

Deed of Variation to Planning Agreement

788-882 Mamre Road, Kemps Creek

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

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

A handwritten signature in black ink, appearing to read "K. Spence". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

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This Deed is dated 13 September 2024

Parties:

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

(Minister)

Mirvac Projects Pty Ltd (ACN 001 069 245) of Level 28, 200 George Street, Sydney NSW 2000

(Mirvac Projects)

Mirvac Industrial Developments Pty Limited (ACN 127 755 239) of Level 28, 200 George Street,
Sydney NSW 2000

(Mirvac Industrial Developments)

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the Mirvac Kemps Creek Trust
of Level 28, 200 George Street, Sydney NSW 2000

(Mirvac Kemps Creek Trustee)

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect North Trust of
Level 28, 200 George Street, Sydney NSW 2000

(Aspect North Trustee)

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect South Trust of
Level 28, 200 George Street, Sydney NSW 2000

(Aspect South Trustee)

Introduction

- A. On 31 March 2022, the Minister entered into the Planning Agreement with Mirvac Projects, Mirvac Industrial Developments and the Mirvac Kemps Creek Trustee (**the Original Parties to the Planning Agreement**).
- B. On 8 December 2023, the Minister entered into the Deed of Accession and Release with the Original Parties to the Planning Agreement, the Aspect North Trustee and the Aspect South Trustee, in connection with the proposed transfer of the Land, in separate tranches, from the Mirvac Kemps Creek Trustee to the Aspect North Trustee and the Aspect South Trustee, under which:
- the Aspect North Trustee and the Aspect South Trustee agreed to become parties to the Planning Agreement upon the transfer of the relevant parts of the Land from the Mirvac Kemps Creek Trustee to the Aspect North Trustee and the Aspect South Trustee, respectively, and agreed to perform all obligations and discharge all liabilities the Mirvac Kemps Creek Trustee is required to perform or discharge under the Planning Agreement; and

- the Minister agreed that on and from the date on which the whole of the 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.
- C. 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.
- D. The Effective Date has not yet occurred.
- E. In preparation for dedication of part of the Land as a public road, the Landowner has subdivided the Land to change it from five lots to four lots.
- F. The Planning Agreement requires the Developer to deliver the Mamre Road Works prior to the issue of the first Occupation Certificate for a building or part of a building within the Development.
- G. The Developer has lodged MOD7 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.
- H. Accordingly, the Developer has proposed, and the Minister has agreed to amend the Planning Agreement in accordance with the terms of this Deed, 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.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this Deed, 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.

Deed of Accession and Release means the Deed of Accession and Release of Planning Agreement dated 8 December 2023, between the Original Parties to the Planning Agreement, the Aspect North Trustee and the Aspect South Trustee.

Developer means Mirvac Projects, Mirvac Industrial Developments and the Landowner, jointly and severally.

Land means the land the subject of the Planning Agreement.

Landowner means the owner of any part of the Land from time to time, and includes the following, jointly and severally:

- (a) Mirvac Kemps Creek Trustee;
- (b) Aspect North Trustee;
- (c) Aspect South Trustee.

MOD 7 means modification application SSD-10448-Mod-7 lodged with the Department.

Planning Agreement means the planning agreement dated 31 March 2022, between the Minister, Mirvac Projects, Mirvac Industrial Developments, the Aspect North Trustee and the Aspect South Trustee.

1.2 Interpretation

In this Deed, unless the context clearly indicates otherwise:

- (a) expressions and phrases used but not defined in this Deed have the same meanings they have in the Planning Agreement; and
- (b) 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:

- (a) it has power to enter into this Deed;
- (b) this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (c) 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:

- (a) inserting the words marked-up (by underlining) in the copy of the Planning Agreement comprising Schedule 1 as being insertions; and
- (b) 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:

- (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.

8. Registration

The parties acknowledge and agree that clauses 6.1 - 6.5 of the Planning Agreement apply to this Deed as if they were set out in full in this Deed.

9. Trustee Warranties

9.1 MIV Aspect North Trust

- (a) In this clause 9.1:
 - (i) **"Trustee"** means Mirvac Funds Management Limited (ACN 067 417 663);
 - (ii) **"Trust"** means the MIV Aspect North Trust; and
 - (iii) **"Trust Deed"** means the trust deed relating to the Trust dated 1 March 2023 appointing the Trustee as trustee of the Trust.
- (b) The Trustee warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;

- (ii) 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 this Deed and to perform its obligations and satisfy or discharge its liabilities under the Planning Agreement;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under the Planning Agreement;
 - (v) 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 the Planning Agreement; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Deed and the Planning Agreement and all necessary action has been taken to authorise the execution and performance of this Deed under the Trust Deed.
- (c) The Trustee 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 9.1(b).
- (d) 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 9.1(d) and the costs and expenses of registering any new deed on the title to the Land.
- (e) Subject to clause 9.1(g), liability arising under or in connection with this Deed (except under or in connection with clause 9.1(b) and 9.1(c) 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.

- (f) 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 9.1(b) and 9.1(c) above.
- (g) Notwithstanding any other provision of this Deed, clauses 9.1(e) and 9.1(f) do 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.
- (h) Nothing in clause 9.1(g) will make the Trustee liable for 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 Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

9.2 MIV Aspect South Trust

- (a) In this clause 9.2:
 - (i) **"Trustee"** means Mirvac Funds Management Limited (ACN 067 417 663);
 - (ii) **"Trust"** means the MIV Aspect South Trust; and
 - (iii) **"Trust Deed"** means the Trust Deed relating to the Trust dated 1 March 2023 appointing the Trustee as trustee of the Trust.
- (b) The Trustee warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) 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 this Deed and to perform its obligations and satisfy or discharge its liabilities under the Planning Agreement;
 - (iii) it is not in breach of the Trust Deed;

- (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under the Planning Agreement;
 - (v) 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 the Planning Agreement; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Deed and the Planning Agreement and all necessary action has been taken to authorise the execution and performance of this Deed under the Trust Deed.
- (c) The Trustee 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 9.2(b).
- (d) 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 9.2(d) and the costs and expenses of registering any new deed on the title to the Land.
- (e) Subject to clause 9.2(g), liability arising under or in connection with this Deed (except under or in connection with clause 9.2(b) and 9.2(c) 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.
- (f) 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 9.2(b) and 9.2(c) above.

- (g) Notwithstanding any other provision of this Deed, clauses 9.2(e) and 9.2(f) do 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.
- (h) Nothing in clause 9.2(g) will make the Trustee liable for 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 Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

9.3 Mirvac Kemps Creek Trustee

- (a) In this clause 9.3:
 - (i) **"Trustee"** means Mirvac Funds Management Limited (ACN 067 417 663);
 - (ii) **"Trust"** means the Mirvac Kemps Creek Trust; and
 - (iii) **"Trust Deed"** means the Trust Deed relating to the Trust dated 20 December 2018 appointing the Trustee as trustee of the Trust.
- (b) The Trustee warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) 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 this Deed and to perform its obligations and satisfy or discharge its liabilities under the Planning Agreement;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under the Planning Agreement;

- (v) 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 the Planning Agreement; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Deed and the Planning Agreement and all necessary action has been taken to authorise the execution and performance of this Deed under the Trust Deed.
- (c) The Trustee 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 9.3(b).
- (d) 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 9.3(d) and the costs and expenses of registering any new deed on the title to the Land.
- (e) Subject to clause 9.3(g), liability arising under or in connection with this Deed (except under or in connection with clause 9.3(b) and 9.3(c) 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.
- (f) 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 9.3(b) and 9.3(c) above.

- (g) Notwithstanding any other provision of this Deed, clauses 9.3(e) and 9.3(f) do 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.
- (h) Nothing in clause 9.3(g) will make the Trustee liable for 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 Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

10. GST

Clause 8 of the Planning Agreement applies to this Deed as if it was set out in full in this Deed.

11. References and inconsistency

On and from the date of this Deed:

- (a) any reference to the Planning Agreement is a reference to the Planning Agreement as varied pursuant to this Deed; and
- (b) to the extent of any inconsistency between the Planning Agreement and this Deed, this Deed will prevail to the extent of the inconsistency.

12. General

12.1 Incorporation of clauses

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

12.2 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 reasonable 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 8.
- (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 12.2(a), 12.2(b) and 12.2(d):
 - (a) 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
 - (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.

12.3 Notices

- (a) Clause 12.16 of the Planning Agreement is incorporated in this Deed as if it was set out in full in this Deed.
- (b) Any notice, demand, consent, approval, request or other communication (**Notice**) to or from a party to this Deed or the Planning Agreement must be sent in the manner required by clause 12.16 of the Planning Agreement.

12.4 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 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:
 - (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.
- (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 Amendments to the Planning Agreement

Planning Agreement

Environmental Planning and Assessment Act 1979

788-882 Mamre Road, Kemps Creek

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

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This Planning Agreement is dated

Parties:

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

c/- NSW Department of Planning, ~~Housing and Infrastructure and Environment~~ of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (**Minister**)

Mirvac Projects Pty Ltd (ACN 001 069 245) of Level 28, 200 George Street, Sydney NSW 2000 (**Mirvac Projects**)

Mirvac Industrial Developments Pty Limited (ACN 127 755 239) of Level 28, 200 George Street, Sydney NSW 2000 (**Mirvac Industrial Developments**)

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the Mirvac Kemps Creek Trust of Level 28, 200 George Street, Sydney NSW 2000 (~~Mirvac Funds Management~~ the **Mirvac Kemps Creek Trustee**)

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect North Trust of Level 28, 200 George Street, Sydney NSW 2000 (the **Aspect North Trustee**)

Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect South Trust of Level 28, 200 George Street, Sydney NSW 2000 (the **Aspect South Trustee**)

Introduction:

- A** The Landowner owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** Mirvac Projects has made a Development Application to the Consent Authority in respect of the Development on the Land.
- D** Clause 29 of the SEPP 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 (including the Erskine Park Link Road Network) in relation to the land to which the SEPP applies.
- 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 clause 29 of the SEPP.

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

Additional Monetary Contribution means payment of a monetary contribution by the Developer to the Minister as may be required by clause 4 of Schedule 4.

Additional Monetary Contribution Notice takes its meaning from clause 4.4(b) of Schedule 4.

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 5.1(c)(ii) of Schedule 4.

Authorised Progress Claim Certificate means a certificate signed by the superintendent for the Mamre Road 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.

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 2021.

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

CLM Act means the *Contaminated Land Management Act 1997 (NSW)*.

Concept Development Application has the same meaning as in the Act.

Consent Authority 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 2.3 of Schedule 4, for the carrying out of the Mamre Road 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 CLM Act.

~~**CoRD Holder Consent** means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.~~

Costs means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

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 his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2022 and each anniversary of 1 July 2022 thereafter.

Current CPI means the CPI number for the quarter ending 31 March in the relevant adjustment year.

Dealing means in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering or otherwise dealing with the Land.

Department means the NSW Department of Planning, Housing and Infrastructure and Environment.

Developer means Mirvac Projects, Mirvac Industrial Developments and the Landowner, jointly and severally.

Development means staged development of the Land with a total gross floor area of up to 246,912 square metres being the total 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.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the following contributions to be provided by the Developer in accordance with Schedule 4:

- (a) the Mamre Road Works Contribution;
- (b) the Mamre Road Land Contribution; and
- (c) subject to clause 4.1 of Schedule 4, the Additional Monetary Contribution.

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

Estimated Cost of the Mamre Road Works means the estimated cost of the Mamre Road Works (including the Road Works Design) as set out in the table in clause 1.1 of Schedule 4.

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.

Final Certified Contract Cost means the total sum of all the Authorised Progress Claim Certificates.

Former Section 7.24 has the same meaning as in Schedule 4 to the Act.

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).

Land means the land described in Schedule 3.

Landowner means the owner of any part of the Land from time to time, and includes the following, jointly and severally:

(a) Mirvac Kempas Creek Trustee~~Mirvac Funds Management~~;

(b) Aspect North Trustee;

(c) Aspect South Trustee

Mamre Road Land means the area of land required for the widening of Mamre Road, being a minimum of 14,004 square metres (unless otherwise agreed by the Minister) to be used as a public road, generally as identified on the Mamre Road Land Plan at Annexure A.

Mamre Road Land Contribution means the dedication of the Mamre Road Land as a public road by the Developer in accordance with the terms of this deed.

Mamre Road Works means that part of the intersection works for Mamre Road that is:

- (a) shown generally on the Mamre Road Works Plan at Annexure B as "Ultimate Proposed Road Pavement", "Ultimate Verge Works (Footpaths, Landscaping, Underground Utility Relocations)" and "Ultimate Raised Concrete Island/Median"; and
- (b) carried out in accordance with any Development Consent granted to SSD-10448.

Mamre Road Works Contribution means the carrying out and completion of the Mamre Road Works by the Developer in accordance with the terms 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.

Minister means the Minister administering the *Environmental Planning and Assessment Act 1979*~~for Planning~~ and includes the Secretary and the Nominated Officer.

Net Developable Area means the net developable area for the Development on the Land calculated in accordance with Schedule 6 and in the event of a dispute or ambiguity, as determined by the Secretary.

Nominated Officer means an officer of the Department for the time being holding a position nominated by the Secretary for the purposes of this deed.

Notional Monetary Contribution has the meaning given to that term by clause 1.2(a) of Schedule 4.

Occupation Certificate has the same meaning as in the Act.

Offset Amount means

- (a) the Estimated Cost of the Mamre Road Works or the Approved Actual Cost (if lower); and
- (b) the Value of the Mamre Road Land.

Offset Certificate means a certificate issued by the Secretary as amended or replaced from time to time under 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,
- relating to the Land.

Practical Completion means practical completion of the Mamre Road 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.

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

Remediation has the meaning given to it in *State Environmental Planning Policy No. 55 – Remediation of Land* and **Remediate** has a corresponding meaning.

Roads Authority has the meaning given to it in the *Roads Act 1993*, and for the purposes of this deed means Penrith City Council or Transport for NSW.

Road Works Deed means a deed or agreement entered into by the Roads Authority and the Developer regarding the design and construction of the Mamre Road Works and its handover to the Roads Authority by the Developer, if required by the Roads Authority.

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

Secretary means the Secretary of the Department.

Security means one or more Bank Guarantees in the amounts specified as the 'Security Amount' in the table in clause 1(b) of Schedule 5 and on the terms specified in Schedule 5.

Section 138 Approval means a consent issued pursuant to section 138 of the *Roads Act 1993*.

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

SIC means a special infrastructure contribution determined in accordance with section 7.23 of the Act.

SIC Determination means a determination by the Minister of a SIC for a special contributions area which includes the Land.

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, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Transfer Security has the meaning given to that term in clause 1(b) of Schedule 5.

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

Value of the Mamre Road Land means the value of the Mamre Road Land as specified in the table in clause 1.1 of Schedule 4 (subject to indexation in accordance with clause 3.2(c) of Schedule 4 and any reduction in accordance with clause 3.5(e)(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;
- ~~(e)~~(d) a reference to the **Department of Planning, Housing and 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;
- ~~(d)~~(e) a reference to the **introduction**, a **clause**, or a **schedule** is a reference to the introduction, a clause, or a schedule to or of this deed;
- ~~(e)~~(f) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- ~~(f)~~(g) the **schedules** form part of this deed;
- ~~(g)~~(h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- ~~(h)~~(i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- ~~(i)~~(j) a reference to a **corporation** includes its successors and permitted assigns;
- ~~(j)~~(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;

~~(k)~~(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;

~~(h)~~(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;

~~(m)~~(n) **including** and **includes** are not words of limitation;

~~(n)~~(o) a word that is derived from a defined word has a corresponding meaning;

~~(e)~~(p) **monetary amounts** are expressed in Australian dollars;

~~(p)~~(q) the singular includes the plural and vice-versa;

~~(q)~~(r) words importing one gender include all other genders;

~~(r)~~(s) a reference to a thing includes each part of that thing; and

~~(s)~~(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 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 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~~ development contributions provisions of the Act

The application of the following provisions ~~sections 7.11, 7.12 and 7.24~~ of the Act is excluded (or not excluded) to the extent stated in Schedule 1:

(a) sections 7.11 and 7.12;

(b) Subdivision 4 of Division 7.1;

~~(c)~~(c) Former Section 7.24.

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide, or procure the provision of, the Development Contribution to the Minister or the Roads Authority 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 any amounts to the Developer in connection with this deed; and
- (b) in circumstances where the Development Contribution is made 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. Enforcement

5.1 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:

- (a) agreeing to register this deed in accordance with clause 6; and
- (b) providing the Security in accordance with the terms and procedures set out in Schedule 5.

6. Registration

6.1 Registration of deed

- (a) The Developer agrees to procure the registration of this deed on the title to the Land, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.
- (b) To procure registration of this deed as required in clause 6.1(a), 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 that land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in that land,to the registration of this deed on the title to that land and to the terms of this deed;
 - (ii) the execution of any documents;
 - ~~(iii) if required, the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and~~
 - ~~(iv)~~(iii) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folios of the Register for that land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

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(b)(iii) within 10 Business Days of such lodgement at the NSW Land Registry Services.

- (b) The Developer will provide the Minister with copies of the relevant folios of the Register and copies of the registered dealings containing this deed within 10 Business Days of receipt of notice 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

The Landowner represents and warrants that it is as at the date of execution of this deed:

- (a) the owner of the Land as shown in Schedule 3; 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(b)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with their 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 to 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 20 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 6.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 6.5(a) 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 8.4.

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) Subject to clause 9.2(b) and clause 9.2(c), a Landowner must not sell or transfer to another person (**Transferee**) the whole or any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which a Development Contribution required under this deed remain outstanding.
- (b) A Landowner may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Landowner:
 - (i) satisfies the Minister, acting reasonably, that:
 - (A) the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed; or
 - (B) the Landowner 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) Notwithstanding clause 9.2(b), a Landowner may sell or transfer any part of the Land to a Transferee if prior to the proposed sale or transfer the Landowner provides a Transfer Security in accordance with Schedule 5 (if any is required).
- (d) If a Transfer Security is provided in accordance with clause 9.2(c), then the Minister agrees to execute the relevant documents to enable the Landowner to remove the notation of this deed from the relevant folios of the Register in respect of the part of the Land that is to be transferred.
- (e) The Developer acknowledges and agrees that:
 - (i) removal of the notation of this deed from the relevant folios of the Register in respect of a part of the Land pursuant to clause 9.2(d) does not constitute a release and discharge of this deed with respect to that part of the Land; and
 - (ii) the Developer remains liable to perform the obligations under this deed with respect to that part of the Land.
- (f) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 9.2.
- (g) This clause does not apply to the transfer or sale of the whole or any part of the Land between the Parties.

9.3 Release of Landowner

~~Not used~~The Minister acknowledges and agrees that if a Landowner (**Outgoing Landowner**) transfers any part of the Land to Mirvac Funds Management, on and from the date of the transfer and subject to Mirvac Funds Management providing, to the Minister's satisfaction, evidence that it has entirely assumed ownership of that part of the Land and that there is no material breach of obligations under this deed:

~~the Outgoing Landowner will be released and discharged from the obligations arising under this deed; and~~

~~the Minister will not seek to enforce the terms of this deed against the Outgoing Landowner in the event of a breach by the Developer of any obligation arising under this deed.~~

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 — Mirvac Kemps Creek Trust

~~(a) Mirvac Funds Management (**Trustee**) enters into this deed in its capacity as trustee for the Mirvac Kemps Creek Trust (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:~~

(a) In this clause 10.3:

- (i) "**Trustee**" means Mirvac Funds Management Limited (ACN 067 417 663);
- (ii) "**Trust**" means the Mirvac Kemps Creek Trust; and
- (i) "**Trust Deed**" means the Trust Deed relating to the Trust dated 20 December 2018 appointing the Trustee as trustee of the Trust.

(b) The Trustee warrants that:

- (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
- (ii) 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;
- (iii) it is not in breach of the Trust Deed;
- (iv) 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;

- (v) 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
- (vi) 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~~
- (c) The Trustee 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(b)~~~~10.3(a)(i)~~.
- (d) 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(d)~~~~10.3(b)~~ and the costs and expenses of registering any new deed on the title to the Land.
- (e) Subject to clause ~~10.3(g)~~~~10.3(e)~~, liability arising under or in connection with this deed (except under or in connection with clause ~~10.3(b)~~~~10.3(a)~~ and ~~10.3(c)~~ 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.
- (f) 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(b)~~~~10.3(a)~~ and ~~10.3(c)~~ above.
- (g) Notwithstanding any other provision of this deed, clauses ~~10.3(e)~~~~10.3(e)~~ and ~~10.3(f)~~~~10.3(d)~~ do 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.

- (h) Nothing in clause 10.3(g)10.3(e) will make the Trustee liable for 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 Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

10.4 Trustee Developer - MIV Aspect South Trust

- (a) In this clause 10.4:
- (i) "Trustee" means Mirvac Funds Management Limited (ACN 067 417 663);
 - (ii) "Trust" means the MIV Aspect South Trust; and
 - (iii) "Trust Deed" means the Trust Deed relating to the Trust dated 1 March 2023 appointing the Trustee as trustee of the Trust.
- (b) The Trustee warrants that:
- (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) 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 this deed and to perform its obligations and satisfy or discharge its liabilities under the Planning Agreement;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under the Planning Agreement;
 - (v) 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 the Planning Agreement; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and the Planning Agreement and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed.
- (c) The Trustee 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 10.4(b).
- (d) 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 10.4(d) and the costs and expenses of registering any new deed on the title to the Land.
- (e) Subject to clause 10.4(g), liability arising under or in connection with this deed (except under or in connection with clause 10.4(b) and 10.4(c) 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.
- (f) 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 10.4(b) and 10.4(c) above.
- (g) Notwithstanding any other provision of this deed, clauses 10.4(e) and 10.4(f) do 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.
- (h) Nothing in clause 10.4(g) will make the Trustee liable for 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 Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

10.5 Trustee Developer - MIV Aspect North Trust

- (a) In this clause 10.5:
 - (i) "Trustee" means Mirvac Funds Management Limited (ACN 067 417 663);
 - (ii) "Trust" means the MIV Aspect North Trust; and
 - (iii) "Trust Deed" means the Trust Deed relating to the Trust dated 1 March 2023 appointing the Trustee as trustee of the Trust.
- (b) The Trustee warrants that:

- (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) 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 this deed and to perform its obligations and satisfy or discharge its liabilities under the Planning Agreement;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under the Planning Agreement;
 - (v) 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 the Planning Agreement; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and the Planning Agreement and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed.
- (c) The Trustee 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 10.5(b).
- (d) 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 10.5(d) and the costs and expenses of registering any new deed on the title to the Land.
- (e) Subject to clause 10.5(g), liability arising under or in connection with this deed (except under or in connection with clause 10.5(b) and 10.5(c) 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.
- (f) 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 10.5(b) and 10.5(c) above.

- (g) Notwithstanding any other provision of this deed, clauses 10.5(e) and 10.5(f) do 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.
- (h) Nothing in clause 10.5(g) will make the Trustee liable for 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 Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

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, Subdivision 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 forecast in relation to the anticipated progression and completion of the Mamre Road Works; 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 everything 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 legal costs, valuation costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) 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 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 12.15(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.

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 5pm on a Business Day, on that Day;
 - (B) after 5pm 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.

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(2)) 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) No (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.
<u>Application of Subdivision 4 of Division 7.1 of the Act – (section 7.4(3)(d))</u>	<u>The application of Subdivision 4 of Division 7.1 of the Act to the Development is excluded.</u>
Applicability of <u>Former Section 7.24 of the Act – (section 7.4(3)(d) and Part 9 of Schedule 6 to the Environmental Planning and Assessment Regulation 2021)</u>	The application of <u>Former Section 7.24 of the Act</u> is excluded in respect of the Development.
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 5 and 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 <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No
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
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, ~~Industry and Environment~~[Housing and Infrastructure](#)
Level 11, 4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Email: planningagreements@planning.nsw.gov.au

Developer

Contact: The Company Directors and Secretary, Mirvac Projects Pty Ltd
Attention: Richard Seddon

Address: Level 28, 200 George Street
SYDNEY NSW 2000

Email: richard.seddon@mirvac.com and
safe.custody@mirvac.com

Contact: The Company Directors and Secretary, Mirvac Industrial
Developments Pty Limited
Attention: Richard Seddon

Address: Level 28, 200 George Street
SYDNEY NSW 2000

Email: richard.seddon@mirvac.com and
safe.custody@mirvac.com

Landowner

Contact: The Company Directors and Secretary, Mirvac Funds Management Limited ([ACN 067 417 663](#)) as trustee for the [Mirvac Kemps Creek Trust](#)

Attention: Richard Seddon

Address: Level 28, 200 George Street
SYDNEY NSW 2000

Email: richard.seddon@mirvac.com and
safe.custody@mirvac.com

Contact: [The Company Directors and Secretary, Mirvac Funds Management Limited \(ACN 067 417 663\) as trustee for the MIV Aspect North Trust](#)

[Attention: Richard Seddon](#)

Address: [Level 28, 200 George Street](#)
[SYDNEY NSW 2000](#)

Email: richard.seddon@mirvac.com and
safe.custody@mirvac.com

Contact: [The Company Directors and Secretary, Mirvac Funds Management Limited \(ACN 067 417 663\) as trustee for the MIV Aspect South Trust](#)

[Attention: Richard Seddon](#)

Address: [Level 28, 200 George Street](#)
[SYDNEY NSW 2000](#)

Email: richard.seddon@mirvac.com and
safe.custody@mirvac.com

Schedule 3 – Land

(clause 1.1)

<u>Lot/Deposited Plan</u>	<u>Folio Identifier</u>	<u>Landowner</u>
<u>Lot 301 in Deposited Plan 1305254</u>	<u>301/1305254</u>	<u>Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect North Trust</u>
<u>Lot 305 in Deposited Plan 1305254</u>	<u>305/1305254</u>	<u>Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the Mirvac Kempas Creek Trust</u>
<u>Lot 104 in Deposited Plan 1305965</u>	<u>104/1305965</u>	<u>Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the Mirvac Kempas Creek Trust</u>
<u>Lot 105 in Deposited Plan 1305965</u>	<u>105/1305965</u>	<u>Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect South Trust</u>

<u>Lot</u>	<u>Deposited Plan</u>	<u>Landowner</u>
<u>54</u>	<u>259135</u>	<u>Mirvac Funds Management</u>
<u>55</u>	<u>259135</u>	<u>Mirvac Funds Management</u>
<u>56</u>	<u>259135</u>	<u>Mirvac Funds Management</u>
<u>57</u>	<u>259135</u>	<u>Mirvac Funds Management</u>
<u>58</u>	<u>259135</u>	<u>Mirvac Funds Management</u>

Schedule 4 – Development Contribution

(clause 4)

1. Development Contribution

1.1 Development Contribution

The Developer undertakes to provide the Development Contribution to the Minister or the Roads Authority in the manner and the times as set out in the table below:

Development Contribution	Estimated cost/value	Timing
Mamre Road Works Contribution	\$3,995,000	<u>In accordance with the timing required by any Development Consent granted in respect of the Mamre Road Works, as modified from time to time. Prior to the issue of the first Occupation Certificate for a building or part of a building within the Development.</u>
Mamre Road Land Contribution	\$425 per square metre of land that comprises the Mamre Road Land	Within three months after Practical Completion of the Mamre Road Works.
Additional Monetary Contribution (if required)	An amount calculated in accordance with clause 4.2 of this Schedule 4.	Subject to clause 4.1 of this Schedule 4, within 30 days after the Minister issues an Additional Monetary Contribution Notice to the Developer.

1.2 Development Contribution as a Monetary Contribution

- (a) The Minister and the Developer acknowledge and agree that if the Developer were to provide the Development Contribution solely as a monetary contribution, the Development Contribution would be an amount equal to the sum represented by 'X' in the following formula:

$$X = N \times \text{WCR (Notional Monetary Contribution)}$$

"N" means the number of hectares comprised in the Net Developable Area for the Development on the Land.

"WCR" is the amount representing the notional monetary contribution rate, which:

- (i) at the date of this deed is \$201,874; and
 - (ii) is adjusted in accordance with clause 1.2(b) of this Schedule 4.
- (b) The value of WCR is to be adjusted by multiplying \$201,874 by an amount equal to Current CPI divided by Base CPI, being the Current CPI applicable at the date for which the determination of the Additional Monetary Contribution must be made under clause 4.4(b) of this Schedule 4.

- (c) For avoidance of doubt, the Minister and the Developer acknowledge and agree that the value of the WCR will not increase or decrease upon the making of a SIC Determination that applies to the Land.

2. Mamre Road Works

2.1 Provision of the Mamre Road Works

The Developer must provide the Mamre Road Works Contribution in accordance with this clause 2.

2.2 Conditions to Commencement of the Mamre Road Works

Prior to commencement of the Mamre Road Works, the Developer must:

- (a) if Development Consent is required — provide evidence to the Minister that it has obtained Development Consent for the Mamre Road Works;
- (b) if required by the Roads Authority to enter into a Road Works Deed:
 - (i) enter into a Road Works Deed, on such terms and conditions as are:
 - (A) consistent with the requirements of this deed, including this Schedule 4; and
 - (B) acceptable to the Roads Authority and the Minister; and
 - (ii) provide to the Minister a copy of the executed Road Works Deed to carry out the Mamre Road Works; and
- (c) if a Section 138 Approval is required in relation to the Mamre Road Works, provide to the Minister a copy of the Section 138 Approval.

2.3 Construction Contract for the Mamre Road Works

- (a) The Developer must provide written notice to the Minister which confirms that it intends to commence the Mamre Road Works (**Works Notice**). If the Developer is to engage a third party to carry out the Mamre Road Works, then clauses 2.3(b) to (f) apply.
- (b) 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 Roads Authority's requirements.
- (c) The Developer must undergo a competitive tender process in awarding a Construction Contract for the Mamre Road Works and provide evidence of such tender process to the Minister within 10 Business Days of awarding the Construction Contract.
- (d) The Works Notice must be accompanied by a copy of each Construction Contract in place for the Mamre Road Works.
- (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 2.3(b) and (c) 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 Mamre Road Works;
- (ii) provide a reasonable itemisation of works comprising the Mamre Road Works, which, in relation to construction work, may be by a bill of quantities;
- (iii) identify the contract value for each item of the Mamre Road Works; and
- (iv) identify the terms and conditions applicable to the carrying out of the Mamre Road Works.

2.4 Timing of Mamre Road Works

The Developer must ensure Practical Completion of the Mamre Road Works in accordance with the Road Works Deed and by the time specified in the table in clause 1.1 of this Schedule 4.

2.5 Estimated Cost and Actual Cost of the Mamre Road Works

- (a) The parties agree that on each CPI Adjustment Date, the Estimated Cost of the Mamre Road Works is to be adjusted by multiplying that cost by an amount equal to the Current CPI divided by the Base CPI.
- (b) The parties agree that if the Actual Cost of the Mamre Road Works is more than the Estimated Cost of the Mamre Road Works, the portion of Offset Amount the Developer may receive by carrying out the Mamre Road Works is the Estimated Cost of the Mamre Road Works.
- (c) 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 Mamre Road Works, following consultation with the Developer, acting in good faith and having proper regard to all matters put before the Minister by the Developer.

3. Mamre Road Land

3.1 Provision of the Mamre Road Land Contribution

The Developer must provide the Mamre Road Land Contribution in accordance with this clause 3.

3.2 Valuation of the Mamre Road Land

- (a) The parties agree that the portion of the Offset Amount that the Developer may receive by dedicating the Mamre Road Land as a public road is the Value of the Mamre Road Land.
- (b) Subject to clauses 3.2(c) and 3.5(e)(ii) of this Schedule 4, the Minister will recognise the amount specified in the table in clause 1.1 of this Schedule 4, as applicable, as the Value of the Mamre Road Land.
- (c) The parties agree, on each CPI Adjustment Date, the value of the Mamre Road Land (being the amount specified in the table in clause 1.1 of this Schedule 4) will be multiplied by an amount equal to the Current CPI divided by the Base CPI until an Offset Certificate is issued to the Developer that sets out the portion of the Offset Amount that has been credited for the Mamre Road Land Contribution.

3.3 Subdivision of the Mamre Road Land

- (a) In order to dedicate the Mamre Road Land in accordance with clause 3.5 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 Mamre Road 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.

3.4 Timing for Provision of the Mamre Road Land Contribution

The Developer must provide the Mamre Road Land Contribution in accordance with this deed by the time specified in the table in clause 1.1 of this Schedule 4 (**Mamre Road Land Dedication Date**).

3.5 Dedication of the Mamre Road Land

- (a) In satisfying its obligation under clause 3.4 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 Mamre Road 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 Mamre Road Land which:
 - (A) state that the Mamre Road Land is suitable or will be suitable for the purposes of a road as at the Mamre Road 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 Mamre Road Land as a public road referred to in clause 3.5(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 Mamre Road Land as a public road; and
 - (v) take any other necessary action to give effect to the dedication of the Mamre Road 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 3.5(a)(ii), the Minister or Roads Authority may:
- (i) refuse to accept the dedication of the Mamre Road 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 3.5(a)(ii),
- in which case the Developer must comply with the Minister's requirements.
- (c) For avoidance of doubt, clause 3.5(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 Mamre Road Land could not prevent from

affecting the Mamre Road Land and in respect of which no action can be taken by the Developer or owner of the Mamre Road Land.

- (d) Despite clause 3.5(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 3.5(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 Mamre Road 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 Mamre Road Land subject to the Agreed Encumbrances for Mamre Road Land, then:
 - (i) the Developer must provide to the Minister or the Roads Authority with a valuation report (prepared by an appropriately qualified valuation expert) which quantifies the diminution in value of the Mamre Road Land as a result of the Agreed Encumbrances for Mamre Road Land (**Mamre Road Land Diminution Amount**); and
 - (ii) the Value of the Mamre Road Land is to be reduced by the Mamre Road 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 Mamre Road Land but only in relation to Contamination that existed on or before the date the Mamre Road 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 Mamre Road Land up to and including the date that the Developer dedicates the Mamre Road Land as a public road pursuant to clause 3.4 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 Mamre Road 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 3.2 to 3.6 of this Schedule 4.
- (i) The parties agree that clause 3 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 Mamre Road 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.

3.6 Compulsory acquisition of Mamre Road Land

- (a) If the Developer does not dedicate the Mamre Road Land as a public road as required by clause 3.5 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 Mamre 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 3.6 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 3.6 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 3.5(d) of this Schedule 4, the Developer must ensure that the Mamre Road Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges) immediately before the Mamre Road 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 Mamre Road Land under this clause 3.6.
- (e) The Developer must pay the Minister or Roads Authority, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Mamre Road Land as contemplated by this clause 3.6.

4. Additional Monetary Contribution

4.1 Application

This clause 4 applies only if the Offset Amount that has been credited for the Mamre Road Works Contribution and Mamre Road Land Contribution pursuant to clause 5.1(d)(ii) of this Schedule 4 is less than the Notional Monetary Contribution calculated in accordance with clause 1.2 of this Schedule 4.

4.2 Provision of Additional Monetary Contribution

- (a) The Developer agrees to provide the Additional Monetary Contribution to the Minister in accordance with this clause 4.
- (b) The Additional Monetary Contribution is an amount equal to the sum represented by 'X' in the following formula:

$$X = \text{Notional Monetary Contribution} - \text{Offset Amount}$$

Where:

Notional Monetary Contribution is that amount calculated in accordance with clause 1.2 of this Schedule 4 as at the date the Developer receives an Offset Certificate which sets out the Offset Amount that has been credited for the Mamre Road Works Contribution and the Mamre Road Land Contribution from the Minister pursuant to clause 5.1(d)(ii) of this Schedule 4.

4.3 Timing of Additional Monetary Contribution

The Developer must provide the Additional Monetary Contribution to the Minister by the time specified in the table in clause 1.1 of this Schedule 4.

4.4 Delivery of the Additional Monetary Contribution

- (a) The Additional Monetary Contribution is made for the purpose of this Schedule 4 when cleared funds are deposited by means of electronic funds transfer or bank cheque into a bank account nominated by the Minister.
- (b) As soon as reasonably practicable after issuing an Offset Certificate which sets out the Offset Amount that has been credited for the Mamre Road Works Contribution and the Mamre Road Land Contribution to the Developer pursuant to clause 5.1(d)(ii) of this Schedule 4, the Minister is to give the Developer a notice setting out the Additional Monetary Contribution (**Additional Monetary Contribution Notice**) and a tax invoice for that amount.

5. Completion of a Development Contribution

5.1 Completion Notice

- (a) If the Developer considers that it has completed the Mamre Road Works Contribution or the Mamre Road 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 Mamre Road Works Contribution or the Mamre Road Land Contribution (as the case may be) has been completed (**Completion Notice**) together with:
 - (i) in relation to the Mamre Road Works Contribution, a certificate from the Roads Authority confirming that Practical Completion of the Mamre Road Works has occurred;
 - (ii) in relation to the Mamre Road Land Contribution, a registered Plan of Subdivision or other registered plan that bears a statement of intention to dedicate the Mamre Road Land as a public road in accordance with section 9 of the *Roads Act 1993*;
 - (iii) in the case of the Mamre Road 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 Mamre Road 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 Mamre Road Works Contribution or the Mamre Road 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 Mamre Road Works Contribution.
- (c) The Minister will, within 45 days of receiving the Completion Notice and all the certificates and information required under this clause 5.1 determine:
 - (i) whether the Mamre Road Works Contribution or the Mamre Road 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 Mamre Road Works Contribution.
- (d) If the Minister, acting reasonably, is satisfied that the Mamre Road Works Contribution or the Mamre Road Land Contribution (as the case may be) has been provided, the Minister will:
 - (i) accept the Mamre Road Work Contribution or the Mamre Road Land Contribution (as the case may be) to discharge (partly or in full) the Developer's obligation to make a contribution towards regional transport infrastructure and services; and
 - (ii) issue an Offset Certificate to the Developer which will set out the Offset Amount that has been credited for the Mamre Road Works Contribution or the Mamre Road Land Contribution (as the case may be).
- (e) If the Offset Amount that has been credited for the Mamre Road Works Contribution and the Mamre Road Land Contribution is greater than the Notional Monetary Contribution calculated in accordance with clause 1.2 of this Schedule 4 then clause 5.2 of this Schedule 4 applies.
- (f) If the Minister, acting reasonably, is not satisfied the Mamre Road Works Contribution or the Mamre Road Land Contribution has been provided, the Minister will notify the Developer and provide an explanation as to why he or she considered that the Mamre Road Works Contribution or the Mamre Road 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 Mamre Road Works Contribution or the Mamre Road 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.
- (g) If, despite the actions undertaken under clause 5.1(f) of this Schedule 4, the parties dispute whether the Mamre Road Works Contribution or the Mamre Road Land Contribution has been provided to the Minister, clause 7 applies to the resolution of the dispute.
- (h) Despite any other provision of this deed, the Minister may, at the Minister's absolute discretion, decide to credit an amount that is less than the Estimated Cost of the Mamre Road Works or the Approved Actual Cost, if Transport for NSW advises that a portion of those works needs to

be removed or demolished to give effect to Transport for NSW's design for Mamre Road at the relevant time. The Minister in exercising his right under this clause may only have regard to the costs of the works that are required to be removed or demolished.

5.2 Use of Offset Amount

- (a) The Developer must not apply, or purport to apply, or agree to or allow any other person to apply or purport to apply, part of the Offset Amount to discharge an obligation to make a development contribution except in accordance with this deed.
- (b) If the Offset Amount is more than the Notional Monetary Contribution, the Minister is to allow the Developer to apply the amount that represents the difference between the Offset Amount and the Notional Monetary Contribution (the **Credit Amount**) to discharge the Developer's liability or the liability of another person nominated by the Developer to make a development contribution under another planning agreement (whether that agreement is in force when this deed commences or comes into force after this deed commences) relating to the provision of regional transport infrastructure and services on other land (not being the Land) to which the SEPP applies.
- (c) If the Minister allows any part of the Credit Amount to be applied to discharge an obligation in accordance with clause 5.2(b) of this Schedule 4:
 - (i) that part of the Credit Amount will be taken to have been surrendered to the Minister; and
 - (ii) the Minister will provide an updated Offset Certificate to the Developer showing that the value of the Offset Amount has decreased by that amount.
- (d) Upon the making of a SIC Determination that applies to a special contributions area that includes the Land, the Minister is to allow the Developer to apply the Credit Amount to satisfy the non-monetary percentage of a SIC for development on other land to which the SIC Determination applies.
- (e) For the purposes of clause 5.2(d) of this Schedule 4, the **non-monetary percentage of a SIC**, in relation to a development, means that percentage or part of the SIC for the development that may be made (whether or not requiring the agreement of the Minister) by carrying out works for the provision of infrastructure, or by providing land for infrastructure, and that is not expressly required, under the terms of the SIC Determination, to be made as a monetary contribution.

Schedule 5- Security

(clause 5.1)

1. Developer to provide Security

- (a) In order to secure the performance of the obligations of the Developer under this deed, the Developer has agreed to provide the Security, in the form of Bank Guarantees, to the Minister.
- (b) Each Bank Guarantee must:
 - (i) either name the "Minister administering the *Environmental Planning and Assessment Act 1979* for Planning and Public Spaces" and the "Department of Planning, Housing Industry and Infrastructure Environment ABN 20 770 707 468" ~~or the "Minister for Planning" and the "Department of Planning and Environment ABN 20 770 707 468"~~ as the relevant beneficiaries;
 - (ii) be in the amount as set out in the table below;
 - (iii) be security for the Secured Obligation as set out in the table below; and
 - (iv) not have an expiry date.

Security Amount	Secured Obligation
\$200,000 (Base Security)	All obligations imposed on the Developer under this deed.
\$1,997,500 (Road Works Security)	The obligation to make the Mamre Road Works Contribution pursuant to clause 2 of Schedule 4.
An amount to be calculated in accordance with clause 4(a) of this Schedule 5 (Transfer Security)	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).
An amount to be calculated in accordance with clause 5(b) of this Schedule 5 (Contribution Security)	The obligation to make the Development Contribution, being the value of the Notional Monetary Contribution.

2. Base Security

- (a) At the time the Developer executes this deed, the Developer must provide the Base Security to the Minister in order to secure the performance of all obligations of the Developer under this deed when it is executed by the Minister.
- (b) From the date the Developer executes this deed until the date that the Developer has performed all its obligations under this deed, the Minister is entitled to retain the Base Security and call upon it in the circumstances set out in clause 6 of this Schedule 5.

3. Road Works Security

- (a) At the time the Developer executes this deed, the Developer must provide the Road Works Security to the Minister in order to secure the provision of the Road Works Contribution under this deed when it is executed by the Minister.
- (b) If, following the execution of this deed, the Developer:
 - (i) enters into one or more Road Works Deeds in relation to the Mamre Road Works;
 - (ii) provides security to the Roads Authority so that the total amount of the security provided to the Roads Authority equals or exceeds the Road Works Security; and
 - (iii) satisfies the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to the Roads Authority for the Mamre Road Works including providing all information reasonably required by the Minister regarding the security provided,

the Minister will accept the security provided to the Roads Authority as securing the performance of the Developer's obligation to deliver the Mamre Road Works, and will provide written notification to the Developer of the Minister's position under this clause 3(b) within 20 Business Days of receiving all required information from the Developer regarding the security provided to the Roads Authority.

- (c) Where clause 3(b) of this Schedule 5 applies, the Minister will return the Road Works Security within 20 Business Days of the Minister notifying the Developer of the Minister's acceptance of the security provided to the Roads Authority.
- (d) If the Developer does not satisfy the Minister as to the adequacy of the security provided for the Mamre Road Works to the Roads Authority in accordance with clause 3(b) of this Schedule 5, then:
 - (i) the Developer will be required to provide a Bank Guarantee to the Minister for the difference between the total amount of the security provided under one or more Road Works Deeds to the Roads Authority and the Road Works Security;
 - (ii) upon receipt of the Bank Guarantee required by the Minister under clause 3(d)(i) of this Schedule 5, the Minister will accept that Bank Guarantee and the security provided to the Roads Authority as securing the performance of the Developer's obligation to deliver the Mamre Road Works; and
 - (iii) the Minister will return the Road Works Security within 10 Business Days of receiving the Bank Guarantee under clause 3(d)(i) of this Schedule 5.

4. Transfer Security

- (a) A Transfer Security required under clause 9.2(c) is an amount equal to 'X' in the following formula:

$$X = \text{Notional Monetary Contribution} \times (\text{Net Developable Area of part of the Land to be sold or transferred pursuant to clause 9.2} \div \text{Net Developable Area of the Land}).$$

- (b) From the date the Transfer Security is provided to the Minister pursuant to clause 9.2(c) in relation to part of the Land until the date the contributions made under this deed reach a value at least equal to the value of the Transfer Security, the Minister is entitled to retain the Transfer Security and call upon it in the circumstances set out in clause 6 of this Schedule 5.

- (c) Despite clause 7 of this Schedule 5, the Minister is entitled to retain any Transfer Security beyond the date referred to in clause 4(b) of this Schedule 5 if the value of the contributions made under this deed is less than the total value of the Transfer Securities, Road Works Security and Base Security held by the Minister.
- (d) However, once the Contribution Security is provided by the Developer in accordance with clause 5 of this Schedule 5, the Developer is not required to provide any further Transfer Security for the purposes of clause 9.2(c).
- (e) For the purposes of this clause 4, the **value of the contributions made under this deed** is any Offset Amount shown on the Offset Certificate (together with any Additional Monetary Contribution made by the Developer).

5. Contribution Security

- (a) The Developer must provide the Contribution Security to the Minister prior to the issue of an Occupation Certificate for a building or part of a building within the Development, unless at that date:
 - (i) the Minister holds one or more Transfer Securities (together with the Base Security and Road Works Security) that have a total value equal to or exceeding the Notional Monetary Contribution; or
 - (ii) the Developer has an Offset Certificate showing an Offset Amount that is equal to or exceeds the Notional Monetary Contribution; or
 - (iii) the combination of securities referred to in clause 5(a)(i) of this Schedule 5 and offsets referred to in clause 5(a)(ii) of this Schedule 5 have a total value that is equal to or exceeds the Notional Monetary Contribution.
- (b) The Contribution Security is an amount equal to 'X' in the following formula:

$$X = \text{Notional Monetary Contribution} - (\text{the Base Security} + \text{the total value of any Transfer Securities} + \text{the total value of any Road Works Security} + \text{any Offset Amount}).$$
- (c) From the date the Contribution Security is provided to the Minister pursuant to clause 5(a) of this Schedule 5 until the date the Development Contribution is made by the Developer, the Minister is entitled to retain the Contribution Security and call upon it in the circumstances set out in clause 6 of this Schedule 5.
- (d) For the purposes of calculating the Notional Monetary Contribution, the value of WCR in the formula in clause 1.2 of Schedule 4 is to be adjusted by multiplying \$201,874 by an amount equal to Current CPI divided by Base CPI, being the Current CPI applicable at the date at which the Contribution Security is determined.
- (e) For the purposes of clause 4 and this clause 5, **Road Works Security** includes any security provided by the Developer to the Roads Authority pursuant to clause 3(b) of this Schedule 5.

6. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon any Security provided in accordance with this deed where the Developer has failed to fulfil the Secured Obligation in accordance with this deed; and

- (ii) retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon the Security; and
 - (ii) applies all or part of such monies towards and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 6(b) of this Schedule 5,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 7 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the Security required to be provided in accordance with clause 1 of this Schedule 5.

7. Release of Security

- (a) If the whole of the Base Security, Road Works Security and the Contribution Security have not been expended and the Developer has paid or satisfied all of its obligations under this deed, including provision of the Development Contribution in accordance with this deed then the Minister will promptly return those securities (less any costs, charges, duties and taxes payable) to the Developer.
- (b) If a Transfer Security has not been expended and the contributions made under this deed reach a value at least equal to the value of the Transfer Security then the Minister will promptly return that security (less any costs, charges, duties and taxes payable) to the Developer.
- (c) If the Minister retains a Transfer Security in accordance with clause 4(c) of this Schedule 5, then the Minister will promptly return that security (less any costs, charges, duties and taxes payable) to the Developer when the Development Contribution has been made in full.

Schedule 6 – Net Developable Area

- (a) The Net Developable Area for the Development on the Land is the area of land, measured in hectares, shown on the Net Developable Area Plan in Schedule 7 to total 51.0665 hectares, subject to the other provisions of this Schedule 6.
- (b) 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:
 - (i) any existing road which was constructed before the grant of the relevant Development Consent and in respect of which works are required to be carried out (including road widening) under the Development Consent;
 - (ii) the area of any land (excluding easements) which is delivered as a land contribution under this deed; or
 - (iii) any road referred to in clauses (c)(xi) or (xii) of this Schedule 6.
- (c) The Net Developable Area does not include the area of any land that a Development Consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
 - (i) school;
 - (ii) TAFE establishment;
 - (iii) emergency services facility;
 - (iv) health services facility owned or operated by a public authority;
 - (v) passenger transport facility;
 - (vi) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*);
 - (vii) public transport corridor (other than a road corridor);
 - (viii) public utility undertaking;
 - (ix) bus depot, whether or not owned or operated by a public authority;
 - (x) recreation area;
 - (xi) roads, or other 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 that is in force when the first Development Consent for the Development is granted; or
 - (xii) roads or other infrastructure in connection with which SICs have been, or may be, imposed in accordance with section 7.23 of the Act before the date of this deed.
- (d) The following areas of land are not to be included in the calculation of the Net Developable Area of the Land:
 - (i) any part of the land to which the relevant Development Consent relates that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if that part of the land is unsuitable for the Development by virtue of it being at or below that level;

- (ii) any part of the land to which the relevant Development Consent relates 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;
 - (iii) any area of land that is within Zone E2 Environmental Conservation, RE 1 Public Recreation, RE2 Private Recreation or SP2 Infrastructure or within Zone Environment and Recreation under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* if the Secretary is satisfied that it cannot be developed for urban purposes;
 - (iv) any 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, if the Secretary is satisfied that the area is rendered incapable of development by virtue of the easement;
 - (v) any area of riparian land if the Secretary is satisfied that it cannot be developed for urban purposes.
- (e) If a proposed lot contains an existing dwelling (being a dwelling that existed on the proposed lot at the date this deed commences) and:
- (i) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
 - (ii) 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 for the proposed subdivision.
- (f) This paragraph applies if any lot of land to which the relevant Development Consent relates includes (wholly or partly):
- (i) land that is within the curtilage of a building listed on the State Heritage Register; or
 - (ii) land that is within Zone E4 Environmental Living.
- For the purpose of calculating the Net Developable Area, any such lot that is more than 0.1 hectare in area is taken to be 0.1 hectare.
- (g) The Secretary may make any determination required to be made for the purpose of calculating the Net Developable Area for the development to which the relevant Development Consent applies and, for that purpose, may have regard to any information available at the time, such as any proposed Plan of Subdivision and any measurements made by a registered surveyor of the land concerned.
- (h) In this Schedule:
- (i) **curtilage**, in relation to a building, means 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, and
 - (ii) the following terms have the same meanings as they have in 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) public utility undertaking,
- (E) recreation area,
- (F) school.

Schedule 7: Net Developable Area Plan



NET DEVELOPABLE AREA	
LOT 1	61694 m ²
LOT 2	50782 m ²
LOT 3	52805 m ²
LOT 4	45370 m ²
LOT 5	30239 m ²
LOT 6	40856 m ²
LOT 7	39062 m ²
LOT 8	58602 m ²
LOT 9	39293 m ²
LOT 10	35285 m ²
LOT 11	39578 m ²
STORMWATER BASIN	17289 m ²
TOTAL NDA	510,665 m ²



Execution page

Executed as a deed

Executed in counterparts

Signed, sealed and delivered by the Minister
administering the *Environmental Planning and
Assessment Act 1979* ~~for Planning~~ (ABN 20 770
707 468), in the presence of:

.....
Signature of witness

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

.....
Name of witness in full

.....
Name of the delegate of the Minister
administering the *Environmental Planning and
Assessment Act 1979* ~~for Planning~~

.....
Address of witness

*I have signed a counterpart of the deed,
having witnessed the signing of the deed over
audio visual link in accordance with section 14G
of the *Electronic Transactions Act 2000*.

Signed, sealed and delivered by **Mirvac Projects Pty Ltd** (ACN 001 069 245) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Signed, sealed and delivered by **Mirvac Industrial Developments Pty Ltd** (ACN 127 755 239) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Signed, sealed and delivered by **Mirvac Funds Management Limited** (ACN 067 417 663) in its capacity as trustee of the Mirvac Kemps Creek Trust in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Signed, sealed and delivered by Mirvac Funds Management Limited (ACN 067 417 663) in its capacity as trustee of the MIV Aspect South Trust in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Signed, sealed and delivered by Mirvac Funds Management Limited (ACN 067 417 663) in its capacity as trustee of the MIV Aspect North Trust in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

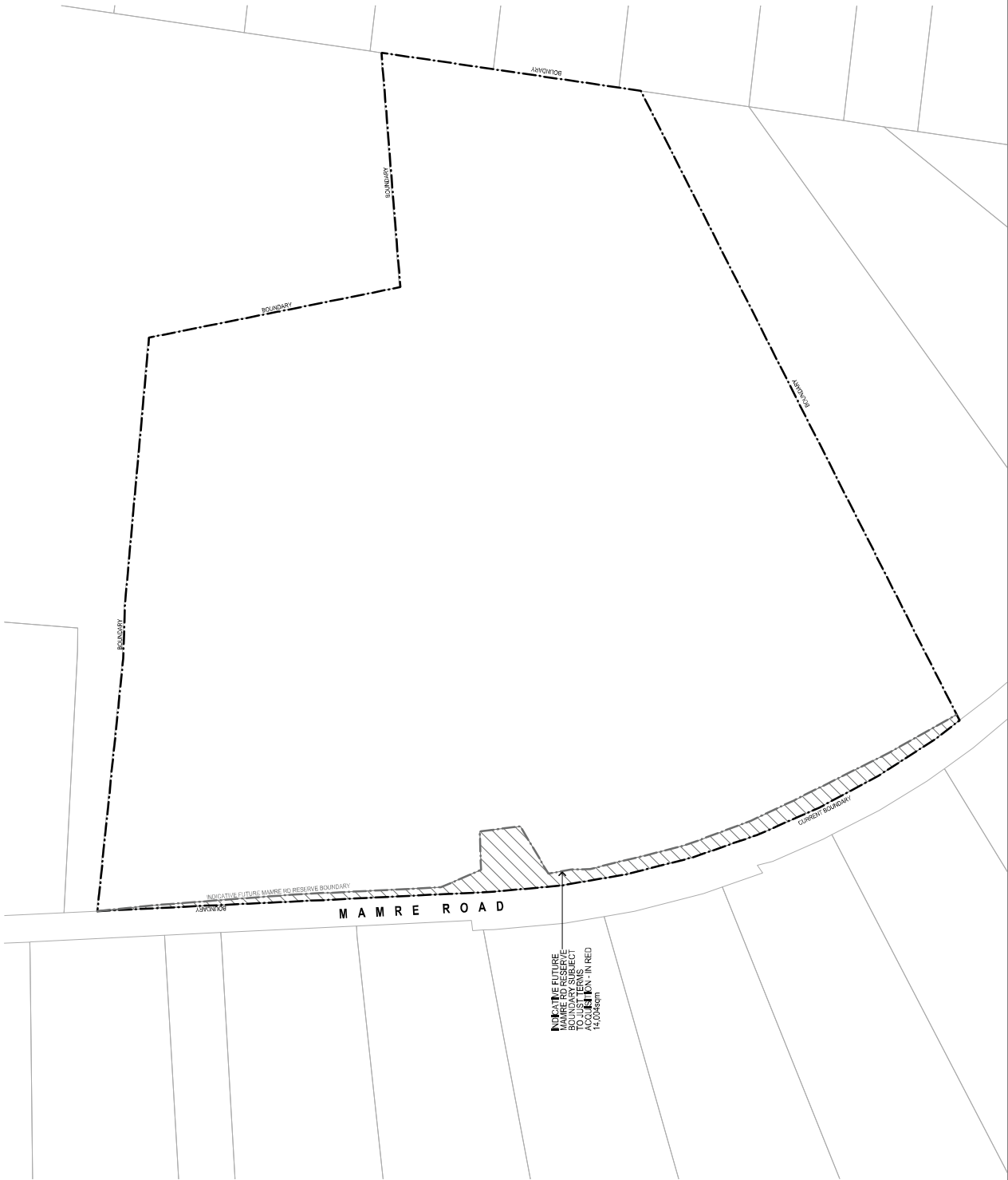
.....
Name of Director in full

.....
Name of Director/Secretary in full

Annexure A - Mamre Road Land Plan



Handwritten signature



	KEMPS CREEK ESTATE	MAMRE RD WIDENING PLAN	DATE: 08/03/21	SCALE: 1:400 @ A3	SHEET: 12210	A

Annexure B – Mamre Road Works Plan



26/1

SKETCH
NOT FOR CONSTRUCTION

[illegible]

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:



Electronic signature of me, Sarah Davino, affixed by me, on 13 September 2024.

Signature of witness

Sarah Davino

Name of witness in full

4 Parramatta Square, 12 Darcy Street, Parramatta

Address of witness

*By signing this Deed, the witness states that he/she witnessed the signing of this Deed by

Kate Speare,

being the delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*, 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).

Electronic signature of me, Kate Speare, affixed by me, on 13 September 2024.



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

Kate Speare

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

Signed sealed and delivered by **Mirvac Projects Pty Ltd** (ACN 001 069 245) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

DocuSigned by:
Stuart Penklis
.....1E07F51AB1324DF.....
Signature of Director

Stuart Penklis
.....
Name of Director in full

Electronic signature of me, Stuart Penklis,
affixed by me on 8/7/2024 | 17:06 AEST
[strike out if not applicable]

DocuSigned by:
Michelle Favelle
.....72B3D15B99774E0.....
Signature of Director/Secretary

Michelle Favelle - Secretary
.....
Name of Director/Secretary in full

Electronic signature of me, Michelle Favelle,
affixed by me on 8/7/2024 | 16:18 AEST
[strike out if not applicable]

Signed sealed and delivered by **Mirvac Industrial Developments Pty Limited** (ACN 127 755 239) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

DocuSigned by:
Richard Seddon
.....0F578F13105C47E.....
Signature of Director

Richard Seddon
.....
Name of Director in full


Electronic signature of me, Richard Seddon,
affixed by me on 8/7/2024 | 17:04 AEST
[strike out if not applicable]

DocuSigned by:
Michelle Favelle
.....72B3D15B99774E0.....
Signature of Director/Secretary

Michelle Favelle - Secretary
.....
Name of Director/Secretary in full

Electronic signature of me, Michelle Favelle,
affixed by me on 8/7/2024 | 16:18 AEST
[strike out if not applicable]

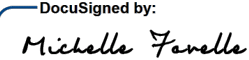
Signed sealed and delivered by Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect North Trust in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

DocuSigned by:

AC839A9845624F7.....
Signature of Director

Belinda Festa
.....
Name of Director in full

Electronic signature of me, Belinda Festa
affixed by me on 8/7/2024 | 16:50 AEST

[strike out if not applicable]

DocuSigned by:

72B3D15B99774E0.....
Signature of Director/Secretary

Michelle Favelle - Secretary
.....
Name of Director/Secretary in full

Electronic signature of me, Michelle Favelle
affixed by me on 8/7/2024 | 16:18 AEST

[strike out if not applicable]

Signed sealed and delivered by Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the MIV Aspect South Trust in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

DocuSigned by:

40839A9845624F7.....
Signature of Director

Belinda Festa
.....
Name of Director in full

Electronic signature of me, Belinda Festa
affixed by me on 8/7/2024 | 16:50 AEST

[strike out if not applicable]

DocuSigned by:


72B3D15B99774E0.....
Signature of Director/Secretary

Michelle Favelle - Secretary
.....
Name of Director/Secretary in full

Electronic signature of me, Michelle Favelle
affixed by me on 8/7/2024 | 16:18 AEST

[strike out if not applicable]

Signed sealed and delivered by Mirvac Funds Management Limited (ACN 067 417 663) as trustee for the Mirvac Kemps Creek Trust in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

DocuSigned by:

4C839A9845624F7...
Signature of Director

Belinda Festa
.....
Name of Director in full

Electronic signature of me, Belinda Festa
affixed by me on 8/7/2024 | 16:50 AEST

[strike out if not applicable]

DocuSigned by:

72B3D15B99774E0...
Signature of Director/Secretary

Michelle Favelle - Secretary
.....
Name of Director/Secretary in full

Electronic signature of me, Michelle Favelle
affixed by me on 8/7/2024 | 16:18 AEST

[strike out if not applicable]