

# Planning Agreement

## Environmental Planning and Assessment Act 1979

Oakdale East Industrial Estate

2-10 Old Wallgrove Road, Horsley Park

**Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468)

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

**BGMG 14 Pty Limited** (ACN 661 888 884) in its capacity as trustee of BGMG1 Oakdale East Trust No. 2

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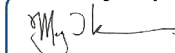
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**This deed** is dated 14 September 2023 | 8:58 AM AEST

**Parties:**

**Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468) c/- NSW Department of Planning and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

**Goodman Property Services (Aust) Pty Limited** (ACN 088 981 793) of 'The Hayesbery' 1-11 Hayes Road Rosebery NSW 2018

**BGMG 14 Pty Limited** (ACN 661 888 884) in its capacity as trustee of BGMG1 Oakdale East Trust No. 2 of 'The Hayesbery' 1-11 Hayes Road Rosebery NSW 2018

**Introduction:**

- A** The Landowner owns the Land.
- B** The Developer proposes to carry out the Development on the Land, referred to as Oakdale East Industrial Estate.
- C** The Developer has made a Development Application to the Consent Authority in respect of the Development.
- D** Section 2.28 of the SEPP, as at 1 September 2023, 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 as referred to in that section.
- E** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by section 2.28 of the SEPP.
- F** The Developer has an Offset Amount generated under the Oakdale East Stage 1 Planning Agreement and an Excess Contributions Credit generated under the Oakdale West Estate Planning Agreement. The Developer proposes to use the Excess Contributions Credit to discharge its obligation under this deed to contribute to the provision of regional transport infrastructure and services in respect of the Development. The Developer may also use the Offset Amount to discharge that obligation, in accordance with this deed.

**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).

**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.

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

**Base CPI** means the CPI number for the quarter ending 31 March 2023.

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

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

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

**Contribution Amount** means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

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

**Current CPI** means the CPI number as provided in clause 2(c) of Schedule 4.

**Dealing** means, in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

**Developer** means Goodman Property Services (Aust) Pty Limited (ACN 088 981 793) and the Landowner, unless otherwise specified in this deed.

**Development** means the proposed staged development of the Land including the construction of 11 warehouses, and associated infrastructure and works, on precincts referred to as Precincts 1, 2, 3, 4 and 5 in the environmental impact statement for the development (**EIS**), generally in accordance with the plan in Schedule 6 and Concept Development Application SSD-37486043 and including:

- (a) the construction of 4 warehouses, with associated loading bays, office and ancillary buildings and other works across Precinct 1 and in Precinct 3 (described as part of "Stage 2" of the Oakdale Industrial Estate development in the EIS), having approximately a gross lettable area of 117,876 m<sup>2</sup>; and
- (b) further stages of development involving the construction of 7 warehouses across Precincts 2, 4 and 5 proposed to be the subject of future development applications.

**Note.** The Development is on the Oakdale East Industrial Estate. Stage 1 of the development of the Oakdale East Industrial Estate was carried out in Precinct 1 pursuant to development consent to DA 93.1/2019. SSD-37486043 proposes the extension of a building in Precinct 1 as well as the development described above. Another planning agreement for Oakdale East Stage 1 with the Minister applies to land in Precinct 1.

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

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

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

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

**Excess Contributions Credit** has the meaning given to it by clause 4.3(e) of Schedule 4 to the Oakdale West Estate Planning Agreement.

**External WSEA Obligation** has the meaning given to it by clause 1.1 of the Oakdale West Estate Planning Agreement.

**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.

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

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

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

**Land** means the land described in Schedule 3.

**Landowner** means BGMG 14 Pty Limited (ACN 661 888 884) in its capacity as trustee of BGMG 1 Oakdale East Trust No. 2.

**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 administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Secretary's nominee.

**Oakdale East Stage 1 Planning Agreement** means the planning agreement in relation to stage 1 of the development at Oakdale East Estate between the Minister and Goodman Property Services (Aust) Pty Ltd and The Austral Brick Co Pty Ltd dated 20 December 2019 (SVPA2019-11), and to which BGAI 12 Pty Ltd (ACN 637 474 545) became a party in its capacity as trustee of the BGAI 1 Oakdale East Trust (replacing The Austral Brick Co Pty Ltd) by deed of novation dated 1 November 2021.

**Oakdale West Estate Planning Agreement** means the planning agreement in relation to Oakdale West Estate between the Minister and Goodman Property Services (Aust) Pty Ltd and BGMG 11 Pty Limited as trustee for the BGMG 1 Oakdale West Trust dated 26 July 2019 (2017/8367).

**Offset Amount** has the meaning given to it by clause 1.1 of the Oakdale East Stage 1 Planning Agreement.

**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.

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

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

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

**SEPP** means *State Environmental Planning Policy (Industry and Employment) 2021*.

**Standard Instrument** means the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*.

**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 and fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

## 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 made 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 **Department of Planning and Environment** continues to be a reference to the Department even if renamed and, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, is a reference to any other Department or other Public Service agency (within the meaning of the *Government Sector Employment Act 2013* (NSW)) that includes that group of staff, whether or not the change in relation to the Department occurs before or after the execution of this deed by the Minister;
- (e) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (f) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** and **annexures** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) 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;
- (m) 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;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;

- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2. Operation and application of this deed**

### **2.1 Operation**

This deed commences on the date that it 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, and new Subdivision 4 of Division 7.1**

The application of the following provisions of the Act to the Development is excluded to the extent stated in Schedule 1:

- (a) sections 7.11 and 7.12;
- (b) section 7.24 (as in force immediately before the commencement of the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023*);
- (c) Subdivision 4 of Division 7.1 (as inserted into the Act by the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023* on its commencement, but as it may be amended from time to time).

## **4. Development Contribution**

### **4.1 Developer to provide Development Contribution**

The Developer agrees to provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4.

### **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.



## **5. Interest**

### **5.1 Interest for late payment**

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

## **6. Registration**

### **6.1 Registration of deed**

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its 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; and
  - (ii) the execution of any documents; and
  - (iii) the electronic lodgement of this deed in a registrable form through an ELNO 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 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)(iii) within 10 Business Days of such lodgement.
- (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 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 Interest in Land**

BGMG 14 Pty Limited (ACN 661 888 884) in its capacity as trustee of BGMG1Oakdale East Trust No. 2 represents and warrants that it is:

- (a) the owner of the Land; 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, co-operate and to otherwise do all things necessary for the Developer to comply with the 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 been unable to achieve the registration of this deed, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights and obligations under this clause 6.5 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.

## 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 and:
  - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
  - (ii) procure 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) satisfy the Minister, 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) 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 required under this deed remains outstanding.

- (b) Notwithstanding clause 9.2(a), 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:
  - (i) satisfies the Minister, 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) 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) satisfies the Minister, 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.

## **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.

### **10.3 Trustee Developer**

- (a) BGMG 14 Pty Limited (ACN 661 888 884) (**Trustee**) enters into this deed in its capacity as the trustee for the BGMG1 Oakdale East Trust No. 2 (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:
  - (i) warrants that:
    - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
    - (B) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
    - (C) it is not in breach of the Trust Deed;
    - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;

- (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
  - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
- (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 10.3(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
  - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;
  - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
  - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
  - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 10.3(b) and the costs and expenses of registering any new deed on the title to the Land.
- (c) Subject to clause 10.3(d), liability arising under or in connection with this deed (except under or in connection with clause 10.3(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) No party to this deed or any person claiming through or on behalf of them will be entitled to:
  - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
  - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
  - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,
 except under or in connection with clause 10.3(a) above.

## 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 and Construction 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 every thing 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 valuation costs, legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note.
- (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 pay its own and the Minister's reasonable costs and disbursements in connection with the release and discharge of this deed with respect to any part of the Land pursuant to clause 6.3.
- (e) 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), (b) and (d):
  - (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; or
  - (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 5 pm on a Business Day, on that Day;
    - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or

(C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

### 12.17 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.
- (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.

## 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.

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Planning instrument and/or development application – (section 7.4(1))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	(a) N/A  (b) Yes  (c) No
<b>Description of land to which this deed applies – (section 7.4(3)(a))</b>	See Schedule 3
<b>Description of development to which this deed applies – (section 7.4 (3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))</b>	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))</b>	See Schedule 4
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))</b>	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
<b>Applicability of section 7.24 of the Act</b> (as in force immediately before the commencement of the <i>Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023</i> (s 7.4 (3)(d))	The application of section 7.24 of the Act to the Development is excluded.
<b>Applicability of Subdivision 4 of Division 7.1 of the Act</b> (as inserted by the <i>Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023</i> on its commencement, but as it may be amended from time to time (s 7.4(3)(d))	The application of Subdivision 4 of Division 7.1 of the Act to the Development is excluded.
<b>Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))</b>	No

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Mechanism for Dispute Resolution</b> – (section 7.4(3)(f))	See clause 7
<b>Enforcement of this deed</b> – (section 7.4(3)(g))	See clause 6
<b>No obligation to grant consent or exercise functions</b> – (section 7.4(10))	See clause 12.13

**Table 2 – Other matters**

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Registration of the Planning Agreement</b> – (section 7.6 of the Act)	Yes (see clause 6)
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued</b> – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	Yes (see clause 3 of Schedule 4)
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued</b> – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued</b> – (section 6.15(1)(d) of the Act)	No

## Schedule 2

### Address for Service (clause 1.1)

**Minister**

**Contact:** The Secretary

**Address:** Department of Planning and Environment  
4 Parramatta Square, 12 Darcy Street  
PARRAMATTA NSW 2150

**Email:** [planningagreements@planning.nsw.gov.au](mailto:planningagreements@planning.nsw.gov.au)

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

**Contact:** The Company Directors and Secretary

**Address:** 'The Hayesbery'  
1-11 Hayes Road  
ROSEBERY NSW 2018

**Email:** [Clarissa.Qasabian@goodman.com](mailto:Clarissa.Qasabian@goodman.com)  
[Stephanie.Partridge@goodman.com](mailto:Stephanie.Partridge@goodman.com)

**Landowner** BGMG 14 Pty Limited (ACN 661 888 884) in its capacity as trustee of  
BGMG1Oakdale East Trust No. 2

**Contact:** The Company Directors and Secretary

**Address:** 'The Hayesbery'  
1-11 Hayes Road  
ROSEBERY NSW 2018

**Email:** [Clarissa.Qasabian@goodman.com](mailto:Clarissa.Qasabian@goodman.com)  
[Stephanie.Partridge@goodman.com](mailto:Stephanie.Partridge@goodman.com)

**Schedule 3**

**Land (clause 1.1)**

**1. Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
103	1268366	103/1268366

## Schedule 4

### Development Contribution (clause 4)

#### 1. Development Contribution

- (a) For the purposes of this Schedule:
- (i) **Net Developable Area**, in relation to each Relevant Part of the Land, means the net developable area of that part as defined and determined in accordance with Schedule 5; and
  - (ii) **Relevant Part of the Land** means that part of the Land on which Development Consent to Concept Development Application SSD-37486043 authorises the carrying out of development in accordance with detailed proposals in that application (described as “Stage 2” of the Oakdale Industrial Estate development in the EIS) and any other part of the Land to which a subsequent Development Consent for a further stage of the Development applies.
- (b) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount - Monetary contribution towards regional transport infrastructure and services	\$226,193 per hectare of Net Developable Area of each Relevant Part of the Land	Pursuant to clauses 3 and 4 of this Schedule 4

- (c) The Minister and Developer acknowledge and agree that the Development Contribution is the sum of the Contribution Amounts under this deed.

#### 2. Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount will be an amount equal to “X” in the following formula:
- $$X = N \times \$226,193$$
- “N” means the number of hectares comprised in the Net Developable Area of the Relevant Part of the Land.
- (b) Each Contribution Amount is to be adjusted, at time of payment, by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.
- (c) For the purposes of this clause 2, the Current CPI is:
- (i) if the Contribution Amount is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and

- (ii) if the Contribution Amount is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

### 3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister each Contribution Amount prior to the issue of the first Construction Certificate for any building or part of a building on the Relevant Part of the Land.
- (b) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the relevant Construction Certificate.
- (c) The parties agree that the requirement to:
  - (i) make a payment under this clause 3 of Schedule 4; or
  - (ii) use the Excess Contributions Credit generated under the Oakdale West Estate Planning Agreement, under clause 4 of Schedule 4,

is a restriction on the issue of any Construction Certificate for a building or part of a building within the meaning of section 21 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

### 4. Use of Excess Contribution Credits to satisfy obligation to pay Contribution Amounts

- (a) The Minister and the Developer acknowledge that, as at 1 July 2023:
  - (i) Goodman has an Excess Contributions Credit generated under the Oakdale West Estate Planning Agreement in the amount of \$22,576,932.04, which may be used to discharge an External WSEA Obligation; and
  - (ii) Goodman Property Services (Aust) Pty Ltd (ACN 088 981 793) (**Goodman**), together with BGA1 12 Pty Ltd (ACN 637 474 545) in its capacity as trustee of the BGA1 1 Oakdale East Trust (**BGA1 12**), has an Offset Amount generated under the Oakdale East Stage 1 Planning Agreement in the amount of \$2,647,325.86, which may be used to discharge an obligation to make a development contribution relating to the provision of regional transport infrastructure and services on land to which the former *State Environmental Planning Policy (Western Sydney Employment Area) 2009* applied; and
  - (iii) the Development Contribution estimated to be payable under this deed is \$11,140,570.73 based on an estimate of the Net Developable Area of the Land of 49.2525 hectares.
- (b) The Developer agrees to use Goodman's Excess Contributions Credit to discharge its obligations under this deed to pay the Contribution Amounts comprising the Development Contribution, in priority to paying those amounts. The Minister agrees that the Developer may use the Offset Amount, with the written consent of BGA1 12, as well as the Excess Contributions Credit, to discharge its obligations.
- (c) The provision of the written notice of the intention to apply for a Construction Certificate as referred to in clause 3(b) of this Schedule 4 is taken also to be a notice to the Minister that the Developer is seeking to use its Excess Contributions Credit to discharge its obligation to pay the relevant Contribution Amount for the purposes of clause 4.3(g) of Schedule 4 to the Oakdale West Estate Planning Agreement, unless the Developer advises the Minister in the



written notice that it wishes to use the Offset Amount instead of, or in addition to, the Excess Contributions Credit.

- (d) To avoid doubt:
- (i) the Minister agrees that, despite clause 4.3(f) of Schedule 4 to the Oakdale West Estate Planning Agreement, Goodman may, and is required to, use its Excess Contributions Credit, to discharge the Developer's obligations under this deed despite not being the owner of the Land; and
  - (ii) after the Excess Contribution Credit or the Offset Amount have been used to discharge obligations under this deed, to the extent required, any remaining Excess Contributions Credit or Offset Amount may be used in the future to discharge other obligations as provided for in the Oakdale West Estate Planning Agreement and the Oakdale East Stage 1 Planning Agreement, respectively.
- (e) Goodman is taken to have surrendered its Excess Contributions Credit or Offset Amount, or both, to the extent notified by the Minister in writing to Goodman and indicated on the contributions credit schedule referred to in clause 4.3 of Schedule 4 to the Oakdale West Planning Agreement (**contributions credit schedule**) or on the Offset Certificate referred to in clause 5.2(c) of Schedule 4 to the Oakdale East Stage 1 Planning Agreement, respectively.
- (f) The Developer agrees that if a Construction Certificate relating to the Development has been issued (whether before or after the commencement of this deed) and the obligation to pay a Contribution Amount has not been satisfied before the issue of the certificate by the use of the Excess Contributions Credit or the Offset Amount, the Minister may notify Goodman, in writing, that it has surrendered so much of the Excess Contributions Credit as is indicated on the updated contributions credit schedule, being an amount equivalent to the sum of:
- (i) the Contribution Amount; and
  - (ii) in the case only of a Construction Certificate issued after the commencement of this deed – any interest payable under clause 5.1.

## 5. Works in kind

The Developer may request that the Minister consider a proposal for the Developer to carry out works in kind to discharge future obligations under this deed to make contributions in Western Sydney Employment Area, being the land to which the former *State Environmental Planning Policy (Western Sydney Employment Area) 2009* applied.

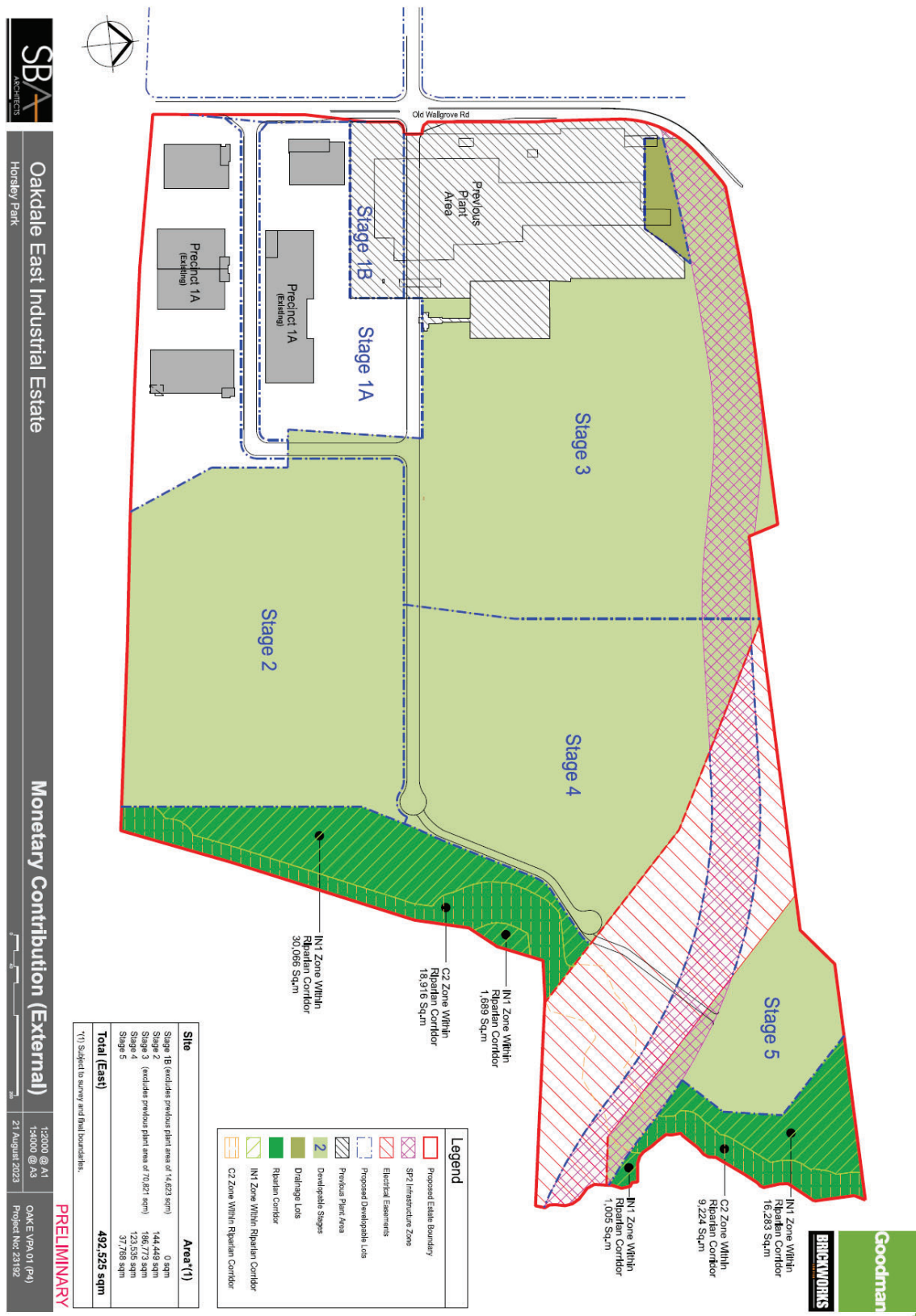
## Schedule 5

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

1. The Net Developable Area for the Development on a Relevant Part of the Land, as defined in clause 1 of Schedule 4, is the area of land, measured in hectares, shown on the indicative plan in Schedule 6 to total 49.2525 hectares, subject to the other provisions of this Schedule 5.
2. The Net Developable Area includes the area of any land that the relevant Development Consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road, but does not include any existing road which was constructed before the grant of Development Consent to SSD-37486043 and in respect of which works are required to be carried out (including road widening) under that consent or any subsequent Development Consent in respect of the Development on the Land.
3. The Net Developable Area does not include the area of any land that the proposed subdivision reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
  - (a) school;
  - (b) TAFE establishment;
  - (c) emergency services facility;
  - (d) health services facility owned or operated by a public authority;
  - (e) golf course;
  - (f) passenger transport facility;
  - (g) place of public worship;
  - (h) public open space, including a public reserve (within the meaning of the *Local Government Act 1993*);
  - (i) drainage reserve (within the meaning of the *Local Government Act 1993*);
  - (j) public utility undertaking;
  - (k) bus depot;
  - (l) recreation area;
  - (m) cemetery (within the meaning of the *Cemeteries and Crematoria Act 2013*);
  - (n) public roads that are already public roads as at the commencement of this deed; and
  - (o) public amenities or public services, in connection with which development contributions have been imposed under section 7.11 or section 7.12 of the Act or may be imposed in accordance with a contributions plan approved under section 7.18 of the Act.
4. The following areas of land are not to be included in the calculation of the Net Developable Area for the Development:
  - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for development by virtue of it being at or below that level;
  - (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 7.18 of the Act;

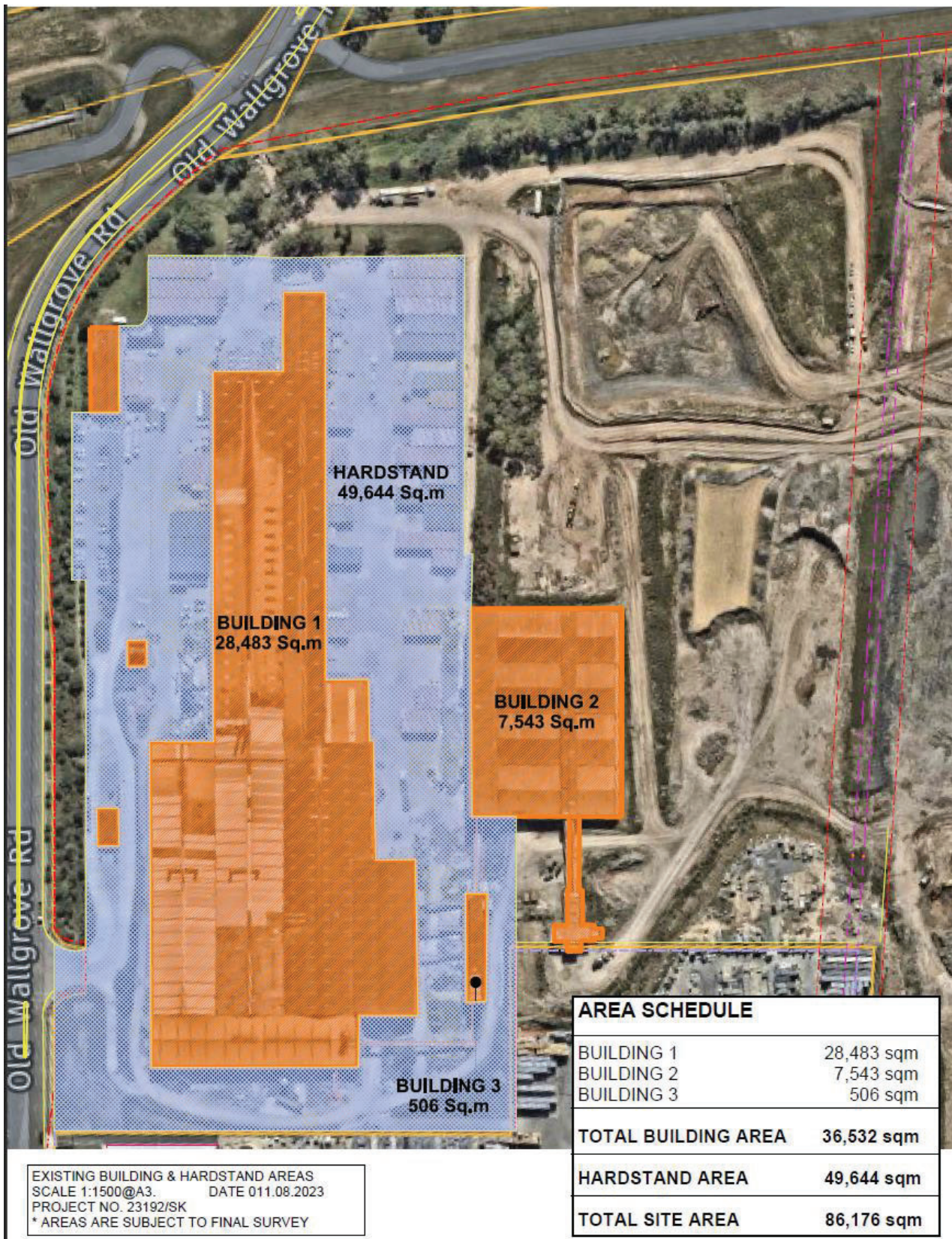
- (c) any area of land that is within Zone C2 Environmental Conservation or that is within a riparian corridor as shown on the plan in Schedule 6;
  - (d) any area of land within the curtilage of a building listed on the State Heritage Register;
  - (e) any area of land this is within an asset protection zone:
    - (i) that is specified in a bush fire safety authority issued under the *Rural Fires Act 1997*; or
    - (ii) that is required to be established by the development consent relating to the Development,if the Secretary is satisfied that the area is unsuitable for the Development by virtue of it being within that zone;
  - (f) the area shown on the plan in Schedule 7 used for the purpose of a brick making plant as described in the development consent granted by Blacktown City Council on 12 July 1971 (Permit No. 1340);
  - (g) an 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 or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied that the area is unsuitable for the Development by virtue of the easement.
5. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the Net Developable Area for the Development in accordance with this Schedule 5 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.
6. In this Schedule 5, the following words or expressions have the same meanings as they have in the Standard Instrument:
- (a) emergency services facility;
  - (a) health services facility;
  - (b) passenger transport facility;
  - (c) place of public worship;
  - (d) public utility undertaking;
  - (e) recreation area; and
  - (f) school.
7. In this Schedule 5, a reference to:
- (a) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone; and
  - (b) a Conservation Zone (Zone C2) includes a reference to an Environmental Protection Zone (Zone E2), as referred to in the Standard Instrument immediately before 1 December 2021; and
  - (c) curtilage of a building listed on the State Heritage Register is a reference to 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 kept under Part 3A of the *Heritage Act 1977*.

## Schedule 6: Net Developable Area Indicative Plan





Schedule 7: Brick making plant area



Execution page

**Executed** as a deed

**Signed, sealed and delivered** by the **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468) in the presence of:

.....  
Signature of witness

.....  
Signature of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....  
Name of witness in full


.....  
Name of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....  
Address of witness

\*By signing this deed, the witness states that they witnessed the signing of this deed by:

.....  
(being the name of the Minister’s delegate) over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

**Signed, sealed and delivered** by **Goodman Property Services (Aust) Pty Ltd** (ACN 088 981 793) by its attorney under a power of attorney registered in New South Wales Book 4507 No 75:

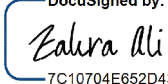
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Signature of Witness

Zahra Ali  
.....  
Name of Witness in full

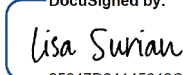
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Signature of Attorney

Samantha Jane Evans  
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Name of Attorney in full

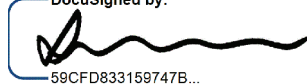
Signed, sealed and delivered by **BGMG 14 Pty Limited (ACN 661 888 884)** by its attorneys under a power of attorney registered in New South Wales Book 4809 No 212:

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Signature of Witness

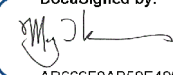
Zahra Ali  
.....  
Name of Witness in full

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Lisa Surian (Witness)  
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Name of Witness in full

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Signature of Attorney

Samantha Jane Evans  
.....  
Name of Attorney in full

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Signature of Attorney

Megan Kublins  
.....  
Name of Attorney in full