

Planning Agreement

**Minchinbury Employment Park, 60 Wallgrove Road, Eastern
Creek**

Minister for Planning (ABN 38 755 709 681)

Mirvac Capital Pty Limited (ACN 096 525 405)

Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130)

Handwritten signature and initials, possibly 'AP/S', in black ink.

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This deed is dated

Parties:

Minister

Minister for Planning (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales 2000

Developer

Mirvac Capital Pty Limited (ACN 096 525 405) as trustee for the Mirvac Industrial No.1 Sub Trust of Level 26, 60 Margaret Street, Sydney, New South Wales 2000

Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130) as trustee for the Mirvac Industrial No.2 Sub Trust of Level 26, 60 Margaret Street, Sydney, New South Wales 2000

Introduction:

- A** The Developer owns the Land.
- B** On 29 June 2010, the Minister for Planning granted Concept Plan Approval to develop the Land for the establishment of the Minchinbury Employment Park, being a park of warehouses, distribution centres, light industry, office premises, high technology uses, freight logistic facilities, and associated infrastructure.
- C** Pursuant to the Concept Plan Approval, the Developer has now lodged a Development Application seeking Development Consent to carry out the Development on the Land. As the Development is State Significant Development under the *State Environmental Planning Policy (State and Regional Development) 2011*, the Minister for Planning is the Consent Authority.
- D** The Developer has also lodged a modification application in relation to the Concept Plan Approval to ensure consistency with the Development Application.
- E** Clause 29 of the SEPP provides that the Consent Authority must not grant 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 referred to in clause 29 of the SEPP.
- F** 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 the SEPP and to satisfy requirements of the Concept Plan Approval.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

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

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

Bank Guarantee means an irrevocable and unconditional undertaking:

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

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2015.

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

Concept Plan Approval means Concept Plan Approval MP 09_0099 granted by the Minister for Planning on 29 June 2010 under the former section 750 of the Act, as modified.

Consent Authority means the Minister for Planning.

Construction Certificate has the same meaning as in the Act.

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

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

CPI Adjustment Date means 1 July 2016 and each anniversary of 1 July 2016 thereafter.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the financial year preceding the date of the relevant adjustment under clause 2(a) of Schedule 4.

Developer means Mirvac Capital Pty Limited and Mirvac Commercial Sub SPV Pty Limited.

Development means the demolition of existing structures, bulk earthworks, construction and operation of five warehouses and distribution related facilities and installation of associated infrastructure generally in accordance with Development Application SSD 6962 which has been lodged with the Consent Authority, as amended from time to time.

Development Application has the same meaning as in the Act.

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

Development Consent has the same meaning as in the Act.

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

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

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

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

Insurance Bond means an irrevocable and unconditional undertaking:

- (a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
 - (b) on terms acceptable to the Minister, in the Minister's absolute discretion,
- to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and who is subject to prudential supervision by Australian Prudential Regulatory Authority.

Land means the land described in Schedule 3 of this deed.

Minister means the Minister for Planning and includes the Secretary, or other officer of the Department of Planning and Environment, and includes the Minister's nominee, whether nominated before or after the date of this deed.

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.

Net Developable Area has the meaning given to that term in Schedule 6 to this deed.

Occupation Certificate has the same meaning as the Act and, for the avoidance of doubt, includes an interim occupation certificate and a final occupation certificate as referred to in section 109H of the Act.

Planning Application means:

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

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

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

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

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services in accordance with clause 29 of the SEPP.

Secretary means the Secretary of the Department of Planning and Environment from time to time (or nominee, whether nominated before or after the date of this deed).

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

Stage of Development means the construction of a stage of the Development on a part of the Land as shown on the Stage of Development Plan (as amended from time to time), and in relation to Stage 1 and 2, includes the construction of the internal road.

Stage of Development Plan means the plan annexed and marked "A" to this Deed which may be varied from time to time with written notice to the Minister on up to two occasions, with written

notice to the Minister, otherwise with the consent of the Minister not to be unreasonably withheld.

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

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;

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

2. Operation and application of this deed

2.1 Operation

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

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F 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 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

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

4.2 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 94EE of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
 - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount for a Stage of Development authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed for that stage, then:
 - (i) the Developer is required to pay only the SIC Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 5 and clauses 1(c), 2(a) and 3 of Schedule 4.
- (c) If the SIC Amount for a Stage of Development authorised by the relevant Development Consent is more than the Contribution Amount that would otherwise be payable under this deed for that stage, then:

- (i) the Developer is required to pay only the Contribution Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 5 and clauses 1(c), 2(a) and 3 of Schedule 4.
- (d) Clause 4.2(b) applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (e) In this clause 4.2, a reference to the SIC Amount for a Stage of Development authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for that stage calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 94EF of the Act had not been excluded by this deed and the Development Consent had been granted before the SIC Determination took effect.

4.3 Acknowledgement

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose 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. Enforcement

6.1 Developer to provide security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing an Insurance Bond or Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

Within 6 calendar months of receiving a copy of this deed executed by the Minister, the Developer at its own expense must 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
- (b) the execution of any documents;
- (c) the production of the relevant certificates of title;
- (d) payment of any duty liability arising from this deed under the *Duties Act 1997* (NSW) and even if duty is not liable to be paid, presentation of this deed for marking at the Office of State Revenue; and
- (e) the lodgement and registration of this deed, 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.

7.2 Evidence of registration

The Developer must provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

The Minister agrees to promptly 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.

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed, and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 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.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, 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.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (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.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 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 8 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 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 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.

9. GST

9.1 Definitions

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

9.2 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.

9.3 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.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.4.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party 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

the Developer provides a Tax Invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

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

10. Assignment and transfer

10.1 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 obligations (**Assigning Party**) must seek the consent of the Minister and:
- (b) 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 in order to perform the Assigning Party's obligations under this deed insofar as those obligations have been novated to the Incoming Party;
 - 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 was the Assigning Party; and
- (i) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 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 in relation to which a Contribution Amount has not been paid.
- (b) Notwithstanding clause 10.2(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 in order 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 was 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 10.2.

10.3 Replacement Security

Upon compliance with clause 10.1 and 10.2, the Minister will do all things reasonably necessary to allow the Transferee or Incoming Party to substitute existing security provided under this deed with its own security including by promptly returning the Bank Guarantee or Insurance Bond if the Transferee or Incoming Party has supplied a replacement Bank Guarantee or Insurance Bond.

11. Trustee Developer

- (a) Mirvac Capital Pty Limited (**Mirvac Capital**) enters into this deed in its capacity as the trustee for the Mirvac Industrial No.1 Sub Trust (ABN 096 525 405) (**No. 1 Trust**).
- (b) Mirvac Commercial Sub SPV Pty Limited (**Mirvac Commercial**) enters into this deed as the trustee for the Mirvac Industrial No.2 Sub Trust (ACN 125 706 130) (**No 2 Trust**).
- (c) Mirvac Capital warrants that:
 - (i) it is the sole trustee of the No.1 Trust and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the No.1 Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of the No.1 Trust; and
 - (iv) it has the power under the deed constituting the No.1 Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting the No.1 Trust.
- (d) If the trustee of the No.1 Trust is replaced in accordance with the trust deed of the No.1 Trust, then:

- (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
 - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.
- (e) Mirvac Commercial warrants that:
 - (i) it is the sole trustee of the No.2 Trust and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the No.2 Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of the No.2 Trust; and
 - (iv) it has the power under the deed constituting the No.1 Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting the No.2 Trust.
- (f) If the trustee of the No.2 Trust is replaced in accordance with the trust deed of the No.2 Trust, then:
 - (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
 - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.
- (g) Mirvac Capital and Mirvac Commercial enter into this deed only in their capacity as trustee (**Trustee**) of No.1 Trust and No. 2 Trust, respectively (**Trust**) constituted under the Mirvac Industrial No. 1 Sub Trust trust deed dated 6 December 2013 and the Mirvac Industrial No. 1 Sub Trust trust deed dated 6 December 2013, respectively (**Trust Deeds**) and in no other capacity. A liability arising under or in connection with this deed is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the respective Trust. This limitation of the Trustee liability applies despite any other provision of this deed and 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.
- (h) 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 respective 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 respective 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 respective Trust.
- (i) This clause 11 does not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as Trustee of the Trust.
- (j) Nothing in clause (i) will make the Trustee liable to any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the respective Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the respective Trust had not been prejudiced by failure to properly perform its duties.
- (k) The Trustee is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (g) to (k) of this clause 11.

12. Capacity

12.1 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.

13. 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.

14. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents, Construction Certificates and Occupation 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 Development Contributions 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;
 - (v) details of details of all Development Consents, Construction Certificates and Occupation Certificates issued in relation to the Development; and
 - (vi) 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.

15. General Provisions

15.1 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.

15.2 Variation

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

15.3 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.

15.4 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.

15.5 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.

15.6 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.

15.7 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.

15.8 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.

15.9 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.

15.10 Counterparts

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

15.11 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.

15.12 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.

15.13 No fetter

Nothing in this deed shall 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.

15.14 Explanatory note

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

15.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable 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 in accordance with the Regulation.

- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 15.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

15.16 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 facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (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 facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (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 is not a Business Day, on the next Business Day after it is sent; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

Schedule 1

Table 1 - Requirements under section 93F 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 93F(2)) The Developer has: (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.	(a) No (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 93F(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))	The Development Contributions to be provided by the Developer under the deed must not be taken into consideration in determining a contribution under section 94.
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 8
Enforcement of this deed – (section 93F(3)(g))	See clause 6 and 7
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 15.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 2(b) of Schedule 5)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3 of Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
23-33 Bridge Street
Sydney NSW 2000

Facsimile No: (02) 9228 6455

Developer

Contact: Fabian Nager

Address: Level 26
60 Margaret Street
Sydney 2000

Facsimile No: (02) 9080 8187

Schedule 3

Land (clause 1.1)

Lot	Deposited Plan
Lot 1	DP1040948

Schedule 4

Development Contributions (clause 4)

1. Development Contributions

- (a) The parties agree that the Stage of Development Plan and Net Developable Area shown in the Stage of Development Plan are indicative only and that the details of those plans including the order and size of the stages (and therefore the Net Developable Area of each stage of the development) are subject to change. The parties agree that if the Stage of Development Plan is amended after the date of this deed, then the Contribution Amount in column 2 of the table in clause 1(b) of Schedule 4 will reflect the Net Developable Area of the proposed stage in the amended Stage of Development Plan.
- (b) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Stage of Development	Contribution Amount (subject to clause 2)	Timing
Stage 1	\$729,769 (being the Net Developable Area of Stage 1 (3.99003ha) (being 3.4952 ha + 60% of road reserve (0.49482)) x \$182,898)	Pursuant to clause 3 of this Schedule 4
Stage 2	\$507,392 (being the Net Developable Area of Stage 2 2.77418 (being 2.4443 ha plus 40% of road reserve 0.32988) x \$182,898)	Pursuant to clause 3 of this Schedule 4
Stage 3	\$681,643 (being the Net Developable Area of Stage 3 (3.7269ha) x \$182,898)	Pursuant to clause 3 of this Schedule 4
Stage 4	\$1,214,973 (being the Net Developable Area of Stage 4 (6.6429ha) x \$182,898)	Pursuant to clause 3 of this Schedule 4
Stage 5	\$849,634 (being the Net Developable Area of Stage 5 (4.6454ha) x \$182,898)	Pursuant to clause 3 of this Schedule 4

- (c) The Minister and Developer acknowledge and agree that the sum of the Contribution Amounts form the Development Contribution under this deed.
- (d) The Developer undertakes and agrees to carry out Development in accordance with the Stage of Development Plan.

2. Calculation of the indexed value of a Contribution Amount

- (a) On each CPI Adjustment Date, the value of the Contribution Amount for a Stage of Development in the table in clause 1(c) is to be adjusted by multiplying that amount payable by an amount equal to the Current CPI divided by the Base CPI.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee the Contribution Amount in respect of a Stage of Development prior to:
 - (i) the issue of an Occupation Certificate in respect of any building (or part thereof) located on any part of the Land in the relevant Stage of Development; or
 - (ii) commencing occupation or use of any building (or part thereof) located on any part of the Land in the relevant Stage of Development,whichever is the earlier.
- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Occupation Certificate within the meaning of section 109H(2) of the Act.
- (c) For the avoidance of doubt, the Developer agrees that it must pay each Contribution Amount irrespective of whether:
 - (i) it is the owner of the Land on the relevant due date for payment; or
 - (ii) it is the applicant for the relevant Occupation Certificate.
- (d) The Minister agrees to issue a certification that a Contribution Amount has been paid if and when requested in writing by the Developer.
- (e) For the purposes of clause 3(a) of this Schedule 4, the definition of "building" shall exclude any building solely occupied as an internal access road, fire access road, retaining wall, rainwater tank, electrical substation and infrastructure, fire tank, pump room, stormwater detention basin, and pipe and service trench.

Schedule 5

Security terms (clause 6)

1. Developer to provide Bank Guarantees or Insurance Bonds

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide security in the form of Bank Guarantees or Insurance Bonds.
- (b) The Bank Guarantee or Insurance Bond must:
 - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Bank Guarantees or Insurance Bonds

- (a) At the time the Developer signs this deed, the Developer undertakes to provide a Bank Guarantee or Insurance Bond to the Minister having a face value amount of \$729,769 in order to secure the payment of the Development Contribution as it relates to Stage 1 of the Development as shown on the Stage of Development Plan.
- (b) Prior to the issue of a Construction Certificate in respect of any Stage of Development (other than Stage 1 of the Development), the Developer undertakes to provide an additional Bank Guarantee or Insurance Bond to the Minister for a face value equivalent to the Contribution Amount in respect of that Stage of Development in order to secure the payment of the Development Contribution as it relates to that Stage of Development.
- (c) From the date of receipt of a Bank Guarantee or Insurance Bond until the date the Developer pays the Contribution Amount for a Stage of Development the Minister will be entitled to retain the Bank Guarantee or Insurance Bond for that Stage of Development subject to clause 4 below.
- (d) The parties agree that the requirement to provide a Bank Guarantee or Insurance Bond under clause 2(b) of this Schedule 5 is a restriction on the issue of the relevant construction certificate within the meaning of clause 146A of the Regulation.

3. Claims under Bank Guarantees or Insurance Bonds

- (a) The Minister may:
 - (i) call upon the Bank Guarantee or Insurance Bond where the Developer has failed to pay a Contribution Amount for a Stage of Development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Bank Guarantee or Insurance Bond the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call on the Bank Guarantee or Insurance Bond.

4. Release of Bank Guarantees or Insurance Bonds

- (a) Subject to clause 4(b) of this Schedule 5, if:
 - (i) the Developer paid the Contribution Amount for the relevant Stage of Development and has satisfied all of its obligations under this deed secured by the Bank Guarantee or Insurance Bond for that Stage of Development; and
 - (ii) the whole of the monies secured by the Bank Guarantee or Insurance Bond have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Minister will promptly return the Bank Guarantee or Insurance Bond as it relates to that Stage of Development (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee or Insurance Bond (as the case may be), to the Developer.

- (b) Notwithstanding the above, the Minister is only required to return a Bank Guarantee or Insurance Bond where the Minister is holding an additional Bank Guarantee or Insurance Bond for one or more other Stages of Development.
- (c) For the avoidance of doubt, clause 4(b) of this Schedule 5 does not apply to the release of the last Bank Guarantee or Insurance Bond held by the Minister.

Schedule 6

Definition of Net Developable Area (Schedule 4)

1. The net developable area of a part of the Land is the area of land, in hectares, comprising a Stage of Development, subject to the other provisions of this Schedule 6. For the avoidance of doubt, the net developable area of a part of the Land includes any land that the proposed development authorises or requires to be used as a road or reserved or dedicated as a public road.
2. The net developable area does not include the area of any land that the proposed development 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) existing roads to which works (such as widening) are required to be carried out including the Erskine Park Link Network,
 - (n) cemetery (within the meaning of the Cemeteries and Crematoria Act 2013),
 - (o) public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
 - (p) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with any Special Infrastructure Contributions Determination made under section 94EE of the Act.
3. The following areas of land are not to be included in the calculation of the net developable area:

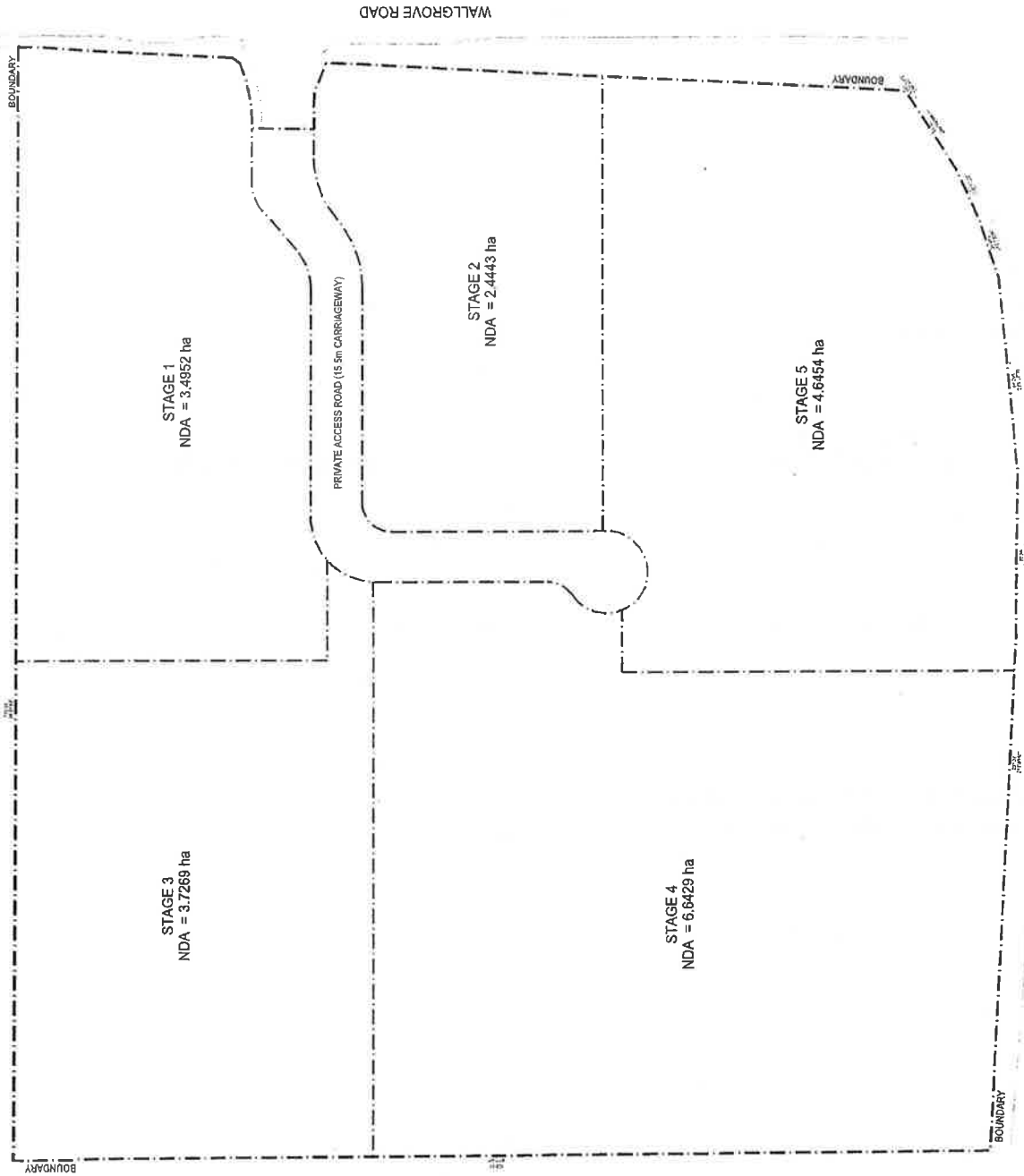
- (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the development by virtue of it being at or below that level,
 - (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act,
 - (c) any area of land that is within Zone E2 Environmental Conservation,
 - (d) any area of land within the curtilage of a building listed on the State Heritage Register,
 - (e) 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 developing for the purposes of the development by virtue of the easement,
 - (f) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the development by virtue of it being within the public transport corridor.
4. The net developable area does not include the area of any lot in a proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
 5. The net developable area does not include the area of any lot in a proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
 6. If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this Deed commences) and:
 - (a) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
 - (b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare, for the purpose of calculating the net developable area.
 7. If a proposed lot is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area.
 8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area in accordance with this clause 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.
 9. In this Schedule 6, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006):

- (a) emergency services facility,
- (b) health services facility,
- (c) passenger transport facility,
- (d) place of public worship,
- (e) public utility undertaking,
- (f) recreation area,
- (g) school.

10. In this Schedule, 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) 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, and
- (c) a “strata scheme” means a reference to a strata scheme as that term is defined in the Strata Scheme (Freehold Development) Act 1973 or a leasehold strata scheme as that term is defined in the Strata Scheme (Leasehold Development) Act 1986.

Annexure A
Stage of Development Plan



NET DEVELOPMENT AREA SCHEDULE

Stage 1 Area	3.4952 ha
Stage 2 Area	2.4443 ha
Stage 3 Area	3.7269 ha
Stage 4 Area	6.6429 ha
Stage 5 Area	4.6454 ha
Road Reserve Area	0.8247 ha
Total Site Area	21.7794 ha

Note: Stages are indicative only and subject to change.

SW
APB

SITE PLAN



23.09.2015 1:2000 @ A3 14230 NDA-01 B

60 WALLGROVE ROAD, EASTERN CREEK

DATE: 23/09/2015
BY: [Signature]
SCALE: 1:2000

Execution page

Executed as a deed

Signed , sealed and delivered for and on behalf of
the **Minister for Planning**, in the presence of:

.....
Signature of witness

.....
Signature of the Minister for Planning or
Delegate

.....
Name of witness in full

.....
Name of the Minister for Planning or delegate

.....
Address of witness

**Signed, sealed and delivered by Mirvac Capital Pty
Limited** (ACN 096 525 405) as trustee for Mirvac
Industrial No.1 Sub Trust in the presence of:


.....
Signature of Director

Andrew Paul Butler
.....
Name of Director

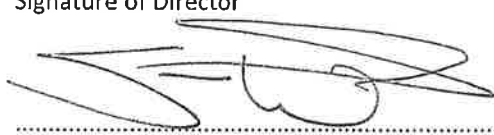

.....
Signature of Director/Secretary

Sean Ward
.....
Name of Director/Secretary

**Signed, sealed and delivered by Mirvac
Commercial Sub SPV Pty Limited** (ACN 125 706
130) as trustee for Mirvac Industrial No.2 Sub Trust
in the presence of:


.....
Signature of Director

Andrew Paul Butler
.....
Name of Director


.....
Signature of Director/Secretary

Sean Ward
.....
Name of Director/Secretary

