

Planning Agreement

Environmental Planning and Assessment Act 1979

55 Coonara Avenue, West Pennant Hills 2125

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

Mirvac Projects (Retail and Commercial) Pty Ltd (ACN 151 466 241) as trustee for the Mirvac Pennant Hills Residential Trust

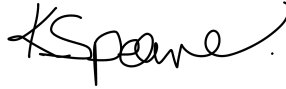
A handwritten signature in black ink, appearing to read 'K. Spence', with a stylized flourish at the end.

Voluntary Planning Agreement – 55 Coonara Avenue, West Pennant Hills

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This deed is dated 24 February 2023

Parties:

Minister

Minister administering the Environmental Planning and Assessment Act 1979 (ABN 20 770 707 468)
of Level 15, 52 Martin Place, Sydney, New South Wales 2000

Developer

Mirvac Projects (Retail and Commercial) Pty Ltd (ACN 151 466 241) as trustee for the Mirvac Pennant Hills Residential Trust
of Level 28, 200 George Street, Sydney, New South Wales 2000

Introduction:

- A** The Developer owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer proposes to make a Development Application to the Consent Authority in respect of the Land seeking Development Consent for the Development.

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.

Amending Instrument means the *Hills Local Environmental Plan 2019 (Amendment No 14)*.

Approval includes approval, consent, licence, permission or the like.

Arboricultural Works means the works described in Row 3 of the table in clause 1 of Schedule 4.

ArborSafe Report means the Tree Assessment Report dated 23 August 2021 prepared in respect of the Land by ArborSafe Tree Consultancy and Management Systems, a summary of which is included at Schedule 7.

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 2022.

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

Claim means any claim, allegation, suit, action, demand, cause of action or proceeding of any kind made under or in connection with this deed or the Land whether or not it arises at Law or in any other way.

Consent Authority has the same meaning as in the Act.

Contribution Amount means the amount of the monetary Development Contribution to be paid by the Developer as described in Row 1 of the table in clause 1 of Schedule 4.

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

Cost includes:

- (a) costs, charges, expenses, including those incurred in connection with advisers, experts and consultants (including legal costs calculated on a solicitor and own client basis);
- (b) damages, losses, injury (whether actual or contingent) suffered or incurred by a party; and
- (c) any fines, penalties, interest or similar item imposed by Law.

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

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

Current CPI means the CPI number for the quarter ending before 31 March in the year in which the relevant adjustment is made.

Dealing means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a work or any part of a work required to be carried out under this deed but excludes:

(a) fair wear and tear; and

(b) anything which is not caused or contributed to by the Developer.

Defects Liability Period means the period of 1 year commencing on the day immediately after a work is completed for the purposes of this deed.

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.

Development means the development of the Land, made permissible by the amendment of the LEP by the Amending Instrument including a maximum of 600 Dwellings.

Dwelling has the same meaning as in the LEP.

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

Engineering Plans means the plans prepared by Northrop with plan reference SSK-00 (revision 2), SSK-01 (revision 3), SSK-10.1 (revision 3), SSK-10.2 (revision 3) and SSK-11 (revision 2) dated 25 February 2022, showing indicative bridge design and which are annexed to the Forest Dedication Plan.

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.

Forest Dedication Land means (unless otherwise agreed in writing by the Minister) an area of a minimum of 10.27ha of the Land shown as Areas 2, 3 and 4 on the Forest Dedication Plan subject only to cadastral survey of the boundary which shall not result in the area differing by more than 5%.

Forest Dedication Plan means the plan in Schedule 6.

Forestry means the Forestry Corporation of NSW.

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

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

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

Insurance Bond means an irrevocable and unconditional undertaking:

- (a) by an Insurance Company 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.

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and subject to prudential supervision by Australian Prudential Regulatory Authority.

Land means the land described in Schedule 3.

LEP means *The Hills Local Environmental Plan 2019*.

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

Minister means the Minister administering the Act and includes the Secretary and the Secretary's nominee.

Permitted Easements means:

- (a) the easements shown on the Forest Dedication Plan; and
- (b) any other easements, restrictions or positive covenants that may be required by an Authority pursuant to a Development Consent for the Development (or any other Approval granted by an Authority) or otherwise agreed to in writing by the Minister.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Planning Application means:

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

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

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,

- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW)

Secretary means the Secretary of the Department of Planning and Environment.

Security means a Bank Guarantee or an Insurance Bond.

Stage means one of the four stages comprising the Development known as 'Housing South', 'Housing North', 'Housing Central' and 'Apartments' as shown in the staging plan in Schedule 10.

Stages 1-3 means the first three Stages in the Development delivered by the Developer.

Stage 4 means the last Stage in the Development delivered by the Developer.

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.

Weed Management Plan means the plan contained in Schedule 8.

Weed Management Plan Works means the works described in Row 4 of the table in clause 1 of Schedule 4.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing

agreement, to a body or authority having substantially the same objects as the named body or authority;

- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **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** and **annexures** 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 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded only to the extent stated in Schedule 1.

4. Development Contributions

4.1 Developer to provide Development Contributions

- (a) The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contributions in accordance with the provisions of Schedule 4.
- (b) For the avoidance of doubt:
 - (i) where this deed requires that a Development Contribution be made prior to or concurrent with the issue of a particular Subdivision Certificate, or otherwise by a specified time; and
 - (ii) the Subdivision Certificate is issued without the making of that Development Contribution, or the Development Contribution is otherwise not made by the time specified, in breach of this deed,

then despite the breach, it is a requirement of this deed that no further Subdivision Certificate may be issued for the Development until the Development Contribution (that was not made) is made.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to repay any 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 but acknowledges that the Developer has requested that the monetary contribution of \$500,000 specified in Row 1 in clause 1 of Schedule 4 is to be used for the purpose of future maintenance of the Forest Dedication Land.

4.3 Permit for Weed Management Plan Works

The Developer will, and the Minister will procure that Forestry will enter into the permit agreement set out in Schedule 9 in order to allow the Developer to access the Forest Dedication Land to carry out the works required under the Weed Management Plan.

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 Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents;
 - (iii) if required, the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the electronic lodgement of this deed in a registrable form through an ELNO for registration 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.
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed 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, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

- (a) The Minister agrees to do all things reasonably required by the Developer to release and discharge the registration of this deed:

- (i) with respect to the part of the Land identified as Stages 1-3, upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land, other than in respect of any components of the Weed Management Plan Works that may occur following dedication of the Forest Dedication Land,
 - (ii) with respect to Stage 4, upon the Developer completing the works nominated as Year 1 works and which are identified in the table on pages 20 to 22 of the Weed Management Plan.
- (b) With respect to Stage 4, in circumstances where the Developer has completed the Year 1 works identified in the table on pages 20 to 22 of the Weed Management Plan, it must provide the Minister with 6 weeks notice that it has completed these works.
- (c) Within 15 business days of the date the Minister receives the notice under clause 7.3(b), the Minister and Forestry must inspect the Forest Dedication Land to determine whether the Year 1 works have been completed in accordance with the Weed Management Plan.
- (d) The Year 1 works are taken to be completed for the purposes of this deed when the Minister, acting reasonably and having regard to the opinion expressed by Forestry, gives the Developer written notice of such. The written notice must be provided by the Minister within 10 Business Days of receipt of Forestry's opinion.
- (e) If the Minister or Forestry is of the opinion that the Year 1 works have not been completed in accordance with the Weed Management Plan and outstanding works are required, the Developer must undertake those outstanding works to the Minister's satisfaction (acting reasonably and having regard to the opinion of Forestry).
- (f) When the Developer is of the view that any works required under clause 7.3(e) above are complete, the Developer must advise the Minister, and the Minister and Forestry must inspect the Forest Dedication Land within 10 business days of the Developer's notice and advise the Developer in writing whether or not the Minister, acting reasonably and having regard to the advice of the independent expert, is satisfied that the outstanding Year 1 works have been completed.
- (g) For the avoidance of doubt, nothing in this clause 7.3 releases the Developer from its obligation to complete the remainder of the Weed Management Plan Works.

7.4 Interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; and
- (b) 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)(i) to assist, cooperate and to

otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

7.5 Right to lodge caveat

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.
- (c) If, after 10 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

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 exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

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

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 novate its obligations (**Assigning Party**) must seek the consent of the Minister (acting reasonably) and:

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

10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
- (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
- (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.

- (c) Notwithstanding clause 10.2(a), the Developer may sell or transfer part of the Land (other than the Forest Dedication Land) pursuant to an 'off-the-plan' sale of a lot in the Development, provided that settlement of the sale or transfer does not occur until this Deed is removed from the title to that part of the Land and (except as provided for in clause 7.3(a) and (b)) the Development Contribution obligations under this deed have been completed.
- (d) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clause 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

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.

11.3 Trustee Developer

- (a) Mirvac Projects (Retail and Commercial) Pty Ltd (ACN 151 466 241) (**Trustee**) enters into this deed in its capacity as the trustee for the Mirvac Pennant Hills Residential Trust (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:
 - (i) warrants that as at the date of this deed:

- (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
- (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 11.3(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
- (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;
 - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
 - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 11.3(b) and the costs and expenses of registering any new deed on the title to the Land.
- (c) Subject to clause 11.3(e), liability arising under or in connection with this deed (except under or in connection with clause 11.3(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the

maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.

- (d) No party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,except under or in connection with clause 11.3(a) above.
- (e) Notwithstanding any other provision of this deed, clauses 11.3(c) and 11.3(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 11.3(e) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

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 (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents 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 Contribution Amounts 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. The obligations of the Developer under this clause 12 are at an end once the Development Contribution obligations under this deed have been completed.

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

Except as expressly provided in this deed, each party must act in good faith and reasonably 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 is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

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 valuation costs, 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 prepaid ordinary mail within Australia; or
 - (iii) 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 prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - (A) before 5 pm on a Business Day, on that Business 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.

13.17 Electronic Execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
 - (i) Insertion of an image (including a scanned image) of the person's own unique signature on to the deed;

- (ii) Insertion of the person's name on to the deed; or
 - (iii) Use of a stylus or touch finger or a touch screen to sign the deed,
provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;
 - (iv) use of reliable electronic signature and exchange platforms (such as DocuSign or AdobeSign) to sign the deed; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this document transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

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

| Requirement under the Act | This deed |
|--|---|
| Planning instrument and/or development application – (section 7.4(1)) 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) Yes (b) Yes (c) No |
| Description of land to which this deed applies – (section 7.4(3)(a)) | See Schedule 3 |
| Description of development to which this deed applies – (section 7.4 (3)(b)) | See definition of Development in clause 1.1 |
| Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b)) | N/A |
| The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c)) | See Schedule 4 |
| Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d)) | The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development. |
| Applicability of section 7.24 of the Act – (section 7.4 (3)(d)) | The application of section 7.24 of the Act is excluded in respect of the Development. |

| Requirement under the Act | This deed |
|---|------------------|
| Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e)) | No |
| Mechanism for Dispute Resolution – (section 7.4(3)(f)) | See clause 8 |
| Enforcement of this deed – (section 7.4(3)(g)) | See clause 6 |
| No obligation to grant consent or exercise functions – (section 7.4(10)) | See clause 13.13 |

Table 2 – Other matters

| Requirement under the Act | This deed |
|---|----------------------|
| Registration of the Planning Agreement – (section 7.6 of the Act) | Yes (see clause 7) |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 21 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>) | No |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 48 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>) | No |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 34 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>) | Yes (see Schedule 4) |

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

Email: planningagreements@planning.nsw.gov.au

Developer

Contact: Adrian Checchin Development Director – NSW Apartments
cc: Toby Long General Manager – Residential Development NSW

Address: Mirvac Projects (Retail and Commercial) Pty Limited
Level 28, 200 George Street
Sydney NSW 2000

Email: adrian.checchin@mirvac.com
CC: toby.long@mirvac.com

Schedule 3

Land (clause 1.1)

Lot 61 in DP737386

Schedule 4

Development Contributions (clause 4)

1. Development Contributions

- (a) The Developer undertakes to provide the Development Contributions in the manner set out in the table below:

| No. | Development Contribution | Nature and Extent of Contribution | Timing |
|-----|--|--|---|
| 1 | Monetary contribution | \$500,000 towards the maintenance of the Forest Dedication Land for a 10 year period. | Prior to or concurrent with the issuing of the first Subdivision Certificate for the Development. |
| 2 | Dedication of the Forest Dedication Land | Dedication of the Forest Dedication Land to the Minister or the Minister's nominee. | On registration of the first Plan of Subdivision in respect of the Development and in accordance with clause 3.1 of this Schedule 4. |
| 3 | Arboricultural Works | Works recommended in the ArborSafe Report in respect of trees identified as 'High Risk Trees' in the ArborSafe Report which are within the Forest Dedication Land. Works to be carried out in accordance with the ArborSafe Report, and any additional works required pursuant to clause 3.3 of this Schedule 4. | Prior to or concurrent with dedication of the Forest Dedication Land. |
| 4 | Weed Management Plan Works | Works in the areas identified on the Forest Dedication Plan to be carried out by a suitably qualified expert and which must be carried out, in accordance with the site specific Weed Management Plan (Accepted Standard). | In accordance with the timing specified in the Weed Management Plan, subject to any extension of time granted by the Minister under clause 3.4(e) of this Schedule 4. |

| | | | |
|---|-----------------------------------|--|--|
| 5 | Replacement of two timber bridges | Replacement of the bridges in the general location indicated on the Forest Dedication Plan and generally in accordance with the Engineering Plans. | Prior to issue of the first Subdivision Certificate for the Development. |
|---|-----------------------------------|--|--|

2. Calculation of the value of a Contribution Amount

- (a) On the CPI Adjustment Date, each Contribution Amount (other than an amount payable under clause 3.4 of this Schedule 4) is to be adjusted by multiplying the Contribution Amount payable (as previously adjusted in accordance with this clause, where relevant) by an amount equal to the Current CPI divided by the Base CPI.
- (b) The Developer must pay to the Minister or the Minister's nominee the Contribution Amount at the time specified in the table in clause 1 of this Schedule 4 or elsewhere in this deed.
- (c) The Developer must provide the Minister with not less than 10 Business Days written notice of its intention to lodge an application for the first Subdivision Certificate for the Development.
- (d) 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 6.15(1)(d) of the Act.

3. Dedication of the Forest Dedication Land

3.1 Transfer of the Forest Dedication Land

- (a) The Developer must transfer the Forest Dedication Land to the Minister or Minister's nominee, free of cost, in accordance with this Schedule 4.
- (b) To transfer the Forest Dedication Land, or a part thereof, the Developer must:
 - (i) deliver to the Minister a form of transfer in respect of the Forest Dedication Land to, executed by the Developer and in registrable form except for acceptance by the Minister or Minister's nominee and marking by the Office of State Revenue; and
 - (ii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the relevant part of the Forest Dedication Land; and

- (iii) take any other necessary action to give effect to the transfer of the title of the Forest Dedication Land to the Minister or Minister's nominee.
- (c) The Developer indemnifies and keeps indemnified the Minister in relation to any failure of the Developer to comply with clauses 3.1 to 3.7 of this Schedule 4.
- (d) The parties agree that this deed operates as a deed poll in favour of the Minister.

3.2 Subdivision of Forest Dedication Land

- (a) Before transferring the Forest Dedication Land in accordance with this Schedule 4, the Developer must (at its cost):
 - (i) obtain Development Consent (if any is required) and any other approvals necessary to create one or more separate lots for the Forest Dedication Land; and
 - (ii) in accordance with the applicable Development Consent (if any) and any other necessary approvals, prepare and register a Plan of Subdivision to create one or more separate lots for the Forest Dedication Land.

3.3 Arboricultural Works

- (a) The Developer must obtain any Approvals necessary for the Arboricultural Works.
- (b) The Developer must carry out the Arboricultural Works in accordance with this deed, any Approvals and any applicable laws.
- (c) The Developer must give the Minister notice at least 4 months prior to the date on which it intends to apply for the first Subdivision Certificate for the Development of its intention to do so.
- (d) Within 15 Business Days of the date the Minister receives the notice under paragraph (c) a suitably qualified independent expert jointly retained by the Developer and the Minister will inspect the Forest Dedication Land to determine whether the Arboricultural Works have been completed in accordance with this deed.
- (e) The Arboricultural Works are taken to be completed for the purposes of this deed when the Minister, acting reasonably and having regard to the advice by the independent expert, gives the Developer written notice as such. The written notice must be provided by the Minister within 10 Business Days of receipt of the advice of the independent expert.
- (f) If the independent expert advises that the Arboricultural Works have not been completed in accordance with this deed and outstanding works are required, the Developer must undertake those outstanding works to the Minister's satisfaction (acting reasonably and

having regard to the advice of the independent expert), prior to the dedication of the Forest Dedication Land.

- (g) When the Developer is of the view that any works required under clause 3.3(f) of this Schedule are complete, the Developer must advise the Minister, and the Minister must inspect the Forest Dedication Land within 10 business days of the Developer's notice and advise the Developer in writing whether or not the Minister, acting reasonably and having regard to the advice of the independent expert, is satisfied that the outstanding works have been completed.

3.4 Weed Management Plan Works

- (a) The Developer must obtain any Approvals necessary for the Weed Management Plan Works.
- (b) The Developer must carry out the Weed Management Plan Works in accordance with this deed, any Approvals and any applicable laws and in compliance with the terms of the access permit agreement in the form that appears at Schedule 9.
- (c) Within 60 business days of the notice under paragraph (c) of clause 3.3 of this Schedule 4, the Minister and Forestry must inspect the Forest Dedication Land to determine whether the part of the Weed Management Plan Works which are required by the Weed Management Plan to be completed prior to the dedication of the Forest Dedication Land have been carried out to the Accepted Standard.
- (d) If, having regard to any opinion expressed by Forestry, and subject to any agreed variations as to timing, the Minister reasonably forms the view that the part of the Weed Management Plan Works which are required by the Weed Management Plan to have been completed at the time of the dedication of the Forest Dedication Land have not been carried out to the Accepted Standard, then the Minister may by notice to the Developer require the Developer to carry out any outstanding works at the Developer's cost to meet the Accepted Standard.
- (e) The Weed Management Plan Works that are required to be completed at the time of the dedication of the Forest Dedication Land are taken to be completed to the Accepted Standard when the Minister, acting reasonably and having regard to the advice by Forestry, gives the Developer written notice as such.
- (f) The Developer is to notify the Minister in writing when it reasonably considers it has completed the part of the Weed Management Plan Works which are required by the Weed Management Plan to be completed after the dedication of the Forest Dedication Land.
- (g) Within 30 business days of the notice under paragraph (e) of clause 3.4 of this Schedule 4, the Minister and Forestry must inspect the Forest Dedication Land to determine whether

the part of the Weed Management Plan Works which are required by the Weed Management Plan to be completed after the dedication of the Forest Dedication Land have been carried out to the Accepted Standard.

- (h) If, having regard to any opinion expressed by Forestry, the Minister reasonably forms the view that the part of the Weed Management Plan Works which are required by the Weed Management Plan to be completed after the dedication of the Forest Dedication Land have not been carried out to the Accepted Standard, then the Minister may by notice to the Developer require the Developer to carry out any outstanding works at the Developer's cost to meet the Accepted Standard.
- (i) The Weed Management Plan Works that are required to be completed after the dedication of the Forest Dedication Land are taken to be completed to the Accepted Standard when the Minister, acting reasonably and having regard to the advice by Forestry, gives the Developer written notice as such.
- (j) If the Developer is reasonably of the opinion that it is unable to complete the Weed Management Plan Works to meet the Accepted Standard by the time those works are required to be completed, then:
 - (i) the Developer is to provide a written notice to this effect to the Minister which includes an explanation of why the Weed Management Plan Works were unable to be completed by the required time,
 - (ii) the Developer is to provide the Minister, for the Minister's approval, a proposed revised date for completion of the Weed Management Plan Works and a justification for the proposed revised date,
 - (iii) the Minister is not to unreasonably withhold approval to the revised date for completion,
 - (iv) if the Minister approves the revised date for completion then the time for completion of the Weed Management Plan Works under this deed will be taken to be amended accordingly.

3.5 Developer's land management obligations

- (a) Between the date of this deed and the dedication of the Forest Dedication Land, the Developer will, at its cost, comply with, in relation to such land:
 - (i) its biosecurity duty under section 22 of the *Biosecurity Act 2015* (NSW);
 - (ii) any other obligations under the *Biosecurity Act 2015* (NSW);

- (iii) its obligation to take practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on and from that land under section 63(2) of the *Rural Fires Act 1997* (NSW); and
- (iv) any other obligations under the *Rural Fires Act 1997* (NSW).

3.6 Contamination

Prior to the dedication of the Forest Dedication Land, the Developer must:

- (a) obtain a Site Audit Report and Site Audit Statement from a Site Auditor in respect of the Forest Dedication Land which:
 - (i) states that the Forest Dedication Land is suitable or will be suitable for the purposes of a public reserve, park or recreational uses including for public access as at the transfer date; and
 - (ii) are addressed to the Minister and Forestry; and
 - (iii) provide the Site Audit Report and Site Audit Statement to the Minister along with any supporting documents pursuant to which the report and statement were prepared.
- (b) The Developer indemnifies and agrees to keep indemnified the Minister and Forestry against all Claims made against the Minister or Forestry as a result of any Contamination that is required to be remediated by an Authority over the whole or any part of the Forest Dedication Land but only in relation to Contamination that existed on or before the date that the relevant part of the Forest Dedication Land is transferred or dedicated or compulsorily acquired pursuant to this deed and only to the extent that such Contamination makes the Forest Dedication Land unsuitable for the public reserve, park or recreational uses, including for public access.

3.7 Encumbrances and affectations

- (a) The Forest Dedication Land is to be dedicated free of all encumbrances (including any mortgages, easements, covenants and planning agreements, other than this deed) and affectations (including any charge or liability for rates, Taxes and charges) other than the Permitted Easements or such other encumbrances as agreed by Forestry in writing in accordance with this clause 3.7.
- (b) For avoidance of doubt, clause 3.7(a) of this Schedule 4 does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the Developer could not prevent from affecting the Forest Dedication Land and in respect of which no action can be taken by the Developer.

- (c) Despite clause 3.7(a) of this Schedule 4, if, despite having used its best endeavours, the Developer cannot ensure that the Forest Dedication Land is free from any relevant encumbrance and affectation (other than Permitted Encumbrances) which would otherwise be the subject of clause 3.7(a), then:
 - (i) the Developer may request that the Minister or the Minister's nominee agree to accept the land subject to those encumbrances and affectations; and
 - (ii) the Minister may accept or refuse to accept the land subject to those encumbrances and/or affectations at the Minister's absolute discretion.
- (d) The Developer will pay all rates and Taxes owing in respect of the Forest Dedication Land up to and including the date that the Developer delivers the form of transfer and certificates of title (if required) for the Forest Dedication Land or dedicates the Forest Dedication Land pursuant to clause 3.1 of this Schedule 4 or the date of acquisition (as applicable), after which time the Minister or Minister's nominee will be responsible for any rates and Taxes in relation to the Forest Dedication Land.
- (e) The Minister is not to unreasonably withhold its acceptance of the Forest Dedication Land if the Developer has complied with all its obligations in respect of the Forest Dedication Land under this deed which are required to be complied with prior to or concurrent with such dedication.

3.8 Access to Forest Dedication Land before and after transfer

- (a) Prior to the dedication of the Forest Dedication Land, the Developer must allow the Minister (and every person authorised by either or both of them) full and free right to enter the Forest Dedication Land and to go, pass and repass at all times (with or without vehicles) within the Forest Dedication Land for the purposes of inspecting any works required to be carried out under this deed provided the Minister first provides 5 Business Days notice to the Developer and subject to the Minister and its authorised persons complying with the work, health and safety requirements of the Developer.
- (b) Following the dedication of the Forest Dedication Land, the Minister will ensure that Forestry will allow the Developer (and every person authorised by either or both of them) full and free right to enter the Forest Dedication Land and to go, pass and repass at all times (with or without vehicles) within the Forest Dedication Land for the purposes of facilitating the Development including but not limited to crane jib swing, sewer maintenance works, civil works, stormwater or water quality works provided the Developer first provides reasonable notice to the Minister (and if relevant the Minister's nominee to whom the land has been dedicated) and obtains the Minister's and the Minister's nominee's written approval to such access (such approval being at the Minister's and Minister's nominee's absolute discretion and with or without conditions) and subject to the Developer and its

authorised persons complying with the work, health and safety requirements and any other conditions of the Minister and Minister's nominee.

- (c) The Minister must not unreasonably delay in making a determination on any request for access made by the Developer under clause 3.8(b).

3.9 Variation to boundary of Forest Dedication Land

- (a) At any time after the boundaries of the Forest Dedication Land are identified by survey, the Developer may make a written request to the Minister that the Minister approve a change to the boundaries of the Forest Dedication Land, including a change to the area of the Forest Dedication Land.
- (b) The Minister may approve or refuse approval to a request under clause 3.9(a) of this Schedule 4 in its absolute discretion.
- (c) On approval by the Minister of a written request under clause 3.9(b), clause 1 of this Schedule 4 of this deed is deemed to have been varied to reflect the revised boundaries of the Forest Dedication Land and no amendment to this deed is required.
- (d) The Minister may request a change to the boundaries of the Forest Dedication Land, and paragraphs (a) to (c) of this clause 3.9 apply to such a request, with references to the Developer read as the Minister, and references to the Minister read as the Developer.

3.10 Compulsory Acquisition

- (a) If the Developer does not transfer or dedicate the Forest Dedication Land as required by this Schedule 4, the Minister may elect to compulsorily acquire, and the Developer consents to the Minister compulsorily acquiring the Forest Dedication Land or the part thereof in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Developer and Minister agree that:
 - (i) this clause 3.10 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 3.10 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that the Forest Dedication Land or relevant part is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges) other than the Permitted Easements, on the date that the Minister acquires the Forest Dedication Land or relevant part.

- (d) The Developer indemnifies and keeps indemnified the Minister against all Claims made against the Minister as a result of any acquisition by the Minister of the whole or any part of the Forest Dedication Land under this clause 3.10.
- (e) The Developer must pay the Minister, promptly on demand, an amount equivalent to all Costs incurred by Forestry or the Minister in the Minister acquiring the whole or any part of the Forest Dedication Land as contemplated by this clause 3.10.

4. Bridge Work

4.1 Carrying out of Bridge Work

- (a) Without limiting any other provision of this deed, the Bridge Work is to be carried out generally in accordance with the design specified on the Engineering Plans and in accordance with any requisite Approval and any other applicable law.
- (b) Other than any modifications proposed or required by an Authority, the Developer is to obtain the consent of the Minister to any modifications proposed by the Developer that are not generally in accordance with the design specified on the Engineering Plans. [
- (c) In considering any request for consent made pursuant to clause 4.1(b), the Minister must act reasonably, consider the circumstances surrounding the Development Application process and respond promptly to the Developer's request.
- (d) The Developer is to maintain the Bridge Work until it is completed for the purposes of this deed or such later time as agreed between the Parties.
- (e) The Developer is to carry out its obligation under this clause 4.1 of Schedule 4 at its own cost.

4.2 Completion of Bridge Work

- (a) The Developer is to give the Minister written notice of the date on which it will complete the Bridge Work.
- (b) The Minister is to inspect the Bridge Work within 14 days of the date specified in the notice provided under paragraph (a).
- (c) The Bridge Work is completed for the purposes of this deed when the Minister, acting reasonably, gives a written notice to the Developer to that effect.
- (d) The Minister or the Minister's nominee assumes responsibility for the Bridge Work when it becomes the owner of the Forest Dedication Land.

- (e) Before the Minister gives the Developer a notice referred to in clause 4.2(c) of this Schedule 4, it may give the Developer a written direction to complete, rectify or repair the Bridge Work to the Minister's reasonable satisfaction.
- (f) The Developer, at its own cost, is to promptly comply with a direction referred to in clause 4.2(e) of this Schedule 4.

4.3 Rectification of defects

- (a) The Minister may give the Developer a Rectification Notice in respect of the Bridge Work during the Defects Liability Period.
- (b) The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Minister.
- (c) The Minister is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice.

4.4 Works-As-Executed-Plan

- (a) No later than 60 days after the Bridge Work is completed for the purposes of this deed, the Developer is to submit to the Minister a full works-as-executed-plan in respect of the Bridge Work.
- (b) The Developer gives the Minister and agrees to give the Minister's nominee a non-exclusive licence to use the copyright in the plans for the purposes of this deed.

5. Risk, release, indemnity and insurance

5.1 Risk, release and indemnity

- (a) The Developer performs this deed at its own risk.
- (b) The Developer releases the Minister and Forestry from all Claims arising from, and any Costs incurred in connection with, the performance of the Developer's obligations under this deed, except to the extent such Claim or Cost is caused or contributed to by the negligent act, negligent omission or default of this deed by the Minister.
- (c) The Developer indemnifies and must keep indemnified the Minister and Forestry against any Claim and any Costs incurred in connection with:
 - (i) loss of or damage to property of the Minister or Forestry, or property under the control and management of the Minister or Forestry; and
 - (ii) Claims by any person against the Minister or Forestry in respect of personal injury or death or loss of or damage to any property,

arising from or as consequence of the Developer carrying out its obligations under this deed, except to the extent such Claim or Cost is caused or contributed to by the negligent act, negligent omission or default of this deed by the Minister or Forestry.

5.2 Insurance

- (a) Prior to the carrying out of work under this deed, the Developer must effect and maintain current the following insurances up until the work is taken to have been completed in accordance with this deed:
 - (i) a public liability policy of insurance for an amount in respect of any one occurrence of not less than \$20,000,000;
 - (ii) a worker's compensation policy or any other insurances required by Law; and
 - (iii) such other insurances as are reasonably requested by the Licensor.
- (b) The Developer is not to commence work unless it has first provided to the Minister satisfactory written evidence of all of the insurances specified in clause 5.2(a).
- (c) The Developer's obligation to effect the insurances required under this clause 5.2 will be satisfied if contained in any global policy of insurance maintained by the Developer or the Developer's group of companies which covers the Developer's obligations under this deed.

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the “Minister administering the Environmental Planning and Assessment Act 1979” and the “Department of Planning and Environment ABN 20 770 707 468” as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Security

- (a) At the time the Developer signs this deed, the Developer must provide the Security to the Minister having a face value amount of \$200,000 (**Security Amount**) in order to secure the Developer’s obligations under this deed.
- (b) 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 Security.

3. Claims under the Security

- (a) The Minister may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount for the Development on or after the date for payment under this deed or to comply with any other of its obligation 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 Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon the Security; and

- (ii) applies all or part of such monies towards any Contribution Amount or any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
- (iii) has notified the Developer of the call upon the Security in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this Schedule, the Minister is in possession of the Security for a face value equivalent to the Security Amount.

4. Release of Security

- (a) If:
 - (i) the Developer has satisfied all of its obligations under this deed secured by the Security; and
 - (ii) the whole of the monies secured by the Security has not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

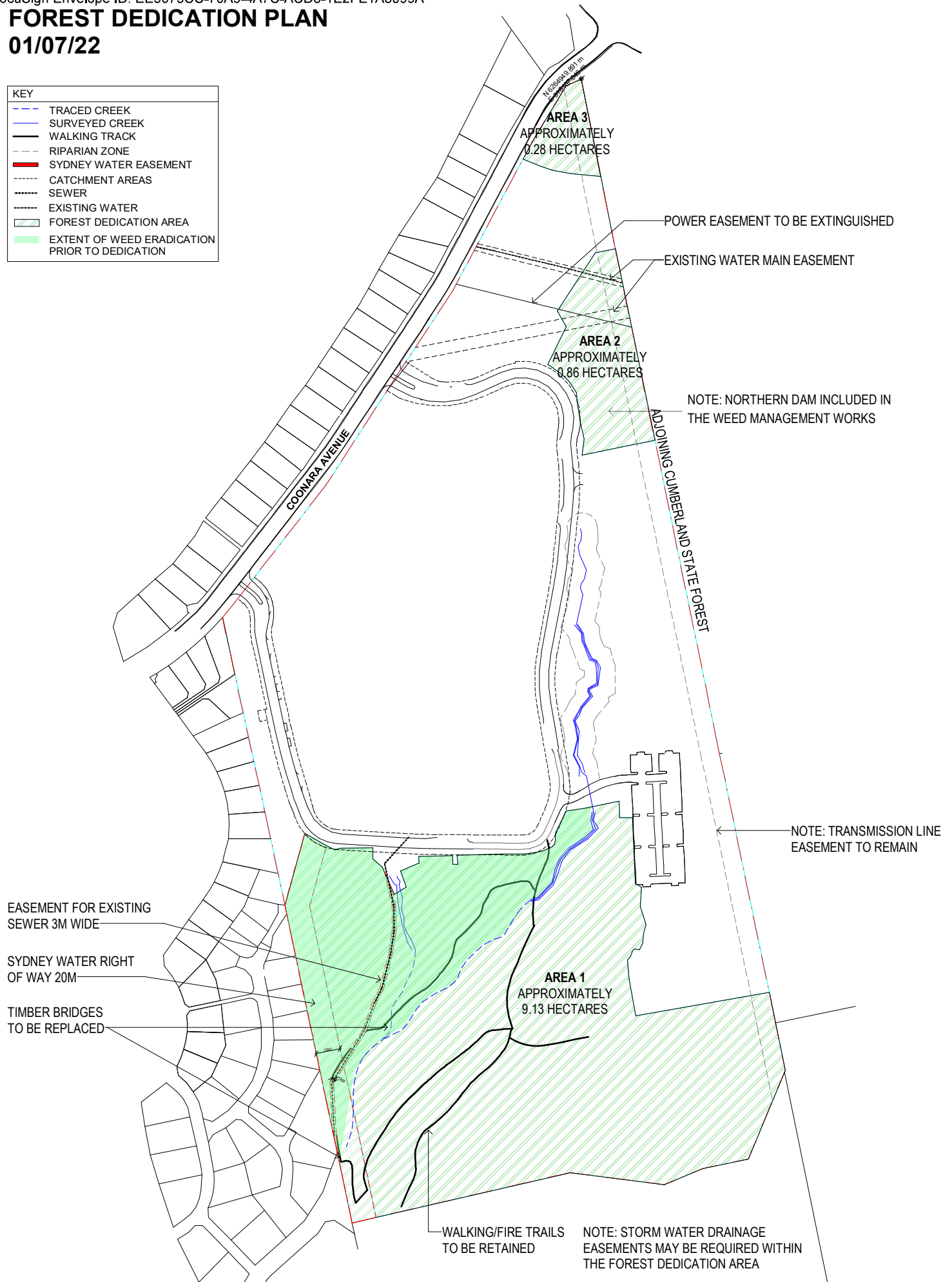
then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Security (as the case may be), to the Developer.

Schedule 6

Forest Dedication Plan & Engineering Plans (clause 1.1)

FOREST DEDICATION PLAN**01/07/22**

| KEY | |
|-----|--|
| | TRACED CREEK |
| | SURVEYED CREEK |
| | WALKING TRACK |
| | RIPARIAN ZONE |
| | SYDNEY WATER EASEMENT |
| | CATCHMENT AREAS |
| | SEWER |
| | EXISTING WATER |
| | FOREST DEDICATION AREA |
| | EXTENT OF WEED ERADICATION PRIOR TO DEDICATION |

TOTAL FOREST DEDICATION AREA - **10.27 HECTARES**

KSpence

ELEVATED WALKING PLATFORMS

55 COONARA AVE, WEST PENNANT HILLS 2125 NSW
STRUCTURAL DOCUMENTATION



SITE LOCALITY PLAN

| DRAWING LIST | |
|--------------|---------------------------------------|
| SSK-00 | COVER SHEET AND DRAWING LIST |
| SSK-01 | SPECIFICATION NOTES |
| SSK-08.1 | PLAN AND ELEVATION WALKING PLATFORM 1 |
| SSK-08.2 | PLAN WALKING PLATFORM 2 |
| SSK-11 | DETAILS |

DESIGNED: M. HARRIS
DRAWN: M. HARRIS
JOB MANAGER: T. PETER
VERIFIED: N.A.

| REV | DESCRIPTION | SSK-00 | SSK-01 | SSK-02 | DATE | CLIENT |
|-----|----------------|--------|--------|--------|----------|--------|
| 1 | CONCEPT DESIGN | MB | MB | MB | 22/03/21 | |
| 2 | ISSUE FOR QA | MB | TD | MB | 25/02/22 | |
| | | | | | | |
| | | | | | | |
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ARCHITECT

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Sydney
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PROJECT

ELEVATED WALKING PLATFORMS
55 COONARA AVE, WEST
PENNANT HILLS 2125 NSW

DRAWING TITLE

STRUCTURAL DRAWING
COVER SHEET AND
DRAWING LIST

JOB NUMBER

S210848

DRAWING NUMBER

SSK-00

REVISION

2

DRAWING SHEET SIZE

A1

CONSTRUCTION CERTIFICATE ONLY

DRAWING SHEET SIZE = A1



SCALE 150



SCALE 150



SCALE 150

SCALE 150

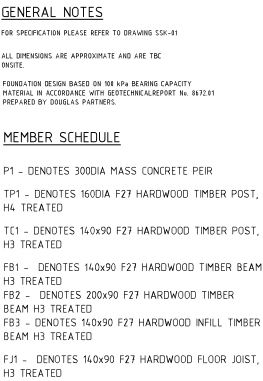
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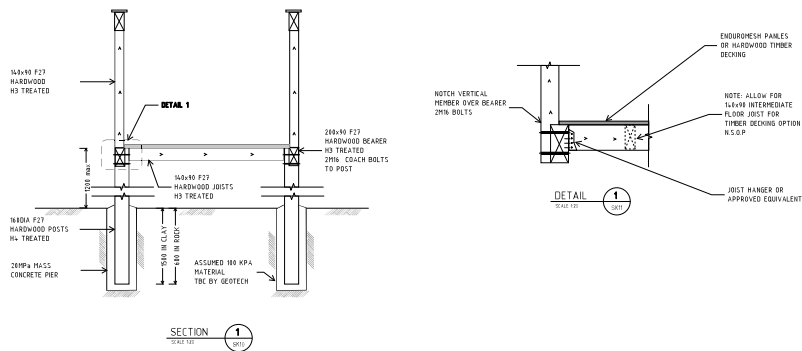
| | |
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| JOB NUMBER | |
| S210848 | |
| DRAWING NUMBER | REVISION |
| SSK-10.1 | 3 |
| DRAWING SHEET SIZE = A1 | |




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|--|------------------------|------|--------|-------|----------|--------|---|--|--|--|--------------------------|
| REV | DESCRIPTION | SUBJ | ISSUED | ADP'S | DATE | CLIENT | ARCHITECT |   | PROJECT | DRAWING TITLE | NO. SHEETS |
| 1 | CONCEPT DESIGN | HB | TS | NO | 23.07.21 | | | <p>ALL STUDY TO ARCHITECT'S DRAWING.</p> <p>DEVELOPMENTS TO BE WORKED WITH ARCHITECT AND ISSUED BEFORE COMMENCEMENT OF CONSTRUCTION.</p> <p>THIS WORK, NORTHROP ACCEPTS NO RESPONSIBILITY FOR THE QUALITY, COMPLETENESS OR SCALE OF DRAWING, TRANSMISSIONS, ETC.</p> <p>Sydney</p> <p>Level 11, 30 George Street, Sydney, N.S.W., 2000 Ph: 02 9241 4100 Fax: 02 9241 4101 Email: info@northrop.com.au Web: www.northrop.com.au</p> | ELEVATED WALKING PLATFORMS 55 COONARA AVE, WEST PENNANT HILLS 2125 NSW | STRUCTURAL DRAWING PLAN AND ELEVATION WALKING PLATFORM 2 | S210848 |
| 2 | REVISED CONCEPT DESIGN | HB | TS | NO | 26.08.21 | | | | | | ISSUING OFFICE: HETSON |
| 3 | ISSUE FOR BA | HB | TS | NO | 25.02.22 | | | | | | SSK-10.2 3 |
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GENERAL NOTES

FOR SPECIFICATION PLEASE REFER TO DRAWING SSK-01



DESIGNED: M. HARRIS
DRAWN: M. HARRIS
CHECKED: M. HARRIS
APPROVED: M. HARRIS

| REV. | DESCRIPTION | SSK | REV | DATE | CLIENT |
|------|----------------|-----|-----|-------------|---|
| 1 | CONCEPT DESIGN | MB | MB | 23.03.23 |  |
| 2 | ISSUE FOR DA | MB | TO | MB 25.02.23 | |
| | | | | | |
| | | | | | |

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DRAWN: M. HARRIS
CHECKED: M. HARRIS
APPROVED: M. HARRIS

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PROJECT
ELEVATED WALKING PLATFORMS
95 COONARA AVE, WEST
PENNANT HILLS 2125 NSW

| DRAWING TITLE | | JOB NUMBER | |
|-------------------------------|--|------------------------|----------|
| STRUCTURAL DRAWING DETAILS | | S210848 | |
| | | DRAWING NUMBER | REVISION |
| | | SSK-11 | 2 |
| | | DRAWING SHEET SIZE: A1 | |

Schedule 7

ArborSafe Report (clause 1.1)

Summary Report – ArborSite Visual Tree Assessment Report summary for 55 Coonara Avenue

Date Assessment Commenced: 23 August 2021

Product delivered: ArborSite Annualised Report

Location: 55 Coonara Avenue, West Pennant Hills NSW

Consulting Arborist/s: Tom Axford | Dip. Hort. (Arb.), Grad Cert (Arb.), AQF Level 8

Total number of trees assessed: 637 (This may not be the total quantity of trees on the site).

The total tree database including previous removals is now 642.

Number of trees added to database at this inspection: 172 (#s 471-642).

The assessment rated the six hundred and thirty-seven (637) surveyed trees into the following risk categories:

- 0 Critical risk trees
- 0 Urgent risk trees
- 9 High risk trees # 70 89 104 120 153 241 256 259 317
- 194 Medium risk trees
- 302 Low risk trees
- 113 Very Low risk trees
- 19 Negligible risk trees

Summary of tree removals specified as remedial works actions

There are fifty-one (51) trees recommended for removal in the following risk categories:

- 3 High risk trees # 89 104 120
- 39 Medium risk trees # 82 124 206 210 229 249 251 275 285 295 342 350 365 393 400 408 429 431 445 450 454 455 456 463 464 468 469 470 478 528 549 551 585 586 587 589 621 629 630
- 6 Low risk trees # 286 288 294 302 339 389
- 1 Very low risk tree # 331

For reasoning behind the recommendation for removal of each tree, you can locate these trees within your ArborSite report folder by going to the Risk Works Budget & Scheduling tab and looking in the "Work Required" column and search for the word "Removal" as the work specification.

Alternatively, if your contract provides you with access to the ArborSafe software, within the interactive mapping software (once you have logged on to your site) select the Advanced Search option on the toolbar above the site map and, under Arborist Actions, select "Removal" and "Removal – Poor Specimen", then the Search button. Right click on each tree's icon and select "Show Tree's Data" to review the tree assessment and recommendations in detail.

Summary of trees requiring further testing, reporting or specific works actions

Please see ArborSite Report for further details regarding any of the following recommendations.

Sonic Tomograph testing (e.g. PiCUS®) – one (1) tree:

- 1 Medium risk tree – # 4

Aerial Inspection of defects – four (4) trees:

- 4 Medium risk trees – # 224 228 246 326

In relation to the need for these additional tests and reports, it should be noted that many councils now require the detail of these qualified additional reports and testing, along with the documentation that goes with them, to accept the need to remove significant trees from your landscape.

For further information regarding any of the above see [Further Reporting and Testing Guides](#).

All remedial and arboricultural works are recommended to be performed to specifications detailed within the report and all works are recommended to be to Australian Standard AS 4373–2007: *Pruning of Amenity Trees* and performed by a minimum AQF level 3 qualified arborist.

Schedule 8

Weed Management Plan (clause 1.1)

Weed Management and Regeneration Plan

55 Coonara Avenue, West Pennant Hills



Prepared by Bushland Management Solutions Pty Ltd –(Updated June 2022)

PO Box 476, Eastwood NSW 2122

www.hillsbushcare.com.au

Email: hillsbush@bigpond.com

Prepared on behalf of Mirvac Projects (Retail and Commercial) Pty Ltd

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1. Overview

Aim – to provide a framework to restore native vegetation and enhance biodiversity in the area of bushland to be dedicated to the NSW State Government and be managed by the Forestry Corporation of NSW (as per figure 4). The areas covered by the works program are Area 2 – the Top Dam and Surrounds (figure 4) and the restoration area marked in green in figure 4.

Consultation – the document has been prepared in collaboration with Mirvac and has adopted the framework of The Hills Shire Council “Guide to Vegetation Management Planning” and the Greater Sydney Regional Strategic Weed Management Plan 2017 - 2022.

Limitations and assumptions

Previous investigations relating to assessing vegetation and fauna values on site has been done by Keystone Ecological “Biodiversity Development Assessment Report, Demolition Stage” (2021), which addresses key legislative requirements and site data.

No new fauna surveys have been conducted by Bushland Management Solutions Pty Ltd in the preparation of this plan, however best practice guidance for the protection and enhancement of fauna with known potential to occur on site or with the potential to occur on site have been incorporated.

2. Background

2.1. Site description

The development site is within Lot 61 DP 737386, 55 Coonara Avenue, West Pennant Hills, in The Hills LGA. The subject lot is approximately 26 hectares in extent, and houses the now-vacated headquarters for IBM, which was then zoned as B7 Business Park. The subject lot is now rezoned with a mixture of R3 and R4 Residential, and E2 Environmental Conservation lands, reflecting the environmental values and development potential of the site. The subdivision also reflects this zoning.

As part of the redevelopment of the site Mirvac is proposing to dedicate circa 10 hectares of forest zoned E2 Environmental Conservation to the NSW Government for public access which is to be managed by Forestry Corporation of NSW. As part of this process Mirvac are proposing to rehabilitate the section of the dedication area outlined in figure 4 as 'extent of weed eradication'. The top dam zone outlined in Area 2 (figure 4), is also included in this plan. This zone is currently infested with *Ludwigia* around the dam, and woody weeds such as Privet and Lantana in the dam surrounds. A rehabilitation program for these two areas is outlined in this report.

2.2. History of vegetation – adjoining lands Cumberland State Forest

Extract Forestry Corporation of NSW Website (Website: Forestry Corporation - Cumberland State Forest)

Australia's only metropolitan state forest, Cumberland State Forest, is located at 95 Castle Hill Road West Pennant Hills, Sydney, only half an hour from the CBD.

Cumberland State Forest contains 40 hectares of native forest. The original privately-owned land was cleared in 1908. In 1938 its management was taken over by the then NSW Forestry Commission and was dedicated as a State forest in 1939. One third of the land was planted as an arboretum while the rest was allowed to regenerate naturally.

Enjoy a forest walk, picnic or barbecue, discover the surprising diversity of wildlife in the forest on a guided walk as part of our extensive school holiday and activities program or participate in our volunteer program. Cumberland State Forest also runs a forest school education program.

Normal forest gate opening times are 8.30am - 5.00pm, except during daylight saving times where they are open 8.30am - 6.00pm.

The Cumberland State Forest is a significant regional recreation and conservation area and includes picnic facilities, walking tracks, and in recent years a high rope climbing course run commercially on site.

The Forest has had an active community Bushcare program for a number of years, who have done an excellent job removing invasive weeds and restoring native vegetation.

It should be noted that a large section of Cumberland State Forest includes an Arboretum which has historical plantings of many northern NSW and south east Queensland rainforest species installed as a trial of tree types for Forestry purposes (Loots 2020). Some of these species such as the native *Alphitonia excelsa* (Red Ash) were not naturally present in this area but have now become locally naturalised and spread into surrounding bushland and nearby bushland reserves (Frank Gasparre, Personal Comment). Some of the expanding species may require intervention to control their spread and enhance the natural values of the Blue Gum High Forest included.

The conservation value of the main Cumberland Forest area is significant and it is specifically listed in the maps associated with the listing of Blue Gum High Forest as a Critically Endangered Ecological Community at a Federal level under the Biodiversity Conservation Act (1999) – see legislation summary. The Forest Dedication Area (FDA) is also a high quality bushland remnant classified as Sydney Turpentine Ironbark Forest by Keystone, and grading into Blue Gum High Forest on the margins of the Cumberland State Forest.



FIGURE 1: INTACT CANOPY AT 55 COONARA AVENUE, WITH NATIVE AND WEEDY VINES IN THE FOREGROUND

3. Current state of vegetation

The broader Cumberland Forest area is in varied condition with scattered weeds on historically disturbed areas such as boundaries and waterways, but remains a significant area of natural forest with a diverse range of native species in all strata.

The Hills Shire Council Vegetation Mapping describes the Cumberland Forest reserve as a Blue Gum High Forest Plant Community. Keystone Ecological identified the area on the margins of the Mirvac development site as Sydney Turpentine Ironbark Forest with reference to the BDAR for Forest Types and Vegetation Mapping which grades into BGHF in the Cumberland State Forest Reserve. This categorisation matches the vegetation identified by our site inspections within the Forest Dedication Area (FDA) to be dedicated which is subject to this Vegetation Management Plan.

Blue Gum High Forest of The Sydney Bioregion is characterised as (NSW Scientific Committee Determination – see Appendix 1 for full details:

Blue Gum High Forest is dominated by a tall canopy of eucalypts that may exceed 30 m in height. Its understorey is typically multi-layered with a midstorey of mesophyllous shrubs and small trees and a diverse ground layer of herbs, ferns and some grasses.

Most stands of the community are in a state of regrowth after past clearing or logging activities, and consequently trees may be shorter, less dense or more dense than less disturbed stands. Blue Gum High Forest is dominated by either Eucalyptus pilularis (Blackbutt) or E. saligna (Sydney Blue Gum). Angophora costata (Smooth-barked Apple) is frequently observed in remnants close to the shale/sandstone boundary, but also occurs infrequently on deep shale soils, as does A. floribunda (Rough-barked Apple). Eucalyptus paniculata (Grey Ironbark) is typically found on upper slopes.

A relatively diverse stratum of small trees is usually present, and includes Pittosporum undulatum (Sweet Pittosporum), Elaeocarpus reticulatus (Blueberry Ash) and Allocasuarina torulosa (Forest Oak). Shrub species are typically mesophyllous, such as Breynia oblongifolia (Coffee Bush), Pittosporum revolutum, (Yellow Pittosporum), Clerodendrum tomentosum, Notelaea longifolia forma longifolia (Large Mock-olive), Maytenus sylvestris (Narrow-leaved Orange Bark), Polyscias sambucifolia subsp. A (Elderberry Panax) and Rapanea variabilis (Muttonwood). Mesophyllous species are generally more common in gullies associated with both shale and volcanic soils than slopes and ridgetops. Sclerophyllous species such as Persoonia linearis (Narrow-leaved Geebung) and Leucopogon juniperinum (Prickly Bearded-heath) occur more frequently closer to the shale/sandstone boundary.

The ground stratum is often dense and contains a mixture of herb, grass and fern species including Adiantum aethiopicum, Entolasia marginata (Bordered Panic), Lomandra longifolia (Spiny-headed Matrush), Calochlaena dubia (Common Groundfern), Dianella caerulea (Blue Flax Lily), Pseuderanthemum variabile (Pastel Flower) and Oplismenus imbecillis. Vine species are also frequently present, in particular Tylophora barbata (Bearded Tylophora), Eustrephus latifolia, (Wombat Berry), Clematis aristata (Old Man's Beard) and Pandorea pandorana (Wonga Wonga Vine).

4. Weeds within the Forest Dedication Area

As with most areas of urban bushland there is a significant presence of introduced weeds within the Forest Dedication area and the main Cumberland Forest Reserve.

A listing of the main weed species is included in Appendix 3, including methods of control. A key weed in the Top Dam area is *Ludwigia peruviana* which is a

This report outlines a restoration plan to remove weeds over time and restore and enhance the natural Biodiversity of the site, including flora and fauna.

5. Weeds within the Top Dam Zone (Area 2)

The top dam zone is heavily weed impacted with woody weeds such as Privet and Lantana, with a very entrenched population of *Ludwigia Peruviana* (Water Primrose) surrounding the dam edge and encroaching over the dam. This *Ludwigia* infestation has been in existence at least since the 1980's with occasional attempts to control it, but with a lack of continuity of effort meaning the infestation is still significant and hard to control. *Ludwigia* is identified by DPI as a priority weed in NSW. The DPI state that:

Ludwigia peruviana: Regional Recommended Measure* (for Regional Priority - Asset Protection)

- Land managers mitigate the risk of the plant being introduced to their land.
- **Land managers prevent spread from their land where feasible.**
- **Land managers reduce the impact on priority assets.**
- The plant should not be bought, sold, grown, carried or released into the environment. Local Control Authority is notified if the plant is found on the land.

There is a significant mix of native species on site including canopy species of Ironbark's and Blue Gums, however the understorey is dominated by woody weeds interspersed with native species such as Cheese Tree, *Pittosporum*, and *Polyscias*. Ground layer diversity throughout the rest of the site is good and it is anticipated that with the removal of woody weeds, that natural regeneration will be good.



FIGURE 2: LUDWIGIA IN THE FOREGROUND SURROUNDING DAM, WOODY WEEDS IN THE BACKGROUND

6. Fauna Issues

The Keystone report identified 6 fauna species of concern for which habitat would need to be managed appropriately in the vicinity of the Cumberland State Forest:

- Pommerhelix duralensis - Dural Land Snail
- Ninox strenua - Powerful Owl
- Saccolaimus flaviventris - Yellow-bellied Sheath-tail-bat
- Micronomus norfolkensis - Eastern Coastal Free-tailed Bat
- Falsistrellus tasmaniensis - Eastern False Pipistrelle
- Broad-nosed Bat - (calls impossible to distinguish)

The large top dam also services a significant role for frogs, insects and other fauna and retention of habitat while weed control works will remain a significant issue.

Best practice management to minimize negative impacts on these fauna species requires the following approach:

- Inspect for presence of live animals or roosting sites prior to commencing clearing works to avoid disruption to key breeding cycles
- Clear in a staged manner to not remove all habitat in an area in one season
- Ensure that suitable habitat replacement is considered either through management of natural regeneration or targeted planting of suitable species and recreation of habitat structure.

7. Legal status

The plant community types of Sydney Turpentine Ironbark Forest and Blue Gum High Forest of the Sydney Bioregion are listed as a Critically Endangered Ecological community under the NSW Biodiversity Conservation Act (2016).

These community types have also been listed as Critically Endangered under the Federal Environment Protection and Biodiversity Conservation Act (1999) with an aim of:

- Preventing further clearing or fragmentation of the ecological community;
- Create buffer zones and link fragments through restoration of remnants;
- Manage weed infestations, and
- Develop and implement appropriate management regimes to prevent further loss or decline

The proposed rehabilitation plan complies with the best practice guidelines for this plant community and the aims of the listing at both state and federal level and will not have a significant impact on the remaining bushland that requires referral to either the NSW Biodiversity Conservation Trust or the Australian National Government Department of Agriculture Water and the Environment.



FIGURE 3: DENSE WOODY WEEDS AND VINES IN THE NORTH WESTERN PORTION OF THE DEDICATION AREA

8. Objectives of the rehabilitation plan

- To provide a program of key actions and milestones to regenerate and enhance the Biodiversity values of the dedication area to be allocated to the management of the Cumberland Forest
- To implement best practice restoration techniques to reduce weed densities and maximise native diversity in a manner that considers habitat needs of local fauna species including Threatened Fauna that may use the site on a casual or semi permanent, or permanent basis.

9. Key Tasks

- Weed control
- Protection of native vegetation and seedbank
- Promotion of regeneration of native species
- Protecting and enhancing fauna habitat
- Preventing negative outcomes such as erosion



FIGURE 4: AN EXCELLENT DIVERSITY OF NATIVE FLORA, BUT WOODY WEEDS SUCH AS OCHNA AND PRIVET SCATTERED THROUGHOUT THE BUSH LOT AT 55 COONARA AVENUE.

10. Definitions

The practice of restoring degraded ecological communities has advanced significantly in recent decades. Some useful terms outlining elements of the restoration process are outlined in Table 1.

| Table 1: Key terms and processes | | |
|----------------------------------|---|--|
| Term | Definition | Explanatory note |
| Resilience | The capacity of an ecosystem to absorb disturbance including human land use impacts and recover while still retaining similar function, structure, and feedbacks. | <p>The Forest Dedication Area (FDA) has had a number of historical impacts including early agricultural use and clearing, more recently drainage infrastructure and urban runoff, and over time the introduction and spread of introduced weed species.</p> <p>In addition the natural fire regime has been significantly altered.</p> <p>Despite these long term impacts the FDA (Forest Dedication Area) retains a high level of resilience and responds excellently when weeds and other threats are managed.</p> |
| Recovery | The process of an ecosystem regaining its composition, structure and function Following disturbance or change. | The process of the area moving in a positive direction towards the desired natural and diverse ecosystem including key processes such as fauna habitat, germination of different species and replacement of key elements such as mature canopy and a diverse range of understorey species. |
| Threat | A factor potentially or already causing degradation, damage or destruction. | <p>Natural areas can be impacted by many human impacts. The Forest Dedication area has a history of early, agricultural use, forestry, community recreation and is now, and one an important forest remnant at the head of a bushland corridor extending along Hunts Creek, from West Pennant Hills through Carlingford, and down towards Lake Parramatta Reserve.</p> <p>Key threats include runoff, weed invasion, changed fire regime, climate change, changed hydrology and soil nutrients, and encroachments.</p> |

Table 2: Strategies for regeneration

| Term | Explanation | Comment |
|-------------------------------------|---|--|
| Natural regeneration | Where natural processes such as seedling germination, pollination, soil disturbance and other processes are supported to encourage the natural resilience of the site to produce recruitment of new native plants and restore the health of existing native plants. | In the low weed density areas of the FDA simple removal of the weeds will promote natural regeneration. We also propose using flame weeding in sections to control Trad (a creeping exotic ground cover) and stimulate recruitment of native species. |
| Assisted natural restoration | Intervention strategies to promote enhanced recovery, | Including weeding, scarification of soil, targeted application of fire, and planting. The use of nest boxes may be considered for fauna habitat where deemed appropriate by a qualified ecologist. Some of the boundary areas along roads and historical infrastructure may require planting to assist recovery of the site ecosystem. |
| Reconstruction | Completely restoring natural processes from a zero base of high level disturbance. | Not necessary at this site. |
| Primary clearing | The initial clearing process to remove weeds, and attempt to restore more natural vegetation and processes. | Requires intensive effort and a staged work plan that takes account of habitat needs, site constraints such as erosion potential, the need for sufficient resources to follow up and consolidate. |
| Secondary treatment | Repeated follow-up treatments, e.g. to control weed regrowth, required during the restoration phase after primary treatment has triggered an ecological response. | This is an essential stage in the restoration process, controlling weeds germinated during and following the primary stage, monitoring for problems arising, consolidating any native plant recruitment and ensuring that the desired recovery is in process. |
| Maintenance | This involves ongoing works to consolidate and restore natural restoration processes. | Ongoing control of germinating weeds, and protection of native plants establishing from competition or other threats such as uncontrolled recreational use – e.g. informal trails |
| | | |

11. Approach at the Forest Dedication Area (Area 1 and Area 2)

The FDA retains a diverse representation of native species that are typical of the Blue Gum High Forest Plant Community, and it is a very significant conservation resource. The incorporation of this quality bushland into the Cumberland State Forest will significantly enhance the total values of the forest.

The weeds present on site are those typical of a Wet Sclerophyll Forest located in an urban area such as West Pennant Hills.

Key weeds are listed in Appendix 3 including the preferred control measures.

The main weeds requiring control are:

| Table 3: Approach to the control of site weeds | | | | |
|--|--|---------|--------|-------|
| Canopy and mid storey | Description | Stage | | |
| | | Primary | Second | Maint |
| • Small and Large Leaved Privet | Prolific seed production, dense canopy that shades and outcompetes native species, easily spread from seed. | X | X | x |
| • Lantana | Fast dense growing scrambling shrub highly adapted to disturbed edges and drainage lines. Smothers all vegetation and spreads from disturbed areas into higher resilience areas. | X | X | x |
| • Camphor Laurel | Tall forest tree that prevents anything growing underneath its canopy. | X | X | x |
| • Isolated African Olive | An introduced rainforest tree, very extensive distribution in western Sydney. | X | X | x |
| • Ludwigia Peruviana | Water Primrose, aggressive regional priority weed that must be prevented from spreading from the site. | X | X | X |
| Vines | | | | |
| • Madeira Vine | A rapidly spreading vine that is very hard to eradicate due to the growth and spread of aerial tubers on the upper vine. | X | X | x |
| • Balloon Vine | A fast growing vine with fine aerial pods that spread easily. | X | X | x |
| • Honeysuckle | Very hard to eradicate creeper and vine with spreading surface roots. | X | X | x |
| • Morning Glory | Fast growing vine that smothers native vegetation. | X | X | x |
| • Ivy | Densely spreading on the ground eventually climbing and damaging trees. | X | X | x |
| Ground layer | | | | |
| • Ehrharta | A south African Grass that thrives in high nutrient moist disturbed soils of the Sydney area and displaces native grasses and prevents the establishment of new native plants. | | X | X |
| • Bridal Creeper | A hard to eradicate ground layer plant with tuberous roots that smothers native vegetation. | X | | X |
| • Crofton Weed | A fast spreading low weed that thrives in moist areas. | | X | X |
| • Farmers Friends | Annual weed with prolific seeds, fast growing | | X | X |

12. Approach to the Forest Dedication Area - top dam area (Area 2)

The top dam zone is heavily weed impacted with woody weeds such as Privet and Lantana, with a major infestation of a very entrenched population of *Ludwigia Peruviana* (Water Primrose) surrounding the dam edge and encroaching over the dam. This *Ludwigia* infestation has been in existence at least since the 1980's with occasional attempts to control it, but with a lack of continuity of effort meaning the infestation is still significant and hard to control. *Ludwigia* is identified by DPI as a priority weed in NSW. The DPI state that:

Ludwigia peruviana: *Regional Recommended Measure* (for Regional Priority - Asset Protection)*

- *Land managers mitigate the risk of the plant being introduced to their land.*
- ***Land managers prevent spread from their land where feasible.***
- *Land managers reduce the impact on priority assets.*
- *The plant should not be bought, sold, grown, carried or released into the environment. Local Control Authority is notified if the plant is found on the land.*

There is a significant mix of native species on site including canopy species of Ironbark's and Blue Gums, however the understorey is dominated by woody weeds interspersed with native species such as Cheese Tree, Pittosporum, and Polyscias. Ground layer diversity throughout the rest of the site is good and it is anticipated that with the removal of woody weeds, that natural regeneration will be good.



FIGURE 5: LUDWIGIA SURROUNDING DAM (FOREGROUND), WOODY WEEDS IN BACKGROUND

13. General approach to this site

| Stage | Approach |
|-----------------------------|--|
| Primary weeding | <p>Normal regeneration programs would not remove more than 30% of an area of woody weeds in one annual program, however as this site adjoins the much larger Cumberland Forest which includes a range of habitats ranging from dense understorey to open canopy there is a sufficient diversity of habitat to maintain local fauna populations.</p> <p>Work progress should be monitored to ensure that no essential habitat for vulnerable or endangered species which have been recorded previously within Lot 61 DP 737386, 55 Coonara Avenue, West Pennant Hills such as the powerful owl (<i>Ninox strenua</i>) and Cumberland Land Snail (<i>Pommerhelix duralensis</i>) is removed or any other breeding or foraging sites removed.</p> |
| Secondary | Visits between 4 to 6 weekly intervals to ensure that weeds do not reach seeding age and do not inhibit germinating native species. |
| Follow up | Visits at an average 6 – 8 weekly interval to maintain low weed seedbanks and ensure that any germinating natives reach maturity. |
| Planting | <p>Natural regeneration should be sufficient for the majority of the site, however at several locations there are disturbed fill batters along the edge of the roadway or in the vicinity of the Sydney water infrastructure works. A nominal number of plants estimated at 1000 per annum can be provided for the first 3 years to embellish areas of poor recruitment or establish plant cover more quickly in areas that may be erosion prone. Plants should be no larger than tubestock and sourced from the local area and suitable for the community type in the ecotone to be planted.</p> |
| Community awareness | Local residents may wish to keep abreast of the program and its progress and a guided walk explaining the works and outcomes being achieved may be beneficial on an annual basis. |
| Fire Management Note | <p>The ecology of both Sydney Turpentine Ironbark Forest and Blue Gum High Forest has important interactions with fire regimes and fire management. This proposal assumes that the FDA will be managed as part of the wider fire management programming of the Cumberland Forest and is not explored in detail.</p> <p>Flame weeding may be used as a very localised tool to reconstruct aspects of fire management, however this will be very localised in nature and small scale.</p> |

FOREST DEDICATION PLAN
22/01/21

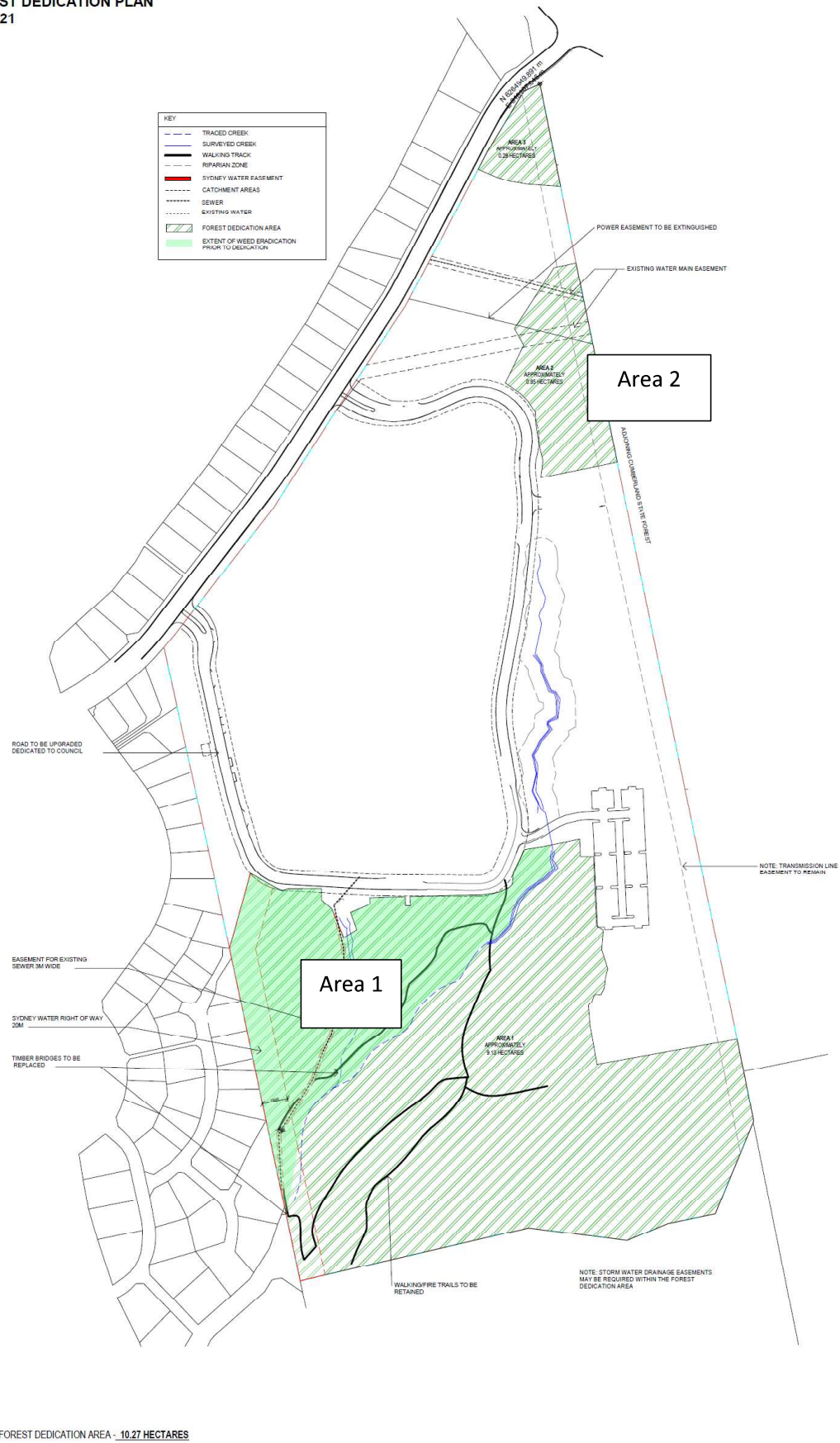


FIGURE 6: FOREST DEDICATION AREA



FIGURE 7: AERIAL IMAGE OF SURROUNDING AREA INCLUDING WEED ERADICATION AREA SHADED IN GREEN (APPROXIMATE AREA ONLY FOR ILLUSTRATION PURPOSES)



FIGURE 8: WEED CONTROL AND REHABILITATION AREA (APPROXIMATE)



FIGURE 9: RESTORATION AREA CURRENT WEED DENSITY -
GREEN = GOOD;
BLUE – FAIR;
ORANGE = POOR;
RED = VERY POOR

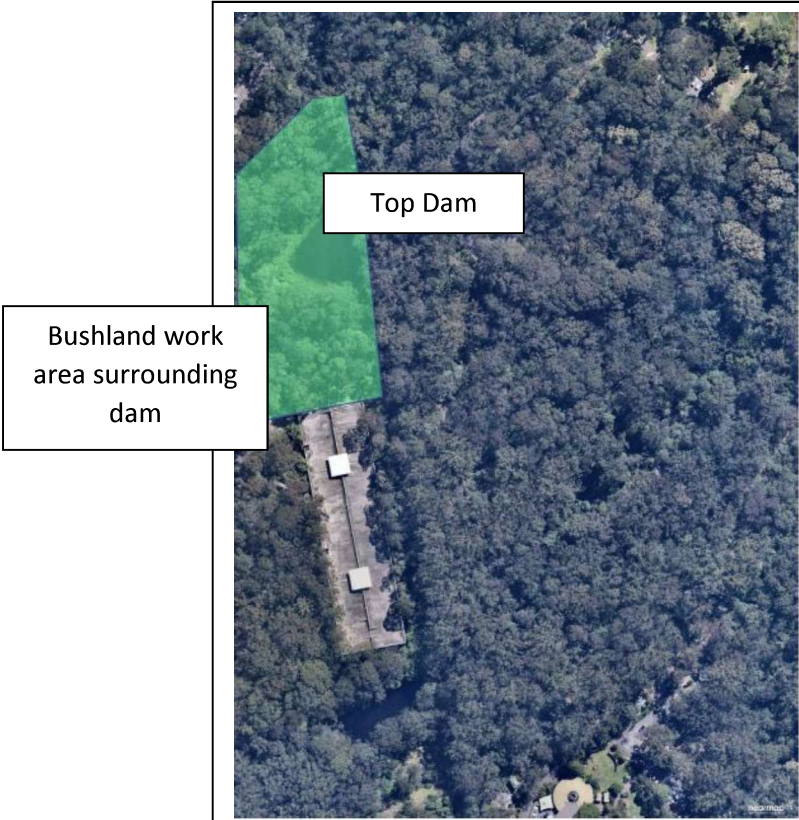


FIGURE 10: CLOSE UP VIEW OF DAM
AND SURROUNDS WORK AREA -
GREEN SHADING

| Task | Action | Approach | Outcome |
|--|---|---|---|
| Year 1: | | | |
| Primary weed removal | Cut and paint, chainsaw, stem inject large woody weeds including Privet, Lantana, Camphor Laurel, and other threats. Note - any evidence of breeding fauna or temporary use of a woody weed area as habitat should be assessed and any variation to the program adopted as per best practice. | The year 1 program can focus on the removal of all mature woody weeds and shrubs above a height of 50 centimetres. Note - Normal regeneration programs would not remove more than 30% of an area of woody weeds in one annual program, however as this site adjoins the much larger Cumberland Forest which includes a range of habitats ranging from dense understorey to open canopy there is a sufficient diversity of habitat to maintain local fauna populations ; reduce all other weeds to a density of less than 10% cover in any one area. Ongoing reductions in percentage weed cover in the APZ zone to less than 10% cover. | <ul style="list-style-type: none"> • Eradication of all mature woody weeds at completion of 12 months work program. • Ongoing control of all priority site weeds |
| Weedy vine control | Control aggressive introduced vine species including Madeira Vine, Passionfruit, Honeysuckle, Ivy and Morning Glory | Skirt vines in the canopy and control in the ground layer with hand weeding and spot spraying. Control regrowth with hand weeding and spot spraying. | <ul style="list-style-type: none"> • All mature vines are controlled within 12 months or program commencement. • Regrowth of vines is controlled on an ongoing basis. |
| Annual, grass and herbaceous weed control | Aim to control these species such as Bidens, Fire Weed, Ehrharta, and Nightshade prior to seed set. | Ensure that a sweep of the site is done at a minimum monthly interval to control any emerging or extant annual, grass or herbaceous weeds prior to seed set through hand weeding, brushcutting, or spot spraying. | <ul style="list-style-type: none"> • Coverage density no greater than 10% of total cover in any one area by the end of year 1. • Greater than 95% of seed set controlled. |

| | | | |
|------------------------|--|--|--|
| APZ maintenance | Control plant structure and density and reduce weed cover on the APZ to less than 10% cover. | Hand weed around natives, brushcut to keep vegetation low, and underprune and thin woody vegetation as required. | <ul style="list-style-type: none"> • Achieve all APZ fuel reduction and structure management goals • Weed levels less than 10% cover |
| | | | |

| Task | Action | Approach | Outcome |
|---------------------------------|--|--|--|
| Year 2 & 3: | | | |
| Secondary weed control | 4 to 6 weekly visits by an average team of 4 staff. | Control all regrowth of weeds in primary weeded areas, continue to reduce ground layer and mid storey weed density to less than 5% cover in any one area of the site and control all regrowth or weed recruitment prior to seed set. Targeted planting on boundaries or in disturbed areas where natural recruitment is minimal, or to prevent weed establishment through targeted competition with native plants. | Reduce over all weed density to less than 5% cover in any one area; no off target damage to native species during the application of herbicide for control; 90% survival rates for all planting. |
| Year 2 - APZ maintenance | Control plant structure and density and reduce weed cover on the APZ to less than 10% cover. | Hand weed around natives, brushcut to keep vegetation low, and underprune and thin woody vegetation as required. | Meet RFS Requirements for the APZ zone; reduce weed cover on the APZ to less than 10% cover. |

| Task | Action | Approach | Performance target |
|---------------------------|-------------------------------------|---|--|
| Year 4 & 5: | | | |
| Maintenance including APZ | 6 to 8 weekly visits in years 4 & 5 | Control all weed establishment and promote the consolidation and expansion of all desirable native plant establishment. | Reduce the presence of all priority weeds on site to less than 2% cover; reduce the cover of non native species in the APZ zone to less than 5% cover. |
| | | | |

14. Rehabilitation Strategy for Top Dam Ludwigia and Surrounds (Area 2)

| Year 1 Program | |
|---|---|
| Remove Ludwigia on a staged basis to maintain aquatic habitat around the dam. | Ludwigia – lower dam water level by up to 1 metre if possible. This will allow access to the larger sections of stem for the application of the stem scrape technique and also cut and paint where possible using Vigilant. Please note herbicides will be required to control this extensive long term Ludwigia infestation. The contractor will consult with the Department of Primary Industries regarding the registered and most effective chemicals causing the least environmental risk. 28 hours of team time on 15 occasions over the first 12 months. |
| | Spot spray Ludwigia, stem scrape main stems, and cut and paint with Vigilante where there is no risk of contamination of water. |
| Staged removal of woody weeds with no more than 33% coverage removed in any 12 month period. | Cut and paint medium to large woody weeds and use trunks for ground layer terracing and habitat enhancement. Chainsaws will be required. |
| Vine control noting any potential habitat values | Some fauna may roost in dense vine weeds and prior to clearing habitat value should be assessed. It is anticipated that over time native vines will replace the weeds removed and habitat will be restored. |
| Targeted ground cover and mid storey shrub planting to restore ground layer habitat for birds and other fauna around the dam | Thinning of larger woody weeds will see a thickening of canopy cover and density from the remaining native small tree species however ground layer native shrubs and low groundcovers will need |
| Control of aquatic weeds | The floating aquatic weed Nymphaea is present in the dam and will required control as well as other aquatic weeds that may emerge during the period of the vegetation management program. Please note herbicides will be required to control these weeds. The contractor will consult with the Department of Primary Industries regarding the registered and most effective chemicals causing the least environmental risk. |

| | |
|--|--|
| Planting | Embellishment planting using approximately 5000 tube stock. Including approximately 3000 grasses and ground covers and 2000 shrubs and medium to small trees. |
| Ongoing maintenance of weed control works to ensure that native recruitment is consolidated and weed seed banks depleted over time. | Maintenance visits in the first 3 months of works should occur fortnightly for this zone with a team of 4, scaling back to fortnightly with a team of 3 for 3 months, and then a team of 4 monthly after that for up to 3 years. |
| Year 2 Program | |
| Monthly visits with 8 staff | Control all weed regrowth in dam surrounds, ensure native recruitment is consolidated and protected from weed encroachment, reduce weed seed banks and expand native seed banks. |
| Year 3 - 5 Program | Continue to control all weed regrowth in dam surrounds, ensure native recruitment is consolidated and protected from weed encroachment, reduce weed seed banks and expand native seed banks. |
| Year 3 | Monthly visits with 6 staff |
| Year 4 | Monthly visits with 5 staff |
| Year 5 | Monthly visits with 4 staff |

15. Monitoring

Fixed photo points should be established at 5 points on site at project commencement with photos taken at 6 month intervals to be included in progress reports.

Annual mapping should be undertaken to reflect changes in weed density for the works program for each year.

An annual report outlining works completed and achievement of performance outcomes should be provided to Cumberland Forest, Mirvac and other stakeholders throughout the maintenance period.

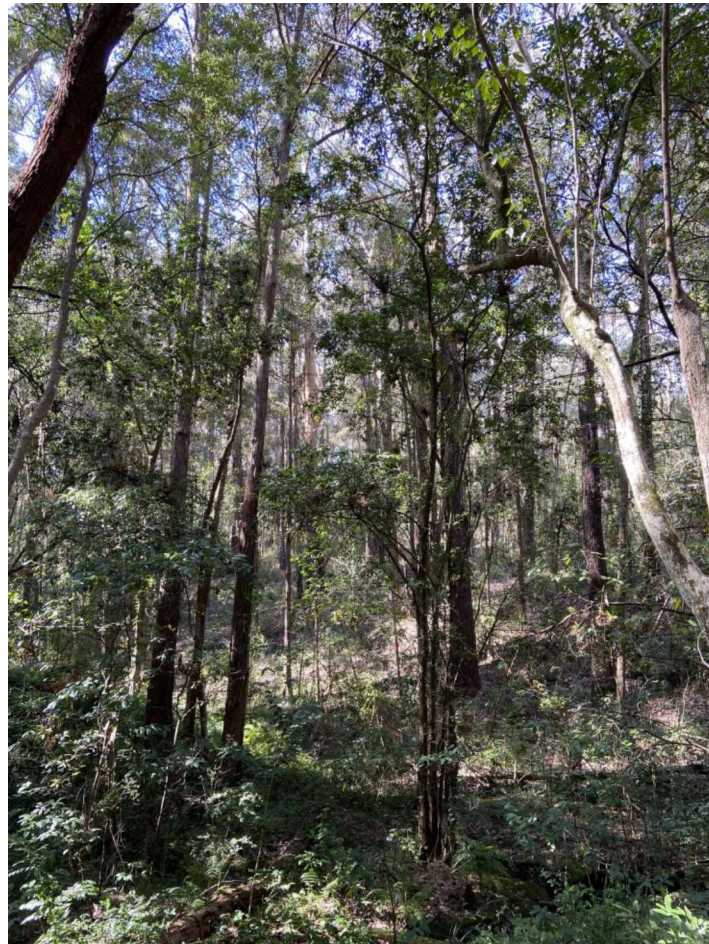


FIGURE 11: RARE BLUE GUM HIGH FOREST SITUATED WITHIN THE FOREST DEDICATION AREA

Appendix 1a – Blue Gum High Forest NSW Scientific Committee Determination

2. Blue Gum High Forest in the Sydney Basin Bioregion is characterised by the following assemblage of species:

- *Acmena smithii*
- *Allocasuarina torulosa*
- *Angophora costata*
- *Asplenium flabellifolium*
- *Blechnum cartilagineum*
- *Calochlaena dubia*
- *Cissus hypoglauca*
- *Clerodendrum tomentosum*
- *Doodia aspera*
- *Entolasia marginata*
- *Eucalyptus globoidea*
- *Eucalyptus pilularis*
- *Eustrephus latifolius*
- *Glochidion ferdinandi* var. *ferdinandi*
- *Hydrocotyle laxiflora*
- *Lomandra longifolia*
- *Maytenus silvestris*
- *Notelaea longifolia* forma *longifolia*
- *Oplismenus imbecillis*
- *Pandorea pandorana*
- *Pittosporum revolutum*
- *Platylobium formosum*
- *Polyscias sambucifolia* subsp. A
- *Pseuderanthemum variabile*
- *Rapanea variabilis*
- *Smilax glyciophylla*
- *Viola hederacea*
- *Adiantum aethiopicum*
- *Alphitonia excelsa*
- *Angophora floribunda*
- *Backhousia myrtifolia*
- *Breynia oblongifolia*
- *Carex maculata*
- *Clematis aristata*
- *Dianella caerulea*
- *Elaeocarpus reticulatus*
- *Entolasia stricta*
- *Eucalyptus paniculata*
- *Eucalyptus saligna*
- *Ficus coronata*
- *Glycine clandestina*
- *Leucopogon juniperinus*
- *Marsdenia rostrata*
- *Morinda jasminoides*
- *Oplismenus aemulus*
- *Oxalis perennans*
- *Persoonia linearis*
- *Pittosporum undulatum*
- *Poa affinis*
- *Pratia purpurascens*
- *Pteridium esculentum*
- *Smilax australis*
- *Tylophora barbata*
-

3. The total species list of the community is considerably larger than that given above, with many species present in only one or two sites or in low abundance. The species composition of a site will be influenced by the size of the site, recent rainfall or drought condition and by its disturbance (including fire) history. The number of species, and the above ground relative abundance of species will change with time since fire, and may also change in response to changes in fire regime (including changes in fire frequency). At any one time, above ground individuals of some species may be absent, but the species may be represented below ground in the soil seed banks or as dormant structures such as bulbs, corms, rhizomes, rootstocks or lignotubers. The list of species given above is of vascular plant species; the community also includes micro-organisms, fungi, cryptogamic plants and a diverse fauna, both vertebrate and invertebrate. These components of the community are poorly documented.

Problematic weed species in Blue Gum High Forest include the following:

| | |
|---|---|
| • <i>Asparagus asparagoides</i> Bridal Creeper | • <i>Cinnamomum camphora</i> Camphor laurel |
| • <i>Lantana camara</i> Lantana | • <i>Ligustrum lucidum</i> Large-leaved Privet |
| • <i>Ligustrum sinense</i> Small-leaved Privet | • <i>Ochna serrulata</i> |
| • <i>Passiflora edulis</i> Passionfruit | • <i>Passiflora subpeltata</i> Passionfruit |
| • <i>Pennisetum clandestinum</i> Kikuyu | • <i>Rubus ulmifolius</i> Blackberry |
| • <i>Senna colutioides</i> | • <i>Tradescantia fluminensis</i> • |

Appendix 1b – Sydney Turpentine Ironbark Forest NSW Scientific Committee Determination

| | |
|---------------------------|--------------------------|
| Acacia decurrens | Acacia falcata |
| Acacia implexa | Acacia longifolia |
| Acacia myrtifolia | Acacia parramattensis |
| Allocasuarina torulosa | Angophora costata |
| Angophora floribunda | Aristida vagans |
| Billardiera scandens | Breynia oblongifolia |
| Bursaria spinosa | Centella asiatica |
| Cheilanthes sieberi | Clematis aristata |
| Clematis glycinoides | Clerodendrum tomentosum |
| Commelina cyanea | Corymbia gummifera |
| Daviesia ulicifolia | Dianella caerulea |
| Dichelachne rara | Dichondra repens |
| Dodonaea triquetra | Echinopogon caespitosus |
| Elaeocarpus reticulatus | Entolasia marginata |
| Entolasia stricta | Eucalyptus acmenoides |
| Eucalyptus globoidea | Eucalyptus paniculata |
| Eucalyptus resinifera | Exocarpos cupressiformis |
| Glycine clandestina | Goodenia hederacea |
| Goodenia heterophylla | Hardenbergia violacea |
| Imperata cylindrica | Indigofera australis |
| Kennedia rubicunda | Kunzea ambigua |
| Lepidosperma laterale | Leucopogon juniperinus |
| Lomandra longifolia | Melaleuca decora |
| Microlaena stipoides | Notelaea longifolia |
| Oplismenus aemulus | Oxalis exilis |
| Ozothamnus diosmifolius | Pandorea pandorana |
| Panicum simile | Pittosporum revolutum |
| Pittosporum undulatum | Poa affinis |
| Polyscias sambucifolius | Pomax umbellata |
| Poranthera microphylla | Pratia purpurascens |
| Pseuderanthemum variabile | Rapanea variabilis |
| Rubus parvifolius | Smilax glycyphylla |
| Stipa pubescens | Syncarpia glomulifera |
| Themeda australis | Tylophora barbata |
| Veronica plebeia | Zieria smithii |

Appendix 2 - Weed density mapping key

| Colour Code | Weed density of bushland | Description of weed density mapping |
|--------------------|---------------------------------|---|
| Green | Good | <ul style="list-style-type: none"> < 40 % weed cover Minimum weed coverage Indicate if weed coverage is in the upper, mid and groundcover stratum, or all of the above. |
| Blue | Fair | <ul style="list-style-type: none"> 40 - 70% weed cover Light to minor weed infestation Indicate if weed coverage is in the upper, mid and groundcover stratum, or all of the above. |
| Orange | Poor | <ul style="list-style-type: none"> 70 - 90% weed cover Severe weed infestation, stratum structure degraded, major elements (upper, mid-storey and ground cover) partly or completely absent Indicate if weed coverage is in the upper, mid and groundcover stratum, or all of the above. |
| Red | Very poor | <ul style="list-style-type: none"> > 90% weed cover Total domination by weeds, bushland replaced by exotic species or only mature specimens of highest stratum remain – no seedlings or saplings due to infestation of understorey with exotics. |
| Pink | Not applicable | <ul style="list-style-type: none"> Original soil profile replaced by foreign fill material Nil resilience |
| Grey | Revegetated | <ul style="list-style-type: none"> Revegetation area |

Appendix 3 – Weeds present in the Forest Dedication Area

| Genus | Species | Common name | Control method | Comment |
|----------------------|----------------|--------------------|---|---|
| | | | Cut and paint = CP Stem Scrape = SS Hand Pull = H Spray = Sp Stem inject - Si | CP, SS, H, Sp, Si |
| Acer | negundo* | Box Elder | CP, SS, SI | Drainage line, Isolated |
| Acetosa | sagittata* | Turkey Rhubarb | Sp | Scattered |
| Ageratina | adenophora* | Crofton Weed | Sp, H | In moist drainage areas |
| Ageratina | riparia* | Mistflower | Sp, H | Present in drainage line |
| Anredera | cordifolia* | Madeira Vine | Sp, H, SS | Widespread in patches |
| Araujia | sericifera* | Moth Vine | Sp, H, SS | Edges |
| Asparagus | aethiopicus* | Asparagus Fern | Sp, H. | Patches |
| Asparagus | asparagoides* | Bridal Creeper | Sp, H. | Isolated but significant |
| Asparagus | plumosus | Climbing Asparagus | Sp, H. | Isolated |
| Bidens | pilosa* | Cobblers Peg | Sp, H. | Disturbed edges and APZ |
| Cardiospermum | grandiflorum* | Balloon Vine | Sp, H, SS | On boundaries and edges |
| Celtis | sinensis* | Celtis | CP, SS, SI | Isolated |
| Cestrum | parqui* | Green Cestrum | CP, SS, SI | Isolated but a priority weed |
| Cinnamomum | camphora | Camphor Laurel | CP, SI | Isolated but a priority weed |
| Conyza | bonariensis | Fleabane | Sp, H. | Frequent control |
| Ehrharta | erecta* | Panic Veltgrass | Sp, H. | Widespread with potential to inhibit natural regen. |
| Eragrostis | curvula* | Agfrican Lovegrass | Sp, H. | Patches |
| Erigeron | karvinskianus* | Erigeron | Sp, H. | Isolated |
| Galium | aparine* | Sticky Weed | Sp, H. | Isolated but potential to spread |
| Grevillea | robusta* | Silky Oak | CP, H, SI | Isolated |
| Hedera | helix* | English Ivy | CP, SS, H, Sp, | Dense in patches |
| Hypericum | perforatum* | St Johns Wort | Sp, H. | Isolated |
| Hypochaeris | radicata* | Catsear | Sp, H. | Benign on edges |
| Lantana | camara* | Lantana | CP, SS, SI | Some clearing done, more to be completed. |

| | | | | |
|---------------------|-------------------|------------------------|--------------------------|---|
| Ligustrum | lucidum* | Large Leaved Privet | CP, SS, SI | Widespread |
| Ligustrum | sinense* | Small Leaved Privet | CP, SS, SI | Widespread |
| Lilium | formosanum* | Formosa Lily | H | Isolated |
| Lonicera | japonica* | Japanese Honeysuckle | SS, H, Sp, | Isolated, but an aggressive weed priority |
| Ludwigia | Peruviana | Water Primrose | SS, H, Sp, | Regional priority weed |
| Modiola | caroliniana* | Modiola | H, Sp, | Isolated |
| Nephrolepis | cordifolia | Fishbone Fern | H, Sp, | Isolated |
| Ochna | serrulata* | Mickey Mouse Bush | CP, SS, SI | Isolated |
| Olea | europaea | African Olive | CP, SS, SI | Isolated |
| Oxalis | sp.* | Oxalis | | Benign |
| Paspalum | dilitatum | Paspalum | H, Sp, | Disturbed edges |
| Passiflora | edulis* | Passionfruit Vine | H, Sp, SS | Isolated |
| Pennisetum | clandestinum* | Kikuyu | H, Sp, | APZ and boundary edges |
| Plantago | lanceolata* | Lambs Tongue | H, Sp, | Isolated, benign |
| Plantago | major* | Plantain | H, Sp, | Isolated, benign |
| Ricinus | communis* | Castor Oil Plant | CP | Isolated |
| Rubus | discolor* | Blackberry | CP, SS | Isolated |
| Senecio | madagascariensis* | Fireweed | | Fast seeding rapid spread |
| Senna | pendula* | Senna | CP, SS, H, Sp, Si | Long lived seed |
| Sida | rhombifolia* | Paddy's Lucerne | SS, H, Sp, | Edges |
| Solanum | mauritianum* | Wild Tobacco | CP, H, Sp, | Scattered |
| Solanum | nigrum* | Blackberry Knightshade | H, Sp, | Long lived seed |
| Soliva | sessilis* | Bindii | H, Sp, | Edges |
| Sonchus | oleraceus* | Common Sowthistle | H, Sp, | Edges |
| Sporobolus | africanus* | Parramatta Grass | H, Sp, | Track edges |
| Thunbergia | elata* | Black Eyed Susan | H, Sp, | Potential problem |
| Tradescantia | fluminensis* | Trad | H, Sp, Rake | Dense requiring control |
| Verbena | bonariensis* | Purpletop | H, Sp, | Disturbed edges |

Schedule 9

Access Forest Permit (clause 4.3)

Forest Permit

55 Coonara Avenue, West Pennant Hills 2125

—

Forestry Corporation of NSW ABN 43 141 857 613
(**Licensor**)

Mirvac Projects (Retail and Commercial) Pty Ltd ACN
151 466 241 as trustee for the Mirvac Pennant Hills
Residential Trust (**Permittee**)

—

Level 40 Governor Macquarie Tower 1 Farrer Place
Sydney NSW 2000 Australia DX 117 Sydney
T +61 2 9921 8888 F +61 2 9921 8123
minterellison.com

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Forest Permit

55 Coonara Avenue, West Pennant Hills 2125

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Signing page 64

Details

Date

Parties

| | |
|-----------------|--|
| Name | Forestry Corporation of NSW |
| ABN | 43 141 857 613 |
| Short form name | FCNSW |
| Notice details | Forestry Corporation of NSW of 121-131 Oratava Ave, West Pennant Hills NSW 2119 Email: [insert] Attention: The Secretary |

| | |
|-----------------|---|
| Name | Mirvac Projects (Retail and Commercial) Pty Ltd ACN 151 466 241 as trustee for the Mirvac Pennant Hills Residential Trust |
| ABN | 80 199 861 372 |
| Short form name | Permittee |
| Notice details | Level 28, 200 George Street, Sydney NSW 2000 Email: adrian.checchin@mirvac.com Attention: Adrian Checchin |

Background

- A The Permittee has transferred the Forest Dedication Land to the State of NSW and it has been dedicated as a State forest in accordance with the *Forestry Act 2012*.
- B The Permittee requires a forest permit issued under the *Forestry Act 2012* by FCNSW to access the Permit Area during the Term for the Permitted Use.
- C FCNSW grants the forest permit to the Permittee on the terms and conditions of this document.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales.

Claim means any claim, allegation, suit, action, demand, cause of action or proceeding of any kind made under or in connection with this document or the Land whether or not it arises at Law or in any other way.

Commencement Date means the date of this agreement.

Cost includes:

- (a) costs, charges, expenses, including those incurred in connection with advisers, experts and consultants (including legal costs calculated on a solicitor and own client basis);
- (b) damages, losses, injury (whether actual or contingent) suffered or incurred by a party; and
- (c) any fines, penalties, interest or similar item imposed by Law.

Expiry Date means the date on which the Permittee completes the Weed Management Plan Works in accordance with the Planning Agreement.

FCNSW's Employees and Agents means each of FCNSW's employees, officers, agents, contractors, service suppliers, licensees and invitees and any subcontractors of each of them (including subcontractors of the subcontractors).

Forest Dedication Land means the land identified as '*Forest Dedication Land*' under the Planning Agreement that has been dedicated to the FCNSW in accordance with schedule 4 of the Planning Agreement.

Forest Dedication Plan means the plan in schedule 6.

forest permit has the meaning given to that term by the *Forestry Act 2012*.

Land means the land contained in folio identifier 61/737386 known as 55 Coonara Avenue, West Pennant Hills 2125.

Law means any statute, regulation, ordinance, by-law or statutory notice, direction or requirement.

Minister means the Minister administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Secretary's nominee.

Party means a party to this document, its successors and permitted assigns and a reference to '**Parties**' is to both of them.

Permit means the forest permit issued under clause 2.

Permit Fee means \$1.00 (exclusive of GST) per annum, if demanded.

Permit Area means the whole of the Forest Dedication Land.

Permittee's Employees and Agents means each of the Permittee's employees, officers, agents, contractors, service suppliers, licensees and invitees and any subcontractors of each of them (including subcontractors of the subcontractors).

Permitted Use means the carrying out of the Weed Management Plan Works in accordance with the Planning Agreement.

Planning Agreement means the planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979* between the Minister and the Permittee.

Secretary means the Secretary of the Department of Planning and Environment.

Term means the period commencing on the Commencement Date and ending on the Expiry Date.

Weed Management Plan means the plan in schedule 8 of the Planning Agreement.

Weed Management Plan Works means the means the works described in Row 4 of the table in clause 1 of Schedule 4 of the Planning Agreement.

1.2 Interpretation

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;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time Sydney;
 - (vii) '\$' or 'dollars' is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) this document includes all schedules and annexures to it; and
 - (x) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;

- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.
- (i) Headings do not affect the interpretation of this document.

2. Access and Works License

2.1 Permit

- (a) Subject to this clause 2, on and from the Commencement Date and during the Term of the Licence, FCNSW grants to the Permittee and the Permittee's Employees and Agents a non-exclusive forest permit to access the Permit Area for the purposes of the Permitted Use.
- (b) The Permittee must give to FCNSW not less than 2 Business Days' prior notice on each occasion that the Permittee and the Permittee's Employees and Agents wish to access the Permit Area pursuant to this document.

2.2 Nature of interest

The Permit granted under this document does not grant the Permittee or the Permittee's Employees and Agents any right, title or interest in the Permit Area.

2.3 Use Permit Area

In accessing the Permit Area pursuant to this document the Permittee must (and must use reasonable endeavours to procure that the Permittee's Employees and Agents must):

- (a) not cause any unreasonable interference to the use of the Permit Area by FCNSW;
- (b) use all reasonable endeavours to avoid damage to the Permit Area;
- (c) comply with any reasonable directions of FCNSW; and
- (d) make good any damage caused to the Permit Area by the Permittee and the Permittee's Employees and Agents.

2.4 Permit Fee to be paid yearly in advance

The Permittee must pay the Permit Fee to FCNSW, if demanded, one year in advance on the Commencement Date and thereafter on each anniversary of the Commencement Date during the Term.

2.5 Risk, release and indemnity

- (a) During the Term the Permittee and the Permittee's Employees and Agents access the Permit Area at their own risk.
- (b) The Permittee releases FCNSW and FCNSW's Employees and Agents in respect of all Claims arising from, and any Costs incurred in connection with, the Weed Management Plan Works, except to the extent such Claim or Cost is caused or contributed to by the negligent act, negligent omission or default of this document by FCNSW or FCNSW's Employees and Agents.

- (c) The Permittee indemnifies and must keep indemnified FCNSW against any Claim and any Costs incurred in connection with:
 - (i) loss of or damage to property of FCNSW or property under the control and management of FCNSW; and
 - (ii) Claims by any person against FCNSW in respect of personal injury or death or loss of or damage to any property,
 arising from or as consequence of the Permittee carrying out the Weed Management Plan Works, except to the extent such Claim or Cost is caused or contributed to by the negligent act, negligent omission or default of this document by FCNSW or FCNSW's Employess and Agents.

2.6 Insurance

- (a) Prior to the Permittee and the Permittee's Employees and Agents accessing the Permit Area under this clause 2, the Permittee must effect and maintain for the Term:
 - (i) a public liability policy of insurance for an amount in respect of any one occurrence of not less than \$20,000,000;
 - (ii) a worker's compensation policy or any other insurances required by Law; and
 - (iii) such other insurances as are reasonably requested by FCNSW.
- (b) The Permittee and the Permittee's Employees and Agents are not to access the Permit Area unless it has first provided to FCNSW satisfactory written evidence of all of the insurances specified in clause 2.6(a).
- (c) The Permittee's obligation to effect the insurances required under this clause 2.6 will be satisfied if contained in any global policy of insurance maintained by the Permittee or the Permittee's group of companies which covers the Permittee's obligation under this licence.

3. GST

- (a) In this clause 3:
 - (i) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - (ii) '**GST Law**' has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.
- (c) If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.
- (d) The recipient will pay the amount referred to in clause 3(c) in addition to and at the same time that the consideration for the supply is to be provided under this document. However, if the supplier is required to return GST in respect of a supply it makes under this document in relation to a tax period which ends on an earlier date, then the recipient must pay the amount payable to the supplier on account of GST on that earlier date.

- (e) The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 3(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- (f) If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under clause 3(c) will be recalculated 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.
- (g) Where a Party is required under this document to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party, or to which the representative member for a GST group of which the other Party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

4. Notices

4.1 General

A notice, demand, certification, process, consent, request, waiver, agreement or other communication relating to this document must be in writing in English and may be given by an agent of the sender and is not effective unless it is in writing.

4.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the Party's current delivery address for notices; or
- (c) sent to the Party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail.

4.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially as specified in the part of this document named 'Details' and are taken to be the current particulars unless clause 4.3(b) applies.
- (b) Each Party may change its particulars for delivery of notices by giving notice to each other Party and the changed particulars will then be taken to be the current particulars.

4.4 Communications by post

Subject to clause 4.5, a communication is given if posted:

- (a) within Australia to an Australian postal address, four Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

4.5 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt, it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

4.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this clause 4 or in accordance with any applicable Law.

4.7 Notices by email

- (a) In addition to the methods of service in clause 4.2, a communication may be given by sending it to the email address specified in the 'Details' section of this document or any email address provided by a party from time to time under clause 4.3(b).
- (b) A communication given under clause 4.7(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received when the first of the following occurs:
 - (i) the communication is capable of being retrieved by the recipient at the email address for the party; or
 - (ii) the sender receives an electronic notification that the email was delivered to the recipient or the email server of the recipient.

5. Miscellaneous**5.1 Alterations**

This document may be altered only in writing signed by each Party.

5.2 Costs

- (a) Each Party must pay its own costs and disbursements of negotiating, preparing, executing and administering this document.

5.3 Waiver and exercise of rights

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

5.4 Rights cumulative

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

5.5 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.

5.6 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the Laws applicable in New South Wales.
- (b) Each Party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

5.7 Liability

An obligation of two or more persons binds them separately and together.

5.8 Counterparts

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

5.9 Entire Agreement

This document contains the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understanding between the parties in connection with its subject matter.

5.10 Relationship of Parties

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

5.11 Press releases

A Party to this document must not issue a press release or disclose any information to the media about this document or any transaction contemplated by it without the consent of the other Party which must not unreasonably withhold or delay that consent.

5.12 Electronic Exchange

- (a) A Party may execute this document as well as any modifications to it by electronic means (including by electronic signature or by facsimile or email of a signed document in PDF or scanned format).
- (b) The Parties agree and intend that such signature by electronic means or by facsimile or email in PDF or scanned format shall bind the party so signing with the same effect as though the signature were an original signature.
- (c) This document may be executed as set out above in two or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

5.13 Acknowledgement of use of electronic signatures

The Parties to this document acknowledge and agree that:

- (a) they consent to the use of the electronic signatures and the document proceeding by electronic means; and
- (b) they intend to be legally bound by the terms of the document on which their electronic signature(s) has been placed.

6. Default and Termination

6.1 Default

If a Party (**Defaulting Party**) does not comply with a term of this document, then a non-defaulting Party may serve a written notice (**Default Notice**) on the Defaulting Party:

- (a) specifying the default; and
- (b) stating that this document will be terminated without further notice unless the Defaulting Party:
 - (i) rectifies the default; and
 - (ii) pays all reasonable expenses of the non-defaulting Party, within 14 days of service of the Default Notice or a longer period having regard to the nature of the default.

6.2 Remedy

If the Default Notice is complied with to the satisfaction of the non-defaulting Party (acting reasonably), then there is no event of default.

6.3 Termination for breach

If the Default Notice is not complied with by the date specified in clause 6.1, the non-defaulting Party may by notice in writing to the Defaulting Party terminate this document.

6.4 Consequences of termination

Termination of this document will not prejudice any right which a Party has or, but for the termination, might have had, against the other Party for breach of this document. In addition, for the avoidance of doubt, provisions which are stated to continue despite this document being terminated or novated, survive termination effected under clause 6.3 and termination effected under general law principles.

6.5 Trustee Permittee

- (a) Mirvac Projects (Retail and Commercial) Pty Ltd (ACN 151 466 241) (**Trustee**) enters into this document in its capacity as the trustee for the Mirvac Pennant Hills Residential Trust (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:
 - (i) warrants that as at the date of this document:

- (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this document is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this document;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this document;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this document; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this document and all necessary action has been taken to authorise the execution and performance of this document under the Trust Deed; and
- (ii) indemnifies FCNSW, and agrees to keep FCNSW indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 6.5(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this document;
 - (ii) the Trustee (as outgoing trustee) must procure an agreement from FCNSW, under which FCNSW releases the Trustee from the requirement to observe and perform any future obligation under this document;
 - (iii) the Trustee (as outgoing trustee) must release FCNSW, from the requirement to observe and perform any future obligation under this document; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of FCNSW in relation to entering into a new deed under this clause 6.5(b) and the costs and expenses of registering any new document on the title to the Land.
- (c) Subject to clause 6.5(e), liability arising under or in connection with this document (except under or in connection with clause 6.5(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (d) No party to this document or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;

- (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust, except under or in connection with clause 6.5(a) above.
- (e) Notwithstanding any other provision of this document, clauses 6.5(c) and 6.5(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 6.5(e) will make the Trustee liable for any claim for an amount greater than the amount which FCNSW would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

Signing page

EXECUTED as a deed.

Signed, Sealed, and Delivered for and on behalf of the **the Forestry Corporation of NSW ABN 43 141 857 613**, in the presence of:

.....
Signature of witness

.....
Signature of the Forestry Corporation of NSW delegate

.....
Name of witness in full

.....
Name of delegate

.....
Address of witness

Excuted by Mirvac Projects(Retail and Commercial) Pty Ltd (ACN 151 466 241) as trustee for the Mirvac Pennant Hills Residential Trust in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

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

Schedule 10

Staging Plan (clause 1.1)



Execution page**Executed** as a deed

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

.....
Signature of witness

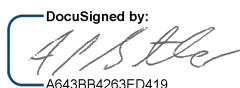
Sarah Davino

.....
Name of witness in full

4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

.....
Address of witness

Signed, sealed and delivered by **Mirvac Projects(Retail and Commercial) Pty Ltd** (ACN 151 466 241) as trustee for the Mirvac Pennant Hills Residential Trust in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

DocuSigned by:

A643BB4263ED419...

.....
Signature of Director

Andrew Butler

.....
Name of Director in full

Electronic signature of me, Kate Speare, affixed by me on 24 February 2023

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

Kate Speare

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

Signed, sealed and delivered by **Mirvac Projects(Retail and Commercial) Pty Ltd** (ACN 151 466 241) as trustee for the Mirvac Pennant Hills Residential Trust in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

DocuSigned by:

925728D3A0BC466...

.....
Signature of Director/Secretary

Vasiliki Vordis/Secretary

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