



HOLDING REDLICH

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning and Public Spaces (ABN 20 770 707 468)

Goodman Property Services (Aust) Pty Ltd (ACN 088 981 793)

The Austral Brick Co Pty Ltd (ACN 000 005 550)

Sydney . Melbourne . Brisbane . Cairns

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This Planning Agreement is dated

2019

Parties:

Minister for Planning and Public Spaces (ABN 20 770 707 468)
of Level 15, 52 Martin Place, Sydney NSW 2000

Goodman Property Services (Aust) Pty Ltd (ACN 088 981 793)
of Level 17, 60 Castlereagh Street, Sydney NSW 2000

The Austral Brick Company Pty Ltd (ACN 000 005 550)
of 738-780 Wallgrove Road, Horsley Park NSW 2175

Introduction:

- 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 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 Contribution in order to enable the Secretary to provide the certification required by clause 29 of the WSEA SEPP.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

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

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

Actual Cost means:

- (a) in relation to the Road Works, the Final Certified Contract Cost inclusive of variations to achieve satisfactory completion by the Developer of the Road Works (as determined by the Roads Authority);

- (b) in relation to the land upon which the Road Works are to be constructed, any reasonably incurred:
- (i) costs borne by the Developer that are incidental to the acquisition of land from third parties (but excluding the purchase price paid by the Developer for that land); and
 - (ii) utility service adjustments required by a Utility Provider; and
 - (iii) other costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred and paid by the Developer to third parties for any licence, approval, authority, permit or permission specifically required to be obtained for or in relation to the carrying out of the Road Works, subject to the Minister's approval.

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Approved Actual Cost has the meaning given to it in clause 5.1(c)(ii) of Schedule 4.

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

Authorised Progress Claim Certificate means a certificate signed by the superintendent for the Road Works confirming that the Developer has paid for the amount specified in that certificate to the third party contractor for work performed under the Construction Contract.

Bank Guarantee means an irrevocable and unconditional undertaking:

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

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 2019.

Base Land Index means the Land Index number for the quarter ending 31 March 2019.

Brickworks means Brickworks Limited (ACN 000 028 526).

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

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Commencement Date means the date this deed commences in accordance with clause 2.1 of this deed.

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

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Construction Contract means each contract between the Developer and a third party, meeting the requirements of clause 3.4 of Schedule 4, for the carrying out of the Road Works by that third party.

Contamination has the same meaning as in the CLM Act.

Contamination Consultant means a suitably qualified consultant as agreed by the Minister.

Contribution Amount means an amount of the Monetary Contribution required to be paid by the Developer in accordance with Schedule 4 calculated in accordance with clause 2.1 of Schedule 4.

Costs means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

CoRD Holder Consent means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2020 and each anniversary of 1 July 2020 thereafter.

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

Current Land Index means the Land Index number for the quarter ending 31 March in the relevant adjustment year.

Dealing in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering or otherwise dealing with the Land.

Department means the NSW Department of Planning, Industry and Environment.

Development means the development of the Land to enable the creation of an estate road on a separate lot, a masonry plant with a production capacity of 220,000 tonnes per annum and 4 industrial warehouse buildings generally in accordance with DA 93.1/2019 lodged with Fairfield City Council.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contribution to be provided by the Developer in accordance with Schedule 4.

Developer means Goodman and the Landowner, unless otherwise specified in this deed.

Election Notice has the meaning given to that term in clause 4.3(a) of this deed.

ELNO has the same meaning as in the *Electronic Conveyancing National Law* (NSW).

Erskine Park Link Road Network means the road connection from Lenore Lane at Erskine Park to Old Wallgrove Road at Eastern Creek.

Estimated Cost of the Road Works means the estimated cost of the Road Works (including the Road Works Design) as set out in the table in clause 3.2 of Schedule 4.

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

Final Certified Contract Cost means the sum total of all the Authorised Progress Claim Certificates.

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

Goodman means Goodman Property Services (Aust) Pty Ltd (ACN 088 981 793).

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).

Land means the land described in Schedule 3.

Land Index means the *6416.0 - Residential Property Price Indexes: Eight Capital Cities, Residential Property Price Index: Sydney* as published by the Australian Bureau of Statistics.

Land Index Adjustment Date means 1 July 2020 and each anniversary of 1 July 2020 thereafter.

Landowner means The Austral Brick Company Pty Ltd ACN 000 005 550 which is a subsidiary of Brickworks Limited (ACN 000 028 526).

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.

Minister means the Minister for Planning and Public Spaces and includes the Secretary and the Secretary's nominee.

Monetary Contribution has the meaning given to that term by clause 1 of Schedule 4.

NDA or Net Developable Area means the net developable area of the Land or 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 Officer means an officer of the Department for the time being holding a position nominated by the Secretary for the purposes of this deed.

Oakdale West Offset Credit means an offset credit as defined in clause 1.1 of the Oakdale West Estate Planning Agreement.

Oakdale West Estate Planning Agreement means the planning agreement between the Minister, Goodman Property Services (Aust) Pty Ltd and BGMG 11 Pty Limited as trustee for the BGMG 1 Oakdale West Trust dated 26 July 2019 relating to the development known as the 'Oakdale West Estate'.

Offset Amount means:

- (a) the Estimated Cost of the Road Works or the Approved Actual Cost (if lower); and
- (b) the Value of the Road Works Land.

Offset Certificate means a certificate issued by the Secretary as amended or replaced from time to time under this deed.

Planning Application means:

- (a) a Development Application; or
 - (b) any other application required under the Act,
- which seeks approval for the subdivision of the Land.

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

Preliminary Design Documents means the preliminary design of the Road Works shown in Annexure C.

Proposed Lot 100 means proposed Lot 100 as shown in Annexure A to this deed.

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

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

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

Remediation has the meaning given to it in *State Environmental Planning Policy No. 55 – Remediation of Land* and **remediate** has a corresponding meaning.

RMS means Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation constituted under section 46 of the *Transport Administration Act 1988* (NSW).

Roads Authority has the meaning given to it in the *Roads Act 1993* and includes RMS.

Road Works means the upgrade to Old Wallgrove Road generally as shown in Annexure B and in the Preliminary Design Documents and includes the Road Works Design.

Road Works Deed means a deed or agreement entered into by the Roads Authority and the Developer regarding the design and construction of the Road Works and their handover to the Roads Authority by the Developer, if required by the Roads Authority.

Road Works Design means the design of the Road Works including project management, fees, investigations, consultant fees, studies or reports specifically required for the Road Works.

Road Works Land means the area of land required for the Road Works to be dedicated to the Roads Authority as a public road in accordance with this deed generally as shown in Annexure B.

Security means a Bank Guarantee in the amount specified in Column 1 of the table in Schedule 5 and on the terms specified in Schedule 5.

Secretary means the Secretary of the Department.

Section 138 Approval means a consent issued pursuant to section 138 of the *Roads Act 1993*.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Site Auditor has the same meaning as in the CLM Act.

Subdivision Certificate has the same meaning as in the Act.

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

Trigger Event means a trigger event of the kind referred to in clause 2.1(c) of Schedule 4.

Utility Provider means a provider of electricity, gas or other essential service.

Value of the Road Works Land means the value of the Road Works Land calculated and notified to the Minister in accordance with clause 3.2 of Schedule 4 subject to:

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Oakdale East, Horsley Park

- (a) any adjustment in accordance with clause 4.2(c) of Schedule 4; and
- (b) any reduction in accordance with clause 4.4(f) of Schedule 4.

WIK Contribution means the:

- (a) completion of the Road Works; and
 - (b) dedication of the Road Works Land to the Roads Authority,
- by the Developer in accordance with the terms of this deed.

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

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) 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;
- (b) 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;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) 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;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part 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 being done;
- (m) **including** and **includes** are not words of limitation;

- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the 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 Act

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

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide, or procure the provision of the Development Contribution to the Minister or the Minister's nominee in accordance with the provisions of Schedule 4 to this deed.

4.2 Acknowledgement

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

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

4.3 Provision of the WIK Contribution in lieu of payment of Monetary Contribution

- (a) The Developer may, at any time prior to the first Trigger Event, provide the Minister with a notice which states that the Developer intends to provide the WIK Contribution in discharge (partial or full) of the Developer's obligation to pay the Monetary Contribution (**Election Notice**).
- (b) The Election Notice must include:
 - (i) a detailed scope for the Road Works;
 - (ii) the proposed timeframe for the delivery of the Road Works; and
 - (iii) copies of any applicable approvals for the Road Works.

5. Enforcement

5.1 Developer to provide Security

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

- (a) agreeing to register this deed in accordance with clause 6; and
- (b) providing the Security in accordance with the terms and procedures set out in Schedule 5.

6. Registration

6.1 Registration of deed

- (a) Within 20 Business Days of receiving a copy of this deed executed by the Minister, the Developer at their own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land and to the terms of this deed;
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any

requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

6.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 6.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the 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 receipt of notice of registration of this deed.

6.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

6.4 Landowner's interest in Land

The Landowner represents and warrants that it is:

- (a) the owner of that part of the Land identified in Schedule 3; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Landowner to comply with its obligations under clause 6.

6.5 Right to lodge caveat

- (a) Subject to clause 6.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 6.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 6.5(a), then the Minister will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 6.1.
- (c) If, after 10 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 6.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 6.5(a) to lodge and withdraw a caveat(s) (as applicable).

7. Dispute Resolution

7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

7.2 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 party specifying the nature of the dispute.

7.3 Attempt to resolve

On receipt of notice under clause 7.2, 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.

7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (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.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This clause 7 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.

8. GST

8.1 Definitions

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

8.2 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.

8.3 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.

8.4 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 8.4.

8.5 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 Minister as recipient of the supply, the Developer must ensure that:

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

8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Developer must assume the Minister is not entitled to any input tax credit.

8.8 No merger

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

9. Assignment and transfer

9.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister which must not be unreasonably withheld where:
 - (i) the Minister is satisfied (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 required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;

- (ii) the Assigning Party procures the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the 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) the Minister is satisfied, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 9.1.

9.2 Right to transfer Land

- (a) Subject to clause 9.2(b) the Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
- (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution (or WIK Contribution) required under this deed remain outstanding.
- (b) The Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer which must not be unreasonably withheld or delayed where:
- (i) the Minister is satisfied, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) the Assigning Party procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) the Minister is satisfied, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 9.2.

9.3 Transfer of Land between the Landowner and Brickworks

- (a) Subject to clause 9.3(b), the provisions of clauses 9.1 and 9.2 do not apply where the Landowner transfers any part of the Land it owns to Brickworks.
- (b) The Developer must prior to any transfer to Brickworks in accordance with clause 9.3(a):
- (i) notify the Minister in writing within 15 Business Days prior to any transfer described in clause 9.3(a); and
 - (ii) comply with any requirements of clause 9.1 as required by the Minister.

10. Capacity

10.1 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.

10.2 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. 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, Construction Certificates and Subdivision Certificates issued in relation to the Development;
 - (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 showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (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.

12. General Provisions

12.1 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.

12.2 Variation

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

12.3 Waiver

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

12.4 Further assurances

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

12.5 Time for doing acts

(a) If:

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

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

12.6 Governing law and jurisdiction

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

12.7 Severance

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

12.8 Preservation of existing rights

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

12.9 No merger

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

12.10 Counterparts

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

12.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

12.12 Good faith

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

12.13 No fetter

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the 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 Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

12.14 Explanatory note

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

12.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs, valuation costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) 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.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 12.15(a) and (b):
 - (i) where the 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 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 Minister for payment.

12.16 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;
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) 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 a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email;
 - (A) before 5pm on a Business Day, on that day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that 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 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 Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(2)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
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 Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))	N/A
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 7
Enforcement of this deed – (section 7.4(3)(g))	See clause 5 and clause 6

Requirement under the Act	This deed
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 12.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 6)
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 Regulation)	Yes (see clause 2.2(c) of Schedule 4)
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 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 Regulation)	Yes (see clause 2.2(c) of Schedule 4)

Schedule 2 – Address for Service

(clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning, Industry and Environment
320 Pitt Street
SYDNEY NSW 2000

Email: planningagreements@planning.nsw.gov.au

Goodman Goodman Property Services (Aust) Pty Limited (ACN 088 981 793)

Contact Brendon Quinn

Address Level 17, 60 Castlereagh Street, SYDNEY NSW 2000

Email Brendon.quinn@goodman.com, samantha.evans@goodman.com,
clarissa.gasabian@goodman.com

Landowner The Austral Brick Co Pty Ltd (ACN 000 005 550)

Contact: Megan Kublins

Address: Group Administration Office, 738-780 Wallgrove Road, HORSLEY PARK NSW 2175

Email: megan.kublins@brickworks.com.au

Schedule 3 – Land

(clause 1.1)

Lot	Deposited Plan	Folio Identifier	Landowner
Part of Lot 20 (being Proposed Lot 100 as shown on the plan attached as Annexure A)	DP 1246626	20/1246626	The Austral Brick Co Pty Ltd

Schedule 4 - Development Contributions

(clause 4)

1. Development Contributions

The Developer undertakes to provide the Development Contribution to the Minister or their nominee in the manner set out in the table below:

Development Contribution	Timing	Value
Monetary Contribution	In accordance with clause 2.2 of this Schedule below	\$196,193 per hectare of Net Developable Area for any part of the Land

2. Monetary Contribution

2.1 Calculation of the value of a Contribution Amount

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

$$X = N \times WCR$$

"N" means the number of hectares comprised in the Net Developable Area of the part of Land:

- (i) that is the subject of an application for a Construction Certificate for the Development;
- (ii) that is the subject of an application for a Subdivision Certificate for the Development; 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 relation to the Land for which a Contribution Amount has already been paid.

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

- (i) at the date of this deed is \$196,193; and
- (ii) is adjusted from time to time in accordance with clause 2.1(b) of this Schedule 4.

- (b) On each CPI Adjustment Date, the value of WCR is to be adjusted by multiplying \$196,193 by an amount equal to the Current CPI divided by the Base CPI.

- (c) For the purpose of this deed, a Trigger Event occurs each time:

- (i) a Subdivision Certificate is issued for the Development;
- (ii) a Construction Certificate is issued for the Development; 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; or

- (B) the issue of a Complying Development Certificate in respect of that part of the Development.

2.2 Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee each Contribution Amount prior to a Trigger Event in accordance with this clause 2.2.
- (b) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to:
 - (i) lodge an application for the relevant Subdivision Certificate;
 - (ii) lodge an application for the relevant Construction Certificate; or
 - (iii) commence any part of the Development to which clause 2.1(c)(iii) of this Schedule 4 applies.
- (c) The parties agree that each of the requirements to provide a Contribution Amount in this clause 2.2 of Schedule 4 is:
 - (i) where the Trigger Event relates to a Construction Certificate - a restriction on the issue of a Construction Certificate for the purposes of clause 146A of the Regulation, so that the Contribution Amount must be paid prior to the issue of the Construction Certificate; 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 Act, so that the Contribution Amount must be paid prior to the issue of the Subdivision Certificate.
- (d) For the avoidance of doubt, if the Developer does not undertake the Development and a Trigger Event does not, therefore, occur, the Developer is not required to pay the Monetary Contribution.

3. WIK Contribution

3.1 Provision of Election Notice

- (a) If the Developer provides an Election Notice to the Minister in accordance with clause 4.3 of this deed:
 - (i) the Minister agrees to accept the WIK Contribution in full or partial discharge of the Developer's liability to pay the Monetary Contribution;
 - (ii) the Developer must provide the WIK Contribution in accordance with the requirements of this clause; and
 - (iii) clauses 3, 4 and 5 of this Schedule 4 will apply.
- (b) The Developer acknowledges and agrees that if an Election Notice is not provided prior to the first Trigger Event, the Developer will be required to pay the Monetary Contribution in accordance with clause 2 of this Schedule 4.

3.2 Value of the WIK Contribution

- (a) The value of the WIK Contribution is as follows:

Estimated Cost of the Road Works	\$4,081,625
Value of the Road Works Land	\$430 calculated in accordance with this clause 3.2 of Schedule 4.

- (b) As at the date of this deed, the parties estimate that:
- (i) the Road Works Land will comprise a total of 1,119 square metres; and
 - (ii) the total Value of the Road Works Land will be \$481,170.
- (c) Upon completion of the Road Works and prior to dedication of the Road Works Land in accordance with this deed, the Developer must procure a survey of the Road Works Land by a registered surveyor, for the purpose of calculating the Value of the Road Works Land (**Road Works Land Survey**).
- (d) The Value of the Road Works Land will be an amount equal to the sum represented by '\$[X]' in the following formula:
- $$\$[X] = \text{SQM} \times \$430$$
- 'SQM' means the number of square metres comprised in the Road Works Land, as determined by the Road Works Land Survey.
- (e) As soon as reasonably practicable upon completion of the Road Works Land Survey, the Developer will provide notice in writing to the Minister of the Value of the Road Works Land.

3.3 Conditions to Commencement of Road Works

Prior to commencement of the Road Works, the Developer must:

- (a) if Development Consent is required in relation to the Road Works, provide evidence to the Minister that it has obtained Development Consent for the Road Works;
- (b) if required by the Roads Authority to enter into a Road Works Deed:
 - (i) enter into a Road Works Deed, on such terms and conditions as are:
 - (A) consistent with the requirements of this deed, including this Schedule 4; and
 - (B) acceptable to the Roads Authority and the Minister; and
 - (ii) provide to the Minister a copy of the executed Road Works Deed to carry out the Road Works; and
- (c) if a Section 138 Approval is required in relation to the Road Works, provide to the Minister a copy of the Section 138 Approval.

3.4 Construction Contract for the Road Works

- (a) The Developer must provide written notice to the Minister which confirms that it intends to commence the Road Works (**Notice**). The Developer may only enter into a Construction Contract with a contractor:
 - (i) appointed under the competitive tender process on an arm's length basis; and

- (ii) approved by the Roads Authority and who meets all of the Roads Authority's requirements.
- (b) The Developer must undergo a competitive tender process in awarding each Construction Contract for the Road Works and provide evidence of such tender process to the Minister within 10 Business Days of awarding each Construction Contract.
- (c) The Notice must be accompanied by a copy of each Construction Contract in place for the Road Works.
- (d) If further Construction Contract(s) are entered into after the Notice has been issued the Developer must provide a written notice to the Minister of that fact as soon as is practicable and follow the process for appointing a construction contractor described in clause 3.4(b) above. The Developer will provide the Minister with a copy of the Construction Contract(s).
- (e) Each Construction Contract must:
 - (i) identify a superintendent for the Road Works;
 - (ii) provide a reasonable itemisation of works comprising the Road Works, which, in relation to construction work, may be by a bill of quantities;
 - (iii) identify the contract value for each item of the Road Works; and
 - (iv) identify the terms and conditions applicable to the carrying out of the Road Works.
- (f) For the avoidance of doubt, the Road Works are limited to the upgrade of Old Wallgrove Road in accordance with the plan in Annexure B. Other road works indicated in Annexure B and any other road works undertaken by the Developer in connection with the Development (including but not limited to the creation of internal estate roads) do not qualify as part of the Road Works. The Developer must enter into a Construction Contract relating only to the Road Works (and no other road works) for the purposes of this Agreement and in particular this Schedule 4.

3.5 Timing of Road Works

The Developer must complete the Road Works in accordance with the Road Works Deed and by no later than the third anniversary of the Commencement Date.

3.6 Estimated Cost and Actual Cost of the Road Works

- (a) The parties agree that on each CPI Adjustment Date, the Estimated Cost of the Road Works is to be adjusted by multiplying that cost by an amount equal to the Current CPI divided by the Base CPI.
- (b) The parties agree that if the Actual Cost of the Road Works is more than the Estimated Cost of the Road Works, the amount of the liability to make the Monetary Contribution that the Developer discharges by carrying out the Road Works is the Estimated Cost of the Road Works.
- (c) The parties agree that the Minister may make any reasonable determination required to be made for the purpose of calculating the Actual Cost of the Road Works, following consultation with the Developer and having proper regard to all matters put before the Minister by the Developer.

4. Road Works Land

4.1 Dedication of the Road Works Land

If the Developer provides an Election Notice to the Minister, the Developer must dedicate the Road Works Land in accordance with clause 4 of this Schedule.

4.2 Valuation of the Road Works Land

- (a) The parties agree that the amount of the liability to pay the Monetary Contribution that the Developer discharges by dedicating the Road Works Land to the relevant Roads Authority, is the Value of the Road Works Land.
- (b) Subject to clauses 4.2(c) and 4.4(f) of this Schedule 4, the Minister will recognise the amount calculated and notified to the Minister in accordance with clause 3.2 of this Schedule 4, as applicable as the Value of the Road Works Land.
- (c) The parties agree, on each Land Index Adjustment Date, the Value of the Road Works Land will be adjusted by multiplying the amount of the valuation by an amount equal to the Current Land Index divided by the Base Land Index.

4.3 Dedication of the Road Works Land on subdivision

In order to give effect to the dedication of the Road Works Land in accordance with clause 4.4 of this Schedule 4, the Developer must (at its cost):

- (a) obtain Development Consent (if any is required) and any other approvals necessary to create a separate lot for the Road Works Land; and
- (b) in accordance with the applicable Development Consent (if any) and any other necessary approvals, prepare and register a Plan of Subdivision to create a separate lot for the Road Works Land and identify that separate lot for dedication to the relevant Roads Authority.

4.4 Transfer of the Road Works Land

- (a) The Developer must procure the dedication of the Road Works Land to the Roads Authority in accordance with this deed within 3 months of completion of the Road Works (**Road Works Dedication Date**).
- (b) In satisfying its obligation under clause 4.4(a) of this Schedule 4, the Developer must:
 - (i) obtain a Site Audit Report and Site Audit Statement from a Site Auditor in respect of the Road Works Land which:
 - (A) state that the Road Works Land is suitable or will be suitable for the purposes of the road as at the Road Works Dedication Date;
 - (B) are addressed to the Minister or the Minister's nominee; and
 - (C) are otherwise on terms satisfactory to the Minister or Minister's nominee (acting reasonably)
 - (ii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the dedication of the Road Works Land; and
 - (iii) take any other necessary action to give effect to the dedication of the Road Works Land to the Roads Authority free of all encumbrances (including any mortgages, easements,

covenants and Planning Agreements) and affectations (including any charge or liability for rates, Taxes and charges) other than service easements or such other encumbrances as agreed by the Minister or nominee in writing.

- (c) If the Developer does not comply with clause 4.4(b)(iii), the Minister or Minister's nominee may:
- (i) refuse to accept the dedication of the Road Works Land; and
 - (ii) require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Minister or the Minister's nominee (acting reasonably), so as to enable the Developer to comply with clause 4.4(b)(iii),
- in which case the Developer must comply with the Minister's reasonable requirements.
- (d) For avoidance of doubt, clause 4.4(b)(iii) of this Schedule 4 does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the Developer or owner of the Road Works Land could not prevent from affecting the Road Works Land and in respect of which no action can be taken by the Developer or owner of the Road Works Land.
- (e) Despite clause 4.4(b)(iii) of this Schedule, if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 4.4(b)(iii), then:
- (i) the Developer may request that the Minister's nominee agree to accept the land subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:
 - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this deed; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,
 the Minister or Minister's nominee may, acting reasonably, agree to accept the Land subject to those encumbrances (**Agreed Encumbrances**); and
 - (iii) in other circumstances, the Minister may withhold the Minister's or Minister's nominee's agreement at the Minister's absolute discretion.
- (f) If the Minister or Minister's nominee agrees to accept the Road Works Land subject to the **Agreed Encumbrances**, then:
- (i) the Developer must provide to the Minister or the Minister's nominee with a valuation report (prepared by an appropriately qualified valuation expert) which quantifies the diminution in value of the Road Works Land as a result of the **Agreed Encumbrances (Road Works Land Diminution Amount)**; and
 - (ii) the Value of the Road Works Land is to be reduced by the Road Works Land Diminution Amount.
- (g) The Developer indemnifies and agrees to keep indemnified the Minister and the Minister's nominee against all Claims made against the Minister or Minister's nominee as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Road Works Land but only in relation to Contamination that existed on or before the date that the Road Works Land is dedicated or compulsorily acquired by the Minister or the Minister's nominee (as the case may be).

- (h) The Developer will pay all rates and Taxes owing in respect of the Road Works Land up to and including the date that the Developer dedicates the Road Works Land pursuant to clause 4.4 of this Schedule or the date of acquisition (as applicable), after which time the Minister's nominee will be responsible for any rates and Taxes in relation to the Road Works Land.
- (i) The Developer indemnifies and keeps indemnified the Minister in relation to any failure of the Developer to comply with clauses 4.1 to 4.5 of this Schedule 4, except to the extent that failure is caused by the Minister's negligence or default.
- (j) The parties agree that this deed operates as a deed poll in favour of the Minister's nominee (where applicable).

4.5 Compulsory acquisition of Road Works Land

- (a) If the Developer does not dedicate the Road Works Land as required by clause 4.4 of this Schedule, the Minister may elect to, and the Developer consents to, the Minister or the Minister's nominee compulsorily acquiring the whole or any part of the Road Works Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Developer and the Minister agree that:
 - (i) this clause 4.5 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 4.5 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that the Road Works Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges), on the date that the Developer is liable to transfer the Road Works Land to the Minister or the Minister's nominee in accordance with this clause 4.5.
- (d) The Developer indemnifies and keeps indemnified the Minister and the Minister's nominee against all Claims made against the Minister or Minister's nominee as a result of any acquisition by the Minister or the Minister's nominee of the whole or any part of the Road Works Land under this clause 4.5.
- (e) The Developer must pay the Minister or Minister's nominee, promptly on demand, an amount equivalent to all Costs reasonably and properly incurred by the Minister in acquiring the whole or any part of the Road Works Land as contemplated by this clause 4.5.

5. Completion of the WIK Contribution

5.1 Completion Notice

- (a) If the Developer considers that it has completed the WIK Contribution in accordance with the requirements of the Roads Authority and this deed, the Developer will provide notice to the Minister stating that the Developer considers that the WIK Contribution has been completed (**Completion Notice**) to the Minister together with:
 - (i) a certificate from the Roads Authority confirming that:
 - (A) the Road Works have been completed; and

- (B) the Road Works Land has been dedicated to the Roads Authority;
- (ii) a report to the Minister 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;
 - (C) provides a reconciliation of the Actual Costs with the Estimated Cost of the Road Works;
 - (D) includes 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; and
- (iii) such other supporting documentation as is necessary for the Minister (or nominee) acting reasonably to determine whether that the Roads Works have been completed and the Actual Cost associated with the Road Works. The Developer must promptly provide any additional information reasonably requested by the Minister (or nominee).
- (b) The 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 Minister's assessment of the Completion Notice and the Actual Cost associated with the WIK Contribution.
- (c) The Minister (or nominee) will, within 45 days of receiving the Completion Notice and all the certificates and information required under clause 5.1 of this Schedule determine:
 - (i) whether the WIK Contribution has been completed; and
 - (ii) the **Approved Actual Costs** which the Minister will recognise as being properly attributable to the WIK Contribution and therefore available to discharge the Developer's obligation to pay the Monetary Contribution.
- (d) If the Minister (or the Minister's nominee), acting reasonably, is satisfied that the WIK Contribution has been provided, the Minister will:
 - (i) accept the WIK Contribution in lieu of the Developer making the Monetary Contribution to discharge (partly or in full) the Developer's obligations to pay the Monetary Contribution;
 - (ii) issue an Offset Certificate to the Developer which will set out the Offset Amount that has been credited for the WIK Contribution; and
 - (iii) if the Offset Amount that has been credited for the WIK Contribution is less than the Monetary Contribution calculated in accordance with clause 2.1 of this Schedule (**Shortfall Amount**), the Developer must:
 - (A) pay to the Minister an amount equal to the Monetary Contribution minus the Offset Amount within 5 Business Days of receipt of the Offset Certificate in accordance with clause 5.1(d)(ii) of this Schedule; and/or
 - (B) apply an Oakdale West Offset Credit to all or part of the Shortfall Amount in accordance with clause 4.1 of Schedule 4 of the Oakdale West Estate Planning Agreement.

- (iv) if the Offset Amount that has been credited for the WIK Contribution is greater than the Monetary Contribution calculated in accordance with clause 2.1 of this Schedule then the provisions of clause 5.2(b) of this Schedule apply.
- (e) If the Minister or Nominated Officer, acting reasonably, is not satisfied that the WIK Contribution has been provided, the Minister or Nominated Officer will notify the Developer and provide an explanation as to why he or she considered that the WIK Contribution has not been completed and, if applicable, provide details of:
 - (i) any additional work or tasks which must be undertaken; and/or
 - (ii) any information or documents which must be provided,

by the Developer, in order to complete the WIK Contribution. The Developer may, after taking into account the Minister or the Nominated Officer's explanation and undertaking the work or providing the information or documents required, re-submit a Completion Notice together with any necessary documentation.

5.2 Use of Offset Amounts 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, part of the Offset Amount to discharge an obligation to make a development contribution except in accordance with this deed.
- (b) The Minister may, in his absolute discretion, allow the Developer to apply an amount of the Offset Amount (if any part of the Offset Amount remains available after it is first applied to discharge the Developer's liability to pay the Monetary Contribution under this Deed) to discharge 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 (but only if the Minister is satisfied that such entity is related to the Developer). The Developer acknowledges and agrees that under no circumstances shall it be or become entitled to a refund of any unapplied Offset Amounts.
- (c) If the Minister agrees to allow a portion of the Offset Amount to be applied to discharge an obligation in accordance with clause 5.2(b) of this Schedule:
 - (i) that portion of the Offset Amount will be taken to have been surrendered to the Minister; and
 - (ii) the Minister will provide an updated Offset Certificate to the Developer showing that the value of the remaining Offset Amount has decreased by that amount.

Schedule 5 - Security

(clause 5.1)

1. Developer to provide Security

- (a) This Developer must provide the Security to the Minister on or prior to the Commencement Date.
- (b) The Security must:
 - (i) name the "Minister for Planning and Public Spaces" and the "Department of Planning, Industry and Environment ABN 20 770 707 468" as the relevant beneficiaries;
 - (ii) be in the amount as set out in the table below;
 - (iii) be as security for the Secured Obligation as set out in the table below; and
 - (iv) not have an expiry date.

Security Amount	Secured Obligation
\$4,562,795	The Developer's obligations under this deed

2. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon the Security provided in accordance with this deed where the Developer has failed to fulfil the Secured Obligation in accordance with this deed; and
 - (ii) retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon the Security; and
 - (ii) applies all or part of such monies towards and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 2(b) of this Schedule 5,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 3 of this Schedule, the Minister is in possession of Security for a face value equivalent to the Security required to be provided in accordance with clause 1 of this Schedule.

3. Release of Security

If:

- (a) the Developer has paid or satisfied all of its obligations under this deed, including:
 - (i) the payment of the Monetary Contribution; or
 - (ii) completion of the WIK Contribution; and
- (b) the whole of the Security relevant to the Secured Obligation has not been expended;

then the Minister will promptly return the Security as it relates to that Secured Obligation (less any costs, charges, duties and taxes payable) to the Developer.

Schedule 6 – Net Developable Area

- (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) of this Schedule 6.
- (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; or
 - (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; or
 - (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.

Execution page

Executed as a deed

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 the
delegate of the Minister for Planning and Public
Spaces

.....
Name of witness in full


.....
Name of the delegate of the Minister for Planning
and Public Spaces

.....
Address of witness

Signed, sealed and delivered by **Goodman Property Services (Aust) Pty Ltd** (ACN 088 981 793) by its attorney under a power of attorney dated 18/12/06 registered in New South Wales with No. 75 Book No. 4807 in the presence of:



.....
Signature of Witness

Esther Gachuhi
.....
Name of Witness


.....
Signature of Attorney

SAMANTHA EVANS
.....
Name of Attorney

Signed, sealed and delivered by **The Austral
Brick Co Pty Ltd** (ACN 000 005 550) in
accordance with section 127 of the
Corporations Act:


.....
Signature of Director

Robert Bakewell
.....
Name of Director


.....
Signature of Director/Secretary

MARK CALLAGHER
.....
Name of Director/Secretary

Annexure A – Land

A handwritten signature in black ink, consisting of a stylized 'H' followed by a long horizontal line.

SVPA2019-11 Planning Agreement

Oakdale East, Horsley Park

A handwritten signature in black ink, consisting of a stylized 'H' followed by a long horizontal line, with a large blue scribble above it.

DIAGRAM
(1:100)

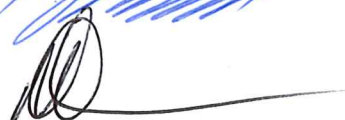
ISSUED FOR REVIEW: 5-6-2019

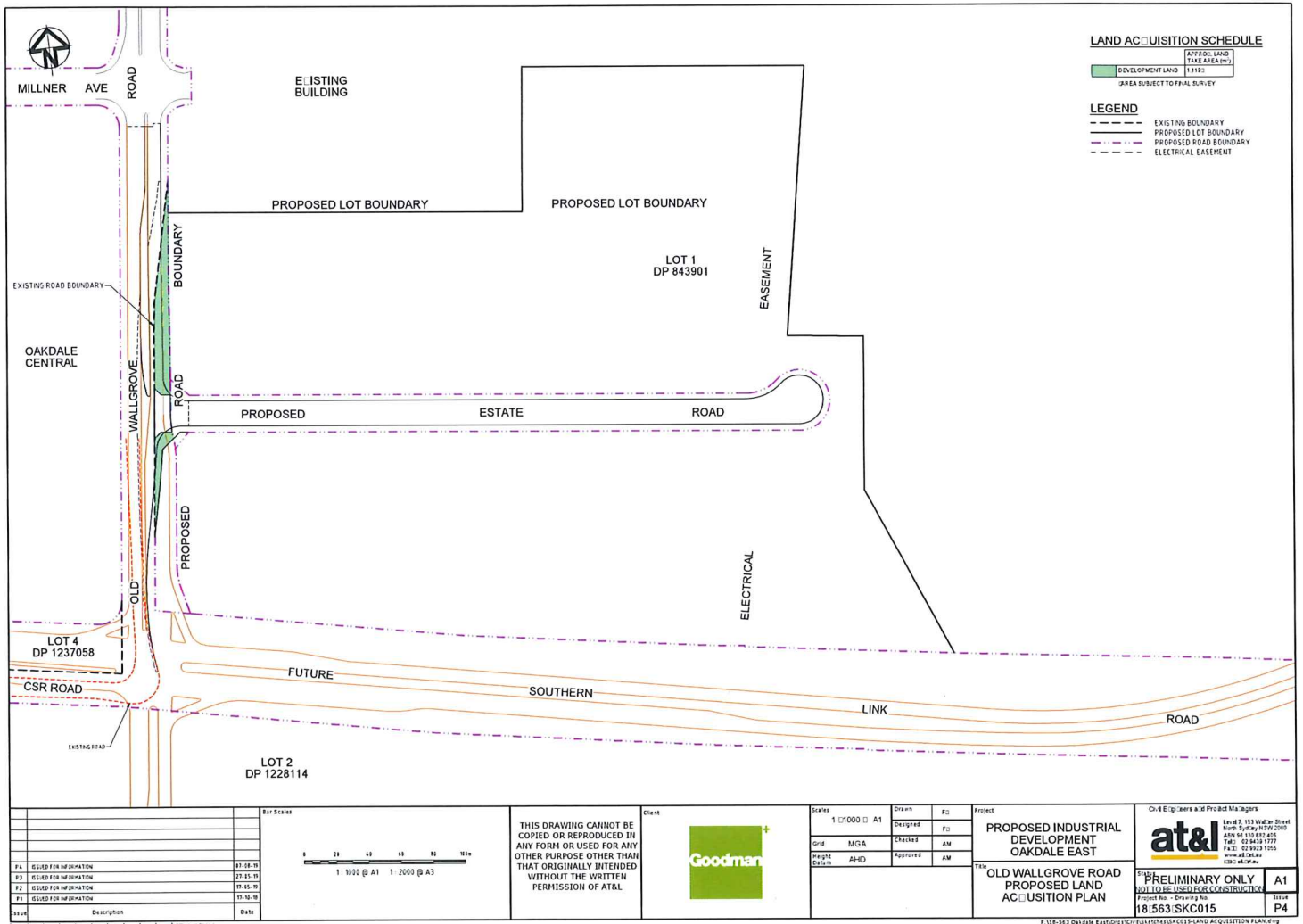
Annexure B – Road Works and Road Works Land



SVPA2019-11 Planning Agreement

Oakdale East, Horsley Park





[Handwritten signature]

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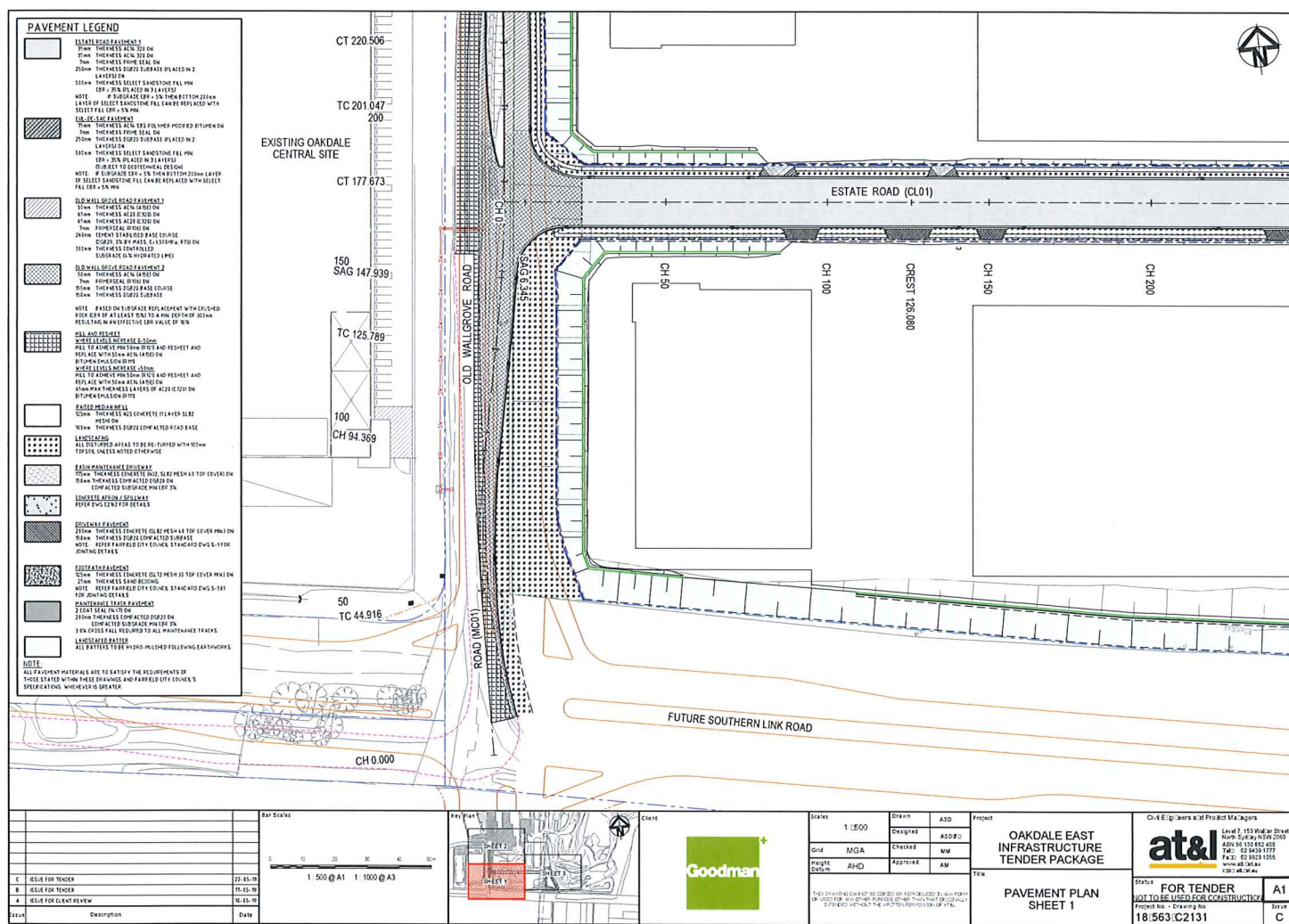
Annexure C – Preliminary Design Documents

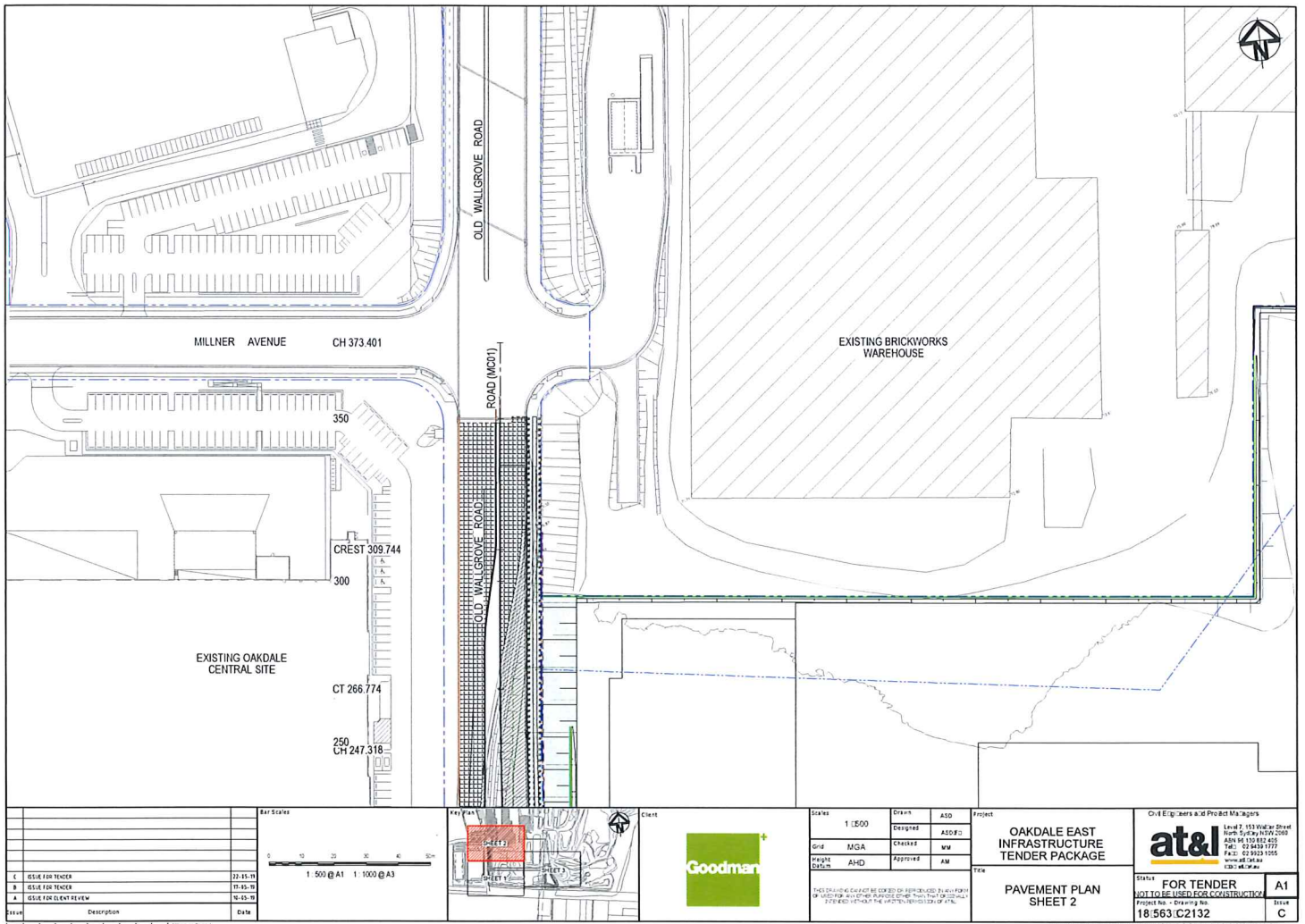


SVPA2019-11 Planning Agreement

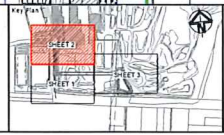
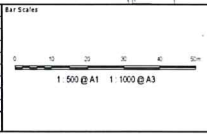
Oakdale East, Horsley Park







Issue	Description	Date
C	ISSUE FOR TENDER	22-05-19
B	ISSUE FOR TENDER	17-05-19
A	ISSUE FOR CLIENT REVIEW	16-05-19



Scale	1:500	Drawn	ASD	Project	OAKDALE EAST INFRASTRUCTURE TENDER PACKAGE
Grid	MGA	Checked	MM	Client	Goodman
Height	AHD	Approved	AM	Sheet	PAVEMENT PLAN SHEET 2

Project	OAKDALE EAST INFRASTRUCTURE TENDER PACKAGE
Sheet	PAVEMENT PLAN SHEET 2

Client	Goodman
Project No.	18.563.C2132
Sheet	A1
Drawn	C

[Handwritten signatures and marks]