

Deed of Variation to Planning Agreement Environmental Planning and Assessment Act 1979

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

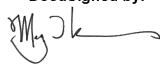
Goodman Property Services (Aust) Pty Limited (ACN 088 981 793)

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



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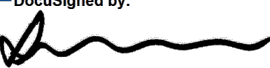
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This Deed is dated 4 February 2025

Parties:

Minister

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

Developer

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

Landowner

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

Introduction

- A. On 12 December 2023, the Minister entered into the Planning Agreement with the Developer and the Landowner.
- B. Under the Planning Agreement, the Developer:
- B.1 has agreed to provide the Development Contribution, being a monetary contribution towards the provision of regional transport infrastructure and services; and
 - B.2 may use the Excess Contributions Credit generated under the Oakdale West Estate Planning Agreement and the Offset Amount generated 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 those amounts.
- C. It is acknowledged that as at the date of this Deed, Goodman has:
- C.1 an Excess Contributions Credit generated under the Oakdale West Estate Planning Agreement in the amount of \$18,352,257.52 which may be used to discharge an External WSEA Obligation; and
 - C.2 an Offset Amount generated under the Oakdale East Stage 1 Planning Agreement in the amount specified in clause 4(a)(i)(B) of Schedule 4 of the Planning Agreement.
- D. However, clause 5 of Schedule 4 of the Planning Agreement provides that the Developer may request the Minister to consider a proposal for the Developer to carry out works in kind to discharge any future obligations under the Planning Agreement to make contributions in the Western Sydney Employment Area.

- E. On 11 October 2023, the Developer obtained SSD-37486043 which approved, among other things, the Intersection Works.
- F. Transport for NSW have advised the Department of Planning, Housing and Infrastructure that the Intersection Works give a 10.7% regional benefit to the road network.
- G. The Developer therefore proposes to carry out the Intersection Works and dedicate the Intersection Land as a public road in order to discharge, in part, the Developer's obligations to make the Development Contributions under the Planning Agreement, as contemplated by clause 5 of Schedule 4 of the Planning Agreement.
- H. Accordingly, the parties have agreed to amend the Planning Agreement in accordance with the terms of this Deed, including among other things to:
 - H.1 permit the Intersection Works Contribution and the Intersection Land Contribution to be provided as a works in kind and dedication of land contribution in order to discharge, in part, its obligation to make the Development Contribution;
 - H.2 require that the Developer first apply the Intersection Offset Amount, then Goodman's Excess Contributions Credit and Offset Amount 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
 - H.3 make administrative amendments to the terms of the Planning Agreement.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this Deed (including the Introduction), unless the context clearly indicates otherwise:

Deed means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.

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

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

Intersection Land means that part of Lot 3 DP 1268366, being an area of approximately 735.86 square metres, as shown in the diagram attached at Annexure A to Schedule 1 of this Deed.

Intersection Land Contribution means dedication of the Intersection Land as a public road by the Developer in accordance with the terms of the Planning Agreement as amended in accordance with the terms of this Deed.

Intersection Land Offset Amount means the offset amount to which the Developer will be entitled by making the Intersection Works Contribution and the Intersection Land Contribution in accordance with the terms of the Planning Agreement as amended in accordance with the terms of this Deed.

Intersection Works means the Old Wallgrove Road and Milner Avenue Intersection Upgrade and the Old Wallgrove Road and Lenore Drive Intersection Upgrade.

Intersection Works Contribution means the carrying out and completion of the Intersection Works by the Developer in accordance with the terms of the Planning Agreement as amended in accordance with the terms of this Deed.

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

Old Wallgrove Road and Lenore Drive Intersection Upgrade means the proposed upgrade of the Old Wallgrove Road and Lenore Drive intersection including the:

- a) widening of the southern side of the intersection to accommodate a second departure lane, allowing for a continuous flow from the East approach;
- b) widening and extension of the existing left-turn slip lane from the South approach from the existing 35 metres to 140 metres,

as authorised by SSD-37486043 and shown on the plans in Figure 5 of Appendix 2 to SSD-37486043 (attached as Annexure B to Schedule 1 of this Deed).

Old Wallgrove Road and Milner Avenue Intersection Upgrade means the proposed upgrade of the Old Wallgrove Road and Milner Avenue intersection including the:

- a) creation of a 100m left-in slip lane off Old Wallgrove Road East into Milner Avenue; and
- b) increase from 90m to 140m long second exit onto Old Wallgrove Road and Millner Avenue providing access to the North, West and South

as authorised by the SSD-37486043 and shown on the plans in Figure 4 of Appendix 2 to SSD-37486043 (attached as Annexure B to Schedule 1 of this deed.)

Planning Agreement means the planning agreement dated 12 December 2023, entered into between the Minister, the Developer and the Landowner.

SSD-37486043 means State Significant Development Consent reference SSD 37486043 for a Concept Plan and Stage 2 works for Oakdale East Industrial Estate dated 11 October 2023.

1.2 Interpretation

In this Deed (including the Introduction), unless the context clearly indicates otherwise:

- 1.2.1 capitalised words used but not defined in this Deed have the same meanings they have in the Planning Agreement; and
- 1.2.2 clause 1.2 of the Planning Agreement applies to the interpretation and construction of this Deed.

2. Status of this Deed

This Deed is an amendment to the Planning Agreement within the meaning of section 203(5) of the *Environmental Planning and Assessment Regulation 2021* (NSW).

3. Commencement

This Deed commences operation from the date it is signed by all parties.

4. Warranties and representations

4.1 Each party warrants to each other party that:

- 4.1.1 it has power to enter into this Deed;
- 4.1.2 this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- 4.1.3 unless otherwise stated, it has not entered into this Deed in the capacity of trustee of any trust.

5. Amendment to the Planning Agreement

5.1 On and from the commencement of this Deed, the Planning Agreement is amended by:

- 5.1.1 inserting the words marked-up (by underlining) in the copy of the Planning Agreement comprising Schedule 1 as being insertions; and
- 5.1.2 deleting the words marked-up (by striking through) in the copy of the Planning Agreement comprising Schedule 1 as being deletions.

6. Confirmation

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

7. Amendments not to affect accrued rights and obligations

7.1 Nothing in this Deed:

7.1.1 prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or

7.1.2 discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.

8. Registration

8.1 Registration of Deed

8.1.1 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:

(a) the consent of each person, as required by the Registrar-General, who:

(i) has an estate or interest in the Land registered under the Real Property Act; or

(ii) is seized or possessed of an estate or interest in the Land,

to the registration of this Deed on title to the Land and to the terms of this deed; and

(iii) the execution of any documents; and

(iv) 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.

8.1.2 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.

8.2 Evidence of registration

- 8.2.1 The Developer must provide the Minister with evidence of the lodgement of this Deed pursuant to clause 8.1.1(a)(iv) within 10 Business Days of such lodgement.
- 8.2.2 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.

8.3 Release and discharge of deed

The Minister agrees to 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.

8.4 Landowner's interest in Land

- 8.4.1 The Landowner 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 8.1.1(a) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 8.

8.5 Right to lodge caveat

- 8.5.1 Subject to clause 8.5.2 until such time as this Deed is registered on the title of the Land in accordance with clause 8.1, 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.
- 8.5.2 If the Minister lodges a caveat in accordance with clause 8.5.1, then the Minister will do all things reasonably necessary to:
- (a) ensure that the caveat does not prevent or delay the registration of this Deed; and
 - (b) remove the caveat from the title to the Land promptly, following registration of this Deed in accordance with clause 8.1.
- 8.5.3 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 under clause 8.5.1 to lodge and withdraw a caveat(s) (as applicable).

9. GST

Clause 9 of the Planning Agreement applies to this Deed as if it was set out in full in this this Deed.

10. General

10.1 Incorporation of clauses

Clauses 10.3 and 12.1-12.14 of the Planning Agreement are incorporated in this Deed as if they were set out in full in this Deed.

10.2 Expenses and stamp duty

- 10.2.1 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.
- 10.2.2 The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note.
- 10.2.3 The Developer must pay all Taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- 10.2.4 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 8.
- 10.2.5 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 10.2.1, 10.2.2 and 10.2.4:
 - (a) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, and supporting invoices for those costs (but, for the avoidance of doubt, will not include an itemised breakdown of work or costs incurred), on the date of execution of this Deed; or
 - (b) 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, to be accompanied by supporting

invoices for the costs demanded (but, for the avoidance of doubt, will not include an itemised breakdown of work or costs incurred).

10.3 Notices

10.3.1 Clause 12.16 of the Planning Agreement is incorporated in this Deed as if it was set out in full in this Deed. For the purposes of this Deed, Address for Service means the address of each party appearing below or any new address notified by any party to all other parties as its new Address for Service:

Minister

Contact: The Secretary

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

Email: 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, Roseberry NSW 2018

Email clarissa.qasabian@goodman.com
Stephanie.Partridge@goodman.com

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

Contact The Company Directors and Secretary

Address 'The Hayesbery'
1-11 Hayes Road, Roseberry NSW 2018

Email clarissa.qasabian@goodman.com
Stephanie.Partridge@goodman.com

10.4 Electronic Execution

10.4.1 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.

10.4.2 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.

10.4.3 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:

(a) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;

(b) insertion of the person's name on to the deed; or

(c) 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;

(d) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or

(e) as otherwise agreed in writing (including via email) between the parties.

10.4.4 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.

10.4.5 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.

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
Jeremy Dwyer

4 Parramatta Square, 12 Darcy Street, Parramatta
Address of witness



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

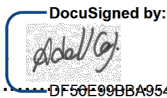
Kate Speare

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

Kate Speare

(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).

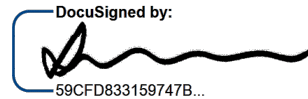
Signed sealed and delivered by the **Goodman Property Services (Aust) Pty Ltd** by its attorney under a power of attorney registered in New South Wales Book 4507 No 75

DocuSigned by:


Signature of witness

Ada Cajal

Print full name of witness

DocuSigned by:


Signature of Attorney

Samantha Jane Evans

Print full name of attorney

Signed, sealed and delivered by the **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:

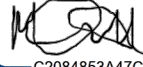
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Signature of witness

Ada Cajal

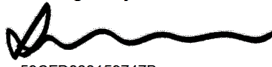
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Signature of witness

Mark Callaghan

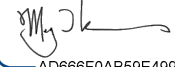
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Signature of Attorney

Samantha Jane Evans

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Print full name of attorney

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Signature of Attorney

Megan Kublins

.....
Print full name of attorney

Schedule 1 Amendments to the Planning Agreement

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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This deed is dated

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~~ Intersection Offset Amount to discharge part of its obligation under this deed to contribute to the provision of regional transport infrastructure and services in respect of the Development. ~~The Following the application of the Intersection Offset Amount, the Developer may also proposes to use the Excess Contributions Credit or~~ Offset Amount to discharge ~~that obligation, in accordance with the balance of the Development Contribution under~~ this deed.

~~FG~~ On 11 October 2023, the Developer obtained SSD-37486043 for the Development.

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, in relation to the Intersection Works, the Final Certified Contract Cost inclusive of variations to achieve Practical Completion by the Developer of the Intersection Works (as determined by the Roads Authority).

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 7.1(c)(ii) of Schedule 4.

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

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.

Construction Contract means each contract between the Developer and a third party, meeting the requirements of clause 5.3 of Schedule 4, for the carrying out of the Intersection Works by that third party.

Contaminated Land Consultant means a certified environmental practitioner under the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) (CEnvP(SC)) scheme or a certified professional soil scientist under the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

Contaminated Land Report means a report provided by the Contaminated Land Consultant to support the Contaminated Land Statement.

Contaminated Land Statement means a statement from the Contaminated Land Consultant.

Contamination has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

Contribution Amount means the amount of the ~~monetary contribution~~ Monetary Contribution as set out in the table in clause 1(b) of Schedule 4 to be calculated and 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.~~

CPI Adjustment Date means 1 July 2025 and each anniversary of 1 July 2025 thereafter.

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 m²; 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).

Estimated Cost of the Intersection Works means the estimated cost of the Intersection Works (including the Road Works Design) as set out in the table in clause 1(b) of Schedule 4.

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.

Final Certified Contract Cost means the total sum of all of 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 Limited (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).

Intersection Land means that part of Lot 103 DP1268366, being an area of approximately 963 square metres, as shown marked (RW) in the Plan of Subdivision of the Land attached as Annexure A.

Intersection Land Contribution means dedication of the Intersection Land to the Roads Authority as a public road by the Developer in accordance with the terms of this deed.

Intersection Land Contribution Offset Amount is an amount that is 10.7% of the Value of the Intersection Land.

Intersection Offset Amount means the:

(a) Intersection Works Contribution Offset Amount; and

(b) Intersection Land Contribution Offset Amount.

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

Intersection Works means the Old Wallgrove Road and Millner Avenue Intersection Upgrade and the Old Wallgrove Road and Lenore Drive Intersection Upgrade.

Intersection Works Contribution means the carrying out and completion of the Intersection Works by the Developer in accordance with the terms of this deed.

Intersection Works Contribution Offset Amount is an amount that is the lower of the following amounts:

(a) \$1,287,268.87 (being 10.7% of the Estimated Cost of the Intersection Works); and

(b) an amount that is 10.7% of the Approved Actual Cost of the Intersection Works.

Land means the land described in Schedule 3.

Landowner means BGMG 14 Pty Limited (ACN 661 888 884) in its capacity as trustee of BGMG1 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.

Monetary Contribution means a monetary contribution towards regional transport infrastructure and services as referred to in section 2.28 of the SEPP.

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).

Occupation Certificate has the same meaning as in the Act.

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

Old Wallgrove Road and Lenore Drive Intersection Upgrade means the proposed development of the Old Wallgrove Road and Lenore Drive intersection including:

- (a) the widening of the southern side of the intersection to accommodate a second departure lane, allowing for a continuous flow from the East approach;
- (b) the widening and extension of the existing left-turn slip lane from the South approach from the existing 35 metres to 140 metres,

as authorised by SSD-37486043 and shown on the plans in Figure 5 of Appendix 2 to SSD-37486043 (attached as **Annexure B** to this deed).

Old Wallgrove Road and Millner Avenue Intersection Upgrade means the proposed development of the Old Wallgrove Road and Milner Avenue intersection including:

- (a) the creation of a 100m left-in slip lane off Old Wallgrove Road East into Milner Avenue; and
- (b) the increase from 90m to 140m long second exit onto Old Wallgrove Road and Millner Avenue providing access to the North, West and South,

as authorised by the SSD-37486043 and shown on the plans in at Figure 4 of Appendix 2 to SSD-37486043 (attached as **Annexure B** to this deed).

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

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.

Practical Completion means practical completion of the Intersection Works in accordance with the *Road Works Deed*.

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

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

Roads Authority has the meaning given to it in the *Roads Act 1993*, and for the purposes of this deed is Fairfield City Council or Blacktown City Council.

Roads Works Deed means the following deeds or agreement entered into by the Roads Authority and the Landowner regarding the design and construction of the Intersection Works and its handover to the Roads Authority:

- (a) in respect of the Old Wallgrove Road and Lenore Drive Intersection Upgrade, Major Works Authorisation Deed (reference TCS4420) dated 13 May 2024 between the Landowner and Transport for NSW; and

(b) in respect of the Old Wallgrove Road and Millner Avenue Intersection Upgrade, Major Works Authorisation Deed (reference TCS4656) dated 13 May 2024 between the Landowner and Transport for NSW.

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

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

Section 138 Approval means the following consents issued pursuant to section 138 of the *Roads Act 1993*:

(a) in respect of the Old Wallgrove Road and Lenore Drive Intersection Upgrade, consent no. RDA-24-00566 granted by Blacktown City Council on 22 March 2024; and

(b) in respect of the Old Wallgrove Road and Millner Avenue Intersection Upgrade, consent no. 334.5/2023 granted by Fairfield City Council on 29 May 2024.

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

SSD-37486043 means State Significant Development Consent reference SSD-37486043 for a Concept Plan and Stage 2 works for Oakdale East Industrial Estate dated 11 October 2023, as modified.

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.

Transport for NSW means Transport for NSW constituted under section 3C of the *Transport Administration Act 1988*.

Value of the Intersection Land means the value of the Intersection Land as specified in the table in clause 1(b) of Schedule 4 (subject to indexation in accordance with clause 7.2 of Schedule 4 and any reduction in accordance with clause 6.5e(ii) of Schedule 4).

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, ~~Housing and Environment~~Infrastructure** 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 BGMG1 Oakdale 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.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(1)) 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) N/A (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 (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.
Applicability of Subdivision 4 of Division 7.1 of the Act (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.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))	No

Requirement under the Act	This deed
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 7
Enforcement of this deed – (section 7.4(3)(g))	See clause 6
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 – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	Yes (see clause 13 of <u>Schedule 4</u> Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No <u>Yes (see clause 1 of Schedule 4)</u>
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (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, Housing and Environment
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Email: 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
Stephanie.Partridge@goodman.com

Landowner BGMG 14 Pty Limited (ACN 661 888 884) in its capacity as trustee of
BGMG1 Oakdale 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
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 approved by SSD-37486043~~ (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.

(iii) **Stage 3 Consent** means the first Development Consent granted following the grant of SSD-37486043
- (b) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value <u>Contribution Amount / Estimated Cost of the Intersection Works / Value of the Intersection Land (as applicable)</u>	Timing
Contribution Amount—Monetary contribution towards regional transport infrastructure and services <u>Monetary Contribution (if required)</u>	<u>Contribution Amount</u> \$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
<u>Intersection Works Contribution</u>	<u>Estimated Cost of the Intersection Works</u> \$12,030,550* <i>(*Note: the Intersection Works Contribution Offset Amount for the purposes of this deed is 10.7% of the estimated cost of the Intersection Works Contribution specified above)</i>	<u>Prior to the commencement of operation of the first warehouse building in the Stage 2 development (being the time required for completion by condition D30 as in force at 1 December 2024) but in any case prior to the issue of the first Construction Certificate for a building or part of a building on a Relevant Part of the Land authorised by the Stage 3 Consent.</u>
<u>Intersection Land Contribution</u>	<u>Value of the Intersection Land</u>	<u>No later than 1 month after the date the Intersection Works are</u>

	<p><u>\$698,175* (calculated as \$725 per square metre x approximately 963 square metres)</u></p> <p><i>(*Note: the Intersection Land Contribution Offset Amount for the purposes of this deed is 10.7% of the value of the Intersection Land Contribution specified above)</i></p>	<p><u>deemed to have been completed in accordance with clause 6 of this Schedule 4 and prior to the issue of the first Construction Certificate for a building or part of a building on a Relevant Part of the Land authorised by the Stage 3 Consent (and in any event, prior to the commencement of operation of the first warehouse building in the Stage 2 development).</u></p>
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(c) ~~The~~ For the avoidance of doubt, the Minister and Developer acknowledge and agree that the Development Contribution is the sum of the Contribution Amounts under this Deed-;

- (i) the Monetary Contribution may not be required to be paid, subject to the terms of this Schedule; and
- (ii) the Developer can use the Excess Contribution Credit, the Offset Amount and the Intersection Offset Amount to satisfy its obligation to make the Monetary Contribution in accordance with clause 44 of this Schedule.

(d) The parties agree that each of the requirements to:

- (i) pay a Contribution Amount under clause 3 of Schedule 4; and
- (ii) use the Excess Contributions Credit and/or the Offset Amount 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*.

(e) The parties agree that each of the requirements to:

- (i) make the Intersection Land Contribution in accordance with this deed-; and
- (ii) make the Intersection Works Contribution in accordance with this deed,

is a restriction on the issue of the Occupation Certificate for the first warehouse building in Stage 2 of the Development, within the meaning of section 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* and on the issue of 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*.

2. Calculation of the value of a Contribution Amount

(a) ~~Each Contribution Amount will~~The Minister and the Developer acknowledge and agree that if the Developer were to provide the Development Contribution solely as a monetary contribution, each Contribution Amount would 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 Currentcurrent CPI divided by the Base CPI.
- (c) For the purposes of this clause 2, the Currentcurrent 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, except as otherwise specified in this Schedule 4.
- (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, ~~:~~

- (i) as at 1 July 2023:
 - (A) 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
 - (B) Goodman Property Services (Aust) Pty Ltd (ACN 088 981 793) (**Goodman**), together with BGAI 12 Pty Ltd (ACN 637 474 545) in its capacity as trustee of the BGAI 1 Oakdale East Trust (**BGAI 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

- (C) 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.
- (ii) as at 18 March 2024:
- (A) the Developer has used a portion of the Excess Contributions Credit (being an amount of \$4,224,674.52) to discharge the obligation to pay a Contribution Amount in respect of "Precinct 3" of the Development; and
- (B) Goodman has an Excess Contributions Credit generated under the Oakdale West Estate Planning Agreement in the amount of \$18,352,257.52, which may be used to discharge an External WSEA Obligation.
- (b) The Minister agrees that, subject to clause 4(c) of this Schedule 4, the Developer may use the:
- (i) Intersection Offset Amount;
- (ii) Excess Contributions Credit; and
- (iii) Offset Amount, with the written consent of BGAI 12,
- to discharge its outstanding obligations under this deed to pay the Contribution Amounts comprising part of the Development Contribution.
- (c) However, the Developer must in the following order:
- (i) first, apply the Intersection Offset Amount; and
- (ii) then, Goodman's Excess Contributions Credit, and/or the Offset Amount
- to discharge its obligations under this deed to pay the Contribution Amounts comprising the Development Contribution.
- (d) 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:
- (i) has provided the Intersection Works Contribution and the Intersection Land Contribution; or
- (ii) where clause 4(d)(i) of this Schedule does not apply, 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; or
- (iii) has no Excess Contributions Credit remaining or an insufficient portion to satisfy the Developer's obligation to pay the Contribution Amount.
- (e) 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) Goodman is not precluded from using its Excess Contributions Credit or Offset Amount to satisfy other obligations in accordance with the Oakdale West Estate Planning Agreement and Oakdale East Stage 1 Planning Agreement or any other agreement that may be entered into with the Minister.
- (f) 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.
- (g) The Developer agrees that if:
- (i) a Construction Certificate relating to the Development has been issued (whether before or after the commencement of this deed); and
- (ii) the obligation to pay a Contribution Amount for a Relevant Part of the Land has not been satisfied before the issue of the certificate in a manner provided by this Schedule 4,
- the Minister may notify Goodman, in writing, that it has surrendered so much of the Excess Contributions Credit, Offset Amount and/or or the Intersection Offset Amount (in the Minister's absolute discretion) as is indicated on the updated contributions credit schedule, being an amount equivalent to the sum of:
- (iii) the Contribution Amount; and
- (iv) in the case only of a Construction Certificate issued after the commencement of this deed – any interest payable under clause 5.1.
- (h) For the avoidance of doubt, if the total value of the:
- (i) Intersection Offset Amount; and
- (ii) any Excess Contribution Credit or Offset Amount,
- which have been applied to discharge the Developer's obligations under this deed is less than the total of the Contribution Amounts, then Developer must pay any remaining balance of the total Contribution Amounts to the Minister in accordance with clause 3 of this Schedule 4.
- ~~(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 Contribution

~~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.~~

5.1 Provision of the Intersection Works Contribution

The Developer must provide the Intersection Works Contribution in accordance with this clause 5.

5.2 Conditions for the Commencement of the Intersection Works

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

- (a) if Development Consent is required other than SSD-37486043 – provide evidence to the Minister that it has obtained Development Consent for the Intersection Works;
- (b) provide to the Minister a copy of the relevant executed Road Works Deed to carry out the Intersection Works, receipt of which is acknowledged by the Minister as at the date of this deed; and
- (c) if a Section 138 Approval is required in relation to the Intersection Works, provide to the Minister a copy of the Section 138 Approval, receipt of which is acknowledged by the Minister as at the date of this deed.

5.3 Construction Contract for the Intersection Works

- (a) The Developer hereby gives notice to the Minister, and the Minister acknowledges, that the Developer has commenced the Intersection Works (**Works Notice**). The Minister acknowledges having received from the Developer a copy of each Construction Contract in place for the Intersection Works.
- (b) If the Developer is to engage a third party to carry out the Intersection Works, other than Robson Civil whose engagement by the Developer to carry out the Intersection Works is acknowledged by the Minister, then clauses 5.3(c) to (f) apply.
- (c) The Developer may only enter into a Construction Contract with a third party contractor who is:
 - (i) appointed under the competitive tender process on an arm's length basis; and
 - (ii) approved by the Roads Authority and meets all of the Road Authority's requirements.
- (d) The Developer must undergo a competitive tender process in awarding a Construction Contract for the Intersection Works and provide evidence of such tender process to the Minister within 10 Business Days of awarding the Construction Contract.
- (e) If further Construction Contract(s) are entered into after the Works 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 clauses 5.3(c) and (d) above. The Developer will provide the Minister with a copy of the further Construction Contract(s).
- (f) Each Construction Contract must:
 - (i) identify a superintendent for the Intersection Works;
 - (ii) provide a reasonable itemisation of works comprising the Intersection Works, which, in relation to construction work, may be by a bill of quantities;
 - (iii) identify the contract value for each item of the Intersection Works; and
 - (iv) identify the terms and conditions applicable to the carrying out of the Intersection Works.

5.4 Timing of the Intersection Works

The Developer must ensure Practical Completion of the Intersection Works in accordance with the Road Works Deed (if any) and by the time specified in the table in clause 1(b) of this Schedule 4.

5.5 Estimated Cost and Actual Cost of the Intersection Works

- (a) For the purposes of this clause 5.5, current CPI is the CPI for the quarter ending on 31 March in the calendar year in which the relevant adjustment is made.
- (b) The parties agree that on each CPI Adjustment Date, the Estimated Cost of the Intersection Works is to be adjusted by multiplying that cost by an amount equal to the current CPI divided by the Base CPI.
- (c) The parties agree that if the Actual Cost of the Intersection Works is more than the Estimated Cost of the Intersection Works, the Developer is only entitled to apply the Intersection Works Contribution Offset Amount to discharge the Developer's obligations under this deed, and not the Actual Cost of the Intersection Works.

- (d) 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 Intersection Works, following consultation with the Developer, acting in good faith and having proper regard to all matters put before the Minister by the Developer

5.6 Amendments to the Intersection Works

- (a) The Developer acknowledges and agrees that if the Developer makes any amendments to the Intersection Works which result in any change to the Estimated Cost of the Intersection Works, then prior to practical completion of the Intersection Works, the Developer must provide a notice in writing to the Minister which:
- (i) states the changes that have been made to the Intersection Works (**Modified Intersection Works**);
 - (ii) attaches any relevant approval for the changes that have been made to the Intersection Works; and
 - (iii) states the estimated cost of the Modified Intersection Works as determined by a quantity surveyor (Estimated Cost of the Modified Intersection Works).
- (b) The Minister may commission an accountant or a quantity surveyor (or both) at the Developer's expense, to review the notice and materials submitted by the Developer and to assist with the Minister's assessment of any notice submitted by the Developer in accordance with clause 5.6(a) of this Schedule.
- (c) If the Minister accepts the Estimated Cost of the Modified Intersection Works and is satisfied that the Developer has complied with clause 5.6(a) of this Schedule, then:
- (i) the Minister will issue the Developer with a notice that the Minister accepts the Estimated Cost of the Modified Intersection Works; and
 - (ii) the Estimated Cost of the Modified Intersection Works will become the Estimated Cost of the Intersection Works for the purposes of this deed.

6. Land Contribution

6.1 Provision of the Intersection Land Contribution

The Developer must provide the Intersection Land Contribution in accordance with this clause 6.

6.2 Valuation of the Intersection Land

- (a) For the purposes of this clause 6.2, current CPI is the CPI for the quarter ending on 31 March in the calendar year in which the relevant adjustment is made.
- (b) The parties agree that the portion of the Intersection Offset Amount that the Developer may apply to discharge the Developer's obligations under this deed by dedicating the Intersection Land as a public road is the Intersection Land Offset Amount.
- (c) Subject to clauses 6.2(c) and 6.5(e)(ii) of this Schedule 4, the Minister will recognise the amount specified in the table in clause 1(b) of this Schedule 4, as applicable, as the Value of the Intersection Land.
- (d) The parties agree, on each CPI Adjustment Date, the Value of the Intersection Land (being the amount specified in the table in clause 1(b) of this Schedule 4) will be multiplied by an amount equal to the current CPI divided by the Base CPI until an Intersection Offset

Certificate is issued to the Developer that sets out the portion of the Intersection Offset Amount that has been credited for the Intersection Land Contribution.

6.3 Subdivision of the Intersection Land

- (a) In order to dedicate the Intersection Land in accordance with clause 6.5 of this Schedule 4, the Developer must (at its cost) obtain Development Consent (if any is required) and any other necessary approvals, in connection with a proposed Plan of Subdivision or other plan that on registration will dedicate the Intersection Land as a public road in accordance with section 9 of the Roads Act 1993.
- (b) The Developer must comply with any conditions of Development Consent and other approvals.

6.4 Timing for Provision of the Intersection Land Contribution

The Developer must provide the Intersection Land Contribution in accordance with this deed by the time specified in the table in clause 1(b) of this Schedule 4 (**Intersection Land Dedication Date**)

6.5 Dedication of Intersection Land

- (a) In satisfying its obligation under clause 6.4 of this Schedule 4, the Developer must:
 - (i) deliver to the Roads Authority for approval a proposed Plan of Subdivision or other plan that bears a statement of intention to dedicate the Intersection Land as a public road as provided by section 9 of the Roads Act 1993;
 - (ii) deliver to the Roads Authority a Contaminated Land Report and Contaminated Land Statement from a Contaminated Land Consultant in respect of the Intersection Land which:
 - (A) state that the Intersection Land is suitable or will be suitable for the purposes of a road as at the Intersection Land Dedication Date;
 - (B) are addressed to the Minister and the Roads Authority; and
 - (C) are otherwise on terms satisfactory to the Minister and Roads Authority (acting reasonably);
 - (iii) upon receipt of approval from the Roads Authority to register the proposed Plan of Subdivision or other plan that bears a statement of intention to dedicate the Intersection Land as a public road referred to in clause 6.5(a)(i) of this Schedule 4, lodge that proposed Plan of Subdivision or other plan at the NSW Land Registry Services for registration;
 - (iv) promptly comply, or procure compliance with, any requisitions raised by the Registrar General in relation to the dedication of the Intersection Land as a public road; and
 - (v) take any other necessary action to give effect to the dedication of the Intersection Land as a public road 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 the Roads Authority in writing.
- (b) If the Developer does not comply with clause 6.5(a)(ii), the Minister or Roads Authority may:

- (i) refuse to accept the dedication of the Intersection Land; and
 - (ii) require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Minister or the Roads Authority (acting reasonably), so as to enable the Developer to comply with clause 6.5(a)(ii),

in which case the Developer must comply with the Minister's requirements.
- (c) For avoidance of doubt, clause 6.5(a)(v) 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 Intersection Land could not prevent from affecting the Intersection Land and in respect of which no action can be taken by the Developer or owner of the Intersection Land.
- (d) Despite clause 6.5(a)(v) of this Schedule 4, if, 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 6.5(a)(v), then:
 - (i) the Developer may request that the Roads Authority 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 as a public road; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,

the Minister or Roads Authority may agree to accept the land subject to those encumbrances (**Agreed Encumbrances for Intersection Land**); and
 - (iii) in other circumstances, the Minister or the Roads Authority may withhold the Minister's or Roads Authority's agreement at their absolute discretion.
- (e) If the Minister or Roads Authority agrees to accept the Intersection Land subject to the Agreed Encumbrances for Intersection Land, then:
 - (i) the Developer must provide to the Minister or the Roads Authority, a valuation report (prepared by an appropriately qualified valuation expert) which quantifies the diminution in value of the Intersection Land as a result of the Agreed Encumbrances for Intersection Land (**Intersection Land Diminution Amount**); and
 - (ii) the Value of the Intersection Land is to be reduced by the Intersection Land Diminution Amount.
- (f) The Developer indemnifies and agrees to keep indemnified the Minister and the Roads Authority against all Claims made against the Minister or Roads Authority as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Intersection Land but only in relation to Contamination that existed on or before the date the Intersection Land is dedicated as a public road or compulsorily acquired by the Minister or the Roads Authority (as the case may be).
- (g) The Developer will pay all rates and Taxes owing in respect of the Intersection Land up to and including the date that the Developer dedicates the Intersection Land as a public road pursuant to clause 6.4 of this Schedule 4 or the date of acquisition (as applicable), after which time the Roads Authority will be responsible for any rates and Taxes in relation to the Intersection Land.

- (h) The Developer indemnifies and keeps indemnified the Minister (or at the Minister's election, the Roads Authority) in relation to any failure of the Developer to comply with clauses 6.2 to 6.5 of this Schedule 4.
- (i) The parties agree that clause 6 of this Schedule 4 operates as a deed poll in favour of the Roads Authority (where applicable).
- (j) Despite any other provision of this Schedule 4, the Developer may request the Minister to agree to providing the Intersection Land Contribution in a different manner to dedication through registration of a Plan of Subdivision or other plan as referred to in section 9 of the Roads Act 1993. If the Minister agrees to the request, the parties may agree to the modification of provisions of Schedule 4 referring to such a plan to accommodate the alternative manner in which the land is to be provided.

6.6 Compulsory Acquisition of the Intersection Land

- (a) If the Developer does not dedicate the Intersection Land as a public road as required by clause 6.5 of this Schedule 4, the Minister may elect to, and the Developer consents to, the Minister or the Roads Authority compulsorily acquiring the whole or any part of the Intersection Road Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.
- (b) The Developer and the Minister agree that:
 - (i) this clause 6.6 is an agreement between the Developer and the Minister or Roads Authority for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 6.6 the Developer and the Minister or Roads Authority have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) Subject to clause 6.5(d) of this Schedule 4, the Developer must ensure that the Intersection Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges) immediately before the Intersection Land is to be acquired by the Minister or the Roads Authority.
- (d) The Developer indemnifies and keeps indemnified the Minister and the Roads Authority against any claims made against the Minister or Roads Authority as a result of any acquisition by the Minister or the Roads Authority of the whole or any part of the Intersection Land under this clause 6.6.
- (e) The Developer must pay the Minister or Roads Authority, promptly on demand, an amount equivalent to all Costs reasonably incurred by the Minister in acquiring the whole or any part of the Intersection Land as contemplated by this clause 6.6.

7. Completion of Works in Kind Contribution or Land Contribution

7.1 Completion Notice

- (a) If the Developer considers that it has completed the Intersection Works Contribution or the Intersection Land 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 Intersection Works Contribution or the Intersection Land Contribution (as the case may be) has been completed (**Completion Notice**) together with:

- (i) in relation to the Intersection Works Contribution, a certificate from the Roads Authority confirming that Practical Completion of the Intersection Works has occurred;
- (ii) in relation to the Intersection Land Contribution, a registered Plan of Subdivision or other registered plan that bears a statement of intention to dedicate the Intersection Land as a public road in accordance with section 9 of the *Roads Act 1993*;
- (iii) in the case of the Intersection Works Contribution, 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 Intersection 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 to form the Actual Costs; and
- (iv) such other supporting documentation as is necessary for the Minister to determine whether the Intersection Works Contribution or the Intersection Land Contribution (as the case may be) has been completed. The Developer must promptly provide any additional information reasonably requested by the Minister.
- (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 Costs associated with the Intersection Works Contribution.
- (c) The Minister will, within 45 days of receiving the Completion Notice and all the certificates and information required under this clause 7.1, determine:
 - (i) whether the Intersection Works Contribution or the Intersection Land Contribution (as the case may be) has been completed; and
 - (ii) the approved Actual Cost which the Minister will recognise as being properly attributable to the Intersection Works Contribution (**Approved Actual Cost**).
- (d) If the Minister, acting reasonably, is satisfied that the Intersection Works Contribution or the Intersection Land Contribution (as the case may be) has been provided, the Minister will:
 - (i) accept the Intersection Work Contribution or the Intersection Land Contribution (as the case may be) to discharge (in part) the Developer's obligation under this deed to pay a Contribution Amount; and
 - (ii) issue an Intersection Offset Certificate to the Developer which will set out the Intersection Offset Amount that has been credited for the Intersection Works Contribution or the Intersection Land Contribution (as the case may be) (the **Credited Offset Amount**).
- (e) If the Minister, acting reasonably, is not satisfied the Intersection Works Contribution or the Intersection Land Contribution has been provided, the Minister will notify the Developer

and provide an explanation as to why he or she considered that the Intersection Works Contribution or the Intersection Land Contribution (as the case may be) 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 Intersection Works Contribution or the Intersection Land Contribution (as the case may be). The Developer may, after taking into account the Minister's explanation and undertaking the work or providing the information or documents required, re-submit a Completion Notice together with any necessary documentation.

(f) If, despite the actions undertaken under clause 7.1(e) of this Schedule 4, the parties dispute whether the Intersection Works Contribution or the Intersection Land Contribution has been provided to the Minister, clause 7 of this deed applies to the resolution of the dispute.

7.2 Indexation of the Credited Offset Amount

The parties acknowledge and agree that the Credited Offset Amount (or the balance of that amount that remains available to the Developer) will be adjusted on each CPI Adjustment Date until the whole of the Credit Offset Amount has been applied, using the following formula:

$$\text{CC} = \text{COA} \times \frac{\text{Current CPI}}{\text{Relevant Base CPI}}$$

Where:

CC is the newly adjusted Credited Offset Amount.

COA means the Credited Offset Amount (or the balance of that amount that remains available to the Developer).

Current CPI: is the CPI for the quarter ending on 31 March in the calendar year in which the relevant adjustment is made.

Relevant Base CPI: means the CPI for the quarter ending on 31 March in the calendar year immediately preceding the calendar year in which the adjustment is made.

8. Failure to provide the Intersection Works Contribution or Intersection Land Contribution

(a) The Developer acknowledges and agrees that if:

(i) the Developer has not provided the Intersection Land Contribution or the Intersection Works Contribution by time required under this deed; and

(ii) the Developer wishes to apply for the Occupation Certificate for the first warehouse building in Stage 2 of the Development or for a Construction Certificate for a building or part of a building authorised by the Stage 3 Consent,

then Minister may at the Minister's absolute discretion, draw upon the Excess Contribution Credit or Offset Amount in order to discharge the Developer's obligation to pay a Contribution Amount under this deed.

(b) If the Minister draws upon the Excess Contribution Credit or Offset Amount to satisfy the Developer's obligations to pay a Contribution Amount under this deed in accordance with clause 8(a) of this Schedule:

(i) the Developer is taken to have surrendered its Excess Contributions Credit or Offset Amount, or both, to the extent notified by the Minister in writing to the Developer and indicated on the contributions credit schedule referred to in clause 4.3 of Schedule 4 to the Oakdale West Planning Agreement or on the Offset Certificate referred to in clause 5.2(c) of Schedule 4 to the Oakdale East Stage 1 Planning Agreement, respectively; and

(ii) the Developer is not entitled to apply any part of the Intersection Offset Amount towards its obligations to pay a Contribution Amount under this deed or under any other deed with the Minister.

Schedule 5

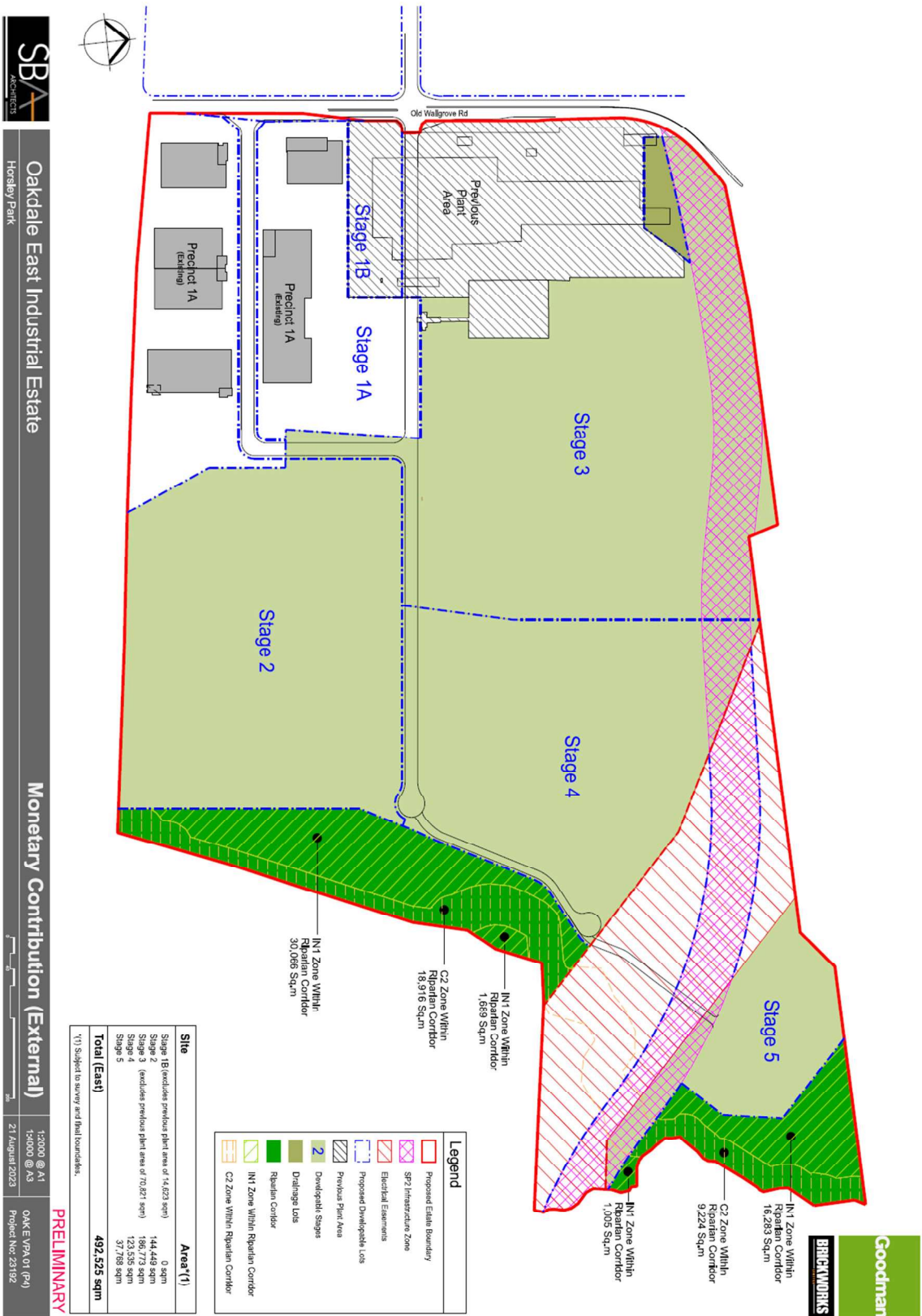
Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

1. The Net Developable Area for the Development on a Relevant Part of the Land, as defined in clause 1(a)(ii) 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;

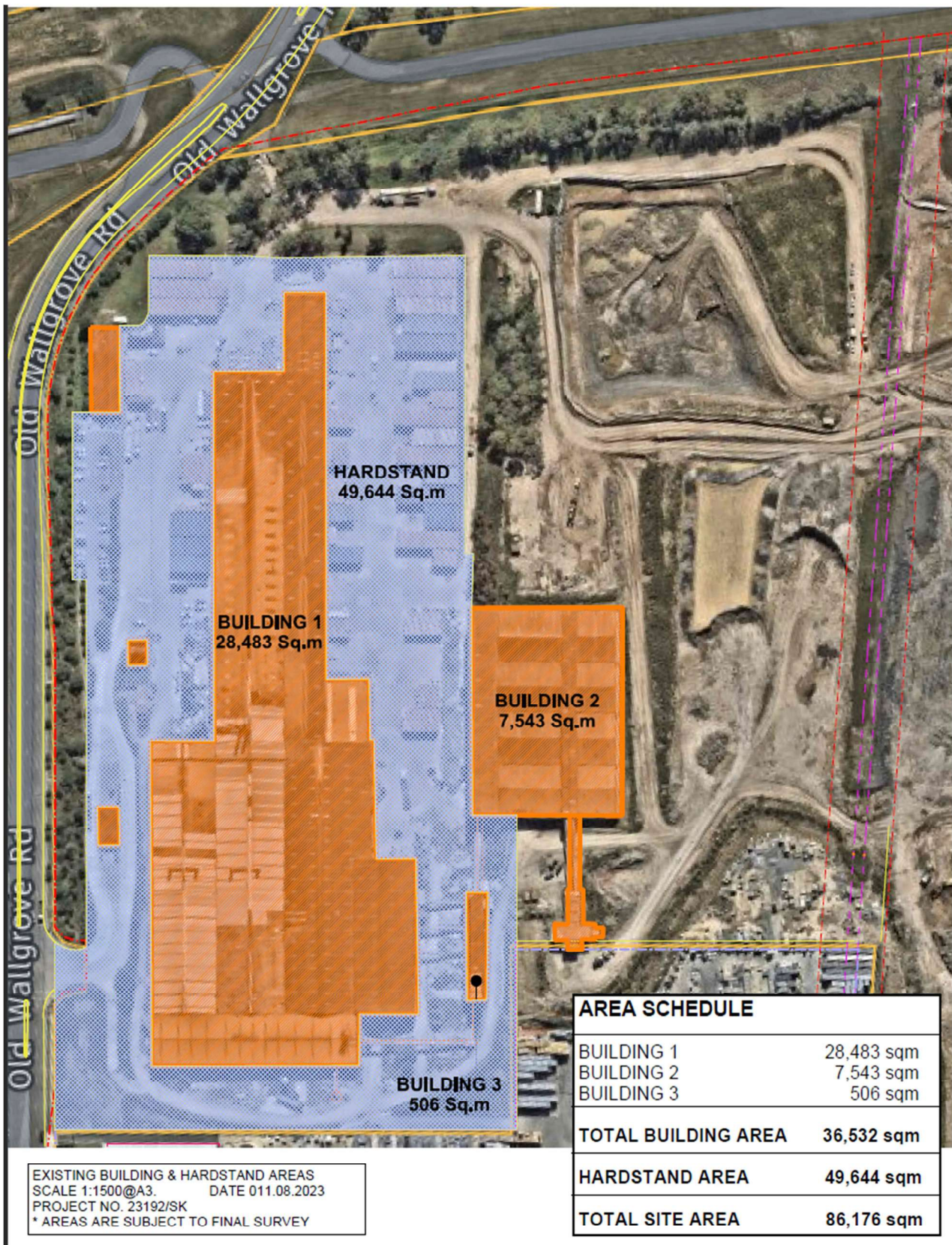
- (c) any area of land that is within Zone C2 Environmental Conservation or that is within a riparian corridor as shown on the plan in Schedule 6;
 - (d) any area of land within the curtilage of a building listed on the State Heritage Register;
 - (e) any area of land this is within an asset protection 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:

.....
Signature of Witness

.....
Signature of Attorney

.....
Name of Witness in full

.....
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:

.....
Signature of Witness

.....
Signature of Attorney

.....
Name of Witness in full

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Name of Attorney in full

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Signature of Witness

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Signature of Attorney

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Name of Witness in full

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Name of Attorney in full

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WALLGROVE ROAD

BURLEY ROAD

LATITUDE ROAD

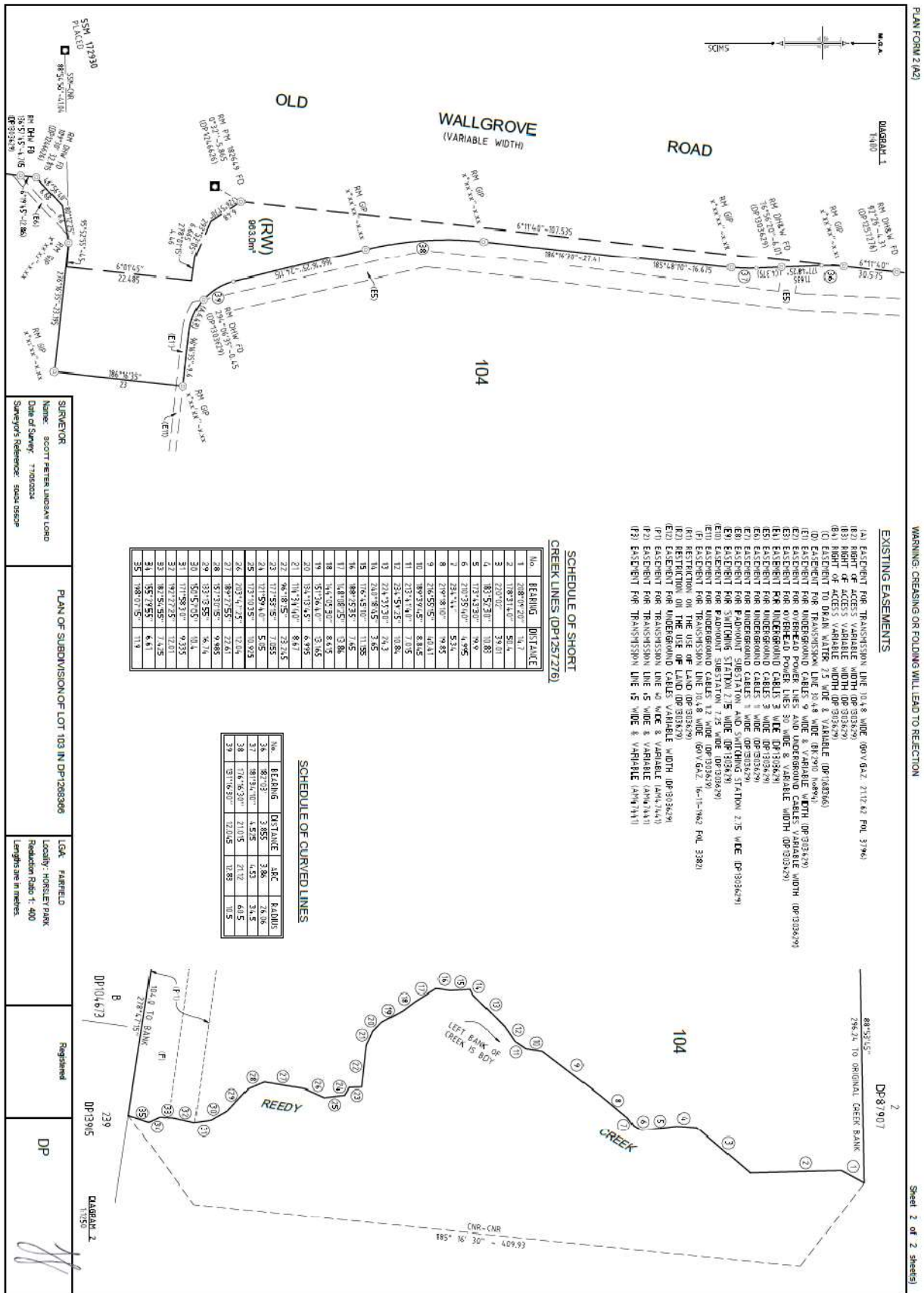
REEDY CREEK

SEE SHEET 1 FOR EXHIBENT DESCRIPTION

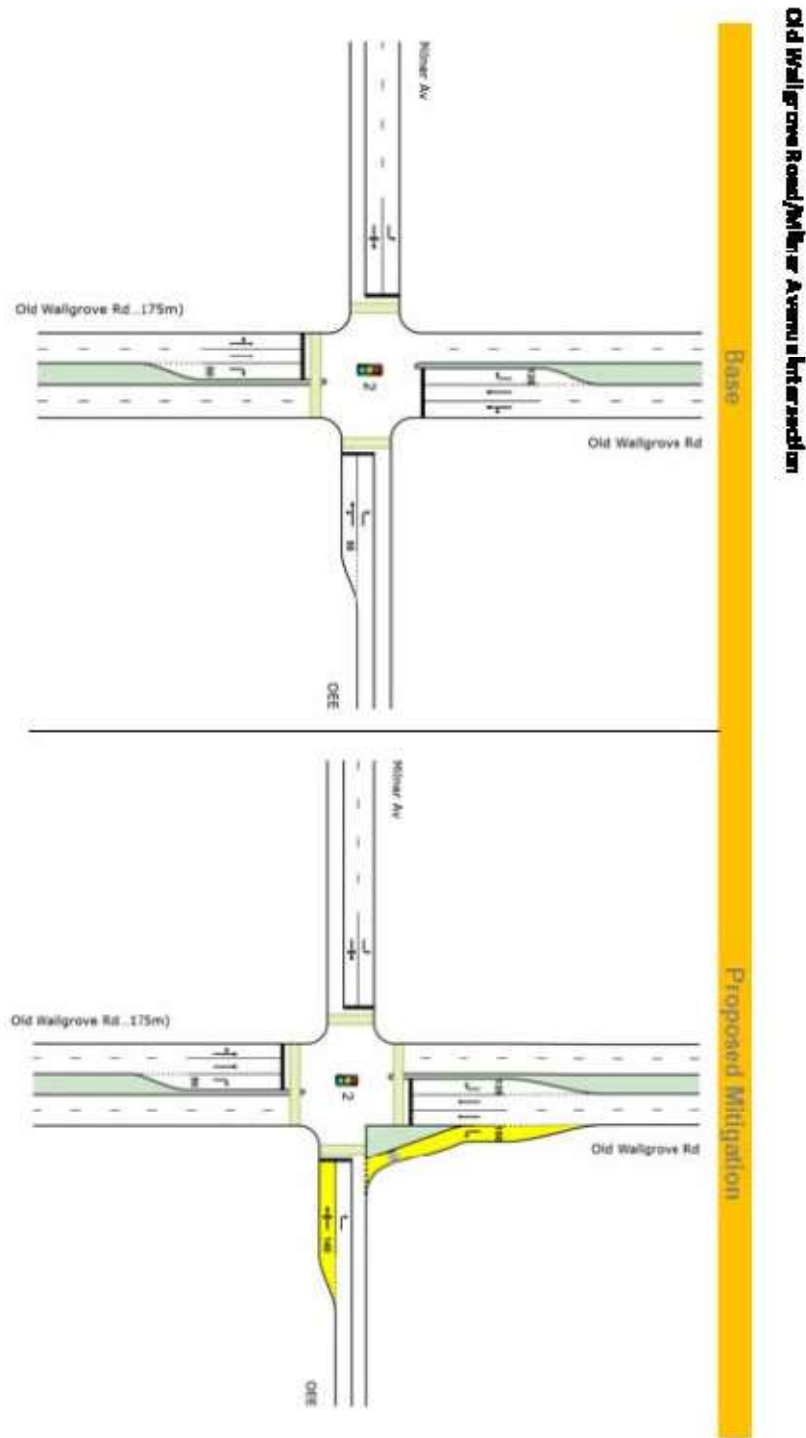
SEE SHEET 2 FOR EXHIBENT DESCRIPTION

Scale: 1" = 100'

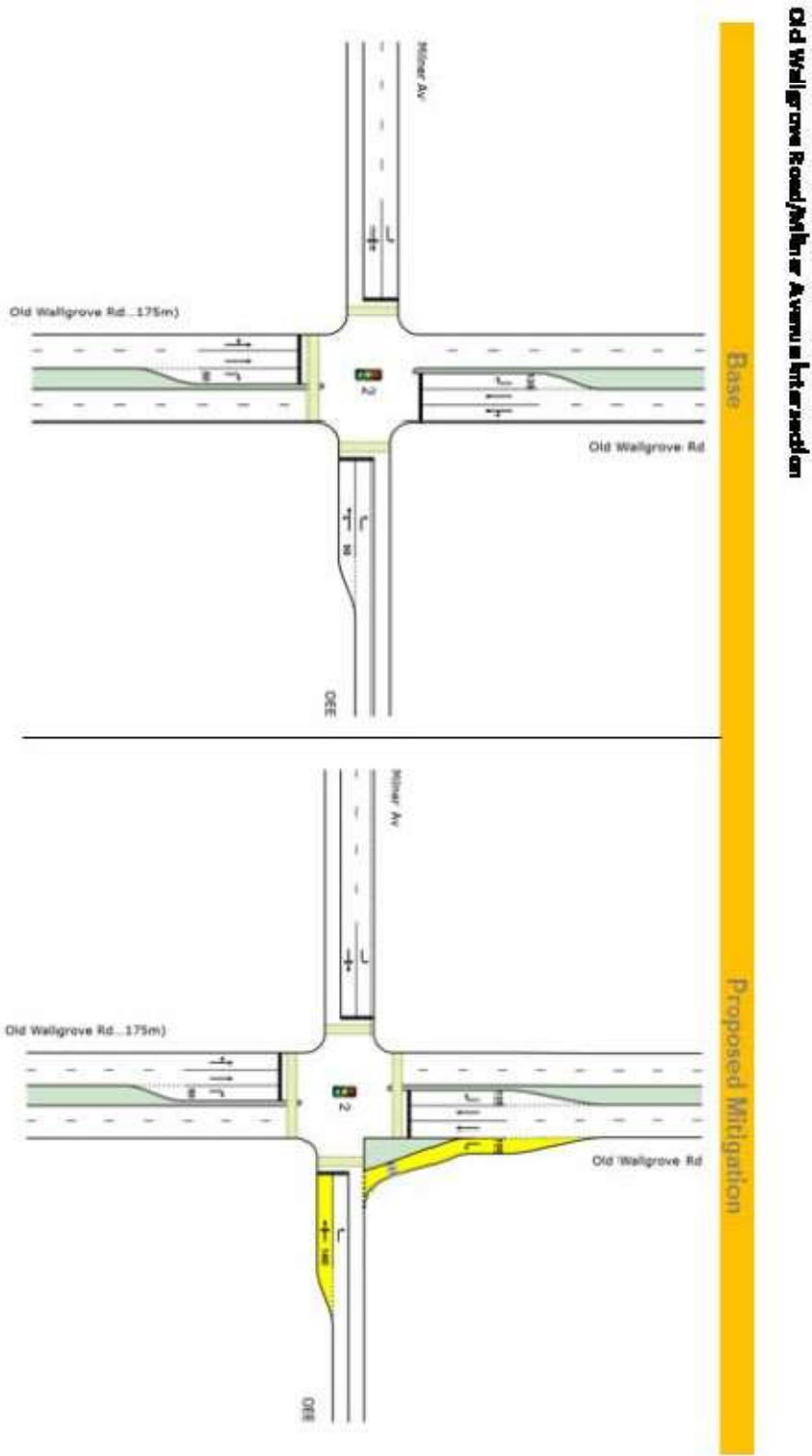
Surveyor: [Name], [Address], [City], [State], [Zip]



Annexure B: Old Wallgrove Road and Lenore Drive Intersection Upgrade – plans



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K. Spence

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