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Subject: SEED Stage 1 SEARs Response - Consistency with AIE Waterway Health Approval (SSD-10448)

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## Introduction

Mirvac is progressing a State Significant Development Application (Reference: **SSD-19618251**) at the Elizabeth Enterprise Precinct, Stage 1, located at 1669A and 1669-1732 Elizabeth Drive, Badgery's Creek, (EEP) (Lot 100 in DP1283398 and Lot 741 in DP810111), which involves the following proposed development:

*Concept plan comprising seven industrial buildings and a cafe and a Stage 1 development including site preparation, bulk earthworks, retaining walls, road works, stormwater infrastructure, signalised intersection with Elizabeth Drive, internal and external utilities, staged subdivision, and construction and operation of two buildings for warehouse and distribution or general industrial use and ancillary office space.*

The Department of Planning, Housing and Infrastructure (**DPHI**) issued updated Secretary's Environmental Assessment Requirements (**SEARs**) on 26<sup>th</sup> August 2024. This included a requirement under the 'Soil and Water' section to demonstrate how the proposed development would be consistent with the consent and stormwater strategy approved at Aspect Industrial Estate (**AIE**) (Reference: **SSD-10448**) located at 788-882 Mamre Road, Kemps Creek (Lots 301 and 305 DP1305254, and Lots 104 and 105 DP1305965).

This Memo outlines the proposed approach to addressing this matter within the Environmental Impact Assessment to be prepared for the EEP Stage 1 SSDA.

## SEARs Requirements and Response

### 1. The first matter to be addressed is as follows:

*A detailed description of how the development is consistent with the consent and stormwater strategy for the Aspect Industrial Estate (AIE) (SSD-10448), whether the proposed stormwater strategy requires any amendments or modification to the approved stormwater strategy for the AIE and other SSD consents on the AIE site, and at what stages of the development these modifications would be required;*

It is recommended that the following matters are identified in a response to this SEARs item in order to explain Mirvac's proposed strategy:

- SSD-10448 pertains to AIE and identifies that the two lots comprising EEP are to be used for stormwater management purposes, such that the AIE achieves compliance with the Mamre Road Precinct DCP and *Technical Guidance for achieving Wianamatta South Creek Stormwater Management Targets*.
- In order that the EEP Stage 1 SSD be progressed, the Concept Consent for AIE must be amended to allow for development consent to be issued for works (beyond the scope of stormwater management works) on the EEP land (Lot 100 in DP1283398 and Lot 741 in DP810111) subject to demonstrating ongoing cumulative compliance across EEP and AIE with the required waterway health standards.

- A modification application to SSD-10448 will be progressed concurrently to the EEP Stage 1 SSDA, to update the overall cumulative waterway health strategy for AIE and EEP, and to revise the wording of Concept conditions A9B, A9C and A9E in the Concept Consent, as set out below.
- The Modification to SSD-10448, to adopt the updated cumulative waterway health strategy for AIE and EEP, will need to be approved (with the above conditions removed or modified) prior to issuance of consent for EEP Stage 1 SSDA.

#### Required Modification to SSD-10448 Concept Consent

SSD-10448 will be updated to include an updated cumulative waterway health strategy and assessment, reflecting the intended EEP Stage 1 works and the approved AIE works. This Modification to SSD-10448 will be lodged and assessed concurrently with the EEP Stage 1 SSDA.

The below conditions to SSD-10448 will need to be modified in order to allow for the progression of development on EEP subject to cumulative IWCM targets being achieved across EEP and AIE. The exact wording of the final conditions (or whether they are to be deleted and replaced with new conditions) will be resolved through the modification preparation and assessment process.

#### Current Condition A9B

- *Under this consent, the EEP site must only be used for stormwater management purposes as required by Condition A9E until the Precinct-Wide Stormwater Infrastructure becomes available for the AIE to connect into.*

*Note: Any future use of the EEP site other than for stormwater management purposes may be considered by the Department as part of a separate future modification and/or application should alternative stormwater management strategies become available.*

#### Current Condition A9C

- *This consent does not permit the use of the EEP site for any other development or use and must be preserved as undeveloped land for the purposes described in Condition A9E.*

#### Current Condition A9E

- *The site must achieve compliance with the Integrated Water Cycle Management (IWCM) controls in the MRP DCP in accordance with the Technical Guidance for achieving Wianamatta South Creek Stormwater Management Targets (NSW Government, 2022).*

The EEP Stage 1 application will also need to demonstrate how EEP and AIE will continue to meet the IWCM targets when factoring in works proposed under that application.

### **2. The second matter to be addressed is:**

*An assessment for both the subject Elizabeth Enterprise and AIE sites against the relevant integrated water cycle management requirements of the Mamre Road Precinct DCP 2021, Western Sydney Aerotropolis DCP 2022 and 'Technical guidance for achieving Wianamatta–South Creek stormwater management targets' (DPE 2022), and in accordance with the MUSIC modelling toolkit – Wianamatta;*

- As referred to above, an updated Stormwater Management Plan is to be prepared by AT&L to demonstrate the continued cumulative compliance for both AIE and EEP sites under the new arrangement. This will include relevant stormwater management works and water quality targets, including updated MUSIC modelling and flow duration curve information.

### **3. The third matter to be addressed is:**

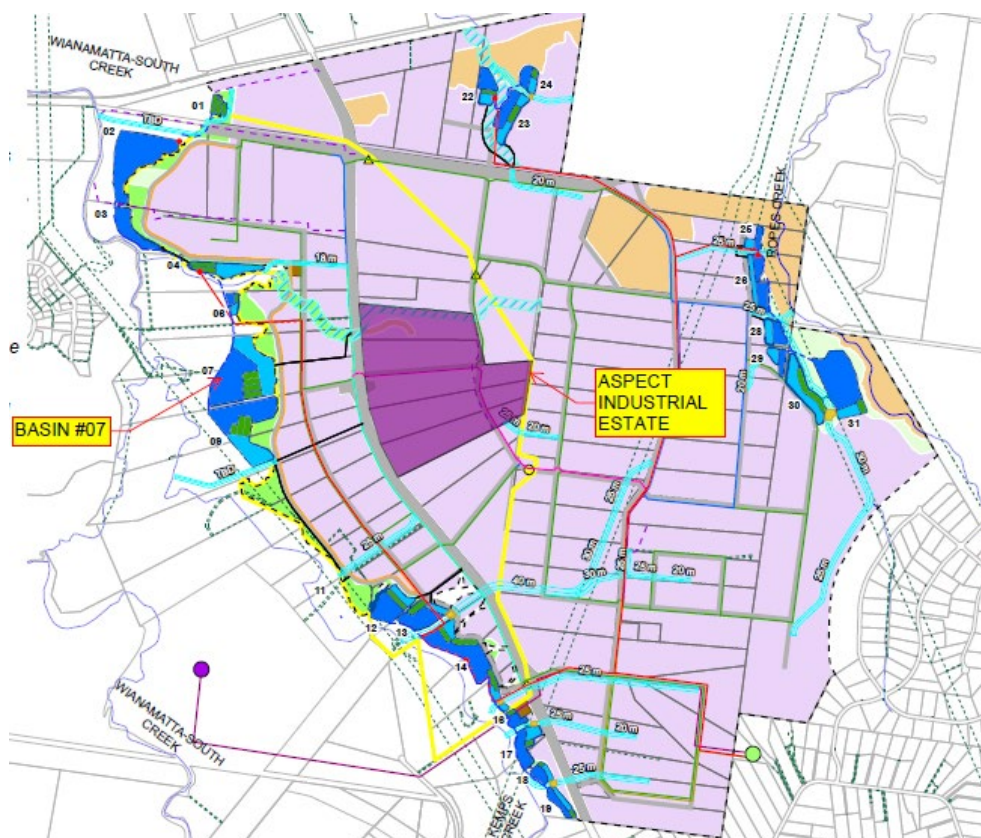
*An analysis of options for delivering parts of the planned regional stormwater infrastructure to support development on the site and enable the AIE site to be unlinked from the subject site;*

- Urbis has been advised that the delivery of 'Basin 7' at 805-817 & 819-831 Mamre Road, Kemps Creek (Lots 26 & 27 in DP258414) and its integration into the regional stormwater management system will facilitate AIE being able to meet the relevant Mamre Road Precinct DCP and *Technical Guidance for achieving Wianamatta South Creek Stormwater Management Targets*, without the need for

infiltration/evaporation measures to be accommodated on EEP. As such, the development of Basin 7 would allow the 'un-linking' of the EEP from the AIE SSD-10448 Concept Plan Approval and subsequent stage SSD approvals.

- Figure 1 below shows the proposed location of Basin 7, which is an extract from the *Mamre Road Precinct Integrated Stormwater Scheme Plan*.

**Figure 1 – Basin 7 Location**



Source: Sydney Water - Mamre Road Precinct Integrated Stormwater Scheme Plan

- It is understood that Mirvac has been in negotiations with Sydney Water regarding the delivery of this basin.
- The Lots where Basin 7 is to be located lie across land that is contained within the Mamre Road Precinct identified under the *State Environmental Planning Policy (Industry and Employment) 2021* as well as land identified within the Western Sydney Aerotropolis under *State Environmental Planning Policy (Precincts—Western Parkland City) 2021 (WPC SEPP)*.
- However, the basin would be located on land covered by the WPC SEPP as it sits to the west of the Wianamatta South Creek Precinct boundary.
- Construction of Basin 7 would be characterised as a 'Stormwater Management System' to which Division 20 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)* applies.
- Under the T&I SEPP, the development of a stormwater management system is described as follows:

*Division 20 Stormwater management systems*

#### 2.136 Definition

*In this Division—*

**stormwater management system means—**

*(a) works for the collection, detention, harvesting, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and*

*(b) stormwater quality control systems (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and*

*(c) stormwater reuse schemes.*

- The T&I SEPP also outlines two pathways for the development of stormwater management systems as below:

#### *2.137 Development permitted without consent*

*(1) Development for the purpose of stormwater management systems may be carried out by or on behalf of a public authority without consent on any land.*

*(2) A reference in this section to development for the purpose of stormwater management systems includes a reference to development for any of the following purposes if the development is in connection with a stormwater management system—*

*(a) construction works,*

*(b) routine maintenance works, including maintenance dredging to remove sediment build-up in a stormwater canal or at exit points into natural waterways that affects the efficiency of the stormwater management system,*

*(c) environmental management works,*

*(d) buildings, including buildings containing amenities for staff, that have a height of not more than 12m above ground level (existing).*

#### *2.138 Development permitted with consent*

*Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.*

- Accordingly, it is evident that either EP& A Act Part 4 (development permitted with consent) or Part 5 (development permitted without consent) can be utilised as a planning pathway for the proposed stormwater management system.
- For the Part 5 pathway to be accessed, the works would need to be carried out ‘*by or on behalf of a public authority*’. As such, either Sydney Water would be required to undertake the works, or Mirvac could undertake the works on behalf of Sydney Water. In this scenario, Mirvac would need to have the relevant agreement from Sydney Water to progress with this pathway.
- For the Part 4 pathway, Mirvac could progress a development application to Penrith City Council subject to the works having an estimated development cost of less than \$30m.
- Alternatively, Mirvac could seek to have the site added into the AIE Concept Plan Approval (SSD-10448) for the purposes of stormwater management through a further modification application to that consent, thereby opening the state significant DA pathway for delivery of Basin 7.
- It is considered that this proposal would meet the ‘substantially the same’ test for modification applications, in the same way that EEP was initially incorporated within the SSD-10448 approval for the purposes of stormwater management.