

# 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**

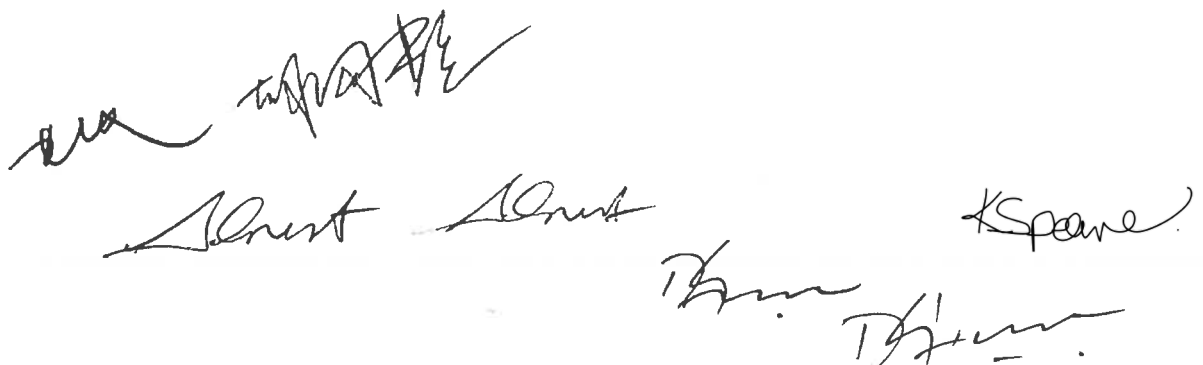
(ACN 001 176 263)

#### **Walker Group Holdings Pty Ltd**

(ACN 001 215 069)

#### **Country Garden Wilton East Pty Ltd**


(ACN 617 612 334)



The image shows several handwritten signatures in black ink. There are approximately seven distinct signatures, some appearing to be initials or full names, written in a cursive style. The signatures are located at the bottom of the page, below the printed text of the deed.

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**Date** 5 June 2024

**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** (ACN 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 9, Suite 905,  
12 Help Street, Chatswood NSW 2067

(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 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** Since the Planning Agreement was entered into, biodiversity certification has been conferred on land within Greater Sydney, including land in Wilton, in connection with the Cumberland Plain Conservation Plan. The Developer has offered to contribute to the costs of approved conservation measures required to be implemented under the order conferring biodiversity certification on land in Wilton, including land to which the Planning Agreement applies.
- H** The parties agree that the Planning Agreement should be amended to exclude the application of Subdivision 4 of Division 7.1 of the Act following the commencement of the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023* on 1 October 2023.
- I** Accordingly, the parties have agreed to amend the Planning Agreement as set out in this Deed to reflect the above changes and to make other consequential amendments.


**It is agreed:**

## **1 Definitions and interpretation**

### **1.1 Definitions**

In this Deed:

- (a) **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.
- (b) **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 the Novation Deed.
- (c) **Novation Deed** means the Deed of Novation of Planning Agreement entered into by the Minister and the Developer on 29 October 2020.

### **1.2 Interpretation**

- (a) 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; and
  - (ii) clause 1.2 of the Planning Agreement will apply to the interpretation and construction of this Deed.
- (b) 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 as referred to in section 203(5) of the *Environmental Planning and Assessment Regulation 2021*.

## **3 Commencement**

This Deed commences operation on the date it 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 Variation to Planning Agreement**

- 5.1 On and from the commencement of this Deed, the Planning Agreement is amended as set out in Schedule 1 – Amendments to Planning Agreement.
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5.2 The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.

5.3 Nothing in this Deed:

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

## **6 Registration of this Deed**

### **6.1 Registration**

- (a) As contemplated by section 7.6 of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1900* 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.
- (b) 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(a) has been satisfied, within 10 business days after the date of registration.

## **7 Expenses**

7.1 The Developer must pay its own legal costs and disbursements, 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 *Environmental Planning and Assessment Regulation 2021*, 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:

- (a) 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
  - (b) 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.
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## **8 GST**

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

## **9 Confirmation**

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

## **10 Notices**

### **10.1 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.

## **11 General**

### **11.1 Entire agreement**

This Deed constitutes the entire agreement between the Parties regarding the variation of the Planning Agreement, including with respect to those matters set out in clauses 1 to 11 (inclusive) of this Deed, and supersedes any prior representations, understandings or arrangements between the Parties, whether orally or in writing.

### **11.2 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.

### **11.3 Waiver and exercise of rights**

- (a) 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.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) 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.

### **11.4 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.

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**11.5 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.

**11.6 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.

**11.7 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:

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

**11.8 Severability**

- (a) 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.
- (b) 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.

**11.9 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.

**11.10 Counterparts**

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

**11.11 Electronic Execution**

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
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- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
  - (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
    - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
    - (ii) insertion of the person's name on to the deed; or
    - (iii) use of a stylus or touch finger or a touch screen to sign the deed,  
provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;
    - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
    - (v) as otherwise agreed in writing (including via email) between the parties.
  - (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
  - (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.
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## Schedule 1 – Amendments to Planning Agreement

The Planning Agreement is amended as follows:

### 1. Interpretation

- (a) 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 relation to Item A4 (CPCP) – the CPI number for the quarter ending March 2022; and
- (ii) in respect of other Items, the CPI number for the quarter ending March 2017.

**Current CPI** means the most recent CPI number for a March quarter (being a quarter ending 31 March) available as at the relevant adjustment date.

- (b) Omit the definitions of “Development” and “Monetary Contributions” in clause 1.1 of the Planning Agreement and substitute the following:

**Development** means the development to which this Deed applies, as specified in clause 1.1A.

**Monetary Contributions** means those specified in Items A1, A2, A3 and A4.

- (c) 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.

- (d) The definitions of the following terms are omitted from clause 1.1:

Actual Cost  
 CPI Adjustment Date  
 Cost Cap  
 Per Lot SIC Top-up Payment  
 Pre-SIC Undeveloped Residential Final Lot  
 Related Body Corporate  
 SIC Determination  
 Special Contributions Area  
 Special Infrastructure Contribution (SIC)

- (e) The following clause is inserted after clause 1.1:

1.1A.1 Development to which this Deed applies is either or both of the following:

- (a) the subdivision of the Land into no more than 3,600 Residential Final Lots or into no more than 3,600 in total of Residential Final Lots and other Final Lots;
- (b) the erection of no more than 3,600 dwellings on the Land.

1.1A.2 This Deed also applies to any development that will result in more than 3,600 Final Lots if the increase in the number of Final Lots is a result of a modification of a development consent, or development consents, that when granted do not, considered together, authorise more than 3,600 Final Lots.

**2. Clause 6 – Provision of Development Contributions**

Omit clauses 6.5 and 6.6.

**3. Clause 9 – Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development**

Omit clause 9 and substitute the following:

- 9.1 This Deed does not exclude the application of sections 7.11 and 7.12 of the Act to the Development.
- 9.2 This Deed excludes the application of Subdivision 4 of Division 7 of the Act to the Development.

**4. Clause 10 – Special Infrastructure Contributions**

Omit clause 10.

**5. Clause 15 – Breach of obligations**

Omit the words “clause 4.3 of Schedule 4 and” in clause 15.2 and clause 15.3 wherever occurring.

**6. Schedule 1 – Section 7.4 Requirements**

Omit the matter relating to the applicability of sections 94, 94A and 94EF of the Act (in rows 5 and 6 of the table) and insert instead:

Applicability of section 7.11 and section 7.12 of the Act – (section 7.4(3)(d)(i) and (ii))	The application of sections 7.11 and 7.12 to the Development is not excluded.
Applicability of Subdivision 4 of Division 7.1, Subdivision 4 of the Act – (section 7.4(3)(d)(iii))	The application of Subdivision 4 of Division 7.1 of the Act to the Development is excluded.

**7. Schedule 4 - Table**

- (a) The Table is amended by omitting the first row and Part A (**Monetary Contributions**) and substituting the following:

Column 1	Column 2	Column 3	Column 4
Item/Contribution	Approximate Value	Manner and Extent	Timing

<b>A. Monetary Contributions</b>			
1.Hume Highway and Picton Road Interchange Interim Upgrade or other regional road infrastructure	\$12,719, 988  (being the total monetary contribution payable based on maximum yield of 3,600 Residential Final Lots, before indexation)	\$3,533.33 per Residential Final Lot	Before the issue of each Subdivision Certificate for a plan of subdivision that creates Residential Final Lots, an instalment calculated based on the number of Residential Final Lots to which the plan of subdivision relates must be made.
2.Public Transport	\$3,276,000  (being the total monetary contribution payable based on maximum yield of 3,600 Residential Final Lots, before indexation)	\$910.00 per Residential Final Lot	Before the issue of each Subdivision Certificate before a plan of subdivision that creates Residential Final Lots, an instalment calculated based on the number of Residential Final Lots to which the plan of subdivision relates must be made.
3.Social infrastructure	\$4,032,000  (being the total monetary contribution payable based on maximum yield of 3,600 Residential Final Lots, before indexation)	\$1,120.00 per Residential Final Lot	Before the issue of each Subdivision Certificate for a plan of subdivision that creates Residential Final Lots, an instalment calculated based on the number of Residential Final Lots to which the plan of subdivision relates must be made.

4.CPCP - Approved conservation measures required under the order conferring biodiversity certification on land (published in the Government Gazette on 17 August 2022) in connection with the Cumberland Plain Conservation Plan (CPCP Order)	\$14,520,000  (being the total monetary contribution payable based on there being 2,904 Final Lots that are biodiversity certified)	\$5,000 per Final Lot, being a lot that is wholly or partly biodiversity certified land	Before the issue of each Subdivision Certificate for a plan of subdivision that creates Final Lots, an instalment must be made calculated based on the number of Final Lots to which the plan of subdivision relates and that are lots that are wholly or partly biodiversity certified land under the CPCP Order
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- (b) The Table is amended by omitting the row relating to Item B1 and substituting the following:

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: <ul style="list-style-type: none"><li>a 3.97 hectare strip of land for the Picton Road duplication and the Pembroke Parade intersection upgrade, being Item C1; and</li><li>an additional 0.43 hectares required in relation to the Almond Street Grade</li></ul> )	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 <sup>th</sup> Residential Final Lot
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	Separation, being Item C2  valued at \$20 per square metre)		
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- (c) The Table is amended by omitting the row relating to Item C1 and substituting the following:

1. Picton Road and Pembroke Parade intersection upgrade	\$30,185,709	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
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- (d) All the words, in the Table, following a dollar amount in Column 2 in Part B (for Item B2) and in Part C (for Items C2 and C3) are omitted.
- (e) The Table is amended by omitting the matter in Column 3 – Manner & Extent in relation to Item C2 and substituting the following:
- Works to be constructed to a design approved by Transport for NSW and generally in accordance with Part 2 of the Roadwork Concept Plans
- (f) The Table is amended by omitting the matter in Column 3 – Manner & Extent in relation to Item C3 and substituting the following:

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

#### **8. Schedule 4 – Part 2 – Development Contributions Provisions**

- (a) The following clauses in Part 2 of Schedule 4 are omitted:
- (i) Clause 1(c);
  - (ii) Clause 2.3;
  - (iii) Clause 3.2;
  - (iv) Clause 3.6;
  - (v) Clause 4 (being clauses 4.1 to 4.6 inclusive).
- (b) Clause 1(b) is omitted and the following is substituted:
- (b) Each Monetary Contribution or instalment of a Monetary Contribution (as the case may require) is to be adjusted, at time of payment, by multiplying the

amount of the contribution or instalment payable by an amount equal to the Current CPI divided by the Base CPI.

- (c) 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.
  - (c) The Developer must complete each Item of Road Work regardless of whether the cost of doing so exceeds the approximate value in Column 2 of the Table in Part 1 of Schedule 4.
- (d) The following is inserted after the first paragraph in clause 3.1 of Schedule 4:
 

The Developer must transfer the Dedication Land regardless of whether the value of that land exceeds the approximate value in Column 2 of the Table in Part 1 of Schedule 4.
- (e) 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.

#### **9. Schedule 4 – transitional provision for contributions already made under Deed**

Insert the following clause after clause 3 of Schedule 4:

##### **4A Transitional provision for Monetary Contributions paid before commencement of this clause**

- (a) The Minister acknowledges that before the commencement of this clause 4A the Developer paid \$3,462,000.00 as Monetary Contributions, based on 400 Residential Final Lots, as required by the Table to clause 1 of Schedule 4 before its amendment, but subdivision certificates have been issued only for the first 4 sub-stages of Stage 1 of the Development comprising 263 Residential Final Lots, and not for 400 Residential Final Lots.
- (b) Accordingly, the Minister agrees that, for the purposes of calculating the Monetary Contributions for each of the purposes described in Items A1, A2 and A3 of the Table to clause 1 of Schedule 4 before the issue of the next Subdivision Certificate sought for a plan of subdivision following the commencement of this clause 4A, the calculation of each Monetary Contribution payable is to be based on the number of Residential Final Lots to which the plan of subdivision relates less 137 Residential Final Lots.

**10. Schedule 5 – Roadwork Concept Plans**

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

**11. Annexure B – Road Dedication Plan**

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

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## 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:

Electronic signature of me, Kate Speare, affixed on 5 June 2024



Signature of witness



Signature of authorised delegate

Jeremy Dwyer

Name of witness in full

Kate Speare

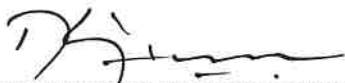
Full name of delegate

4 Parramatta Square, 12 Darcy Street, Parramatta

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** (ACN 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

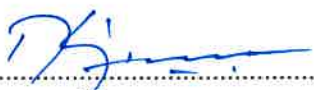


Signature of Director/Secretary

**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

**Y. BIAN**

Name of Director in full



Signature of Director/Secretary

**GUOTAO HU**

Name of Director/Secretary in full

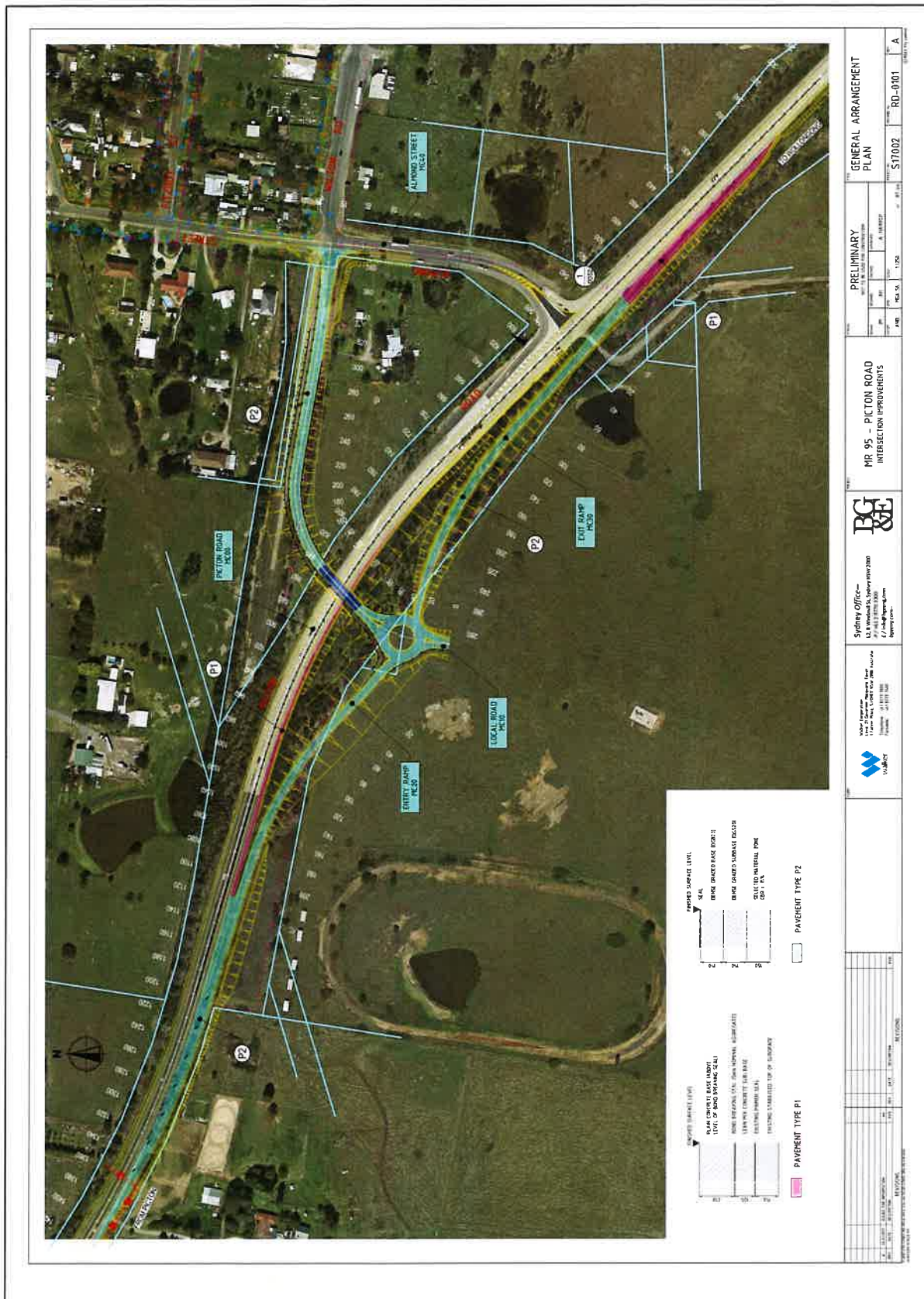
# 12. Appendix 1 – Amended Roadwork Concept Plans

## Part 1



KSpence *[Signature]* *[Signature]* *[Signature]*

## Part 2



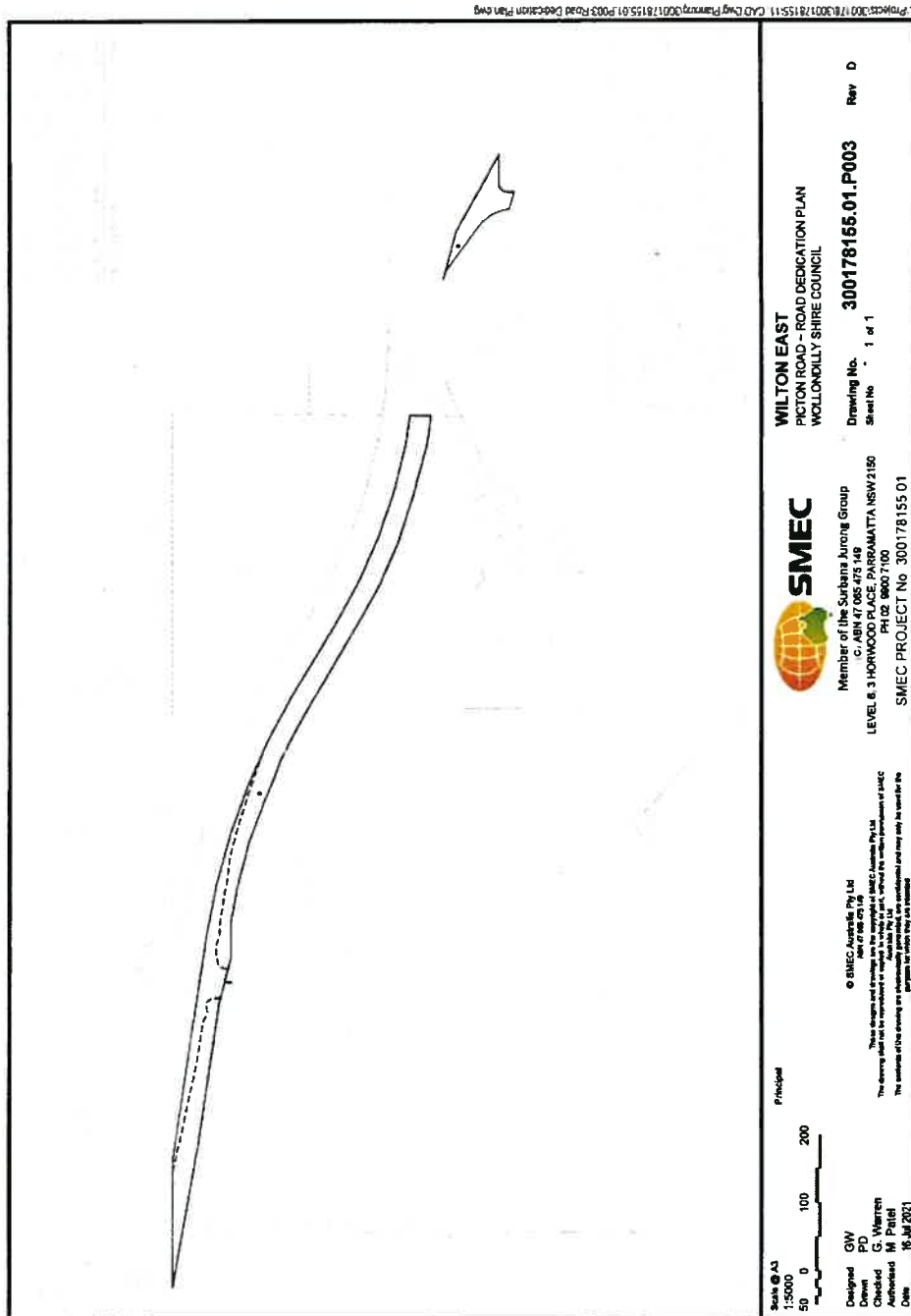
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# Appendix 2 – Road Dedication Plan

## Annexure B

(clause 1.1)

## Road Dedication Plan



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