

Planning Agreement

Environmental Planning and Assessment Act 1979

Harbourside Shopping Centre Redevelopment

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

Mirvac Retail Sub SPV Pty Limited (ACN 122 863 521) as the trustee for
Mirvac Harbourside Sub Trust

Mirvac Projects Pty Ltd (ACN 001 069 245)

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This Planning Agreement is dated

Parties:

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)
c/- NSW Department of Planning and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street,
Parramatta NSW 2150 (**Minister**)

Mirvac Retail Sub SPV Pty Limited (ACN 122 863 521) as the trustee for Mirvac Harbourside Sub Trust of
Level 28, 200 George Street, Sydney NSW 2000 (**Mirvac**)

Mirvac Projects Pty Ltd (ACN 001 069 245) of Level 28, 200 George Street, Sydney NSW 2000 (**Mirvac
Projects**)

Introduction:

- A** Place Management NSW owns the Land.
- B** Mirvac is the lessee of the Land.
- C** The Developer proposes to carry out the Development on the Land and on Part Lot 2015 and Part Lot 300.
- D** Mirvac Projects obtained SSD 7874 in relation to the Land and on Part Lot 2015 and Part Lot 300.
- E** Conditions A6 and A7 of Schedule 2 of SSD 7874 require the Developer to enter into a planning agreement prepared in accordance with Division 7.1 of Part 7 of the Act to the satisfaction of the Secretary to secure the provision of an affordable housing contribution.
- F** Condition C29 of Schedule 2 of SSD 7874 requires the Developer to enter into a Public Art Strategy for the inclusion of public art within the Development.
- G** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to comply with conditions A6 and A7 of Schedule 2 of SSD 7874.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

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

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

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

Affordable Housing Monetary Contribution means the provision of a monetary contribution to the Minister or Minister's nominee towards affordable housing in the amount of \$5,200,000 in accordance with Schedule 4.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required for the commencement and carrying out of the works the subject of this deed, the Concept Proposal or the Development generally.

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

Bank Guarantee means an irrevocable and unconditional undertaking:

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

(b) on terms acceptable to the Minister,

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

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

Concept Proposal means the concept proposal for the redevelopment of the Land and Part Lot 2015 and Part Lot 300 in accordance with SSD 7874 comprising:

(a) a residential and commercial building envelope, comprising:

(i) a maximum height of Reduced Level 166.95;

(ii) a maximum Gross Floor Area of 87,000 square metres, including:

(A) 42,000 square metres residential Gross Floor Area;

(B) 45,000 square metres non-residential Gross Floor Area;

(b) minimum publicly accessible open space of 3,500 square metres on the Northern Podium;

(c) sitewide concept landscaping including public domain upgrades and through site links;

(d) Bunn Street bridge;

(e) design guidelines and design excellence strategy;

(f) car parking rates.

Construction Certificate has the same meaning as in the Act.

Department means the NSW Department of Planning and Environment.

Developer means Mirvac and Mirvac Projects.

Development means the development of the Land and Part Lot 300 and Part Lot 2015 in accordance with:

(a) SSD 7874; and

(b) any future Development Consent authorising development on the Land, Part Lot 2015 or Part Lot 300 that is not inconsistent with SSD 7874.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

- (a) Affordable Housing Monetary Contribution; and
- (b) Public Art and Future Activation Contribution.

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

Future Activation Works means such works as approved by Place Management NSW for the enhancement, embellishment and activation of the public domain within Darling Harbour, which may include such items as street furniture, wayfinding or public art and provided in accordance with the Public Art Works Arrangement.

Future Activation Works Value means the difference between the Total Public Art and Future Activation Contribution Value and the Public Art Works Value.

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

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

Land means the land described in Schedule 3.

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

Minister means the Minister for Planning and includes the Secretary and the Nominated Officer.

Nominated Officer means an officer of the Department for the time being holding a position nominated by the Secretary for the purposes of this deed.

Occupation Certificate has the same meaning as in the Act.

Part Lot 300 means that part of Lot 300 in Deposited Plan 836419 on which the Development permitted by SSD 7874 as granted may occur.

Part Lot 2015 means that part of Lot 2015 in Deposited Plan 1234971 on which the Development permitted by SSD 7874 as granted may occur.

Place Management NSW means Place Management NSW (ABN 51 437 725 177), a corporation constituted under section 10 of the *Place Management NSW Act 1998* (NSW).

Planning Application means any application required under the Act relating to the Land.

Public Art means an artistic work, structure or piece (other than an architectural feature for a building) that is located in the public domain, or within a publicly accessible space, within Darling Harbour and, to the extent possible, in close proximity to the Development.

Public Art and Future Activation Contribution means:

- (a) the provision of the Public Art Works; and
- (b) if applicable, the provision of Future Activation Works.

Public Art Works means the provision of Public Art in accordance with the Public Art Works Arrangement with a value of the Public Art Works Value.

Public Art Works Arrangement means a deed between the Developer and Place Management NSW regarding, among other items, the provision of the Public Art and Future Activation Contribution.

Public Art Works Value means the value of the Public Art Works to be provided under the Public Art Works Arrangement, with a minimum value of \$3,000,000 (excluding GST).

Secretary means the Secretary of the Department.

Security means one or more Bank Guarantees in the amounts specified as the 'Security Amount' in the table in clause 1(b) of Schedule 5 and on the terms specified in Schedule 5.

SSD 7874 means the Development Consent granted to Development Application SSD 7874 dated 25 June 2021 for the Concept Proposal and Stage 1 Works on the Land and Part Lot 2015 and Part Lot 300.

Stage 1 Works means the stage 1 works approved by SSD 7874, being works for the demolition of existing shopping centre and structures, southern pedestrian link bridge, monorail infrastructure and tree removal.

Subdivision Certificate has the same meaning as in the Act.

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

Total Public Art and Future Activation Contribution Value means \$7,009,100.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, or a **schedule** is a reference to the introduction, a clause, or a schedule to or of this deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;

- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation or warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

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

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

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

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

4. Development Contribution

4.1 Developer to provide Development Contribution

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

4.2 Acknowledgement

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

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay any amounts to the Developer in connection with this deed; and
- (b) in circumstances where the Development Contribution is made to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Enforcement

5.1 Developer to provide Security

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

6. Registration

Not used.

7. Dispute Resolution

7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

7.2 Written notice of dispute

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

7.3 Attempt to resolve

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or

(c) the selection and compensation of the independent person required for such technique, the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 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 7 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 7 for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This clause 7 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.

8. GST

8.1 Definitions

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

8.2 Intention of the parties

The parties intend that:

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

8.3 Reimbursement

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

8.4 Consideration GST exclusive

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

8.5 Additional Amounts for GST

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

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

8.6 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Developer must assume the Minister is not entitled to any input tax credit.

8.7 No merger

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

9. Assignment and transfer

9.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 9.1.

10. Capacity

10.1 General warranties

Each party warrants to each other party that:

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

10.2 Power of attorney

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

10.3 Trustee Developer

- (a) Mirvac (**Trustee**) enters into this deed in its capacity as trustee for the Mirvac Harbourside Sub Trust (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:
- (i) warrants that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
 - (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 10.3(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
- (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;
 - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
 - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 10.3(b) and the costs and expenses of registering any new deed on the title to the Land.
- (c) Subject to clause 10.3(e), liability arising under or in connection with this deed (except under or in connection with clause 10.3(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any

way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.

- (d) No party to this deed or any person claiming through or on behalf of them will be entitled to:
- (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,
- except under or in connection with clause 10.3(a) above.
- (e) Notwithstanding any other provision of this deed, clauses 10.3(c) and 10.3(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 10.3(e) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

11. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
- (i) details of all Development Consents, Subdivision Certificates and Occupation Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development, the Public Art Works and Future Activation Works (if applicable) including a plan that identifies what parts of the Development, the Public Art Works and Future Activation Works (if applicable) have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a forecast in relation to the anticipated progression and completion of the Public Art Works and if applicable, the Future Activation Works; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development, Public Art Works and Future Activation Works (if applicable) and the Developer's compliance with this deed.

12. General Provisions

12.1 Entire deed

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

12.2 Variation

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

12.3 Waiver

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

12.4 Further assurances

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

12.5 Time for doing acts

- (a) If:
- (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

12.6 Governing law and jurisdiction

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

12.7 Severance

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

12.8 Preservation of existing rights

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

12.9 No merger

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

12.10 Counterparts

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

12.11 Relationship of parties

Unless otherwise stated:

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

12.12 Good faith

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

12.13 No fetter

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

12.14 Explanatory note

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

12.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable valuation costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The developer must pay the Minister's reasonable legal costs of preparation and completion of the deed.
- (c) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note.
- (d) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (e) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 12.15(a), (b) and (c):

- (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

12.16 Notices

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

12.17 Electronic Execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
 - (ii) insertion of the person's name on to the deed; or
 - (iii) use of a stylus or touch finger or a touch screen to sign the deed,
 - (iv) provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;

- (v) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
 - (vi) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

Schedule 1

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

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

Requirement under the Act	This deed
<p>Planning instrument and/or development application – (section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of land to which this deed applies – (section 7.4(3)(a))</p>	<p>See Schedule 3</p>
<p>Description of development to which this deed applies – (section 7.4(3)(b))</p>	<p>See definition of Development in clause 1.1</p>
<p>Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))</p>	<p>N/A</p>
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))</p>	<p>See Schedule 4</p>
<p>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</p>	<p>The application of sections 7.11 and 7.12 of the Act is excluded in respect of the Development but only to the extent that it is carried out on the Land, Part Lot 300 or Part Lot 2015</p>
<p>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</p>	<p>The application of section 7.24 of the Act is excluded in respect of the Development but only to the extent that it is carried out on the Land, Part Lot 300 or Part Lot 2015</p>
<p>Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))</p>	<p>No</p>

Requirement under the Act	This deed
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 7
Enforcement of this deed – (section 7.4(3)(g))	See clause 5
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 12.13

Table 2 – Other matters

Requirement under the Act	This deed
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (section 21 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021)	Yes (clause 2.1(a) of Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (section 48 of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021)	Yes (clause 3.3(a)(iii) of Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	No

Schedule 2 – Address for Service

(clause 1.1)

Minister

Contact: The Secretary
Address: Department of Planning and Environment
Level 11, 4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150
Email: planningagreements@planning.nsw.gov.au

Mirvac

Contact: David Hogendijk
Address: Mirvac Retail Sub SPV Pty Limited
Level 28, 200 George Street
SYDNEY NSW 2000
Email: david.hogendijk@mirvac.com and
safe.custody@mirvac.com

Mirvac Projects

Contact: David Hogendijk
Address: Mirvac Projects Pty Ltd
Level 28, 200 George Street
SYDNEY NSW 2000
Email: david.hogendijk@mirvac.com and
safe.custody@mirvac.com

Schedule 3 – Land

(clause 1.1)

Lot	Deposited Plan	Landowner
1	776815	Sydney Harbour Foreshore Authority
2	776815	Sydney Harbour Foreshore Authority
3	776815	Sydney Harbour Foreshore Authority
4	776815	Sydney Harbour Foreshore Authority
5	776815	Sydney Harbour Foreshore Authority
6	776815	Sydney Harbour Foreshore Authority
7	776815	Sydney Harbour Foreshore Authority
8	776815	Sydney Harbour Foreshore Authority
9	776815	Sydney Harbour Foreshore Authority
10	776815	Sydney Harbour Foreshore Authority
12	776815	Sydney Harbour Foreshore Authority
13	776815	Sydney Harbour Foreshore Authority
15	776815	Sydney Harbour Foreshore Authority
17	776815	Sydney Harbour Foreshore Authority

NOTE: Sydney Harbour Foreshore Authority is now known as Place Management NSW (see clause 19 of Schedule 5 to the Place Management NSW Act 1998)

Schedule 4 – Development Contribution

(clause 4)

1. Development Contribution

1.1 Development Contribution

The Developer undertakes to provide the Development Contribution to the Minister in the manner and the times as set out in the table below:

Development Contribution	Estimated cost/value	Timing
Affordable Housing Monetary Contribution	\$5,200,000	Pursuant to clause 2 of this Schedule 4
Public Art and Future Activation Contribution	\$7,009,100	Pursuant to clause 3 of this Schedule 4.

2. Affordable Housing Monetary Contribution

2.1 Payment of the Contribution

- (a) The Developer must provide the Minister or the Minister's nominee the Affordable Housing Monetary Contribution prior to the issue of the first Construction Certificate for any part of the Development, other than the demolition of existing buildings on the Land or Part Lot 2015 or Part Lot 300.
- (b) The Developer agrees that the requirement in clause 2.1(a) of this Schedule 4 is a restriction on the issue of a Construction Certificate for the purposes of section 21 of *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

2.2 Delivery of the Affordable Housing Monetary Contribution

The Affordable Housing Monetary Contribution is made for the purpose of this Schedule 4 when cleared funds are deposited by means of electronic funds transfer or bank cheque into a bank account nominated by the Minister.

3. Public Art and Future Activation Contribution

3.1 Making of Public Art and Future Activation Contribution

- (a) The Developer must provide the:
- (i) Public Art Works; and
 - (ii) Future Activation Works to the Future Activation Works Value if the Public Art Works Value is less than the Total Public Art and Future Activation Contribution Value,
- in accordance with this clause 3 of Schedule 4.

- (b) The parties acknowledge that the Developer intends for the Public Art Works that are provided as part of the Public Art and Future Activation Contribution to form an integral part of the Public Art Strategy referred to in condition 29 of Schedule 2 of SSD 7874.

3.2 Public Art Works Arrangement

- (a) The Developer must, at its cost, enter into the Public Art Works Arrangement with Place Management NSW on terms satisfactory to Place Management NSW and consistent with the terms of this deed, prior to the issue of the first Construction Certificate for any part of the Development.
- (b) The Public Art Works Arrangement must include (at a minimum):
 - i. a description of the nature of the Public Art Works and Future Activation Works to be provided;
 - ii. the value of the Public Art Works and Future Activation Works to be provided (noting that the value of the Public Art Works shall not be less than the Public Art Works Value); and
 - iii. how the Public Art Works and Future Activation Works are to be provided.
- (c) The Developer must provide the Minister with a copy of the Public Art Works Arrangement within 10 Business days of execution of the Public Art Works Arrangement and in any event, prior to the commencement of any works in connection with the Public Art and Future Activation Contribution.

3.3 Completion of the Public Art and Future Activation Works

- (a) The Developer must, at its cost:
 - i. obtain any necessary Approvals for the Public Art Works and Future Activation Works;
 - ii. provide the Minister with evidence in writing that it has obtained all necessary Approvals for:
 - a. the Public Art Works and Future Activation Works (if applicable); and
 - b. the Public Art Works Arrangement,prior to the commencement of any works in connection with the Public Art and Future Activation Contribution; and
 - iii. carry out and complete the Public Art Works and Future Activation Works (if applicable) prior to the issue of the final Occupation Certificate for the Development in accordance with the Public Art Works Arrangement and all applicable Approvals.
- (b) The Developer agrees that the requirement in clause 3.3(a)(iii) of this Schedule 4 is a restriction on the issue of an Occupation Certificate for the purposes of section 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
- (c) The Public Art Works and Future Activation Contribution is made for the purpose of this Schedule 4 when the Developer provides the Minister (to the Minister's satisfaction, acting reasonably) with a notice in writing from Place Management NSW which states that the Public Art Works and Future Activation Contribution has been provided in accordance with the Public Art Works Arrangement.

Schedule 5- Security

(clause 5.1)

1. Developer to provide Security

- (a) In order to secure the performance of the obligations of the Developer under this deed, the Developer has agreed to provide the Security, in the form of a Bank Guarantee, to the Minister.
- (b) The Bank Guarantee must:
 - (i) name the “Minister administering the *Environmental Planning and Assessment Act 1979*” and the “Department of Planning and Environment ABN 20 770 707 468” as the relevant beneficiaries;
 - (ii) be in the amount as set out in the table below;
 - (iii) be security for the Secured Obligation as set out in the table below; and
 - (iv) not have an expiry date.

Security Amount	Secured Obligation
\$200,000	All obligations imposed on the Developer under this deed.

2. Security

- (a) The Developer must provide the Security to the Minister on the date of execution of this deed.
- (b) From the date of execution of this deed until the date that the Developer has performed all its obligations under this deed, the Minister is entitled to retain the Security and call upon it in the circumstances set out in clause 3 of this Schedule 5.

3. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon any Security provided in accordance with this deed where the Developer has failed to fulfil the Secured Obligation in accordance with this deed; and
 - (ii) retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon the Security; and
 - (ii) applies all or part of such monies towards and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 4 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the Security required to be provided in accordance with clause 1 of this Schedule 5.

4. Release of Security

If the whole of the Security have not been expended and the Developer has paid or satisfied all of its obligations under this deed, including provision of the Development Contribution in accordance with this deed then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable) to the Developer.

Execution page

Executed as a deed

Signed, sealed and delivered by the **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468), in the presence of:

.....
Signature of witness

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

.....
Name of witness in full

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

.....
Address of witness

*By signing this deed, the witness states that they witnessed the signing of this deed by [NAME] over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000*.

Signed, sealed and delivered by Mirvac Retail Sub SPV Pty Limited (ACN 122 863 521) as trustee of the Mirvac Harbourside Trust in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

DocuSigned by:
Kelly Miller
.....
D574014E3771450...

Signature of Director

Kelly Miller

.....
Name of Director in full

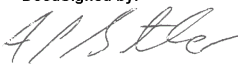
DocuSigned by:
Vasiliki Vordis
.....
925728D3A0BC466...

Signature of Director/Secretary

Vasiliki Vordis/Company Secretary

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

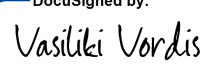
Signed, sealed and delivered by Mirvac Projects Pty Ltd (ACN 001 069 245) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

DocuSigned by:

A643BB4263ED419...

.....
Signature of Director

Andrew Butler

.....
Name of Director in full

DocuSigned by:

925728D3A0BC466...

.....
Signature of Director/Secretary

Vasiliki Vordis/Company Secretary

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