordance with this deed, which have not been applied to discharge the Developer's obligation to provide a Contribution Amount under clause 2 of Schedule 4.

Offset Credits Schedule means a schedule which the Planning Minister has issued under clause 2.3 of Schedule 4, identifying the value of any Offset Credits at the time at which the schedule is issued.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

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

Planning Minister means the Minister for Planning and includes the Secretary, the Secretary's nominee and the Ministerial Corporation.

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

Practical Completion for a WIK Contribution means the point in time in the process of delivering a WIK Contribution at which:

- (a) the works comprising the WIK Contribution (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation or handover to the Roads Authority, as the case may be, except for minor omissions and minor defects which:
 - (i) have been so identified on a list issued to the Developer by the Roads Authority,
 - (ii) do not impede use of the WIK Contribution by the public for the continuous safe passage of vehicular traffic and pedestrians;
 - (iii) will not prejudice the convenient and safe use of the WIK Contribution during rectification; and
 - (iv) the Roads Authority determines that the Developer has reasonable grounds for not rectifying prior to public use and occupation;

- (b) any inspection and testing requirements of the Roads Authority have been complied with and any other tests necessary to be carried out and passed before the WIK Contribution, or a part of it, is used and occupied by the public or handed over to the Roads Authority have been carried and passed and all test results and conformance data identified by the Roads Authority have been provided to the Roads Authority;
- (c) all relevant requirements of the Roads Authority in respect of the WIK Contribution have been carried out or satisfied;
- (d) all documents, certifications and information required by the Roads Authority, which the Roads Authority considers necessary for the use, operation and maintenance of the WIK Contribution have been provided to the Roads Authority, including all "As-Built" and other drawings, and all original manufacturers' or suppliers' warranties required by the Roads Authority;
- (e) with the approval of the Roads Authority, the Developer has commissioned into operation all plant incorporated into the WIK Contribution and any traffic signalling equipment and has demonstrated to the satisfaction of the Roads Authority that the commissioning has been successful; and
- (f) the Roads Authority has certified in writing that practical completion of the WIK Contribution has been achieved,

unless that expression has been given a different meaning by the Key Road Work Terms, in which case the meaning given by the Key Road Works Terms shall apply.

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

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

Relevant Land has the meaning given to that term in clause 4.3.

Residue Super Lot means a residue Land Parcel which is intended for further subdivision for industrial or commercial purposes, which the Secretary, in her absolute discretion, certifies as a 'Residue Super Lot'.

RMS means Roads and Maritime Services, a statutory corporation established under the *Transport Administration Act* 1988 (NSW).

Road Works Agreement means:

- (a) a works authorisation deed (or WAD) or other legally binding agreement between the Developer and RMS (or other relevant Roads Authority) which governs the delivery of road infrastructure; and
- (b) in the case of a Roads Authority other than RMS, includes
 - (i) an Authorisation granted by the Roads Authority under section 138 of the *Roads Act* 1993 (NSW);
 - (ii) a Construction Certificate; or
 - (iii) a Subdivision Works Certificate,

for that road infrastructure instead of such a deed or agreement, if the Planning Minister agrees in accordance with clause 4.3(e)(iii), or determines in accordance with clause 4.3(e)(v), that the "Road Works Agreement" can take the form of that instrument.

Roads Authority means the Council unless the Planning Minister notifies the Developer in writing otherwise.

Satisfactory Arrangements Certificate in respect of any land means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) in respect of that land in accordance with clause 29 of the WSEA SEPP.

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

Security means a Bank Guarantee.

Separable Portion 1 means that portion of the WNSL Road comprising the Northern WNSL Road Section and the part of the Southern WNSL Road Section which is as generally shown in blue on the plan at Annexure D.

Separable Portion 2 means that portion of the WNSL Road comprising the part of the Southern WNSL Road Section which is to the south of the future road marked 'Estate Road 1', as generally shown in yellow in the plan at Annexure D.

Southern WNSL Road Section means the part of the WNSL Road between Lockwood Road and the Future Southern Link Road as generally shown in yellow on the plan at Annexure C.

Stage means:

- (a) one of the five stages of the Development as generally described in the State significant Development Application SSD1773; and
- (b) any other stages of the Development contemplated by any future Development Applications for the Development.

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

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

Sunset Date means 30 June 2040 or such other date as may be agreed between the parties.

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.

Trigger Event has the meaning given to that term in clause 2 of Schedule 4.

WAD means a works authorisation deed.

WaterNSW Land means the land owned by WaterNSW which is required for the WNSL Road, as generally shown on the plan at Annexure B.

WIK means works-in-kind.

WIK Approval has the meaning given to that expression in clause 4.3(f).

WIK Contribution means the design, construction, completion and delivery to the Roads Authority of a road and related works the subject of a current WIK Proposal or a WIK Approval.

WIK Estimate Notice has the meaning given to that expression in clause 3.3(a) of Schedule 4.

WIK Proposal has the meaning given to that expression in clause 4.3(a).

WNSL Road or Western North South Link Road means a public road and ancillary works to be constructed between Lenore Drive and the Future Southern Link Road, including:

- (a) the Southern WNSL Road Section; and
- (b) the Northern WNSL Road Section,

as generally shown on the plan at Annexure C.

WSEA SEPP means *State Environmental Planning Policy (Western Sydney Employment Area)* 2009.

1.2 Interpretation

In this deed:

- (a) clause headings, the introduction and the table of contents are inserted for convenience only and do not form part of this deed;

and, unless the context clearly indicates otherwise:

- (b) a reference to this deed or another document means this deed or that other document and 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 an office which ceases to exist is a reference to:
 - (i) whether the body or office holder is an Authority - the Authority which replaces that body or office holder, or (if there is no replacement Authority) having relevant functions which are substantially the same as or similar to those of the former body or office holder; or
 - (ii) whether the body or office holder is not an Authority - either a body of office that the parties agree to substitute for the named body or office or, failing agreement, to a body or office having objects or functions which are substantially the same as those of the named body or office;
- (e) a reference to the introduction, a clause, a schedule or an annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (f) the schedules and annexures form part of this deed;
- (g) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (i) a reference to a corporation includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) 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;

- (l) 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 from being done;
- (m) a right for a person to do something, or a power for a person to agree to or determine or be satisfied as to something, is a right to determine to do or not do that thing, or a power to agree to or determine or be satisfied as to that thing (as the case may be), in the person's absolute discretion (and, in the case of a determination, with or without conditions);
- (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

- (a) This deed commences on the date that this deed is signed by all the parties.
- (b) The Developer agrees that this deed operates as a deed poll in favour of:
 - (i) the Planning Minister, on and from the date of execution of this deed until the date on which this deed commences;
 - (ii) the Roads Authority, on and from the date of execution of this deed; and
 - (iii) the Nominated Transferee, on and from the date on which the Nominated Transferee is nominated by the Planning Minister.

2.2 Planning agreement under the Planning Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Planning Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Planning Act

The application of sections 7.11, 7.12 and 7.24 of the Planning Act are excluded to the extent stated in Schedule 1.

4. Development Contributions

4.1 Developer to provide Development Contributions

The Developer must provide to the Planning Minister, or the Nominated Transferee, the Development Contributions in accordance with this clause 4 and the provisions of Schedule 4.

4.2 Acknowledgement

The Developer acknowledges and agrees that subject to section 7.3 of the Planning Act, the Planning Minister:

- (a) has no obligation to use or expend the Development Contributions for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contributions or refund any amount to the Developer; and
- (b) in circumstances where the Development Contributions are transferred to any Authority, has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by that Authority.

4.3 Works-in-Kind Contribution and Land Contribution

- (a) The Developer may, by written notice to the Planning Minister in accordance with this clause 4.3, propose that the Developer provide a WIK Contribution and (if applicable) Land Contribution instead of providing some or all of the Monetary Contribution, in accordance with this clause 4.3 and Schedule 4 (**WIK Proposal**).
- (b) The Developer may make:
 - (i) a single WIK Proposal for Separable Portion 1 and Separable Portion 2 to be delivered together; or
 - (ii) a WIK Proposal for the delivery of Separable Portion 1, which may (but is not required to) be followed by a later WIK Proposal for Separable Portion 2.
- (c) If the Developer intends to submit a WIK Proposal to the Planning Minister, the Developer must give the Planning Minister 15 Business Days' written notice of that intention before submitting the WIK Proposal.
- (d) The Developer must, in the WIK Proposal:
 - (i) describe the WIK Contribution which the Developer proposes to provide;
 - (ii) specify, for all of the land which is the subject of that WIK Contribution (other than the Fitzpatrick Road Land) and any other Land Contribution in that WIK Proposal (**Relevant Land**):
 - 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 based on the Agreed Valuation Rate;
 - (iii) confirm:
 - A. that the Developer or the Landowner is the registered proprietor of the Relevant Land; or

- B. if the Developer or the Landowner is not the registered proprietor of any parts of the Relevant Land, that the Developer:
 - 1) has obtained the unconditional written consent of each owner of each of those parts of the Relevant Land to the transfer of that part to the Nominated Transferee; or
 - 2) if part of the Relevant Land is owned by WaterNSW, that the Developer has obtained the written consent of WaterNSW to the transfer of that part to the Nominated Transferee either unconditionally or subject to conditions which the Developer is able to satisfy;
- (iv) provide an indicative estimate of the Actual Cost of that proposed WIK Contribution.
- (e) The Developer must, when providing the WIK Proposal, also provide:
 - (i) a statement of the proposed Key Road Work Terms, 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;
 - C. the process for achieving Practical Completion;
 - D. the date for Practical Completion for the WIK Contribution, which, in the case of Separable Portion 1, must be no later than 13 December 2023; and
 - E. the date for the handover of the completed WIK Contribution to the Roads Authority;
 - F. the form of Road Works Agreement which will apply to the WIK Contribution; and
 - (ii) written evidence:
 - A. that the Roads Authority agrees in principle to the provision of the WIK Contribution and (if applicable) the Land Contribution described in the WIK Proposal; and
 - B. of the 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 Developer in writing, within 20 Business Days after receiving a WIK Proposal and the material specified in clause 4.3(e)(i) and (ii), whether or not the Planning Minister agrees with those proposed Key Road Work Terms;
- (iv) if the Planning Minister notifies the Developer that the Planning Minister does not agree with those proposed Key Road Work Terms, then the

parties must negotiate in good faith and use their best endeavours to agree the Key Road Work Terms; and

- (v) if 20 Business Days (or such other period as the parties may agree) have passed since the Developer's statement of proposed Key Road Work Terms and the material specified in clause 4.3(e)(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 Roads Authority, and by written notice to the Developer, determine the Key Road Work Terms.
- (f) The Developer may withdraw a WIK Proposal at any time up to the date on which the Key Road Work Terms are agreed under clause 4.3(e)(iii) or (iv), or, in the absence of agreement, the date which is 20 Business Days after the Planning Minister provides notice of the Key Road Work Terms under clause 4.3(e)(v). If the Developer does not withdraw a WIK Proposal before this time, then the Planning Minister must, within a further 20 Business Days, determine, in his absolute discretion, to:
 - (i) 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 4.3(e) (**WIK Approval**); or
 - (ii) refuse to approve the WIK Proposal.
- (g) If the Planning Minister issues a WIK Approval for a WIK Contribution, the Developer:
 - (i) must use its best endeavours to ensure that any Road Works Agreement with the Roads Authority for that WIK Contribution incorporates the Key Road Work Terms, unless the Planning Minister notifies the Developer otherwise in writing; and
 - (ii) if the Key Road Work Terms are not incorporated into the Road Works Agreement, is bound by the Key Road Work Terms and must comply with the Key Road Work Terms as material obligations under this deed.
- (h) Nothing in this clause 4.3 prevents a party from providing the other party with a notice of dispute in accordance with clause 8.2 of this deed.

4.4 Exclusion of future SIC Determination

If, after the date this deed is executed by the Developer and the Landowner, the Planning Minister:

- (a) executes this deed; and
- (b) determines a special infrastructure contribution (SIC) under section 7.23 of the Planning Act for a special contributions area that includes any part of the Land (SIC Determination),

then:

- (c) the SIC Determination is, notwithstanding its terms, taken not to apply to the Development; and
- (d) the value of the Development Contributions required to be provided under this deed will not be affected by the SIC Determination.

5. Interest for late provision of Contribution Amount

- (a) If the Developer fails to provide a Contribution Amount (as indexed in accordance with Schedule 4) to the Planning Minister by the due date for provision of the Contribution Amount, the Developer must also pay to the Planning Minister interest on the value of the Contribution Amount, at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is to be compounded daily from the due date for provision of the Contribution Amount until all outstanding amounts (including interest on those amounts) have been provided to the Planning Minister.

6. Enforcement

6.1 Developer to provide Security

The Developer has agreed to provide security to the Planning Minister for the performance of the Developer's obligations under this deed:

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

7. Registration

7.1 Registration of deed

- (a) The Developer and the Landowner must, within 20 Business Days of receiving a copy of this deed executed by the Planning Minister, procure the lodgement of this deed at NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land.
- (b) The Developer and the Landowner warrant that they have procured the consent of each person who has an interest in the Land to the registration of this deed.
- (c) The Developer and the Landowner must take all necessary steps to effect the prompt registration of this deed, including:
 - (i) the execution of any documents;
 - (ii) the production of the relevant certificates of title; and
 - (iii) the lodgement of this deed in a registrable form at NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land.

7.2 Evidence of registration

- (a) The Developer must provide the Planning Minister with evidence of the lodgement of this deed pursuant to clause 7.1(c)(iii) within 10 Business Days of that lodgement.
- (b) The Developer must provide the Planning Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

- (a) The Planning Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to the Land after the Developer and the Landowner have satisfied all of their obligations under this deed.
- (b) The Planning Minister may, in his discretion, permit the release and discharge of this deed with respect to a Land Parcel if:
 - (i) the Developer has discharged its obligation to provide a Contribution Amount in respect of that Land Parcel;
 - (ii) the Developer has satisfied all of its obligations in this deed in respect of that Land Parcel; and
 - (iii) the Developer and the Landowner are not in breach of any obligations in this deed.

7.4 Landowner's interest in Land

The Landowner represents and warrants that:

- (a) it is the registered proprietor of the Land and the beneficial owners of the Land are the direct beneficiaries under the BGMG 1 Oakdale West Trust; or
- (b) it is legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed.

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute under or in relation to this deed unless it complies 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.

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 processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must 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 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 8 and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge that any exchange of information or documents or the making of any offer of settlement under this clause 8 is confidential to the parties and is done in an attempt to settle 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 in an attempt to settle the dispute.

8.7 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 is reasonably practicable) continue to perform and comply with their respective obligations under this deed.

8.8 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

Words used in this clause that are defined in the GST Legislation have the meaning given in the GST Legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation 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 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are 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 purposes of this clause 9.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Planning Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Planning Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Planning Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Planning Minister is not entitled to any input tax credit.

9.8 No merger

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

10. Assignment and transfer

10.1 Right to assign or novate

- (a) The Developer and the Landowner must not assign or novate, or purport to assign or novate, any of their rights or obligations under this deed without the prior written consent of the Planning Minister, which consent must not be withheld or delayed unreasonably or granted subject to unreasonable conditions.
- (b) A party seeking to assign or novate any of its rights or obligations under this deed (**Assigning Party**) must:
 - (i) satisfy the Planning Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise to perform the Assigning Party's obligations under this deed insofar as those obligations are to be assigned or novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Planning Minister on terms satisfactory to the Planning Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Planning Minister (acting reasonably) that it is not in material breach of its obligations under this deed.
- (c) The Assigning Party must pay the Planning Minister's reasonable legal costs and expenses incurred in relation to this clause 10.1.

10.2 Right to transfer Land

- (a) The Developer and the Landowner must not sell or transfer, or purport to sell or transfer, to another person (**Transferee**) the whole or any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Planning Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding,

without the prior written consent of the Planning Minister, which consent must not be withheld or delayed unreasonably or granted subject to unreasonable conditions.
- (b) A party seeking to sell or transfer the whole or any part of the Land to a Transferee (**Transferor**) must:
 - (i) satisfy the Planning Minister (acting reasonably) that the Transferee has sufficient assets, resources and expertise to perform any of the remaining obligations of the Transferor under this deed or satisfies the Planning Minister (acting reasonably) that the Transferor will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procure the execution of an agreement by the Transferee with the Planning Minister on terms satisfactory to the Planning Minister (acting reasonably) under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Transferor; and
 - (iii) satisfy the Planning Minister (acting reasonably) that it is not in material breach of its obligations under this deed.
- (c) The Transferor must pay the Planning Minister's reasonable legal costs and expenses incurred in relation to this clause 10.2.

10.3 Replacement Security

If:

- (a) the Developer and the Landowner have complied with clause 10.1 and 10.2; and
- (b) the Incoming Party or Transferee (as the case may be) has provided the Planning Minister with a replacement Security in accordance with the requirements of Schedule 5 which is equivalent to the Security which the Assigning Party or Transferor (as the case may be) has provided and is on terms acceptable to the Planning Minister (acting reasonably),

the Planning Minister will promptly return the Security to the Assigning Party or Transferor (as the case may be).

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

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

11.4 Winding up of Developer

In the event that the Developer becomes insolvent or is wound up:

- (a) a reference in this deed to the Developer is to be taken as a reference to the Landowner; and
- (b) the Landowner must perform all obligations and discharge all liabilities under this deed as though it were the Developer on and from the date of this deed.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents, Subdivision Certificates or Construction Certificates issued in relation to the Development or the Land;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule:
 - A. showing the details of all Contribution Amounts provided under this deed as at the date of the report;
 - B. providing a map which identifies those parts of the Land for which Contribution Amounts have been provided;
 - C. identifying the current balance of the Offset Credits;
 - D. identifying any non-compliance with this deed and the reason for the non-compliance;
 - (v) when the Developer expects to lodge the next Development Application;
 - (vi) when the Developer expects that the next Trigger Event will occur.

- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

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.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties.

13.3 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.

13.4 Further assurances

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

13.5 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.

13.6 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.

13.7 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.

13.8 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.

13.9 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, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

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

13.11 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.

13.12 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.

13.13 No fetter

Nothing in this deed is to be construed as requiring 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.

13.14 Explanatory note

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

13.15 Expenses

- (a) The Developer must pay its own and the Planning Minister's reasonable valuation costs and legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer 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.

- (d) The Developer must provide the Planning Minister with bank cheques, or an alternative method of payment if agreed with the Planning Minister, in respect of the Planning Minister's costs pursuant to clauses 13.15(a) and (b):
- (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 30 Business Days of demand by the Planning Minister for payment.

13.16 Notices

- (a) Any notice, demand, consent, approval, 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; or
 - (iv) in the case of a Notice to be given by the Planning Minister or Secretary, sent by email.
- (b) A Notice is given if:
- (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or on a day that is not a Business Day, then is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - A. before 5pm on a Business Day, then on that day;
 - B. after 5pm on a Business Day, then on the next Business Day after it is sent; or
 - C. on a day that is not a Business Day, then on the next Business Day after it is sent; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by email:
 - A. before 5 pm on a Business Day, on that Day;
 - B. after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - C. on a day that it is not a Business Day, on the next Business Day after it is sent,
- and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 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 the deed complying with the Planning Act.

Requirement under the Planning Act	This deed
Development application – (section 7.4(2)) The Developer has made, or proposes to make, a Development Application.	Yes
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of "Development" in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Planning Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Planning Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Planning Act – (section 7.4(3)(d))	The application of section 7.24 of the Planning Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 7.4(3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Planning Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Planning Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	Yes

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 6455

Email: PlanningAgreements@planning.nsw.gov.au

Developer

Contact: Samantha Evans, General Counsel Australia

Address: Level 17, 60 Castlereagh Street
SYDNEY NSW 2000

Facsimile No: (02) 9230 7444

Email: Samantha.Evans@goodman.com

Landowner

Contact: Samantha Evans, General Counsel Australia

Address: Level 17, 60 Castlereagh Street
SYDNEY NSW 2000

Facsimile No: (02) 9230 7444

Email: Samantha.Evans@goodman.com

Schedule 3 - Land (clause 1.1)

Lot	Deposited Plan	Registered Proprietor
Lot 11	1178389	BGMG 11 Pty Limited as trustee for the BGMG 1 Oakdale West Trust
Lot 1	663937	BGMG 11 Pty Limited as trustee for the BGMG 1 Oakdale West Trust

Schedule 4 - Development Contributions (clause 4)

1. Development Contributions

The Developer must provide the Development Contributions in accordance with the following schedule:

Development Contribution	Timing	Manner of delivery
Monetary Contributions	Pursuant to clause 2.1(a)(ii) of this Schedule 4.	Bank cheque or electronic funds transfer.
WIK Contribution (if applicable)	By the date for Practical Completion identified in the Road Works Agreement, which in the case of Separable Portion 1 must be no later than 13 December 2023.	Practical Completion of the WIK Contribution in accordance with clause 3.4 of this Schedule 4.
Land Contribution (if applicable)	By the date for Practical Completion of the associated WIK Contribution, unless a different date is agreed by the Planning Minister in writing.	Transfer of the Land Contribution to the Nominated Transferee in accordance with clause 3.6 of this Schedule 4.

2. Calculation of the value of a Contribution Amount

2.1 Timing for payment of Contribution Amount

- (a) Before the occurrence of a Trigger Event, the Developer must:
- (i) pay a Monetary Contribution in the amount of the Contribution Amount calculated in accordance with clause 2.2 of this Schedule 4;
 - (ii) where the value of the Offset Credits equals or exceeds the value of that Contribution Amount:
 - A. satisfy the Planning Minister of that fact; and
 - B. obtain an updated Offset Credits Schedule from the Planning Minister showing that the value of the Offset Credits has decreased by the value of that Contribution Amount; or
 - (iii) where the value of the Offset Credits is more than zero but is less than the value of that Contribution Amount:
 - A. satisfy the Planning Minister of that fact;
 - B. pay a Monetary Contribution in the amount of the difference; and
 - C. obtain an updated Offset Credits Schedule from the Planning Minister showing that the value of the Offset Credits has decreased to zero.

- (b) For the purpose of this deed, a Trigger Event occurs each time:
- (i) a Subdivision Certificate is issued;
 - (ii) a Construction Certificate is issued; or
 - (iii) if any part of the Development may be carried out without the need for a Subdivision Certificate or a Construction Certificate, then on the earlier of the following:
 - A. commencement of that part of the Development;
 - B. the issue of a Complying Development Certificate in respect of that part of the Development.
- (c) The parties agree that each of the requirements to provide a Monetary Contribution in this clause 2.1 of Schedule 4 and/or to obtain an updated Offset Credits Schedule from the Planning Minister is:
- (i) where the Trigger Event relates to a Construction Certificate - a restriction on the issue of a Construction Certificate for the purposes of section 6.8 of the Planning Act; and
 - (ii) where the Trigger Event relates to a Subdivision Certificate - a restriction on the issue of a Subdivision Certificate for the purposes of section 6.15 of the Planning Act.

2.2 Calculation of Contribution Amount

- (a) Each Contribution Amount will be an amount equal to the sum represented by "CA" in the following formula:

$$CA = pNDA \times WCR$$

where:

"pNDA" means the number of hectares comprised in the NDA of each Land Parcel:

- (i) that is the subject of an application for a Construction Certificate; or
- (ii) that is the subject of an application for a Subdivision Certificate (excluding the NDA comprised in any Residue Super Lot that will be created upon the issue of that Subdivision Certificate); or
- (iii) on which any part of the Development is to be carried out without the need for a Construction Certificate or Subdivision Certificate,

excluding any NDA in that Land Parcel for which a Contribution Amount has already been provided under this deed.

"WCR" is the amount representing the WSEA contribution rate, which:

- (iv) at the date of this deed is \$193,636; and
 - (v) is adjusted from time to time in accordance with clause 2.2(b) of this Schedule 4.
- (b) On each CPI Adjustment Date, the value of WCR is to be adjusted by multiplying \$193,636 by an amount equal to the Current CPI divided by the Base CPI.

2.3 Offset Credits Schedule

- (a) The Planning Minister will prepare or update the Offset Credits Schedule:
- (i) on the commencement of this Deed;
 - (ii) after a Land Contribution is delivered in accordance with this deed - increasing the value of the Offset Credits by the amount of the value of that Land Contribution as determined in accordance with this deed;
 - (iii) after a reconciliation for a WIK Contribution has been completed in accordance with this deed - increasing the value of the Offset Credits by the amount of that WIK Contribution as determined in accordance with this deed;
 - (iv) after the Developer satisfies the Planning Minister in accordance with clause 2.4(b)(ii) of this Schedule 4 in relation to a Deferred Contribution Amount (as defined in clause 2.4(a) of this Schedule 4) - decreasing the value of the Offset Credits by the amount of that Deferred Contribution Amount;
 - (v) after an amount of Offset Credits has been applied to discharge (in whole or in part) an obligation to provide a Contribution Amount calculated under clause 2.2(a) of this Schedule 4 - decreasing the value of the Offset Credits by the amount applied;
 - (vi) upon the Planning Minister agreeing to the application of Offset Credits to discharge an External WSEA Obligation under clause 4.1 of this Schedule 4 - decreasing the value of the Offset Credits by the amount of the External WSEA Obligation;
 - (vii) upon the Sunset Date or the occurrence of the final reconciliation referred to in clause 4.3 of this Schedule 4;
 - (viii) if it becomes apparent that there is an error or inaccuracy in the Offset Credits Schedule - to correct that error or inaccuracy;
 - (ix) after each CPI Adjustment Date, showing the indexed value of the Offset Credits;
 - (x) upon request by the Developer; and
 - (xi) at such other times as the Planning Minister may determine.
- (b) The Planning Minister will use his best endeavours to provide an updated Offset Credits Schedule within 5 Business Days of the occurrence of any of the events listed at clause 2.3(a) of this Schedule 4.

2.4 Extension of time for payment of Contribution Amount

- (a) If:
- (i) a Monetary Contribution is required to be paid under clause 2.1(a)(i) or 2.1(a)(iii)B of this Schedule 4 because the Developer has insufficient Offset Credits to discharge the obligation to provide the Contribution Amount;
 - (ii) the Planning Minister grants a WIK Approval;

- (iii) the date for Practical Completion of the WIK Contribution the subject of that WIK Approval has not passed; and
- (iv) the Developer provides the Planning Minister with a further Bank Guarantee with a face value of 10% of the value of the Deferred Contribution Amount,

then, subject to clause 2.4(e) of this Schedule 4, the time for payment of part or all of that Contribution Amount (**Deferred Contribution Amount**) is extended until the earlier of:

- (v) the date of Practical Completion of the WIK Contribution; and
- (vi) the date for Practical Completion of the WIK Contribution.

(b) The Developer may discharge its obligation to pay a Deferred Contribution Amount at any time by:

- (i) paying the full amount of the Deferred Contribution Amount as determined in accordance with this deed at that time; or
- (ii) where the amount of the Offset Credits has increased since the Deferred Contribution Amount would have been payable but for clause 2.4 of this Schedule 4:
 - A. satisfying the Planning Minister that the value of the Offset Credits equals or exceeds the value of that Deferred Contribution Amount as determined in accordance with this deed at that time; and
 - B. obtaining an updated Offset Credits Schedule from the Planning Minister showing that the value of the Offset Credits has decreased by the value of that Deferred Contribution Amount.

(c) If the Developer discharges its obligation to pay a Deferred Contribution Amount in accordance with clause 2.4 of this Schedule 4, the Planning Minister will return the Bank Guarantee relating to that Deferred Contribution Amount.

(d) The Developer must pay interest in accordance with clause 5 on the value of a Deferred Contribution Amount, from the date for Practical Completion of the relevant WIK Contribution until the date of Practical Completion of the relevant WIK Contribution.

(e) The Planning Minister:

- (i) may not issue a demand for payment of a Deferred Contribution Amount until the earlier of the date of Practical Completion of the WIK Contribution and the date that is 12 months after the date for Practical Completion of the WIK Contribution if the Developer demonstrates to the Planning Minister's reasonable satisfaction that:
 - A. the Developer has used its best endeavours to achieve Practical Completion of the WIK Contribution by the date for Practical Completion of the WIK Contribution and the reason for it not being able to do so was beyond the Developer's control; and
 - B. the WIK Contribution is at least 60% complete and the developer confirms in writing to the Planning Minister that

Practical Completion of the WIK Contribution will be achieved by the date that is 12 months after the date for Practical Completion of the WIK Contribution.

- (ii) may not issue a demand for payment of a Deferred Contribution Amount until after the Planning Minister has issued an updated Offset Credits Schedule in accordance with clause 2.3(a)(iii) of this Schedule 4, increasing the value of the Offset Credits by the amount of the Approved Actual Costs, if:
 - A. Practical Completion of the WIK Contribution has been achieved; and
 - B. the Developer has been provided with an opportunity to provide a WIK Actual Contribution Report and has done so by the time required by clause 3.5 (a) of this Schedule 4.

2.5 Sunset Date

- (a) On the Sunset Date, the Developer must pay to the Planning Minister an amount representing the value of the Development Contributions for the whole of the Land (calculated in accordance with clause 2.5(b) of this Schedule 4) less the sum of the Contribution Amounts calculated in accordance with clause 2.2 of this Schedule 4 which have been provided by the Developer and the current balance of available Offset Credits:
 - (i) irrespective of whether or not the "Timing" for delivery of any part of the Development Contributions identified in clause 1 of this Schedule 4 has passed; and
 - (ii) irrespective of whether any Trigger Event has occurred, provided that at least one Trigger Event has occurred.
- (b) The value of the Development Contributions is the amount equal to the sum represented by "DC" in the following formula:

$$DC = NDH \times WCR$$

where:

"NDH" means the number of hectares comprised in the Net Developable Area of the Land as though an application for a Subdivision Certificate had been made in respect of the whole of the Land and there are no Residue Super Lots; and

"WCR" is the amount representing the WSEA contribution rate, which:

- (i) at the date of this deed is \$193,636; and
- (ii) is adjusted from time to time in accordance with clause 2.2(b) of this Schedule 4.

3. Works in Kind Contribution and Land Contribution

3.1 Fitzpatrick Developer's election to provide WIK Contribution

- (a) The Developer acknowledges that the Fitzpatrick Developer and the Planning Minister have entered into the Fitzpatrick VPA with the Planning Minister under which the Fitzpatrick Developer may elect to deliver the Northern WNSL Road Section, unless by 31 December 2019, the Developer has submitted a WIK

Proposal which includes the Northern WNSL Road Section and obtained a WIK Approval for that WIK Proposal under this deed.

- (b) The Developer must provide the Fitzpatrick Developer with written notice as to the occurrence or non-occurrence of the submission and approval of the WIK Proposal referred to in clause 3.1(a) of this Schedule 4 by the date identified in that clause.
- (c) The Developer must, as soon as practicable, and by no later than 3 months after the date of this deed, prepare a survey plan delineating the Fitzpatrick Road Land for the purpose of enabling that land to be subdivided and dedicated by the Fitzpatrick Developer, and must provide that plan to the Planning Minister for review and approval.

3.2 Provision of WIK Contribution

If the Planning Minister issues a WIK Approval for a WIK Contribution in accordance with clause 4.3 of this deed, the delivery of the WIK Contribution and the determination of the value of the Offset Credits attributable to the WIK Contribution will follow a three step process, set out below in clauses 3.3 to 3.5 of this Schedule 4 which, in summary only, follows these steps:

- (a) **(Step 1 - Estimate)** reaching agreement on, or otherwise having determined as outlined below the Maximum WIK Value;
- (b) **(Step 2 - Delivery)** undertaking the necessary works to achieve Practical Completion of the WIK Contribution; and
- (c) **(Step 3 - Reconciliation)** a reconciliation of Actual Costs incurred by the Developer for the WIK Contribution with the Maximum WIK Value determined by the Planning Minister.

3.3 Step 1- Contributions Estimates

- (a) Prior to commencing work for a WIK Contribution and unless a later date is agreed with the Planning Minister, within 120 Business Days of receiving a WIK Approval relating to that WIK Contribution, the Developer must:
 - (i) obtain all necessary Authorisations to carry out the works for the WIK Contribution;
 - (ii) enter into a Road Works Agreement for the WIK Contribution in accordance with clause 4.3(g) of this Deed;
 - (iii) provide the Planning Minister with a notice (**WIK Estimate Notice**) which sets out:
 - A. an estimate of the Actual Costs to complete the WIK Contribution including reasonable contingencies;
 - B. details of:
 - 1) the Authorisations obtained to carry out the works for the WIK Contribution;
 - 2) any security which the Roads Authority requires for the WIK Contribution and (if applicable) the Land Contribution under the proposed Road Works Agreement; and

- (iv) provide construction drawings for the WIK Contribution which have been certified and approved by the Roads Authority and any other relevant public authorities; and
 - (v) provide a copy of the executed Road Works Agreement to the Planning Minister with the Contributions Estimate Notice.
- (b) The Planning Minister will not withhold his agreement to a later date under clause 3.3(a) of this Schedule 4 if the Developer satisfies the Planning Minister that the Developer has used its best endeavours to meet that date and the reason for it not being able to do so was the action or inaction of a third party which was beyond the Developer's control.
- (c) The Planning Minister will notify the Developer in writing, within 20 Business Days after receiving the WIK Estimate Notice and the material specified in clause 3.3(a) of this Schedule 4, whether or not the Planning Minister accepts the estimate of costs in the WIK Estimate Notice as the Maximum WIK Value.
- (d) If the Planning Minister notifies the Developer that the Planning Minister does not accept that estimate of costs as the Maximum WIK Value, the parties must negotiate in good faith and use their best endeavours to agree the Maximum WIK Value.
- (e) If 20 Business Days (or such other period as the parties may agree) have passed since the date on which the Planning Minister's notice was provided under clause 3.3(c) of this Schedule 4 and the parties have not reached agreement on the Maximum WIK Value, then the Planning Minister may, after consulting with the Roads Authority, and acting reasonably, determine the Maximum WIK Value.
- (f) Nothing in this clause 3.3 of this Schedule 4 prevents a party from providing the other party with a notice of dispute in accordance with clause 8.2 of this deed.

3.4 Step 2 - Delivery - WIK Contribution

The Developer must:

- (a) within 15 Business Days of receiving notice of the Planning Minister's determination of the Maximum WIK Value, provide any further security required under Schedule 5;
- (b) where the WIK Contribution is not the subject of a WAD:
 - (i) within 35 Business Days of receiving notice of the Planning Minister's determination of the Maximum WIK Value, provide to the Planning Minister (for the Planning Minister's review) the proposed Construction Contract for the delivery of the WIK Contribution, which:
 - A. is to be executed by the Developer and an Acceptable Contractor;
 - B. identifies a superintendent approved by the Planning Minister to oversee the work;
 - C. identifies the terms and conditions applicable to carrying out the construction of the WIK Contribution;
 - D. identifies the proposed contract value for the WIK Contribution; and
 - (ii) within 10 Business Days of receiving the Planning Minister's comments on the Construction Contract, provide the Planning Minister with a

revised version of the Construction Contract incorporating those comments, for the Planning Minister's approval;

- (c) where the WIK Contribution is the subject of a WAD, ensure that the Construction Contract:
 - (i) is entered into with an Acceptable Contractor (and not any other counterparty unless approved by the Planning Minister);
 - (ii) is consistent with the Key Road Work Terms;
 - (iii) identifies a superintendent to oversee the work under the Construction Contract;
 - (iv) identifies the terms and conditions applicable to carrying out the construction, practical completion and handover of the WIK Contribution; and
 - (v) identifies the proposed contract value for the WIK Contribution; and
- (d) within 15 Business Days of receiving the Planning Minister's approval to the proposed Construction Contract under clause 3.4(b) of this Schedule 4, or if the WIK Contribution is the subject of a WAD, within 15 Business Days of execution of the Construction Contract, provide the Planning Minister with a copy of the Construction Contract as executed by the Developer and the Acceptable Contractor;
- (e) comply in all respects with the Road Works Agreement for the WIK Contribution;
- (f) comply in all material respects with the Construction Contract for the WIK Contribution;
- (g) notify the Planning Minister if the Developer becomes aware that there has been, or is likely to be, a non-compliance with the Key Road Works Terms, or with the Road Works Agreement for the WIK Contribution that is likely to materially affect the date of Practical Completion, specifying:
 - (i) the nature of the non-compliance or likely non-compliance; and
 - (ii) how and when the Developer will ensure that the non-compliance is rectified or the likely non-compliance is avoided (as the case may be); and
- (h) give the Planning Minister written notice at least 40 Business Days prior to the date of Practical Completion of the WIK Contribution;
- (i) give the Planning Minister written confirmation from the Roads Authority that Practical Completion of the WIK Contribution has been achieved to its satisfaction; and
- (j) upon Practical Completion of a WIK Contribution involving Separable Portion 1, provide a final version of the survey plan approved under clause 3.1(c) of this Schedule 4 delineating the final boundaries of the Fitzpatrick Road Land.

3.5 Step 3 - WIK Reconciliation

- (a) Within 60 Business Days after Practical Completion of a WIK Contribution has been achieved, the Developer must submit:

- (i) a report to the Planning Minister (**WIK Actual Contribution Report**) which:
 - A. provides an itemised breakdown and details of the Actual Costs incurred by the Developer, including accounts for the Actual Costs;
 - B. shows that the Actual Costs have been reduced by the amount of any input tax credit which the Developer is entitled to claim; and
 - C. provides a reconciliation of the Actual Costs with the Maximum WIK Value, together with a report by an independent quantity surveyor who is appointed with the consent of the Planning Minister (acting reasonably), which supports that reconciliation and which confirms that it is the opinion of the quantity surveyor that each item of the proposed Actual Costs is reasonable in quantum and was reasonably incurred;
 - (ii) a tabulated and indexed folder of tax invoices for, and documentary evidence of the payment of, each of the items which the Developer proposes as Actual Costs;
 - (iii) such other information that the Planning Minister requests to enable the Planning Minister to determine the Actual Costs.
- (b) The Planning Minister may commission an accountant or a quantity surveyor (or both) at the Developer's expense, to review the materials submitted by the Developer and to assist with the Planning Minister's determination of the Actual Costs.
 - (c) Within 60 Business Days after receiving a WIK Actual Contribution Report from the Developer, the Planning Minister must advise the Developer in writing of the Approved Actual Costs, being the Actual Costs that the Planning Minister determines in accordance with the definition of Actual Costs will be applied for the purposes of the WIK Reconciliation.
 - (d) Nothing in this clause 3.5 of Schedule 4 prevents a party from providing the other party with a notice of dispute in accordance with clause 8.2 of this deed.

3.6 Provision of Land Contribution

If the Planning Minister issues a WIK Approval which relates to a Land Contribution, the delivery of the Land Contribution and the determination of the value of the Offset Credits attributable to the Land Contribution will follow the following process and is subject to the following requirements:

- (a) The Developer must (at its cost) prepare and register a plan of subdivision to create a separate lot or lots for any Land Contribution (which is to include batters that are outside the paved surface of the road and verge), before the due date for delivery of the Land Contribution (which, for the avoidance of doubt, will either be the date for Practical Completion of the associated WIK Contribution or a different date agreed by the Planning Minister in writing in accordance with clauses 3.6(d)(i) and 3.9 of Schedule 4).
- (b) On the date that is 80 Business Days before the anticipated date of Practical Completion of the associated WIK Contribution, the Developer must request that the Planning Minister give notice to the Developer nominating the person to whom the Land Contribution is to be transferred (**Nominated Transferee**).

- (c) Within 30 Business Days after receiving the request under clause 3.6(b) of this Schedule 4, the Planning Minister must issue a notice identifying the Nominated Transferee.
- (d) The Developer must:
 - (i) by the date for Practical Completion of the associated WIK Contribution, unless a different date is agreed by the Planning Minister in writing, procure the transfer of any Land Contribution to the Nominated Transferee for \$1; and
 - (ii) deliver to the Nominated Transferee:
 - A. a form of transfer in respect of the Land Contribution executed by the registered proprietor of that land and in registrable form; and
 - B. the certificates of title for the Land Contribution;
 - (iii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of any Land Contribution; and
 - (iv) 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.
- (e) The Developer 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 Developer delivers the form of transfer and certificates of title for the Land Contribution to the Nominated Transferee or the date on which the Nominated Transferee acquires the Land (as the case may be), after which time the Nominated Transferee will be responsible for all rates and Taxes in relation to the land subject to the Land Contribution.
- (f) The Developer indemnifies and agrees to keep indemnified the Planning Minister and the Nominated Transferee from and against all Liabilities connected in any way to any Contamination which:
 - (i) existed on or before the date on which the Land Contribution is transferred to or acquired by the Nominated Transferee; or
 - (ii) occurs as a result of the acts or omissions of the Developer or the Landowner or any of either of their Associates.
- (g) The Developer:
 - (i) must ensure that the Land Contribution is transferred to the Nominated Transferee without the Planning Minister or the Nominated Transferee incurring any Acquisition Cost in connection with that Land Contribution or its acquisition or transfer; and
 - (ii) indemnifies the Planning Minister and the Nominated Transferee in relation to any failure to comply with clause 3.6(g)(i) of this Schedule 4.
- (h) The value of a Land Contribution shall be calculated by reference to the following table, by multiplying the area of the land which meets the criteria in the first and

second columns by the corresponding rate in the third column (**Agreed Valuation Rate**):

Tenure	Zoning	Agreed Valuation Rate
Freehold	IN1 General Industrial	\$300 per m ²
	E2 Environmental Conservation	\$90 per m ²
Easement	Any	\$75 per m ²
WaterNSW Land (surface land)	SP2 Infrastructure	\$90 per m ²
WaterNSW Land (stratum land)	SP2 Infrastructure	\$25 per m ²

On each CPI Adjustment Date that occurs on or after 1 July 2019, the Agreed Valuation Rate is to be adjusted by multiplying each of the rates specified in the third column by an amount equal to the Current CPI divided by the CPI number for the quarter ending 31 March 2019.

- (i) Subject to clause 3.6(j) of this Schedule 4, the Planning Minister will recognise the amount calculated under clause 3.6(h) of this Schedule 4 as the value of the Land Contribution upon the Land Contribution being:
 - (i) transferred to the Nominated Transferee in accordance with clause 3.6(d) of this Schedule 4; or
 - (ii) compulsorily acquired by the Planning Minister in accordance with clause 3.7 of this Schedule 4.
- (j) If the Developer has received, will receive, or has entered into any arrangement under which it may receive any financial benefit from a third party, for the reservation, transfer or acquisition of the Land Contribution, the value of the land which is the subject of the Land Contribution is deemed to have been reduced by an amount representing the value of that financial benefit.

3.7 Compulsory Acquisition

- (a) If the Developer or the Landowner does not transfer the Land Contribution as required by clause 3.6(d) of this Schedule 4, the Planning Minister may elect to, and the Developer and the Landowner consent to, the Planning Minister compulsorily acquiring the whole or any part of the Relevant Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.
- (b) The Developer and the Planning Minister agree that:
 - (i) clause 3 of this Schedule 4 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and

- (ii) in clause 3 of this Schedule 4 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer indemnifies and keeps indemnified the Planning Minister, the Nominated Transferee and the Roads Authority against any Acquisition Cost incurred by the Planning Minister, the Nominated Transferee or the Roads Authority in connection with any acquisition of the whole or any part of the Relevant Land, including any compensation or amount payable to any person who immediately before the acquisition had an 'interest' in the Relevant Land within the meaning of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

3.8 Reimbursement of the Planning Minister's Costs

The Developer must pay to the Planning Minister or the Nominated Transferee, promptly on demand, an amount equivalent to any Acquisition Costs which the Planning Minister or the Nominated Transferee incurs in acquiring the Relevant Land, if the Developer does not transfer the Land Contribution as required by clause 3.6(d) of this Schedule 4.

3.9 Extension of time for provision of Land Contribution

- (a) The Planning Minister will not withhold his agreement to a later date for the delivery of a Land Contribution under clause 3.6(d)(i) of this Schedule 4 if:
 - (i) the later date is not more than 12 months after the date of Practical Completion of the associated WIK Contribution;
 - (ii) the Developer satisfies the Planning Minister that:
 - A. the Developer has used its best endeavours to deliver the Land Contribution by the date for Practical Completion of the associated WIK Contribution and the reason for it not being able to do so was the inaction of another Government Authority which was beyond the Developer's control;
 - B. members of the public will, at all times, have the right to access, be on and use the WIK Contribution as if it had been dedicated as a public road and the Land Contribution had been delivered to the Nominated Transferee;
 - C. the Developer holds and will maintain at its cost, until the date that the Land Contribution is delivered to the Nominated Transferee, insurance policies on terms satisfactory to the Planning Minister (acting reasonably) which extend the benefit of cover to the Roads Authority and the Planning Minister by naming them as additional insureds and which provide cover on an occurrence basis for:
 - 1) any damage to or destruction of the associated WIK Contribution; and
 - 2) public liability risk in an amount of \$20 million.
- (b) If the Planning Minister agrees to a later date for the delivery of a Land Contribution under clause 3.6(d)(i) of this Schedule 4, the Developer must ensure that:
 - (i) clauses 3.9 (a)(ii) B, and (a)(ii)C of this Schedule 4 are satisfied;

- (ii) the works comprising the WIK Contribution are repaired and maintained at the Developer's cost to a standard acceptable to the Roads Authority until the Land Contribution is delivered to the Nominated Transferee;
 - (iii) any damage to the WIK Contribution which occurs before the Land Contribution is delivered to the Nominated Transferee is made good at the Developer's cost to a standard acceptable to the Roads Authority; and
 - (iv) any proceeds received by the Developer from a claim on the insurances for damage to or destruction of the associated WIK Contribution will be directed to the cost of rectifying or replacing the WIK Contribution.
- (c) The Developer must indemnify and keep indemnified the Planning Minister and the Roads Authority from and against all Liabilities that the Planning Minister or the Roads Authority may sustain or incur as a result, arising out of or in connection with:
- (i) any breach of this clause 3.9 of Schedule 4 by the Developer;
 - (ii) any injury to or death of any person including any injury to or death of a member of the public having the right to access, be on and use the WIK Contribution;
 - (iii) any damage to the WIK Contribution; or
 - (iv) any damage to or loss of property arising out of the use of the WIK Contribution.
- (d) The indemnity in clause 3.9(c) of this Schedule 4 will not apply to the extent the Liability is directly caused or contributed to by the negligent or wilful acts or omissions of the Planning Minister or the Roads Authority.

4. Excess Contributions and Additional Payments

4.1 Use of Offset Credits at other WSEA SEPP land

- (a) The Developer must not apply, or purport to apply, or agree to or allow any other person to apply or purport to apply, an amount of Offset Credits to discharge an obligation to make a development contribution except in accordance with this deed.
- (b) The Planning Minister may, in his absolute discretion, allow the Developer to apply an amount of Offset Credits to discharge an External WSEA Obligation.
- (c) If the Planning Minister agrees to allow an amount of Offset Credits to be applied to discharge an External WSEA Obligation:
 - (i) that amount of Offset Credits will be taken to have been surrendered to the Planning Minister; and
 - (ii) the Planning Minister will provide an updated Offset Credits Schedule to the Developer showing that the value of the Offset Credits has decreased by that amount.

4.2 Oakdale Central Deferred Contribution Amount

- (a) Subject to clause 4.2(b) of this Schedule 4, if the Planning Minister issues a WIK Approval for Separable Portion 1 or the WNSL Road (with or without Separable Portion 2), the Developer may elect to have an obligation to make a development contribution under the Oakdale Central VPA treated as though it were an obligation

on the Developer to provide a Contribution Amount under this deed, with the effect that, on and from the date on which the WIK Approval is issued by the Planning Minister:

- (i) the obligation to make the development contribution under the Oakdale Central VPA is treated by the Planning Minister as having been discharged, and the Planning Minister agrees that this clause 4.2(a)(i) operates as a deed poll in favour of the parties to the Oakdale Central VPA;
 - (ii) the Developer is required to provide a Contribution Amount equal to the value of that development contribution (as indexed, and inclusive of interest calculated under the Oakdale Central VPA) (**Oakdale Central Deferred Contribution Amount**), in addition to any other obligations it has under this deed;
 - (iii) on each CPI Adjustment Date, the value of the Oakdale Central Deferred Contribution Amount is to be adjusted by multiplying it by an amount equal to the Current CPI divided by the Base CPI;
 - (iv) the Developer must pay interest in accordance with clause 5 of this deed on the value of the Oakdale Central Deferred Contribution Amount, on and from the date that the WIK Approval is issued, until the date on which the obligation to provide the Oakdale Central Deferred Contribution Amount is discharged in full under this deed;
 - (v) subject to clause 4.2(c), the time for payment of the Oakdale Central Deferred Contribution Amount is extended until the earlier of the date for Practical Completion of the WIK Contribution and the date of Practical Completion of the WIK Contribution; and
 - (vi) clauses 2.4(b) and (c) of this Schedule 4 apply to the Oakdale Central Deferred Contribution Amount as if it were a Deferred Contribution Amount.
- (b) The Developer must:
- (i) make the election under clause 4.2(a) of this Schedule 4 by written notice to the Planning Minister, within 10 Business Days of the issue of the WIK Approval to which that clause refers, unless a longer date is agreed with the Planning Minister;
 - (ii) prior to making the election:
 - A. provide the Planning Minister with a further Bank Guarantee with a face value equivalent to 110% of the value of the Oakdale Central Deferred Contribution Amount at that time, plus the future value of the interest which will be payable on the Oakdale Central Deferred Contribution Amount assuming that payment occurs on the date for Practical Completion of the WIK Contribution;
 - B. provide the Planning Minister with all necessary information and workings to enable the Planning Minister to determine the Oakdale Central Deferred Contribution Amount under the Oakdale Central VPA, and the amount of the further Bank Guarantee, independently of the Developer; and
 - C. satisfy the Planning Minister that the value of the WIK Contribution which is the subject of the WIK Approval to which that clause refers, and any associated Land Contribution, is

likely to exceed the value of the Development Contributions Amount (as defined in clause 4.3(b)(i) below) by an amount which is greater than or equal to the Oakdale Central Deferred Contribution Amount.

- (c) Clause 2.4(e) of this Schedule 4 applies to the Oakdale Central Deferred Contribution Amount as if it were a Deferred Contribution Amount.

4.3 Final reconciliation

- (a) The Developer must provide written notice to the Planning Minister, at least 30 Business Days prior to the occurrence of the final Trigger Event for the Development, evidence which the Planning Minister (acting reasonably) requires to determine that the Trigger Event will be the last to occur prior to completion of the Development (**Final Trigger Event Notice**).
- (b) As soon as practicable after receiving the Final Trigger Event Notice, the Planning Minister will undertake a final reconciliation which will:
- (i) determine the total value of the Contribution Amounts which would have been payable based on the actual NDA for the Land, calculated on the assumption that the Contribution Amounts would have been payable on the date of the final reconciliation (**Development Contributions Amount**); and
 - (ii) reconcile the Development Contributions Amount against the sum of:
 - A. the value (adjusted in accordance with clause 4.3(c) of this Schedule 4) of any Land Contribution which has been delivered to the Planning Minister or the Nominated Transferee;
 - B. the value (adjusted in accordance with clause 4.3(c) of this Schedule 4) of the Monetary Contributions which the Developer has paid;
 - C. if the Developer has elected to deliver, and has delivered, one or more WIK Contributions, the lesser of the aggregated Approved Actual Costs of the WIK Contributions delivered and the Maximum WIK Value (in either case, adjusted in accordance with clause 4.3(c) of this Schedule 4

less the value (adjusted in accordance with clause 4.3(c) of this Schedule 4) of any Offset Credits which have been applied, or any Monetary Contributions which have been paid, to discharge an External WSEA Obligation (including the Oakdale Central Deferred Contribution Amount) under clause 4.1 of Schedule 4, or any obligation to pay interest under this deed

(**Interim Contribution Amount**).
- (c) When calculating the Interim Contribution Amount, the Minister must adjust the value of any Development Contributions or Offset Credits referred to in clause 4.3(b)(ii) of this Schedule 4 by multiplying each original value by an amount equal to the Current CPI divided by the CPI number for the quarter ending immediately before 31 March in the year during which the relevant Development Contribution was made or the relevant Offset Credit was surrendered.
- (d) Where the final reconciliation indicates that the Interim Contribution Amount provided by the Developer in accordance with this Schedule 4 is less than the

Development Contributions Amount, then the Developer must pay the shortfall as a Monetary Contribution to the Planning Minister within 10 Business Days of receiving a notice from the Planning Minister notifying the Developer of the shortfall.

- (e) Where the final reconciliation indicates that the Interim Contribution Amount provided by the Developer in accordance with this Schedule 4 exceeds the Development Contributions Amount, then the Developer will be entitled to a credit for the amount that the value of the Development Contribution provided exceeds the Development Contributions Amount (**Excess Contributions Credit**) in accordance with clauses 4.3(f) and (g) of this Schedule 4.
- (f) Subject to clause 4.3(h) of this Schedule 4, any Excess Contributions Credit which has been generated under this deed may be used by:
 - (i) the Developer,
 - (ii) a Related Body Corporate (within the meaning of the *Corporations Act 2001 (Cth)*) of the Developer; or
 - (iii) any other person which the Planning Minister determines to approve on written request by the Developer,

(**Contributions Credit Recipient**) to discharge an External WSEA Obligation which relates to land which is owned by that Contributions Credit Recipient.

- (g) An Excess Contributions Credit is taken to have been used for the purpose of this Schedule 4 when the Planning Agreement provides for the use of the Excess Contributions Credit or when the Contributions Credit Recipient notifies the Planning Minister that it wishes to use an Excess Contributions Credit and the Excess Contributions Credit is accounted for by the Planning Minister on its contributions credit schedule.
- (h) The parties agree that any Excess Contributions Credit which has been generated under this deed must be used by the Contributions Credit Recipient in accordance with this clause 4.3 of this Schedule 4 within 15 years of the date of the final reconciliation unless the Planning Minister agrees in writing to a longer period than 15 years. After that time it will be taken to have been wholly surrendered and forfeited to the Planning Minister and no Claim may be made against the Planning Minister in respect of any such surrender or forfeiture.
- (i) Any Excess Contributions Credit which has been generated under this deed, and which has not been used in accordance with clauses 4.3(f) – (h), will be adjusted on each CPI Adjustment date until that Excess Contribution Credit has been used, in accordance with 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.

Schedule 5 - Security terms (clause 6)**1. Provision of Security**

- (a) Prior to the issue of a Satisfactory Arrangements Certificate by the Secretary for a Stage of the Development, the Developer must provide to the Planning Minister one or more Bank Guarantees with a total face value equivalent to 100% of the Monetary Contributions which the Planning Minister estimates would be payable under this deed for that Stage of the Development.
- (b) If, after execution of this deed, the Developer elects to provide a WIK Contribution, then within 15 Business Days of receiving notice of the Planning Minister's determination of the Maximum WIK Value, the Developer must provide to the Planning Minister further Bank Guarantees with a total face value equivalent to the difference between the Maximum WIK Value and the face value of the Security held by the Planning Minister which was provided under clause 1(a) of this Schedule 5.
- (c) If the Developer:
 - (i) enters into a Road Works Agreement with the Roads Authority in relation to the WIK Contribution in accordance with this deed; and
 - (ii) provides security to the Roads Authority under that Road Works Agreement which would have met the definition of a Bank Guarantee in clause 1.1 of this deed had it been provided to the Planning Minister under this deed,

then the amount of Security required to be provided under clauses 1(a) and (b) of this Schedule 5 for a particular Stage will be reduced by the amount of the security provided under that Road Works Agreement.

2. Claims under Bank Guarantees

- (a) The Planning Minister may:
 - (i) call upon the Security where the Developer has failed to comply with any obligation in this deed, including to:
 - A. pay a Contribution Amount, a Deferred Contribution Amount, the Oakdale Central Deferred Contribution Amount, or interest;
 - B. deliver a WIK Contribution or an associated Land Contribution; or
 - C. pay money to the Planning Minister under this deed (including for Acquisition Costs under clause 3.8 of Schedule 4),
 by the time required by this deed; and
 - (ii) retain and apply monies obtained from the call upon the Security towards any costs and expenses incurred by the Planning Minister in rectifying such failures.
- (b) For the purposes of this deed, any costs and expenses which another Authority incurs in rectifying a failure under this deed are taken to be costs and expenses incurred by the Planning Minister in rectifying such a failure.

- (c) Prior to calling upon the Security, the Planning Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (d) The Developer may, within 10 Business Days of the date of the notice in clause 2(c) of this Schedule 5, elect to pay to the Planning Minister an amount equivalent to the amount of the Planning Minister's proposed call. If payment is made by the Developer within 5 Business Days of such an election by the Developer, the Planning Minister shall no longer be entitled to call upon the Security to the extent of the amount that has been paid by the Developer.

3. Release of Security

If:

- (a) the Developer satisfies the Planning Minister that all of the obligations secured by the Security have been fulfilled; and
- (b) the whole of the monies secured by the Security have not been expended or applied towards the discharge of an obligation secured by the Security,

then the Planning Minister will promptly return the Security to the Developer.

Schedule 6 - Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

- (a) The Net Developable Area of a part of the Land is the area of land, measured in hectares, comprising the allotments to which the relevant application for a Subdivision Certificate, Construction Certificate or Complying Development Certificate relates, subject to the other provisions of this Schedule 6.
- (b) The Net Developable Area includes the area of any land that a Development Consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road, but does not include:
 - (i) any existing road which was constructed before the date of this deed to which works are required to be carried out under a Development Consent;
 - (ii) the area of any land (excluding easements) which is delivered as a Land Contribution under this deed; or
 - (iii) any road referred to in clauses (c)(xii) or (xiii).
- (c) The Net Developable Area does not include the area of any land that a Development Consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
 - (i) government school (within the meaning of the *Education Act 1990*),
 - (ii) TAFE establishment,
 - (iii) emergency services facility,
 - (iv) health services facility owned or operated by a public authority,
 - (v) golf course,
 - (vi) passenger transport facility,
 - (vii) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
 - (viii) public transport corridor (other than a road corridor),
 - (ix) public utility undertaking,
 - (x) bus depot, whether or not owned or operated by a public authority,
 - (xi) recreation area,
 - (xii) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 7.11 or section 7.12 of the Planning Act or may be imposed in accordance with a contributions plan approved under section 7.18 of the Planning Act,
 - (xiii) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with a determination of the Planning Minister made under section 7.23 of the Planning Act before the date of this deed.

- (d) The following areas of land are also not to be included in the calculation of the Net Developable Area for the relevant development:
- (i) any part of the land to which the Development Consent for the relevant development relates that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if that part of the land is unsuitable for the relevant development by virtue of it being at or below that level,
 - (ii) any part of the land to which the Development Consent for the relevant development relates that is identified as public open space in a development control plan or in a contributions plan approved under section 7.18 of the Planning Act,
 - (iii) any area of land that is within Zone E2 Environmental Conservation,
 - (iv) any area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land, if the Secretary is satisfied that the area is rendered incapable of development by virtue of the easement.
- (e) The Net Developable Area for a relevant development comprising 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 is taken to be reduced by 0.1 hectare.
- (f) This clause applies to a relevant development if any lot of land to which the development consent for the development relates includes (wholly or partly):
- (i) land that is within the curtilage of a building listed on the State Heritage Register, or
 - (ii) land that is within Zone E4 Environmental Living.
- (g) For the purpose of calculating the Net Developable Area for a relevant development to which this clause applies, any such lot that is more than 0.1 hectare in area is taken to be 0.1 hectare.
- (h) In this clause, **curtilage**, in relation to a building, means the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register.
- (i) The Secretary may make any determination required to be made for the purpose of calculating the Net Developable Area for a relevant development and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.

Schedule 7 - Trustee Limitation of Liability

(a) Definitions

In this clause:

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

Trust means the BGMG 1 Oakdale West Trust (ABN 79 264 172 511).

Trustee means BGMG 11 Pty Ltd (ABN 73 616 276 076).

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 (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 (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**
ABN 38 755 709 681, in the presence of:

Signature of witness

Full name of witness

Signature of the Minister for Planning or delegate

Full name of Minister for Planning or delegate

Signed, sealed and delivered for and on behalf
of **BGMG 11 Pty Limited ABN 73 616 276 076**
as trustee for the BGMG 1 Oakdale West Trust
ABN 79 264 172 511 by its attorneys under a
power of attorney dated 21 December 2016
registered in New South Wales with No. 800
Book No. 4719 in the presence of:



Signature of witness

Esther Gachuhi

Full name of witness



Signature of witness

Full name of witness

Thomas Gosper



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

Samantha Evans

Full name of attorney



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

MEGAN M KUBLINS

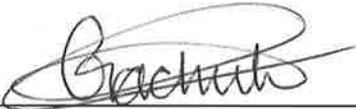
Signed, sealed and delivered for and on behalf
of **Goodman Property Services (Aust) Pty
Limited** (ABN 40 088 981 793) by its attorneys
under a power of attorney dated
registered in New South Wales with No.
Book No. _____ in the presence of:



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

Samantha Evans

Full name of attorney



Signature of witness

Esther Gachuhi

Full name 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 attorney

Signature of witness

Full name of witness

Annexure A - Plan showing Land



Annexure B



Annexure D

