

Kings Forest Planning Agreement

The Minister for the Environment and Heritage

Secretary of the Department of Planning and Environment

Kings Forest Estates Pty Ltd



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Planning Agreement

Dated 15 September 2022

Parties

1. **The Minister for the Environment and Heritage and the Secretary of the Department of Planning and Environment** (ABN 20 770 707 468) of 4 Parramatta Square, 12 Darcy Street, Parramatta, New South Wales (**together the Minister**)
2. **Kings Forest Estates Pty Ltd** (ACN 003 919 613) of Suite 14, Level 1, 46 Cavill Ave, Surfers Paradise, Queensland (**the Developer**)

Background

- A. The Developer is the owner of the Kings Forest Site.
- B. The Kings Forest Site is the subject of the Concept Plan Approval and the Project Approval.
- C. The Developer was the applicant for the Concept Plan Approval and the Project Approval and continues to be the proponent of the development of the Kings Forest Site in accordance with those approvals.
- D. Term C3 of Schedule 2 of the Concept Plan Approval envisages that — prior to the issue of the first subdivision certificate for the project (or as otherwise determined by the Secretary at the request of the proponent) — the proponent must provide evidence of an agreement to dedicate at least 150 hectares of land as an addition to the Cudgen Nature Reserve. Condition 149 of Schedule 2 of the Project Approval requires that this term be met prior to the issue of a Subdivision Certificate for Kings Forest Precinct 5.
- E. The development of the Kings Forest Site has not yet commenced.
- F. The Developer has offered to enter into this Agreement to fulfil the relevant terms of the Concept Plan Approval and the Project Approval.
- G. The Minister for the Environment and Heritage and the Secretary of the Department of Planning and Environment agreed to enter into this Agreement.
- H. This Agreement will assist with the Secretary of the Department of Planning and Environment's consideration of relevant matters under clause 34A of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.
- I. There is a public purpose in the Dedicated Land being dedicated to the Minister for incorporation into the Cudgen Nature Reserve.

Operative provisions

1. Defined meanings

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Status of this Agreement

2.1 Planning Agreement

This Agreement is a planning agreement within the meaning of section 7.4 of the Act.

2.2 Land

This Agreement applies to:

- (a) the Kings Forest Site; and
- (b) within the Cudgen Nature Reserve 80 Metre Strip.

2.3 Development

This Agreement applies to the Development.

2.4 Operation

This Agreement commences on the date that it is signed by all the parties.

2.5 Effect and obligations

Despite any other provision of this Agreement, the Developer is under no obligation to make any Development Contribution in accordance with this Agreement unless the relevant circumstances set out in this Agreement as to when the Development Contribution must be made have arisen.

2.6 Security

In consideration of the Minister entering into this Agreement, the Developer has agreed to provide for the enforcement of the agreement by suitable means for the performance of the Developer's obligations under this Agreement by the provisions of clause 3.4, clause 8, clause 9 and clause 10.

2.7 Cobaki Planning Agreement

The parties acknowledge that the Minister will not enter into this Agreement unless the Minister also concurrently enters into the Cobaki Planning Agreement.

2.8 Variation of Agreement

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

3. Application of other development contribution provisions

3.1 Local infrastructure contributions - general

- (a) This Agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

3.2 Local infrastructure contributions - fixed levies

This Agreement does not exclude the application of section 7.12 of the Act to the Development.

3.3 Special infrastructure contributions

This Agreement does not exclude the application of section 7.24 of the Act.

3.4 Right to lodge caveat

- (a) In the absence of this Agreement being Registered on Title of the Dedicated Land, the Developer acknowledges that this Agreement confers on the Minister an interest in the Dedicated Land and entitles the Minister to lodge and maintain a caveat on the title to the Dedicated Land to prevent any dealing in respect of the Dedicated Land.
- (b) The entitlement under clause 3.4(a) above ends when the Agreement is Registered on Title of the Dedicated Land (and the Minister must, on such registration, promptly remove any such caveat).

4. Development Contributions

4.1 Nature, extent and timing

- (a) The Developer must make the Development Contribution in Column 3 of the Table at the point in time set out in Column 5 of the Table.
- (b) In relation to a Work, the reference to 'make' in clause 4.1(a) is a reference to the completion of the Work for the purposes of this Agreement.
- (c) Nothing in this Agreement (other than clause 5.6) precludes a Developer from electing to make a Development Contribution earlier than it is required to do so.

4.2 Public purpose of the Development Contributions

- (a) Each Development Contribution must be used for or applied towards the relevant public purpose set out in Column 4 of the Table.
- (b) Despite clause 4.2(a), the Minister may apply a Development Contribution made under this Agreement towards a public purpose other than the relevant public purpose set out in Column 4 of the Table if:

- (i) at least five years has elapsed since the Defect Liability Period for the relevant Development Contribution ended; and
- (ii) the Minister reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose.
- (c) This clause 4.2 has effect after the termination of this Agreement.

5. **Dedicating land as a Development Contribution**

5.1 **When land is taken to be dedicated**

- (a) A Development Contribution that is the dedication of land is taken to have been made (and made free of cost) if either:
 - (i) the land is land acquired in the circumstances set out in sections 145, 146 or 148 of the *National Parks and Wildlife Act 1974*;
 - (ii) the land is reserved under section 30A of the *National Parks and Wildlife Act 1974* without a prior land acquisition of the kind that is the subject of clause 5.1(a)(i); or
 - (iii) the Developer:
 - A. requests for the Minister to execute any relevant documents and provide any requisite approvals necessary for the Developer to effect the transfer of the title to the Dedicated Land to New South Wales;
 - B. promptly does all things reasonably necessary to effect the transfer of the title to the Dedicated Land to New South Wales;
 - C. as soon as reasonably practicable after the transfer of the title to the Dedicated Land has been effected:
 - 1) notifies the Minister that the transfer of the Dedicated Land has been effected; and
 - 2) provides the Minister with:
 - a) a title search for the Dedicated Land;
 - b) a copy of the transfer or instrument registered with the NSW Land Registry Services (or the relevant land registry body for New South Wales); and
 - c) an Electronic Lodgement Network record of completion (if applicable),
- evidencing that the transfer of the Dedicated Land has been effected in accordance with this agreement.

D. provides the Security required under clause 10.1(a) (if any).

5.2 Obligations on the Developer prior to the transfer

- (a) Prior to the transfer of the Dedicated Land the Developer must:
- (i) survey and mark the boundary of the Dedicated Land (however a partial survey is sufficient where it is consistent with the requirements or guidelines of the NSW Land Registry Services);
 - (ii) provide an updated survey plan to the Minister showing the revised boundary of the Dedicated Land; and
 - (iii) prepare an easement for power line in the northern part of the Dedicated Land.
- (b) For avoidance of doubt, clause 5.2(a)(i) does not require the marking of the edge of Cudgen Lake and Cudgen Creek.

5.3 Ancillary obligations of the parties in relation to the dedication of land

- (a) The Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), when the Developer transfers that land to the Minister under this Agreement.
- (b) Clause 5.3(a) does not apply to any registered:
- (i) easement (except for any fees and charges incurred in respect to the Developer's non-compliance with the terms of such easement);
 - (ii) public positive covenant; or
 - (iii) restriction on use (except for any fees and charges incurred in respect to the Developer's non-compliance with the terms of such restriction on use,

that exists as at the date of this Agreement.

Note: This includes the instruments listed in Schedule 3 to this Agreement.

- (c) For avoidance of doubt, clause 5.3(a) does not apply in relation to statutory rights that exist or arise under:
- (i) sections 37 or 44 of the *Sydney Water Act 1994*;
 - (ii) section 5 of the *Coal Acquisition Act 1981*;
 - (iii) sections 51 or 53 of the *Electricity Supply Act 1995*;
 - (iv) section 52 of the *Gas Supply Act 1996*;
 - (v) section 59A of the *Local Government Act 1993*;

- (vi) section 379AA of the *Mining Act 1992* or any provision of that Act relating to an authority within the meaning of that Act;
 - (vii) any provision of the *Petroleum (Onshore) Act 1991* relating to a petroleum title within the meaning of that Act;
 - (viii) Schedule 6B to the *Transport Administration Act 1988*;
 - (ix) section 64 of the *Water Industry Competition Act 2006*;
 - (x) section 372B(3) of the *Water Management Act 2000*;
 - (xi) section 29 of the *Water NSW Act 2014*; and
 - (xii) any similar statutory provisions.
- (d) Despite clause 5.3(a), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 5.3(a), then:
- (i) the Developer may request that the Minister agree to accept the land subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:
 - A. does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or
 - B. is not a charge arising as a result of unpaid taxes or charges,

the Minister must not withhold the Minister's agreement unreasonably; and
 - (iii) in other circumstances, the Minister may withhold the Minister's agreement at the Minister's absolute discretion.

5.4 No warranties, etc unless express or required

The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Dedicated Land unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this Agreement; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

5.5 The Developer's warranties in relation to the Dedicated Land

The Kings Forest Developer represents and warrants that it is the owner of the Dedicated Land.

5.6 Land is not to be dedicated before the completion of certain work

- (a) A Development Contribution that is the dedication of land must not be made before the Developer has completed:
 - (i) any actions required under:
 - A. the Project Approval (including the relevant Environmental Management Plans); and
 - B. any applicable approval under the *Environment Protection and Biodiversity Conservation Act 1999*,

that must, under the terms of those respective approvals, be completed before the land is incorporated into the Cudgen Nature Reserve; and
 - (ii) Items 2, 3, 4, 5 and 6 in Schedule 1 to this Agreement; and
 - (iii) the completion of the Establishment Period; and
 - (iv) the completion of the Maintenance Period.

6. Making of a monetary Development Contribution

6.1 When a monetary Development Contribution is made

A monetary Development Contribution is taken to have been made by the Developer when the Minister receives the full amount of the contribution payable by a deposit, by means of electronic funds transfer, of cleared funds into a bank account nominated by the Minister.

6.2 The Minister's warranty in relation to the monetary Development Contribution

The Minister represents and warrants that the Minister does not and will not require any funding from the Developer (beyond the Development Contributions set out in this Agreement) in relation to:

- (a) the amendment of existing reserve-specific fire, pest and weed management plans; and
- (b) ensuring that the actions that are relevant to the Dedicated Land and contained within environmental management plans under the Project Approval (as may be amended from time-to-time) are able to be completed.

Note: A cash sum of \$34,500 was paid by the Developer prior to the date of this Agreement. This cash sum does not cover, or contribute to any of the EMP Works. The obligations to carry out the EMP Works are secured by this Agreement).

7. Carrying out of Work

7.1 Establishment Period and Maintenance Period

- (a) The Establishment Period will:

- (i) commence on the date of this Agreement; and
 - (ii) be completed on the day (which must not be less than five (5) years after the date of this Agreement) on which the Minister issues the Completion Notice in respect of the Establishment Period under clause 7.7(m)(ii) (**Establishment Period**).
- (b) The Maintenance Period will:
- (i) commence immediately after the completion of the Establishment Period; and
 - (ii) be completed on the day (which must not be less than ten (10) years from the date of the completion of the Establishment Period) that the Minister issues the Completion Notice in respect of the Maintenance Period under clause 7.7(m)(ii) (**Maintenance Period**).
- (c) Nothing in this Agreement prevents the Minister from exercising its rights in relation to the Maintenance Period if the Developer fails to comply with its obligations in respect to the Establishment Period.

7.2 Manner of the carrying out of Work

- (a) Without limiting any other provision of this Agreement, Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with any design or specification specified or approved by the Minister (and agreed to by the Developer, such agreement not being unreasonably withheld), any relevant Approval and any other applicable law.
- (b) Any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with the Development Consent that authorises the carrying out of the Work (if any).
- (c) Nothing in this Agreement may be taken to be an authorisation to carry out any Work without Development Consent.

7.3 Access to land by the Minister

- (a) An officer of the Department (as a representative of the Minister) may enter any land on which Work is being carried out by the Developer under this Agreement in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Agreement relating to the Work.
- (b) An officer must give the Developer prior reasonable notice before the officer enters land under this clause 7.3.
- (c) Nothing in this Agreement creates or gives the Minister any estate or interest in any part of the land referred to in this clause 7.3.

7.4 The Minister's obligations relating to Work

- (a) The Minister must not unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement.
- (b) The Minister must use the Minister's reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

7.5 Protection of people, property and utilities

- (a) The Developer must, in performing its obligations under this Agreement, as far as is reasonably practicable:
 - (i) take all necessary measures to protect people and property;
 - (ii) avoid, on public roads, unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent private or public nuisances (including noise and disturbances of an unreasonable nature).
- (b) Without limiting clause 7.5(a), the Developer must not obstruct, interfere with, impair or damage any:
 - (i) public road, public footpath, public cycleway or other public thoroughfare; or
 - (ii) any publicly-owned pipe, conduit, drain, watercourse or other such utility or service on any land,except as authorised in accordance with the relevant legislation and Approvals.

7.6 Repair of damage

- (a) The Developer is to maintain any Work required to be carried out by the Developer under this Agreement until the Work is completed for the purposes of this Agreement or such later time as agreed between the parties.
- (b) The Developer is to carry out its obligation under clause 7.6(a) at its own cost.

7.7 Completion of Time Periods and Associated Work

- (a) The obligations in this clause 7.7 (with the exception of this clause 7.7(a)) must be complied with in relation to each of the following periods (**Period**):
 - (i) the Establishment Period;
 - (ii) the day that is five (5) years after the commencement of the Maintenance Period (if the Developer completes the Works in accordance with the Environmental Management Plans and this Agreement) (**Midway Period**); and
 - (iii) the Maintenance Period.
- (b) Before the commencement of each Period in clause 7.7(a), the Developer must serve, by email to the Minister's email address specified in clause 15.4 of this Agreement, the Authorised Officer with a draft report detailing the scope of works to be undertaken in accordance with the Environmental Management Plans and this Agreement for the approval of the Authorised Officer (**Period Scope of Works Report**).
- (c) The Authorised Officer:

- (i) may request that the Developer revise the Period Scope of Works Report to correctly detail the outcomes and performance indicators in the Environmental Management Plans (but such a request must not be made unreasonably); or
 - (ii) may approve the Period Scope of Works Report provided by the Developer under clause 7.7(b) or 7.7(d) and provide notice to the Developer of such approval (but such approval must not be unreasonably withheld)
- (d) The Developer must promptly revise the Period Scope of Works Report in accordance with the Authorised Officer's request under clause 7.7(c) and re-issue the Period Scope of Works Report to the Authorised Officer for approval.
- (e) Before the completion of each Period in clause 7.7(a), the Developer must:
 - (i) give the Minister written notice of the date on which it intends to complete:
 - A. the Work required to be carried out under this Agreement; and
 - B. any Work identified in the Environmental Management Plans that must, under the terms of the Project Approval, be completed before the Dedicated Land is incorporated into the Cudgen Nature Reserve.
- (f) The Tender Process for the appointment of an Independent Ecologist will:
 - (i) commence on the date in which the Developer gives notice to the Minister under clause 7.7(e); and
 - (ii) conclude:
 - A. prior to the completion of each Period; and
 - B. on the date in which the Minister notifies the Developer of the appointment of an Independent Ecologist in accordance with clause 7.7(g)(iii)B
- (g) During the Tender Process:
 - (i) the Developer must:
 - A. invite reasonably qualified tenderers to submit a tender for the appointment of an Independent Ecologist to prepare the Secretary's Report required in accordance with clause 7.7(i);
 - B. convene a panel of five (5) persons, inclusive of the Authorised Officer to participate in a vote in relation to the recommended tender received during the Tender Process (**Recommended Tender**); and
 - C. provide all tenders received to the Minister;
 - (ii) the Department may invite reasonably qualified tenderers to submit a tender for the appointment of an Independent Ecologist to prepare the Secretary's Report.

- (iii) The Minister:
 - A. must review the tenders received, including the Recommended Tender under clause 7.7(g); and
 - B. must notify the Developer of the Independent Ecologist to be appointed under this clause 7.7 (**Notice of Appointment**).
- (h) If the position of the Independent Ecologist falls vacant before all of the functions of the Independent Ecologist are completed under this Agreement, the Tender Process under this clause 7.7 must be repeated.
- (i) An Independent Ecologist appointed under this clause 7.7, must, at the conclusion of each Period, prepare a report addressed to the Secretary certifying that the Work completed by the Developer:
 - (i) is completed by virtue of the performance measures and targets established in the Environmental Management Plans; and
 - (ii) has been carried out in accordance with this Agreement, the Development Consent and the Period Scope of Works Report,
 in a form suitable to the Minister (**Secretary's Report**).
- (j) Following receipt of the Minister's Notice of Appointment, the Developer must, at its own cost:
 - (i) engage the Independent Ecologist to prepare the Secretary's Report for the review of the Minister;
 - (ii) brief the Independent Ecologist with all documents reasonably required to enable the Independent Ecologist to issue the Secretary's Report; and
 - (iii) arrange for the Independent Ecologist to inspect the Work the subject of the notice referred to in clause 7.7(e) within 21 days of the date specified in the notice for completion of the Work.
- (k) The Developer must:
 - (i) not liaise directly with the Independent Ecologist without the consent of the Department;
 - (ii) ensure the Department is copied in to any outgoing or incoming correspondence with the Independent Ecologist;
 - (iii) issue the Secretary's Report to the Authorised Officer by email to the address specified in clause 15.4 of this Agreement, prior to issuing to the Minister; and
 - (iv) without limiting clause 7.7(l)(i), complete, rectify or repair any Work as directed by the Authorised Officer, acting reasonably.
- (l) If the Authorised Officer:
 - (i) (acting reasonably) directs the Developer to complete, rectify or repair any Work as directed under clause 7.7(k)(iv), the Developer must promptly:

- A. complete the requested Works;
 - B. arrange for the Independent Ecologist to inspect the Work and prepare a further Secretary's Report assessing the additional Work completed; and
 - C. provide the further Secretary's Report and the direction from the Authorised Officer given under clause 7.7(k)(iv) to the Minister for approval;
- (ii) notifies the Developer that no further Works are required to be completed following receipt of the Secretary's Report under clause 7.7(k)(iii), the Developer must promptly forward the Secretary's Report to the Minister for approval.
- (m) Work required to be carried out by the Developer during the Establishment Period, the Midway Period and the Maintenance Period is completed for the purposes of this Agreement when the Minister:
 - (i) reviews the relevant Secretary's Report; and
 - (ii) gives a written notice to the Developer that the Works during the Establishment Period, the Midway Period and Maintenance Period (as applicable) have been completed in accordance with this agreement (**Completion Notice**).
- (n) In respect to the Minister's obligations under clause 7.7(m), the Minister:
 - (i) may exercise its discretion to rely on the Secretary's Report when issuing a Completion Notice; and
 - (ii) must not unreasonably withhold or delay the Completion Notice.
- (o) Before the Minister gives the Developer a relevant Completion Notice, the Minister may, acting reasonably, give the Developer a written direction to complete, rectify or repair any specified part of the Work (that is not the subject of a Completion Notice) to the reasonable satisfaction of the Minister.
- (p) The Minister is to act reasonably when making any decision under this clause 7.7.
- (q) The Developer, at its own cost, is to promptly comply with any direction given in accordance with clause 7.7(k)(iv) and 7.7(o).

7.8 Defect rectification

- (a) The Minister may, acting reasonably, give the Developer a Rectification Notice during the Defect 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 such a Rectification Notice.

7.9 Works-as-executed-plan

- (a) No later than 60 days after Work is completed for the purposes of this Agreement, the Developer is to submit to the Minister a full works-as-executed-plan in respect of:
 - (i) the Work identified in Item 5; and
 - (ii) any Work identified in the Environmental Management Plans that must, under the terms of the Project Approval, be completed before the Dedicated Land is incorporated into the Cudgen Nature Reserve.
- (b) The Developer, being the copyright owner in the plan referred to in clause 7.9(a), gives the Minister a non-exclusive licence to use the copyright in the plans for the purposes of this Agreement.

7.10 Equipment removal

When Work on any land owned or controlled by the Minister (or an agency that is responsible to the Minister) is completed for the purposes of this Agreement, the Developer, without unreasonable delay, is to:

- (a) remove any Equipment from land and make good any damage or disturbance to the land as a result of that removal; and
- (b) leave the land in a neat and tidy state, clean and free of rubbish.

7.11 Insurance

- (a) Prior to commencing the construction of any Work (required under this Agreement), the Developer must take out and keep current to the reasonable satisfaction of the Minister the following insurances in relation to the relevant Work up until the Work is taken to have been completed in accordance with this Agreement:
 - (i) contract works insurance, noting the Minister as an interested party, for the full replacement value of the Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
 - (ii) public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Minister, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (iii) workers compensation insurance as required by law; and
 - (iv) any other insurance required by law.
- (b) If the Developer does not comply with clause 7.11(a), the Minister may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Minister and may be recovered by the Minister as a debt due in a court of competent jurisdiction.
- (c) The Developer is not to commence the construction of any Work (required under this Agreement) unless it has first provided to the Minister satisfactory written evidence of the relevant insurances specified in clause 7.11(a).

7.12 The Minister's warranty in relation to the trees within the Scribbly Gum Reserve at the Cobaki Site

The Minister represents and warrants that:

- (a) the actions that the Developer has taken to plant and maintain Scribbly Gum species within the Kings Forest site;
- (b) any further actions required under the Scribbly Gum Restoration Plan; and
- (c) the payment of a monetary contribution towards offsetting the loss of hollow-bearing trees within the Scribbly Gum Reserve on the Land,
- (d) Item 1 (combined with Item 2);

are sufficient to offset the impact that the development of the Cobaki Site (in accordance with concept plan approval 06_0316) will have on existing trees within the Scribbly Gum Reserve.

8. Registration

8.1 Developer agreement to registration

The Developer agrees to the registration of this Agreement under section 7.6 of the Act in relation to the allotments that comprise the Dedicated Land.

8.2 Registration of this Agreement

- (a) Within 60 Business Days of this Agreement coming into effect:
 - (i) the Developer at its own expense will take all reasonably practicable steps to obtain the agreement of the persons specified in section 7.6(1) of the Act whose agreement is necessary for the Registration on Title; and
 - (ii) if that agreement is obtained, take all reasonably practicable steps to secure:
 - A. the execution of any documents; and
 - B. the lodgement and registration of this Agreement, by the Registrar-General in the relevant folio of the Register.
- (b) The Developer must give the Minister a copy of:
 - (i) a title search of the relevant folio recording registration of this Agreement; and
 - (ii) a copy of the registered dealing within 21 Business Days of registration of this Agreement.

8.3 Release and discharge of this Agreement

The parties agree to do all things reasonably required by the other party to promptly release and discharge this Agreement with respect to any of the following:

- (a) any allotment that is created as a result of the subdivision of an allotment that is only partially contained within the Dedicated Land, if the allotment so created is wholly outside of the Dedicated Land; and
- (b) all parts of the land, upon this Agreement being terminated.

9. Transfer, assignment or novation

9.1 Consent for transfer of Relevant Lots

- (a) The Developer must not transfer the Dedicated Land or any part of the Dedicated Land to any person without the consent of the Minister.
- (b) This clause 9.1 does not apply to:
 - (i) the dedication of the Dedicated Land to the Minister; or
 - (ii) the transfer of a Service Lot or Final Lot.

9.2 Consent for assignment or novation of this Agreement

- (a) The Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Minister.
- (b) For avoidance of doubt, this clause 9.2 does not preclude the transfer of any part of the Land.

9.3 The giving of consent by the Minister

- (a) The Minister must give consent under clause 9.1(a) or clause 9.2(a) if, before the Developer transfers, assigns or novates this Agreement to the proposed transferee or assignee (**Proposed Party**):
 - (i) the Developer has, at no cost to the Minister, first procured the execution of a deed of novation by the Proposed Party on terms acceptable to the Minister (being a deed generally in terms of the Novation Deed); and
 - (ii) the Developer satisfies the Minister acting reasonably that the Proposed Party is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the Proposed Party) of performing its obligations under this Agreement;
 - (iii) the rights of the Minister under this Agreement are not diminished or fettered in any way;
 - (iv) any default by the Developer has been remedied by the Developer or waived by the Minister; and
 - (v) the Developer and the Proposed Party pay the Minister's reasonable costs in relation to the transfer, assignment or novation.
- (b) The Minister, on giving consent under clause 9.3(a), must enter into the deed of novation referred to in clause 9.3(a)(i).

9.4

Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into

- (a) This clause 9.4 takes precedence over the other provisions of clause 9.
- (b) For the avoidance of doubt, the Developer may enter into any agreement to sell, transfer, option or lease which, if exercised, may result in the formation of an agreement to sell, transfer or lease any Final Lot or Service Lot (other than a Service Lot containing the Dedicated Land).

9.5

No restriction on a mortgagee-in-possession's right to exercise a power of sale

- (a) Nothing in this clause 9 derogates from any right of a Mortgagee In Possession to exercise a power of sale for the whole of or any part of the Kings Forest Site.
- (b) In this clause 9.5 **Mortgagee In Possession** means a person who is:
 - (i) a mortgagee in possession within the meaning of the definition of 'owner' in the *Local Government Act 1993*; and
 - (ii) bound by this Agreement by reason of section 7.6(3) of the Act.

10. Enforcement and security

10.1 Developer to provide Security for Establishment Period

- (a) On the date the Developer executes this Agreement, the Developer must deliver to the Minister a Bank Guarantee in the amount of \$2,180,000.00 (**First Bank Guarantee**) which the Minister may at any time, call upon, to satisfy, either wholly or in part:
 - (i) completing the Works required during the Establishment Period; and
 - (ii) any other reasonable costs incurred by the Minister in remedying a breach arising as a result of the Developer's failure to comply with its obligations in respect to the Establishment Period (**Security**).
- (b) Should the Minister use the part or whole of the monies under the Security under clause 10.1(a), the Developer must:
 - (i) if the Developer still has further obligations in relation to incomplete Works that have not been fulfilled by the Minister through the Minister's calling up of the Security (but not for any amount that exceeds the amount of the First Bank Guarantee); and
 - (ii) on being advised in writing by the Minister to do so, immediately take steps to ensure that the amount of the Security is replaced for the benefit of the Minister at the Replacement Value.
- (c) The Minister will release the First Bank Guarantee, or the balance of the First Bank Guarantee on the later of:
 - (i) the completion of the Works required during the Establishment Period; and

- (ii) following receipt of the Second Bank Guarantee.
- (d) For the avoidance of doubt Works are only considered complete when a Completion Notice for the Establishment Period is issued.
- (e) In this clause 10.1:
 - (i) **Replacement Value** means an amount, determined by the Minister acting reasonably, for the value of:
 - A. the obligations under the Agreement that have been fulfilled by the Developer (if any); and
 - B. any obligations under the Agreement that would have otherwise been fulfilled by the Developer must have been fulfilled by the Minister through the Minister's calling up of the Security.
- (f) At any time the Developer may substitute the First Bank Guarantee(s) that have been provided as the Security with one or more Bank Guarantees of such that the total amount of the Bank Guarantee(s) is not less than the value required to be provided as the Security (including as adjusted under clause 10.1(b)).
- (g) If the value of the Bank Guarantee provided by the Developer exceeds the value required to be provided as the Security (including as adjusted under clause 10.1(b)) at any time, the Developer may substitute it with another Bank Guarantee or Bank Guarantees whose total amount is not less than the value at that time.

10.2 Developer to provide security for Maintenance Period

- (a) Prior to the completion of the Establishment Period, the Developer must deliver to the Minister a Bank Guarantee which the Minister may at any time, call upon, to satisfy, either wholly or in part:
 - (i) any Work required to be completed during the Maintenance Period and in accordance with the Environmental Management Plans; and
 - (ii) any other costs incurred by the Minister in remedying a breach arising as a result of the Developer's failure to comply with their obligations in respect to the Maintenance Period,
- (b) As soon as practicable after the date of this Agreement, the Developer must:
 - (i) prepare a sourcing strategy (**Sourcing Strategy**) comprising:
 - A. a scope of works which details the Works required to be undertaken during the Maintenance Period, and the outcomes and performance indicators in accordance with the Environmental Management Plans (**Scope of Works Report**); and
 - B. guidelines detailing the manner in which the panel appointed under clause 10.2(e)(ii) will assess Tenders under this clause 10.2 (**Tender Assessment Guidelines**); and

- (ii) submit the Sourcing Strategy to the Authorised Officer for review and approval.
- (c) The Authorised Officer must notify the Developer within a reasonable timeframe of receiving the Sourcing Strategy if the Sourcing Strategy is:
 - (i) approved; or
 - (ii) must be revised to adequately address any issues reasonably raised by the Authorised Officer.
- (d) If the Authorised Officer notifies the Developer that the Sourcing Strategy must be revised in accordance with clause 10.2(c)(ii), the Developer is to promptly revise the Sourcing Strategy and re-submit such document to the Authorised Officer for approval.
- (e) If the Sourcing Strategy is approved by the Authorised Officer in accordance with clause 10.2(c)(i) or 10.2(d) the amount of the Second Bank Guarantee must be determined by way of a tendering process in which:
 - (i) the Developer and the Department must each invite three reasonably qualified consultants to submit a written tender quoting to carry out the Work detailed in the Scope of Works Report (**Tender**); and
 - (ii) the Developer must convene a panel of five (5) persons, inclusive of the Authorised Officer, to carry out a vote to approve a Tender to carry out the Work detailed in the Scope of Works Report (**Approved Quote**).
- (f) A panel convened under clause 10.2(e)(ii) must assess each Tender in accordance with the Tender Assessment Guidelines.
- (g) If the panel convened under clause 10.2(e)(ii) unanimously votes to approve one (1) Tender to carry out the Work detailed in the Scope of Works Report the amount of the Second Bank Guarantee is taken to equate to the value of the Approved Quote plus a 15% contingency.
- (h) If the panel convened under clause 10.2(e)(ii) fails to vote unanimously on an Approved Quote within 12 months of the date of this Agreement, the amount of the Second Bank Guarantee is taken to be \$4,800,000.00.
- (i) The Minister will release the Second Bank Guarantee on the completion of the Works required during the Maintenance Period.
- (j) For the avoidance of doubt Works are only considered complete when a Completion Notice for the Maintenance Period is issued.
- (k) The Minister may release half of the amount of the Second Bank Guarantee on the completion of the Works required during the Midway Period.
- (l) For the avoidance of doubt Works are only considered complete when a Completion Notice for the Midway Period is issued.

10.3 Agreement under the Just Terms Act

- (a) Subject to clause 10.4, if the Developer does not dedicate the land required to be dedicated under this Agreement:
 - (i) at the time at which it is required to be dedicated; or

(ii) at any point after that time,

the Developer consents to the Minister (or his/her nominee) compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

(b) The Developer and the Minister agree that:

(i) clause 10.3(a) is an agreement for the purposes of section 30 of the Just Terms Act; and

(ii) in this clause 10.3, they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

(c) The Landowner indemnifies and agrees to keep indemnified the Minister (or his nominee) against all claims made against the Minister (or his nominee) as a result of any acquisition by the Minister (or her his nominee) of the whole or any part of the land required to be dedicated under this Agreement, under this clause 10.3.

(d) The Landowner must pay the Minister (or his nominee), promptly on demand, an amount equivalent to all reasonable costs incurred by the Minister (or his nominee) acquiring the whole or any part of the land required to be dedicated under this Agreement, as contemplated by this clause 10.3.

(e) Clause 10.3(c)-(d) does not apply if the Developer has not dedicated the land (at the time at which it is required to be dedicated) because of an unreasonable act or omission by the Minister.

10.4 Limitations on that agreement

The Minister may only acquire land pursuant to clause 10.3 if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.

10.5 Ancillary obligations

(a) If, as a result of the acquisition referred to in clause 10.3, the Minister must pay compensation to any person other than the Developer, the Developer must reimburse the Minister for that amount, upon a written request being made by the Minister.

(b) The Developer indemnifies and keeps indemnified, the Minister against all claims made against the Minister under the Just Terms Act as a result of any acquisition by the Minister of the whole or any part of the Dedicated Land under clause 10.3(a).

(c) The Developer is to promptly do all things necessary, and consents to the Minister doing all things necessary, to give effect to this clause 10.3 including:

(i) signing any documents or forms; and

(ii) paying the Minister's reasonable costs arising under this clause 10.3.

11. Termination

11.1 Termination of this Agreement

The Developer may terminate this Agreement by giving written notice to the Minister in following circumstances:

- (a) where the Developer has made the Development Contributions required under this Agreement and any Defect Liability Period has ended.

11.2 Consequences of the termination of this Agreement

- (a) If this Agreement is terminated under clause 11.1 the parties are released and discharged from their obligations under this Agreement.
- (b) 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 Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

12. Breach of obligations

12.1 Breach notice

If the Minister reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice (**Breach Notice**) to the Developer:

- (a) specifying the nature and extent of the breach;
- (b) requiring the Developer to either:
 - (i) rectify the breach if it reasonably considers it is capable of rectification; or
 - (ii) if the Minister reasonably considers the breach is not capable of rectification, pay a reasonable amount in compensation to the Minister in lieu of rectifying the breach,

specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

- (c) If the Developer:
 - (i) does not comply with a Breach Notice relating to the carrying out of Work under this Agreement; and
 - (ii) the Minister reasonably considers that the Developer has no reasonable excuse for its non-compliance,

the Minister may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

12.2 Costs of remedying a breach

- (a) Any reasonable costs incurred by the Minister in remedying a breach in accordance with clause 12.1 may be recovered by the Minister as a debt due in a court of competent jurisdiction, but only if there has been an actual breach by the Developer of the obligations under this Agreement that were the subject of the Breach Notice.
- (b) For the purpose of this clause 12.2, the Minister's costs of remedying a breach the subject of a Breach Notice include, but are not limited to:
 - (i) the costs of the Minister's servants, agents and contractors reasonably incurred for that purpose;
 - (ii) all fees and charges necessarily or reasonably incurred by the Minister in remedying the breach; and
 - (iii) all legal costs and expenses reasonably incurred by the Minister, by reason of the breach.
- (c) Nothing in this clause 12 prevents the Minister from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

13. Dispute resolution

13.1 Not commence

- (a) A party must not commence any court proceedings relating to a dispute unless it complies with this clause 13.
- (b) For avoidance of doubt, clause 13.1(a) does not prevent class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) being commenced, maintained and concluded.

13.2 Written notice of dispute

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

13.3 Attempt to resolve

On receipt of notice under clause 13.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

13.4 Mediation

If the parties do not agree within 21 days of receipt of notice under clause 13.2 (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 Rules of the Law Society of NSW. 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.

13.5 Court proceedings

If the dispute is not resolved within 60 days after notice is given under clause 13.2 then any party which has complied with the provisions of this clause 13 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

13.6 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 13 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 13 for any purpose other than in an attempt to settle the dispute.

13.7 No prejudice

This clause 13 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.

14. GST

14.1 Interpretation

In this clause 14:

- (a) except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14; and
- (c) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

14.2 Intention of the parties

Without limiting the operation of this clause 14, the parties intend that:

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

14.3 Reimbursement

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will 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.

14.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement 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 14.

14.5 Additional amount of GST payable

Subject to clause 14.7, if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this Agreement:

- (a) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply ("**GST Amount**"), and:
 - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause (a).

14.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.5 and clause 14.7), varies from the additional amount paid by the Recipient under clause 14.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 14.7(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.5(a).
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

14.7 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 14.5 applies is a taxable supply made by the Recipient (the

"Recipient Supply"), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 14.5 shall:

- (i) if the Supplier is the Minister, be reduced by the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of the Recipient Supply; and
 - (ii) in any other case, be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14.5 (or the time at which such GST Amount would have been payable in accordance with clause 14.5 but for the operation of clause 14.7(a)).

14.8 No merger

This clause will not merge on completion or termination of this Agreement.

15. General provisions

15.1 Costs

- (a) The Developer is to pay to the Minister the Minister's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Minister for such payment.
- (b) These costs cannot exceed the specific amount(s) disclosed to the Developer prior to the execution of this Agreement by the Developer.
- (c) The Developer is also to pay to the Minister the Minister's reasonable costs of enforcing this Agreement (where there has been an actual breach of the Agreement) within 7 days of a written demand by the Minister for such payment.

15.2 Duties

The party at law to pay stamp duty, must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Agreement, or any agreement or document executed or effected under this Agreement.

15.3 Assignment

A party must not transfer any right or liability under this Agreement without the prior consent of each other party, except where this Agreement provides otherwise.

15.4 Notices

- (a) Any notice to be served or given by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.

- (b) Any notice, document or thing may be given or served (unless specified otherwise by a clause in this Agreement) by post or email to the address of the recipient specified in this provision or most recently notified by the recipient to the sender.

Addresses for notices, documents or things:

The Minister for the Environment and Heritage and the Secretary of the Department of Planning and Environment

npws.northcoastbranch@environment.nsw.gov.au; or

The Minister for the Environment and Heritage
Locked Bag 5022
Parramatta NSW 2124

The Developer

brandon.yeats@ledaholdings.com.au

Kings Forest Estates Pty Ltd
PO Box 1914
Surfers Paradise QLD 4217

15.5 Governing law and jurisdiction

- (a) This Agreement is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

15.6 Third parties

This Agreement confers rights only upon a person expressed to be a party and not upon any other person.

15.7 Pre-contractual negotiation

This Agreement:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

15.8 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.

15.9 Continuing performance

- (a) The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.
- (b) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.
- (c) Any indemnity agreed by any party under this Agreement:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
 - (ii) survives and continues after performance of this Agreement.

15.10 Waivers

Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

15.11 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

15.12 Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

15.13 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

15.14 Electronic Execution

- (a) Each party consents to this Agreement and any variations of this Agreement 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 Agreement 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 Agreement and any variation of it:

- (i) insertion of an image (including a scanned image) of the person's own unique signature on to the Agreement;
- (ii) insertion of the person's name on to the Agreement; or
- (iii) use of a stylus or touch finger or a touch screen to sign the Agreement,
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 Agreement;
- (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the Agreement; 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 Agreement and that electronic signing of this Agreement by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this Agreement 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 Agreement for all purposes.

15.15 Party acting as trustee

If a party enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Agreement:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust; and
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Agreement on behalf of the trust and that this Agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust.
- (c) no restriction on the party's right of indemnity out of, or lien over, the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

15.16 Validity of this Agreement

- (a) No party is to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court concerning:
 - (i) the validity of this Agreement; or
 - (ii) the granting or modifying of any Development Consent to the extent that the Development Consent was granted or modified having regard to the existence of this Agreement.
- (b) If this Agreement or any part of it becomes unenforceable or invalid as a result of any change to a law, the parties are to co-operate and do all things

necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

15.17 Annual reporting

- (a) The Developer is to provide to the Minister (no later than each anniversary of the date on which this Agreement is entered into) a report outlining the performance of its obligations under this Agreement.
- (b) The report under this clause 15.17 is to be in such a form and to address such matters as reasonably required by the Minister from time to time.
- (c) This clause 15.17 has no effect unless the Works provided for in this Agreement have been physically commenced.

16. Definitions and interpretation

16.1 Definitions

In this Agreement unless the context otherwise requires:

Act means the *Environmental Planning and Assessment Act 1979*;

Agreement or **this Agreement** means this Deed and includes any schedules, annexures and appendices to this Deed;

Approval includes approval, consent, licence, permission or the like as in force for the time being;

Approved Institution means:

- (a) an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);
- (b) a general insurer within the meaning of the *Insurance Act 1973* (Cth); or
- (c) any other financial institution or insurer approved by the Minister in the Minister's absolute discretion;

Authorised Officer means a person appointed to a senior executive role in the National Parks and Wildlife Service responsible for administering the *National Parks and Wildlife Act 1974* (NSW) the name and title of which is to be notified to the Developer by the Minister from time-to-time and whose service address is the same as that of the Minister under this Agreement;

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like;

Bank Guarantee means an irrevocable and unconditional undertaking with no expiry date;

- (a) by an Australian bank which is an eligible financial institution for the purposes of the Treasury Circular NSW TC14/01 dated 24 January 2014 (as amended, supplemented or substituted from time to time);
- (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 Agreement) on demand; and;
- (c) nominating the 'Minister administering the *National Parks and Wildlife Act* 1974 (NSW)' as the Beneficiary.

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

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;

Cobaki Planning Agreement means the draft planning agreement that has been negotiated between the Minister and Cobaki Estates Pty Limited (in relation to land known as the Cobaki Estate) and publicly notified in parallel with this Agreement;

Completion Notice — see clause 7.7(m);

Concept Plan Approval means concept plan approval 06_0318 granted by the Minister on 19 August 2010 as in force for the time being;

Construction Certificate has the same meaning as in the Act and includes a subdivision works certificate within the meaning of the Act;

Cudgen Nature Reserve 80 Metre Strip means the land within the existing Cudgen Nature Reserve where that reserve immediately adjoins the Kings Forest Site, but only for a distance of 80 metres from the boundary;

Dedicated Land means the land to be, or that is, dedicated under this Agreement, namely Lot 3 in DP 1270901 as set out in Sheet 3 of Schedule 2;

Defect means anything inherent in the Work at the time its completed 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;

Defect Liability Period means the period of 12 months commencing on the day immediately after the Minister issues the relevant Completion Notice in relation to the completion of a Work for the purposes of this Agreement;

Department means the Department of Planning and Environment established under Schedule 1 of the *Government Sector Employment Act 2013*;

Development means the development of the Kings Forest Site for urban purposes and, in relation to the Dedicated Land, the development of that land for environmental and/or conservation purposes;

Development Consent means:

- (a) a development consent (within the meaning of the Act); and
- (b) a project approval given under the former Part 3A provisions of the Act;

for the Development;

Development Contribution means any of the following:

- (a) a monetary contribution;
- (b) a dedication of land free of cost; or
- (c) the provision of any other material public benefit,

provided for in this Agreement and described in Schedule 1;

Effective Date — see the Novation Deed;

EMP Works — see Item 6 to Schedule 1 of this Agreement;

Encumbrance includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre;

Environmental Management Plans means the following approved plans:

- (a) Kings Forest Precincts 1-5 Vegetation & Weed Management Plan (Revision 10, dated, March 2021, prepared by JWA Ecological Consultants);
- (b) Kings Forest Precincts 1-5 Buffer Management Plan, Revision RW8, dated 3 December 2020, prepared by JWA Ecological Consultants;
- (c) Kings Forest Precincts 1-5 Threatened Species Management Plan, Version RW7, dated 3 December 2020, prepared by JWA Ecological Consultants;
- (d) Kings Forest Precincts 6-14 Buffer Management Plan, Revision RW5, dated 3 December 2020, prepared by JWA Ecological Consultants;
- (e) Kings Forest Precincts 12-14 Vegetation & Weed Management Plan, Revision RW4, dated 4 December 2020, prepared by JWA Ecological Consultants;
- (f) Kings Forest Precincts 12-14 Threatened Species Management Plan, Version RW5, dated 15 December 2020, prepared by JWA Ecological Consultants Pty Ltd;
- (g) Kings Forest Feral Animal Management Plan, Version RW7, dated 17 December 2020, prepared by JWA Ecological Consultants;
- (h) Bushfire Management Plan for Proposed Residential/Commercial Development Kings Forest Stage 1, prepared by Bushfire Safe (Aust) Pty Ltd, dated August 2012, revised April 2020;
- (i) Summary of Management Plans Stage 1, Kings Forest New South Wales, Revision 8, dated December 2020, prepared by Gilbert + Sutherland;
- (j) Kings Forest Koala Fire Management Plan, prepared by Wildsite Ecological Services, dated December 2020;
- (k) Koala Plan of Management; and
- (l) Wallum Sedge Frog Management Plan.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Agreement;

Establishment Period is the period of time which commences and completes pursuant to clause 7.1(a);

Final Lot means a lot created for separate occupation and disposition which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development, but does not include a Service Lot;

First Bank Guarantee means the Bank Guarantee referred to in clause 10.1.

GST has the meaning given in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act (1999)* (Cth);

Independent Ecologist means a qualified ecologist with the necessary expertise who does not have a financial stake in the outcome the Development.

Item means the relevant or indicated item in the Table;

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW);

Kings Forest Precinct Plan means drawing reference '113691-PSP-4 (PRECINCT PLAN)', plan number 4, Revision B, dated 5 December 2013, prepared by RPS as set out in Sheet 1 of Schedule 2;

Kings Forest Precinct 5 means the Final Lots that would be within the area identified as Precinct 5 in the Kings Forest Precinct Plan;

Kings Forest Site means Lots 1-11 DP 1270901.

Koala Plan of Management means the 'Koala Plan of Management Kings Forest, January 2020 (Volumes 1 and 2)' prepared by JWA Pty Ltd, Ecological Consultants Pty Ltd, dated 16 January 2020, revision 23;

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work;

Maintenance Period is the period of time which commences and completes pursuant to clause 7.1(b);

Midway Period – see clause 7.7(a)(ii);

Novation Deed means the draft deed in Annexure A;

Period Scope of Works Report – see 7.7(b).

Precincts 1 & 5 Vegetation Management Plan means the 'Kings Forest Precincts 1-5 Vegetation & Weed Management Plan' prepared by JWA Ecological Consultants dated March 2020, Revision 10;

Precincts 12, 13 and 14 Vegetation Management Plan means the 'Kings Forest Precincts 12-14 Vegetation & Weed Management Plan' prepared by JWA Ecological Consultants dated, 4 December 2020, revision RW4;

Project Approval means project approval 08_0194 given under the former Part 3A provisions of the Act as in force for the time being;

Real Property Act means the *Real Property Act 1900*;

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;

Recommended Tender – see clause 7.7(g);

Registration on Title means the registration of this Agreement under section 7.6 of the Act in the folio of the Register kept under the Real Property Act in relation to the Dedicated Land, and **Registered on Title** refers to the state of the Agreement being so registered;

Regulation means the *Environmental Planning and Assessment Regulation 2000*;

Replacement Value — see clause 10.1(e)(i);

Scope of Works Report – see clause 10.2(b).

Scribbly Gum Restoration Plan means the document titled 'Scribbly Gum Offset Area Restoration Management Plan' prepared by Boyds Bay Environmental dated 6 December 2017, Ref 358C, version 3, as set out in Annexure B to this Agreement;

Second Bank Guarantee means the Bank Guarantee referred to in clause 10.2.

Section 7.11 Contribution means a development contribution under section 7.11 of the Act;

Security — see clause 10;

Service Lot means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to the Minister;
- (b) for any public utility undertaking (within the meaning of the Standard Instrument);
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

but does not include a lot which is intended to be further subdivided by or on behalf of the Developer but does include association property within the meaning of the *Community Land Development Act 1989* used for a purpose mentioned in (c) above;

Sourcing Strategy – see clause 10.2(b)

Standard Instrument means the standard instrument for a principal local environmental plan set out in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement;

Subdivision Certificate has the same meaning as in the Act;

Table means the table set out in Schedule 1;

Tender Assessment Guidelines – see clause 10.2(b)(i)B;

Tender Process - see clause 7.7(f);

Wallum Sedge Frog Management Plan means the 'Wallum Sedge Frog Management Plan' prepared by JWA Pty Ltd, Ecological Consultants, dated 20 April 2020, version RW17;

Work means:

- (a) when a reference to an object, the physical result of any building, engineering or construction work in, on, over or under land; and
- (b) when a reference to activity, activity directed to produce the physical result of any building, engineering or construction work in, on, over or under land.

16.2 Interpretation

- (a) In this Agreement unless the context otherwise requires:
 - (i) clause and subclause headings are for reference purposes only;
 - (ii) the singular includes the plural and vice versa;
 - (iii) words denoting any gender include all genders;
 - (iv) reference to a person includes any other entity recognised by law and vice versa;
 - (v) a reference to a party means a party to this Agreement, including their successors and assigns and a person bound by the Agreement under section 93H(3) of the Act;
 - (vi) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
 - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
 - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
 - (ix) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
 - (x) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
 - (xi) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;

- (xii) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party.
- (xiii) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Agreement;
- (xiv) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (xv) when a thing is required to be done or money required to be paid under this Agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (xvi) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.
- (b) Nothing in this Agreement is to be taken to require the Minister to do anything that would cause the Minister to be in breach of any of the Minister's statutory obligations.
- (c) Nothing in this Agreement, including the Kings Forest Precinct Plan, requires the Developer to produce any or a particular number of Final Lots, or produce the Final Lots (or a subdivision stage) in any particular order.

16.3 No joint venture, etc

Unless otherwise stated:

- (a) nothing in this Agreement 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.

16.4 No obligation to grant or modify a Development Consent

- (a) This Agreement does not impose an obligation on any public authority to grant or modify any Development Consent.
- (b) For avoidance of doubt, clause 16.4(a) does not affect any obligation of a consent authority (under section 4.15(1)(a)(iia) of the Act) to take this Agreement into consideration.

16.5 No breach, etc of a Development Consent

Despite any other provision of this Agreement, this Agreement does not require, allow or preclude anything from being done if by so doing it would cause the Developer to:

- (a) be in breach; or

(b) not fulfil a requirement,

of a Development Consent (or any applicable approval under the *Environment Protection and Biodiversity Conservation Act 1999*) in force and applying to the Land.

16.6 Explanatory Note

In accordance with clause 25E(7) of the Regulation the explanatory note must not be used to assist in construing this Agreement.

Schedule 1 – Development Contributions

(Clause 4 and Clause 16.1)

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
Dedication of land				
1	Addition to the Cudgen Nature Reserve	1.1 Dedication of Lot 3 in DP 1270901. Note: Sheets 1, 4-11 and 14 DP 1270901 are set out in sheet 3 of schedule 2 for information	Conservation or enhancement of the natural environment	15 years after the date of this Agreement in accordance with clause 5.6 of this Agreement.
Material public benefit (works)				
2	Scribbly Gum restoration work	2.1 The carrying out of restoration work in generally accordance with the Scribbly Gum Restoration Plan, provided that where Scribbly Gum Restoration Plan provides for the Department to exercise a discretion, that discretion must be exercised reasonably. Note: The parties recognise that prior to the date of this Agreement work was already carried out by the Developer for this purpose. The parties do not intend that the Developer need to carry out the work merely because work (that has already been carried out) is referred to prospectively in the Scribbly Gum Restoration Plan. The parties acknowledge that as at the date of this Agreement the Developer has not completed the works required under the Scribbly Gum Restoration Plan.	Conservation or enhancement of the natural environment	Prior to the dedication of land in Item 1.

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
3	Bushfire management	3.1 A category 7 fire trail (in accordance to 'Fire Trail Standards' published by the Rural Fire Service Rural on 14 August 2017) must be provided within the retained portion of the Kings Forest Site adjacent to the boundary of the Lot 3 DP 1270901. 3.2 Within Precinct 5 — A sealed perimeter road in accordance with the Project Approval or a category 7 fire trail (in accordance to 'Fire Trail Standards' published by the Rural Fire Service Rural on 14 August 2017) — or a mixture of both.	Conservation or enhancement of the natural environment	Prior to the dedication of land in Item 1
4	Weed management	4.1 Control of weeds within the area of land to be dedicated under Item 1 and for a distance of 20 metres within the Cudgen Nature Reserve 80 Metre Strip, measured from the boundary with the Kings Forest Site. 4.2 Removal of mature pine trees and pine wildlings within the area of land to be dedicated under Item 1 and the Cudgen Nature Reserve 80 Metre Strip.	Conservation or enhancement of the natural environment	Prior to the dedication of land in Item 1
5	Bridge replacement	5.1 Replace the existing bridge with either a new bridge or a culvert on the far south of the Dedicated Land.	Conservation or enhancement of the natural environment	Prior to the dedication of land in Item 1
6	EMP Works	6.1 All Works required to be undertaken to the Dedicated Land as specified in the Environmental Management Plans.	Conservation or enhancement of the natural environment	Prior to the dedication of land in Item 1.
Payment of a monetary contribution				

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
7	Signage	6.1 Pay a monetary contribution \$24,000.00 indexed each year by reference to the CPI. for signage.	Conservation or enhancement of the natural environment	Prior to the dedication of land in Item 1

Schedule 2 – Drawings

(Clause 16)

Sheet 1: Kings Forest Precinct Plan



Y) LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS -
(SEE CROWN GRANT(S))

WARNING : Crossing or folding will lead to rejection

PLAN FORM 2 (A2)

SHORT LINES		
NO	BEARING	DIST
15	218°26'50"	4.3
16	223°22'35"	4.3
17	228°18'20"	4.3
18	233°14"	4.3
19	238°09'45"	4.3
20	243°02"	5.127

[illegible]

DP1270901

REGISTERED
24/11/2021

GA: TWEED
Locality: KINGS FOREST 'DURANBAH'
Reduction Ratio 1:1250

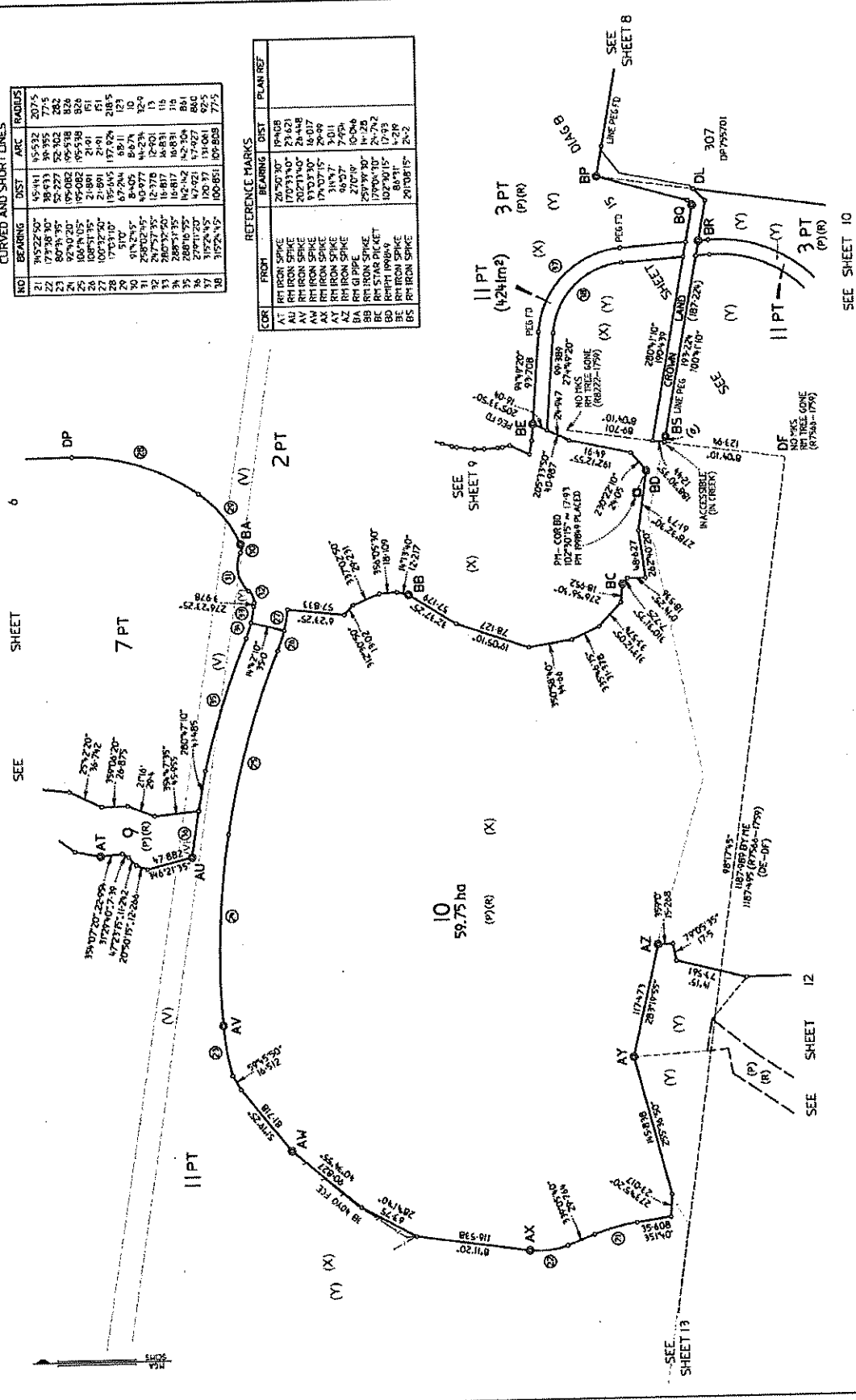
PLAN OF SUBDIVISION OF Lot 44 OFF 442, Lots 37A, 38A & 39B DP1377,
Lot 1 DP12373, Lot 1 DP70697, Lots 76, 272, 323 & 328 DP75761, Lot 1
DP78133, Lot 6 DP75446, Lot 7 DP75447, Lot 50 DP118562, Lots 1, 2 & 3
DP1157618 (Cheong Road), Lot 2 DP158235 (Cheong Road) and Lot 1

SURVEYOR
Name : BRIAN PHILLIP ROGERS
Date : 26/07/2021

SEE SHEET 3 (DIAGH)

NO	BEARING	ARC	RADIUS
1	34°52'22" S	45-141	207.5
2	77°36'30" S	38-613	77.5
3	80°34'30" S	35-227	34.5
4	82°30'00" S	52-102	83.2
5	72°30'00" S	52-102	83.2
6	27°30'00" S	51-082	82.6
7	18°34'30" S	21-881	81.1
8	10°34'30" S	21-881	81.1
9	10°32'30" S	175-645	218.5
10	51°00'00" S	627-244	165.1
11	91°15'00" S	400-977	135.0
12	126°32'30" S	44-274	32.9
13	280°32'30" S	12-716	12.0
14	280°32'30" S	16-187	11.6
15	280°30'00" S	16-187	11.6
16	280°10'00" S	162-162	84.0
17	280°10'00" S	162-162	84.0
18	315°22'30" S	100-371	92.5
19	315°22'30" S	100-371	92.5
20	315°22'30" S	100-371	92.5

OR	FROM	BEARING	DIST.	PLAN OF
20	RM IRON SPIKE	20° 50' 00"	19.00	
21	RM IRON SPIKE	172° 31' 40"	26.68	
22	RM IRON SPIKE	173° 03' 10"	16.63	
23	RM IRON SPIKE	173° 03' 10"	16.07	
24	RM IRON SPIKE	174° 02' 15"	29.49	
25	RM IRON SPIKE	314° 47'	3.01	
26	RM IRON SPIKE	314° 47'	7.954	
27	RM IRON SPIKE	66° 37'	10.506	
28	RM IRON SPIKE	270° 49'	10.506	
29	RM IRON SPIKE	270° 49'	10.506	
30	RM IRON SPIKE	172° 31' 40"	26.742	
31	RM IRON SPIKE	173° 03' 10"	17.93	
32	RM IRON SPIKE	173° 03' 10"	17.93	
33	RM IRON SPIKE	80° 31'	4.289	
34	RM IRON SPIKE	201° 10' 15"	26.2	



X) RESTRICTION(S) ON THE USE OF LAND NO. 3 & 4 (DP1188902)
LAND EXCLUDES MINERALS (S 171 CROWN LANDS ACT 1959)
LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND
CONDITIONS- SEE CROWN GRANT(S)
P).....POSITIVE COVENANT (VARIABLE WIDTH)
POSITIVE COVENANT ON JUST ICE O'NEILL (VARIABLE WIDTH)

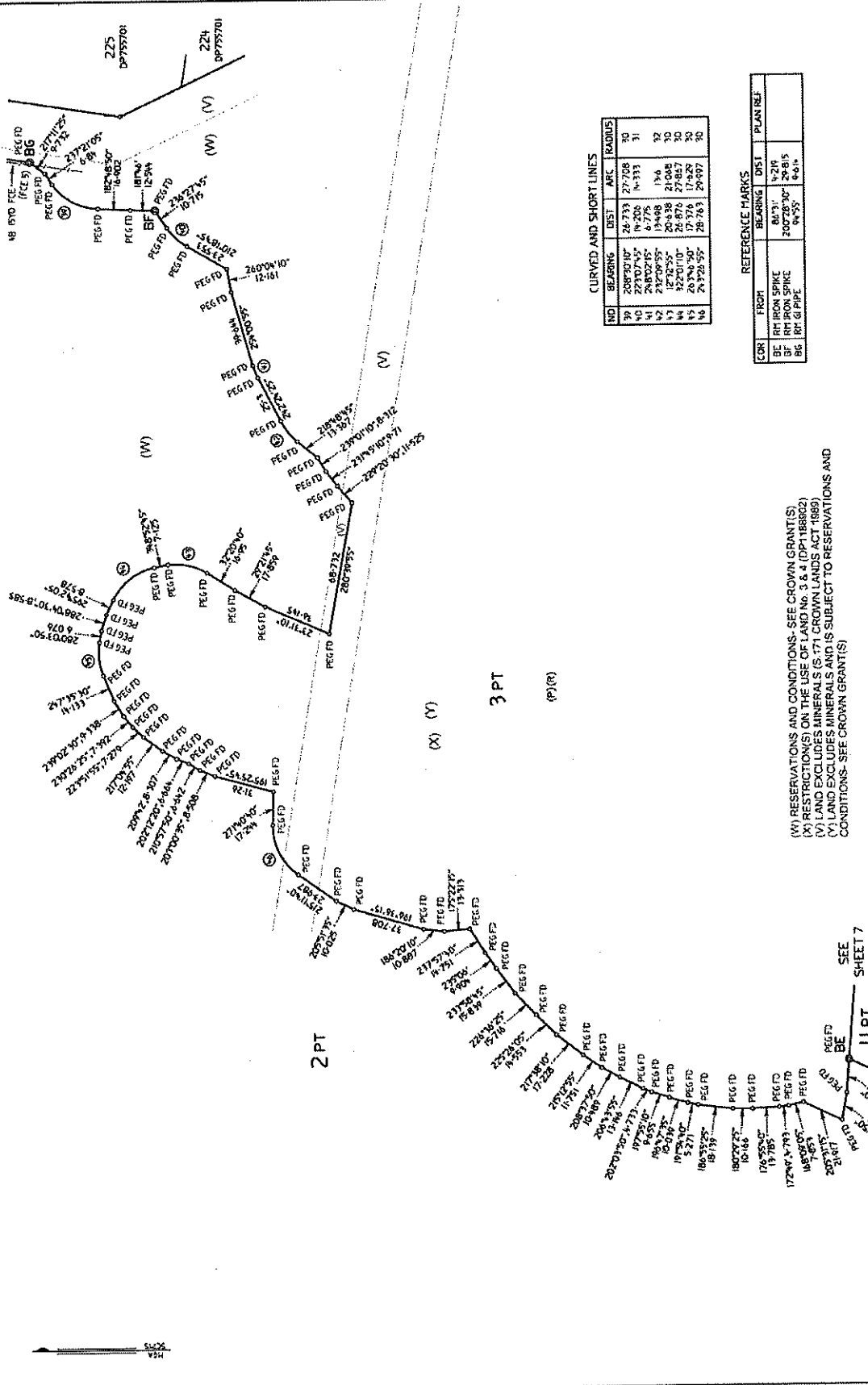
SURVEYOR
Name : BRIAN PHILLIP ROGERS
Date : 26/07/2021
Reference : APS CC 11589-1st Plan, REF
www.apscc.com.au Part 5 Survey

PLAN OF SUBDIVISION OF Lot 40 DPT7482, Lots 37A, 38A & 30B DP15727,
Lot 1 DP128737, Lot 1 DPT76487, Lots 76, 272, 323 & 326 DP755701, Lot 1
DPT761623, Lot 8 DPT675446, Lot 7 DPT675447, Lot 50 DPT108982, Lots 1, 2 & 3
DP11578716 (Closed Road), Lot 2 DPT1580231 (Closed Road) and Lot 1
DP11578716 (Closed Road).

GA: TWEED
locality: KINGS FOREST, DURANBAH
Reduction Ratio 1:2500
weights are in mg/m².

REGISTERED
24/11/2021

DP1270901



NO	BEARING	DEPT	ARC	RADIUS
39	208°30'10"	26.733	27.708	30
40	223°07'45"	19.206	16.333	31
41	248°02'45"	6.775		
42	232°09'55"	13.608	13.6	32
43	127°22'55"	20.638	21.048	33
44	325°01'10"	26.876	27.867	30
45	283°06'50"	17.376	17.829	30
46	283°26'50"	28.763	29.697	30

REFERENCE MARKS				
COR	FROM	BEARING	DIST.	PLAN REF.
BE	RM IRON SPIKE	80°31'	42.19	
BF	RM IRON SPIKE	200°28'30"	29.815	
BR	RM GLADE	00°55'	9.615	

2000 JUN 23 09:38:33

(W) RESERVATIONS AND CONDITIONS- SEE CROWN GRANT(S)
 (X) RESTRICTION(S) ON THE USE OF LAND NO. 3 & 4 (DP1188902)
 (Y) LAND EXCLUDES MINERALS (S.171 CROWN LANDS ACT 1969)
 (Z) LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATION
 CONDITIONS- SEE CROWN GRANT(S)

DP1270901

REGISTERED
24/11/2021

LGA : TWEED
Locality : KINGS FOREST, DURANBAH
Reduction Ratio 1 : 1250

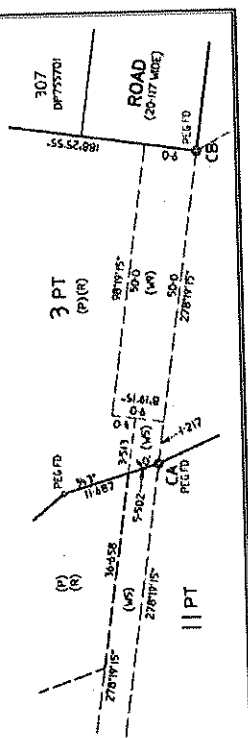
PLAN OF SUBDIVISION OF LOT 46 DPT62, LOTS 37A, 38A & 39B DPT377,
Lot 1 DPT23777, Lot 1 DPT66667, LOTS 76, 77, 78 & 326 DPT55761, Lot 1
DPT31633, Lot 6 DPT54446, LOTS 7 DPT65447, Lot 50 DPT138662, LOTS 1, 2 &
DPT157616 (Closed Roads), Lot 2 DPT159231 (Closed Road) and Lot 1

SURVEYOR
NAME: BRIAN PHILLIP ROGERS
Date: 26/07/2021

(P).....POSITIVE COVENANT (VARIABLE WIDTH)
(R).....RESTRICTION ON THE USE OF LAND (VARIABLE WIDTH)

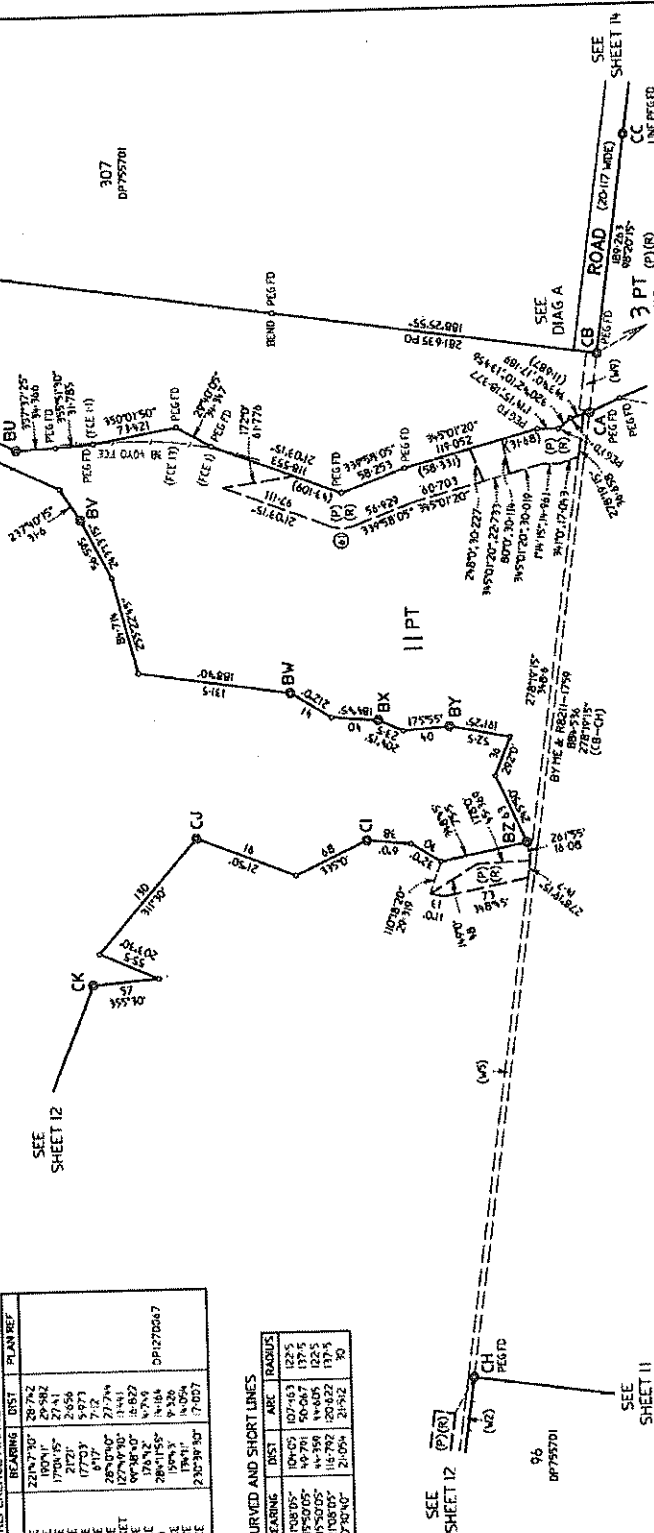
DIAGRAM A
NOT TO SCALE

COMPARISONS				
FROM	TO	BEARING	DIST	METHOD
COR DL	COR CB	198°23'58"	816.541	SURVEY
		180°01'02"	816.541	HB210-1759



REFERENCE MARKS		BEARING	DIST	PLAN REF.
BT	IRON SPIKE	22° 30' N	28.742	
BU	IRON SPIKE	170° 01'	29.582	
BV	IRON SPIKE	170° 05'	27.41	
BW	IRON SPIKE	212°	2.656	
BX	IRON SPIKE	172° 21'	7.73	
BY	IRON SPIKE	172° 21'	7.73	
BZ	IRON SPIKE	208° 00'	27.744	
CA	5" IRON PEG	12° 45' 00"	3.842	
CB	IRON SPIKE	09° 38' 00"	1.551	
CC	IRON SPIKE	170° 13'	9.326	DP127067
CD	IRON SPIKE	208° 05'	9.326	
CE	IRON SPIKE	159° 33'	11.054	
CF	IRON SPIKE	22° 30' N	7.057	
CG	IRON SPIKE	22° 30' N	3.07	

NO.	BEARING	DIST.	ARC	RADIUS
57	21°08'05"	104.05	107.463	122.5
58	215°07'05"	40.701	50.667	137.5
59	215°08'05"	44.350	44.605	122.5
60	218°08'05"	116.792	200.622	177.5
61	0°30'40"	21.054	21.562	30



(W2).....EASEMENT FOR WATER SUPPLY 5 WIDE (P 1270087)
 (W5).....EASEMENT FOR WATER SUPPLY 5 WIDE (A275433)
 (W6).....EASEMENT FOR WATER SUPPLY 6 WIDE (A275434)
 (P).....POSITIVE COVENANT (VARIABLE WIDTH)
 (R).....RESTRICTION ON THE USE OF LAND (VARIABLE WIDTH)

SURVEYOR
Name: **BRIAN PHILLIP ROGERS**
Date: **26/07/2021**
Report: **REVISIONS: 005 C01: 15/09/21-AT: PERS. REPORT**

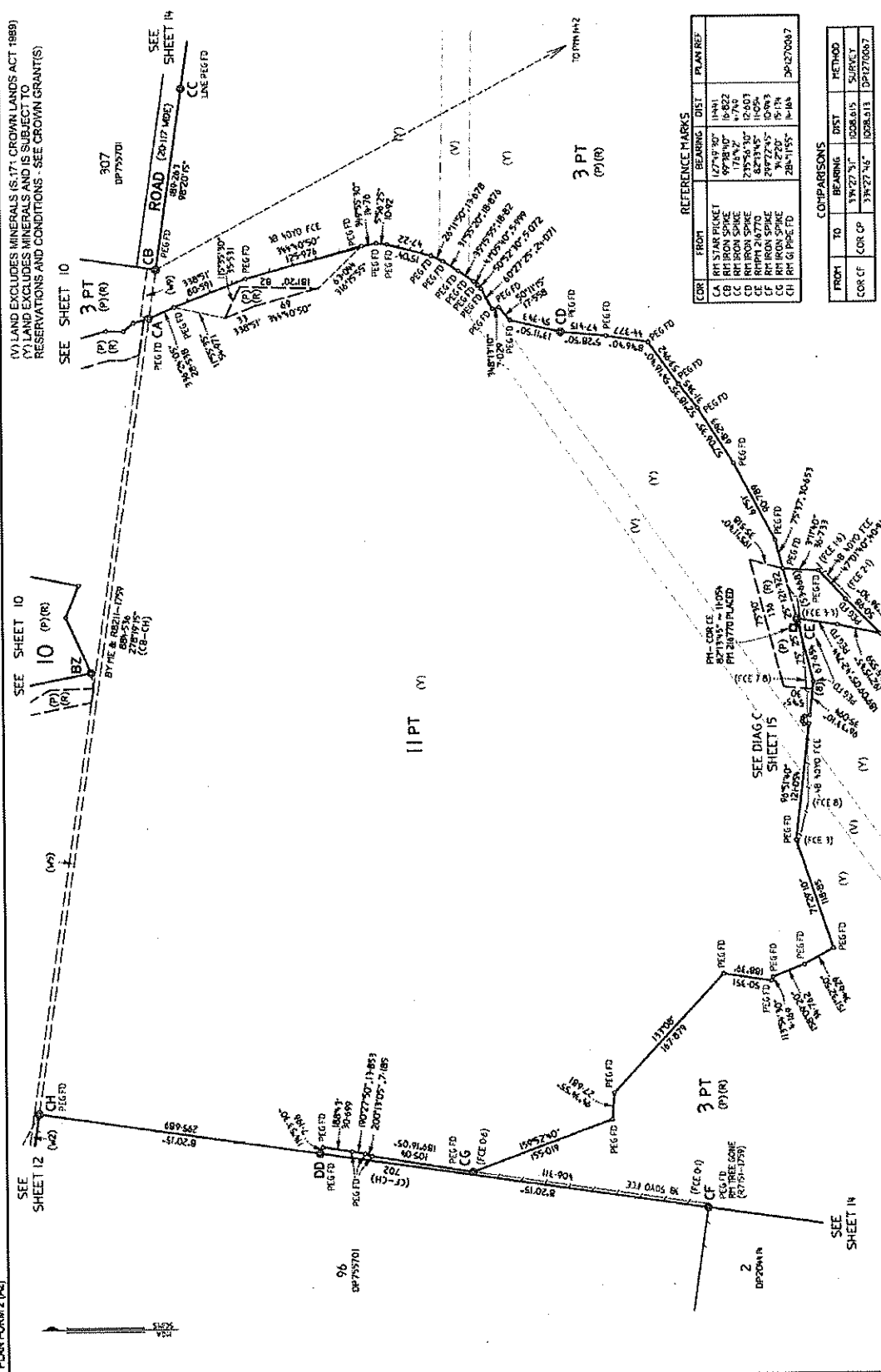
LGA : TWEED
Locality : KINGS
Reduction Ratio
Landings are in millions.

REGISTERED
24/11/2024

DP1270901

WARNING: Crossing or loading will lead to rejection

(V) LAND EXCLUDES MINERALS (S.17: CROWN LANDS ACT 1989)
(Y) LAND EXCLUDES MINERALS AND IS SUBJECT TO
RESERVATIONS AND CONDITIONS - SEE CROWN GRANT(S)



REFERENCE MARKS				BEARING	DIST.	PLAN REF.
CR	FROM			127° 5' 30"	11441	
CA	RT STAR PICKET			69° 38' 40"	16-822	
CB	RT IRON SPIKE			176° 42'	17430	
CC	RT IRON SPIKE			235° 58' 30"	12-001	
CD	RT IRON SPIKE			315° 14' 5"	11-054	
CE	RHPH 216.770			298° 22' 55"	10-993	
CF	RT IRON SPIKE			94° 20'	5-174	
CG	RT IRON SPIKE			268° 15' 55"	10-145	
CH	RT GLASS ED.					30-127000-7

COMPARISONS			
	FROM	TO	METHOD
	COR CF	1° 27' 31"	SURVEY
		1008.615	
		24552.316°	1008.413
			121370627

(W2).....EASEMENT FOR WATER SUPPLY 5 WIDE (DP 1270067)
 (W5).....EASEMENT FOR WATER SUPPLY 5 WIDE (A2795433)
 (W6).....EASEMENT FOR WATER SUPPLY 5 WIDE (A2795434)
 (P2).....POSITIVE COVENANT (VARIABLE WIDTH)
 (R2).....RESTRICTION ON THE USE OF LAND (VARIABLE WIDTH)

SURVEYOR
Name : BRIAN PHILLIP ROGERS
Date : 26/07/2021
Reference : RPS GC 17369 1st Plan, REPORT
2020/07/2021 130 Partial Survey

PLAN OF SUBDIVISION OF LOT 40 DP7402, LOTS 37A, 38A & 32B DP13777, LOT 1 DP128737, LOT 1 DP178647, LOTS 76, 77, 32 & 32B DP755701, LOT 1 DP128737, LOT 1 DP178647, LOT 2 DP755477, LOT 30 DP1188502, LOTS 1, 2 & 3 DP128737, LOT 1 DP178647, LOT 2 DP1188502 (Closed Road) and LOT 1 DP1188502 (Closed Road)

LGA : TWEED
Locality : KINGS FOREST / DURANBAH
Reduction Ratio 1 : 2500
Langlois are in metres.

REGISTERED
24/11/2021

DP1270901

Schedule 3 – Encumbrances

(Clause 5.3(b))

Tab	Folio	Property address	Instruments
1.	40/7482 (Auto consol 7255-158)	165 Duranbah Road, Kings Forest 2487 102 Melaleuca Road, Kings Forest 2487	AI408827 x 3 - For overhead power lines in areas E5, E6 and E9 in DP1186170 - Copy of AI408827 and DP1186170
2.	1/781633 (Auto consol 7255-158)	165 Duranbah Road, Kings Forest 2487 102 Melaleuca Road, Kings Forest 2487	AI408827 x 3 - For overhead power lines in areas E5, E6 and E9 in DP1186170 - For AI408827 and DP1186170 see tab 1
3.	6/875446	165 Duranbah Road, Kings Forest 2487	AI408827 - For overhead power lines in areas E12 in DP1186170 - For AI408827 and DP1186170 see tab 1
4.	2/597802	11 Secret Lane, Kings Forest 2487	A684002 - Right of carriageway in favour of 2/13727 R48248 - Right of carriageway in favour of 1/597802 AI661341 - Easement for overhead power lines in area E10 on DP1186170
5.	2/819015 (Folio cancelled – now 50/1188902)	165 Duranbah Road, Kings Forest 2487 175 Duranbah Road, Kings Forest 2487 80 Melaleuca Road, Kings Forest 2487 102 Melaleuca Road, Kings Forest 2487	DP616044 - Right of carriageway in favour of 7/605574 over 5/616044 DP819194 - Right of carriageway in favour of 70/819194 – area shown on DP1188902 DP1186717 - Easement for water supply in areas J and K on 71/819194 in favour of Tweed Shire Council – area shown on DP1188902 DP1188902 - Easement for water supply on 50/1188902 in favour of Tweed Shire Council

			• Easement for overhead power lines on 51/1188902 • Restriction on the use of land on 50/1188902 in favour of Tweed Shire Council • Restriction on use of the land on 50/1188902 in favour of Tweed Shire Council
--	--	--	---

Executed as a deed.

Signed, sealed and delivered by the Minister for the Environment and Heritage in the presence of:

K. T.
Witness

KEIRAN THOMAS
Print name

4 PARRAMATTA SQUARE, 12 DARCY STREET PARRAMATTA NSW 2150
Print address

Sharon Molloy
Minister MINISTER'S DELEGATE
SHARON MOLLOY
Print name

Signed, sealed and delivered by the Secretary of the Department of Planning Environment (ABN 20 770 707 468) in the presence of:

K. T.
Witness

KEIRAN THOMAS
Print name

4 PARRAMATTA SQUARE, 12 DARCY STREET PARRAMATTA NSW 2150
Print address

David Cressford
Chief Executive Secretary Delegate
David Cressford
Print name

Signed, sealed and delivered on behalf of Kings Forest Estates Pty Ltd (ACN 003 919 613) in accordance with s127(1) of the Corporations Act 2001 (Cth) by:

Secretary/Director

William Ell
Print name

William Robert Ell
WR 60

WR 60

Robert Ell
Director
Robert Ell
Print name

Robert John Ell

Annexure A – Draft Deed of Novation

Deed of Novation

The Minister for the Environment and Heritage

Secretary of the Department of Planning and Environment

[Insert name of existing developer]

[Insert name of new developer]

Deed of Novation

Dated

Parties

1. **The Minister for the Environment and Heritage** of 4 Parramatta Square, 12 Darcy Street, Parramatta, NSW and the **Secretary of the Department of Planning, and Environment** (ABN 20 770 707 468) (*together the Minister*)
2. **[Insert name of existing developer]** ACN [insert ACN] of [insert address] (**the Existing Developer**)
3. **[Insert name of new developer]** ACN [insert ACN] of [insert address] (**the New Developer**)

Background

- A. The Minister and the Existing Developer have entered into the Agreement.
- B. The Existing Developer intends to transfer **[Insert title reference(s)]** to the New Developer.

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. The Minister has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and the parties have agreed to enter into this Deed to give effect to their common intentions.

[If, as a result of the transfer, the Existing Developer will still own part of the Land:]

- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. The Minister has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and the parties have agreed to enter into this Deed to give effect to their common intentions.

Operative provisions

1. Defined meanings

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Novation

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

[If, as a result of the transfer, the Existing Developer will still own part of the Land:]

With effect on and from the Effective Date:

- (c) The New Developer is taken to be a party to the Agreement and the definition of Developer in clause 16.1 of the Agreement is taken to include the New Developer; and
- (d) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

3. Consent

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

With effect on and from the Effective Date, the Minister:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- (c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

[If, as a result of the transfer, the Existing Developer will still own part of the Land:]

With effect on and from the Effective Date, the Minister:

- (d) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed; and

- (e) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

4. Release and Indemnity

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

4.1 Release and Discharge (the Minister)

On and from the Effective Date, the Minister releases the Existing Developer from all Rights and Obligations and from all Claims that it may have against the Existing Developer under or in respect of the Agreement.

4.2 Release and Discharge (the Existing Developer)

On and from the Effective Date, the Existing Developer releases the Minister from all the Minister's obligations under the Agreement and from all Claims that it may have against the Minister under or in respect of the Agreement.

4.3 Indemnity

On and from the Effective Date, the New Developer indemnifies the Existing Developer from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Land]

5. Representations and Warranties

5.1 Power

Both of the Existing Developer and the New Developer represent and warrant to the Minister and to each other that:

- (a) it is an individual or corporation validly existing under the laws of Australia;
- (b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- (c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

5.2 Reliance by the Minister

The Existing Developer and the New Developer each acknowledge that the Minister has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

6. General provisions

6.1 Developer Costs

The Existing Developer and the New Developer must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.2 The Minister's Costs

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable legal costs in relation to the negotiation, preparation and execution of this Deed, but are not otherwise liable for the Minister's costs in relation to the:

- (a) performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.3 GST

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

6.4 Duties

- (a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

6.5 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

6.6 Notices

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

[Insert address for notices for each of the parties]

- (b) Any notice to or by a party under this Deed must be in writing and signed by either:
 - (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

6.7 Governing law and jurisdiction

- (a) This Deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

6.8 Amendments

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

6.9 Third parties

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

6.10 Pre-contractual negotiation

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

6.11 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

6.12 Continuing performance

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:

- (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
- (ii) survives and continues after performance of this Deed,

6.13 Waivers

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

6.14 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

6.15 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

6.16 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same Deed.

6.17 Party acting as trustee

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

7. Definitions and interpretation

7.1 Definitions

In this Deed unless the context otherwise requires:

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Agreement means the voluntary planning agreement between the Minister and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure A.

Deed means this Deed and includes any Annexures to this Deed.

Effective Date means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Liabilities include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

Rights and Obligations means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

7.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

Executed as a deed.

[Insert relevant attestation clauses]

[Insert the executed planning agreement that is the subject of the novation as Annexure A

Annexure B – Scribbly Gum Restoration Plan

Scribbly Gum Offset Area Restoration Management Plan



Location: Kings Forest, NSW

Prepared for PROJECT 28 PTY LTD

REF: 358C

Date: 06/12/2017

Document Control Register

Client: LEDA

Job Manager: Morgan Hamilton

Version no.	Date	by	Nature of Document
1	8/1/2016	Morgan Hamilton	Draft for client comment
1.1	20/1/2016	Morgan Hamilton	Draft for OEH comment
2	15/02/2016	Morgan Hamilton	Incorporating OEH comments
3	06/12/2017	Dmitri Medvedko	Incorporating OEH comments

Date: 06/12/2017

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1. Introduction

This plan provides restoration measures for the Scribbly Gum (*Eucalyptus racemosa*) offset area located at Kings Forest, NSW.

1.1 Background

A Scribbly Gum reserve area within what is today Precinct 8 at Cobaki Estate had its origin in recommendations contained in a report "*Flora and Fauna Assessment, James Warren December 1994*". In about 2009, during the course of the preparation of a Part 3A Concept Plan application for Cobaki Estate, the significant impact on the trees of termites infestation was recognised by the then DECCW. Having regard also for the isolated situation of the reserve area, the eventual removal of the trees with the provision of appropriate offsets was foreshadowed. The Concept Plan approval of December 2010 accordingly contained the following commitment with the Statement of Commitments:

The proponent will enter into separate planning Agreements with DECCW for the offset of the following impacts: (the list included)

- *On existing trees within the Scribbly Gum Reserve should this occur."*

Anticipating the Concept Plan approval and having made this commitment, Project 28, the proprietor of the Kings Forest lands, obtained the in-principle approval of NPWS of an area within Kings Forest where Scribbly Gums would be planted to provide the offset. Subsequent to such planting monitoring reports were produce twice annually, commencing in April 2011 with the most recent being that of September 2015.

The site was inspected by OEH in June 2015 and noted that additional restoration work (weed control and planting) would be required to ensure the overall vegetation community is in a healthy and selfsustaining condition able to transition to National Parks with minimal long-term maintenance inputs.

1.2 Aim & Objectives

The aim and objectives of this plan are:

- Provide restoration measures to be applied to the 2.55ha Scribbly Gum offset site leading up to the acceptance of the site by National Parks
- Provide weed control and infill plantings to create canopy cover, limit potential for weed impacts and trigger native plant successions

- Ensure the vegetation community is in a healthy and self-sustaining condition, to the satisfaction of OEH and able to transition to National Parks with minimal long-term maintenance inputs

2. Site Description

Topography & Soils

The landscape is generally low lying and very flat. Elevation is approximately ~5 AHD. Soils are generally sandy, well drained and highly leached.

Vegetation Description

Canopy layer vegetation is generally heath and regrowth open woodland throughout the majority of project area. Isolated mature *Eucalyptus racemosa* provide disconnected canopy cover with a height between 8-14m. Other small regrowth canopy species include *Lophostemon suaveolens* (swamp box) *Melaleuca quinquinervia* (broad-leaved paperbark), *Eucalyptus robusta* (swamp mahogany) and *Pinus elliottii* (slash pine).

The ground layers are dominated by exotic species including *Axonopus compressus* (broad-leaved carpet grass) *Setaria sphacelata* (South African pigeon grass) and native species including *Imperata cylindrica* (blady grass). The project area also contains coastal heath species including *Babingtonia similis* (twiggy heath myrtle) *Banksia spinulosa* (hairpin banksia), *Hakea* sp. and *Leucopogon parviflorus* (coast beard-heath).

The dominant grass weeds are *Andropogon virginicus* (whisky grass) and *Setaria sphacelata* (pigeon grass). Other weeds present include *Pinus elliottii* (Slash pine) *Conyza sumatrensis* (Tall fleabane), *Ageratina adenophora* (Crofton's weed) and *Baccharis halimifolia* (Groundsel bush).

Landscape Context & Connectivity

The location of the offset planting provides connectivity between the intact vegetation to the east and to the west. The restoration activities are reducing exotic species cover and building connectivity between planted scribbly gums and existing native species (figure 2-1).



Figure 2-1: Connectivity between adjacent intact vegetation and the project area

3. Management Zones & Recommendations

Management zones have been allocated based on extent of disturbance, variations in vegetation and/or weed assemblages and variations in topography. Priority of management zones has been based on the distribution, density and diversity of weeds in each zone; seasonality, dispersal mechanisms and degree of invasiveness, statutory requirements and control difficulty.

The aim of the restoration management zones is to:

- Ensure the vegetation community is in a healthy and self-sustaining condition able to transition to National Parks with minimal long-term maintenance inputs.
- Treat all areas affected by exotic species;
- Maintain and create suitable conditions for native flora species successions;
- Improve habitat for native fauna; and
- Maintain conditions favourable for regeneration of natives;

Expected duration of works is 12 – 24 months from commencement, however results may vary based on weather patterns and rainfall received at the site. It is envisaged that the works will commence in April 2016 with expected completion by March 2019. An annual inspection by a representative of the Office of Environment and heritage will be undertaken to determine whether the vegetation community at the site has reached a healthy and self-sustaining condition.

3.1 Management zone 1

Description & works



Figure 3-1: Vegetation within management zone 1

- 0.66ha covering more open areas with appreciable exotic species cover (mostly grasses)
- Canopy weeds in this zone are mature (Slash Pine) *Pinus Elliotii* scattered through the zone in varying densities
- Mid-story weeds are mostly absent but scattered Crofton's Weed, juvenile Slash Pine and Groundsel Bush (*Baccharis halimifolia*) are present in minor patches.
- Ground layer weeds are mostly widespread mixed grasses exotic grasses including *Andropogon virginicus* (Whisky Grass), *Conyza sumatrensis* (Tall Fleabane) and *Setaria sphacelata* (Pigeon Grass)
- Access to management zone 1 is provided via the existing assess track/paddock via a locked gate.
- Commence works from the eastern boundary of the zone and systematically work through the zone treating all canopy, mid-storey and ground layer weeds by the appropriate methods outlined below.

Planting

The restoration measures provided in this plan have been developed to ensure a healthy and self-sustaining vegetation community with minimal long term maintenance required.

The infill planting areas will be prepared by overspray of the weed affected area (particularly grasses) and a follow up spray approximately a month later.

Plants will be at 1.5 – 2m avoiding planting within the dripline of any existing native species. Forest mulch is to be installed in a 1m ring to 100mm depth around each plant.

Planting is proposed for late summer or early autumn to coincide with rain and avoid hot summer conditions. Plants will be sun hardened prior to delivery. Plants will be thoroughly watered on site prior to being installed and again on planting with a minimum of 5 litres per plant. Watering will continue on a weekly basis for the first month then as required depending on weather conditions.

The plants selected are characteristic of the surrounding vegetation community and have been recorded on site or adjacent to the site. Scribbly gums have been included in the planting to provide further species to offset loss of habitat values from the mature trees to be cleared at Cobaki.

Tubestock consists of trees/shrubs only as native groundcover species are expected to colonise the site naturally. Native seed dispersion from forested areas surrounding the restoration area should increase the diversity species onsite after establishment of planting and weed control.

<i>Acacia melanoxylon</i>	Blackwood	240
<i>Banksia integrifolia</i>	Coast banksia	120
<i>Eucalyptus racemosa</i>	Scribbly gum	240
<i>Eucalyptus robusta</i>	Swamp mahogany	240
<i>Glochidion ferdinani</i>	Cheese tree	120
<i>Macaranga tanarius</i>	Macaranga	120
<i>Melaleuca quinquenervia</i>	Paperbark	240
<i>Dodonaea triquetra</i>	Hop bush	120
<i>Elaeocarpus reticulatus</i>	Blueberry ash	120

Note: additional plants may be necessary to meet rehabilitation standards.

Recommended management actions

The following schedule provides a prioritized list of recommended management actions for the zone.

Sequence of work	Action detail/description	Target outcomes	Works schedule	Indicative labour and materials requirements
1	Primary works 0.67 ha Cut, Scrape and Paint woody weeds <10cm stem diameter. Stem inject woody weeds >10cm diameter. Hand pull/cut, scrape and paint vine weeds	Reduce area affected by exotic species. Maintain and create conditions for native flora including endangered species. Improve habitat for native fauna.	Spring/summer	2 person days. Drill and generator required
2	Follow-up 0.67 ha Treat any woody weed re-growth. Spot spray all exotic seedlings, including ground covers	As above. Provide conditions favourable for recruitment of native species. Improved habitat suitable for native fauna	Summer/autumn	1 person days
3	Planting 0.67 ha	Planting as described for the management zone	Summer/autumn	10 person days 1560 plants 150m ³ Mulch
3	Maintenance 0.67 ha Spot spray any exotic seedlings/ ground covers	Consolidate work area. Maintain conditions favourable for regeneration of natives. Manage bushfire risk	Year round as required	1 person days per quarter

3.2 Management zone 2

Description & works



Figure 3-2: Vegetation within management zone 2

- 1.88ha covering more intact vegetated areas with majority native species cover
- Canopy weeds in this zone are mature (Slash Pine) *Pinus Elliotii* scattered through the zone in varying densities
- Mid-story weeds are mostly scattered Crofton's Weed, juvenile Slash Pine and Groundsel Bush (*Baccharis halimifolia*) present in minor patches.
- Ground layer weeds are mostly mixed grasses exotic grasses including *Andropogon virginicus* (whisky grass) and *Setaria sphacelata* (pigeon grass) present in dense patches in more open areas
- Access to management zone 2 is provided via the existing assess track/paddock via a locked gate.
- Commence works from the eastern boundary of the zone and systematically work through the zone treating all canopy, mid-storey and ground layer weeds by the appropriate methods outlined below.

Recommended management actions

The following schedule provides a prioritized list of recommended management actions for the zone.

Sequence of work	Action detail/description	Target outcomes	Works schedule	Indicative labour and materials requirements
1	Primary works 1.88 ha Cut, Scrape and Paint woody weeds <10cm stem diameter. Stem inject woody weeds >10cm diameter. Hand pull/cut, scrape and paint vine weeds. Spot Spray all grasses and soft weeds	Treat all areas affected by exotic species. Maintain and create conditions for native flora including endangered species. Improve habitat for native fauna	Spring/summer	4 person days. Drill and generator required
2	Follow-up 1.88 ha Treat any woody weed re-growth. Spot spray all exotic seedlings, including ground covers	As above. Provide conditions favourable for recruitment of native species. Improved habitat suitable for native fauna	Summer/autumn	2 person days
3	Maintenance 1.88 ha Spot spray any exotic seedlings/ ground covers	Consolidate work area. Maintain conditions favourable for regeneration of natives	Year round as required	2 person days per quarter

3.3 Restoration Management Plan



Management Zone 1 (0.67 ha)

Management Zone 2 (1.88ha)

Project Boundary

Existing Access track to be retained

Project office
11 Vanden Plas
Hwy 2400
PO BOX 404
Cockburn, WA 6201
Telephone (07) 5338 8800
Facsimile (07) 5338 8771
Email info@bays.com.au



CLIENT
LEDA DEVELOPMENTS

PROJECT
KINGS FOREST

TITLE
RESTORATION MANAGEMENT PLAN
SCRIBBLY GUM OFFSET AREA

REGISTER

Name	Amendment	Date	Checked
A	Original	11/10/16	UT
B	Include area extension	10/2/2016	UT

DRAWING INFORMATION
PROJECT NO. 358C
DRAWING NO. 1
SCALE 1:1000
DATE 2/2016
ISSUE B

NOTES

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3.4 Restoration Management Outcome

The measures provided in this restoration plan aim to create a healthy and self-sustaining vegetation community including a healthy population of *Eucalyptus racemosa* (Scribbly gum) with minimal long-term maintenance requirements. This will be achieved through various methods of weed control and planting of native species at densities that will aim to achieve canopy cover in the shortest possible time.

OEH will determine when revegetation has reached a self-maintaining state requiring limited ongoing management.

3.5 Monitoring and reporting

One photo monitoring point is to be established in each work zone with the location marked with a timber stake painted with high visibility paint. A monitoring report is to be produced every six months generally outlining the following:

- A brief discussion of works completed to date;
- Comparative photos from each work zone; and
- Any recommendations for adaptive work to suit changing conditions or priorities

APPENDIX I – Weed Control Methods

Weed Control Methods

Current best practice methods for weed control are described below.

Please note: (1) It is the responsibility of the herbicide user to hold an off-label permit (obtained from the National Registration Authority for Agricultural and Veterinary Chemicals) for herbicide use that is not consistent with conditions specified on the label; and (2) The methods and herbicide use rates provided below are current best practice methods. It is the responsibility of the operator to ensure methods used are current best practice and are suitable for the site and any environmental constraints experienced at the site.

Cut-scrape-paint

This weed control method applies to all woody shrubs, trees and some vines.

- Cut plant low to the ground at an angle.
- Apply Glyphosate immediately at the rate of 1 part Glyphosate to 1.5 parts water, with a paintbrush approximately 1.5 centimetres wide.
- Scrape sides lightly to reveal green tissue and apply the herbicide to the scraped area.
- Take care that the brush is not contaminated with soil.
- Note - all seed that has high viability and longevity, e.g. *Senna spp.* and other members of the Fabaceae family, or plants with a high invasive potential, such as Umbrella Tree *Schefflera actinophylla*, must be removed from the parent and either composted on site or removed from the site.

Gouge-paint

This weed control method applies to those plant species that have a fleshy root system, such as rhizomes or large bulbs. It is particularly appropriate for the treatment of *Asparagus spp.*

- Gouge out sections of the fleshy base with a knife (if using on *Asparagus*, first cut the stems at shoulder height and also at the base).
- Apply 1 part Glyphosate to 1.5 parts water immediately, with a paint brush approximately 1.5 centimetres wide.

Stem Injection

This weed control method applies to all woody trees and shrubs with a diameter of about six to ten centimetres or greater.

- With a tomahawk, make a cut the width of the blade, at a slight angle, into the trunk. Note - it is important not to make cuts too deep.
- Apply herbicide immediately into the cut using a tree-injecting device (if using Glyphosate, apply at the rate of 1 part Glyphosate to 1.5 parts water).
- Repeat this procedure in a brickwork pattern around the circumference of the tree, as close to the ground as possible. Where the presence of a crotch angle makes this difficult, make a cut above it. Note - two rows of cuts will be sufficient for trees with trunks of six to ten centimetres; larger trunk diameters will need correspondingly more.
- Treat all visible lateral roots as per dot point 1.

Scrape-ditch-paint

This weed control method is applicable to many species of vines where it is desirable to treat the vines intact, particularly those with aerial tubers such as Madeira Vine *Anredera cordifolia* or those which will propagate from segments, e.g. Cape Ivy *Delairia odorata*.

- Scrape the stem tissue on one side of the stem only for at least 20-30 centimetres if possible. Note - on Madeira Vine, it is necessary to scrape heavily. Scrape as many sections of the stem as possible.
- Apply undiluted Glyphosate with a paintbrush.
- On stems that are thicker or horizontal, make a ditch into the stem with a knife and apply herbicide. Tubers and side roots should be treated the same way. Note - care must be taken not to sever the stem.

Spraying

This weed control method is carried out using a 15 litre backpack spray unit with a modified spray nozzle that gives a solid spray pattern. Glyphosate is the main herbicide used with the addition of a marker dye. For plants that show some resistance (e.g. Madeira Vine) or where growing conditions are not optimal, an acidifying agent, LI700®, is added. Metsulfuron methyl can also be used for resistant species and grasses. It should be used with a surfactant, such as Agral®.

Where both Glyphosate and Metsulfuron methyl are recommended for a species, it may be possible to use a commercially available compound of these two herbicides. This approach is currently under trial and is not suitable for operators unskilled in precision spraying.

Dilution rates for Glyphosate and Metsulfuron methyl are in accordance with the manufacturer's recommendations and any variation requires a permit from the National Registration Authority.

Dilution rates for Glyphosate to water for treatment of some weed species are provided below:

- Plants with more or less succulent leaves, e.g. Wandering Jew *Tradescantia fluminensis*, Madeira Vine *Anredera cordifolia* (autumn to winter is the suggested time for spraying these plants), Spider/Ribbon Plants *Chlorophytum* spp. etc - 1 part Glyphosate to 50 parts water + LI700® 0.5%
- Lantana *Lantana camara* - 1 part Glyphosate to 100 parts water
- Other soft-leaved plants, annuals and grasses - 1 part Glyphosate to 100 parts water
- Bitou Bush *Chrysanthemoides monilifera* subsp. *rotundata* - 1 part Glyphosate to 150 parts water to 1 part Glyphosate to 400 parts water

Typical dilution rates for Metsulfuron methyl to water are - 1.5g Metsulfuron methyl to 10 litres water + 20 millilitres Agral® to 10 litres water.

Overspray

This weed control method is applicable to large, dense infestations of such plants as *Lantana camara*, where it is desirable to leave the dead plants intact to prevent erosion and over-exposure of large areas, protect native seedlings from predators such as wallabies, and avoid trampling by humans.

- Spray over the top of the infestation, using a weak solution of Glyphosate.
- Any native plants that may be under the weed will be protected by the foliage cover of the weed.
- Leave the sprayed plants intact so that native seedlings can establish under the shelter provided.
- The rate for overspraying of Lantana is 1 part Glyphosate to 100 parts water.

Alternatively, weeds can be cut and flattened with bush-hooks or loppers and the subsequent regrowth sprayed with Glyphosate. In many cases it is preferable to overspray wherever practicable as this will cause less erosion and trampling of suppressed native plants, such as ferns and seedlings. However, handwork will be necessary to cut-scrape-paint any unsprayed Bitou Bush or Lantana that surrounds native plants.

Crowning

This weed control method is applicable to weeds which have their growing points below the surface of the ground (corms, bulbs, rhizomes, clumped or fibrous root systems, etc. e.g. *Asparagus* spp., *Chlorophytum comosum* and grasses).

- Grasp the leaves or stems and hold them tightly so that the base of the plant is visible. Plants with sharp leaves or stems should be cut back first.
- Insert the knife close to the base of the plant at a slight angle, with the tip well under the root system.
- Cut through the roots close to the base. Depending on the size of the plant, two or more cuts may be needed to sever all the roots.
- Remove the plant. Make sure that the base of the plant where the roots begin is completely removed.

Adapted from Joseph (2001)

WEED CONTROL METHODS

Taken from "Environmental Weeds of the Gold Coast: an Identification Guide"

Hand removal of weeds

Hand removal of weeds is an option when the infestation is clustered in one small area or scattered throughout native species. Hand removal can be used to prepare an area prior to spot spraying, for example where native seedlings or sensitive plants exist.

A walk through a site prior to spraying and hand weeding around natives can allow better visibility during spray activities, minimising off-target damage.

Hand weeding is suitable for seedlings, herbaceous weeds and some grasses and is best carried out when the soil is moist. Prior to working an area, seeds and fruits of weed species can be bagged and moved off site to prevent further spread.

Note that some weeds such as lantana, umbrella tree, mistflower, ground asparagus and coastal morning glory can re-establish if their roots or growing parts are left in contact with moist soil. These weeds need to be hung up or elevated off the ground to dry out. If you are hand pulling weeds that grow vegetatively from fleshy parts or tubers they need to be carefully removed and disposed of in the garbage. For example succulents, some groundcovers, and madeira vine. Hand removal may not be suitable along banks or areas where erosion could occur.

Crowning method

This method is suitable for weeds that have their growing points at ground level or below the surface such as plants with corms, bulbs, rhizomes, clumped or fibrous root systems. For example Asparagus sp. and grasses.

1. Cut climbing vines at head height and remove them from native plants carefully before again trimming them near ground level. Leave enough plant intact to perform the next stage.
2. Grasp the leaves or stems and hold them tightly and close to the ground so that the base of the plant is visible.
3. Insert a knife close to the base of the plant at a slight angle with the tip well under the root system.
4. Cut through the roots close to the base. Depending on the size of the plant two or more cuts may be needed to sever all the roots.
5. Remove the plant. Make sure that the base of the plant where the roots begin is completely removed.
6. Shake off excess soil and hang the rhizome or bulb up off the ground to prevent it from reshooting or remove it totally from site and dispose of it in an appropriate manner. Some grasses can be left on the ground to act as mulch.

Herbicide control methods

The following information describes different weed control techniques using herbicide as well as some general pointers for use in agricultural non-crop situations and environmentally sensitive areas.

When selecting a suitable herbicide control method there are a number of factors to consider including:

- the type of herbicide appropriate for the job
- the recommended rate of herbicide use
- the aim of your weed control program or project
- correct identification of the weed(s) you are targeting

- the growth habit of the weed. This is important in deciding the application technique and product for its control
- the size and density of weeds you are targeting
- the type of application equipment you have access to
- whether the infestation is in an environmentally sensitive area
- how regularly can you follow up or maintain the area

When to treat with herbicides

For best results, the following rules generally apply.

- Apply herbicides when the plant is actively growing.
- Do not apply the herbicide when the plant is under stress, for example extreme heat or cold, drought, water logging or diseased.
- Do not spray when wet or windy weather are anticipated, particularly with techniques such as over-spraying.

Cut-scrape and paint method

This method is an extension of the cut stump treatment and applies to all woody shrubs, trees and some vines that are too small to be injected. Examples include groundsel bush, broad-leaved pepper tree and smaller camphor laurels to name a few.

1. Cut the plant low (approximately 1-2 centimetres above soil level) and level to the ground so the herbicide does not run off the cut.
2. Apply the herbicide immediately, at the recommended rate, with a paintbrush.
3. Lightly scrape the sides of the remaining stump with a knife to reveal green tissues and apply the herbicide, to the scraped area.
4. Other methods of application include swabbing the cut or immediately spraying the cut and sides with the correct rate of herbicide. Take care that the brush is not contaminated with soil.

Scrape and paint method

This method is applicable to a number of species of vines where it is desirable to treat the vines in position, particularly those with aerial tubers such as madeira vine (*Anredera cordifolia*) or those which will propagate from segments.

1. Remove and bag tubers before scraping to avoid dislodging them during treatment.
2. Scrape the stem tissue on one side starting at the base of the stem (up to one metre if possible) before leaving a small gap (approximately five centimetres) and changing sides and scraping another one metre. In the case of madeira vine it is necessary to scrape heavily to expose the white inner tissue. Scrape as much of the stem as possible.
3. Apply undiluted herbicide with a paintbrush within seven seconds of first scraping the stem, that is scrape and paint in sections.
4. In the case of madeira vine it is essential that ground tubers and lateral roots are also treated with a heavy scrape and paint. If the tuber is of substantial size a gouge can be made into the tuber with a knife and herbicide applied. Any side roots must also be scraped and painted.

Gouge-paint method

This method applies to those plant species that have a fleshy root system of rhizomes or large bulbs such as kahili ginger or canna lily.

1. Cut the stems off at ground level.

2. Gouge out sections of the fleshy base with a knife and liberally apply an appropriate herbicide solution.

Stem injection (drilling) method

To treat larger woody weeds and shrubs a cordless drill or tomahawk can be used.

1. Drill or chisel holes around the base of the tree into the sapwood at a 45 degree angle at 5–10 centimetre intervals. The holes should be approximately four centimetres deep, though deeper holes may be drilled on larger specimens.
2. Within a few seconds of drilling each hole fill it with herbicide at the recommended rate.

Use this method only when falling branches will not be a safety hazard as the tree dies. This is especially important with Chinese celtis as they are known to fall within 6-12 months of injection.

Note that residents and landowners should refer to information on tree removal on the following pages before carrying out works on large shrubs or trees. Restrictions apply and City of Gold Coast approval may be required.

Low volume foliar spraying / spot-spraying

This method uses low pressure to apply a herbicide and water mixture to target weed plants. This method is applicable to a wide variety of plant species. The plants need to be actively growing and not under stress for the herbicide to have the best effect.

In a natural area, spot-spraying using a modified spray nozzle that gives an accurate and easily adjustable spray pattern should be used to minimise off-target damage. Ensure thorough coverage of the plants is achieved. Penetration into larger thickets, of lantana for example, can be achieved by increasing the pressure in the pack and adjusting the nozzle stream.

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