

Deed of Variation to Planning Agreement

Oakdale West Planning Agreement

Parties

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

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

**BGMG 11 Pty Limited (ABN 73 616 276 076) as trustee for the BGMG 1
Oakdale West Trust (ABN 79 264 172 511)**

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Date

Parties **Minister for Planning and Public Spaces** (ABN 20 770 707 468) c/-NSW Department of Planning, Housing and Infrastructure of 4 Parramatta Square, 12 Darcy Street, Parramatta, NSW 2150 (**Minister**)

AND

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

AND

BGMG 11 Pty Limited (ABN 73 616 276 076) as trustee for the **BGMG 1 Oakdale West Trust** of 'The Hayesbery' 1-11 Hayes Road, Rosebery, NSW 2018 (ABN 79 264 172 511) (**Landowner**)

Introduction

- A. The Minister, the Developer and the Landowner entered into the Planning Agreement relating to Oakdale West Estate, Erskine Park on 26 July 2019.
- B. Under the Planning Agreement, the Developer may use any Excess Contributions Credit generated under that agreement to discharge an External WSEA Obligation, being an obligation to make a development contribution relating to regional transport infrastructure and services on other land in Western Sydney Employment Area.
- C. The parties agree that, as at 1 July 2025, the total Excess Contributions Credit under the Planning Agreement equals \$19,485,185.08.
- D. On 1 October 2023 clause 2.28 of *State Environmental Planning Policy (Industry and Employment) 2021* requiring the Planning Secretary to certify that satisfactory arrangements had been made to contribute to the provision of regional transport infrastructure and services in relation to land in Western Sydney Employment Area (**satisfactory arrangements clause**) was repealed. The new scheme for housing and productivity contributions commenced on the same date.
- E. Having regard to the repeal of the satisfactory arrangements clause, the Department, on behalf of the Minister, has agreed to an amendment of the Planning Agreement to enable any Excess Contributions Credit to be used also to discharge a future housing and productivity contribution (other than any strategic biodiversity component or transport project component) for development on other land in Western Sydney Employment Area.
- F. The parties have also agreed to clarify the on-going adjustment of the value of any Excess Contributions Credit by applying the Sydney Consumer Price Index (All Groups).

It is agreed:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (a) **Deed** means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.

- (b) **Planning Agreement** means the planning agreement between the Minister, the Developer and the Landowner dated 26 July 2019 (with the identifier SVPA-2017-8367).

1.2 Interpretation

- (a) In this Deed, unless the contrary intention appears:
 - (i) capitalised words and phrases used but not defined in this Deed have the same meanings they have in the Planning Agreement; and
 - (ii) clause 1.2 of the Planning Agreement will apply to the interpretation and construction of this Deed.
- (b) The parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

2 Status of this Deed

This Deed is an amendment to the Planning Agreement as referred to in section 203(5) of the *Environmental Planning and Assessment Regulation 2021*.

3 Commencement

This Deed commences operation on the date it is signed by all parties (**Commencement Date**).

4 Warranties and representations

- 4.1 The parties represent and warrant that they have power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any law.
- 4.2 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.

5 Variation to Planning Agreement

- 5.1 On and from the Commencement Date, the Planning Agreement is amended as set out in Schedule 1 – Amendments to Planning Agreement.
 - 5.2 The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.
 - 5.3 Nothing in this Deed:
 - (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or
 - (b) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.
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6 Expenses

- 6.1 The Developer must pay its own legal costs and disbursements, and the Minister's reasonable legal costs and disbursements, in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 6.2 The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the *Environmental Planning and Assessment Regulation 2021*, and the review of any submissions received during the public notice period.
- 6.3 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).
- 6.4 The Developer must provide the Minister with bank cheques or deposit the funds by means of electronic funds transfer into a bank account nominated by the Minister in respect of the Minister's costs pursuant to clauses 6.1 and 6.2:
- (a) where the Minister has provided the Developer with a written notice of the sum of such costs accompanied by an invoice prior to execution, on the date of execution of this Deed; or
 - (b) where the Minister has not provided the Developer with a written notice of the sum of such costs prior to execution, within 10 business days of demand by the Minister for payment accompanied by an invoice.

7 GST

Clause 9 of the Planning Agreement applies as if it forms part of this Deed, with any necessary changes.

8 Confirmation

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

9 Notices

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in the manner required by clause 13.16 of the Planning Agreement.

10 General

10.1 Entire agreement

This Deed constitutes the entire agreement between the Parties regarding the variation of the Planning Agreement, including with respect to those matters set out in clauses 1 to 10

(inclusive) of this Deed, and supersedes any prior representations, understandings or arrangements between the Parties, whether orally or in writing.

10.2 **Incorporation of provisions of Planning Agreement**

Clauses 13.2 to 13.13, and Schedule 7, of the Planning Agreement are incorporated in this Deed as if they were set out in full in this Deed and references to the Planning Agreement were references to this Deed.

10.3 **Assignment and dealings**

None of the Parties to this Deed may assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or be varied in each case unless stated otherwise in this Deed. This clause 10.3 does not prevent assignment or novation of the Planning Agreement, as varied by this Deed, in accordance with clause 10.1 of the Planning Agreement.

10.4 **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 a party. 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 is taken to have the same legal effect as delivery of an original executed copy of this Deed for all purposes.
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Schedule 1 – Amendments to Planning Agreement

The Planning Agreement is amended as follows:

1. Interpretation – clause 1.1

Omit the definition of **External WSEA Obligation**. Insert instead:

External WSEA Obligation means either of the following:

- (a) an obligation to make a development contribution relating to the provision of regional transport infrastructure and services on other land in WSEA (not being the Land);
- (b) an obligation to make a Housing and Productivity Contribution for development on other land in WSEA (not being the Land), other than any Strategic Biodiversity Component or Transport Project Component of that contribution,

including an obligation to make any such contribution on land that is not owned by a party to this deed.

2. Interpretation – clause 1.1

Insert the following definitions in appropriate alphabetical order:

Housing and Productivity Contribution has the same meaning as in Subdivision 4 of Division 7.1 of the Planning Act.

Strategic Biodiversity Component has the same meaning as in Subdivision 4 of Division 7.1 of the Planning Act.

Transport Project Component has the same meaning as in Subdivision 4 of Division 7.1 of the Planning Act.

3. Interpretation – clause 1.1

Omit the definition of **WSEA SEPP**. Insert the following definitions instead:

WSEA means the land to which the WSEA SEPP applies.

WSEA SEPP means Chapter 2 of *State Environmental Planning Policy (Industry and Employment) 2021*.

4. Schedule 4, clause 4.3

Omit clause 4.3 (i). Insert instead:

- (i) The parties acknowledge that, as at 1 July 2025:
 - (i) under the *Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024 (2024 Order)* a Housing and Productivity Contribution imposed as a condition of a complying development certificate cannot be made by dedicating or providing land or carrying out works; and
 - (ii) accordingly, an Excess Contributions Credit cannot be used to discharge the Housing and Productivity Contribution.
- (j) However, subject to clauses 4.3(f), 4.3(g) and 4.3(h) of this Schedule 4, the Excess Contributions Credit may be used to discharge an External WSEA Obligation that is a Housing and Productivity Contribution imposed as a condition of a complying development certificate if the 2024 Order is amended, or a new Ministerial planning order is made, under Subdivision 4 of Division 7.1 of the Planning Act, so as to allow a

contribution to be made by dedicating or providing land or carrying out works for such development (with the agreement of the Minister).

- (k) The Minister may correct any errors made in keeping the contributions credit schedule referred to in clause 4.3(g) of this Schedule 4 in the Minister's discretion, acting reasonably and following consultation with the Developer. In consulting the Developer, the Minister must provide evidence to the satisfaction of the Developer (acting reasonably) to substantiate the error. If the Developer is not satisfied, the Developer or the Minister may refer the matter to dispute resolution in accordance with the terms of this deed.
- (l) The parties agree that, for the purposes of this clause 4.3 of Schedule 4:
 - (i) as at 1 July 2025 the Excess Contributions Credit or Excess Contributions Credits are equal to \$19,485,185.08 (**2025 Excess Contributions Credit**); and
 - (ii) the **Excess Contributions Credit Balance**, at any time, is the 2025 Excess Contributions Credit less any amount used to discharge an External WSEA Obligation, but adjusted in accordance with clause 4.3(n) of this Schedule 4.
- (m) The Excess Contributions Credit Balance is to be adjusted on 1 July 2026, and on 1 July in each subsequent year, by multiplying it by the following fraction:

$$\frac{\text{latest CPI number}}{\text{relevant base CPI number}}$$

where:

latest CPI number is the CPI number for the March quarter in the calendar year in which the adjustment is made, and

relevant base CPI number is the CPI number for the March quarter in the calendar year immediately preceding the calendar year in which the adjustment is made.

(The March quarter is the quarter commencing on and including 1 January and ending on and including 31 March in the same year.)

- (n) To avoid doubt, nothing in this clause 4.3 of Schedule 4 requires the Minister to act contrary to any provision of the Planning Act or a Ministerial planning order under Subdivision 4 of Division 7.1 of that Act.

Signed sealed and delivered by the **Minister for Planning and Public Spaces** (ABN 20 770 707 468) in the presence of:

Name of Attorney in full

Executed by: **BGMG 11 Pty Limited** (ABN 73 616 276 076) **as trustee for the BGMG 1 Oakdale West Trust** (ABN 79 264 172 511) by its attorneys under a power of attorney registered in New South Wales Book 4719 No 800:

Signed by:

7C10704E652D430...

Signature of Witness

Zahra Ali 13/8/2025 | 14:25 AEST

Name of Witness in full

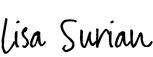
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59CFD833159747B...

Signature of Attorney

Samantha Jane Evans 13/8/2025 | 14:21 AEST

Name of Attorney in full

DocuSigned by:

25847D24145643C...

Signature of Witness

Lisa Surian 14/8/2025 | 11:46 AEST

Name of Witness in full

DocuSigned by:

AD666F0AB59E499...

Signature of Attorney

Megan Kublins 14/8/2025 | 11:40 AEST

Name of Attorney in full