

Voluntary Planning Agreement

Penrith City Council

ABN 43 794 422 563

Mirvac Projects Pty Ltd

ACN 001 069 245

Mirvac Industrial Developments Pty Limited

ACN 127 755 239

Mirvac Funds Management Limited (as trustee for the Mirvac Kemps Creek Trust)

ACN 067 417 663

Sydney

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Contents

Parties	5
Background	6
Operative part	6
1 <i>Definitions</i>	6
2 <i>Interpretation</i>	10
3 <i>Planning Agreement under the Act</i>	12
4 <i>Application of this agreement</i>	12
5 <i>Operation of this agreement</i>	12
6 <i>Contributions to be made under this agreement</i>	12
6.1 <i>Monetary Contribution</i>	12
6.2 <i>Works</i>	13
6.3 <i>Dedication of Land</i>	13
6.4 <i>Maintenance and Rectification of Defects</i>	14
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act</i>	14
8 <i>Registration of this agreement</i>	14
8.1 <i>Developer Interest</i>	14
8.2 <i>Registration of this agreement</i>	14
8.3 <i>Removal from Register</i>	15
8.4 <i>Caveat</i>	15
9 <i>Review of this agreement</i>	16
9.1 <i>Review generally</i>	16
10 <i>Dispute Resolution</i>	16
10.1 <i>Reference to Dispute</i>	16
10.2 <i>Notice of Dispute</i>	16
10.3 <i>Representatives of Parties to Meet</i>	16
10.4 <i>Further Notice if Not Settled</i>	17
10.5 <i>Mediation</i>	17
10.6 <i>Expert determination</i>	18
10.7 <i>Litigation</i>	18
10.8 <i>No suspension of contractual obligations</i>	18
11 <i>Enforcement and Security</i>	19
11.1 <i>Default</i>	19
11.2 <i>Security</i>	19

11.3	Compulsory Acquisition	21
11.4	Restriction on the issue of Certificates	21
11.5	General Enforcement	21
11.6	Council may perform Developer's obligations	22
12	<i>Assignment and Dealings</i>	22
12.1	Assignment	22
12.2	Transfer of Land	23
12.3	Transfer to Pre-approved Related Party	23
13	<i>Approvals and consents</i>	24
14	<i>No fetter</i>	24
14.1	Discretion	24
14.2	No fetter	24
15	<i>Notices</i>	25
16	<i>General</i>	26
16.1	Relationship between parties	26
16.2	Time for doing acts	26
16.3	Further assurances	26
16.4	Variation	26
16.5	No assignment	26
16.6	Counterparts	26
16.7	Legal expenses, stamp duty and administration fees	26
16.8	Entire agreement	27
16.9	Representations and warranties	27
16.10	Severability	27
16.11	Invalidity	27
16.12	Waiver	27
16.13	GST	28
16.14	Governing law and jurisdiction	28
17	<i>Reporting</i>	28
18	<i>Trustee Developer</i>	28
	Schedule 1 Scope of works	31
	Schedule 2 Construction terms	38
	Schedule 3 Summary of requirements (section 7.4)	46
	Annexure A Site Location	51

Annexure B Plans showing Works and Land	52
Annexure C Road Design Plans – Item 1	55
Annexure D Road Design Plans – Items 2, 3, 4 and 5	60

Agreement

Date 11 MARCH 2024

Parties

First party

Name Penrith City Council (Council)
ACN 43 794 422 563
Contact The General Manager
Telephone 02 4732 7777

Second party

Name Mirvac Projects Pty Ltd (Mircvac Projects)
ACN 001 069 245
Contact The Company Directors and Secretary, Mirvac Projects Pty Ltd
Attention: Richard Seddon
Email richard.seddon@mirvac.com and
Safe.custody@mirvac.com

Fourth party

Name Mirvac Industrial Developments Pty Ltd (Mircvac Industrial Developments)
ACN 127 755 239
Contact Attention: Richard Seddon
Email Richard.seddon@mirvac.com and
Safe.custody@mirvac.com

Fifth party

Name Mirvac Funds Management Limited (as trustee for the Mirvac Kemps Creek Trust) (Landowner)
ACN 067 417 663
Contact The Company Directors and Secretary, Mirvac Funds Management Limited
Email Attention: Richard Seddon
Safe.Custody@mirvac.com

Background

- A. On 24 May 2022, Development Consent was granted to carry out the Development on the Land.
- B. In connection with the Development, the Developer offered to enter into this agreement to make contributions for public purposes.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this agreement;

Altis Access Road means the collector road, to be constructed by others, which adjoins Access Road 3 (South) from lot 53 DP259135 to be approved under SSD-17647189.

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency;

Builder means any entity contracted under the Construction Contract to carry out the Works;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued under clause 8.1(d) of Schedule 2;

Certification Regulation means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Complying Development Certificate has the same meaning as in the Act;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development);

Construction Terms means the terms set out in Schedule 2;

Contributions means the dedication of land, the payment of money or the carrying out of Works required under this agreement.

Contributions Plan means the 'Penrith City Council section 7.11 Mamre Road Precinct Development Contributions Plan 2022' effective from 4 April 2022 and made under section 7.18 of the Act, or any replacement plan;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

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

Dedication Land means that part of the Land to be dedicated to Council in accordance with this agreement comprising the parts of Access Road 1 and Access Road 3 north – half width, Access Road 3 south (Part A), Access Road 3 South (Part B) and Access Road 3 South (Part C), as shown on the plan at [Annexure B](#);

Defects Liability and Maintenance Period means in respect of each component of the Works the period of 12 months from the date on which Handover of that component of the Works occurs;

Department means the Department of Planning and Environment;

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

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

Development means the staged development of the Land in accordance with Concept Approval SSD-10448 Mod 3 (and any further Development Consent granted in accordance with that concept approval) with a total Net Developable Area of approximately 479,686 square meters and gross floor area of up to 247,646 square metres being the total gross floor area of approximately 9 buildings for the purpose of industrial, warehousing and distribution centres, and café uses, including:

- (a) Stage 1 comprising construction, fit-out and operation of one warehouse and one industrial building with ancillary offices, 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 Concept Approval SSD-10448.

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

Handover means, with respect to any Works, the time Council takes possession of and assumes responsibility for the work in accordance with the Construction Terms;

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;

- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable.

Land means Lots 1-2 and 5 DP1285305 and Lots 6-7 DP1291562 , known as 788-882 Mamre Road, Kemps Creek, as shown at Annexure A;

Landowner means Mirvac Funds Management Limited (as trustee for the Mirvac Kemps Creek Trust);

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Maintain means works to bring an item to or keep an item in a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, including repairing any defects due to use of poor materials or due to poor workmanship, but does not include repairing normal wear and tear, removing graffiti or repairing any item damaged as a consequence of vandalism.

Maintained and **Maintenance** have corresponding meanings.

Ministerial VPA means the planning agreement between the Developer and the Minister dated 31 March 2022 in relation to the Development and the Land;

Modification Application means any application to modify the Development Consent under section 4.55 of the Act;

Monetary Contribution means the monetary contribution payable by the Developer under clause 6 of this agreement;

Net Developable Area means the net developable area for the Development on the Land calculated in accordance with the Contributions Plan;

Occupation Certificate means an occupation certificate as defined under section 6.4 the Act;

Permitted Encumbrances means any encumbrance, including easements, restrictions of use and covenants that will not interfere or obstruct the intended use and purpose of the Dedicated Land;

- (a) in favour of any utility service providers;

- (b) required by any Authority; or
- (c) requested by the Developer which is reasonably necessary for the Development or development on land adjacent to the Land, as agreed in writing by the Council, acting reasonably and promptly.

Pre-approved Related Party means each of:

- a) Mirvac Funds Management Limited as trustee for the Aspect North Trust; and
- b) Mirvac Funds Management Limited as trustee for the Aspect South Trust.

Public Reserve has the same meaning as in the *Local Government Act 1993*;

Public Road has the same meaning as in the *Roads Act 1993*;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Regulation means the *Environmental Planning and Assessment Regulation 2021*;

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

Security means a Bank Guarantee, Bond or cash deposit to be held by Council;

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

Subdivision Certificate means a subdivision certificate defined under section 6.4 of the Act;

Subdivision Works Certificate means a subdivision works certificate defined under section 6.4 of the Act; and

Superintendent means the Superintendent appointed under any Construction Contract.

Works means the work set out in Schedule 1.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, General Manager, CEO or managing director)** the president, General Manager, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** 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;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement 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;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in City or State, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Development, and
- (b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) The Developer will pay to Council a monetary contribution (excluding administration fees as included in clause 16.7(b)) of \$2,693,369.57 which has been calculated in accordance with the following formula:

Monetary Contribution	=	Total Contributions value (Excl. Admin), being \$28,593,944.57	-	Total Works value, being \$8,148,600.00	-	Total Dedication of Land value, being \$17,751,975.00
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- (b) The Monetary Contribution must be adjusted in accordance with increases in the CPI from the date of commencement of the Contributions Plan to the date of payment.
- (c) The Monetary Contribution, as adjusted in accordance with clause 6.1(b), must be paid to Council prior to the issue of the second Occupation Certificate for the Development, but no later than 1 July 2025.
- (d) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (e) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (f) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards the delivery of works, land acquisition and administration consistent with the Contributions Plan at Council's discretion.

6.2 Works

- (a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms, and any Development Consent or other Approval granted for the Works.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.
- (c) The Works or any part of the Works required under this agreement will be taken to have been delivered to Council on Handover in accordance with the Construction Terms.
- (d) Each component of the Works must be delivered to the Council in accordance with the timeframe for that component set out in Schedule 1.
- (e) The parties agree and acknowledge that the Works serve the public purposes of road improvement.
- (f) The parties agree and acknowledge that the Developer's completion of the Item 4, Access Road 3 South (Part B) Works is dependent on the completion of the Altis Access Road within Lots 52 and 53 DP259135 by others. Council will promptly notify the Developer in writing of the practical completion of the Altis Access Road and the dedication of the Altis Access Road land to Council.
- (g) The parties agree and acknowledge that the Developer's completion of the Item 5, Access Road 3 South (Part C) Land Dedication is dependent on approval of modification to Altis SSD-176471890 by others. Approval of the modification to Altis SSD-176471890 to include the Works for item 5, Access Road 3 South (Part C) is taken to have occurred when the notice of determination is published on the Planning Portal.

6.3 Dedication of Land

- (a) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax (except for any Permitted Encumbrances).
- (b) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, each component of the Dedication Land by the timeframe for that component set out in Column 4 of Schedule 1.
- (c) The Developer must take all steps, prepare all documents and meet all costs required to dedicate the Dedication land including, but not limited to:
 - (i) removing any encumbrances on the title to the land (except Permitted Encumbrances);
 - (ii) creating an interest in land in favour of Council if required;
 - (iii) subdividing the Land to create a separate lot for the Dedication Land;
 - (iv) preparing and lodging documents for registration;

- (v) obtaining the consent of any other parties to the registration of the relevant documents; and
 - (vi) attending to any requisition relating to any dealing or document lodged for registration.
- (d) The obligation to dedicate the Dedication Land will be taken to have been satisfied when the Public Road is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993*.

6.4 *Maintenance and Rectification of Defects*

The Developer must Maintain the Works and rectify any defects after Handover of the Works in accordance with the Construction Terms.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are to be taken into consideration in determining a development contribution under section 7.11 of the Act, had such a contribution been payable by for clause 7(a) of this agreement.
- (e) The parties agree and acknowledge that, for the purposes of section 7.4(6) of the Act, the Contributions to be delivered under this agreement will be taken into consideration by the relevant consent authority for the Development, up to a Net Developable Area of 479,686 square meters, when determining any condition to be imposed on a Development Consent under section 7.11 of the Act.
- (f) For the avoidance of doubt, section 7.11 of the Act will continue to apply to any development of the Land that exceeds the proposed Net Developable Area of 479,686 square meters Without consideration of any Contributions to be delivered under this agreement.

8 Registration of this agreement

8.1 *Developer Interest*

The Landowner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.

- (b) The Developer, at its own expense, must:
- (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date;
 - (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration; and
 - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer warrants that, as at the date of this agreement, it has obtained the consent of each person who has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW) or is seized or possessed of an estate or interest in the Land to the registration of this agreement on title.
- (d) The Developer, at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
- (i) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (ii) The execution of any documents; and
 - (iii) The production of the relevant duplicate certificates of title,
- to enable the registration of this agreement in accordance with clause 8.2.
- (e) The Landowner consents to the registration of the agreement in accordance with this clause 8.2.

8.3 *Removal from Register*

The Council will, at the Developer's cost, provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement in respect of that part of the Land.

8.4 *Caveat*

- (a) The Developer acknowledges and agrees that:
- (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.

- (b) The Council must, at Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2.
- (c) The Developer must notify the Council within 5 Business Days after the registration of any subdivision plan that creates a separate lot for the Dedication Land or any part of the Dedication Land.
- (d) The Developer acknowledges and agrees that, if this agreement is not registered on title to the Land, in the event a separate lot is created for the Dedication Land or any part of the Dedication Land, it will not object to Council lodging a caveat in the relevant folios of the Register for that land, nor will it seek to remove any such caveat lodged by Council, until the relevant part of the Land is dedicated to Council in accordance with this agreement.

9 Review of this agreement

9.1 *Review generally*

This agreement may be reviewed or modified in accordance with this clause 9.1.:

- (a) any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties;
- (b) no modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement; and
- (c) a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,

- (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
- (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 10 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and

- (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 10 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 10 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement and Security

11.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 Security

- (a) On execution of this agreement, or at a later date as agreed in writing by Council, the Developer must provide to the Council Security in an amount equivalent to the Monetary Contribution payable as at the date of execution of this agreement.
- (b) Within 20 Business Days of each anniversary of a Security provided under clause (a), or at a later date as agreed in writing by Council, the Developer must provide Council with one or more replacement Securities (replacement Security) in an amount calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$

Where:

A is the amount of the replacement Security,

B is the amount of the Security to be replaced,

C is the CPI for the quarter ending immediately before the date of the Security to be replaced,

D is the CPI for the quarter ending immediately before the date of the replacement Security,

provided A is greater than B.

- (c) On receipt of a replacement Security provided under clause 11.2(b), the Council must release and return to the Developer, as directed, the Security that has been replaced within 30 Business Days.
- (d) Prior to the issue of a Construction Certificate for each component of the Works set out in Schedule 1, the Developer must provide to the Council Security in an amount equivalent to 125% of the agreed value of the Works set out in Schedule 1 for that item (**Agreed Value**), comprising two Securities equivalent to:
 - (i) 100% of the Agreed Value (**Works Security**); and
 - (ii) 25% of the Agreed Value (**Maintenance Security**).

- (e) Notwithstanding clause 11.2(d), on execution of this agreement, the Developer must provide the Works Security and the Maintenance Security for any Works that have commenced prior to the date of this agreement.
- (f) The Developer discloses and the Council acknowledges that the Maintenance Security may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
 - (i) any Maintenance Security provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procures an agreement from the Builder that the Council will be entitled to call on any Maintenance Security provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (g) Upon the issue of a Certificate of Practical Completion for a component of the Works issued under clause 8.1(d) of Schedule 2, Council must release to the Developer the Works Security held by Council for that component of the Works, subject to any right which Council has under this agreement to withhold, make a demand on or set-off against the Works Security.
- (h) Upon receiving a request to inspect the Works in accordance with clause 9.2(i) of the Construction Terms, Council shall undertake an inspection of the Works in accordance with Council's *Engineering Construction Specification for Civil Works*. Subject to a satisfactory inspection by Council, within 10 Business Days after the inspection, Council must (if it has not called on it) return the Maintenance Security (or any remaining balance of it) for that component of Works to the Developer.
- (i) Notwithstanding clause 11.2(h), if Council issues a Rectification Notice under clause 9.2 of the Construction Terms, then Council need not deliver the balance of any Maintenance Security provided to it until that Rectification Notice has been complied with.
- (j) The Council may call on a Security provided under this clause if:
 - (i) the Developer is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so, in accordance with clause 11.1 of this agreement; or
 - (ii) the Developer becomes insolvent.
- (k) Subject to this clause 11 and the provisions of this agreement, the Council may apply the proceeds of a Security to satisfy:
 - (i) any obligation of the Developer under this agreement to deliver Contributions, and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by Council because of the failure by the Developer to comply with this agreement.

11.3 *Compulsory Acquisition*

- (a) If the Developer does not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may recover any costs, including legal costs, incurred by the Council on acquisition of the land from the Developer.
- (b) Clause 11.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 11.3(a).
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 11.3(a).
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.3(a) that are not or cannot be recovered by calling on a Security.

11.4 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and clause 21 of the Certification Regulation, if this agreement specifies that an obligation must be satisfied before the issue of a Construction Certificate, that Construction Certificate must not be issued unless the certifier has received written confirmation from Council that the relevant obligations have been carried out by the Developer to the satisfaction of Council, acting reasonably.
- (b) In accordance with section 6.10(d) of the Act and clause 48 of the Certification Regulation, if this agreement specifies that an obligation must be satisfied before the issue of an Occupation Certificate, that Occupation Certificate must not be issued unless the certifier has received written confirmation from Council that the relevant obligations have been carried out by the Developer to the satisfaction of Council, acting reasonably.
- (c) If Council has issued a Default Notice under clause 11.1, no further Construction Certificates, Subdivision Certificates or Occupation Certificates for the Development may be issued until the default has been remedied, or any dispute arising from the Default Notice has been resolved in accordance with clause 10.

11.5 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.

- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

11.6 Council may perform Developer's obligations

- (a) If Council considers that the Developer is in breach of any obligation under this agreement relating to the carrying out of any Work (or part of a Work), including Work the subject of a Rectification Notice, Council may give the Developer a notice under this clause 11.6.
- (b) The notice may require the Developer to:
 - (i) rectify the breach to Council's satisfaction; and
 - (ii) immediately cease carrying out further work relating to the Work except to rectify the breach.
- (c) A notice given under clause 11.6(a) must allow the Developer no less than twenty eight (28) days (or such further period as Council considers reasonable in the circumstances) to rectify the breach.
- (d) The Developer must comply with any notice issued by Council under clause 11.6.
- (e) Without limiting any other rights Council has to enforce this agreement, if the Developer does not comply with a notice given under clause 11.6(a) then Council may:
 - (i) enter any part of the Land;
 - (ii) carry out and complete the Work the subject of the Developers' breach; and
 - (iii) call on the relevant Works or Maintenance Security to recover the costs of completing the Works.
- (f) The Developer must pay to the Council any reasonable costs of completing the Works itself that are not or cannot be recovered by calling on a Security, within twenty eight (28) days of receiving a written demand for such payment by Council.
- (g) For the purposes of clause 11.6(e) and (f), the costs which Council can recover include the direct costs of carrying out the Works (including labour, equipment and supplies), fees and charges incurred by Council, Council's employees, agents and contractors, and legal costs and expenses.

12 Assignment and Dealings

12.1 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.

- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

12.2 *Transfer of Land*

- (a) Subject to clause 12.3, the Landowner may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) the Landowner satisfies the Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this agreement;
 - (ii) the Landowner satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (iv) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (v) the Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

12.3 *Transfer to Pre-approved Related Party*

- (a) The parties acknowledge that the Landowner intends to transfer its interests in the Land to the Pre-approved Related Parties.
- (b) The Developer may sell or transfer any part of the Land together with its right under this agreement to a Pre-approved Related Party without the prior consent of the Council (**Pre-approved Dealing**), and the provisions of clauses 12.1 and 12.2 will not apply in respect of such Pre-approved Dealing, provided that on or before the date on which the Developer effects the Pre-approved Dealing this agreement is registered on the title to the Land in accordance with clause 8 and the Developer delivers to the Council:
 - (i) written notice confirming:
 - (A) the details of the Pre-approved Related Party to which any part of the Land and the Developer's rights under this agreement are to be transferred and assigned to pursuant to the Pre-approved Dealing; and
 - (B) the anticipated date on which the Pre-approved Dealing is to be effected;
 - (C) the part of the Land which is the subject of the Pre-approved Dealing; and

- (ii) a deed poll signed by the Pre-approved Related Party under which the Pre-approved Related Party covenants to comply with all the outstanding obligations of the Developer under this agreement on and from the date on which the Pre-approved Related Party becomes the owner of any part of the Land (the **Pre-approved Dealing Effective Date**).
- (c) If the Developer effects a Pre-approved Dealing in accordance with clause 12.3(a), on and from the Pre-approved Dealing Effective Date, this agreement is deemed to be varied and is to be read and interpreted on the basis that:
 - (i) the 'Developer' comprises the parties as defined within this agreement immediately prior to the Pre-approved Dealing Effective Date, together with the relevant Pre-approved Related Party (being a party to the Pre-approved Dealing), jointly and severally; and
 - (ii) references to the 'Landowner' are references to the relevant registered proprietors of each part of the Land from time to time, as the context requires.
- (d) The Developer must pay Council's reasonable legal costs and expenses incurred under this clause 12.3.
- (e) This clause 12.3 will operate, and the above provisions will reapply, in relation to each Pre-approved Dealing with the entities specified in the definition of Pre-approved Related Party.

13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,

- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to Penrith City Council: PO Box 60, Penrith, NSW 2751
 Fax: (02) 4732 7958
 Email: council@penrith.city
 Attention: The General Manager
 - (ii) the Mirvac Projects: Level 28, 200 George Street, Sydney, NSW 2000
 Email: Richard.seddon@mirvac.com and
safe.custody@mirvac.com
 Attention: Richard Seddon
 - (iii) to Mirvac Industrial Developments: Level 28, 200 George Street, Sydney, NSW 2000
 Email Richard.seddon@mirvac.com and
safe.custody@mirvac.com
 Attention: Richard Seddon
 - (iv) to the Landowner: Level 28, 200 George Street, Sydney, NSW 2000
 Email: Richard.seddon@mirvac.com and
safe.custody@mirvac.com
 Attention: Richard Seddon
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of an email, when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above; and
- (d) if under clause 15(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 *Relationship between parties*

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement 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 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 *No assignment*

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 *Counterparts*

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

16.7 *Legal expenses, stamp duty and administration fees*

- (a) The Developer must pay on demand Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, stamping, and release and discharge of this agreement, including the reasonable costs incurred by the Council in obtaining any advice about this agreement or the value of land or works to be delivered under this agreement.
- (b) On execution of this agreement, the Developer must pay an administration, monitoring and enforcement fee to the Council in the amount of \$150,039.77 or

the total amount calculated in accordance with the following formula, whichever is greater:

Total Administration fee value	=	\$150,039.77 (unindexed)	x	$\frac{\text{The CPI at the date of this agreement}}{\text{The CPI at the commencement of the Contributions Plan (120.2)}}$
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16.8 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 *Representations and warranties*

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

16.10 *Severability*

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

16.11 *Invalidity*

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 *Waiver*

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does 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.

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (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.

17 Reporting

On or before 31 July in each calendar year after the execution of this agreement and until the Developer's obligations under this agreement are satisfied, the Developer must provide a written report to Council detailing the progress of the provision of Contributions under this agreement and the progress of the Development.

18 Trustee Developer

- (a) In this clause 18:
 - (i) **Trustee** means Mirvac Funds Management Limited (ACN 067 417 663); and
 - (ii) **Trust** means the Mirvac Kemps Creek Trust.
- (b) The Trustee enters into this agreement in its capacity as trustee for the Trust constituted by a trust deed (**Trust Deed**). The Trustee:
 - (i) warrants that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this agreement 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 agreement;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this agreement;
 - (E) the Land forms part of the assets of the Trust and 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 agreement; and

- (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this agreement and all necessary action has been taken to authorise the execution and performance of this agreement under the Trust Deed; and
 - (ii) indemnifies Council, and agrees to keep Council indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 18(b)(i).
- (c) 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 agreement with Council on the same terms as this agreement;
 - (ii) the Trustee (as outgoing trustee) must procure an agreement from Council, under which Council releases the Trustee from the requirement to observe and perform any future obligation under this agreement;
 - (iii) the Trustee (as outgoing trustee) must release Council, from the requirement to observe and perform any future obligation under this agreement; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of Council in relation to entering into a new agreement under this clause 18(c) and the costs and expenses of registering any new deed on the title to the Land.
- (d) Subject to clause 18(f), liability arising under or in connection with this agreement (except under or in connection with clause 18(b) 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 agreement.
- (e) No party to this agreement 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 18(b) above.
- (f) Notwithstanding any other provision of this deed, clauses 18(c) and 18(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.

- (g) Nothing in clause 18(f) will make the Trustee liable for any claim for an amount greater than the amount which Council 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.

Schedule 1 Scope of works

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No	Contribution type	Road Works Description	Land Dedication Description	Trigger Event	Works Value (unindexed)	Land Value (unindexed)
1.	Part A of Access Road 1 Works and land dedication	Part A of the Access Road 1 works described as the 'Stage 1 Phase 1 Road Works' in SSD-10448, shown as 'Access Road 1 – Part A' within Annexure B, and as shown on the plans at Annexure C.	The land comprising the Part A of the Access Road 1 works described as the 'Stage 1 Phase 1 Road Works' in SSD-10448, shown as 'Access Road 1 – Part A' within Annexure B, and as shown on the plans at Annexure C	<p>Works: Prior to issue of an Occupation Certificate for the first warehouse in the Development, or if another timeframe is set out in Condition D6 of SSD-10448, as amended from time to time, the timeframe set out in that condition, but no later than 1 July 2025.</p> <p>Land Dedication: Within six (6) months of the latter of:</p> <ul style="list-style-type: none"> a) issuance of Practical Completion Certificate from Council for the Works; and b) Issuance of Practical Completion Certificate from Transport for NSW for the signalised intersection works to the Mirvac estate. <p>But no later than 1 July 2026.</p>	\$3,299,400.00	\$6,170,325.00

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No	Contribution type	Road Works Description	Land Dedication Description	Trigger Event	Works Value (unindexed)	Land Value (unindexed)
2.	Part B of Access Road 1 Works and land dedication	Part B of the Access Road 1 works described as the 'Stage 1 Phase 2 Road Works' in SSD-10448, as shown as 'Access Road 1 – Part B' within Annexure B, and as shown on the plans at Annexure D.	The land comprising the Part B of the Access Road 1 works described as the 'Stage 1 Phase 2 Road Works' in SSD-10448, shown as 'Access Road 1 – Part B' within Annexure B, and as shown on the plans at Annexure D.	<p>Works: Prior to issue of an Occupation Certificate for the second warehouse in the Development, or if another timeframe is set out in Condition D8 of SSD-10448, as amended from time to time, the timeframe set out in that condition, but no later than 1 July 2025.</p> <p>Land Dedication: Within six (6) months of the latter of:</p> <ul style="list-style-type: none"> a) issuance of Practical Completion Certificate from Council for the Works; and b) Issuance of Practical Completion Certificate from Transport for NSW for the signalised intersection works to the Mirvac Estate. <p>But no later than 1 July 2026.</p>	\$1,226,700.00	\$2,582,900.00

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No	Contribution type	Road Works Description	Land Dedication Description	Trigger Event	Works Value (unindexed)	Land Value (unindexed)
3.	Part A of Access Road 3 (South) Works and land dedication	Part A of the Access Road 3 (South) works described as the 'Stage 1 Phase 2 Road Works' in SSD-10448, shown as 'Access Road 3 (South) Part A' within Annexure B and as shown on the plans at Annexure D.	The land comprising the Part A of the Access Road 3 (South) works described as the 'Stage 1 Phase 2 Road Works' in SSD-10448, shown as 'Access Road 3 (South) - Part A' within Annexure B, and as shown on the plans at Annexure D.	<p>Works: Prior to issue of an Occupation Certificate for the second warehouse in the Development, or if another timeframe is set out in Condition D8 of SSD-10448, as amended from time to time, the timeframe set out in that condition, but no later than 1 July 2025.</p> <p>Land Dedication: Within six (6) months of the latter of:</p> <ul style="list-style-type: none"> a) issuance of Practical Completion Certificate from Council for the Works; and b) Issuance of Practical Completion Certificate from Transport for NSW for the signalised intersection works to the Mirvac estate. <p>But no later than 1 July 2026.</p>	\$3,172,500.00	\$6,816,625.00

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No	Contribution type	Road Works Description	Land Dedication Description	Trigger Event	Works Value (unindexed)	Land Value (unindexed)
4.	Part B of Access Road 3 (South) Works and land dedication	Part B of Access Road 3 (South) south of the temporary cul-de-sac as approved under SSD-10448, and as shown on the plans at Annexure D.	The land comprising the Part B of the Access Road 3 (South) works south of the temporary cul-de-sac as approved under SSD-10448, as shown as 'Access Road 3 (South) Part B' within Annexure B.	<p><u>Explanatory note:</u> To enable temporary swept turn paths in advance of final road connections to the South, Mirvac is providing a temporary cul-de-sac. It has been agreed with Council that the road verge which includes a portion of this temporary cul-de-sac will be dedicated to Council as a public road reserve at the same time as item 3, Part A of Access Road 3 (South) land dedication. The works to complete the final verge works will be undertaken by Mirvac at a later date once the final road connections have been made to the south which includes provisions (both works and on title) to enable a PBS 2B vehicle to safely turn around.</p> <p><u>Works:</u> Within six (6) months of Council issuing a Notice to the Developer informing of the Practical Completion and Land Dedication to Council as a public road reserve for road works on lots 52 and 53 DP259135 including provisions (both works and on title) to enable a PBS 2B vehicle to safely turn around.</p> <p><u>Land Dedication:</u> Same timing as item 3, Part A of Access Road 3 (South) Land Dedication.</p>	N/A. Incl. as part of item 3, Part A of Access Road 3 (South) works.	N/A. Incl. as part of item 3, Part A of Access Road 3 (South) Land Dedication.

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No	Contribution type	Road Works Description	Land Dedication Description	Trigger Event	Works Value (unindexed)	Land Value (unindexed)
5.	Part C of Access Road 3 (South) land dedication	Part C of Access Road 3 (South) south of the temporary cul-de-sac, and as shown on the plans at Annexure D.	The land comprising the Part C of the Access Road 3 (South) works south of the temporary cul-de-sac, as shown as 'Access Road 3 (South) Part C' within Annexure B.	<p><u>Explanatory note:</u> These road connection works have been agreed between Council, Mirvac and the developer of lot 53 DP259135 (Altis) to be approved under SSD-17647189, to be completed by Altis. Noting existing level differences, Mirvac to construct temporary batter. To enable these connection works, Altis will obtain a modification to their SSD-17647189, to which Mirvac will provide Landowners Consent. To enable subdivision and land dedication of this land, within three (3) months of exhibition of this Planning Agreement by Council, Mirvac will lodge a modification to SSD-10448 to seek consent to subdivide and dedicate this land to Council as a public road reserve.</p> <p><u>Works:</u> Nil</p> <p><u>Land Dedication:</u> Within six (6) months of the latter of:</p> <ul style="list-style-type: none"> a) Notice of Determination (approval) for the modification to the Altis SSD-17647189 for the Works being published on the Planning Portal; and b) Approval of modification to SSD-10448 for the subdivision and dedication of the Land to Council as a public road reserve. <p>But no later than 1 July 2025.</p>	N/A	\$109,250.00

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No	Contribution type	Road Works Description	Land Dedication Description	Trigger Event	Works Value (unindexed)	Land Value (unindexed)
6.	Roundabout Works (RA3)	The part of the road works described as the 'Stage 1 Phase 2 Road Works' in SSD-10448 comprising the roundabout at the intersection of Access Roads 1 and 3 (south), and as shown within Annexure B and on the plans at Annexure D.	N/A	<p>Works: Same timing as item 3, Part A of Access Road 3 (South) Works.</p> <p>Land Dedication: Same timing as item 3, Part A of Access Road 3 (South) Land Dedication.</p>	\$450,000	N/A.

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No	Contribution type	Road Works Description	Land Dedication Description	Trigger Event	Works Value (unindexed)	Land Value (unindexed)
7.	Access Road 3 (North) Half Width land dedication	N/A	The western half width of Access Road 3 (north) north of the roundabout at the intersection of Access Road 1 and 3 (south) as shown 'Access Road 3 (North) within Annexure B.	<p><u>Explanatory note:</u> These road connection works have been agreed between Council, Mirvac and developer of lot 180 DP1290397 (GPT Group) to be approved under SSD-10272349, to be completed by GPT Group. To enable these connection works, Mirvac will dedicate the Land to Council as a public road reserve and GPT Group will obtain s138 approvals from Council for the Works. To enable subdivision and land dedication of this land, within three (3) months of exhibition of this Planning Agreement by Council, Mirvac will lodge a modification to SSD-10448 to seek consent to subdivide and dedicate this land to Council as a public road reserve.</p> <p><u>Works:</u> Nil</p> <p><u>Land Dedication:</u> Within six (6) months of approval of modification to SSD-10448 for the subdivision and dedication of the Land to Council as a public road reserve. But no later than 1 July 2025.</p>	N/A	\$2,072,875.00
				TOTAL VALUE:	\$8,148,600.00	\$17,751,975.00

Schedule 2 Construction terms

1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply, unless context indicates a contrary intention.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

and it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

All costs of the Works must be borne by the Developer.

4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:

- (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
- (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

5 Design Development

5.1 Concept Design

Council and the Developer have worked in consultation with each other to prepare and agree the concept plans for the Works described in the table in Schedule 1.

5.2 Detailed Design

- (a) Prior to Works commencing the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (b) Within 15 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (c) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 15 Business Days of Council providing its suggested amendments in accordance with clause 5.2(b) of this Schedule, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
 - (i) is consistent with the obligation to carry out the Works and dedicate the Dedication Land under this agreement; and
 - (ii) is consistent with the Development Consent; and
 - (iii) does not materially and adversely affect the Development; and
 - (iv) is not unreasonable.

5.3 Any acceptance by the Council of the Detailed Design under this clause 5 is not to be taken as approval of or to any Construction Certificate for the Works.

5.4 Good faith

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

6 Carrying out of Works

6.1 Communication

The Developer must notify Council on the commencement of the Works and keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

6.2 Standard of Works

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.

- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.2(b)(ii) of this Schedule from Council if the Council fails to deliver them to the Developer.
- (d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:
 - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or
 - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works; or
 - (iii) The normal wear and tear of the Works through public use, other than damage caused by construction or other vehicles accessing the Land for the purposes of carrying out the construction of the Development.

6.3 Damage to people, property & utilities

- (a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this agreement:
 - (i) all necessary measures are taken to protect people and property;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 6.3(a) of this Schedule, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

7 Inspection

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Developer must request the Inspection Schedule from the Council prior to the Works commencing.
- (b) One Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council and its employees, contractors, agents or representatives may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:

- (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer; and
 - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of Schedule), notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
- (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Developer is issued a direction to carry out further work under clause 7(e) of this Schedule, the Developer must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with a direction to carry out work given under clause 7(e) of this Schedule, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under clause 7(e) of this Schedule does not constitute:
- (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Works; or
 - (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

8 Completion

8.1 Practical Completion

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any

public utility authority and a request for written certification from the Council that the Works, or the relevant part of the Works, are complete.

- (b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably, either:
 - (i) provide written certification to the Developer that the Works, or the relevant part of the Works, have been completed; or
 - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 2 for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

8.2 Handover

- (a) The Developer is responsible for the delivery and care of the Works at all times prior to Handover of the Works, or the relevant component of the Works.
- (b) Handover will occur and Council will assume responsibility for the Works:
 - (i) following dedication to Council of the land on which Works are located; or
 - (ii) if Works are carried out on land already owned by Council, on the issue of a Certificate of Practical Completion for those Works.

8.3 Delivery of documents

- (a) If it has not already done so, the Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of all compliance documentation outlined in section 2.3 of Council's *Engineering Construction Specification for Civil Works* as are relevant to the Works or that component of the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

8.4 Assignment of Warranties and Causes of Action

- (a) The Developer must use reasonable endeavours to assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.

- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

9 Defects Liability and Maintenance

9.1 Maintenance

- (a) Prior to the issue of a Certificate of Practical Completion for any part of the Works, the Developer must provide to the Council a Maintenance Schedule setting out the proposed maintenance works and estimated costs for the relevant part of the Works over the Defects Liability and Maintenance Period.
- (b) Within 10 Business Days of receiving the Maintenance Schedule, Council must issue a written notice to the Development advising of any changes it requires to the Maintenance Schedule, which changes must be reasonable and in accordance with Council's usual practice for maintaining works of the same type.
- (c) Within 5 Business Days of receiving the Council's notice under clause 9.1(b) of this Schedule, the Developer must provide to Council a final Maintenance Schedule incorporating the Council's changes.
- (d) The Works or any part of those works, must be Maintained by the Developer in accordance with the Maintenance Schedule for the Defects Liability and Maintenance Period.
- (e) The Developer must follow relevant Council policies and obtain all Approvals necessary to carry out the Maintenance required under this clause.
- (f) The Council must give the Developer and its contractors any access required to carry out Maintenance in accordance with the Maintenance Schedule.

9.2 Defects Liability

- (a) The Developer must request that Council inspect the Works (or the relevant component of the Works) at least 10 Business Days prior to the end of the Defects Liability and Maintenance Period. The Council must inspect the Works at any time after receiving the request from the Developer and may do so after the end of the Defects Liability and Maintenance Period.
- (b) If, prior to the end of the Defects Liability and Maintenance Period, the Developer fails to request the inspection under clause 9.2(a) of this Schedule, the Council may extend the Defects Liability and Maintenance Period so that the inspection may be carried out.
- (c) During the Defects Liability and Maintenance Period or within 20 Business Days after the inspection carried out under clause 9.2(a) of this Schedule, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works or the relevant component of the Works or any Maintenance requirement that has not been complied with.
- (d) The Rectification Notice must specify:
 - (i) action required to be undertaken by the Developer to rectify the defect or Maintain the Works or the relevant component of the Works (**Rectification Works**); and

- (ii) the date on which the defect must be rectified, or the **Maintenance work completed (Rectification Date)**.
- (e) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
 - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect or Maintain the Works or the relevant component of the Works; and
 - (iii) carrying out the Rectification Works.
- (f) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (g) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (h) The Council may inspect the Rectification Works within 15 Business Days of receiving a notice from the Developer under clause 9.2(e) of this Schedule 2 and, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (i) The Developer must meet all costs of and incidental to rectification of defects or Maintenance of Works or the relevant component of the Works under this clause 9.2.
- (j) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
 - (i) call upon the Maintenance Security provided to the Council for that component of the Works under clause 11.2(c)(ii) of this agreement to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Maintenance Security for that component of the Works and the costs incurred by the Council in carrying out Rectification Works.

10 Risk

The Developer undertakes the Works entirely at its own risk.

11 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved

by the Council (acting reasonably) in a form approved by the Council (acting reasonably):

- (i) construction works insurance for the value of the Works;
 - (ii) public risk insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 11(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

12 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

13 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer have or receive intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

14 Risk of contamination

The Developer acknowledges and agrees:

- (a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
- (b) it will attend to any necessary remediation at their own costs; and
- (c) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

15 Plans

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the parties.

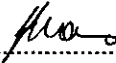
Schedule 3 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Landowners have:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>7888-882 Mamre Road, Kemps Creek being Lots 1-2 and 5 DP1285305 and Lots 6-7 DP1291562</p>
<p>Description of the change to the environmental planning instrument or development to which the Planning Agreement applies - Section 7.4(3)(b)</p>	<p>See definition of Development in clause 1</p>
<p>The scope, timing and manner of delivery of contributions required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>See clause 6</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded in accordance with clause 7.</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded in accordance with clause 7.</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded by this agreement but excluded under a separate agreement with the Minister.</p>
<p>Whether the benefits are or are not to be taken into consideration in determining a development contribution under section 7.11 – Section 7.4(3)(e)</p>	<p>See clause 7(e)</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>See clause 10</p>
<p>Enforcement of the Planning Agreement by a suitable means – Section 7.4(3)(g)</p>	<p>See clause 11</p>
<p>Registration of the Planning Agreement – Section 7.6</p>	<p>See clause 8</p>

No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 14 (no fetter)
--	---------------------------

Executed as an agreement

Executed for and on behalf of Penrith)
City Council by its authorised delegate in)
accordance with a resolution of the)
Council dated: 22/07/2014)



.....

Signature of witness



.....

Signature of Authorised Delegate

Print position:

JULIE ROES

.....

Print name

If this agreement was signed electronically, I certify that my electronic signature was affixed by me, or at my direction, to a counterpart of the deed on the date specified, having witnessed the signing of the deed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000

ANDREW MOORE

.....

Print name

If this agreement was signed electronically, I certify that my electronic signature was affixed by me, or at my direction, on the date specified

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

DocuSigned by:

.....AR43BR4263ED419.....

Signature of Director

Andrew Butler

Name of Director in full
9/2/2024 | 09:15 AEDT

*If this agreement was signed electronically, I
certify that my electronic signature was affixed by
me, or at my direction, on the date specified*

DocuSigned by:

.....925728D3A0BC466.....

Signature of Director/Secretary

Vicki Vordis

Name of Director/Secretary in full
8/2/2024 | 17:54 AEDT

*If this agreement was signed electronically, I
certify that my electronic signature was affixed by
me, or at my direction, on the date specified*

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

DocuSigned by:

.....0F578F13105C47E.....

Signature of Director

Richard Seddon

Name of Director in full
8/2/2024 | 18:48 AEDT

*If this agreement was signed electronically, I
certify that my electronic signature was affixed by
me, or at my direction, on the date specified*

DocuSigned by:

.....925728D3A0BC466.....

Signature of Director/Secretary

Vicki Vordis

Name of Director/Secretary in full
8/2/2024 | 17:54 AEDT

*If this agreement was signed electronically, I
certify that my electronic signature was affixed by
me, or at my direction, on the date specified*

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

DocuSigned by:

4C839A9845624F7.....

Signature of Director

Belinda Festa

.....

Name of Director in full

9/2/2024 | 09:11 AEDT

If this agreement was signed electronically, I certify that my electronic signature was affixed by me, or at my direction, on the date specified

DocuSigned by:

92572803A06C466.....

Signature of Director/Secretary

Vicki Vordis

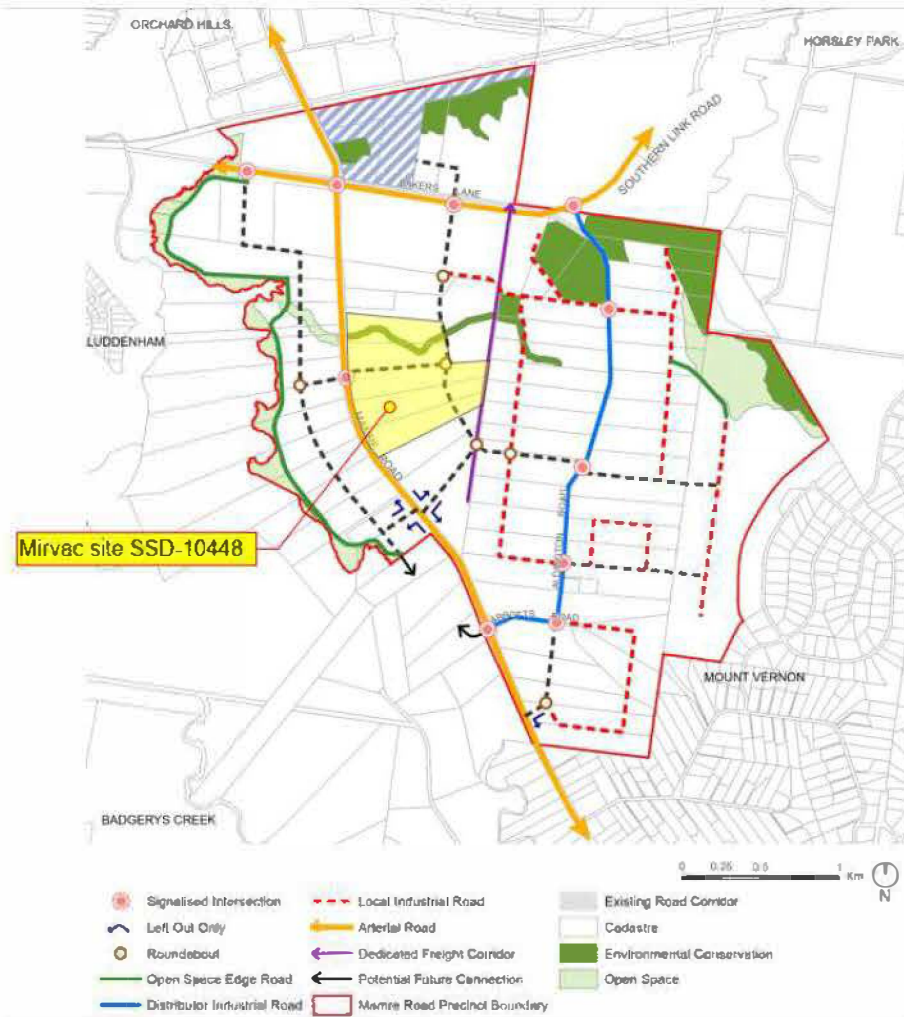
.....

Name of Director/Secretary in full

8/2/2024 | 17:54 AEDT

If this agreement was signed electronically, I certify that my electronic signature was affixed by me, or at my direction, on the date specified

Annexure A Site Location



Annexure B Plans showing Works and Land



SITE AREA	558,323 m ²
less excluded from developable area	
SP2 ZONE	14,004 m ²
RIPARIAN CORRIDOR	33,700 m ²
ROADS INCLUDED IN 7.11:	
ACCESS ROAD 1 PART A (LENGTH 380m)	10,731 m ²
ACCESS ROAD 1 PART B (LENGTH 145m)	4,492 m ²
ACCESS ROAD 3 SOUTH PART A (LENGTH 375m)	11,855 m ²
ACCESS ROAD 3 SOUTH PART C (LENGTH 7.2m)	193 m ²
ACCESS ROAD 3 NORTH - HALF WIDTH (LENGTH 247.8m)	3,605 m ²
SUBTOTAL ROADS 7.11	30,873 m ²
TOTAL EXCLUDED FROM DEVELOPABLE AREA	78,637 m ²
TOTAL NET DEVELOPABLE AREA	479,686 m ²
BREAKDOWN OF DEVELOPABLE AREA	
LOT 1	85,216 m ²
LOT 2	43,871 m ²
LOT 3	43,001 m ²
LOT 4	41,365 m ²
LOT 5	28,408 m ²
LOT 6	19,568 m ²
LOT 7	29,365 m ²
LOT 8	77,897 m ²
LOT 9	113,017 m ²
STORMWATER BASIN	18,157 m ²
	479,686 m ²

SB CONSULTANTS
 KEMPS CREEK ESTATE
 LOTS 1-9, MAURE ROAD, KEMPS CREEK
 SDA NET DEVELOPABLE AREA PLAN
 09/11/2023 1:20:00 PM 1/20 28 E

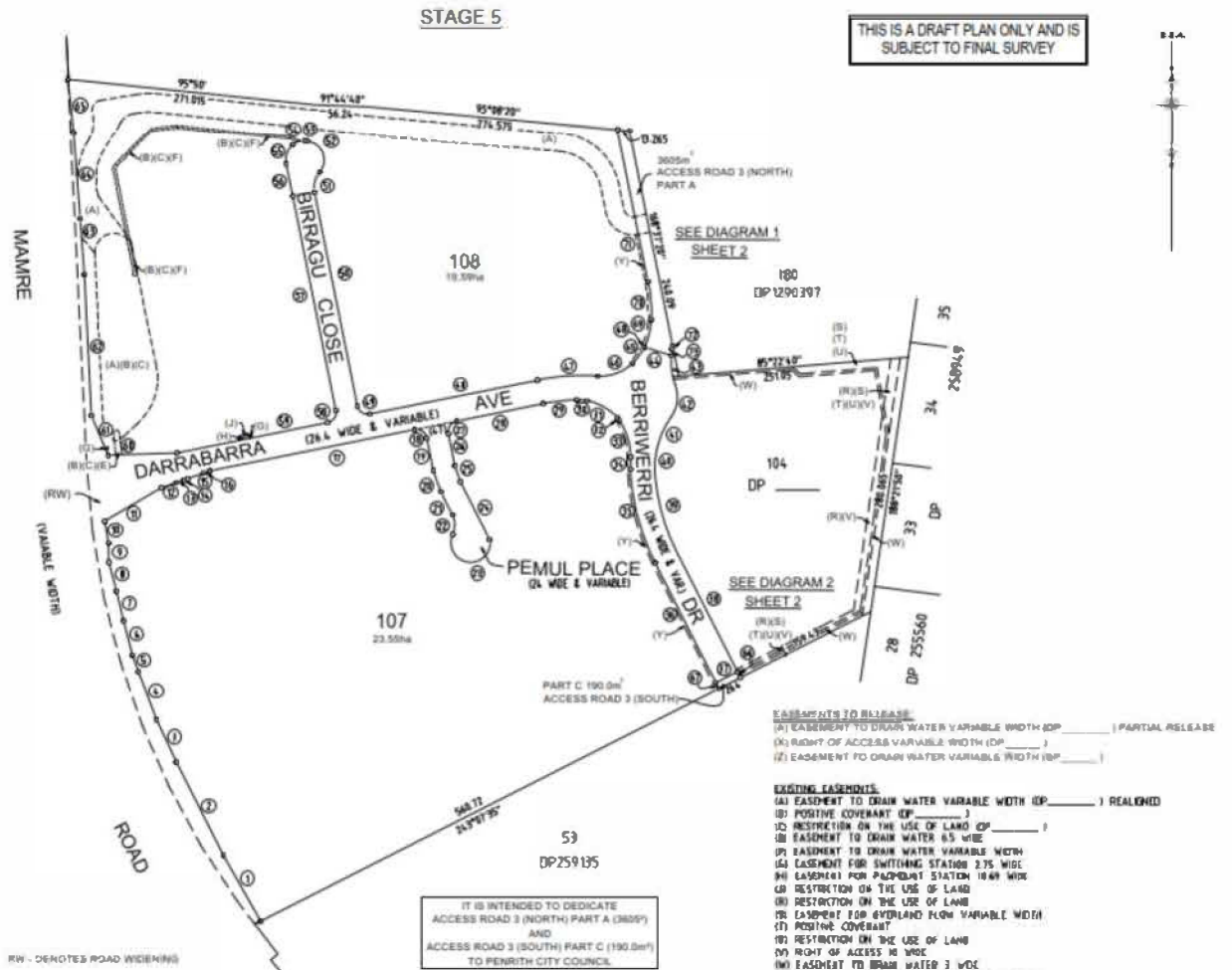
PLAN FORM 2 (A2)

WARNING: CREATING OR FOLDING WILL LEAD TO REJECTION

Sheet 1 of 2 sheet(s)

SCHEDULE OF SHORT & CURVED LINES

No	BEARING	DISTANCE	ARC	RADIUS
1	335°32'49"	82.665		
2	333°19'	18.426		
3	334°42'55"	51.225		
4	339°22'	86.146		
5	340°12'05"	19.27		
6	345°21'40"	38.726		
7	346°29'40"	33.37		
8	345°42'33"	32.665		
9	338°32'15"	20.94		
10	344°38'45"	24.845		
11	59°32'06"	71.94		
12	77°45'35"	17.3		
13	72°45'30"	8.195	8.195	233.4
14	77°16'20"	4.86	4.86	56.1
15	88°47'35"	10.31		
16	77°42'25"	7.52	7.52	43.9
17	109°07'18"	227.5		
18	103°37'10"	18.765	18.065	115
19	104°07'10"	36.67		
20	100°52'40"	24.92	24.095	92.5
21	63°06'10"	28.16		
22	179°46'50"	21.95	22.275	25.015
23	98°02'30"	4.106	80.505	21.4
24	333°08'10"	78.91		
25	344°25'47"	18.458	18.51	68.5
26	344°27'30"	36.67		
27	337°37'10"	18.765	18.51	115
28	70°27'10"	15.96		
29	83°21'25"	37.38	37.426	226.7
30	95°12'	10.985	11.01	44.4
31	119°15'55"	27.575	28.13	64.4
32	142°27'10"	3.89	3.89	24.4
33	104°27'25"	45.815	45.78	68.1
34	180°26'00"	8.188	9.2	79.4
35	165°07'45"	195.445	194.22	253.7
36	152°08'05"	14.644		
37	69°07'32"	26.4		
38	333°08'05"	14.644		
39	343°19'50"	86.466	86.18	227.3
40	4°30'20"	32.825	32.18	95.4
41	24°51'20"	34.616	34.81	109.4
42	7°18'35"	33.67	35.035	36
43	352°08'50"	312	33.475	75.4
44	287°45'40"	38.615		
45	236°10'05"	31.69	31.78	69.48
46	249°28'40"	44.516	44.745	69.4
47	266°09'40"	66.225	66.415	252.3
48	268°31'10"	84.516		
49	333°31'15"	18.385	18.065	115
50	348°32'20"	237.500		
51	34°31'40"	22.72	23.51	26
52	330°05'30"	36.315	44.01	265
53	278°44'50"	2.46		
54	253°32'25"	13.605	13.955	18
55	199°46'50"	22.59	23.08	21.6
56	148°19'45"	36.885		
57	108°07'20"	237.835		
58	213°17'15"	16.265	16.065	115
59	258°37'10"	167.635		
60	268°02'20"	74.935		
61	336°35'43"	44.855		
62	307°12'45"	114.286		
63	295°42'35"	68.915		
64	253°19'05"	95.38		
65	253°54'00"	52.31		
66	65°08'05"	7.2		
67	333°08'05"	7.2		
68	27°01'35"	8.715	8.715	69.48
69	0°20'25"	30.27	30.46	78.4
70	350°32'	4.184	4.175	106.3
71	344°37'50"	14.975		
72	89°44'	3.826	3.826	212.3
73	87°36'20"	7.21	7.215	74.4

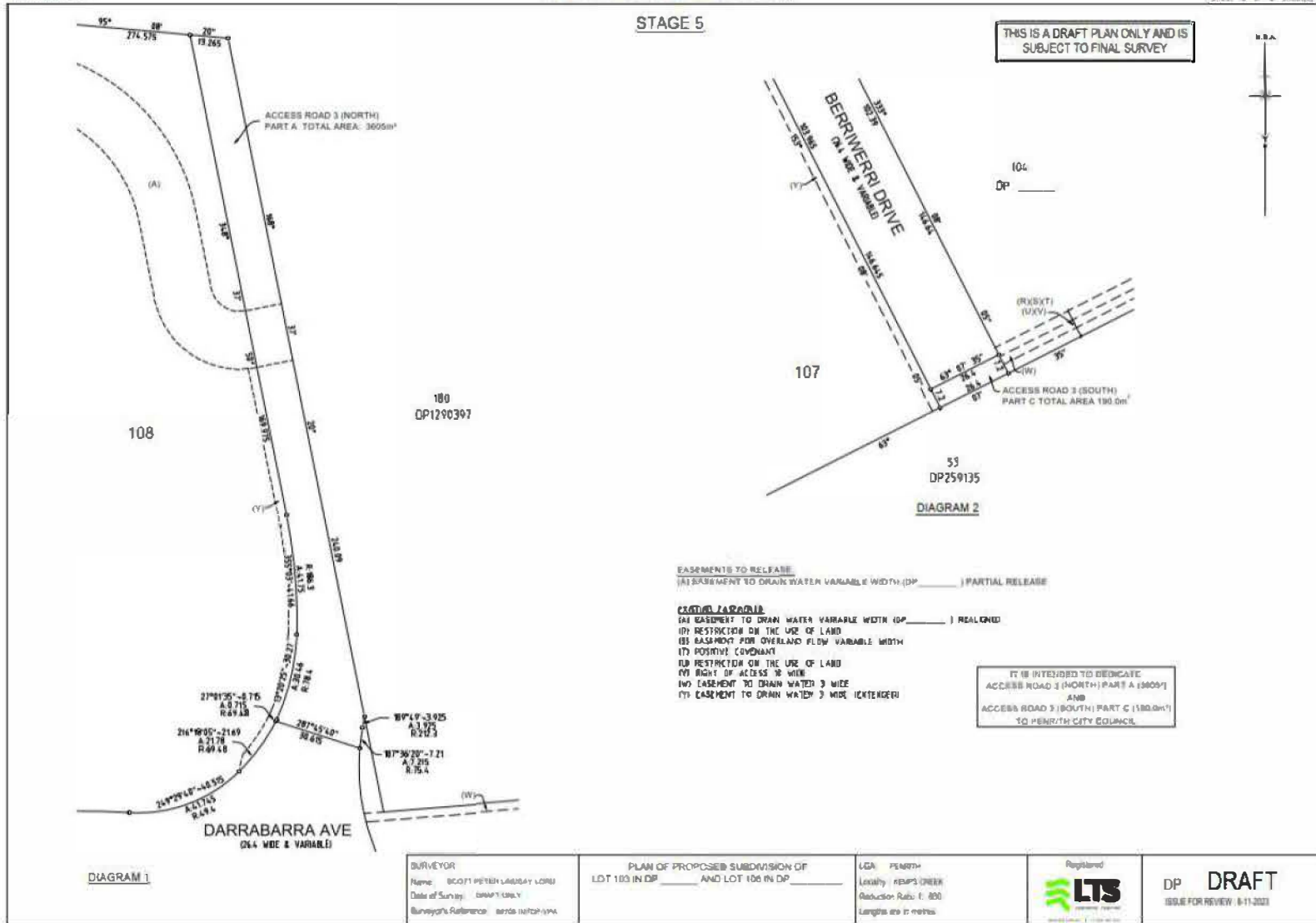


SURVEYOR Name: SCOTT PETER LINDSAY LORD Date of Survey: DRAFT ONLY Surveyor's Reference: 50158 01/07/19/16	PLAN OF PROPOSED SUBDIVISION OF LOT 103 IN DP _____ AND LOT 106 IN DP _____	LGA: PENRITH Locality: XENPS CREEK Reduction Ratio: 1: 3000 Lengths are in metres.	Register LTS Land Transfer Services DP DRAFT ISSUE FOR REVIEW: 8/11/2023
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PLAN FORM 2 (A2)

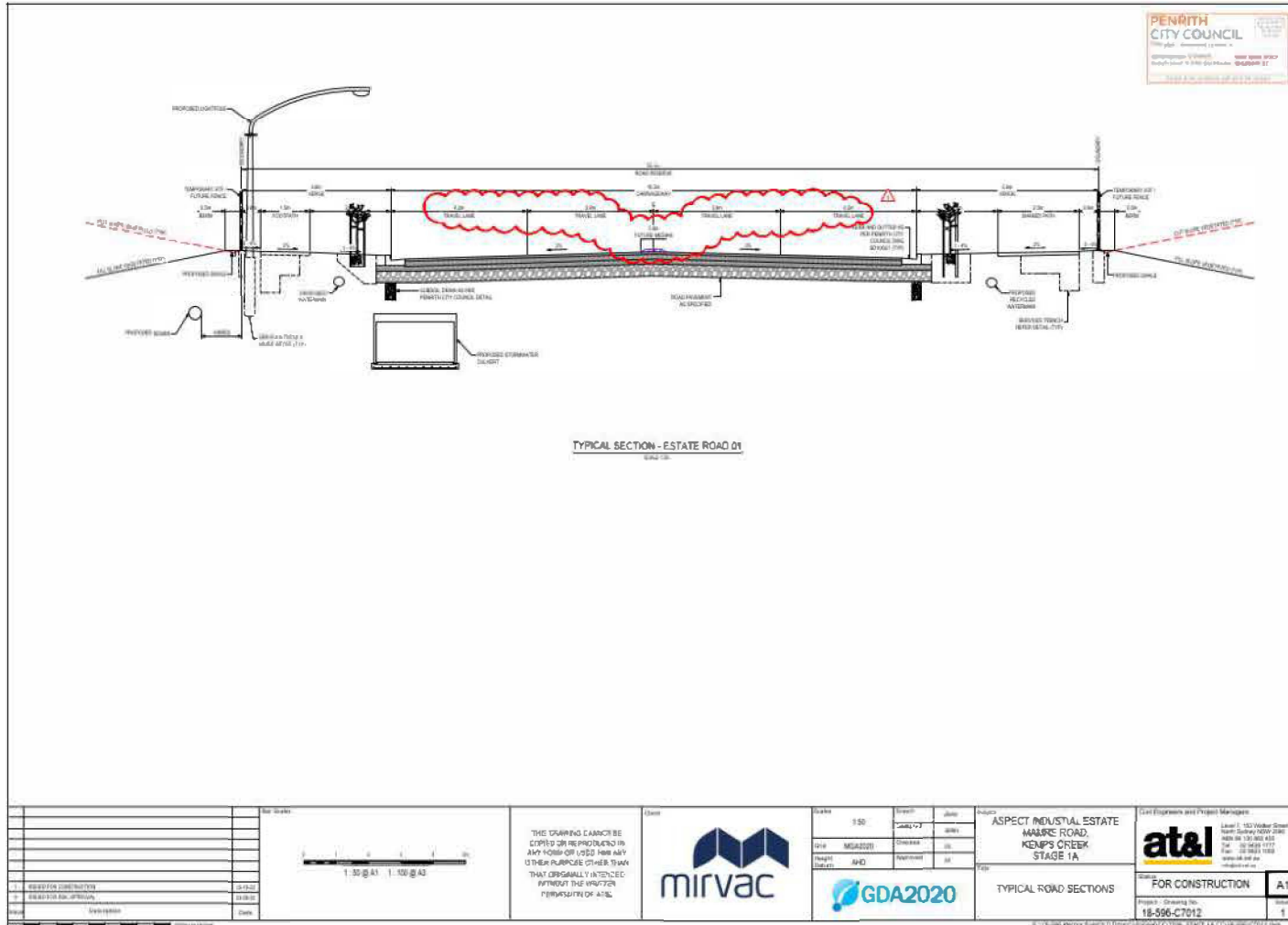
WARNING: CREAMING OR FOLDING WILL LEAD TO REJECTION

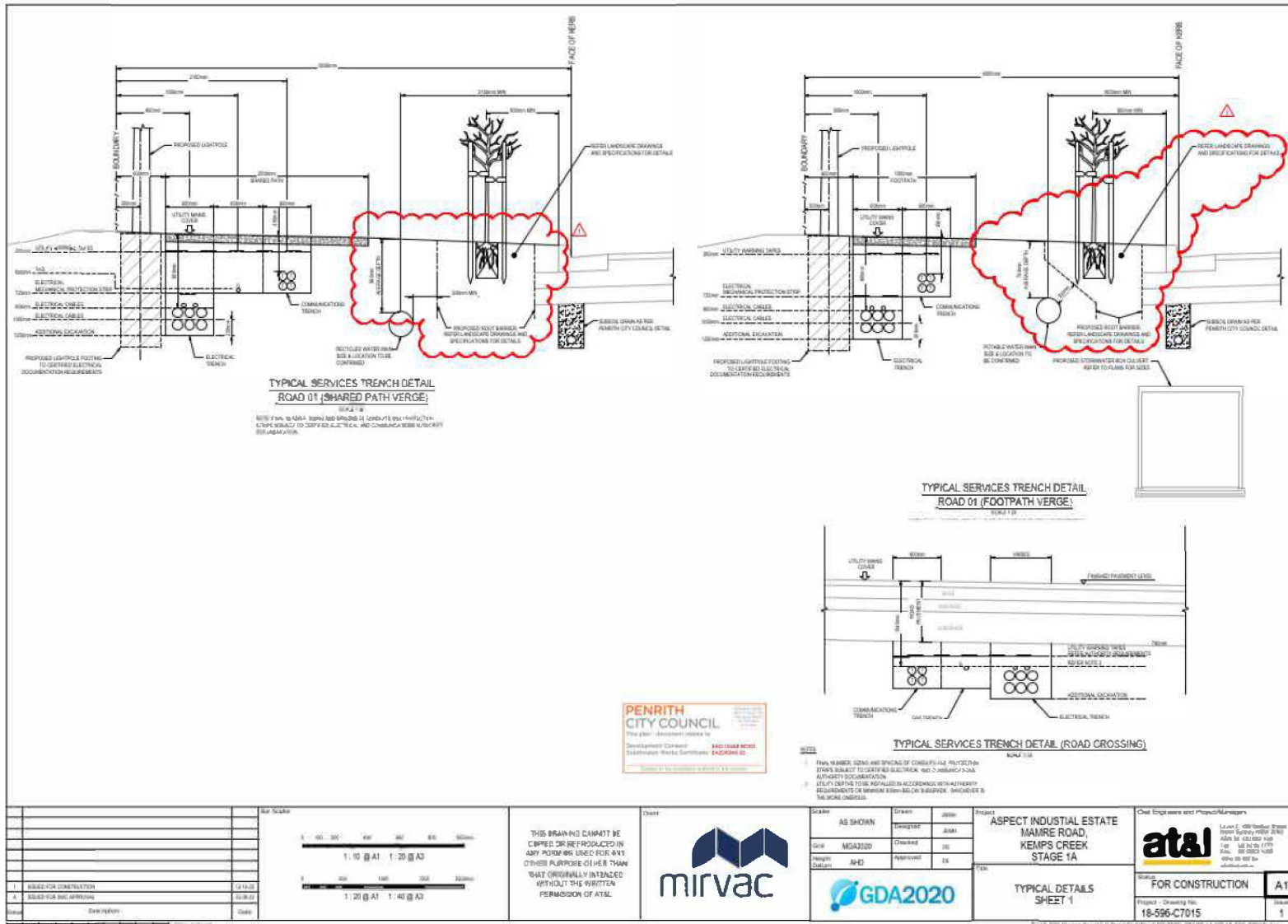
Sheet 2 of 2 sheet(s)

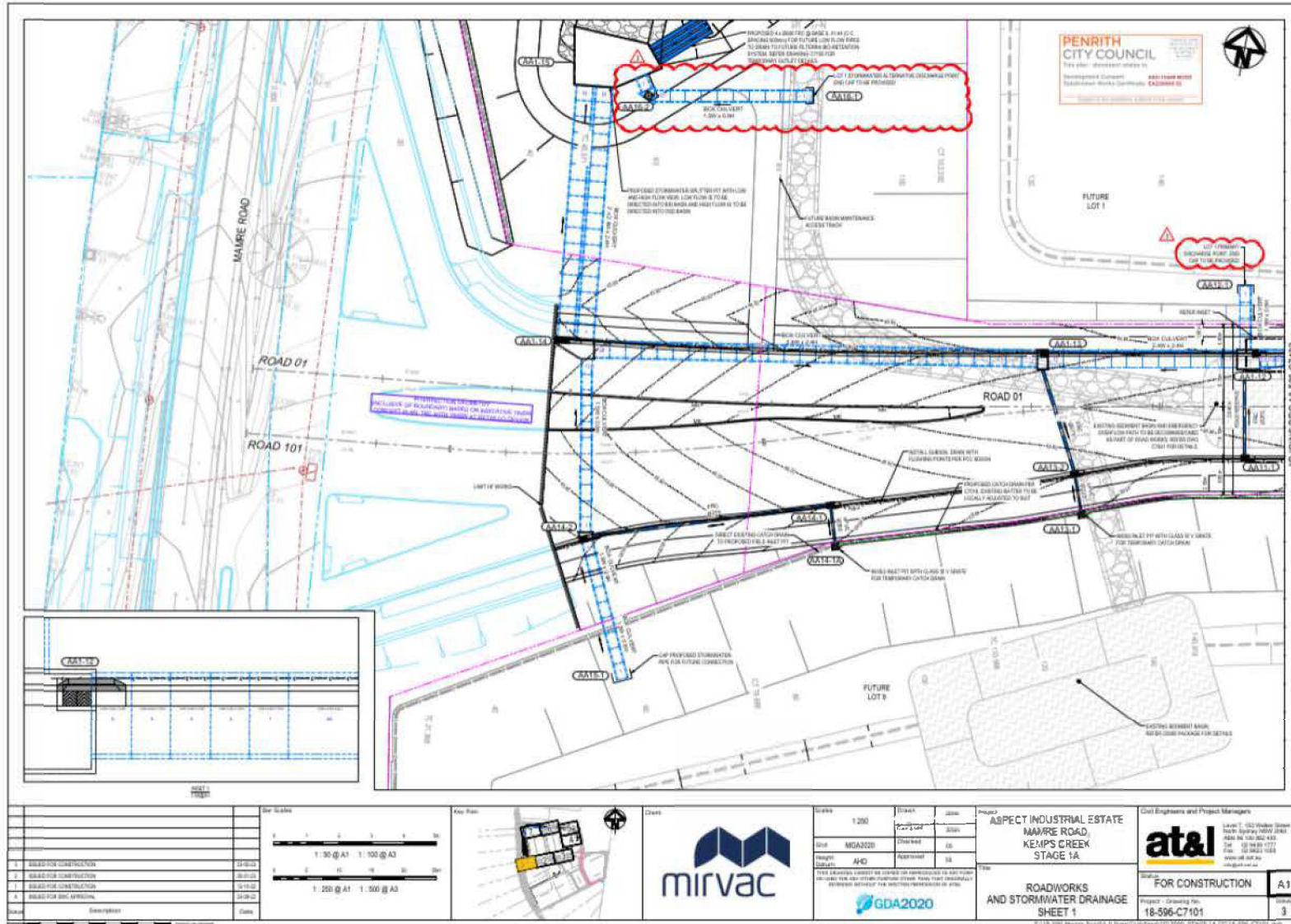


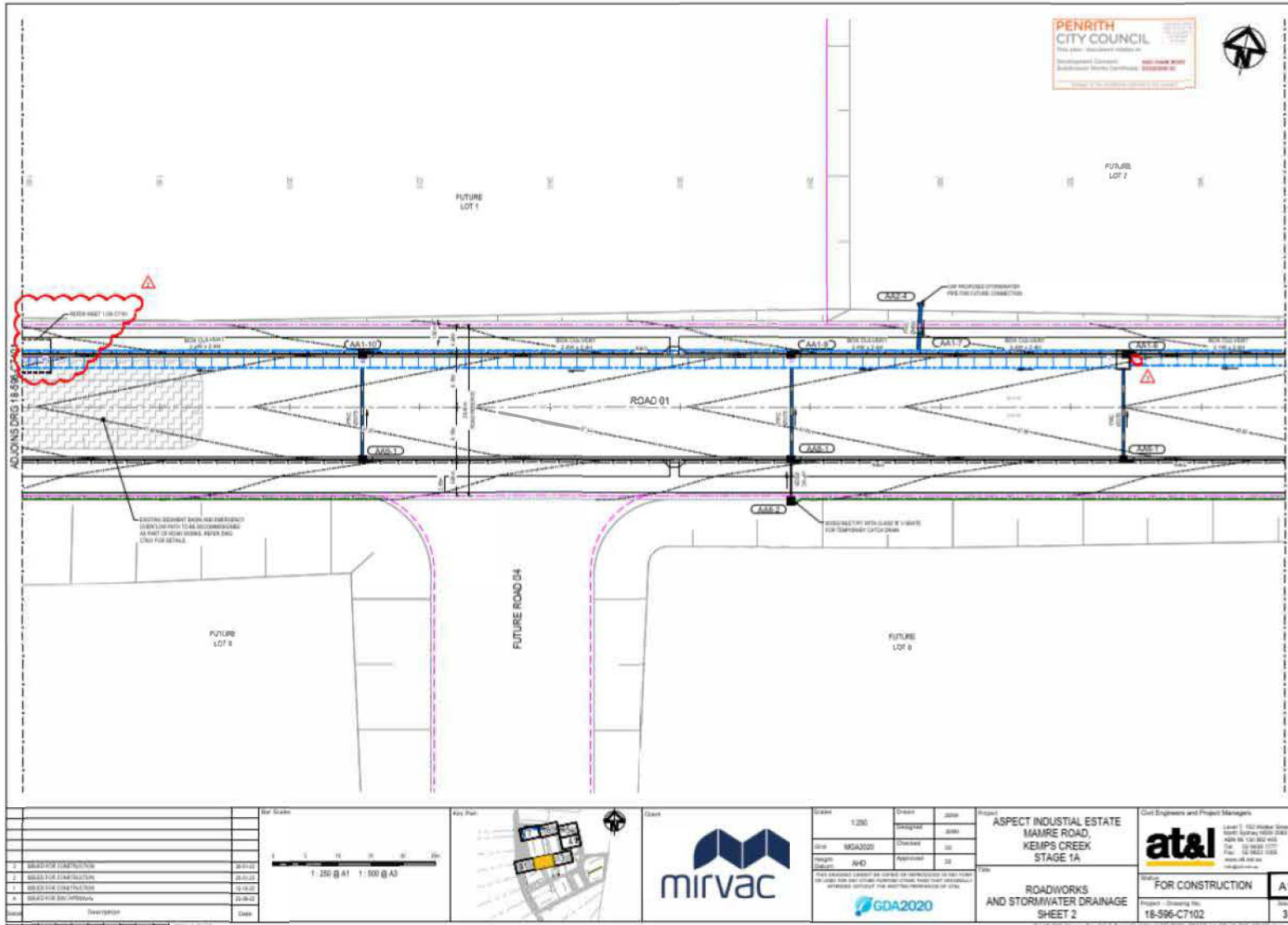
Annexure C Road Design Plans – Item 1

Part A of the Access Road 1 Works

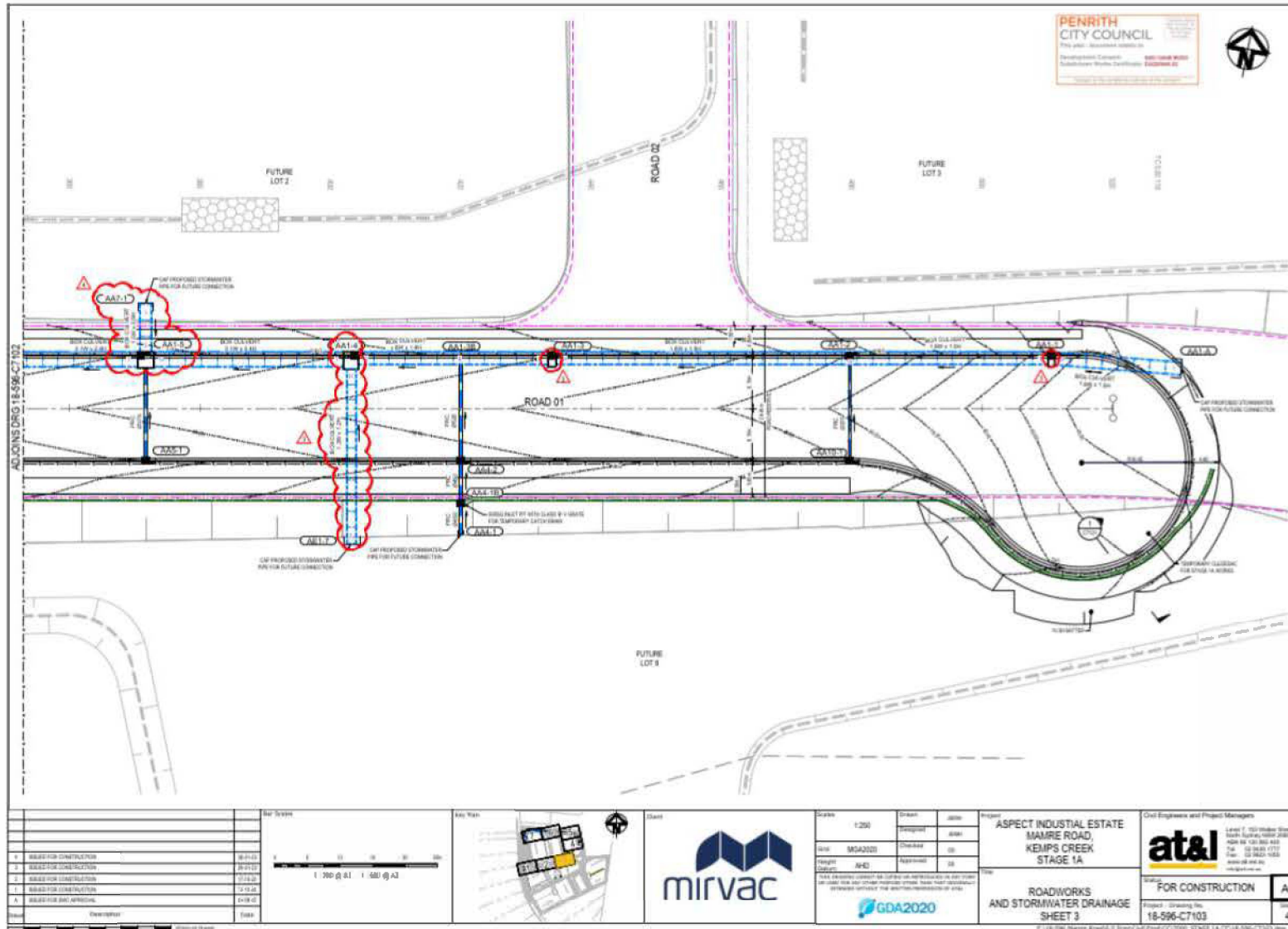








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Rev	Description	Date																										
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FOR CONSTRUCTION	A1																											
Project - Drawing No.	18-596-C7102																											
Sheet	3																											



Annexure D Road Design Plans – Items 2, 3, 4 and 6

Part B of the Access Road 1 Works. Parts A and B of the Access Road 3 (South) Works. Roundabout Works (RA3)

