

Deed of Variation to Planning Agreement

Wilton Junction Planning Agreement

Parties

Minister for Planning and Public Spaces

(ABN 20 770 707 468)

Walker Corporation Pty Ltd

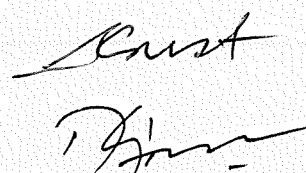
(ABN 95 001 176 263)

Walker Group Holdings Pty Ltd

(ACN 001 215 069)

Country Garden Wilton East Pty Ltd

(ACN 617 612 334)

Two handwritten signatures in black ink. The top signature is a cursive 'Christ' and the bottom signature is a cursive 'D. Hume'.

Contents

1	Definitions and interpretation	3
2	Status of this Deed	4
3	Commencement	4
4	Warranties and representations	4
5	Amendment to Planning Agreement	4
6	Registration of this Deed	8
7	Expenses	8
8	Amendments not to affect accrued rights and obligations	9
9	GST	9
10	Confirmation	9
11	Notices	9
12	General	9
	Execution	12
	Appendix 1 – Amended Roadwork Concept Plans	14
	Appendix 2 – Road Dedication Plan	16

Date

Parties **MINISTER FOR PLANNING AND PUBLIC SPACES** (ABN 20 770 707 468) of Level 15,
52 Martin Place, Sydney NSW 2000
(**Minister**)

AND

WALKER CORPORATION PTY LTD (ABN 95 001 176 263) of Level 21, Governor
Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

WALKER GROUP HOLDINGS PTY LTD (ACN 001 215 069) of Level 21, Governor
Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

COUNTRY GARDEN WILTON EAST PTY LTD (ACN 617 612 334) of Level 7, Suite 702,
207 Kent Street, Sydney NSW 2000

(jointly and severally, the **Developer**)

Introduction

- A** The Minister and the Developer are parties to the Planning Agreement.
- B** The Planning Agreement applies to the rezoning of the Land and the proposed future development of that land permissible following the rezoning. The Land was rezoned on 13 April 2018. Accordingly, the Developer now wishes to proceed to carry out the Development on the Land.
- C** Under the Planning Agreement, the Developer is to carry out certain Items of Road Work including the Picton Road and Pembroke Parade Intersection Upgrade (**Intersection Upgrade**) and the Picton Road and Almond Street Grade Separation (**Almond Street Overpass**).
- D** Following consultation with Transport for NSW, the design of the Intersection Upgrade has now been finalised and has increased from that proposed under the Planning Agreement to include the widening and upgrade of Picton Road to meet forecast demand at 2040.
- E** Based on costings undertaken on the finalised design, the estimated cost of that Item of Road Work has significantly increased and the works will take longer to complete.
- F** In addition, it has been identified that land is required to be dedicated by the Developer for the Almond Street Overpass.
- G** Accordingly, the parties have agreed to amend the Planning Agreement as set out in this Deed to reflect the above changes.

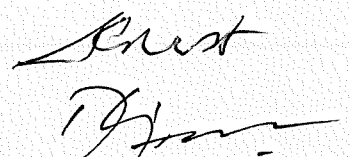
It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (1) **Deed** means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.



- (2) **Planning Agreement** means the planning agreement between the Minister and Walker Corporation Pty Ltd and Walker Group Holdings Pty Ltd dated 10 April 2018 to which Country Garden Wilton East Pty Ltd also became a party by way of a Deed of Novation dated 29 October 2020.

1.2 Interpretation

- (1) In this Deed, unless the contrary intention appears:
- (i) expressions and phrases used but not defined in this Deed have the same meanings they have in the Planning Agreement;
 - (ii) clause 1.2 of the Planning Agreement will apply to the interpretation and construction of this Deed.
- (2) The parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

2 Status of this Deed

This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.

3 Commencement

This Deed commences operation on the date this Deed is signed by all parties.

4 Warranties and representations

4.1 Representations and warranties

The parties represent and warrant that they have power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any law.

5 Amendment to Planning Agreement

5.1 Amendment

On and from the commencement of this Deed, the Planning Agreement is amended as set out in this clause 5.

5.2 Interpretation

- (1) The following definitions in clause 1.1 of the Planning Agreement are substituted for the definitions of the same terms:

Base CPI means:

- (i) in respect of Item C1, the CPI number for the quarter ending March 2021;

- (ii) in respect of other Items, the CPI number for the quarter ending March 2017.

CPI Adjustment Date means:

- (a) in relation to Item C1 – 1 July 2022 and 1 July in each subsequent year;
- (b) in relation to a Per Lot SIC Top-up Payment as referred to in clause 4.3(j) of Part 2 of Schedule 4 – 1 July in the first calendar year following the calendar year in which the SIC Determination is made, and 1 July in each subsequent year; and
- (c) in any other case – 1 July 2018 and 1 July in each subsequent year.
- (2) The following is inserted into the definition of **Actual Cost** in clause 1.1 of the Planning Agreement:
- (b1) in respect of Item C1, the Actual Cost is reduced by an amount of \$2,082,170 adjusted on each CPI Adjustment Date by multiplying that value by an amount equal to the Current CPI divided by the Base CPI; and
- (3) The following definition is inserted in clause 1.1 of the Planning Agreement in appropriate alphabetical order:

Road Dedication Plan means the plan in Annexure B.

5.3 Schedule 4 - Table

The Table is amended as follows:

- (1) The following is substituted for Item B1 in the Table:

1. Land for Picton Road duplication between Hume Highway and Almond Street (including land required for Item C1) and additional land required for Item C2 (together being the Road Widening Land)	\$880,000 (being the amount based on: • a 3.97 hectare strip of land for the Picton Road duplication and the Pembroke Parade intersection upgrade, being Item C1; and	Land generally in the location shown on the Road Dedication Plan as 'Picton Road Duplication (including Pembroke Parade Intersection)' and 'Almond Street Dedication', both with dimensions determined by Transport for NSW.	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1500 th Residential Final Lot
--	---	--	--

	<ul style="list-style-type: none"> an additional 0.43 hectares required in relation to the Almond Street Grade Separation, being Item C2 <p>valued at \$20 per square metre)</p>		
--	---	--	--

- (2) The following is substituted for Item C1 in the Table:

1. Picton Road and Pembroke Parade intersection upgrade	\$30,185,709 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by Transport for NSW and generally in accordance with Part 1 of the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 301st Residential Final Lot
---	--	---	---

- (3) In relation to Item C2, the following is substituted for Column 3 – Manner & Extent in the Table:

Works to be constructed to a design approved by Transport for NSW and generally in accordance with Part 2 of the Roadwork Concept Plans

- (4) In relation to Item C3, the following is substituted for Column 3 – Manner & Extent in the Table:

Works to be constructed to a design approved by Transport for NSW

5.4 Schedule 4 – Clause 2.2 Timing of Road Work

The following is inserted after clause 2.2(a) of Part 2 of Schedule 4:

- (b) The Developer must enter into a WAD with Transport for NSW in respect of Item C1 prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the first Residential Final Lot.

5.5 Schedule 4 – Clause 2.3 Road Work Offset

Clause 2.3 of Part 2 of Schedule 4 is amended as follows:

- (1) in clause 2.3(e) the reference to clause 2.3(c) is replaced with a reference to clause 2.3(d);
- (2) the following is inserted after clause 2.3(e):
 - (e1) In respect of Item C1, where the Minister receives notification under clause 2.3(d) accompanied by confirmation from Transport for NSW in writing that nightworks were required, the Minister will increase the Cost Cap by the Actual Cost incurred in relation to undertaking work at night capped at the amount of \$5,749,659 provided that the Minister is satisfied (acting reasonably) that such costs were not included in the estimate on which the Cost Cap was based.
- (3) in clause 2.3(f) the reference to clause 2.3(c) is replaced with a reference to clause 2.3(e).

5.6 Schedule 4 – Clause 3 Dedication of Dedication Land

- (1) The following is inserted after clause 3.2(h) of Part 2 of Schedule 4:
 - (i) Despite anything else in this Deed, in respect of Item B1:
 - (i) the valuation process set out in clause 3.2 of this Schedule 4 will not apply (including where the Minister exercises the compulsory acquisition right under clause 3.5 of this Schedule 4);
 - (ii) immediately prior to the transfer of Item B1 (or any part thereof), the value of that Item of Dedication Land (or part) will be determined as an amount equal to the area of the Item of Dedication Land (or part) in square metres multiplied by \$20 (subject to indexation under clause 3.2(i)(iii));
 - (iii) on each CPI Adjustment Date before the valuation of that Item of Dedication Land (or part) under clause 3.2(i)(ii), the value of \$20 will be adjusted by multiplying that value by an amount equal to the Current CPI divided by the Base CPI; and
 - (iv) once a valuation has been determined, on each CPI Adjustment Date before the issue of a notice under clause 3.6, the valuation will be adjusted by multiplying the amount of the valuation by an amount equal to the Current CPI divided by the most recent CPI number for the quarter available as at the time that the valuation is determined.
- (2) The following is inserted after clause 3.4(a) of Part 2 of Schedule 4:
 - (a1) In respect of Item B1, the parties acknowledge and agree that:

- (i) the Road Widening Land is the land referred to in Item B1;
- (ii) notwithstanding clause 3.4(a), Transport for NSW may require different parts of the land comprising Item B1 to be transferred at different times; and
- (iii) where Transport for NSW requires Item B1 to be transferred in parts, references to an Item of Dedication Land in clauses 3.3 – 3.6 of this Schedule 4 should be taken to include a part of Item B1.

5.7 Schedule 5 – Roadwork Concept Plans

The drawings in Schedule 5 are deleted and replaced with the drawings at Appendix 1 to this Deed.

5.8 Annexure B – Road Dedication Plan

The plan at Appendix 2 to this Deed is inserted as Annexure B to the Planning Agreement.

6 Registration of this Deed

6.1 Registration

- (1) As contemplated by section 7.6 of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1990* on the relevant folios of the Register for the Land, within 10 business days after the date on which this Deed, executed by the Minister, is returned to the Developer.
- (2) The Developer will provide the Minister with a copy of the relevant folios of the Register and a copy of the registered dealing which provide evidence that clause 6.1(1) has been satisfied, within 10 business days after the date of registration.

7 Expenses

- 7.1 The Developer must pay its own, and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 7.2 The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation, and the review of any submissions received during the public notice period.
- 7.3 The Developer must pay all taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- 7.4 The Developer must provide the Minister with bank cheques or deposit the funds by means of electronic funds transfer into a bank account nominated by the Minister in respect of the Minister's costs pursuant to clauses 7.1 and 7.2 above:

- (1) where the Minister has provided the Developer with a written notice of the sum of such costs prior to execution, on the date of execution of this Deed; or
- (2) where the Minister has not provided the Developer with a written notice of the sum of such costs prior to execution, within 10 business days of demand by the Minister for payment.

8 Amendments not to affect accrued rights and obligations

8.1 The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.

8.2 Nothing in this Deed:

- (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or
- (2) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.

9 GST

Clause 33 of the Planning Agreement applies as if it forms part of this Deed, with any necessary changes.

10 Confirmation

Upon execution of this Deed by both parties, each Party is bound by the Planning Agreement as amended by this Deed.

11 Notices

11.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in the manner required by clause 21 of the Planning Agreement.

12 General

12.1 Entire agreement

This Deed constitutes the entire agreement between the Parties regarding the matters set out in this Deed and supersedes any prior representations, understandings or arrangements between the Parties, whether orally or in writing.

12.2 Amendment

No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

12.3 Waiver and exercise of rights

- (1) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- (2) A waiver by a Party is only effective if it is in writing.
- (3) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

12.4 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requires to affect, perfect or complete this Deed and all transactions incidental to it.

12.5 Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

12.6 Assignment and dealings

None of the Parties to this Deed may assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or be varied in each case unless stated otherwise in this Deed.

12.7 No fetter

Nothing in this Deed shall be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation:

- (1) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (2) nothing in this Deed imposes any obligation on an Authority to:
 - (i) grant Development Consent;
 - (ii) exercise any functions or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

12.8 Severability

- (1) If any part of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read the latter way.
- (2) If any part of the Deed is illegal, unenforceable or invalid, that part is to be treated as removed from this Deed, but the rest of the Deed is not affected.

12.9 Joint and individual liability and benefits

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed made by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

12.10 Counterparts

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

Execution

Executed as a deed.

Executed in counterparts.

Signed sealed and delivered by the **Minister for Planning and Public Spaces** (ABN 20 770 707 468) in the presence of:

.....
Signature of witness

.....
Signature of authorised delegate

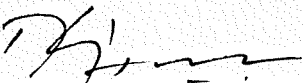
.....
Name of witness in full

.....
Full name of delegate

.....
Address of witness

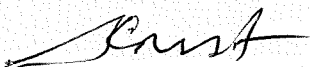
*I have signed a counterpart of the deed,
having witnessed the signing of the deed over audio
visual link in accordance with section
14G of the *Electronic Transactions Act 2000*.

Signed, sealed and delivered by **Walker Corporation Pty Ltd** (ABN 95 001 176 263) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:


.....
Signature of Director

DAVID CRAIG GALLANT

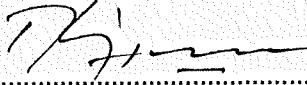
.....
Name of Director in full


.....
Signature of ~~Director~~/Secretary

IAN EDWARD GRIST

.....
Name of ~~Director~~/Secretary in full

Signed, sealed and delivered by Walker Group Holdings Pty Ltd (ACN 001 215 069) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:



.....
Signature of Director

DAVID CRAIG GALLANT

.....
Name of Director in full



.....
Signature of Director/Secretary

IAN EDWARD GRIST

.....
Name of Director/Secretary in full

Signed, sealed and delivered by Country Garden Wilton East Pty Ltd (ACN 617 612 334) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

.....
Signature of Director

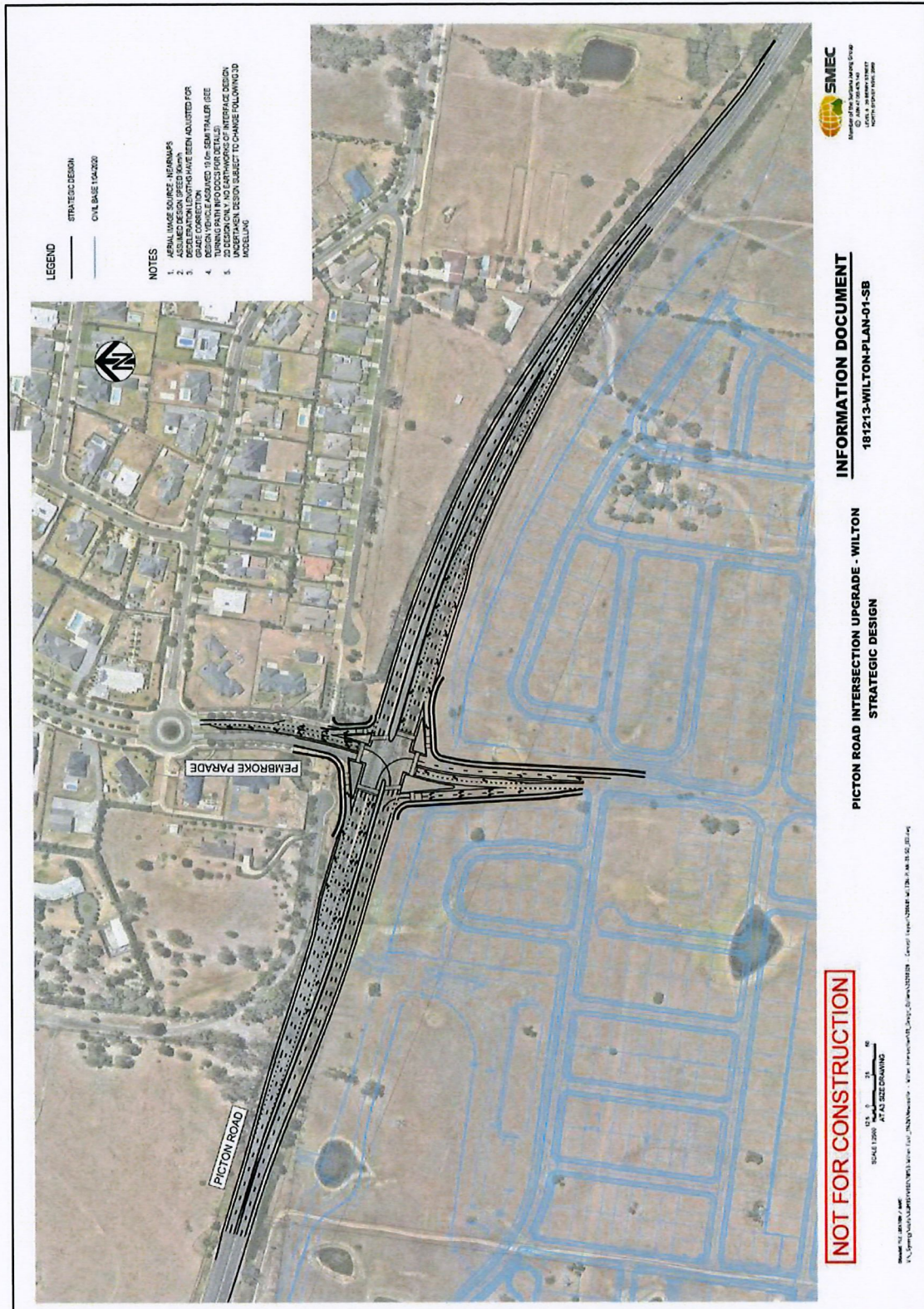
.....
Name of Director in full

.....
Signature of Director/Secretary

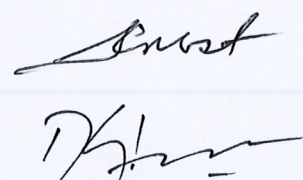
.....
Name of Director/Secretary in full

Appendix 1 – Amended Roadwork Concept Plans

Part 1



Crest
D. H. M.

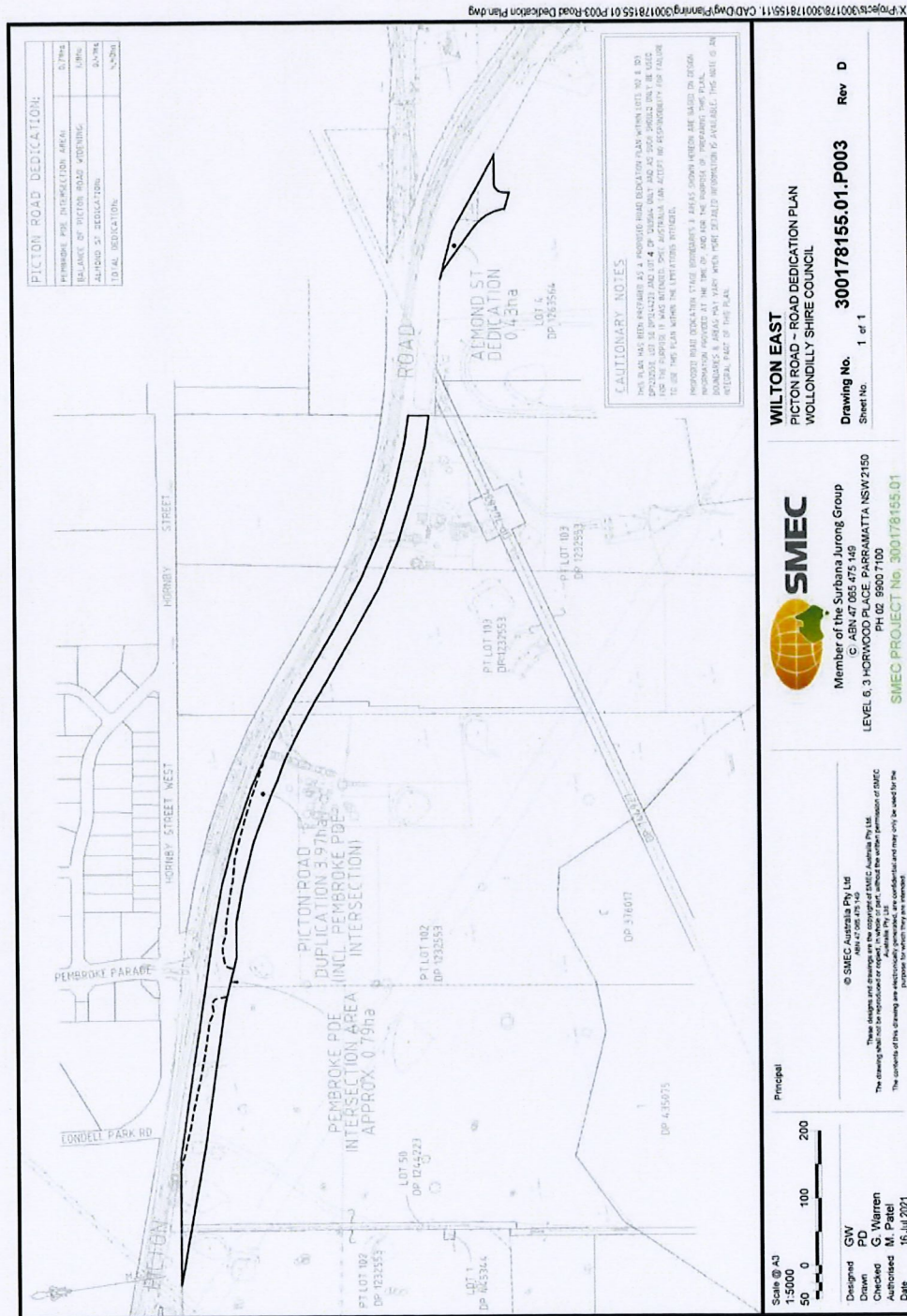
[illegible]

Appendix 2 – Road Dedication Plan

Annexure B

(clause 1.1)

Road Dedication Plan



Deed of Variation to Planning Agreement

Wilton Junction Planning Agreement

Parties

Minister for Planning and Public Spaces

(ABN 20 770 707 468)

Walker Corporation Pty Ltd

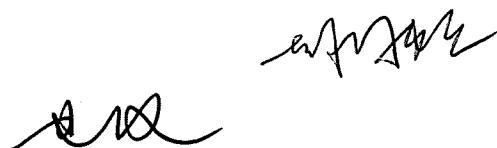
(ABN 95 001 176 263)

Walker Group Holdings Pty Ltd

(ACN 001 215 069)

Country Garden Wilton East Pty Ltd

(ACN 617 612 334)



Contents

1	Definitions and interpretation	3
2	Status of this Deed	4
3	Commencement	4
4	Warranties and representations	4
5	Amendment to Planning Agreement	4
6	Registration of this Deed	8
7	Expenses	8
8	Amendments not to affect accrued rights and obligations	9
9	GST	9
10	Confirmation	9
11	Notices	9
12	General	9
	Execution	12
	Appendix 1 – Amended Roadwork Concept Plans	14
	Appendix 2 – Road Dedication Plan	16

Date

Parties **MINISTER FOR PLANNING AND PUBLIC SPACES** (ABN 20 770 707 468) of Level 15,
52 Martin Place, Sydney NSW 2000
(Minister)

AND

WALKER CORPORATION PTY LTD (ABN 95 001 176 263) of Level 21, Governor
Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

WALKER GROUP HOLDINGS PTY LTD (ACN 001 215 069) of Level 21, Governor
Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

COUNTRY GARDEN WILTON EAST PTY LTD (ACN 617 612 334) of Level 7, Suite 702,
207 Kent Street, Sydney NSW 2000

(jointly and severally, the **Developer**)

Introduction

- A** The Minister and the Developer are parties to the Planning Agreement.
- B** The Planning Agreement applies to the rezoning of the Land and the proposed future development of that land permissible following the rezoning. The Land was rezoned on 13 April 2018. Accordingly, the Developer now wishes to proceed to carry out the Development on the Land.
- C** Under the Planning Agreement, the Developer is to carry out certain Items of Road Work including the Picton Road and Pembroke Parade Intersection Upgrade (**Intersection Upgrade**) and the Picton Road and Almond Street Grade Separation (**Almond Street Overpass**).
- D** Following consultation with Transport for NSW, the design of the Intersection Upgrade has now been finalised and has increased from that proposed under the Planning Agreement to include the widening and upgrade of Picton Road to meet forecast demand at 2040.
- E** Based on costings undertaken on the finalised design, the estimated cost of that Item of Road Work has significantly increased and the works will take longer to complete.
- F** In addition, it has been identified that land is required to be dedicated by the Developer for the Almond Street Overpass.
- G** Accordingly, the parties have agreed to amend the Planning Agreement as set out in this Deed to reflect the above changes.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (1) **Deed** means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.



- (2) **Planning Agreement** means the planning agreement between the Minister and Walker Corporation Pty Ltd and Walker Group Holdings Pty Ltd dated 10 April 2018 to which Country Garden Wilton East Pty Ltd also became a party by way of a Deed of Novation dated 29 October 2020.

1.2 Interpretation

- (1) In this Deed, unless the contrary intention appears:
- (i) expressions and phrases used but not defined in this Deed have the same meanings they have in the Planning Agreement;
 - (ii) clause 1.2 of the Planning Agreement will apply to the interpretation and construction of this Deed.
- (2) The parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

2 Status of this Deed

This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.

3 Commencement

This Deed commences operation on the date this Deed is signed by all parties.

4 Warranties and representations

4.1 Representations and warranties

The parties represent and warrant that they have power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any law.

5 Amendment to Planning Agreement

5.1 Amendment

On and from the commencement of this Deed, the Planning Agreement is amended as set out in this clause 5.

5.2 Interpretation

- (1) The following definitions in clause 1.1 of the Planning Agreement are substituted for the definitions of the same terms:

Base CPI means:

- (i) in respect of Item C1, the CPI number for the quarter ending March 2021;

- (ii) in respect of other Items, the CPI number for the quarter ending March 2017.

CPI Adjustment Date means:

- (a) in relation to Item C1 – 1 July 2022 and 1 July in each subsequent year;
 - (b) in relation to a Per Lot SIC Top-up Payment as referred to in clause 4.3(j) of Part 2 of Schedule 4 – 1 July in the first calendar year following the calendar year in which the SIC Determination is made, and 1 July in each subsequent year; and
 - (c) in any other case – 1 July 2018 and 1 July in each subsequent year.
- (2) The following is inserted into the definition of **Actual Cost** in clause 1.1 of the Planning Agreement:
- (b1) in respect of Item C1, the Actual Cost is reduced by an amount of \$2,082,170 adjusted on each CPI Adjustment Date by multiplying that value by an amount equal to the Current CPI divided by the Base CPI; and
- (3) The following definition is inserted in clause 1.1 of the Planning Agreement in appropriate alphabetical order:

Road Dedication Plan means the plan in Annexure B.

5.3 Schedule 4 - Table

The Table is amended as follows:

- (1) The following is substituted for Item B1 in the Table:

1. Land for Picton Road duplication between Hume Highway and Almond Street (including land required for Item C1) and additional land required for Item C2 (together being the Road Widening Land)	\$880,000 (being the amount based on: • a 3.97 hectare strip of land for the Picton Road duplication and the Pembroke Parade intersection upgrade, being Item C1; and	Land generally in the location shown on the Road Dedication Plan as 'Picton Road Duplication (including Pembroke Parade Intersection)' and 'Almond Street Dedication', both with dimensions determined by Transport for NSW.	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1500 th Residential Final Lot
--	---	--	--

	<ul style="list-style-type: none"> an additional 0.43 hectares required in relation to the Almond Street Grade Separation, being Item C2 <p>valued at \$20 per square metre)</p>		
--	---	--	--

- (2) The following is substituted for Item C1 in the Table:

1. Picton Road and Pembroke Parade intersection upgrade	\$30,185,709 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by Transport for NSW and generally in accordance with Part 1 of the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 301st Residential Final Lot
---	--	---	---

- (3) In relation to Item C2, the following is substituted for Column 3 – Manner & Extent in the Table:

Works to be constructed to a design approved by Transport for NSW and generally in accordance with Part 2 of the Roadwork Concept Plans

- (4) In relation to Item C3, the following is substituted for Column 3 – Manner & Extent in the Table:

Works to be constructed to a design approved by Transport for NSW

5.4 Schedule 4 – Clause 2.2 Timing of Road Work

The following is inserted after clause 2.2(a) of Part 2 of Schedule 4:

- (b) The Developer must enter into a WAD with Transport for NSW in respect of Item C1 prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the first Residential Final Lot.

5.5 Schedule 4 – Clause 2.3 Road Work Offset

Clause 2.3 of Part 2 of Schedule 4 is amended as follows:

- (1) in clause 2.3(e) the reference to clause 2.3(c) is replaced with a reference to clause 2.3(d);
- (2) the following is inserted after clause 2.3(e):
 - (e1) In respect of Item C1, where the Minister receives notification under clause 2.3(d) accompanied by confirmation from Transport for NSW in writing that nightworks were required, the Minister will increase the Cost Cap by the Actual Cost incurred in relation to undertaking work at night capped at the amount of \$5,749,659 provided that the Minister is satisfied (acting reasonably) that such costs were not included in the estimate on which the Cost Cap was based.
- (3) in clause 2.3(f) the reference to clause 2.3(c) is replaced with a reference to clause 2.3(e).

5.6 Schedule 4 – Clause 3 Dedication of Dedication Land

- (1) The following is inserted after clause 3.2(h) of Part 2 of Schedule 4:
 - (i) Despite anything else in this Deed, in respect of Item B1:
 - (i) the valuation process set out in clause 3.2 of this Schedule 4 will not apply (including where the Minister exercises the compulsory acquisition right under clause 3.5 of this Schedule 4);
 - (ii) immediately prior to the transfer of Item B1 (or any part thereof), the value of that Item of Dedication Land (or part) will be determined as an amount equal to the area of the Item of Dedication Land (or part) in square metres multiplied by \$20 (subject to indexation under clause 3.2(i)(iii));
 - (iii) on each CPI Adjustment Date before the valuation of that Item of Dedication Land (or part) under clause 3.2(i)(ii), the value of \$20 will be adjusted by multiplying that value by an amount equal to the Current CPI divided by the Base CPI; and
 - (iv) once a valuation has been determined, on each CPI Adjustment Date before the issue of a notice under clause 3.6, the valuation will be adjusted by multiplying the amount of the valuation by an amount equal to the Current CPI divided by the most recent CPI number for the quarter available as at the time that the valuation is determined.
- (2) The following is inserted after clause 3.4(a) of Part 2 of Schedule 4:
 - (a1) In respect of Item B1, the parties acknowledge and agree that:

- (i) the Road Widening Land is the land referred to in Item B1;
- (ii) notwithstanding clause 3.4(a), Transport for NSW may require different parts of the land comprising Item B1 to be transferred at different times; and
- (iii) where Transport for NSW requires Item B1 to be transferred in parts, references to an Item of Dedication Land in clauses 3.3 – 3.6 of this Schedule 4 should be taken to include a part of Item B1.

5.7 Schedule 5 – Roadwork Concept Plans

The drawings in Schedule 5 are deleted and replaced with the drawings at Appendix 1 to this Deed.

5.8 Annexure B – Road Dedication Plan

The plan at Appendix 2 to this Deed is inserted as Annexure B to the Planning Agreement.

6 Registration of this Deed

6.1 Registration

- (1) As contemplated by section 7.6 of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1990* on the relevant folios of the Register for the Land, within 10 business days after the date on which this Deed, executed by the Minister, is returned to the Developer.
- (2) The Developer will provide the Minister with a copy of the relevant folios of the Register and a copy of the registered dealing which provide evidence that clause 6.1(1) has been satisfied, within 10 business days after the date of registration.

7 Expenses

- 7.1 The Developer must pay its own, and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 7.2 The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation, and the review of any submissions received during the public notice period.
- 7.3 The Developer must pay all taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- 7.4 The Developer must provide the Minister with bank cheques or deposit the funds by means of electronic funds transfer into a bank account nominated by the Minister in respect of the Minister's costs pursuant to clauses 7.1 and 7.2 above:

- (1) where the Minister has provided the Developer with a written notice of the sum of such costs prior to execution, on the date of execution of this Deed; or
- (2) where the Minister has not provided the Developer with a written notice of the sum of such costs prior to execution, within 10 business days of demand by the Minister for payment.

8 Amendments not to affect accrued rights and obligations

8.1 The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.

8.2 Nothing in this Deed:

- (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or
- (2) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.

9 GST

Clause 33 of the Planning Agreement applies as if it forms part of this Deed, with any necessary changes.

10 Confirmation

Upon execution of this Deed by both parties, each Party is bound by the Planning Agreement as amended by this Deed.

11 Notices

11.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in the manner required by clause 21 of the Planning Agreement.

12 General

12.1 Entire agreement

This Deed constitutes the entire agreement between the Parties regarding the matters set out in this Deed and supersedes any prior representations, understandings or arrangements between the Parties, whether orally or in writing.

12.2 Amendment

No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

12.3 Waiver and exercise of rights

- (1) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- (2) A waiver by a Party is only effective if it is in writing.
- (3) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

12.4 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requires to affect, perfect or complete this Deed and all transactions incidental to it.

12.5 Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

12.6 Assignment and dealings

None of the Parties to this Deed may assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or be varied in each case unless stated otherwise in this Deed.

12.7 No fetter

Nothing in this Deed shall be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation:

- (1) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (2) nothing in this Deed imposes any obligation on an Authority to:
 - (i) grant Development Consent;
 - (ii) exercise any functions or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

12.8 Severability

- (1) If any part of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read the latter way.
- (2) If any part of the Deed is illegal, unenforceable or invalid, that part is to be treated as removed from this Deed, but the rest of the Deed is not affected.

12.9 Joint and individual liability and benefits

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed made by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

12.10 Counterparts

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

Execution

Executed as a deed.

Executed in counterparts.

Signed sealed and delivered by the **Minister for Planning and Public Spaces** (ABN 20 770 707 468) in the presence of:

.....
Signature of witness

.....
Signature of authorised delegate

.....
Name of witness in full

.....
Full name of delegate

.....
Address of witness

*I have signed a counterpart of the deed,
having witnessed the signing of the deed over audio
visual link in accordance with section
14G of the *Electronic Transactions Act 2000*.

Signed, sealed and delivered by **Walker Corporation Pty Ltd** (ABN 95 001 176 263) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Signed, sealed and delivered by Walker Group Holdings Pty Ltd (ACN 001 215 069) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

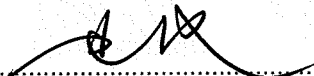
.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Signed, sealed and delivered by Country Garden Wilton East Pty Ltd (ACN 617 612 334) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:


.....
Signature of Director

Yi Bian
.....

Name of Director in full


.....

Signature of Director/Secretary

Gustavo Hu
.....

Name of Director/Secretary in full

Appendix 1 – Amended Roadwork Concept Plans

Part 1



[Handwritten signatures]

Appendix 2 – Road Dedication Plan

Annexure B

(clause 1.1)

Road Dedication Plan

