

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

and

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

and

BGMG 14 Pty Limited (ACN 661 888 884) as trustee of BGMG 1 Oakdale East Trust No. 2

Variation to Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of a Deed of Variation to the Planning Agreement dated 12 December 2023 in relation to 2-10 Old Wallgrove Road (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared in accordance with s 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (the **Regulation**).

Words which are capitalised in this explanatory note but are not defined take on the meaning given to those words in the Planning Agreement and the Deed of Variation.

Parties to the Deed of Variation

The parties to the Deed of Variation are the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468) (the **Minister**), Goodman Property Services (Aust) Pty Limited (the **Developer**) and BGMG 14 Pty Limited as trustee of BGMG 1 Oakdale East Trust No. 2 (the **Landowner**).

Description of the Subject Land

The Planning Agreement as varied by the Deed of Variation applies to the same land to which the Planning Agreement applies being Lot 103 DP 1268366, known as Oakdale East Industrial Estate, 2-10 Old Wallgrove Road, Horsley Park (**Subject Land**)

Description of the Development

The Developer is seeking to carry out a staged development of the Subject Land, including the construction of 11 warehouses, and associated infrastructure and works, generally in accordance with State Significant Development Consent reference SSD-37486043 for concept proposals and Stage 2 works for Oakdale East Industrial Estate dated 11 October 2023, as modified, which includes:

- the construction of 4 warehouses, with associated loading bays, office and ancillary buildings and other works across Precinct 1 and in Precinct 3, having approximately a

gross lettable area of 117,876 m²; and

- 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.

Summary of Objectives, Nature and Effect of the Planning Agreement as varied by the Deed of Variation

The Deed of Variation varies the Planning Agreement to:

- permit the Developer to, in accordance with new clause 5 of Schedule 4 of the Planning Agreement, carry out the Intersection Works Contribution and the Intersection Land Contribution as works in kind in order to discharge, in part, its obligation to make the Development Contribution;
- require that the Developer first apply the Intersection Offset Amount and then Goodman's Excess Contributions Credit (under the Oakdale West Estate Planning Agreement) and Offset Amount (under the Oakdale East Stage 1 Planning Agreement) to discharge its obligations under the Planning Agreement to pay the Contribution Amounts comprising the Development Contribution, in priority to paying the Contribution Amounts; and
- make administrative amendments to the terms of the Planning Agreement.

Assessment of Merits of Planning Agreement as amended by the Deed of Variation

The Public Purpose of the Planning Agreement as varied by the Deed of Variation

In accordance with section 7.4(2) of the Act, the Planning Agreement as varied by the Deed of Variation has the public purpose of facilitating the provision of (or the recoupment of the cost of providing) regional transport infrastructure and services in the Western Sydney Employment Area (WSEA).

The Minister and the Developer have assessed the Planning Agreement as varied by the Deed of Variation and both hold the view that the Deed of Variation does not change the means of achieving the public purpose of the Planning Agreement. This is because the Planning Agreement as amended by the Deed of Variation will continue to ensure that the Developer makes the Development Contribution.

How the Planning Agreement as varied by the Deed of Variation Promotes the Public Interest

The Planning Agreement as varied by the Deed of Variation continues to promote the public interest envisioned by ensuring that an appropriate contribution is made towards the provision of regional transport infrastructure and services in WSEA that arise from development of the Subject Land.

The Developer's offer to contribute towards the provision of this transport infrastructure and services will have a positive impact on the public who will ultimately use it.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement as varied by the Deed of Variation, requires the Developer to:

- pay to the Minister each Contribution Amount (if required) prior to the release of the first Construction Certificate for any building or part of a building on the Relevant Part of the Subject Land; and
- use the Excess Contributions Credit and/or the Offset Amount (if required) prior to the release of the first Construction Certificate for any building or part of a building on the Relevant Part of the Subject Land.

Both these requirements are restrictions 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*.

The Planning Agreement, as varied by the Deed of Variation, also requires the Developer to provide the Intersection Works Contribution and the Intersection Land Contribution before the commencement of operation of the first warehouse building in the Stage 2 development. This is achieved by requiring that the Intersection Works Contribution and the Intersection Land Contribution must be provided before the following can be issued to the Developer:

- the Occupation Certificate for the first warehouse building in Stage 2 of the Development (within the meaning of section 48 of *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*); and
- a Construction Certificate for any building authorised by a Stage 3 Consent (within the meaning of section 21 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*).