

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning (ABN 38 755 709 681)

Mirvac Homes (NSW) Pty Limited (ACN 006 922 998)

Vincenzo Pisciuneri and Elizabeth Pisciuneri

Frank Galluzzo and Maria Galluzzo

Samuel Galluzzo

Diamonte Pty Ltd (ACN 079 130 153)

Eva Bernatovic and Jozo Bernatovic

Teresa Friscic and Rok Friscic

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This deed is dated *FIRST DAY OF JUNE 2015*

Parties:

Minister

Minister for Planning (ABN 38 755 709 681)
of Level 15, 52 Martin Place, Sydney New South Wales 2000

Developer

Mirvac Homes (NSW) Pty Limited (ACN 006 922 998)
of Level 26, 60 Margaret Street, Sydney New South Wales 2000

Landowner

Vincenzo Piscuneri and Elizabeth Piscuneri
of 182 Raby Road, Gledswood Hills New South Wales 2557

Frank Galluzzo and Maria Galluzzo
of 184 Raby Road, Gledswood Hills New South Wales 2557

Samuel Galluzzo,
of 184 Raby Road, Gledswood Hills New South Wales 2557

Diamonte Pty Ltd (ACN 079 130 153)
of Level 1, 147 Northumberland Street, Liverpool New South Wales 2170

Eva Bernatovic and Jozo Bernatovic
of 188 Raby Road, Gledswood Hills New South Wales 2557

Teresa Friscic and Rok Friscic
of 188 Raby Road, Gledswood Hills New South Wales 2557

Introduction:

- A** The Landowner owns the Land.
- B** The Developer has entered into a commercial arrangement with the Landowner to acquire part of the Land and carry out the Development on the Land.
- C** The Developer has made a Development Application with the Consent Authority in respect of the Land for the first stage of the Development.
- D** The Land is not within a Special Contributions Area as defined by section 93C of the Act.
- E** Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 6.1 of the LEP.
- F** The Developer and Landowners have offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.



It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

(a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2015.

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

Consent Authority has the same meaning as in the Act.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the financial year preceding the date of the relevant adjustment under clause 2(b) of Schedule 4.

Developer means the Developer, unless otherwise specified in this deed.

Development means the residential subdivision of the Land into approximately 583 lots.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Schedule 3 of this deed.

LEP means *Camden Local Environmental Plan 2010*.

Minister means the Minister for Planning and includes the Secretary, or other officer of the Department of Planning and Environment and includes the Minister's nominee, whether nominated before or after the date of this deed.

Mirvac means Mirvac Homes (NSW) Pty Limited (ABN 22 006 922 998).

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Net Developable Area has the meaning given to that term in clause 1(a) of Schedule 4 to this deed.

Planning Application means:

- (a) a Development Application; or
 - (b) any other application required under the Act,
- which seeks approval for the subdivision of the Land.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

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

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 6.1 of the LEP.

Secretary means the Secretary of the Department of Planning and Environment from time to time (or nominee, whether nominated before or after the date of this deed).

Subdivision Certificate has the same meaning as in the Act.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;



- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.



2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

3. Application of sections 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

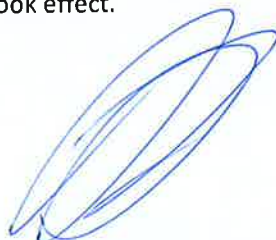
4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

4.2 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 94EE of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
 - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed for that stage, then:
 - (i) the Developer is required to pay only the SIC Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 5 and clauses 1(b), 2(b) and 4 of Schedule 4.
- (c) Clause 4.2(b) applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (d) In this clause 4.2, a reference to the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for that stage calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 94EF of the Act had not been excluded by this deed and the Development Consent had been granted before the SIC Determination took effect.



4.3 Acknowledgement

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. Enforcement

6.1 Developer to provide security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Landowner and the Developer, at their own expense, are to take all practical steps and otherwise do anything to procure:

- (a) the consent of each person, as required by the Registrar-General, who:
 - (i) has an estate or interest in the Land registered under the Real Property Act; or
 - (ii) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on title to the Land and to the terms of this deed; and
- (b) the execution of any documents;
- (c) the production of the relevant certificates of title;
- (d) payment of any duty liability arising from this deed under the *Duties Act 1997* (NSW) and even if duty is not liable to be paid, presentation of this deed for marking at the Office of State Revenue; and

- (e) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

7.2 Evidence of registration

The Developer must provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Landowner or the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 Landowner's interest in Land

The Landowner represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed, and

legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a) to assist, cooperate and to otherwise do all things necessary for the Landowner to comply with its obligations under clause 7.

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,



the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.4.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient must pay to the Supplier the GST Amount.



However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

This clause does not merge on completion or termination of this deed.

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Assigning Party's obligations under this deed insofar as those obligations have been novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party was the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) Subject to clause 10.2(e), this clause does not apply where the Landowner proposes to sell the whole or part of the Land to Mirvac.
- (b) The Landowner must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.
- (c) Notwithstanding clause 10.2(a) the Landowner may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Landowner:



- (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Landowner and the Developer under this deed or satisfies the Minister, acting reasonably, that the Landowner will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee was the Landowner; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (d) The Landowner must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.
- (e) If the whole or any part of any part of the Land is transferred to Mirvac:
- (i) Mirvac must provide the Minister with written notice stating that Mirvac has acquired the whole or part of the Land, as the case may be, within 10 Business Days; and
 - (ii) Mirvac assumes all responsibilities and obligations of the Landowner and the Developer under this deed, including this clause 10.2 on and from the date the whole or any part of any part of the Land is transferred to Mirvac.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;

- (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Development Contributions provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties.

13.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

13.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,
 expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

13.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

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

13.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

13.13 No fetter

Nothing in this deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

13.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.


13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.

- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (A) before 5 pm on a Business Day, on that day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.



Schedule 1

Table 1 - Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 93F(2)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 93F(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(5))	The Development Contributions to be provided by the Developer under the deed must not be taken into consideration in determining a contribution under section 94.
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 8
Enforcement of this deed – (section 93F(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3 of Schedule 4)

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary
Address: Department of Planning and Environment
23-33 Bridge Street
Sydney NSW 2000
Facsimile No: (02) 9228 6455

Developer

Contact: Basem Hamdan
Address: Mirvac Homes (NSW) Pty Ltd
Level 26, 60 Margaret Street
Sydney NSW 2000
Facsimile No: (02) 9080 8111
Email: basem.hamdan@mirvac.com.au

Landowner

Vincenzo and Elizabeth Piscuneri

Contact: Vince Galluzzo
Address: Galluzzo Lawyers
Suite 2, 3-5 Norfolk Street
Liverpool NSW 2170
Facsimile No: (02) 9822 5106
Email: reception@glawyers.com.au

Samuel Galluzzo

Contact: Vince Galluzzo
Address: Galluzzo Lawyers
Suite 2, 3-5 Norfolk Street
Liverpool NSW 2170
Facsimile No: (02) 9822 5106
Email: reception@glawyers.com.au



Frank and Maria Galluzzo

Contact: Vince Galluzzo
Address: Galluzzo Lawyers
Suite 2, 3-5 Norfolk Street
Liverpool NSW 2170
Facsimile No: (02) 9822 5106
Email: reception@glawyers.com.au

Diamonte Pty Ltd

Contact: Vince Galluzzo
Address: Galluzzo Lawyers
Suite 2, 3-5 Norfolk Street
Liverpool NSW 2170
Facsimile No: (02) 9822 5106
Email: reception@glawyers.com.au

Eva and Jozo Bernatovic

Contact: Albert A. Marci
Address: Albert A Marci & Co
Suite 3, 3-5 Norfolk Street
Liverpool NSW 2170
Facsimile No: (02) 9601 5996
Email: albert@amarcipartners.com.au

Teresa and Rok Friscic

Contact: Albert A. Marci
Address: Albert A Marci & Co
Suite 3, 3-5 Norfolk Street
Liverpool NSW 2170
Facsimile No: (02) 9601 5996
Email: albert@amarcipartners.com.au



Schedule 3**Land (clause 1.1)**

Lot	Deposited Plan	Landowner
101	1193881	Vincenzo Piscuineri and Elizabeth Piscuineri
102	1193881	Vincenzo Piscuineri and Elizabeth Piscuineri
1	1193163	Vincenzo Piscuineri and Elizabeth Piscuineri Frank Galluzzo and Maria Galluzzo Samuel Vincent Galluzzo Diamonte Pty Ltd
2	1193163	Vincenzo Piscuineri and Elizabeth Piscuineri Frank Galluzzo and Maria Galluzzo Samuel Vincent Galluzzo Diamonte Pty Ltd
3	1193163	Vincenzo Piscuineri and Elizabeth Piscuineri Frank Galluzzo and Maria Galluzzo Samuel Vincent Galluzzo Diamonte Pty Ltd
401	1196627	Eva Bernatovic and Jozo Bernatovic
402	1196627	Eva Bernatovic and Jozo Bernatovic
302	1193883	Teresa Friscic and Rok Friscic

Schedule 4

Development Contributions (clause 4)

1. Development Contributions

- (a) For the purposes of this Schedule 4, Net Developable Area means the area of net developable area of a part of the Land as defined and determined in accordance with Schedule 6 of this deed.
- (b) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount - Cash contribution towards designated State public infrastructure	\$158,244.00 per hectare of Net Developable Area for any part of the Land to which each Subdivision Certificate application relates calculated in accordance with clause 2 of this Schedule 4	Pursuant to clause 3 of this Schedule 4

- (c) The Minister and Developer acknowledge and agree that the sum of the Contribution Amounts form the Development Contribution under this deed.

2. Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:

$$X = N \times \$158,244.00$$

"N" means the number of hectares comprised in the Net Developable Area of the part of Land to which a Subdivision Certificate application relates.

- (b) Each Contribution Amount is to be adjusted by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee each Contribution Amount prior to the issue of the relevant Subdivision Certificate.
- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act.

Schedule 5

Security terms (clause 6)

1. Bank Guarantees

- (a) At the time the Developer signs this deed, the Developer undertakes to provide a Bank Guarantee to the Minister having a face value amount of \$20,000 (**Bank Guarantee Amount**) in order to secure the payment of the Development Contribution.
- (b) The Bank Guarantee must:
 - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.
- (c) From the date of execution of this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Bank Guarantee.

2. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon the Bank Guarantee where the Developer has failed to pay a Contribution Amount on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Bank Guarantee the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call on the Bank Guarantee.
- (c) If:
 - (i) the Minister calls upon the Bank Guarantee; and
 - (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Bank Guarantee in accordance with clause 2(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Bank Guarantee to ensure that at all times until the date that the Bank Guarantee is released in accordance with clause 3 of this Schedule, the Minister is in possession of a Bank Guarantee for a face value equivalent to the Bank Guarantee Amount.

3. Release of Bank Guarantees

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and

- (b) the whole of the monies secured by the Bank Guarantee has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

then the Minister will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.



Schedule 6

Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

1. The Net Developable Area of a part of the Land (*the net developable area for the proposed subdivision*) is the area of land, in hectares, shown in the proposed plan of subdivision (that is, the area to which the relevant application for a Subdivision Certificate for that part of the Land relates), subject to the other provisions of this Schedule 6.
2. The Net Developable Area does not include the area of any existing road, including an existing road in respect of which the Development Consent authorises, or requires, road work (such as road widening) to be carried out.
3. The Net Developable Area does not include the area of any land that the Development Consent relating to the proposed subdivision authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
 - (a) school,
 - (b) TAFE establishment,
 - (c) emergency services facility,
 - (d) health services facility owned or operated by a public authority,
 - (e) golf course,
 - (f) passenger transport facility,
 - (g) place of public worship,
 - (h) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
 - (i) public transport corridor (other than a road corridor),
 - (j) public utility undertaking,
 - (k) bus depot,
 - (l) recreation area,
 - (m) public roads, or other public amenities (including public open space) or public services, or any other public purpose.
4. The following areas of land are not to be included in the calculation of the Net Developable Area for the proposed subdivision:
 - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the area is unsuitable for developing for the purposes of the subdivision by virtue of it being at or below that level, and
 - (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act.
5. The Net Developable Area does not include the area of any lot in the proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the Development Consent relating to the subdivision.

6. The Net Developable Area does not include any lot in the proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future Development Consent for the purpose of the orderly development of the land for urban purposes in the future.
7. If the proposed subdivision includes the creation of a lot that is more than 0.1 hectare in area, the area of that lot is taken to be 0.1 hectare for the purpose of calculating the Net Developable Area for the proposed subdivision. This clause applies whether an existing lawful habitable dwellings is located on the proposed lot or otherwise.
8. If the proposed subdivision includes any lot that is more than 0.1 hectare in area and contains land that is within the curtilage of a building listed on the State Heritage Register, the area of that lot is taken to be 0.1 hectare for the purpose of calculating the Net Developable Area for the proposed subdivision. (In this clause 7, *curtilage*, in relation to a building, means the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register.)
9. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the Net Developable Area for the proposed subdivision in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.
10. In this Schedule 6, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*):
 - (a) emergency services facility,
 - (b) health services facility,
 - (c) passenger transport facility,
 - (d) place of public worship,
 - (e) public utility undertaking,
 - (f) recreation area,
 - (g) school.
11. In this Schedule, a reference to a "strata scheme" means a reference to a strata scheme as that term is defined in the *Strata Scheme (Freehold Development) Act 1973* or a leasehold strata scheme as that term is defined in the *Strata Scheme (Leasehold Development) Act 1986*.



Execution page

Executed as a deed

Signed , sealed and delivered for and on behalf
of the **Minister for Planning**, in the presence of:

.....
Signature of witness

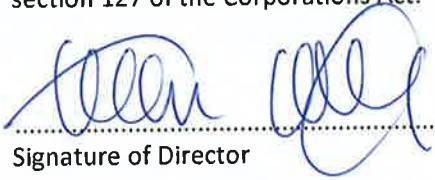
.....
Signature of the Minister for Planning or
delegate

.....
Name of witness in full

.....
Name of the Minister for Planning or delegate

.....
Address of witness

Executed by Mirvac Homes (NSW) Pty Limited
(ACN 006 922 998) in accordance with
section 127 of the Corporations Act:


.....
Signature of Director

Toben Michael James Long


.....
Name of Director


.....
Signature of ~~Director~~/Secretary

David John Sellin

.....
Name of ~~Director~~/Secretary

Signed sealed and delivered by Vincenzo
Pisciuneri in the presence of:


.....
Signature of Witness

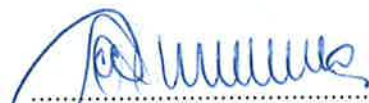

.....
Name of Witness in full

)
)
)

.....
Signature


.....
Name

Signed sealed and delivered by Elizabeth
Pisciuneri in the presence of:



Signature of Witness

CAROLINE PISCIUNERI

Name of Witness in full



Signature

ELIZABETH PISCIUNERI

Name

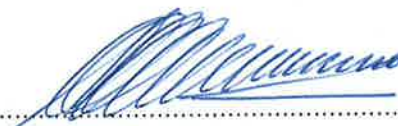
Signed sealed and delivered by Frank Galluzzo
in the presence of:



Signature of Witness

DOMONIL PISCIUNERI

Name of Witness in full



Signature

FRANK GALLUZZO

Name

Signed sealed and delivered by Maria Galluzzo
in the presence of:



Signature of Witness

DOMONIL PISCIUNERI

Name of Witness in full



Signature

MARIA GALLUZZO


Name



Signed sealed and delivered by Samuel Galluzzo in the presence of:


Signature of Witness

JOSIE CAVALLARO
Name of Witness in full


Signature

SAMUEL GALLUZZO
Name

Executed by Diamonte Pty Limited (ACN 079 130 153) in accordance with section 127 of the Corporations Act:

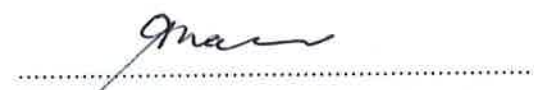

Signature of Director

DOMINIC PICCININI
Name of Director


Signature of Director/Secretary

ROSETTA ZACCAGNINI
Name of Director/Secretary

Signed sealed and delivered by Eva Bernatovic in the presence of:


Signature of Witness


ALBERT MACARI
Name of Witness in full


Signature


Name



Signed sealed and delivered by Jozo
Bernatovic in the presence of:

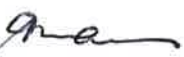

Signature of Witness



Name of Witness in full


Signature

Name

Signed sealed and delivered by Teresa Friscic
in the presence of:



Signature of Witness


Name of Witness in full



Signature

Name

Signed sealed and delivered by Rok Friscic in
the presence of:


Signature of Witness


Name of Witness in full


Signature

Name

