

## Explanatory Note

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

and

Mirvac Projects Pty Ltd (ACN 001 069 245)

Mirvac Industrial Developments Pty Limited (ACN 127 755 239)

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the Mirvac Kemps Creek Trust

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect North Trust

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect South Trust

## Variation to Planning Agreement

### Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the Deed of Variation to Planning Agreement for 788-882 Mamre Road, Kemps Creek (the **Deed of Variation**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties.

### Parties to the Planning Agreement as amended by the Deed of Variation

The parties to the Planning Agreement as amended by the Deed of Variation are the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468) (the **Minister**) and the following **Developer** entities:

- Mirvac Projects Pty Ltd (ACN 001 069 245);
- Mirvac Industrial Developments Pty Limited (ACN 127 755 239);
- Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the Mirvac Kemps Creek Trust (**Mirvac Kemps Creek Trustee**);
- Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect North Trust (**Aspect North Trustee**); and

- Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect South Trust (**Aspect South Trustee**).

The parties entered into a deed of accession and release dated 8 December 2023 (**Deed of Accession and Release**) under which:

- the Aspect North Trustee and the Aspect South Trustee agreed to become parties to the Planning Agreement upon the transfer of any part of the Subject Land from the Mirvac Kemps Creek Trustee to the Aspect North Trustee and the Aspect South Trustee, respectively; and
- the Minister agreed that on and from the date on which the whole of the Subject Land has been transferred from the Mirvac Kemps Creek Trustee to the Aspect North Trustee and the Aspect South Trustee (the **Effective Date**), the Mirvac Kemps Creek Trustee will be released from all obligations and liabilities under the Planning Agreement to be performed or discharged at or after the Effective Date.

The Aspect North Trustee and the Aspect South Trustee have become parties to the Planning Agreement in accordance with the Deed of Accession and Release following the transfer of part of the Subject Land to those parties. However, not the whole of the Subject Land has been transferred meaning the Effective Date has not yet occurred and the Mirvac Kemps Creek Trustee remains a party to the Planning Agreement.

## Description of the Subject Land

There has been no change to the land to which the Planning Agreement applies, however, in preparation for dedication of part of the Subject Land as a public road, the Developer has subdivided the Subject Land to change it from five lots to four lots.

The Planning Agreement as amended by the Deed of Variation applies to the Subject Land, being:

- Lot 301 in Deposited Plan 1305254;
- Lot 305 in Deposited Plan 1305254;
- Lot 104 in Deposited Plan 1305965;
- Lot 105 in Deposited Plan 1305965.

## Description of the Proposed Development

The proposed development is defined in the Planning Agreement to mean the staged development of the Subject Land up to 246,912 square metres of gross floor area, being the gross floor area of approximately 11 buildings for the purpose of industrial, warehousing and distribution centres, and café uses generally in accordance with Concept Development Application SSD-10448 lodged with the Department and in accordance with any Development Consent granted to that application, including:

- (a) Stage 1 comprising construction, fit-out and operation of two warehouses with ancillary offices and café with a total gross floor area of 58,257 square metres, and ancillary car parking, landscaping, signage, services and utilities, carrying out of demolition, bulk earthworks, civil works, Mamre Road and Access Road 1 intersection works, realignment of existing creek and subdivision of the Land into three lots; and
- (b) other development on the Land, including further subdivision of the Land and the erection of warehouses, proposed to be carried out by the Developer in accordance

with further Development Applications, being development which is not inconsistent with any Development Consent granted pursuant to SSD-10448.

On 24 May 2022, the Minister approved the Concept Development Application, SSD-10448 (**Original Consent**).

## **Summary of Objectives, Nature and Effect of the Planning Agreement as amended by the Deed of Variation**

The Developer has lodged a modification application to amend the Original Consent (SSD-10448 MOD 7) to enable the staged delivery of the Mamre Road Works, which will involve the delivery of part of the Mamre Road Works after the issue of the first Occupation Certificate for a building within the Development.

The Developer has proposed, and the Minister has agreed to amend the Planning Agreement in accordance with the terms of the Deed of Variation, including among other things to:

- vary the timing for the delivery of the Mamre Road Works in the Planning Agreement to require the Developer to deliver the Mamre Road Works in accordance with the timing required by any Development Consent granted in respect of the Mamre Road Works, as modified from time to time; and
- make minor administrative updates to the terms of the Planning Agreement.

The Planning Agreement as amended by the Deed of Variation provides that the Developer will make the following Development Contribution at the times provided:

<b>Development Contribution</b>	<b>Estimated cost/value</b>	<b>Timing</b>
Carry out and complete works to upgrade an intersection along Mamre Road in accordance with any Development Consent granted to SSD10448, and as generally shown on the Mamre Road Works Plan at Annexure B to the Planning Agreement as: <ul style="list-style-type: none"><li>• “Ultimate Proposed Road Pavement”;</li><li>• “Ultimate Verge Works (Footpaths, Landscaping, Underground Utility Relocations)”;</li><li>• “Ultimate Raised Concrete Island/Median”,</li></ul> <b>(Mamre Road Works)</b> .	\$3,995,000	In accordance with the timing required by any Development Consent granted in respect of the Mamre Road Works, as modified from time to time.
Dedicate a minimum of 14,004 square metres of land (for the purposes of widening Mamre Road) to be used as a public road, generally as identified on the Mamre Road Land Plan at Annexure A to the Planning Agreement <b>(Mamre Road Land)</b> .	\$425 per square metre of land that comprises the Mamre Road Land	Within three months after Practical Completion of the Mamre Road Works.

Pay a monetary contribution of \$201,874 per hectare of net developable area (subject to indexation in accordance with the Planning Agreement) less the offset amount for the value of the Mamre Road Works and the Mamre Road Land to the Minister to contribute to the provision of regional transport infrastructure and services in relation to the Subject Land.	An amount calculated in accordance with clause 4.2 of Schedule 4 to the Planning Agreement.	Within 30 days after the Minister issues a notice which specifies the amount to the Developer.
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The proposed amendments to the Planning Agreement does not necessitate any change to the security provided by the Developer to secure the performance of the obligations of the Developer under the Planning Agreement. The Planning Agreement requires the following security, in the form of bank guarantees:

Security Amount	Secured Obligation
\$200,000	All obligations imposed on the Developer under the Planning Agreement
\$1,997,500	The obligation to deliver the Mamre Road Works.
An amount to be calculated in accordance with clause 4(a) of Schedule 5 to the Planning Agreement.	The obligation to make the Development Contribution in respect of the part of the Land to be transferred or sold pursuant to clause 9.2(c) of the Planning Agreement.
An amount to be calculated in accordance with clause 5(b) of Schedule 5 to the Planning Agreement.	The obligation to make the Development Contribution.

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

### The Public Purpose of the Planning Agreement as amended by the Deed of Variation

In accordance with former section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to the land.

The Minister and the Developer have assessed the Deed of Variation and both hold the view that the Deed of Variation does not change the means of achieving the public purpose of the Planning Agreement. This is because the Planning Agreement as amended by the Deed of Variation will continue to ensure that the Developer makes an appropriate contribution towards the provision of regional transport infrastructure and services within the Western Sydney Employment Area.

## **How the Planning Agreement as amended by the Deed of Variation Promotes the Public Interest**

The Planning Agreement as amended by the Deed of Variation promotes the public interest by ensuring that the Developer provides an appropriate contribution towards the provision of (or the recoupment of the cost of providing) regional transport infrastructure and services to satisfy needs that arise from development of the Subject Land.

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

## **Requirements relating to Construction, Occupation and Subdivision Certificates**

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate or a subdivision certificate.

The Planning Agreement as amended by the Deed of Variation requires the Mamre Road Works to be completed in accordance with the timing required by any Development Consent granted in respect of the Mamre Road Works, as modified from time to time and therefore does not expressly contain a restriction on the issue of an occupation certificate within the meaning of section 48 of *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.