

Draft No 2  
November 2020

---

Penrith City Council

---

Mulgoa Road (No. 1) Pty Ltd

---

Transport for NSW

---

Penrith Rugby League Club Limited

---

# Deed of Variation to Planning Agreement

## Contents

<b>1</b>	<b>Definitions</b>	<b>2</b>
<b>2</b>	<b>Status of this Deed</b>	<b>2</b>
<b>3</b>	<b>Operation of this Deed</b>	<b>2</b>
<b>4</b>	<b>Warranties</b>	<b>3</b>
<b>5</b>	<b>Amendment to Planning Agreement</b>	<b>3</b>
<b>6</b>	<b>Costs</b>	<b>3</b>
<b>7</b>	<b>Explanatory Note</b>	<b>3</b>
	<b>Schedule 1 – Amended Planning Agreement</b>	<b>4</b>
	<b>Execution</b>	<b>5</b>
	<b>Annexure A - Explanatory Note</b>	<b>7</b>
<b>1</b>	<b>Parties</b>	<b>7</b>
<b>2</b>	<b>Description of the Land to which the Draft Deed Applies</b>	<b>7</b>
<b>3</b>	<b>Description of Proposed Change to Environmental Planning Instrument</b>	<b>8</b>
<b>4</b>	<b>Summary of Objectives, Nature and Effect of the Draft Deed</b>	<b>8</b>
<b>5</b>	<b>Assessment of the Merits of the Draft Deed</b>	<b>9</b>
<b>6</b>	<b>Other Matters</b>	<b>10</b>

Date 16 December 2020

## Parties

**Penrith City Council** ABN 43 794 422 563 of 601 High Street, Penrith, New South Wales (**Planning Authority**)

**Transport for NSW** ABN 18 804 239 602 a NSW Government Agency and corporation incorporated under section 3C of the *Transport Administration Act 1988* (NSW) of 20 - 44 Ennis Road, Milsons Point, New South Wales (**TfNSW**)

**Penrith Rugby League Club Limited** ABN 57 000 578 398 of 83 Mulgoa Road, Penrith, New South Wales (**Developer**)

**Mulgoa Road (No.1) Pty Ltd** ACN 002 535 202 of Penrith Rugby League Club, Mulgoa Road, Penrith, New South Wales (**Mulgoa Road**)

---

## Background

- A The Developer, Planning Authority and TfNSW are parties to the Planning Agreement.
- B The Developer, Planning Authority and TfNSW have agreed to amend the Planning Agreement in accordance with an offer submitted by the Developer to amend the Planning Agreement in connection with the Second Planning Proposal submitted by the Developer on 12 April 2016 to the Planning Authority.
- C The Second Planning Proposal was lodged by the Planning Authority with DPIE on 25 July 2016, with an amendment made in September 2016. Gateway determination was obtained on 20 December 2016. The Gateway determination was then amended several times.
- D The amendments to the Planning Agreement provide for the following:
  - a. a revised Development Contribution offering in connection with the Development, which includes a Monetary Contribution in addition to the delivery of Road Works and dedication of the Road Widening Land;
  - b. revised timing for delivery of the Development Contributions;
  - c. provision of a clause which allows TfNSW to compulsorily acquire the Road Widening Land in the event of any default by the Developer or Mulgoa Road to dedicate the Road Widening Land as required; and
  - d. the inclusion of Mulgoa Road as party to the Amended Planning Agreement reflecting the current ownership of the Developer's Land.

- e.
  - f. update the section references to the *Environmental Planning and Assessment Act 1979* (NSW) following the introduction of the new section numbering.
- 

## Agreed terms

### 1 Definitions

- (a) In this Deed these terms have the following meanings:

**Amended Planning Agreement** The Planning Agreement, as amended in Schedule 1 of this Deed.

**Deed** This Deed and includes any schedules and annexures to this Deed.

**Party** A party to this Deed.

**Planning Agreement** The planning agreement for the Penrith Panthers precinct development between the Developer, the Planning Authority and TfNSW entered into pursuant to section 7.4 of the Act on 28 November 2012.

- (b) All capitalised words used in this Deed that are defined in clause 4.1 of the Planning Agreement have the same meaning as in Amended Planning Agreement.

- (c) Clauses 4.2, 21 - 24, 26 - 33 of the Planning Agreement, as amended by Schedule 1, apply as if they form part of this Deed with any necessary changes.

### 2 Status of this Deed

- (a) This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.
- (b) This Deed is not a planning agreement within the meaning of section 7.4(1) of the Act.

### 3 Operation of this Deed

- (a) This Deed operates on and from the later of the date:
- (i) the Second Amending LEP is published on the NSW Legislation website; and

- (ii) each Party has executed separate counterparts of this Deed and exchanged the counterparts.
- (b) The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

## 4 Warranties

The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) are able to fully comply with their obligations under this Deed and the Planning Agreement as modified by this Deed.

## 5 Amendment to Planning Agreement

On and from the date this Deed takes effect the Planning Agreement is amended in accordance with the mark-up shown on the copy of the Planning Agreement contained in **Schedule 1**.

## 6 Costs

- (a) The Parties agree that the Developer will bear the costs of preparing, negotiating, executing and stamping this Deed and any document related to this Deed.
- (b) For the avoidance of doubt, the Developer agrees that it will pay TfNSW's reasonable legal costs in connection with preparing, negotiating, executing and stamping this Deed, and in connection with the Amended Planning Agreement, within 28 days of being provided with a suitable tax invoice.

## 7 Explanatory Note

- (a) **Annexure A** contains the Explanatory Note relating to this Deed and as required by clause 25E of the Regulation.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

# Schedule 1

## Amended Planning Agreement

The Planning Agreement as amended by this Deed appears on the following pages.

---

Penrith Rugby League Club Limited

---

[Mulgoa Road \(No. 1\) Pty. Limited](#)

---

Penrith City Council

---

~~Roads and Maritime Services~~ [Transport for NSW](#)

---

# Planning Agreement Road Works

Section ~~93F~~ [7.4](#) of the Environmental  
Planning and Assessment Act, 1979 (NSW)

## Contents

<b>1</b>	<b>Planning Agreement under the Act</b>	<b>2</b>
<b>2</b>	<b>Application of this Agreement</b>	<b>2</b>
<b>3</b>	<b>Operation of this Agreement</b>	<b>3</b>
<b>4</b>	<b>Definitions and interpretation</b>	<b>3</b>
4.1	Definitions	3
4.2	Interpretation	8
<b>5</b>	<b>Development Contributions to be made under this Agreement</b>	<b>9</b>
<b>6</b>	<b>Road Works</b>	<b>10</b>
6.1	Carrying out the Road Works	10
6.2	Pre-Conditions for Road Works	12
6.3	Road Works - Standard of Work	12
6.4	Access to Planning Authority's and TfNSW's Land	13
6.5	Failure to deliver Road Works	13
6.6	Failure to enter into Works Authorisation Deed	14
<b>7</b>	<b>Road Widening Land Dedication</b>	<b>14</b>
7.1	Developer's Obligation	14
7.2	Mulgoa Road Widening Works	15
7.3	Developer to indemnify TfNSW in relation to Relevant Lessees	15
7.4	Compulsory Acquisition	16
<b>8</b>	<b>Monetary Contribution</b>	<b>16</b>
8.1	Payment of the Monetary Contribution	16
8.2	Failure to pay the Monetary Contribution	17
<b>9</b>	<b>Application of sections 7.11, 7.12 and 7.24 of the Act to the Development</b>	<b>17</b>
<b>10</b>	<b>Registration of this Agreement</b>	<b>17</b>
<b>11</b>	<b>Review of this Agreement</b>	<b>19</b>
<b>12</b>	<b>Dispute Resolution</b>	<b>19</b>
12.1	Reference to Dispute	19
12.2	Notice of Dispute	19
12.3	Representatives of Parties to Meet	19
12.4	Neither party may constrain	20
<b>13</b>	<b>Security and Enforcement</b>	<b>20</b>
13.1	Security	20
13.2	Enforcement	20
<b>14</b>	<b>Notices</b>	<b>21</b>
14.1	Delivery	21



14.2	Change of Details	22
14.3	Giving of Notice	22
14.4	Delivery outside of business hours	22
<b>15</b>	<b>Approvals and consent</b>	<b>23</b>
<b>16</b>	<b>Coordination of Road Works</b>	<b>23</b>
<b>17</b>	<b>Assignment and Novation</b>	<b>23</b>
17.1	Assignment	23
17.2	Transfer Dealings	23
<b>18</b>	<b>Release and discharge</b>	<b>24</b>
<b>19</b>	<b>Force Majeure</b>	<b>24</b>
<b>20</b>	<b>Costs</b>	<b>26</b>
<b>21</b>	<b>Entire Agreement</b>	<b>26</b>
<b>22</b>	<b>Further acts</b>	<b>26</b>
<b>23</b>	<b>Governing law and jurisdiction</b>	<b>26</b>
<b>24</b>	<b>No fetter</b>	<b>27</b>
<b>25</b>	<b>Representations and warranties</b>	<b>27</b>
<b>26</b>	<b>Severability</b>	<b>27</b>
<b>27</b>	<b>Waiver</b>	<b>28</b>
<b>28</b>	<b>GST</b>	<b>28</b>
28.1	Construction	28
28.2	Intention of the Parties	28
28.3	Consideration GST exclusive	28
28.4	Payment of GST – additional payment required	28
28.5	Valuation of non-monetary consideration	29
28.6	Tax invoice	29
28.7	Adjustment event	30
28.8	Reimbursements	30
28.9	No Merger	30

<b>29</b>	<b>Effect of Schedules</b>	<b>30</b>
<b>30</b>	<b>Relationship of Parties</b>	<b>30</b>
<b>31</b>	<b>Further steps</b>	<b>30</b>
<b>32</b>	<b>Counterparts</b>	<b>30</b>
<b>33</b>	<b>Rights cumulative</b>	<b>31</b>
	<b>Schedule 1 - Section 7.4F Requirement</b>	<b>32</b>
	<b>Schedule 2 - Land Description</b>	<b>34</b>
	<b>Schedule 3 - Development Contributions - Road Works</b>	<b>35</b>
	<b>Schedule 4 - Explanatory Note</b>	<b>1</b>
	<b>Schedule 5 - The Development</b>	<b>7</b>
	<b>Schedule 6 - Concept Diagrams</b>	<b>15</b>
	<b>Schedule 7 - Road Widening Plan</b>	<b>31</b>
	<b>Annexure A – Novation Deed</b>	<b>40</b>
<b>1</b>	<b>Interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Construction	2
1.3	Headings	2
<b>2</b>	<b>Novation</b>	<b>2</b>
2.1	Original Agreement	2
2.2	Reference in Original Agreement	3
2.3	Address for notices	3
2.4	Coordination of Road Works	3
<b>3</b>	<b>Affirmation of the Original Agreement</b>	<b>3</b>
<b>4</b>	<b>Indemnities</b>	<b>3</b>
<b>5</b>	<b>Warranties and representations</b>	<b>4</b>
5.1	Warranties	4
5.2	Survival of warranties	4

<b>6</b>	<b>GST</b>	<b>4</b>
<b>7</b>	<b>Stamp duty and costs</b>	<b>4</b>
<b>8</b>	<b>Further acts</b>	<b>5</b>
<b>9</b>	<b>Amendment</b>	<b>5</b>
<b>10</b>	<b>Governing law</b>	<b>5</b>
<b>11</b>	<b>Counterparts</b>	<b>5</b>
<b>Planning Agreement under the Act</b>		<b>2</b>
<b>2</b>	<b>Application of this Agreement</b>	<b>2</b>
<b>3</b>	<b>Operation of this Agreement</b>	<b>3</b>
<b>4</b>	<b>Definitions and interpretation</b>	<b>3</b>
4.1	Definitions	3
4.2	Interpretation	8
<b>5</b>	<b>Development Contributions to be made under this Agreement</b>	<b>9</b>
<b>6</b>	<b>Road Works</b>	<b>11</b>
6.1	Carrying out the Road Works	11
6.2	Pre-Conditions for Road Works	11
6.3	Road Works – Standard of Work	11
6.4	Access to Planning Authority's and RMS' Land	12
6.5	Failure to deliver Road Works	12
6.6	Failure to enter into Works Authorisation Deed	13
6.7	Roads Authority	13
6.8	Road Works Value	<b>Error! Bookmark not defined.</b>
<b>7</b>	<b>Road Widening Land Dedication</b>	<b>13</b>
7.1	Developer's Obligation	13
7.2	Compulsory Acquisition	15
<b>8</b>	<b>Top-up Monetary Contribution</b>	<b>16</b>
<b>9</b>	<b>Application of sections 7.11, 7.12 and 7.24 of the Act to the Development</b>	<b>17</b>
<b>10</b>	<b>Registration of this Agreement</b>	<b>17</b>
<b>11</b>	<b>Review of this Agreement</b>	<b>18</b>
<b>12</b>	<b>Dispute Resolution</b>	<b>18</b>
12.1	Reference to Dispute	18
12.2	Notice of Dispute	18
12.3	Representatives of Parties to Meet	19
12.4	Neither party may constrain	19

<b>13</b>	<b>Security and Enforcement</b>	<b>19</b>
13.1	Security	19
13.2	Enforcement	20
<b>14</b>	<b>Notices</b>	<b>20</b>
14.1	Delivery	20
14.2	Change of Details	24
14.3	Giving of Notice	24
14.4	Delivery outside of business hours	24
<b>15</b>	<b>Approvals and consent</b>	<b>22</b>
<b>16</b>	<b>Coordination of Road Works</b>	<b>22</b>
<b>17</b>	<b>Assignment and Novation</b>	<b>22</b>
17.1	Assignment	22
17.2	Transfer Dealings	22
<b>18</b>	<b>Release and discharge</b>	<b>23</b>
<b>19</b>	<b>Force Majeure</b>	<b>23</b>
<b>20</b>	<b>Costs</b>	<b>25</b>
<b>21</b>	<b>Entire Agreement</b>	<b>25</b>
<b>22</b>	<b>Further acts</b>	<b>25</b>
<b>23</b>	<b>Governing law and jurisdiction</b>	<b>25</b>
<b>24</b>	<b>No fetter</b>	<b>26</b>
<b>25</b>	<b>Representations and warranties</b>	<b>26</b>
<b>26</b>	<b>Severability</b>	<b>26</b>
<b>27</b>	<b>Waiver</b>	<b>27</b>
<b>28</b>	<b>GST</b>	<b>27</b>
28.1	Construction	27
28.2	Intention of the Parties	27
28.3	Consideration GST exclusive	27
28.4	Payment of GST – additional payment required	27
28.5	Valuation of non-monetary consideration	28
28.6	Tax invoice	28
28.7	Adjustment event	28
28.8	Reimbursements	29
28.9	No Merger	29

<b>29</b>	<b>Effect of Schedules</b>	<b>29</b>
<b>30</b>	<b>Relationship of Parties</b>	<b>29</b>
<b>31</b>	<b>Further steps</b>	<b>29</b>
<b>32</b>	<b>Counterparts</b>	<b>29</b>
<b>33</b>	<b>Rights cumulative</b>	<b>30</b>
	<b>Schedule 1 - Section 7.4F Requirement</b>	<b>34</b>
	<b>Schedule 2 - Land Description</b>	<b>33</b>
	<b>Schedule 3 - Development Contributions - Road Works</b>	<b>35</b>
	<b>Schedule 4 - Explanatory Note</b>	<b>1</b>
	<b>Schedule 5 - The Development</b>	<b>7</b>
	<b>Schedule 6 - Concept Diagrams</b>	<b>15</b>
	<b>Annexure A - Novation Deed</b>	<b>35</b>
<b>1</b>	<b>Interpretation</b>	<b>1</b>
	1.1 Definitions	1
	1.2 Construction	2
	1.3 Headings	2
<b>2</b>	<b>Novation</b>	<b>2</b>
	2.1 Original Agreement	2
	2.2 Reference in Original Agreement	3
	2.3 Address for notices	3
	2.4 Coordination of Road Works	3
<b>3</b>	<b>Affirmation of the Original Agreement</b>	<b>3</b>
<b>4</b>	<b>Indemnities</b>	<b>3</b>
<b>5</b>	<b>Warranties and representations</b>	<b>4</b>
	5.1 Warranties	4
	5.2 Survival of warranties	4
<b>6</b>	<b>GST</b>	<b>4</b>
<b>7</b>	<b>Stamp duty and costs</b>	<b>4</b>
<b>8</b>	<b>Further acts</b>	<b>4</b>
<b>9</b>	<b>Amendment</b>	<b>5</b>
<b>10</b>	<b>Governing law</b>	<b>5</b>
<b>11</b>	<b>Counterparts</b>	<b>5</b>

Agreement made at \_\_\_\_\_ on \_\_\_\_\_

## Parties

**Penrith City Council** ABN 43 794 422 563 of 601 High Street, Penrith, New South Wales (**Planning Authority**)

~~Roads and Maritime Services~~**Transport for NSW** ABN ~~76 236 371 088~~**18 804 239 602** a NSW Government Agency and corporation incorporated under section ~~46-3C~~ of the *Transport Administration Act 1988* (NSW) of ~~20-44 Ennis Road, Milsons Point, New South Wales Level 9, 101 Miller Street, North Sydney, New South Wales, 2060~~ (**RMSTfNSW**)

**Penrith Rugby League Club Limited** ABN 57 000 578 398 of 83 Mulgoa Road, Penrith, New South Wales (**Developer**)

**Mulgoa Road (No. 1) Pty. Limited** ACN 002 535 202 of Penrith Rugby League Club, Mulgoa Road, Penrith, New South Wales (**Mulgoa Road**)

## Background

- A On 10 December 2009, the Developer submitted the Planning Proposal to the Planning Authority for the Amending LEP and to facilitate the ~~e~~Original ~~D~~development ~~P~~proposal on the Land.
- B The Planning Proposal was lodged by the Planning Authority with ~~DPIE~~&I on 2 June 2010 and received Gateway determination on 13 August 2010.
- C In connection with the Planning Proposal, the Developer submitted an offer dated 26 March 2012 to enter into this Agreement to make the Development Contributions towards the Public Facilities if the Amending LEP ~~is~~was made.
- D The Amending LEP was made and on 21 June 2013, the LEP Amendment 2013 commenced.
- E On 12 April 2016, the Developer submitted the Second Planning Proposal to the Planning Authority for the Second Amending LEP to facilitate development of a revised plan for the development of the Land.
- F The Second Planning Proposal was lodged by the Planning Authority with DPIE on 25 July 2016 with an amendment to the Second Planning Proposal made in September 2016. Gateway determination was obtained on 20 December 2016. The Gateway determination was then subsequently amended several times.

- G In connection with the Second Planning Proposal, the Developer submitted an offer dated 26 August 2019 to amend this Agreement if the Second Amending LEP was made.
- H On 1 July 2020, in the context of the SARS COV2/COVID-19 pandemic, the Developer submitted a revised offer, amending the total value of the Development Contribution under this Agreement. Accordingly, the parties agree that the total value of the Development Contribution set out in this Agreement reflects concessions which have been afforded to the Developer, on the Developer's request, to reflect the hardships caused by the SARS COV2/COVID-19 pandemic.
- I The Developer has completed revised traffic modelling (dated 18 October 2018) to reflect the revised plan for the proposed Development which will be facilitated by the Second Amending LEP. This revised traffic modelling is based on the Land Use Assumptions dated 7/8/2018 for the Land, set out in Schedule 5 to this Agreement which TfNSW and the Planning Authority have endorsed.
- J Separate to this Agreement, and the obligations of the Developer and Mulgoa Road under this Agreement, part of land located on the corner of Ransley Street and Mulgoa Road and formerly comprised in Lot 20 in DP1248609 was dedicated as public road by the former owner of the land, One East Side Pty Ltd ACN 628 345 415, in accordance with condition 77 of DA17/0766 for ESQ Stage 1. This occurred on 23 October 2020 by registration of DP1267353, being a plan of subdivision of Lot 20 in DP1248609.
- K On 1 December 2019, the Transport Administration Amendment (RMS Dissolution) Act 2019 dissolved Roads and Maritime Services and transferred all functions, assets, rights and liabilities to TfNSW.

## Operative provisions

### 1 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.16 of Part 74 of the Act.

### 2 Application of this Agreement

This Agreement applies to the:

- (a) Land; and
- (b) Development.

### 3 Operation of this Agreement

This Agreement operates on and from the date that:

- (a) the Amending LEP is published on the NSW Legislation website; and
- (b) the Agreement is entered into as required by Clause 25C(1) of the Regulation.

### 4 Definitions and interpretation

#### 4.1 Definitions

In this Agreement the following definitions apply:

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

**Agreement** means this planning agreement including any schedules [and annexures](#) that come into operation upon satisfaction of the requirements set out in **clause 3**.

**Alternative Trigger Event** means the date on which the event described in **column 4 of schedule 3** occurs for the Road Works identified in **columns 1 and 2 of schedule 3**.

[Amending Deed](#) means [the Deed of Variation to Planning Agreement which varies this Agreement dated on or about 13 November 2020](#).

**Amending LEP** means the Local Environmental Plan proposed under the Planning Proposal to amend the *Penrith Local Environmental Plan 2010*.

**Authority** means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

~~**Campus Style Office Development** means the campus style office development forming part of the Development as defined in the Amending LEP.~~

**Commencement Date** means the date upon which the Agreement is taken to operate under **clause 3**.

~~**Completion** means that date upon which the relevant Roads Authority notifies the Developer (and if necessary the Planning Authority and RMS) in writing that the Road Works or parts of the Road Works have been completed in accordance with:~~

- ~~(a) — the relevant conditions of consent for the Road Works; and~~
- ~~(b) — if applicable, any relevant Works Authorisation Deed.~~

**Construction Certificate** has [the](#) meaning given to it in the Act.



CPI means the Consumer Price Index (All Groups) for Sydney as published by the Australian Bureau of Statistics (Index). If the Index is suspended or discontinued the expression means an index which in the opinion of the Australian Statistician (whether published or advised at the request of either party) reflects on a consistent basis changes which have occurred in the cost of living in Sydney. However if the Australian Statistician has not published and will not advise an appropriate index the expression means an index which accurately reflects changes in cost of living in Sydney as determined by a consulting actuary (being a member of the Institute of Actuaries Australia) to be appointed by the Planning Authority acting reasonably.

**Dealing** means subdividing, mortgaging, charging, encumbering or otherwise dealing with the Developer's Land.

~~**Defects Liability Period** means the period of 12 months which commences on the date of Completion of the Road Works or parts of the Road Works.~~

**Developer's Land** means Lot 2 in DP1241942 and Lot 55 in DP1246141.

**Development** means the 'Panthers Penrith Precinct' development as described in the Planning Proposal and amended by the Second Planning Proposal ~~being a mixed-use development inclusive of 25,000m<sup>2</sup> NUFA of Outlet Centre, 12,500m<sup>2</sup> GFA of retail, 25,000m<sup>2</sup> GFA of campus style offices and entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities and exhibition space, which is to be carried out in stages generally in the form described in **schedule 5**.~~

**Development Contribution** means:

- (a) the carrying out and delivery of the Road Works; ~~and~~
- (b) the dedication of the Road ~~Works~~ Widening Land; ~~and~~
- (c) payment of the Monetary Contribution.

~~**Development Stage** means each stage of the Development that is approved under a Planning Approval and that is generally in accordance with those stages identified in **schedule 5**.~~

**DPIE&I** means the NSW Department of Planning, Industry and ~~Infrastructure Environment~~ or any other Authority replacing it.

**Explanatory Note** means the Explanatory Note attached at **schedule 4**.

**Force Majeure Event** means any of the following:

- (a) the declaration by a Court that the Amending LEP or Second Amending LEP is invalid and where a modified LEP-Local Environmental Plan is not remade in similar form within 12 calendar months of the date of the declaration; or
- (b) any of the following:
  - (i) act of God;
  - (ii) law, rule, regulation, order or policy of any government or governmental authority;

- (iii) act of war declared or undeclared;
- (iv) accident, fire, explosion, epidemic;
- (v) public disorder;
- (vi) riot, civil disturbance, insurrection, rebellion, sabotage or act of terrorists;
- (vii) flood, earthquake, hail, lightning, severe weather conditions or other natural calamity;
- (viii) strike, boycott, lockout or other labour disturbance,

which:

- (ix) prevents the Developer from carrying out or completing the Road Works or the Development;
- (x) is beyond the control of the Developer; and
- (xi) was not directly or indirectly caused or contributed to by the Developer.

**GFA** has the meaning given to it in the *Standard Instrument (Local Environmental Plans) Order 2006*.

**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 or administration of the GST.

~~**Interim Occupation Certificate** has the meaning given to it in section 109H of the Act~~

**LAJTC Act** means the [Land Acquisition \(Just Terms Compensation\) Act 1991 \(NSW\)](#).

**Land** means the land described in **schedule 2**.

**Land Use Assumptions** means the [land use assumptions prepared by the Developer dated 7 August 2018 and endorsed by TfNSW and the Planning Authority set out in Schedule 5](#).

~~**Land Owners** mean [Mulgoa Road \(No. 1\) Pty. Limited and Panthers Property Management Pty Ltd](#).~~

**LEP Amendment 2013** means the [Penrith Local Environmental Plan 2010 \(Amendment No 2\)](#), which was made in relation to the Planning Proposal and commenced on 21 June 2013.

**Local Environmental Plan** has the meaning given to it in the Act.

**LRSPi** means the [New South Wales Land Registry Services Land and Property Information of New South Wales](#) or any other Authority replacing it.

**Milestone Event** means the earlier of:

- (a) the date on which an Occupation Certificate ~~or Interim Occupation Certificate~~ is granted for any part of the Development identified in the applicable Trigger Event in **column 3 of schedule 3** for the relevant

component of the Road Works identified in **columns 1 and 2 of schedule 3**; or

- (b) the date on which an Occupation Certificate ~~or Interim Occupation Certificate~~ is granted for any part of the Development identified in the Alternative Trigger Event in **column 4 of schedule 3** for the relevant component of the Road Works identified in **column 1 and 2 of schedule 3**.

~~**Multi Use Arena and Exhibition Centre** means the multi-use arena and exhibition centre forming part of the Development that is capable of accommodating major events, sports, school programs, conferences, tradeshow and exhibitions.~~

**Monetary Contribution** means the monetary contribution of \$2,700,000, comprising three instalments of \$900,000.00 (each) paid and indexed in accordance with **clause 8**.

**Non-Party Land Owners** mean the registered proprietors from time to time of the Land, excluding the Developer's Land.

**Novation Deed** means a deed substantially in the same form as that attached at **annexure A**.

**NUFA** (net useable floor area) has the meaning given to the expression, "net useable floor area" in the Amending LEP.

**Occupation Certificate** has the meaning given to it in the Act.

~~**Outlet Centre** means the proposed outlet centre of up to 25,000m<sup>2</sup> NUFA forming part of the Development.~~

**Original Development Proposal** means the 'Panthers Penrith Precinct' development as described in the Planning Proposal being a mixed use development inclusive of 25,000m<sup>2</sup> NUFA of Outlet Centre, 12,500m<sup>2</sup> GFA of retail, 25,000m<sup>2</sup> GFA of campus style offices and entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities and exhibition space, which was to be carried out in stages.

**Party** means a party to this Agreement, including their successors and assigns.

**Party Land Owners** mean the registered proprietors from time to time of the Developer's Land. As at the date of the varied Agreement, the Party Land Owners are Mulgoa Road (No. 1) Pty. Limited and Penrith Rugby League Club Limited.

**Planning Application** means a development application made under the Act for the Development or a stage of the Development.

**Planning Approval** means the determination by approval of the Planning Application for the Development or a stage of the Development.

**Planning Proposal** means the planning proposal submitted under Part 3, Division 3.4 of the Act for the [LEP Amendment 2013 Amending LEP, DP&IE](#) reference PP\_2010\_PENRI\_001\_00, or its amended form, as has been endorsed by the Planning Authority.

**Public Facility** means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

**Public Purpose** means any purpose that benefits the public or a section of the public, specified in section [7.493F\(2\)](#) of the Act.

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

**Relevant Lessee** means the lessee in relation to any lease or interest that is registered or unregistered on title to the part of the Land comprising the Road Widening Land at the date for registration of the plan to dedicate the Road Widening Land identified in [clause 7](#).

**Residential Lot** means a lot created under plan of subdivision, including a strata plan of subdivision, which forms part of the Development and which is created solely for residential purposes.

**Road Works** means those road works identified in [schedule 3](#) and identified on the concept plans in Part A of [schedule](#) and in ~~schedules 5 and 6~~.

**Road Works Widening Land** means such parts of the Land upon which the future road widening of Mulgoa Road is to occur generally as shown on the Road Widening Plan, but for completeness, excludes any part of the land shown on the Road Widening Plan that, as at the date of the Amending Deed, had already been dedicated as public road by the registration of DP1267353. Roads Works are required to be constructed which is not owned by the Planning Authority or RMS.

**Road Widening Plan** means the plan annexed in [schedule 7](#).

**Roads Authority** has the meaning given to it in the *Roads Act 1993* (NSW).

**Second Amending LEP** means the Local Environmental Plan proposed under the Second Planning Proposal to amend the *Penrith Local Environmental Plan 2010*.

**Second Planning Proposal** means the planning proposal submitted under Part 3, Division 3.4 of the Act for the Second Amending LEP, DPIE reference PP\_2016\_PENRI\_005\_00 (as amended at the Commencement Date), as endorsed by the Planning Authority. ~~Stage 1 Development means that part of the Development identified in schedule 5 and that is intended to commence on or around 2016.~~

~~Stage 2 Development means that part of the Development identified in schedule 5 and that is intended to commence on or around 2021.~~

~~**Stage 3 Development** means that part of the Development identified in schedule 5 and that is intended to commence on or around 2026.~~

~~**Stage 4 Development** means that part of the Development identified in schedule 5 and that is intended to commence on or around 2031.~~

**Subdivision** has the meaning given to it in the Act.

**Subdivision Certificate** has the meaning given to it in the Act.

**Transfer Dealings** means selling or transferring the Developer's Land.

**Trigger Event** means the date on which the event occurs in **column 3 of schedule 3** corresponding with the Road Works identified in **columns 1 and 2 of schedule 3**.

**Western Sydney Conference and Community Centre** means that part of the Development the subject of development consent, DA18\_0340, granted on 28 August 2018 and as modified from time to time.

**Works Authorisation Deed** means any deed(s) entered into between **RMS TfNSW** and the Developer or TfNSW and the Planning Authority to complete any relevant part of the Road Works ~~for which RMS is the Roads Authority.~~

## 4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment, replacement or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.

## 5 Development Contributions to be made under this Agreement

- (a) Subject to this Agreement, the Developer is to make a Development Contribution comprising:
    - (i) the carrying out and the delivery of the Road Works in accordance with this Agreement and any applicable Works Authorisation Deed; ~~and~~
    - (ii) the dedication of the Road ~~Works~~ Widening Land to TfNSW in accordance with **clause 7**, which is required for the Road Works; ~~and~~
    - (iii) the payment of the Monetary Contribution to TfNSW in accordance with **clause 8**.
  - (b) The Parties agree that the Trigger Event and Alternative Trigger Event for the Road Works set out in **columns 3 and 4** of **schedule 3** and the nature, timing and delivery and staging ~~described in of~~ the Development ~~Stages~~ are subject to review by the Parties and the Parties agree to:
    - (i) meet within 30 Business Days of each anniversary date of the Commencement Date, and at any other time as may be agreed between the Parties in writing, to review, in good faith:
      - (A) the timing, scope of works and land required for the delivery of the Road Works; and
      - (B) the staging of the Development ~~Stages~~;
- the Parties may each nominate two representatives to attend that meeting, unless otherwise agreed; and

- (ii) any variation to **schedule 3** ~~or the Development Stages~~ is to be agreed in writing by the Parties.
- (c) In the event that no written agreement can be reached between the Parties in respect of any requested variance to **schedule 3** ~~or the Development Stages~~, the Parties agree that the Works will be delivered in accordance with the requirements in **schedule 3**, as if the request for the variance had not been made.
- (d) The Developer acknowledges and agrees that in respect of the Road Works ~~for which RMS is the Roads Authority~~:
  - (i) the carrying out of the Road Works will be subject to ~~one or more~~ Works Authorisation Deeds between the Developer and ~~RMS TfNSW~~, and this Agreement in no way fetters or restricts the terms of any such Works Authorisation Deed; and
  - (ii) the Road Works will be required to meet the then current Austroads standards and ~~RMS TfNSW~~ supplements to the applicable Austroads standards which may be different from those standards which apply as at the date of this Agreement.
- (e) The Parties agree that the legal costs of any modification to this Agreement arising from a review in accordance with **clause 5(b)** will be borne by the party that requests the modification. Where more than one party requests the modification, the legal costs associated with modification to this Agreement will be split between the Parties equally, unless otherwise agreed in writing.
- (f) The Parties agree that the specifications for ~~that part of~~ the Road Works ~~for which RMS is the Roads Authority~~ will be set out in the relevant Works Authorisation Deed ~~and, for all other components of the Road Works, in the relevant Planning Application and Planning Approval for the Road Works.~~

## 6 Road Works

### 6.1 Road Works Security

- (a) The Developer must provide security for the Road Works to the Planning Authority in the form of a bank guarantee or a bond equivalent to 125% of the agreed value of the Road Works.
- (b) The agreed value of the Road Works is to be determined and agreed by the Parties to the Agreement, acting reasonably, by the following process:
  - (i) the Developer is to provide written notice to the Planning Authority and TfNSW as soon as practicable after appointing a contractor for the Road Works, and no later than 17 March 2022. That notice is to confirm the value of the contract for the Road Works and calculate the value that is 125% of that contract value;

- (ii) within 5 Business Days after receiving the notice described in **clause 6.1(b)(i)**, the Planning Authority and TfNSW are to provide written notice to the Developer confirming whether they agree to the values identified in the Developer's notice, and:

  - (A) if they agree, the value of the contract is the agreed value of the Road Works for the purpose of calculating the security described at **clause 6.1(a)**; and
  - (B) if they do not agree, the matter is to be referred to an expert quantity surveyor appointed by agreement of the parties, for a binding determination as to the value of the Road Works and the security described at **clause 6.1(a)**.
- (c) The Road Works security identified in **clause 6.1(a)** and **clause 6.1(b)** is to be provided by the Developer to the Planning Authority by 31 March 2022. However this obligation does not apply if the Works Authorisation Deed referred to at **clause 6.2(a)** has already been entered into, and the Developer has already provided sufficient evidence to the Planning Authority that any security required by that Works Authorisation Deed for the agreed value of the Road Works has already been provided to TfNSW.

#### **6.16.2 Carrying out the Road Works**

- (a) The Developer must enter into a Works Authorisation Deed with **RMS TfNSW** for those components of the Road Works identified in **columns 1 and 2 of schedule 3** prior to any Trigger Event or Alternative Trigger Event, whichever occurs first, and:-

  - (i) bear the costs of the parties associated with entering into any such Works Authorisation Deed; and
  - (ii) provide a security in the form of a bank guarantee at the time of entering into any such Works Authorisation Deed with TfNSW in the form and amount as is required by TfNSW in its usual course, subject to **clause 6.2(c)**.
- (b) The Developer must physically commence the Road Works prior to 1 June 2022.
- (c) The Developer must provide any security required by the Works Authorisation Deed referred to in **clause 6.2(a)** to TfNSW prior to entering into the Works Authorisation Deed. The total value of the security required by the Works Authorisation Deed will not exceed 125% of the agreed value of the Road Works, as agreed or determined in accordance with **clause 6.1(b)**.
- (d) Upon receiving evidence that the Developer has entered into the Works Authorisation Deed referred to in **clause 6.2(a)** and provided the security referred to in **clause 6.2(a)(ii)** to TfNSW, the Planning Authority will promptly take all steps required to assist the Developer to add or substitute TfNSW as a beneficiary of the security for the Road Works



provided by the Developer pursuant to clause 6.1 or to return that security to the Developer.

- (a)(e) The Developer must ~~C~~complete the Road Works in **columns 1 and 2 of schedule 3** prior to the relevant Milestone Event.
- (b)(f) For the purpose of calculating the Alternative Trigger Event identified in **column 4 of schedule 3**, the Developer must provide an estimate of the GFA ~~and NUFA~~ for the specific Planning Application and the cumulative GFA ~~and NUFA~~ for ~~each of~~ the Development ~~Stages~~ with each Planning Application submitted for the Development.
- (c)(g) The Developer must promptly notify ~~RMS-TfNSW~~ of the lodgement of a Planning Application relevant to this Agreement and the Planning Authority must promptly notify ~~RMS-TfNSW~~ of the GFA ~~and NUFA~~ for which Planning Approval is sought in the Planning Application, along with the cumulative GFA ~~and NUFA~~ identified for the Alternative Trigger Event.

#### **6.26.3 Pre-Conditions for Road Works**

The Developer must obtain at the Developer's cost:

- (a) all necessary approvals (including Planning Approvals), consents, certifications and authorisations required to carry out the Road Works or any component of the Road Works and to subdivide and dedicate the Road ~~Works~~ Widening Land and any components of the Road ~~Works~~ Widening Land; and
- (b) land owners' consent from all relevant Party Land Owners and Non-Party Land Owners to enable the Road Works or any component of the Road Works to be carried out and to subdivide and dedicate the Road ~~Works~~ Widening Land and any components of the Road ~~Works~~ Widening Land.

#### **6.36.4 Road Works - Standard of Work**

- (a) The Developer must carry out the Road Works in a good and workmanlike manner, in compliance with applicable laws, regulations and currently applicable road design standards (including any relevant Australian Standards, Austroads standards, ~~RMS-TfNSW~~ Supplements to Austroads standards or other standards), the provisions of any applicable Works Authorisation Deed, the conditions of any Planning Approval and conditions of any approval under section 138 of the *Roads Act 1993* (NSW).
- (b) The Developer must permit duly authorised representatives of the Planning Authority and ~~RMSTfNSW~~, as the case may be, to inspect the Road Works as they are constructed in accordance with any applicable Works Authorisation Deed.
- (c) The Planning Authority and ~~RMS-TfNSW~~ (as appropriate) may nominate the stages at which it requires formal notification that the Road Works (or any part of the Road Works) are available for inspection, and the Developer must use all reasonable endeavours to ensure that those

inspection opportunities are provided to the Planning Authority and ~~RMS~~TfNSW, as appropriate.

#### **6.46.5 Access to Planning Authority's and ~~RMS~~TfNSW's Land**

If requested, the Planning Authority and ~~RMS~~TfNSW must promptly grant, at no cost to the Developer, such licences or other rights (as are reasonably necessary) over the Planning Authority's and ~~RMS~~TfNSW's land and roads (subject to the provisions of the *Roads Act 1993*) to enable the Developer, its contractors, employees and servants to carry out the Road Works in accordance with a licence to be agreed between the Parties.

#### **6.56.6 Failure to deliver Road Works**

- (a) If the Developer fails to ~~C~~complete any component of the Road Works by the applicable Milestone Event then the Developer acknowledges and agrees that, unless otherwise agreed in writing by both the Planning Authority and ~~RMS~~TfNSW, it will ensure that:
  - (i) no further Planning Applications are lodged with the Planning Authority for the Development or any other development on the Land; and
  - (ii) no application for any Occupation Certificate ~~or Interim Occupation Certificate~~ is lodged for any aspect of the Development or any other development on the Land that generates additional GFA ~~or NUFA~~ until such time as the relevant Road Works are ~~C~~completed.
- (b) Where the Developer fails to ~~C~~complete the Road Works as required by this Agreement by the applicable Milestone Event for that item of Road Work, the Planning Authority ~~RMS~~ may complete that item or such part or parts as are outstanding as at the time of the Milestone Event or otherwise as agreed, or appoint a contractor to carry out these Works on the Planning Authority's ~~RMS~~ behalf.
- (c) If ~~RMS~~ the Planning Authority elects to ~~C~~complete an item or such part or parts of the Road Works under **clause 6.66-5(b)**, any reasonable costs and expenses of carrying out those Road Works will become a debt due and payable to the Planning Authority ~~RMS~~ by the Developer, and the Planning Authority will be entitled to claim against any security provided in accordance with clause 6.1 in satisfaction of that debt.
- (d) If the Planning Authority elects to complete an item or such part or parts of the Road Works under clause 6.6 the Planning Authority must enter into a Works Authorisation Deed with TfNSW for those components of the Road Works. The Planning Authority must provide any security required by the Works Authorisation Deed to TfNSW prior to physically commencing the Road Works. This security may be drawn from the security identified in clause 6.1.
- (e) If the Planning Authority elects to complete an item or such part or parts of the Road Works under clause 6.6, the Developer must transfer any Intellectual Property Rights for the Road Work designs to the Planning

[Authority to enable the Planning Authority to amend or change the designs for the purposes of delivery of the Road Works.](#)

#### **6.6.7 Failure to enter into Works Authorisation Deed**

If the Developer fails to enter into a Works Authorisation Deed in breach of **clause 6.2(a)6.1(a)**, then, unless otherwise agreed in writing by ~~RMS TfNSW~~ [the Planning Authority](#), the Developer acknowledges and agrees that it will ensure that:

- (a) no further Planning Applications will be lodged with the Planning Authority for the Development; and
- (b) no further applications for any Construction Certificate or Occupation Certificate ~~or Interim Occupation Certificate~~ will be lodged for any aspect of the Development or any other development on the [Developer's](#) Land that generates additional GFA ~~or NUFA~~,

until such time as the relevant Works Authorisation Deed has been agreed and executed by the Developer.

#### **6.7 ~~Roads Authority~~**

~~The parties acknowledge and agree that RMS will exercise the functions of the Roads Authority for all of the Road Works other than the provision of a shared pathway on the northern side of Jamison Road, between Harris Street and Mulgea Road.~~

## **7 Road ~~Works Widening~~ Land Dedication**

### **7.1 Developer's Obligation**

- (a) ~~When requested to do so by RMS following Completion of the Road Works or a component of the Road Works, the~~ [Party Land Owners](#) Developer must ensure the registered proprietors of the Road ~~Widening Works Land~~ [request registration of the dedication of](#) ~~dedicate~~ the Road [Widening Works Land](#) or the relevant part of the Road [Widening Works Land](#) as a public road to ~~the Planning Authority TfNSW~~ [by the time specified in paragraph clause 7.1\(b\)](#) ~~within the timeframe required by RMS, acting reasonably,~~ at no cost to ~~RMS TfNSW~~ or the Planning Authority.
- (b) For the purpose of ~~paragraph (a) clause 7.1(a)~~ [clause 7.1\(a\)](#), the ~~timeframe nominated by RMS for the lodgement of Developer~~ [Party Land Owners undertakes to lodge](#) the plan with ~~LPI LRS~~ [LPI LRS](#) requesting registration of the dedication of the Road [Widening Works Land](#) or relevant part of the Road [Widening Works Land](#), ~~must not be less than 10 Business Days of the date of the Completion of the Road Works or relevant component of the Road Works by no later than 31 December 2023 or such other later time as agreed by the earlier of 31 December 2024, or 12 months after~~

- receiving a notification from TfNSW that the dedication of the Road Widening Land under this Agreement is required. ~~between the Parties.~~
- (c) The ~~Developer~~ Party Land Owners must do all things necessary to effect dedication of the Road Widening Works Land including ~~ensuring that the registered proprietors of the Road Widening Works Land~~ providing to the Planning Authority TfNSW an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer title to the land to ~~the Planning Authority TfNSW~~ when registered and ensuring that the Road Widening Land is unencumbered at the time of such registration, except for any existing utility services.
- (d) To allow for the registration of an instrument of transfer referred to in ~~paragraph clause 7.1(c)~~, the ~~Developer is~~ Party Land Owners are to:
- (i) cause to be produced to the LPI/LRS the certificate of title to that part of the Road Widening Works Land, respectively, to be dedicated under this Agreement or a direction allowing the certificate of title to be used for that purpose; ~~and~~
- (ii) give to the Planning Authority TfNSW an irrevocable undertaking to deliver to the Planning Authority TfNSW the certificate of title if that certificate is released to the Party Land Owners ~~Developer~~ by the LPI/LRS.

## 7.2 Mulgoa Road Widening Works

- (a) TfNSW agrees to complete the widening of Mulgoa Road generally as shown in the Road Widening Plan as soon as possible after the Road Widening Land has been dedicated and once funding has been made available by NSW Treasury.
- (b) The Developer will not permit the lodgement of an application for any Construction Certificate which will have the effect of, if approved, that Construction Certificates have been granted for more than 163,443 m<sup>2</sup> of the GFA for the Development on the Land calculated on a cumulative basis prior to practical completion of the Mulgoa Road widening works shown in the concept plans at Part B of Schedule 6.
- (c) The Developer agrees to not permit the lodgement of an application for any Construction Certificate which will have the effect if approved that Construction Certificates have been granted for more than 40,847m<sup>2</sup> of the GFA for the Development on the Developer's Land calculated on a cumulative basis prior to practical completion of the Mulgoa Road widening works shown in the concept plans at Part B of Schedule 6.

## 7.3 Developer to indemnify TfNSW in relation to Relevant Lessees

- (a) The Developer indemnifies TfNSW or the Planning Authority in relation to any and all claims made by any of the Relevant Lessees in respect of loss suffered or costs incurred due to the dedication of the Road Widening Land.

## 7.4 Compulsory Acquisition

- (a) If the Developer does not request registration of the dedication of the Road Widening Land by the time required under **clause 7.1(b)**, the Party Land Owners consent to TfNSW compulsorily acquiring the Road Widening Land for compensation in the amount of \$1 (to be divided equally between the Party Land Owners) without having to follow the pre-acquisition procedure under the LAJTC Act.
- (b) TfNSW may acquire the Road Widening Land pursuant to **clause 7.4(a)** if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Party Land Owners to take steps to dedicate the land required to be dedicated under this Agreement.
- (c) **Clause 7.4(a)** constitutes an agreement for the purposes of s30 of the LAJTC Act.
- (e)(d) If, as a result of the acquisition referred to in **clause 7.4(a)**, TfNSW receives a claim or is required to pay compensation to any person other than the Party Land Owners in accordance with clause 7.4(a) above, the Developer indemnifies TfNSW in relation to:
  - (i) any and all claims for compensation (including compensation under the LAJTC Act and all associated costs) made by any person, including the Relevant Lessees, in connection with the compulsory acquisition of the Road Widening Land; and
  - (ii) any and all claims made by any person, including the Relevant Lessees, in respect of loss suffered or costs incurred due to the compulsory acquisition of the Road Widening Land.

## 8 Monetary Contribution

### 8.1 Payment of the Monetary Contribution

- (a) Subject to receipt of a tax invoice in accordance with **clause 8.1(c)**, the Developer will pay to TfNSW the Monetary Contribution in three equal instalments (**Monetary Contribution Instalment**) as follows:
  - (i) first Monetary Contribution Instalment paid on or before 30 December 2026;
  - (ii) second Monetary Contribution Instalment paid on or before 30 December 2027; and
  - (iii) third Monetary Contribution Instalment paid on or before 30 December 2028.
- (f)(b) The Developer must request TfNSW to issue a tax invoice for each Monetary Contribution Instalment, as indexed in accordance with **clause 8.1(e)**, at least 40 Business Days before the payment of that Monetary Contribution Instalment is due pursuant to **clause 8.1(a)**.

- (c) TfNSW must provide the Developer with a tax invoice within 15 Business Days of being requested to do so by the Developer in accordance with **clause 8.1(b)**.
- (d) Each Monetary Contribution Instalment must be paid by the Developer to TfNSW by bank cheque or electronic funds transfer within 30 Business Days of the issue of the relevant tax invoice by TfNSW in accordance with **clause 8.1(c)**.
- (e) For the period commencing on the date of the Amending Deed up to and including the date of payment of the relevant Monetary Contribution Instalment, the value of each of the Monetary Contribution Instalments is to be increased by an amount equal to CPI, applied each year on the anniversary of the date of the Amending Deed.

## **8.2 Failure to pay the Monetary Contribution**

- (a) If the Developer fails to effect payment of any of the Monetary Contribution Instalments in accordance with the due date specified in **clause 8.1(d)** above or fails to request a tax invoice by the relevant date set out in **clause 8.1(a)** and **8.1(b)**, then the Developer acknowledges and agrees that, unless otherwise agreed in writing by both the Planning Authority and TfNSW, it will ensure that:
  - (iii) no further Planning Applications are lodged with the Planning Authority for the Development or any other development on the Developer's Land; and
  - (iv) no application for any Occupation Certificate is lodged for any aspect of the Development or any other development on the Developer's Land, that generates additional GFA until such time as the relevant Monetary Contribution is paid.

## **89 Application of sections ~~94~~7.11, ~~94A~~7.12 and ~~94EF~~7.24 of the Act to the Development**

This Agreement does not exclude the application of sections ~~94~~7.11, ~~94A~~7.12 and ~~94EF~~7.24 of the Act to the Development.

## **910 Registration of this Agreement**

- (a) The Developer must, at its expense, procure the registration of the Agreement on the relevant folios of the register held by the ~~LP~~LRS pertaining to the Developer's Land as soon as reasonably practicable after the Commencement Date and, in any event, no later than 60 Business Days after that date. The Developer will secure the necessary lessee, mortgagee and caveator consents necessary for registration of the Agreement within 30 days of the date of the Amending Deed and will

- provide regular updates to the Planning Authority and TfNSW on the progress of registration.
- (b) The Parties agree that any part of the Land that does not form part of the Developer's Land ~~Lot 1021 DP812335~~ is excluded from the registration requirements in this **clause 910**.
- (c) Until such time as this Agreement is registered on the relevant folios of the register held by the LP/LRS pertaining to the Developer's Land, the Developer Party Land Owners agrees that the Planning Authority and RMS TfNSW may each lodge a caveat on the relevant folios of the Register held by the LP/LRS pertaining to the Developer's Land.
- (d) If the Planning Authority or RMS TfNSW lodges a caveat in accordance with **clause 9(e) 10(c)**, then the Planning Authority or RMS TfNSW must during such time as the caveat remains lodged on the title of the Developer's Land:
- (i) provide written consent within 5 Business Days to any proposed Dealing in respect of the Developer's Land other than a Transfer Dealing;
  - (ii) provide written consent within 5 Business Days to a proposed Transfer Dealing in circumstances where the proposed assignee, transferee, purchaser or other party (the "**Incoming Party**") of the Developer's Land or part of the Developer's Land has executed a Novation Deed in substantially the same form as contained in Annexure A;
  - (iii) ensure that the caveat does not prevent or delay the registration of this Agreement; and
  - (iv) remove the caveat from the title to the Developer's Land promptly, following registration of this Agreement in accordance with **clause 9(a) 10(a)**.
- (e) If after 420-60 Business Days, the ~~Developer has~~ Party Land Owners have failed or have as been unable to register this Agreement on any of the Developer's Land in accordance with **clause 9(a) 10(a) by within six months of execution of this Agreement**, the Developer must pay the Planning Authority's and TfNSW's reasonable costs and expenses, including legal costs, of exercising their rights under **clause 9(e) 10(c)** of this Agreement.
- (f) The Agreement must continue to be registered on the title of the Developer's Land until all obligations to make the Development Contribution under this Agreement have been satisfied.
- (g) The Party Land Owners must ensure the Agreement is registered on all subsequent subdivision of the Developer's Land until the obligations to make the Development Contribution under this Agreement are satisfied.

## ~~10~~11 Review of this Agreement

- (a) This Agreement may be reviewed or modified and 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.
- (c) If the land use assumptions specified in Schedule 5, being the assumptions which underpin the modelling and design of the Road Works and the future widening of Mulgoa Road (as generally depicted in the Road Widening Plan), substantially change, the Developer will promptly notify TfNSW and the Planning Authority.
- (d) TfNSW and the Planning Authority, acting reasonably, may then determine whether the Agreement requires review or amendment.
- (b)(e) For the purposes of clause 11(c) above, the term "substantially change" means any increase in the traffic generation rate specified for any lot within the table of land use assumptions in Schedule 5.

## ~~11~~12 Dispute Resolution

### ~~11.1~~12.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this clause.

### ~~11.2~~12.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

### ~~11.3~~12.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 12.2**) 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, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
  - (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.

#### ~~11.4~~12.4 **Neither party may constrain**

If:

- (a) at least one meeting has been held in accordance with **clause 12.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 12.3(b)(i) to (iii)**; and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 12.3**,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement and either Party may proceed to enforce this Agreement in a Court of competent jurisdiction.

## ~~12~~13 Security and Enforcement

### ~~12.1~~13.1 **Security**

The Parties agree that:

- (a) registration of this Agreement and the Planning Authority's and ~~RMS TfNSW's~~ rights under **clause 910**;
- (b) the compulsory acquisition of the Road Widening Land for \$1 under clause 7.4;
- (c) the requirement for the Developer to provide security as described at clause 6.1; and
- ~~(b)~~(d) the requirement for the Developer to enter into a Works Authorisation Deed with ~~RMS TfNSW~~ for the Road Works ~~for which RMS is the Roads Authority as described at clause 6.2(a)~~ pursuant to which the Developer will be required to lodge a bank guarantee or other similar security with ~~RMS TfNSW as described at clause 6.2(c)~~,

constitute suitable means of enforcement for the purpose of section ~~93F~~7.4(3)(g) of the Act.

### ~~12.2~~13.2 **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 or any other Court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (ii) the Planning Authority or ~~RMS-TfNSW~~ 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.

## ~~13~~14 Notices

### ~~13.1~~14.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

#### **Penrith City Council**

Attention: General Manager  
Address: 601 High St, Penrith NSW 2750  
Fax Number: 02 4732 7958  
Email: [natasha.borgia@penrith.city](mailto:natasha.borgia@penrith.city);  
~~[pgrimson@penrithcity.nsw.gov.au](mailto:pgrimson@penrithcity.nsw.gov.au)~~;  
~~[pencitcouncil@penrithcity.nsw.gov.au](mailto:pencitcouncil@penrithcity.nsw.gov.au)~~

#### **~~RMSTfNSW~~**

Attention: ~~Colin Langford – Director Land Use, Networks and Development~~ [Michael Veysey – Director Network Management](#)  
Address: ~~27 – 31 Argyle Street, Parramatta NSW 2150~~ [101 Miller Street North Sydney NSW 2060](#)  
Fax Number: 02 ~~8849 2747~~ [8588 4160](#)  
Email: [colin.langford@transport.nsw.gov.au](mailto:colin.langford@transport.nsw.gov.au)  
~~[michael.veysey@rms.nsw.gov.au](mailto:michael.veysey@rms.nsw.gov.au)~~

#### **Penrith Rugby League Club Limited**

Attention: General Manager - Corporate Real Estate  
Address: [83423](#) Mulgoa Road Penrith NSW 2750  
Fax Number: 02 4731 2665  
Email: [matthew.leavey@panthers.com.au](mailto:matthew.leavey@panthers.com.au) ~~[stacey.fishwick@panthers.com.au](mailto:stacey.fishwick@panthers.com.au)~~  
~~[realestate@panthers.com.au](mailto:realestate@panthers.com.au)~~

**Mulgoa Road (No. 1) Pty. Limited**

Attention: General Manager - Corporate Real Estate  
Address: Penrith Rugby League Club, Mulgoa Road  
Penrith NSW 2750  
Fax Number: 02 4731 2665  
Email: [matthew.leavey@panthers.com.au](mailto:matthew.leavey@panthers.com.au)

**13.214.2 Change of Details**

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, electronically sent, posted or faxed to the latest address, email address or fax number.

**13.314.3 Giving of Notice**

Subject to **clause 14.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address;
- (b) if it is sent by registered post, two Business Days after it is posted; and
- (c) if it is sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

**13.414.4 Delivery outside of business hours**

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

## ~~14~~15 Approvals and consent

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 obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## ~~15~~16 Coordination of Road Works

In the event that any part of the Developer's Land is assigned or novated in accordance with **clause ~~16~~ 17**, wherever Panthers Rugby League Club Limited is the Developer of the Development in whole or part, it acknowledges and agrees that it is responsible for coordinating the delivery of all of the Road Works in **schedule 3**, including those responsibilities assigned or novated to another party under **clause ~~16~~ 17**.

## ~~16~~17 Assignment and Novation

### ~~16.1~~17.1 Assignment

- (a) The Developer-Party Land Owners must not assign, encumber or deal with any right, obligation or interest under this Agreement without the prior written consent of the Planning Authority and RMSTfNSW, such consent not to be unreasonably withheld.
- (b) Approval is reasonably withheld if the proposed assignee, or person is not solvent and reputable and the assignment or encumbrance with materially adversely affect the obligations of the Developer-Party Land Owner and the rights of the Planning Authority and RMSTfNSW.
- (c) Any purported dealing in breach of this clause is of no effect.

### ~~16.2~~17.2 Transfer Dealings

- (a) The Developer-Party Land Owners must not have any Transfer Dealings with the Developer's Land unless the proposed assignee, transferee, purchaser or other party (the "**Incoming Party**") enters into the Novation Deed.
- (b) As and from the date of execution of the Novation Deed by the Planning Authority, RMSTfNSW, the Developer-relevant Party Land Owner and the Incoming Party, and other than as set out in the Novation Deed, the Developer-relevant Party Land Owner is released from the obligations contained in this Agreement to the extent that they:
  - (i) are novated to the Incoming Party, and
  - (ii) remain to be performed.

## 1718 Release and discharge

- (a) Upon satisfaction of the ~~Developer's~~ Party Land Owner's obligations under this Agreement, the Planning Authority and ~~RMS-TfNSW~~ must provide a release and discharge of this Agreement with respect to the Developer's Land, including any strata lot, within 20 Business Days of receiving a written request from the Developer and do all things reasonably necessary, including executing any necessary document to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the LP/LRS pertaining to the Developer's Land.
- (b) If there is a disagreement about whether the ~~Developer~~ Party Land Owner has satisfied its obligations under this Agreement, the Planning Authority and ~~RMS-TfNSW~~ must provide a release and discharge of the Agreement where alternative security is provided by the ~~Developer~~ Party Land Owner to the reasonable satisfaction of the Planning Authority and ~~the RMSTfNSW~~ to secure any obligations the Planning Authority or ~~RMS TfNSW~~ considers are still outstanding in respect of the Developer's Land.
- (c) From time to time, the ~~Developer~~ Party Land Owner may request ~~RMS TfNSW~~ and the Planning Authority provide a partial release and discharge of the Agreement. The Planning Authority and ~~RMS-TfNSW~~ must provide a partial release and discharge of this Agreement to the extent that the Agreement affects any Residential Lot for which a Subdivision Certificate has been issued or a strata Subdivision Certificate has been issued and where the Party Land Owner has:
- (i) ~~the Developer has~~ satisfied its obligations under this Agreement in respect of that part of the Developer's Land; or
- (ii) provided alternative security to the reasonable satisfaction of the Planning Authority and ~~RMS-TfNSW~~ to secure the performance of any outstanding obligations under this Agreement in respect of that part of the Developer's Land.
- (d) The Planning Authority and ~~RMS-TfNSW~~ must provide the release and discharge or partial release and discharge referred to in **paragraphs (a) and (c)**, within 20 ~~B~~business ~~D~~days of receiving a written request from the ~~Developer~~ Party Land Owner and do all things reasonably necessary, including ~~executing~~ any necessary document to enable the ~~Developer~~ Party Land Owner to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the LP/LRS pertaining to the Developer's Land.

## 1819 Force Majeure

- (a) If a Party is unable by reason of a Force Majeure Event to carry out wholly or in part its obligations under this Agreement, it must:

- (i) give to the other Parties prompt notice of the force majeure with reasonably full particulars; and
  - (ii) suggest an alternative method, if any, of satisfying its obligations under this Agreement.
- (b) If a Party is unable to satisfy its obligations under this Agreement by an alternative method, the obligations of the Parties, and any time periods, so far as they are affected by the Force Majeure Event are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable efforts and diligence to remove the Force Majeure Event or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of a Force Majeure Event or the period during which the obligations of the Parties, and any time periods, are suspended during the continuance of the Force Majeure Event, that dispute must be referred for determination under **clause 12**.
- (e) If a Force Majeure Event cannot be rectified to the mutual satisfaction of the Parties and the ~~Developer~~Party Land Owner, ~~in its sole discretion,~~ reasonably determines that it is unable to undertake or continue with the Development, then upon the surrender of any existing Planning Approvals that relate to works that have not yet been physically commenced (as defined in the Act), the ~~Developer~~relevant Party Land Owner may terminate this agreement by written notice to the Planning Authority and ~~RMS-TfNSW~~ in which event neither Party will have any claim against the other under this Agreement.
- (f) If **paragraph (e)** applies, the Planning Authority and ~~RMS-TfNSW~~ shall do all things reasonably necessary including executing any necessary documents to enable the ~~Developer~~relevant Party Land Owner to remove the notation of this Agreement on the relevant folios of the Torrens title register held by ~~LPI~~LRS relating to the ~~Developer's~~ Land within 20 Business Days of receiving written request from the ~~Developer~~relevant Party Land Owner.
- (g) If **paragraph (e)** applies, ~~RMS-TfNSW~~ or ~~Council~~the Planning Authority may give notice to the ~~Developer~~relevant Party Land Owner that it requires:
  - (i) works to be done to ensure that there is no immediate risk of harm to human safety arising from any incomplete Road Works or any part of the Development; and
  - (ii) works to be done of a permanent nature to ensure the ongoing functionality of the road network and use of the pedestrian footpath, notwithstanding the non-completion of either of the whole or part of the Road Works or the Development.

- (h) The Developer must be given a reasonable period of time, and not less than 10 Business Days, to carry out any works the subject of a notice under this clause and the ~~Council-Planning Authority~~ and ~~RMS-TfNSW~~ must reasonably consider any variation sought by the ~~Developer-Party~~ Land Owner to any works requested under this clause.

## ~~19~~20 Costs

- (a) The Parties agree to bear their own costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.
- (b) The legal costs of preparing, negotiating, executing and stamping any modifications to this Agreement are to be dealt with in the manner contemplated in **clause 5(e)** of this Agreement.

## ~~20~~21 Entire Agreement

- (a) This Agreement, any applicable Works Authorisation Deed and any documents required or contemplated by any Works Authorisation Deed contain everything to which the Parties have agreed in relation to the matters those documents deal with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

## ~~21~~22 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

## ~~22~~23 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

## ~~23~~24 No fetter

Nothing in this Agreement shall be construed as requiring the Planning Authority or ~~RMS-TfNSW~~ to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## ~~24~~25 Representations and warranties

- (a) The ~~Developer-Party Land Owners~~ represents and warrants that on the date of this Planning Agreement,:

~~t~~The Party Land Owners are the legal and beneficial owners of the Developer's Land.

~~(i) The Land Owners have provided written consent to:~~

~~(A) the Developer entering into and performing its obligations under this Planning Agreement;~~

~~(B) the registration of the Planning Agreement in the relevant folio of the Land titles;~~

~~(C) the lodgement by RMS and the Planning Authority of caveats notifying their interest in the Planning Agreement in the relevant folio of the Land titles, up until such time as the Agreement is registered in the relevant folios of the register held by the LPI pertaining to the Land.~~

~~(b) The Land Owners have agreed, promptly upon request, to lodge at the LPI the relevant certificates of title to enable the registration of the Planning Agreement in the relevant folios of the Land titles.~~

~~(c)~~(b) The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

## ~~25~~26 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 ~~i~~s 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.



## 2627 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## 2728 GST

### 27.128.1 Construction

In this **clause 2728**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the same meaning given to that expression in the GST Act.

### 27.228.2 Intention of the Parties

Without limiting the operation of this **clause 2728**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 27.428.4** below) on account of GST.

### 27.328.3 Consideration GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

### 27.428.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 27.4(d) 28.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 27.4(b) 28.4(b)**, ~~27.4(e) 28.4(c)~~ and ~~27.4(e) 28.4(e)~~ (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 27.4(e) 28.4(c)** and ~~27.4(e) 28.4(e)~~), the Recipient must

pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.

- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
- (i) a payment of money; nor
  - (ii) a taxable supply,

**(Non-taxable non monetary consideration),**

the Recipient must pay to the Supplier an additional amount equal to 1/11<sup>th</sup> of the GST-inclusive market value of the Non-taxable non-monetary consideration.

- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 27.4(a)28.4(a)** and subject to **clause 27.4(e)28.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding **clause 27.4(d)28.4(d)** if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11<sup>th</sup> of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.
- (f) The recipient will pay the GST Amount referred to in this **clause 27.428.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

**27.528.5 Valuation of non-monetary consideration**

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 27.428.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

**27.628.6 Tax invoice**

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 27.428.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

### **27.728.7 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 27.4**28.4 will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

### **27.828.8 Reimbursements**

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **clause 27.4**28.4 in respect of that reimbursement.

### **27.928.9 No Merger**

This **clause 27**28 does not merge in the completion, discharge, rescission or termination of this document or on the transfer of any property supplied or to be supplied under this document.

### **2829 Effect of Schedules**

The Parties agree to comply with any terms contained in Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

### **2930 Relationship of Parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

### **3031 Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

### **3132 Counterparts**

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### ~~32~~33 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

# Schedule 1

## Section ~~93F~~7.4 Requirement

Provision of the Act	This Agreement
Under section <del>93F</del> <u>7.4</u> (1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
(b) made, or proposes to make, a development application.	(b) Yes (to be made at a later date)
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
<b>Description of the land to which this Agreement applies-</b> (Section <del>93F</del> <u>7.4</u> (3)(a))	See <b>schedule 2</b>
<b>Description of the development to which this Agreement applies-</b> (Section <del>93F</del> <u>7.4</u> (3)(b)(ii))	<del>The Development comprises the 'Panthers Penrith Precinct', being a mixed use development inclusive of 25,000m<sup>2</sup> NUFA of Outlet Centre, 12,500m<sup>2</sup> GFA of retail, 25,000m<sup>2</sup> GFA of campus-style offices and entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities and exhibition space.</del>  <u>The Development comprises the 'Panthers Penrith Precinct', as described in the Planning Proposal and amended by the Second Planning Proposal.</u>
<b>The scope, timing and manner of delivery of Development Contributions required by this Agreement -</b> (Section <del>93F</del> <u>7.4</u> (3)(c))	See <b>clause 7</b> and <b>schedule 3</b>
<b>Applicability of Section <del>94</del><u>7.11</u> of the Act -</b> (Section <del>93F</del> <u>7.4</u> (3)(d))	Section <del>94</del> <u>7.11</u> is not excluded as it applies to the Development.
<b>Applicability of Section <del>94A</del><u>7.12</u> of the Act -</b> (Section <del>93F</del> <u>7.4</u> (3)(d))	Section <del>94A</del> <u>7.12</u> is not excluded as it applies to the Development.
<b>Applicability of Section <del>94EF</del><u>7.24</u> of the Act -</b> (Section <del>93F</del> <u>7.4</u> (3)(d))	Section <del>94EF</del> <u>7.24</u> is not excluded as it applies to the Development.
<b>Applicability of Section <del>93F</del><u>7.4</u>(3)(e) of the Act</b>	Not Applicable.

Schedule 1 - Amended Planning Agreement

Provision of the Act	This Agreement
<b>Mechanism for Dispute resolution -</b> (Section <a href="#">93F7.4(3)(f)</a> )	See clause <a href="#">4412</a> .
<b>Enforcement of this Agreement -</b> (Section <a href="#">93F7.4(3)(g)</a> )	See clause <a href="#">4213</a> .
<b>Registration of this Agreement</b> (Section <a href="#">93H7.4</a> )	See clause <a href="#">910</a> .
<b>No obligation to grant consent or exercise functions -</b> (Section <a href="#">93F7.4(9)</a> )	See clause <a href="#">4415</a> and <a href="#">2324</a> .

## Schedule 2

### Land Description

Title Description	Address
Lot 1021 DP812335	63 Mulgoa Road, Penrith
Lot 1 DP1043008	73 Mulgoa Road, Penrith
Lot 151 DP863625	83 Mulgoa Road, Penrith
Lot 13 DP710086 (part)	123 – 135 Mulgoa Road, Penrith
<a href="#">Lot 2 in DP1241942</a>	<a href="#">123 Mulgoa Road, Penrith</a>
<a href="#">Lot 11 in DP1223020</a>	<a href="#">1 Royce Way, Penrith</a>
<a href="#">Lot 20 in DP 1248609</a>	<a href="#">65 Mulgoa Road, Penrith</a>
<a href="#">Lot 52 in DP1246141</a>	<a href="#">8 Retreat Drive, Penrith</a>
<a href="#">Lot 53 in DP1246141</a>	<a href="#">8 Retreat Drive, Penrith</a>
<a href="#">Part of Lot 55 in DP1246141</a>	<a href="#">123 Mulgoa Road, Penrith</a>
<a href="#">Lot 56 in DP1250704</a>	<a href="#">6 Retreat Drive, Penrith</a>
<a href="#">Lot 57 in DP1250704</a>	<a href="#">4 Retreat Drive, Penrith</a>
<a href="#">Lot 58 in DP1250704</a>	<a href="#">2 Retreat Drive, Penrith</a>
<a href="#">Lot 59 in DP1256085</a>	<a href="#">8 Retreat Drive, Penrith</a>
<a href="#">Lot 60 in DP1256085</a>	<a href="#">8 Retreat Drive, Penrith</a>

## Schedule 3

### Development Contributions - Road Works

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
	<p>Jamison/Harris Street</p> <p>Construction of new intersection at Jamison Road, Harris Street and new access road from Panthers development</p>	<p>Construction of intersection at Harris Street and Jamison Road, with provision for a 15 metre long <del>sheltered</del> right turn bay from <a href="#">west approach of</a> Jamison Road into Harris Street and a 30 metre long <del>sheltered</del> right turn bay from <a href="#">east approach of</a> Jamison Road into the new Southern Riverlink Access and provision of appropriate traffic signals at the Jamison and Harris Street intersection.</p>	<p><b>Stage 2 Development</b></p> <p>The grant of a Construction Certificate in respect of the <a href="#">ground floor structure for the Multi-Use Arena and Exhibition Centre, Western Sydney Conference and Community Centre.</a></p>	<p><b>Stage 2 Development</b></p> <p><del>On the earlier of:</del></p> <p><del>(a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m<sup>2</sup> of GFA for the Stage 2 Development on the Land calculated on a cumulative basis; or</del></p> <p><del>(b) t</del><u>he</u> grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than <del>153,200</del><u>58,384</u>m<sup>2</sup> of the GFA for the Development on the Land calculated on a cumulative basis.</p>



Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
				In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
2	Jamison Road between Harris Street and Mulgoa Road	<p>2.1 Widening of Jamison Road between Harris Street and Mulgoa Road to include two continuous eastbound lanes within the existing road reserve.</p> <p>2.2 Retention and, if necessary reconstruction, of a 3m wide shared path along the northern side of Jamison Road, from the existing shared path</p>	<p><b>Stage 2 Development</b></p> <p><del>The grant of a Construction Certificate in respect of the Multi Use Arena and Exhibition Centre.</del> <u>The grant of a Construction Certificate in respect of the ground floor structure for the Western Sydney Conference and Community Centre.</u></p> <p><b>Stage 2 Development</b></p> <p>The grant of a Construction Certificate in respect of the <u>ground floor structure for the Western Sydney Conference and Community</u></p>	<p><b>Stage 2 Development</b></p> <p>On the earlier of:</p> <p><del>(a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m<sup>2</sup> of GFA for the Stage 2 Development calculated on a cumulative basis; or</del></p> <p><del>(b) the</del> <u>The</u> grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than <u>58,384m<sup>2</sup></u> <del>153,200m<sup>2</sup></del> of GFA for the Development on the Land calculated on a cumulative basis.</p> <p><b>Stage 2 Development</b></p> <p>On the earlier of:</p> <p><del>(a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect</del></p>

Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
		<p><del>approximately 50m west of Harris Street to</del> between Harris Street and Mulgoa Road.</p>	<p><del>Centre, Multi-Use Arena and Exhibition Centre.</del></p>	<p>In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre</p> <p><del>that Construction Certificates have been granted for more than 69,300m<sup>2</sup> of GFA for the Stage 2 Development calculated on a cumulative basis; or</del></p> <p><del>(b) <del>t</del>he grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than 58,384 m<sup>2</sup> 153,200m<sup>2</sup> of GFA for the Development on the Land calculated on a cumulative basis.</del></p>
		<p>2.23 Extension of the existing <u>central</u> median along Jamison Road between Mulgoa Road and Harris Street.</p>	<p><b>Stage 2 Development</b></p> <p>The grant of a Construction Certificate in respect of the <u>ground floor structure for the Western Sydney Conference and Community Centre, Multi-Use Arena and Exhibition Centre.</u></p>	<p><b>Stage 2 Development</b></p> <p><del>On the earlier of:</del></p> <p><del>(a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m<sup>2</sup> of GFA for the Stage 2 Development calculated on a cumulative basis; or</del></p> <p><del>(b) <del>t</del>he grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been</del></p>

Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
				<p>In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre</p> <p>granted for more than <del>58,384 m<sup>2</sup></del> <del>153,200m<sup>2</sup></del> of GFA for the Development on the Land calculated on a cumulative basis.</p>
3	Jamison Road /Mulgoa Road	<p><del>Construction of a second right turn bay from Jamison Road eastbound into Mulgoa Road (30m). Existing right turn bay (45m) to be retained</del> <u>Additional 40m right turn lane (from the ultimate widened Mulgoa Road alignment) at the western approach of Jamison Road/Mulgoa Road intersection.</u></p>	<p><b>Stage 2 Development</b></p> <p>The grant of a Construction Certificate in respect of the <u>ground floor structure for the Western Sydney Conference and Community Centre, Multi-Use Arena and Exhibition Centre.</u></p>	<p><b>Stage 2 Development</b></p> <p><del>On the earlier of:</del></p> <p><del>(a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m<sup>2</sup> of GFA for the Stage 2 Development calculated on a cumulative basis; or</del></p> <p><del>(b) the grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than 153,200m<sup>2</sup> of GFA for the Development on the Land calculated on a cumulative basis.</del></p> <p><u>(b) the grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than 58,384m<sup>2</sup> of GFA for the Development on the Land calculated on a cumulative basis.</u></p>

Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
				In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
4	Mulgoa Road/Panther Place  An additional northbound left slip lane off Mulgoa Road into Panther Place	Construction of a continuous left slip lane of 50m into Panther Place from Mulgoa Road.	<b>Stage 1 Development</b>  The grant of a Construction Certificate in respect of the Outlet Centre.	<b>Stage 1 Development</b>  The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m <sup>2</sup> of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.
		Construction of a signalised pedestrian crossing across Panther Place at the intersection with Mulgoa Road.	<b>Stage 1 Development</b>  The grant of a Construction Certificate in respect of the Outlet Centre.	<b>Stage 1 Development</b>  The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m <sup>2</sup> of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.

Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
				In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
5	Mulgea Road/Ransley Street intersection	5.1 Upgrade north bound component of intersection of Mulgea Road and Ransley Street resulting from the widening of Mulgea Road to three lanes north bound including associated right hand turn bays.	<b>Stage 1 Development</b> The grant of a Construction Certificate in respect of the Outlet Centre.	<b>Stage 1 Development</b> The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m <sup>2</sup> of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.

Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
				In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
		5.2 Upgrade south bound component of intersection of Mulgea Road and Ransley Street resulting from the widening of Mulgea Road to three lanes south bound.	<p><b>Stages 3 and 4 Development</b></p> <p>The grant of a Construction Certificate in respect of the Campus Style Office Development.</p>	<p><b>Stages 3 and 4 Development</b></p> <p>On the earlier of:</p> <p>(a) the grant of Construction Certificate for the Stage 3 and Stage 4 Development which has the effect that Construction Certificates have been granted for more than 46,325m<sup>2</sup> GFA for the Stage 3 Development and Stage 4 Development on the Land calculated on a cumulative basis; or</p> <p>(b) the grant of a Construction Certificate in respect of the Development which has the effect that Construction Certificates have been granted for more than 229,225m<sup>2</sup> GFA for the Development on the Land calculated on a cumulative basis.</p>

Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
6	Widening of Mulgoa Road to provide for three lane carriageway north and south bound	<p><b>6.1 Widening of Mulgoa Road north bound</b></p> <p>Widen to three carriageways north bound between Jamison Road to 100m north of Ransley St within the existing kerb to kerb alignment through reclamation of median and narrowing of lanes from 3.5m to 3.2m</p>	<p><b>Stage 1 Development</b></p> <p>The grant of a Construction Certificate in respect of the Outlet Centre.</p>	<p><b>Stage 1 Development</b></p> <p>The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m<sup>2</sup> of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.</p>
<p><b>6.2 Widening of Mulgoa Road south bound</b></p> <p>Widen to three carriageways south bound between Jamison Road to 100m north of Ransley St within the existing kerb to kerb alignment through reclamation of median and narrowing of lanes from 3.5m to 3.2m</p>		<p><b>Stages 3 and 4 Development</b></p> <p>The grant of a Construction Certificate in respect of the Campus Style Office Development.</p>	<p><b>Stages 3 and 4 Development</b></p> <p>On the earlier of:</p> <p>(a) the grant of Construction Certificate for the Stage 3 and Stage 4 Development which has the effect that Construction Certificates have been granted for more than 46,325m<sup>2</sup> GFA for the Stage 3 Development and Stage 4 Development on the Land calculated on a cumulative basis; or</p> <p>(b) the grant of a Construction Certificate in respect of the Development which has the effect that Construction Certificates have been granted for</p>	

Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	<b>Alternative Trigger Event</b>  In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
				more than 229,225m <sup>2</sup> GFA for the Development on the Land calculated on a cumulative basis.
7	Mulgoa Road (North of Jamison Road) and Jamison Road (East of Mulgoa Road)	Construction of a continuous left slip lane of 100m on the northern approach of Jamison Rd/Mulgoa Rd intersection.	<b>Stage 1 Development</b>  The grant of a Construction Certificate in respect of the Outlet Centre.	<b>Stage 1 Development</b>  The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m <sup>2</sup> of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.
		Lengthening of existing right turn bays on Jamison Road between Station Street and Mulgoa Road to continuous and 130m respectively.	<b>Stage 1 Development</b>  The grant of a Construction Certificate in respect of the Outlet Centre.	<b>Stage 1 Development</b>  The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m <sup>2</sup> of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.
		Change line marking on the eastern leg of Jamison Rd/Mulgoa Rd	<b>Stage 1 Development</b>	<b>Stage 1 Development</b>



Schedule 1 - Amended Planning Agreement

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	<b>Alternative Trigger Event</b> In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
		intersection to show left, left-through, right, right arrangement.	The grant of a Construction Certificate in respect of the Outlet Centre.	The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m <sup>2</sup> of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.

## Schedule 4

### Explanatory Note

*Environmental Planning and Assessment Regulations 2000*

(Clause 25E)

#### Explanatory Note

### 1 Planning Agreement

Under section ~~93F-7.4~~ of the *Environmental Planning and Assessment Act 1979* (NSW) and Clause 25E of the *Environmental Planning and Assessment Regulations 2000*

### 1 Parties

**Penrith City Council** ABN 43 794 422 563 of 601 High Street, Penrith New South Wales (**Planning Authority**)

~~Roads and Maritime Services~~ **Transport for NSW** ABN ~~76 236 371 088~~ 18 804 239 602 a NSW Government Agency and corporation incorporated under section ~~46-3C~~ of the *Transport Administration Act 1988* (NSW) ~~of 20 - 44 Ennis Road, Milsons Point, New South Wales (RMSTfNSW)~~

~~of Level 9, 101 Miller Street, North Sydney, New South Wales, 2060 (RMS).~~

**Penrith Rugby League Club Limited** ABN 57 000 578 398 of Mulgoa Road, Penrith New South Wales (**Developer**)

[Mulgoa Road \(No.1\) Pty. Limited ACN 002 535 202 of Penrith Rugby League Club, Mulgoa Road Penrith, New South Wales \(Mulgoa Road\).](#)

### 2 Description of Subject Land

The land [comprised in the folio identifiers, and](#) located at the [corresponding](#) addresses, [provided in the table below:](#) ~~63, 73, 83, 123 – 135 Mulgoa Road, Penrith, New South Wales and contained in folio identifiers Lot 1021, DP812335, Lot 1 DP1043008, Lot 151 DP863625 and Lot 13 DP710086 (part).~~

<u>Folio Identifier</u>	<u>Address</u>
<a href="#">Lot 2 in DP1241942</a>	<a href="#">123 Mulgoa Road, Penrith</a>
<a href="#">Lot 11 in DP1223020</a>	<a href="#">1 Royce Way, Penrith</a>
<a href="#">Lot 20 in DP 1248609</a>	<a href="#">65 Mulgoa Road, Penrith</a>
<a href="#">Lot 52 in DP1246141</a>	<a href="#">8 Retreat Drive, Penrith</a>
<a href="#">Lot 53 in DP1246141</a>	<a href="#">8 Retreat Drive, Penrith</a>
<a href="#">Part of Lot 55 in DP1246141</a>	<a href="#">123 Mulgoa Road, Penrith</a>
<a href="#">Lot 56 in DP1250704</a>	<a href="#">6 Retreat Drive, Penrith</a>
<a href="#">Lot 57 in DP1250704</a>	<a href="#">4 Retreat Drive, Penrith</a>
<a href="#">Lot 58 in DP1250704</a>	<a href="#">2 Retreat Drive, Penrith</a>
<a href="#">Lot 59 in DP1256085</a>	<a href="#">8 Retreat Drive, Penrith</a>
<a href="#">Lot 60 in DP1256085</a>	<a href="#">8 Retreat Drive, Penrith</a>

### 3 Description of Proposed Change to Environmental Planning Instrument

The Developer has submitted ~~at two~~ [two](#) Planning Proposals to the Planning Authority ~~to rezone~~ [that affect](#) the Land.

~~An~~ [The amendment of the Penrith Local Environmental Plan 2010 Amending LEP](#) will facilitate additional development of the 'Panthers Penrith Precinct' on the Land being a mixed use development [as set out in the Planning Proposal as amended by the Second Planning Proposal](#). ~~inclusive of 12,500m<sup>2</sup> GFA of retail, 25,000m<sup>2</sup> NUFA of Outlet Centre, 25,000m<sup>2</sup> GFA of campus style offices, entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities, and exhibition space.~~

### 4 Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objective of the draft Planning Agreement is to facilitate the delivery of Development Contributions in relation to required Road Works on local and State roads associated with the 'Panthers Penrith Precinct'.

The nature of the draft Planning Agreement is a contractual relationship between Penrith City Council, the Developer, [Mulgoa Road](#) and ~~Roads and Maritime Services~~ [Transport for NSW \(RMSTfNSW\)](#) for the provision of Road Works to support the Development and how they will be provided.

The effect of the draft Planning Agreement is that the Developer [and Mulgoa Road](#) must provide Development Contributions that include:

Schedule 1 - Amended Planning Agreement

Element	Detail of Works	Responsible entity
<p>1 Jamison/Harris Street</p> <p>Construction of new intersection at Jamison Road, Harris Street and new access road from Panthers development</p>	<p>1.1 Construction of intersection at Harris Street and Jamison Road, with provision for a 15 metre long <del>sheltered</del> right turn bay from <a href="#">west approach of</a> Jamison Road into Harris Street and a 30 metre long sheltered right turn bay from <a href="#">east approach of</a> Jamison Road into the new Southern Riverlink Access and provision of appropriate traffic signals at the Jamison and Harris Street intersection</p>	<a href="#">Developer</a>
<p>2 Jamison Road between Harris Street and Mulgoa Road</p>	<p>2.1 Widening of Jamison Road between Harris Street and Mulgoa Road to include two continuous eastbound lanes within the existing road reserve. <del>This includes any required adjustments to access arrangements and utility services fronting this section of Jamison Road.</del></p> <p>2.2 Retention and, if necessary reconstruction, of a 3m wide shared path along the northern side of Jamison Road, <a href="#">from the existing shared path approximately 50m west of Harris Street to</a> <del>between Harris Street and</del> Mulgoa Road.</p> <p>2.3 Extension of the existing <a href="#">central</a> median along Jamison Road between Mulgoa Road and Harris Street</p>	<a href="#">Developer</a>
<p>3 Jamison Road /Mulgoa Road</p>	<p>3.1 <a href="#">Additional 40m right turn lane (from the ultimate widened Mulgoa Road alignment) at the western approach of Jamison Road/Mulgoa Road intersection.</a> <del>Construction of a second right turn bay from Jamison Road eastbound into Mulgoa Road (30m). Existing right turn bay (45m) to be retained.</del></p>	<a href="#">Developer</a>
<p>4 <del>Mulgoa Road/Panther Place</del></p> <p><del>An additional northbound left slip lane off Mulgoa Road into Panther Place.</del></p>	<p>4.1 <del>Construction of a continuous left slip lane of 50m into Panther Place from Mulgoa Road.</del></p> <p>4.24.1 <del>Construction of a signalised pedestrian crossing across Panther Place at the intersection with Mulgoa Road.</del></p>	
<p>5 <del>Mulgoa Road/Ransley Street</del></p>	<p>5.1 <del>Upgrade north bound component of intersection of Mulgoa Road and Ransley Street resulting from the widening of Mulgoa Road to three lanes north bound including associated right hand turn bays.</del></p> <p>5.25.1 <del>Upgrade south bound component of intersection of Mulgoa Road and Ransley Street resulting from the widening of Mulgoa Road to three lanes south bound</del></p>	
<p>6 <del>Mulgoa Road</del></p> <p><del>Three lanes north &amp; south from Jamison Road to 100m north of</del></p>	<p>6.1 <del>Widening of Mulgoa Road north bound</del></p> <p><del>Widen to three carriageways north bound between Jamison Road to 100m north of Ransley St within the existing kerb to kerb alignment through reclamation of</del></p>	

Ransley St median and narrowing of lanes from 3.5m to 3.2m

6.26.1 **Widening of Mulgoa Road south bound**

Widen to three carriageways south bound between Jamison Road to 100m north of Ransley St within the existing kerb-to-kerb alignment through reclamation of median and narrowing of lanes from 3.5m to 3.2m

- 7 Mulgoa Road (North of Jamison Road) and Jamison Road (East of Mulgoa Road)
- 7.1 Construction of a continuous left slip lane of 100m on the northern approach of Jamison Rd/Mulgoa Rd intersection.
- 7.2 Lengthening of existing right turn bays on Jamison Road between Station Street and Mulgoa Road to continuous and 130m respectively.
- 7.37.1 Change line marking on the eastern leg of Jamison Rd/Mulgoa Rd intersection to show left, left-through, right, right arrangement.

The draft Planning Agreement:

- (a) Contains a schedule for the Road Works required in relation to the above Development Contribution including the triggers and milestones of the delivery of these Road Works.
- (b) Includes the dedication of Road ~~Works~~ Widening Land.
- ~~(b)~~(c) Includes a Monetary Contribution.
- ~~(e)~~(d) Does not exclude the application of s7.11~~94~~, s7.12~~94A~~ and s7.24~~94EF~~ of the Act to the Development.
- ~~(d)~~(e) Is required to be registered on the Developer's Land, being Lot 2 in DP1241942 and Lot 55 in DP1246141, ~~with the exception of Lot 1021 in DP 812335.~~
- ~~(e)~~(f) Requires the Developer and Mulgoa Road to provide security against any breach of the agreement.
- ~~(f)~~(g) Notes that ~~the bulk of~~ the Road Works will be subject to separate Works Authorisation Deeds between the Developer and ~~RMS~~ TfNSW or between the Planning Authority and TfNSW.

## 5 Assessment of the Merits of the Draft Planning Agreement, including the impact on the public or any relevant section of the public

The draft Planning Agreement satisfies the objectives through the Developer and Mulgoa Road making Development Contributions for Road Works to meet the road

infrastructure and traffic impacts created by the Development and to ensure that existing communities which may be affected do not bear the cost of these Road Works.

The positive impact on the public is that the public will gain benefit from the Development Contributions.

The negative impact on the public is that Penrith City Council and the ~~RMS-TfNSW~~ will need to maintain the infrastructure provided by the Development Contributions.

## 6 Other Matters

### 6.1 ~~7.1~~ How the draft Planning Agreement promotes public interest and one or more of the objects of the Act

The draft Planning Agreement promotes the public interest by:

- providing Development Contributions comprising road upgrades to local and State infrastructure including the dedication of those Road ~~Works~~ Widening Land;
- providing for the carrying out of those required Development Contributions in a timely manner in connection with the Development; and
- promoting the sharing of responsibility between the different levels of government in the State

And therefore promotes the objects of the *Environmental Planning and Assessment Act 1979* as set out in s1.3(c) and (i) s5(a)(ii) and s5(b),

### 6.2 ~~7.2~~ How the draft Planning Agreement promotes the Guiding Principles for councils in s8A of the Local Government Act 1993 (NSW) (previously s8 elements of the Council's charter)

The draft Planning Agreement promotes the guiding principles for councils by facilitating the management and delivery of works on the land so as to provide adequate, equitable and appropriate facilities and infrastructure for the community.

~~one or more of the elements of the council's charter under Section 8 of the Local Government Act 1993~~

~~The draft Planning Agreement is consistent with Council's charter under Section 8 of the Local Government Act 1993:~~

- ~~(a) — to have regard to the long term and cumulative effects of its decisions~~
- ~~(b) — to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible;~~
- ~~(c) — to engage in the long term strategic planning on behalf of the local community; and~~
- ~~(d) — to keep the local community and the State government (and through it, the wider community) informed about its activities.~~

**6.26.3 ~~7.3~~ The planning purpose/s served by the draft Planning Agreement and an assessment of whether the amendment provides for a reasonable means of achieving that purpose**

The draft Planning Agreement will provide for a reasonable means of achieving the planning purpose by the co-ordinated provision of local and State infrastructure and associated land dedication to enable Development to occur.

**6.36.4 ~~7.4~~ Whether the draft Planning Agreement conforms with Council's capital works program**

The draft Planning Agreement conforms with Council's capital works program as it provides infrastructure to support the Development which would otherwise ~~would~~ be required to be provided under a contributions plan under Division 7.16 of Part 47 of the *Environmental Planning and Assessment Act 1979*.

**6.5 Whether the draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement contains requirements that must be complied with prior to the issue of Construction Certificates and Occupation Certificates for the Development.

## Schedule 5

~~Development Stages~~ The Development



Schedule 1 - Amended Planning Agreement

UPDATED LAND USE ASSUMPTIONS USED FOR PANTHERS SITE TRAFFIC MODELLING (7/8/2018)

Scenario	Year of modelling	Lot	Development Stage/Land Use	Number (Units/dwelling)	Number GFA (sqm)	Trip generation rate
Existing	2016 base model	Lot 1A	Existing club expansions	N/A	N/A	N/A - Included in existing Base Traffic model
		Lot 1B	Existing Chifley Hotel	N/A	N/A	N/A - Included in existing Base Traffic model
		Lot 1E	iFly	N/A	N/A	N/A - Included in existing Base Traffic model
		Lot 8	NRL Academy	N/A	N/A	N/A - Included in existing Base Traffic model
1	2019	Lot 6	Seniors Living	151 dwellings	25,488	0.4 trips / dwelling
2	2020	Lot 3A + 3B	ESQ Stage 1 - Residential	152 dwellings	12,975	0.5 trips / dwelling
		Lot 2	ESQ Stage 2A/2B - Residential	186 dwelling	16,070	0.5 trips / dwelling
			ESQ Stage 2A/2B - Retail	N/A	1,225	2 trips/100sqm GLFA (GLFA = 0.75 x GFA)
3 (Stage 1)	2021	Lot 4	Western Sydney Conference and Community Centre			
			* Conference Centre	1000 seats	3,034	0.32 trips per seat
			* Community Centre	N/A	1,244	AM Peak: 2.81 trips/100sqm GFA PM Peak: 2.5 trips/100sqm GFA
			* Panthers retail	N/A	141	2 trips/100sqm GLFA (GLFA = 0.75 x GFA)
3 (Stage 2)	2021	Lot 4	Western Sydney Conference and Community Centre			
			* Hotel	190 rooms	12,079	0.5 trips / room
3 (Stage 3)	2021	Lot 4	Western Sydney Conference and Community Centre			
			* Serviced Apartments	145 rooms	9,980	0.5 trips / room
			* Panthers retail	N/A	1,170	2 trips/100sqm GLFA (GLFA = 0.75 x GFA)
4	2022	Lot 2	ESQ Stage 3 - Residential	144 dwellings	12,135	0.5 trips / dwelling
5	2024	Lot 2	ESQ Stage 4/5 - Residential	368 dwellings	34,000	0.5 trips / dwelling
			ESQ Stage 4/5 - Retail	N/A	2,208	2 trips/100sqm GLFA (GLFA = 0.75 x GFA)
		Lot 1C	Entertainment Leisure Centre	N/A	2,600	0.6 trips/100sqm GFA
			Retail	N/A	1,200	2 trips/100sqm GLFA (GLFA = 0.75 x GFA)
			Residential	48 dwellings	4,100	0.5 trips / dwelling
Lot 1A	Existing club - future expansion	N/A	5,000	1 trip/100sqm GFA		
6	2025	Lot 9	Commercial Office and Indoor Recreation			
			* Commercial Office	N/A	7,500	AM Peak: 1.6 trips/100sqm GFA PM Peak: 1.2 trips/100sqm GFA
			* Indoor Recreation	N/A	7,500	0.5 trips / 100sqm GFA
		Lot 7	Car Park	N/A	N/A	N/A: Parking area only - No additional traffic flow has been assumed.
7	2026	Lot 1D	Serviced Apartments	84 dwellings	6,495	0.5 trips / room
			Retail	N/A	900	2 trips/100sqm GLFA (GLFA = 0.75 x GFA)
			Car Park	N/A	N/A	N/A: Traffic generation associated with land use.
8	2031	Lot 5	Residential	300 dwellings	25,500	0.5 trips / dwelling
TOTAL					192,544	

Schedule 1 - Amended Planning Agreement



**Road Works for Stage 1 Development**

2031 Panthers – Gross Floor Area & Traffic Generation Trips (Evening Peak) – March 2012								
Stage-years	Land-use	GFA (floorspace is calculated as GFA, except for the Outlet Centre, which is calculated as NUFA)		Traffic Generation Rate	2031 PM Peak Hour Trips			
		m2	%		Outbound	Inbound	Total	Total%
Stage 1—2016	Cinemas and bowling	8,500 GFA		0.6/100m <sup>2</sup>	40	10	50	
	General retail	5,000 GFA		2/100m <sup>2</sup>	72	18	90	
	Outlet Centre	25,000 NUFA		500	400	100	500	
	Seniors living (125 units)	25,000 GFA		45	36	9	45	
	Residential (60 units)	10,000 GFA		0.4/lot	5	20	25	
	New hotel	10,400 GFA		0.5 / room	10	42	52	
	<b>Sub Total</b>	<b>83,900 GFA</b>	<b>29.2%</b>		<b>563</b>	<b>199</b>	<b>762</b>	<b>44.1%</b>
Stage 2—2021	Seniors living (125 units)	25,000 GFA		2.8 / lot	36	9	45	
	Business park	6,500 GFA		15 / ha	8	2	10	
	Residential (140 units)	24,000 GFA		0.4 / lot	11	46	57	
	General retail	4,500 GFA		2/100m <sup>2</sup>	65	16	81	
	Mixed-use/serviced apartments (60 units)	9,000 GFA		0.55 / lot	6	24	30	
	Events and exhibition	30,000 GFA		0.5 / 100m <sup>2</sup>	30	120	150	
<b>Sub Total</b>	<b>99,000 GFA</b>	<b>34.5%</b>		<b>156</b>	<b>217</b>	<b>373</b>	<b>21.6%</b>	
Stage 3—2026	Aquatic, health and well-being	4,000 GFA		0.25/100m <sup>2</sup>	60	15	75	
	Business Park Stg 2	6,500 GFA			2	8	10	
	Business Park Stg 3	12,000 GFA			4	14	18	
	Residential (200 units)	33,200 GFA		0.4/unit	16	65	81	
	General retail	3,000 GFA		2/100m <sup>2</sup>	43	11	54	

Schedule 1 - Amended Planning Agreement

	<b>Sub Total</b>	<b>58,700 GFA</b>	<b>20.5%</b>		<b>125</b>	<b>113</b>	<b>238</b>	<b>13.8%</b>
Stage 4 -- 2031	New hotel (250 rooms)	19,800 GFA		0.5/room	400	25	425	
	Restaurants	3,000 GFA		400	80	20	400	
	Commercial suites (ancillary)*	6,000 GFA		90	72	48	90	
	<del>Deleted commercial suites 6,000m<sup>2</sup></del>						0	
	Residential (100 units)	16,600 GFA		0.4/Lot	8	33	41	
	<b>Sub Total</b>	<b>45,400 GFA</b>	<b>15.8%</b>	<b>190</b>	<b>260</b>	<b>96</b>	<b>356</b>	<b>20.6%</b>
	<b>Total</b>	<b>287,000 GFA</b>	<b>100.0%</b>		<b>1,104</b>	<b>625</b>	<b>1,729</b>	
66* this floorspace needs to be distributed across all stages								

Schedule 1 - Amended Planning Agreement



**Road Works for Stage 2 Development**





Schedule 6

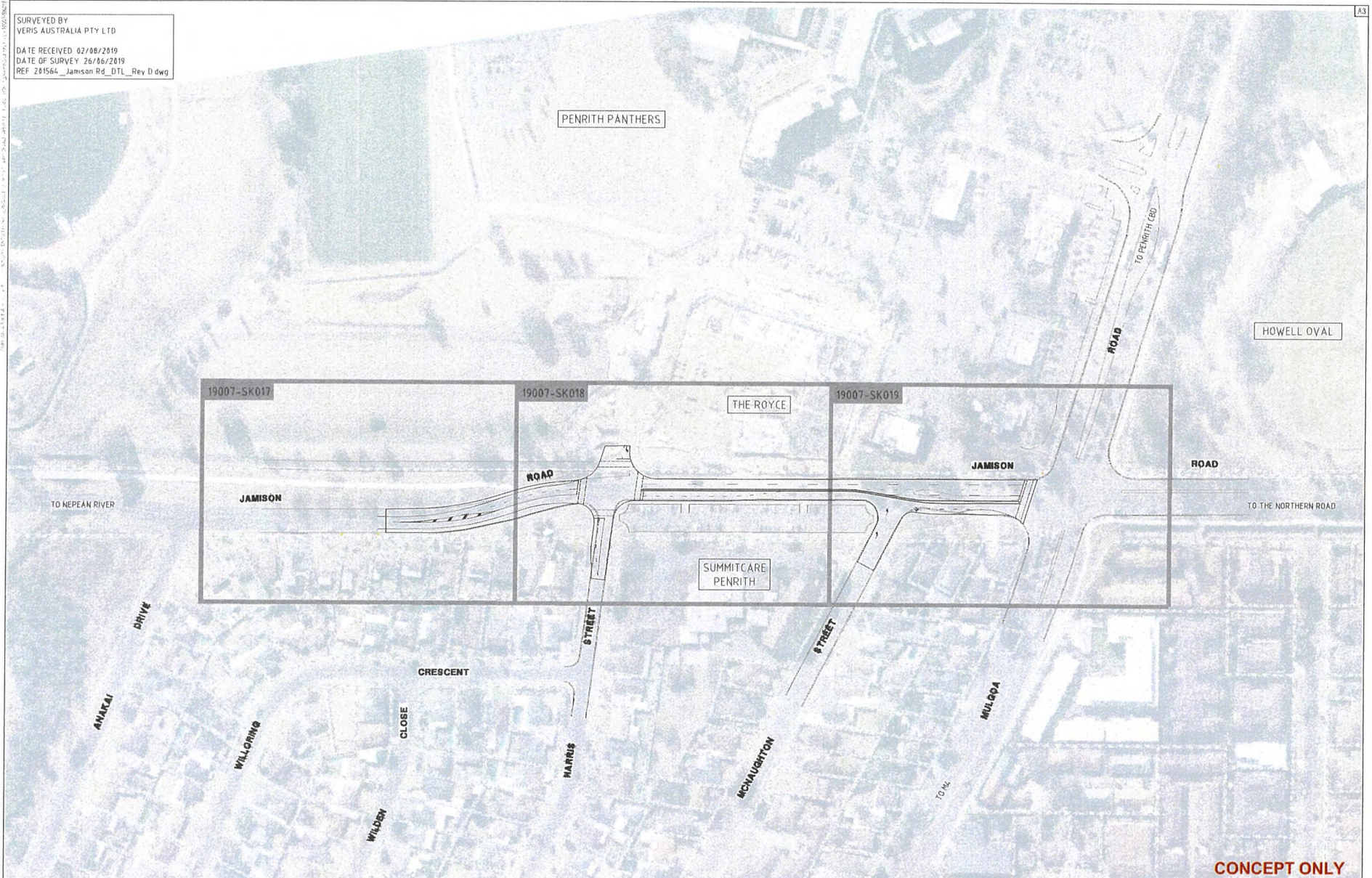
Part A - Concept Diagrams – Road Works (Jamison/Harris Street)



Schedule 1 - Amended Planning Agreement

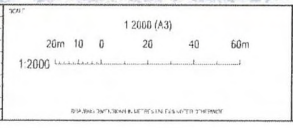
A3

SURVEYED BY  
VERIS AUSTRALIA PTY LTD  
DATE RECEIVED 02/08/2019  
DATE OF SURVEY 26/06/2019  
REF 201564\_Jamison Rd\_DTL\_Rev D.dwg



CONCEPT ONLY

1	2019	CONCEPT DESIGN							
2	2019	CONCEPT DESIGN							



NOT FOR CONSTRUCTION

THIS CONCEPTUAL STYLE ONLY AND NOT TO BE USED FOR CONSTRUCTION PURPOSES. THE INFORMATION IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT REPRESENT A CONTRACT. THE INFORMATION IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT REPRESENT A CONTRACT. THE INFORMATION IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT REPRESENT A CONTRACT.

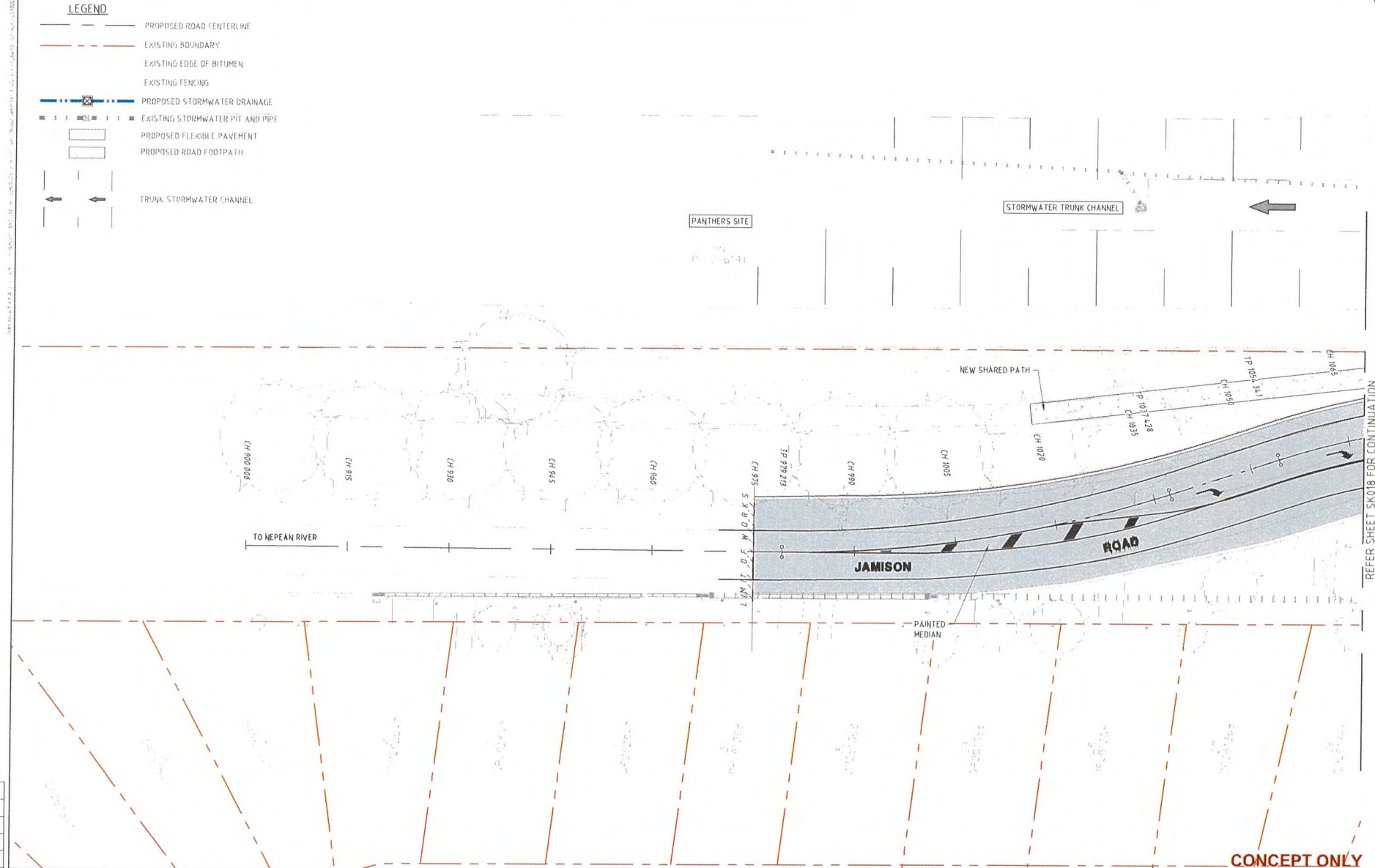


PROJECT		PENRITH PANTHERS PRECINCT JAMISON ROAD UPGRADE	
BY		GENERAL OVERVIEW PLAN	
PROJECT NO.	19007	DATE	SK016
REV.		NO.	1

Schedule 1 - Amended Planning Agreement

A3

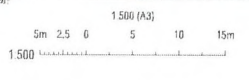
- LEGEND**
- PROPOSED ROAD CENTERLINE
  - - - EXISTING BOUNDARY
  - - - EXISTING EDGE OF BITUMEN
  - - - EXISTING FENCING
  - [Symbol] — PROPOSED STORMWATER DRAINAGE
  - [Symbol] EXISTING STORMWATER PIT AND PIPE
  - [Symbol] PROPOSED FLEXIBLE PAVEMENT
  - [Symbol] PROPOSED ROAD FOOTPATH
  - [Symbol] TRUNK STORMWATER CHANNEL



REFER SHEET SK018 FOR CONTINUATION

**CONCEPT ONLY**

1	INITIATION	CONCEPT DESIGN	NZP	NUT	PGD	PGD
2	SET	ACT. MFG. DEVELOPMENT	20%	30%	40%	50%



**NOT FOR CONSTRUCTION**

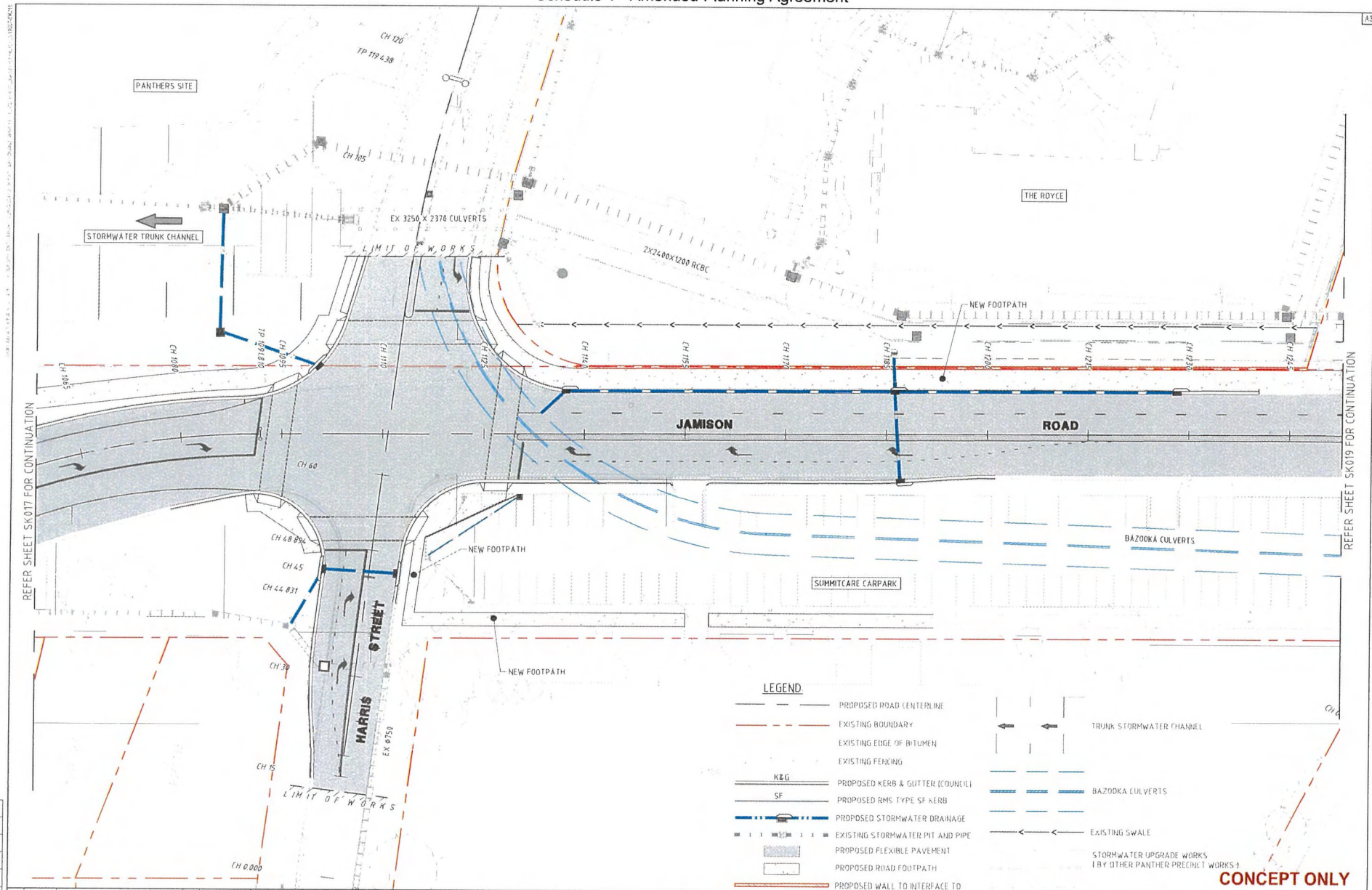
THIS DESIGN SHALL ONLY BE USED FOR CONSULTATION AND NOT PART OF AN APPROVED CONSTRUCTION CONTRACT.

Copyright © 2014 Diversi Creative Engineering Solutions Pty Ltd. This document and the information contained herein are the property of Diversi Creative Engineering Solutions Pty Ltd. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Diversi Creative Engineering Solutions Pty Ltd.

**DIVERSI**  
CREATIVE ENGINEERING SOLUTIONS  
SUITE 102, 28-31 SAUNDERS ROAD  
MADRID ST, NORTH SYDNEY  
NSW 1585  
P 02 9609 1113  
E [info@diversi.com.au](mailto:info@diversi.com.au)  
W [www.diversi.com.au](http://www.diversi.com.au)

Project:	PENRITH PANTHERS PRECINCT JAMISON ROAD UPGRADE
Sheet:	DETAIL PLAN SHEET 1 OF 3
Scale:	1:500
Drawn by:	19007
Checked by:	SK017
Page:	1

Schedule 1 - Amended Planning Agreement



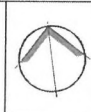
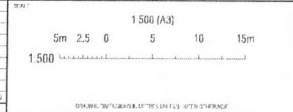
REFER SHEET SK017 FOR CONTINUATION

REFER SHEET SK019 FOR CONTINUATION

- LEGEND**
- PROPOSED ROAD CENTERLINE
  - - - EXISTING BOUNDARY
  - - - EXISTING EDGE OF BITUMEN
  - - - EXISTING FENCING
  - K&G PROPOSED KERB & GUTTER (COUNCIL)
  - SF PROPOSED RMS TYPE SF KERB
  - PROPOSED STORMWATER DRAINAGE
  - - - EXISTING STORMWATER PIT AND PIPE
  - PROPOSED FLEXIBLE PAVEMENT
  - PROPOSED ROAD FOOTPATH
  - PROPOSED WALL TO INTERFACE TO
  - ← TRUNK STORMWATER CHANNEL
  - BAZOOKA CULVERTS
  - ← EXISTING SWALE
  - STORMWATER UPGRADE WORKS (BY OTHER PANTHER PRECINCT WORKS)

**CONCEPT ONLY**

NO.	DATE	BY	CHKD.	DESCRIPTION
1				CONCEPT DESIGN



**NOT FOR CONSTRUCTION**

THIS DRAWING SHALL ONLY BE USED FOR INFORMATION AND NOT BE A PART OF AN OFFICIAL CONTRACT. THE USER OF THIS DRAWING SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.



PROJECT: PENRITH PANTHERS PRECINCT JAMISON ROAD UPGRADE

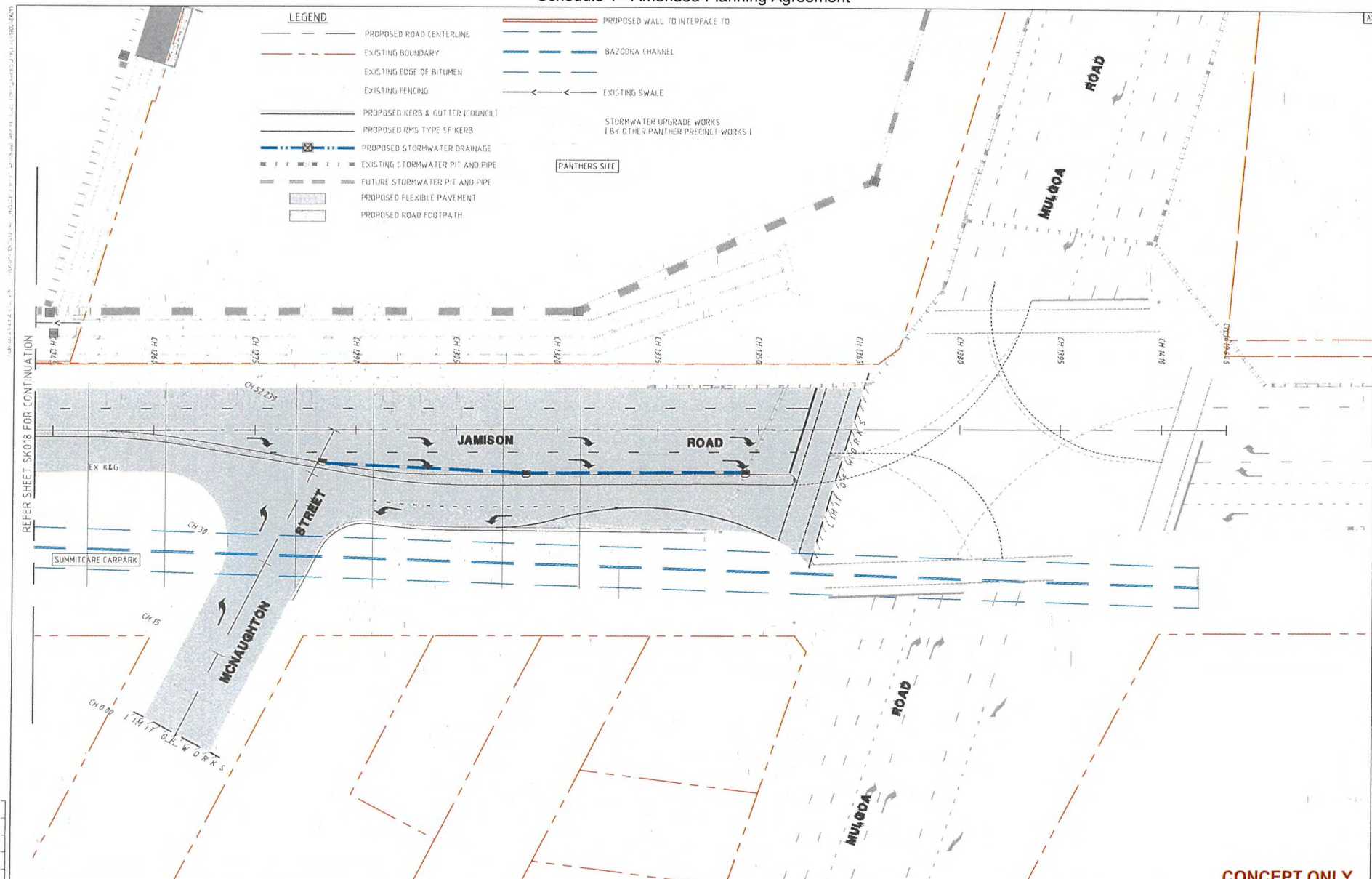
DATE: 16/05/2024

PROJECT NO: 19007

SHEET NO: SK018

OF: 1

# Schedule 1 - Amended Planning Agreement

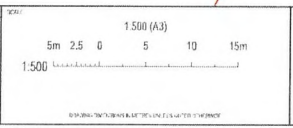


- LEGEND**
- PROPOSED ROAD CENTERLINE
  - EXISTING BOUNDARY
  - EXISTING EDGE OF BITUMEN
  - EXISTING FENCING
  - PROPOSED KERB & GUTTER (COUNCIL)
  - PROPOSED RMS TYPE SF KERB
  - PROPOSED STORMWATER DRAINAGE
  - EXISTING STORMWATER PIT AND PIPE
  - FUTURE STORMWATER PIT AND PIPE
  - PROPOSED FLEXIBLE PAVEMENT
  - PROPOSED ROAD FOOTPATH
  - PROPOSED WALL TO INTERFACE TO
  - BAZDDKA CHANNEL
  - EXISTING SWALE
  - STORMWATER UPGRADE WORKS (BY OTHER PANTHER PRECINCT WORKS)

REFER SHEET SK018 FOR CONTINUATION

10  
20  
30  
40  
50  
60  
70  
80  
90  
100

NO.	DATE	BY	CHKD	APP'D	DESCRIPTION
1	10/01/2024	COMPUTER DESIGNED			
2	10/01/2024	REVISED			



**NOT FOR CONSTRUCTION**

THIS DRAWING IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR CONSTRUCTION PURPOSES. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND THE APPLICABILITY OF ALL REGULATIONS AND STANDARDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.



**CONCEPT ONLY**

PROJECT: PENRITH PANTHERS PRECINCT  
JAMISON ROAD UPGRADE

DATE: 10/01/2024

PROJECT NO: 19007

SHEET NO: SK019

PAGE: 1

## ***Traffic Management Works***

### ***Extent Overview***

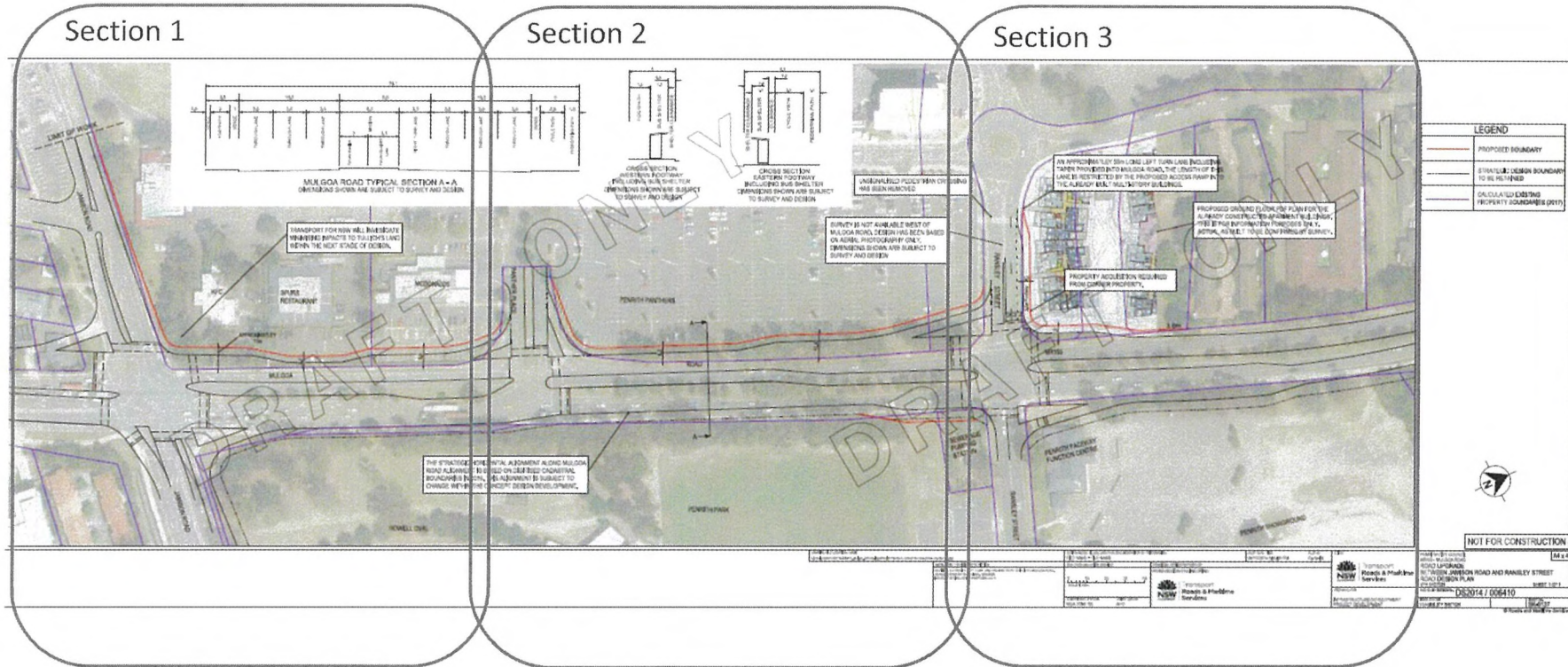
1. Mulgoa Rd Upgrade:  
Three lanes from  
Jamison Rd to 100m past  
Ransley St inclusive of  
Ransley St & Panther Pl  
intersection works; plus
2. Jamison Road Upgrade:  
Works from Harris St  
intersection through to  
west side of Station St.



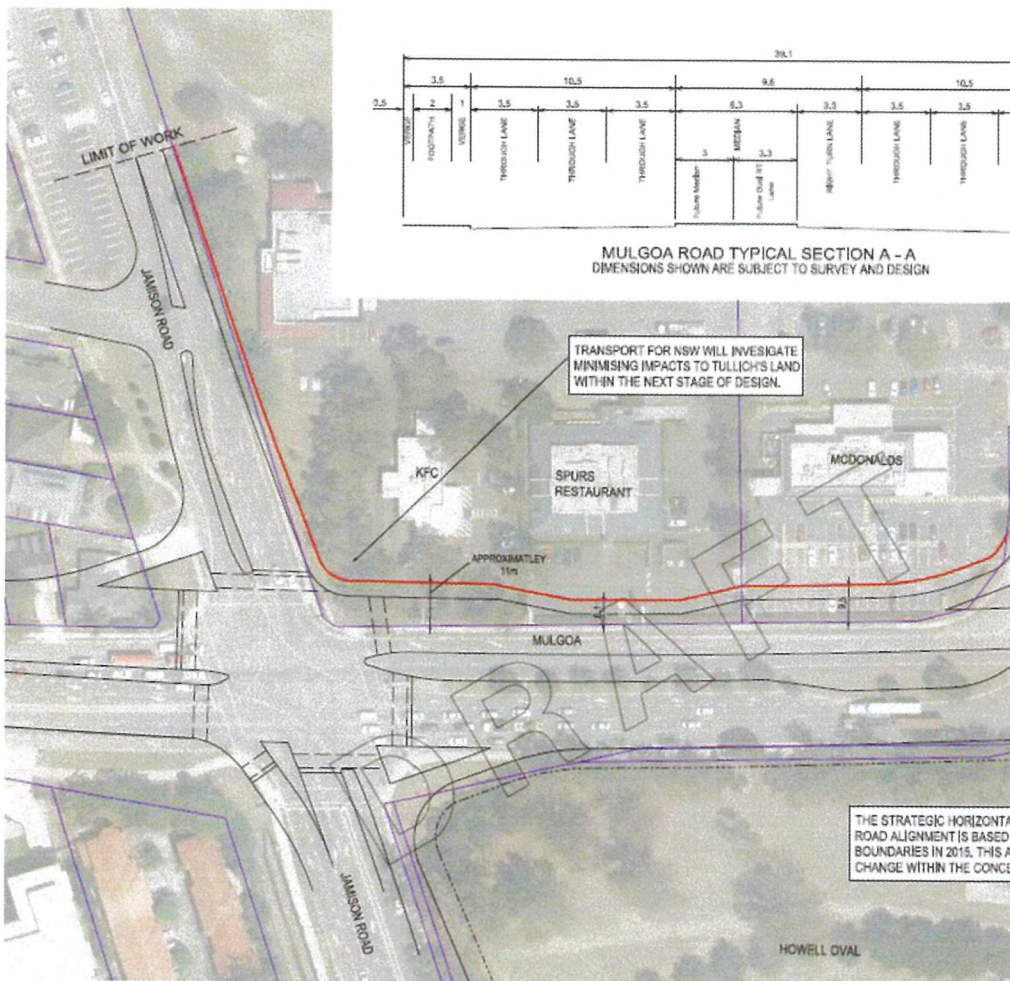
Overview  
of works

| Part B - Concept Diagrams – Road Widening (Mulgoa Road)

Schedule 1 - Amended Planning Agreement

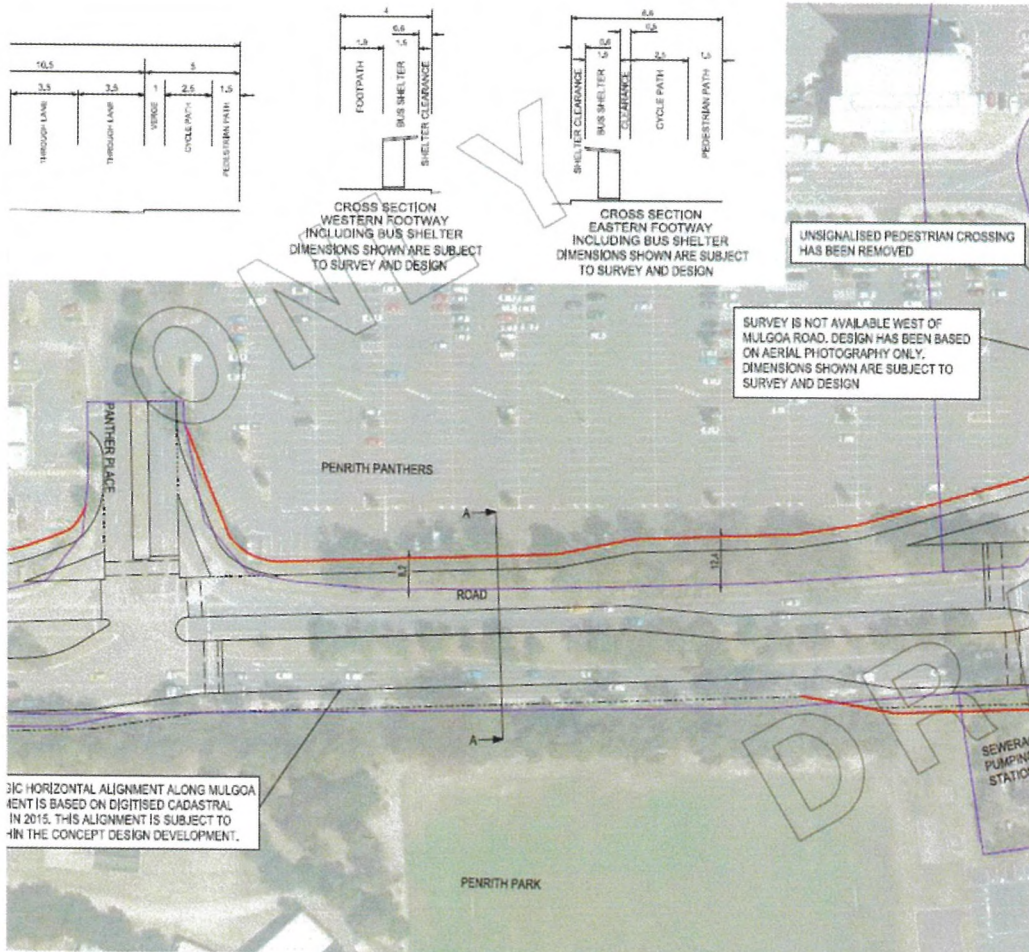


Schedule 6, Part B Schedule 1 - Amended Planning Agreement  
 Section 1





Schedule 6, Part B Schedule 1 - Amended Planning Agreement  
 Section 2

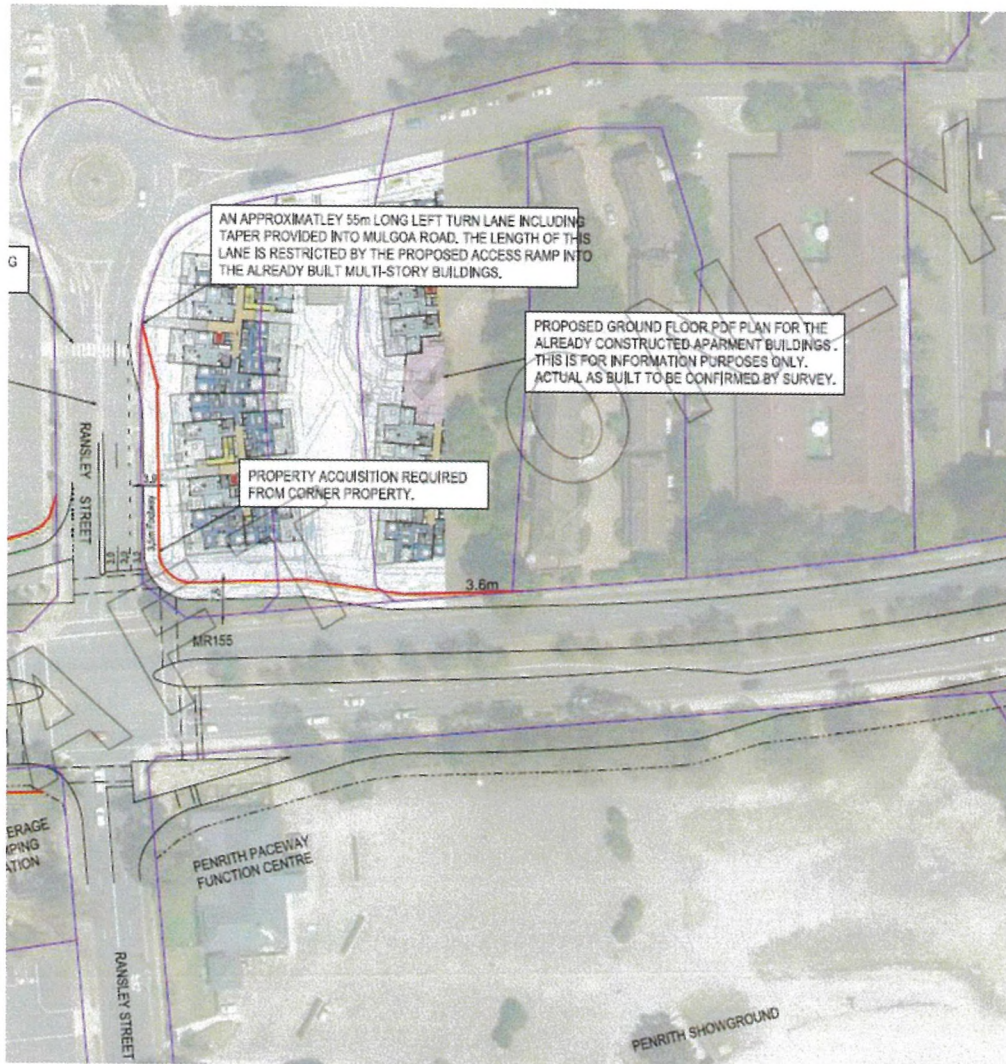


3/10 HORIZONTAL ALIGNMENT ALONG MULGOA ROAD IS BASED ON DIGITISED CADASTRAL DATA FROM 2015. THIS ALIGNMENT IS SUBJECT TO CHANGE IN THE CONCEPT DESIGN DEVELOPMENT.

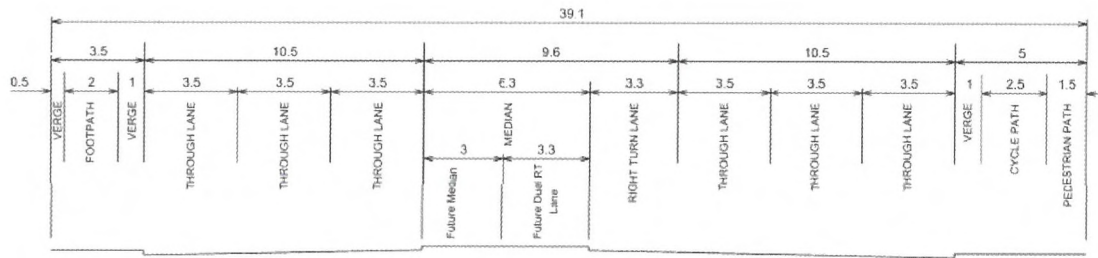
SURVEY IS NOT AVAILABLE WEST OF MULGOA ROAD. DESIGN HAS BEEN BASED ON AERIAL PHOTOGRAPHY ONLY. DIMENSIONS SHOWN ARE SUBJECT TO SURVEY AND DESIGN

UNSIGNALLLED PEDESTRIAN CROSSING HAS BEEN REMOVED

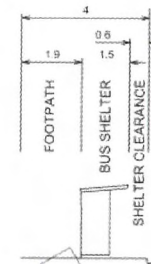
Schedule 6, Part B <sup>Schedule 1 - Amended Planning Agreement</sup>  
Section 3



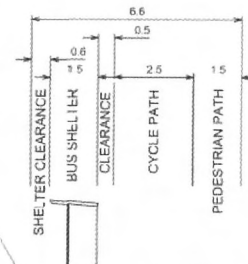
Schedule 1 - Amended Planning Agreement



MULGOA ROAD TYPICAL SECTION A - A



CROSS SECTION WESTERN FOOTWAY INCLUDING BUS SHELTER



CROSS SECTION EASTERN FOOTWAY INCLUDING BUS SHELTER

## **Traffic Management Works**

### **Mulgoa Road Works**

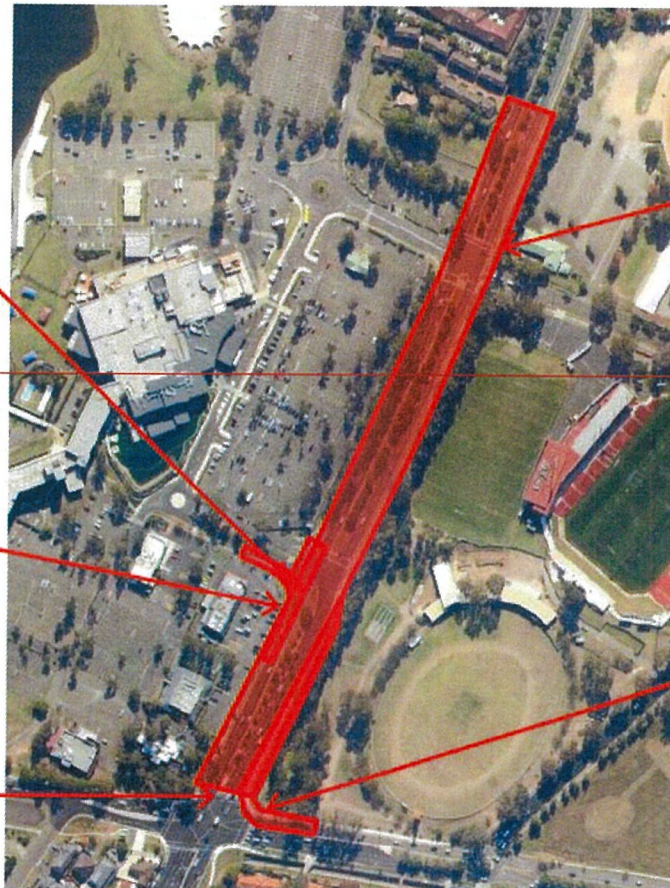
Construction of a signalised pedestrian crossing across Panther Place at the intersection with Mulgoa Road  
(VPA - 4.3 of Schedule 3)

Widening of Mulgoa Road to three lanes north and south bound between Jamison Road and 100m north of Ransley Street  
(VPA - 4.2 & 6 of Schedule 3)

Construction of a continuous left slip lane of 50m into Panther Place from Mulgoa Road  
(VPA - 4.1 of Schedule 3)

Construction of a continuous left slip lane of 100m on the northern approach of Jamison Rd/Mulgoa Rd intersection.  
(VPA - 7.1 of Schedule 3)

Upgrade intersection resulting from the widening of Mulgoa Road to three lanes north and south bound  
(VPA - 5 of Schedule 3)



## **Traffic Management Works**

### **Jamison Road Works**

Construction of new intersection at Jamison Road, Harris Street and new access road from Panthers development  
(VPA - 1 of Schedule 3)

Retention of a 3m wide shared path along the northern side of Jamison Road between Harris Street and Mulgoa Road.  
(VPA - 2.2 of Schedule 3)

Extension of the existing median along Jamison Road between Mulgoa Road and Harris Street.  
(VPA - 2.3 of Schedule 3)

Widening of Jamison Road between Harris Street and Mulgoa Road to include two continuous eastbound lanes within the existing road reserve.  
(VPA - 2.1 of Schedule 3)

Construction of a second right turn bay from Jamison Road eastbound into Mulgoa Road  
(VPA - 3 of Schedule 3)

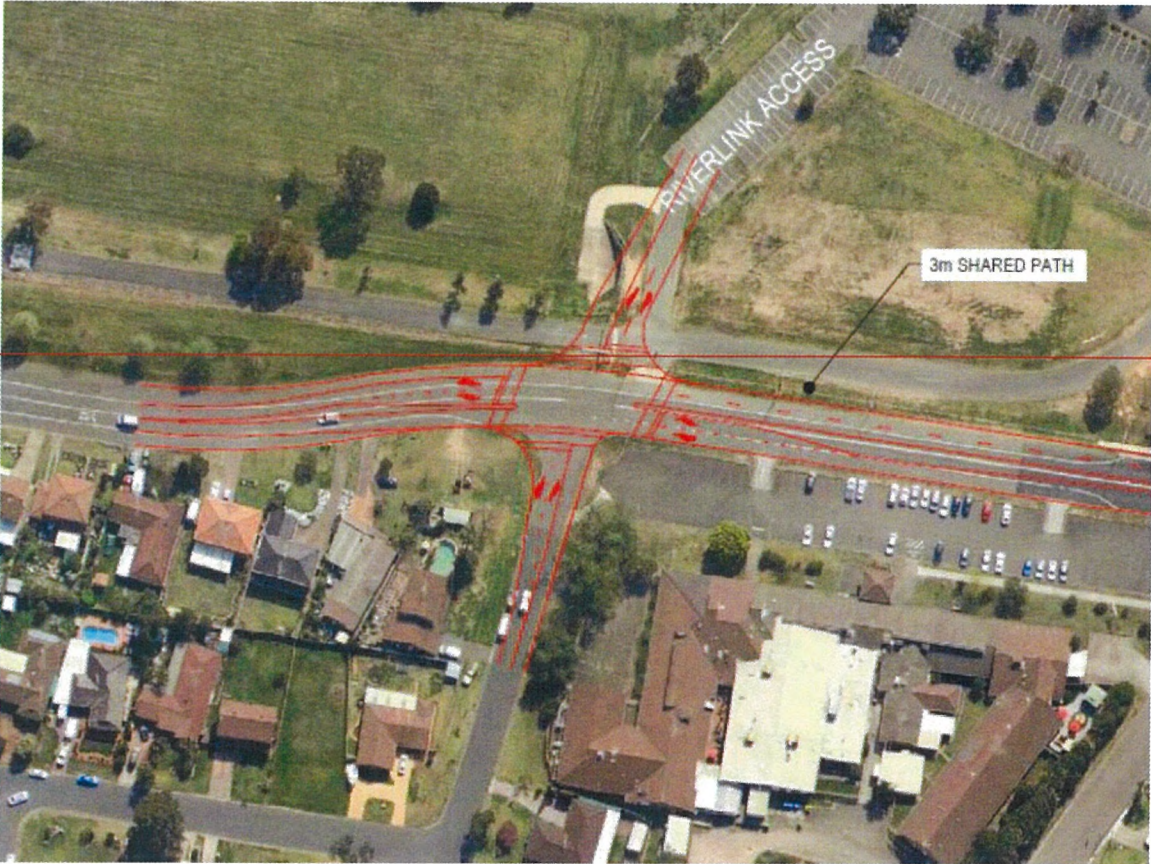
Change line marking on the eastern leg of Jamison Road  
(VPA - 7.3 of Schedule 3)

Lengthening of existing right turn bays on Jamison Road between Station Street and Mulgoa Road  
(VPA - 7.2 of Schedule 3)



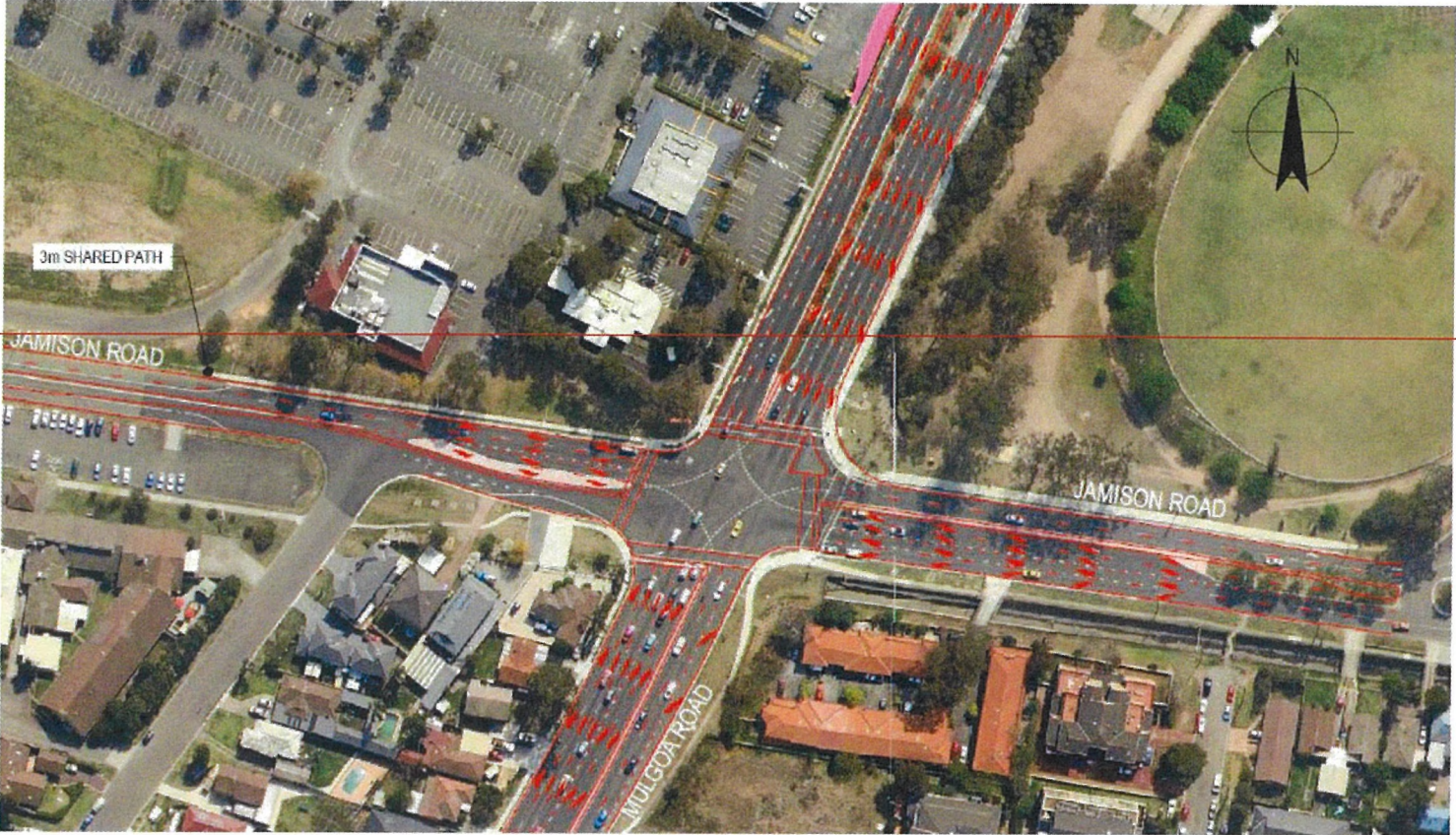
# ***Strategic Concept Design***

## ***Jamison Road, Harris Street and Southern Riverlink Access***



# Strategic Concept Design

## Jamison Road and Mulgoa Road

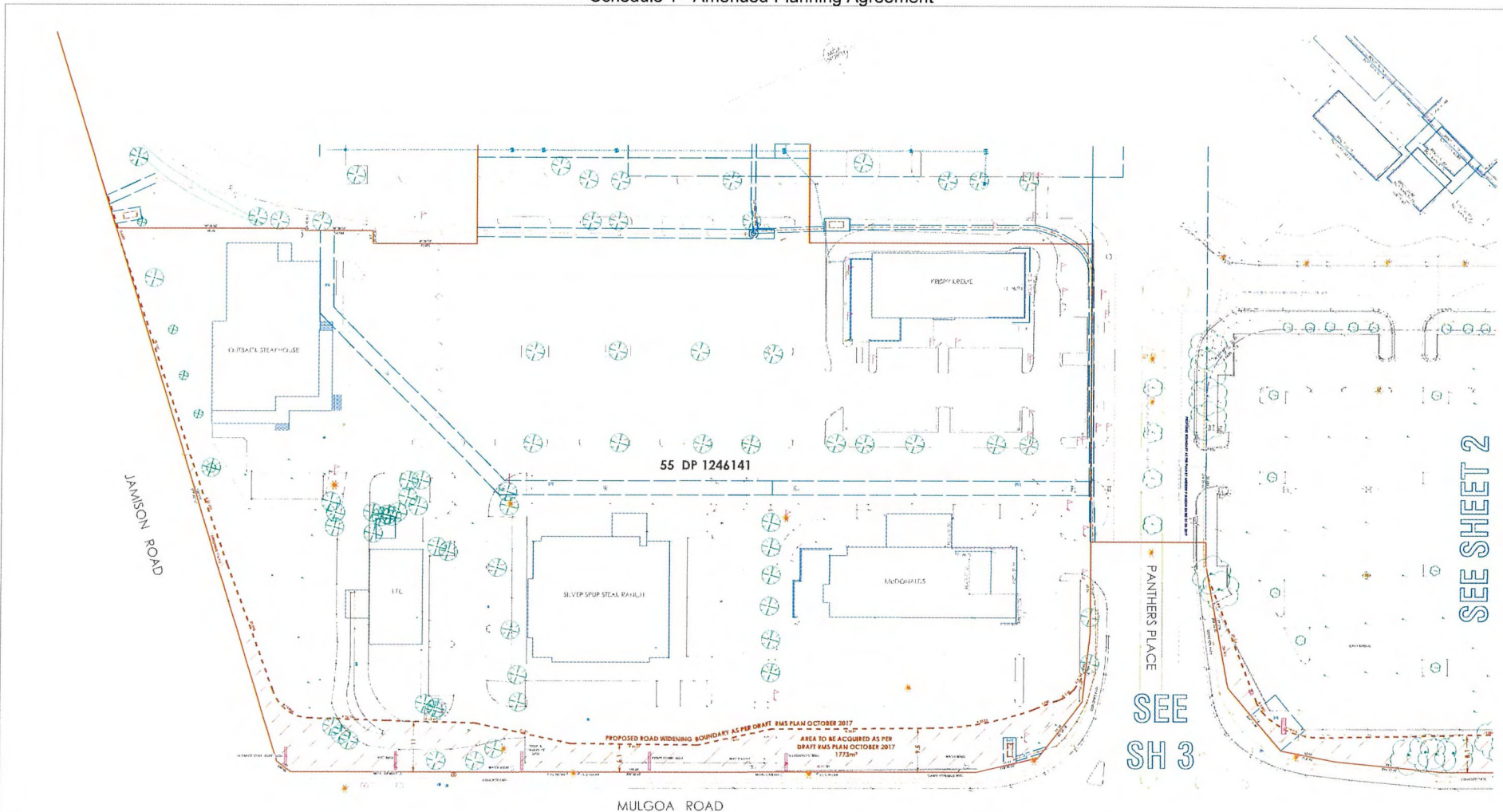


Schedule 7

Road Widening Plan

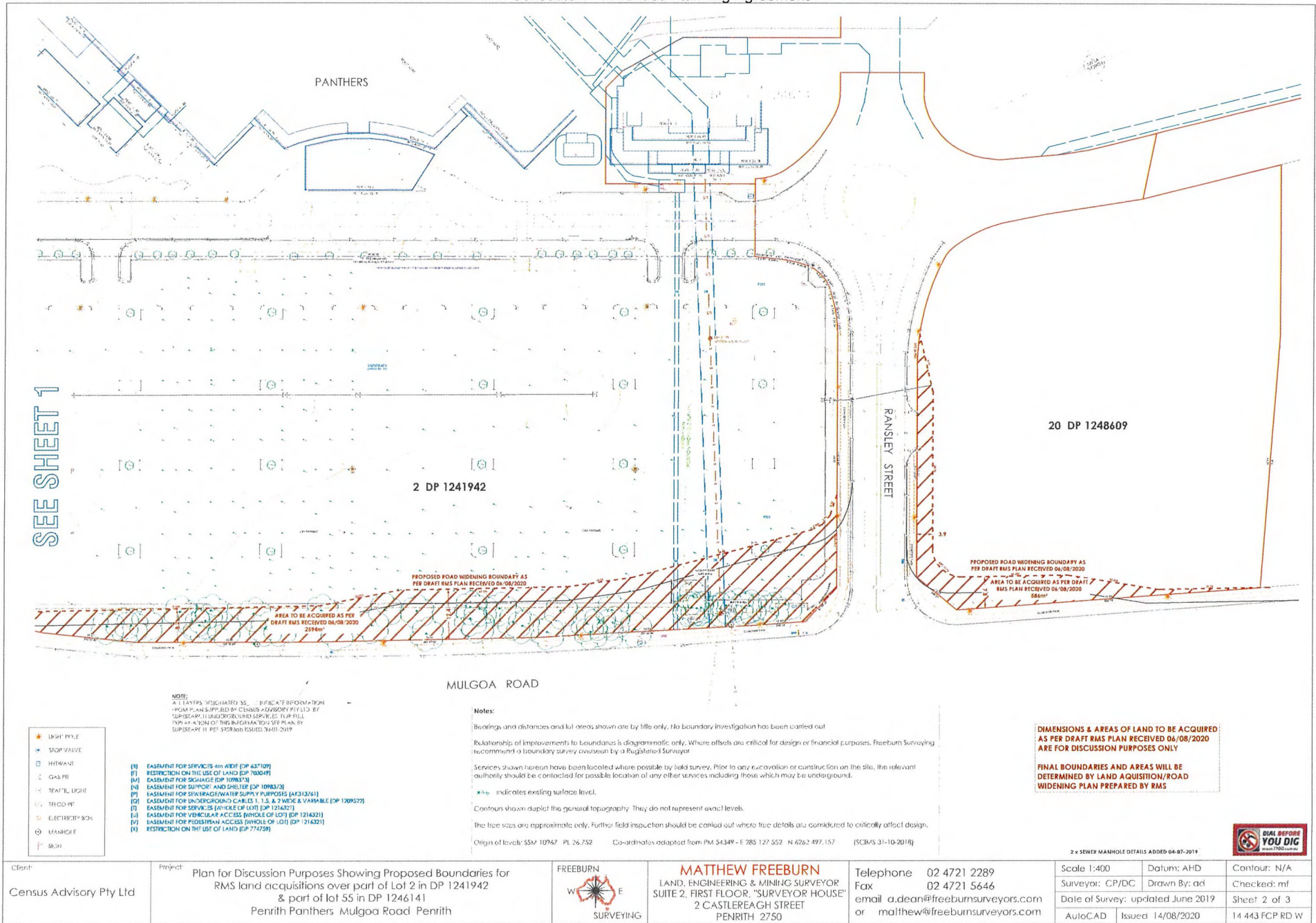


Schedule 1 - Amended Planning Agreement



<p><b>Client:</b> Census Advisory Pty Ltd</p>	<p><b>Project:</b> Plan for Discussion Purposes Showing Proposed Boundaries for RMS land acquisitions over part of Lot 2 in DP 1241942 &amp; part of lot 55 in DP 1246141 Penrith Panthers Mulgoa Road Penrith</p>	<p><b>FREEBURN SURVEYING</b></p>	<p><b>MATTHEW FREEBURN</b> LAND, ENGINEERING &amp; MINING SURVEYOR SUITE 2, FIRST FLOOR, "SURVEYOR HOUSE" 2 CASTLEREAGH STREET PENRITH 2750</p>	<p>Telephone 02 4721 2289 Fax 02 4721 5646 email a.dean@freeburnsurveyors.com or matthew@freeburnsurveyors.com</p>	<p>Scale 1:400 Datum: AHD Contour: N/A Surveyor: CP/DC Drawn By: aid Checked: mf Date of Survey: updated June 2019 Sheet 1 of 3 AutoCAD Issued 10-10-2019 14 443 FCP RD W</p>	<p><b>YOU DIG</b> DIAL BEFORE YOU DIG www.youdig.com.au</p>
<p>FA-1 EASEMENT FOR PADMOUNT SUBSTATION (DP 1063446) FA-1 EASEMENT TO DRAIN WATER 3/4 WIDE (DP 1716221) IC-1 EASEMENT TO DRAIN WATER 3 &amp; 3.5 WIDE (DP 710084) U-1 EASEMENT FOR UNDERGROUND CABLES 1 WIDE (DP 1063446)</p>						

Schedule 1 - Amended Planning Agreement



SEE SHEET 1

- NOTE:**  
 ALL UTILITIES INDICATED SHALL BE LOCATED BY FORMATION FROM PLANS SUPPLIED BY CENSUS ADVISORY PTY LTD. IF SUPERSEPTED (INDICATED BY SHOWN SERVICE), TYPICAL PLAN IS A COPY OF THIS INFORMATION YOU SEE FROM SUPERSEPTED PLAN. 5/20/2018 ISSUED 3/4/2019
- (1) EASEMENT FOR SERVICES 4m WIDE (DP 637107)
  - (2) RESTRICTION ON THE USE OF LAND (DP 703049)
  - (3) EASEMENT FOR SIGNAGE (DP 1098373)
  - (4) EASEMENT FOR SUPPORT AND SHELTER (DP 1098373)
  - (5) EASEMENT FOR STRAIGHTWATER SUPPLY PURPOSES (A313761)
  - (6) EASEMENT FOR UNDERGROUND CABLES 1.15 & 2 WIDE & VARIABLE (DP 1205272)
  - (7) EASEMENT FOR SERVICES (WHOLE OF LOT) (DP 1216371)
  - (8) EASEMENT FOR VEHICULAR ACCESS (WHOLE OF LOT) (DP 1216321)
  - (9) EASEMENT FOR PROVISION ACCESS (WHOLE OF LOT) (DP 1216321)
  - (10) RESTRICTION ON THE USE OF LAND (DP 774291)

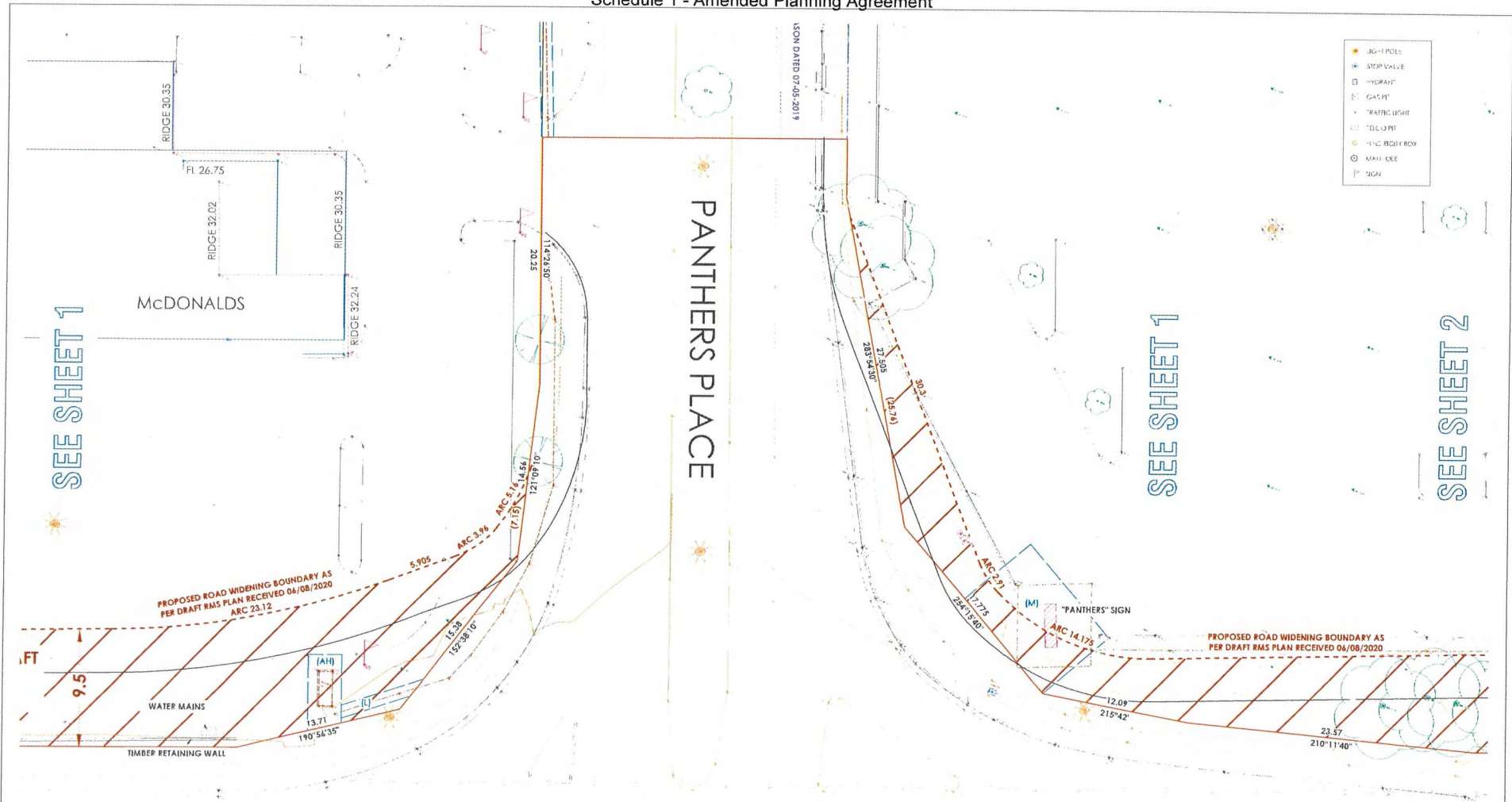
**Notes:**  
 Bearings and distances and lot areas shown are by title only. No boundary investigation has been carried out.  
 Relationship of improvements to boundaries is diagrammatic only. Where offsets are critical for design or financial purposes, Freeburn Surveying recommend a boundary survey conducted by a Registered Surveyor.  
 Services shown hereon have been located where possible by field survey. Prior to any excavation or construction on the site, the relevant authority should be contacted for possible location of any other services including those which may be underground.  
 \* indicates existing surface level.  
 Contours shown depict the general topography. They do not represent exact levels.  
 The true sizes are approximate only. Further field inspection should be carried out where true details are considered to critically affect design.  
 Origin of levels: SSM 10767 PL 26.752 Co-ordinates adapted from PM 54349 - E 285 127 552 N 4262 497 157 (SCIMS 31-10-2018)

**DIMENSIONS & AREAS OF LAND TO BE ACQUIRED AS PER DRAFT RMS PLAN RECEIVED 04/08/2020 ARE FOR DISCUSSION PURPOSES ONLY**  
**FINAL BOUNDARIES AND AREAS WILL BE DETERMINED BY LAND ACQUISITION/ROAD WIDENING PLAN PREPARED BY RMS**



Client Census Advisory Pty Ltd	Project Plan for Discussion Purposes Showing Proposed Boundaries for RMS land acquisitions over part of Lot 2 in DP 1241942 & part of lot 55 in DP 1246141 Penrith Panthers Mulgoa Road Penrith		<b>MATTHEW FREEBURN</b> LAND, ENGINEERING & MINING SURVEYOR SUITE 2, FIRST FLOOR, "SURVEYOR HOUSE" 2 CASTLEREAGH STREET PENRITH 2750	Telephone 02 4721 2289 Fax 02 4721 5646 email a.dean@freeburnsurveyors.com or matthew@freeburnsurveyors.com	Scale 1:400 Surveyor: CP/DC Date of Survey: updated June 2019 AutoCAD Issued 14/08/2020	Datum: AHD Drawn By: ad 14 443 FCP RD W	Contour: N/A Checked: mf Sheet 2 of 3 14 443 FCP RD W
-----------------------------------	--	--	--	---	--	---	--

Schedule 1 - Amended Planning Agreement



- LIGHT POLE
- ⊕ STOP VALVE
- ⊕ HYDRANT
- ⊕ GAS PIP
- ⊕ TRAFFIC LIGHT
- ⊕ TELEGRAPH
- ⊕ ELECTRIC BOX
- ⊕ MAIL BOX
- ⊕ SIGN

SEE SHEET 1

SEE SHEET 1

SEE SHEET 2

MULGOA ROAD

**DIMENSIONS & AREAS OF LAND TO BE ACQUIRED AS PER DRAFT RMS PLAN RECEIVED 04/08/2020 ARE FOR DISCUSSION PURPOSES ONLY**

**FINAL BOUNDARIES AND AREAS WILL BE DETERMINED BY LAND ACQUISITION/ROAD WIDENING PLAN PREPARED BY RMS**

**Notes:**

Bearings and distances and lot areas shown are by title only. No boundary investigation has been carried out.

Relationship of improvements to boundaries is diagrammatic only. Where offsets are critical for design or financial purposes, Freeburn Surveying recommend a boundary survey as ordered by a Registered Surveyor.

Services shown hereon have been located where possible by field survey. Prior to any excavation or construction on the site, the relevant authority should be contacted for possible location of any other services including those which may be underground.

● indicates existing surface level

Contours shown depict the general topography. They do not represent exact levels.

The tree sizes are approximate only. Further field inspection should be conducted where tree details are considered to critically affect design.

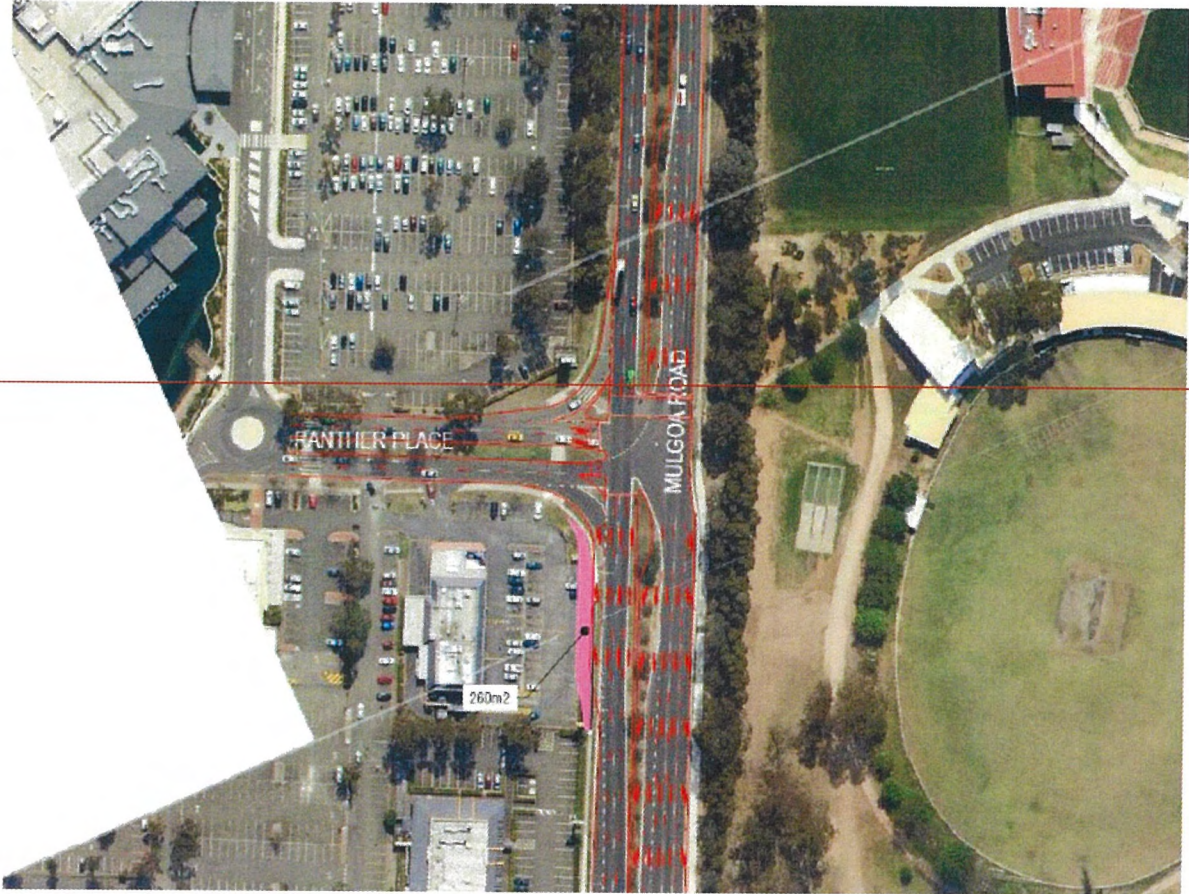
Origin of levels: SSM 10967 RL 26.752 Co-ordinates adopted from PM 54349 - E 285 127 532 - N 6262 497 157 (SCIMS 31-10-2018)



Client Census Advisory Pty Ltd	Project Plan for Discussion Purposes Showing Proposed Boundaries for RMS land acquisitions over part of Lot 2 in DP 1241942 & part of lot 55 in DP 1246141 Penrith Panthers Mulgoa Road Penrith		<b>MATTHEW FREEBURN</b> LAND, ENGINEERING & MINING SURVEYOR SUITE 2, FIRST FLOOR, "SURVEYOR HOUSE" 2 CASTLEREAGH STREET PENRITH 2750	Telephone 02 4721 2289 Fax 02 4721 5646 email a.deane@freeburnsurveyors.com or matthew@freeburnsurveyors.com	Scale 1:150	Datum: AHD	Contour: n/a
					Surveyor: CP/DC	Drawn By: ad	Checked: ml
					Date of Survey: updated June 2019	Sheet 3 of 3	
					AutoCAD	Issued 14/08/2020	14 443 FCP RD W

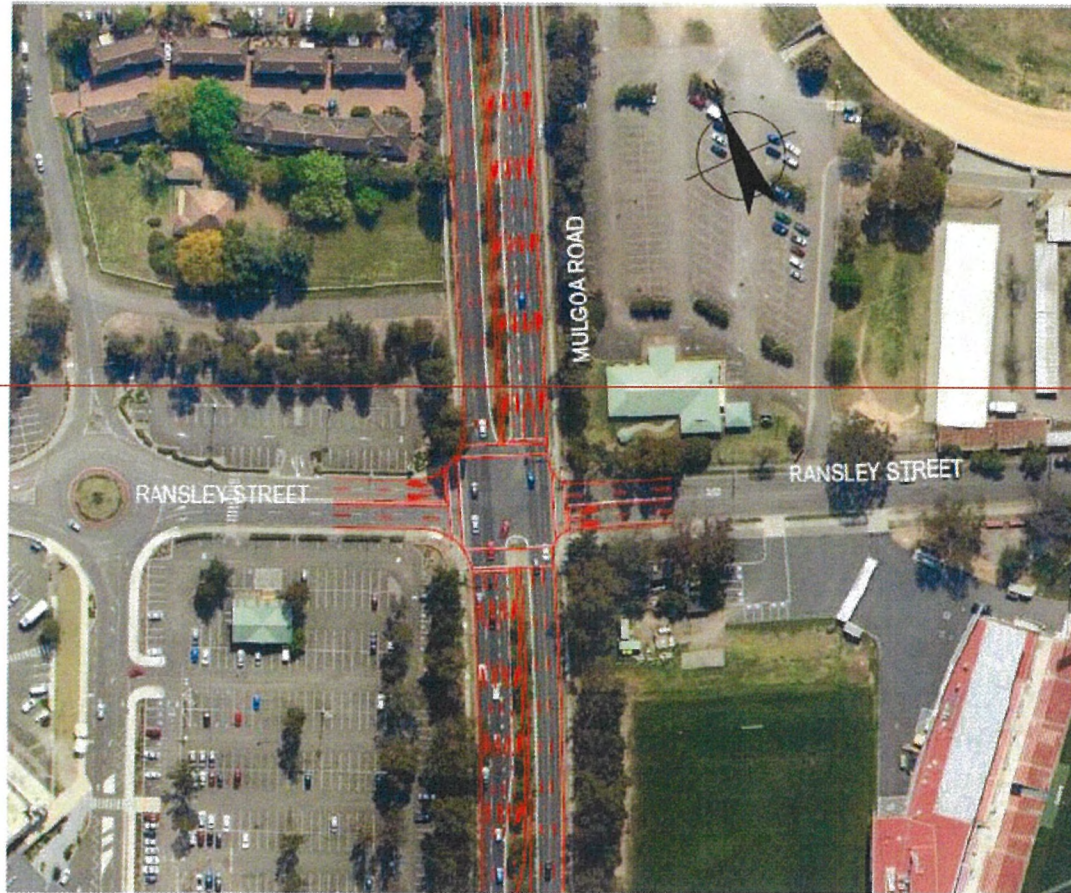
# Strategic Concept Design

## Panther Place and Mulgoa Road



# ***Strategic Concept Design***

## ***Ransley Street and Mulgoa Road***



|

Executed as a deed

**Executed by Penrith Rugby League** )  
**Club Limited** ABN 43 794 422 563 )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Executed by Penrith City Council** )  
ABN 43 794 422 563 by its duly )  
appointed officer in the presence of: )

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

Executed by **Roads and Maritime** )  
**Services Transport for NSW** ABN-76 )  
**236 371 088 18 804 239 602** by its duly )  
appointed officer in the presence of: )

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

Executed by Mulgoa Road (No. 1) )  
Pty. Limited ACN 002 535 202 )  
 )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)



# Annexure A

## Novation Deed

---

Penrith City Council

---

Penrith Rugby League Club Limited

---

~~Roads and Maritime Services~~ [Transport for NSW](#)

---

[Mulgoa Road \(No. 1\) Pty. Limited](#)

---

***[Insert Name of New Developer]***

---

# Deed of Novation for Planning Agreement

## Contents

<b>1</b>	<b>Interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Construction	2
1.3	Headings	2
<b>2</b>	<b>Novation</b>	<b>2</b>
2.1	Original Agreement	2
2.2	Reference in Original Agreement	3
2.3	Address for notices	3
2.4	Coordination of Road Works	3
<b>3</b>	<b>Affirmation of the Original Agreement</b>	<b>3</b>
<b>4</b>	<b>Indemnities</b>	<b>3</b>
<b>5</b>	<b>Warranties and representations</b>	<b>4</b>
5.1	Warranties	4
5.2	Survival of warranties	4
<b>6</b>	<b>GST</b>	<b>4</b>
<b>7</b>	<b>Stamp duty and costs</b>	<b>4</b>
<b>8</b>	<b>Further acts</b>	<b>54</b>
<b>9</b>	<b>Amendment</b>	<b>5</b>
<b>10</b>	<b>Governing law</b>	<b>5</b>
<b>11</b>	<b>Counterparts</b>	<b>5</b>
<del>1</del>	<del>Interpretation</del>	<del>1</del>
<del>1.1</del>	<del>Definitions</del>	<del>1</del>
<del>1.2</del>	<del>Construction</del>	<del>2</del>
<del>1.3</del>	<del>Headings</del>	<del>2</del>
<del>2</del>	<del>Novation</del>	<del>2</del>
<del>2.1</del>	<del>Original Agreement</del>	<del>2</del>
<del>2.2</del>	<del>Reference in Original Agreement</del>	<del>3</del>
<del>2.3</del>	<del>Address for notices</del>	<del>3</del>
<del>2.4</del>	<del>Coordination of Road Works</del>	<del>3</del>
<del>3</del>	<del>Affirmation of the Original Agreement</del>	<del>3</del>
<del>4</del>	<del>Indemnities</del>	<del>3</del>
<del>5</del>	<del>Warranties and representations</del>	<del>4</del>
<del>5.1</del>	<del>Warranties</del>	<del>4</del>
<del>5.2</del>	<del>Survival of warranties</del>	<del>4</del>

Schedule 1 - Amended Planning Agreement

<b>6</b>	<b>GST</b>	<b>4</b>
<b>7</b>	<b>Stamp duty and costs</b>	<b>4</b>
<b>8</b>	<b>Further acts</b>	<b>4</b>
<b>9</b>	<b>Amendment</b>	<b>5</b>
<b>10</b>	<b>Governing law</b>	<b>5</b>
<b>11</b>	<b>Counterparts</b>	<b>5</b>

Date

## Parties

**Penrith City Council** ABN 43 794 422 563 of 601 High Street, Penrith New South Wales (**Planning Authority**)

~~Roads and Maritime Services~~ **Transport for NSW** ABN ~~76-236-371-088~~ **18 804 239 602** a NSW Government Agency and corporation incorporated under section ~~46-3C~~ of the *Transport Administration Act 1988* (NSW) of Level 9, 101 Miller Street, North Sydney, New South Wales, 2060 (**RMS TfNSW**).

**Penrith Rugby League Club Limited** ABN 57 000 578 398 of Mulgoa Road, Penrith New South Wales (**Original Developer**)

**Mulgoa Road (No. 1) Pty. Limited** ACN 002 535 202 of Penrith Rugby League Club, Mulgoa Road, Penrith, New South Wales (**Mulgoa Road**)

**[Insert Name]** ACN **[Insert ABN]** of **[Insert Address]** New South Wales (**New Developer**)

## Background

- A The Planning Authority, **RMS-TfNSW** and the Original Developer are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the **Developer's Land** **[or part of the Land (provide description of the relevant part of the Developer's Land)]**.
- C The Original Developer **[and Mulgoa Road]** wishes to novate all of its rights and obligations to the New Developer.

## Agreed terms

### 1 Interpretation

#### 1.1 Definitions

In this document:

**Effective Date** means **[Insert Date]**

**Deed of Novation** means this deed of novation.

**Developer's Land** has the meaning given to that term in the Original Agreement.

**Original Agreement** means the planning agreement dated **[Insert Date]** and made between the Planning Authority, ~~RMS-TfNSW~~ and the Original Developer, as modified by the Deed of Variation made between the Planning Authority, RMS-TfNSW, Mulgoa Road and the Original Developer dated [Insert Date].

## 1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

## 1.3 Headings

Headings do not affect the interpretation of this document.

# 2 Novation

## 2.1 Original Agreement

With effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer [and Mulgoa Road] as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be

subject to the rights and obligations contained in the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer [and Mulgoa Road]; and

(c) other than in respect:

(i) ***[Parties to set out any responsibilities that the Original Developer is not discharged from, for example, any part of the Developer's Land and Road Works for which the Developer is not novating its rights and obligations or matters arising from or occurring prior to the date of execution of this Novation Deed],***

the Original Developer [and Mulgoa Road] is released and discharged from all obligations and liabilities to the extent they are novated to the New Developer and remain to be performed, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

## 2.2 Reference in Original Agreement

All references to the Original Developer [and Mulgoa Road] in the Original Agreement are to be construed as references to the New Developer.

## 2.3 Address for notices

The Planning Authority and **RMS-TfNSW** must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

### New Developer:

Address: **[Insert]**

Fax: **[Insert]**

Contact Person: **[Insert]**

Email: **[Insert]**

## 2.4 Coordination of Road Works

***[Parties to insert a clause setting out the implications of the novation on the coordination of the delivery of the Road Works]***

## 3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

## 4 Indemnities

The New Developer indemnifies the Original Developer [and Mulgoa Road](#) on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

## 5 Warranties and representations

### 5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
  - (i) any law or directive from a government entity;
  - (ii) its constituent documents;
  - (iii) any agreement or instrument to which it is a party; or
  - (iv) any obligation of it to any other person.

### 5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this document and the novation of the Original Agreement.

## 6 GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

## 7 Stamp duty and costs



The Party seeking to novate the Original Deed will bear the costs of preparing, negotiating and executing this Deed of Novation.

The New Developer will pay all stamp duty arising directly or indirectly from this deed.

## 8 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each Party which signs it even if other Parties do not, or if the execution by other Parties is defective, void or voidable.

## 9 Amendment

This document may only be varied or replaced by a document executed by the Parties

## 10 Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of that place.

## 11 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed

Executed by **Penrith Rugby League** )  
**Club Limited** ABN ~~43-794-422-563~~[57](#) )  
[000 578 398](#)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Executed by Penrith City Council** )  
ABN 43 794 422 563 by its duly )  
appointed officer in the presence of: )

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

| **Executed by ~~Roads and Maritime~~** )  
**Services Transport for NSW** ABN ~~76~~ )  
**236 371 088 18 804 239 602** by its duly )  
appointed officer in the presence of: )

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

Executed by **Mulgoa Road (No. 1) Pty. Limited** ACN 002 535 202 )  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director (print)

.....  
Name of Director (print)

**Executed by [Insert Incoming Party Name] [Insert ABN]** by its duly appointed officer in the presence of: )  
)  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director (print)

.....  
Name of Director (print)

.....  
Witness

.....  
Officer

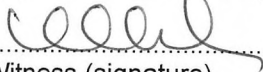
.....  
Name of Witness (print)

.....  
Name of Officer (print)

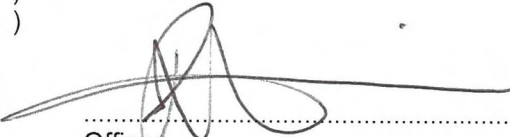
# Execution

**Executed** as a deed.

**Executed by Penrith City Council**  
**(ABN 43 794 422 563)** by its duly  
appointed officer in the presence of

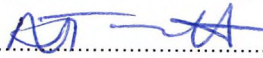
  
.....  
Witness (signature)

*Marie Maher*  
.....  
Name (print)

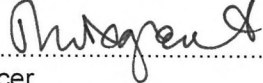
)  
)  
  
.....  
Officer

*Warwick Winn*  
.....  
Name of Officer

**Executed by Transport for NSW**  
**Services (ABN 18 804 239 602)** by its  
duly appointed officer in the presence of

  
.....  
Witness (signature)

*NICOLA TARGETT*  
.....  
Name (print)

)  
)  
  
.....  
Officer

*TESSA KNODX-GRANT*  
.....  
Name of Officer

**Executed by Penrith Rugby League**  
**Club Limited (ABN 57 000 578 398)**  
pursuant to section 127 of the  
*Corporations Act 2001*

  
.....  
Company Secretary/Director

*Brian Fletcher*  
.....  
Name of Company Secretary/Director  
(print)

)  
)  
  
.....  
Director

*David O'Neill*  
.....  
Name of Director (print)

**Executed by Mulgoa Road (No. 1)** )  
**Pty. Limited ACN 002 535 202** )  
)



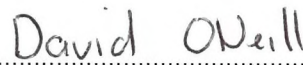
.....  
Company Secretary/Director



.....  
Name of Company Secretary/Director  
(print)



.....  
Director



.....  
Name of Director (print)

# Annexure A

## Explanatory Note

(clause 7)

*Environmental Planning and Assessment Regulation 2000* (NSW)

(Clause 25E)

### **Draft Deed of Variation to Planning Agreement**

Under clause 25C(3) of the *Environmental Planning and Assessment Regulation 2000* (NSW)

Capitalised words in this Explanatory Note have the meaning given to them in the draft Deed.

## 1 Parties

**Penrith City Council** ABN 43 794 422 563 of 601 High Street, Penrith, New South Wales (**Planning Authority**)

**Transport for NSW** ABN 18 804 239 602 a NSW Government Agency and corporation incorporated under section 46 of the *Transport Administration Act 1988* (NSW) of 20 - 44 Ennis Road, Milsons Point, New South Wales (**TfNSW**)

**Penrith Rugby League Club Limited** ABN 57 000 578 398 of 83 Mulgoa Road, Penrith, New South Wales (**Developer**)

**Mulgoa Road (No.1) Pty Ltd** ACN 002 535 202 of Penrith Rugby League Club, Mulgoa Road Penrith, New South Wales (**Mulgoa Road**).

## 2 Description of the Land to which the Draft Deed Applies

The draft Deed applies to the following land:

Folio Identifier	Address
Lot 2 in DP1241942	123 Mulgoa Road, Penrith

Lot 11 in DP1223020	1 Royce Way, Penrith
Lot 20 in DP 1248609	65 Mulgoa Road, Penrith
Lot 52 in DP1246141	8 Retreat Drive, Penrith
Lot 53 in DP1246141	8 Retreat Drive, Penrith
Part of Lot 55 in DP1246141	123 Mulgoa Road, Penrith
Lot 56 in DP1250704	6 Retreat Drive, Penrith
Lot 57 in DP1250704	4 Retreat Drive, Penrith
Lot 58 in DP1250704	2 Retreat Drive, Penrith
Lot 59 in DP1256085	8 Retreat Drive, Penrith
Lot 60 in DP1256085	8 Retreat Drive, Penrith

### 3 Description of Proposed Change to Environmental Planning Instrument

The Deed relates to a Second Planning Proposal submitted by the Developer to the Planning Authority in relation to the Land.

The amendment to the *Penrith Local Environmental Plan 2010* will facilitate additional development of the "Penrith Panthers Precinct" on the Land being a mixed use development as set out in the Planning Proposal as amended by the Second Planning Proposal.

### 4 Summary of Objectives, Nature and Effect of the Draft Deed

(a) **Objectives of Draft Deed**

The objective of the draft Deed is to amend the Planning Agreement to reflect the revised development contributions to be provided by the Developer in connection with the Second Planning Proposal for the Land.

(b) **Nature of Draft Deed**

The Deed is a deed of variation of the Planning Agreement under clause 25C(3) of the *Environmental Planning and Assessment Regulation 2000* (NSW).

(c) **Effect of the Draft Deed**

The Deed amends the Planning Agreement with respect to:

- (i) the nature of the development contributions to be delivered under the Planning Agreement so that the Development Contribution consists of:
  - (A) the carrying out and delivery of the Road Works;
  - (B) the dedication of the Road Widening Land; and
  - (C) payment of the Monetary Contribution to TfNSW (subject to indexation).
- (ii) the timing of the completion of the Road Works to a Milestone Event, being either:
  - (A) linked to the grant of an Occupation Certificate in respect of the ground floor structure for the Western Sydney Conference & Community Centre; or
  - (B) alternatively, the grant of an Occupation Certificate in respect of any part of the Development which has the effect that Occupation Certificates will have been granted for more than 58,384m<sup>2</sup> of Gross Floor Area of the Land;
- (iii) a provision of security is included in the Planning Agreement, being a clause which permits TfNSW to compulsorily acquire the Road Widening Land for \$1.00;
- (iv) deletion of the references to the Development Stages that were part of the original master plan for the Development; and
- (v) updates to the section references to the *Environmental Planning and Assessment Act 1979* to reflect the new section numbering.

## 5 Assessment of the Merits of the Draft Deed

The Deed:

- (a) promotes the orderly and economic use and development of the Land to which the draft Deed applies;
- (b) promotes good design and amenity of the built environment by facilitating the development of the Land in accordance with the draft Deed;
- (c) promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- (d) promotes increased opportunity for the public in environmental planning and assessment.



## 6 Other Matters

(a) **How the Draft Deed Promotes the Public Interest and one or more objects of the Act**

The Deed:

- (i) promotes and co-ordinates the orderly and economic use and development of the Land to which the Planning Agreement applies;
- (ii) provides and co-ordinates public facilities in connection with the development on the Land;
- (iii) provides Development Contributions comprising road upgrades to local and State infrastructure including the dedication of the Road Widening Land, and a payment of a monetary contribution for the Mulgoa Road widening (or, if this has already been funded by the NSW Government, as a contribution to other road works required);
- (iv) provides for the carrying out of those required Development Contributions in connection with the Development;
- (v) promotes the sharing of responsibility between the different levels of government in the State; and
- (vi) provides increased opportunity for community participation in environmental planning and assessment;

and therefore promotes the objects of the *Environmental Planning and Assessment Act 1979* (NSW) as set out in section 1.3(a), (c), (i) and (j).

(b) **How the Draft Deed Promotes the Guiding Principles for councils in s8A of the *Local Government Act 1993* (NSW) (previously s8 elements of the Council's charter)**

The Deed promotes the guiding principles for councils by amending the Planning Agreement to facilitate the management and delivery of works on the land so as to provide adequate, equitable and appropriate facilities and infrastructure for the community.

(c) **The planning purpose or purposes served by the amendment to the Planning Agreement and an assessment of whether the amendment provides for a reasonable means of achieving that purpose**

The Deed will provide for a reasonable means of achieving the planning purpose by the co-ordinated provision of local and State infrastructure and associated land dedication to enable Development to occur.

(d) **Whether the draft Deed conforms with Council's Capital Works Program**

The Deed conforms with Council's capital works program as it provides infrastructure to support the Development which would otherwise be required to be provided under a contributions plan under Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW).

- (e) **Whether the amendment to the draft Deed specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement as amended by this Deed contains requirements that must be complied with prior to the issue of Construction Certificates and Occupation Certificates for the Development.