

**Minister for Planning and Infrastructure**  
ABN 38 755 709 681

and

**Jacfin Pty Ltd**  
ABN 44 000 967 902

## **Eastern Creek – Stage 4 Development**

### **Planning Agreement**

Environmental Planning and Assessment Act 1979

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THIS deed is dated

2013

**PARTIES:**

**MINISTER FOR PLANNING AND INFRASTRUCTURE** (ABN 38 755 709 681) of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

**JACFIN PTY LTD** (ABN 44 000 967 902) c/- Pricewaterhouse Coopers, 201 Sussex Street, Sydney, New South Wales, 2000 (**Landowner**)

**INTRODUCTION:**

- A The Landowner owns the Land and the Parent Lot.
- B The Landowner provided consent to the Development Application for the Development.
- C The Council assessed the Development Application for the Development and granted the Development Consent.
- D The Landowner is prepared to make Development Contributions to the Minister for the provision of infrastructure for public purposes in connection with the Stage 4 Development in accordance with this deed.
- E This deed constitutes the arrangements for the provision of regional transport infrastructure and services referred to in Condition 9.1.1 of the Development Consent.

**IT IS AGREED:**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

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

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

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

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

**Council** means the Blacktown City Council.

**CPI** means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the parties agree, acting reasonably, will apply.

**CPI Adjustment Date** means 1 July in the year this deed is executed and each anniversary of 1 July thereafter.

**Current CPI** means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

**Department** means the NSW Department of Planning and Infrastructure.

**Development** means the development subject of the Development Consent.

**Development Application** has the same meaning as in the Act.

**Development Consent** means DA 12-1631 granted by the Council on 13 November 2012.

**Development Contribution** means the contribution to be provided by the Landowner in accordance with clause 4 and Schedule 4 of this deed.

**Direction** means the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Direction 2011* as it appeared in the NSW Government Gazette No. 6 on 21 January 2011.

**Director-General** means the Director-General of the NSW Department of Planning and Infrastructure from time to time.

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

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

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

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

**Net Developable Area** means the net developable area of the Land calculated in accordance with the Direction.

**Parent Lot** means Lot 11 DP 1157491.

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

**Stage 4 Development** means the Development and the subdivision of the Parent Lot to create the Land.

**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.

**Western Sydney Employment Area** means the land to which *State Environmental Planning Policy (Western Sydney Employment Area) 2009* applies identified on the Land Application Map.

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

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

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

## **2 OPERATION AND APPLICATION OF THIS DEED**

### **2.1 Operation**

This deed will commence from the date this deed is signed by all the parties.

### **2.2 Planning agreement under the Act**

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

### **2.3 Application**

This deed applies to:

- (a) the Land; and
- (b) the Stage 4 Development.

### 3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

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

### 4 DEVELOPMENT CONTRIBUTION

#### 4.1 Landowner to provide Development Contribution

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

#### 4.2 Acknowledgement

The Landowner acknowledges and agrees that the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose; and
- (b) has no obligation to repay the Development Contribution (noting that the provision of any credit to the Landowner under clause 4.3 is not a repayment); and
- (c) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by any Authority to which the Minister transfers the Development Contribution.

#### 4.3 Determination of a Special Infrastructure Contribution

- (a) Despite anything else in this deed, this clause 4.3 applies if:
  - (i) the Minister determines that all or part of the Parent Lot is part of a special contributions area under the Act (**SIC Determination**); and
  - (ii) had the SIC Determination been made prior to the execution of this deed, an amount for special infrastructure contributions would have been payable by the Landowner in association with the Stage 4 Development (**SIC Amount**).
- (b) Where the amount of the Development Contribution the Landowner is required to provide under this deed is less than the SIC Amount:
  - (i) the Landowner must provide to the Minister the Development Contribution; and



- (ii) no further provision will be required from the Landowner relating to any portion of the Land in respect of which the Development Contribution has been provided pursuant to this deed.
- (c) Where the SIC Amount is less than the amount of the Development Contribution the Landowner is required to provide under this deed, and the Landowner has not provided the Development Contribution under this deed prior to the SIC Determination:
  - (i) the Landowner must provide to the Minister the SIC Amount; and
  - (ii) no further provision will be required from the Landowner relating to any portion of the Land in respect of which the SIC Amount has been provided pursuant to this deed.
- (d) Where the SIC Amount is less than the amount of the Development Contribution the Landowner is required to provide under this deed, and the Landowner has provided the Development Contribution under this deed prior to the SIC Determination:
  - (i) no further provision will be required from the Landowner relating to any portion of the Land in respect of which the Development Contribution has been provided pursuant to this deed; and
  - (ii) the Minister will not be required to refund any part of the Development Contribution provided by the Landowner under this deed to the extent that such amount exceeds the SIC Amount; and
  - (iii) the Landowner will be entitled to a credit to be offset against its obligations to pay development contributions for future development of land which the Landowner owns within the Western Sydney Employment Area; and
  - (iv) the value of the credit referred to in subclause (d)(iii) above will:
    - (A) equal the difference between the amount of the Development Contribution provided pursuant to this deed and the SIC Amount (**Base Credit Amount**); and
    - (B) on each CPI Adjustment Date until the date when a subsequent planning agreement that draws upon the credit is executed, be adjusted by multiplying the Base Credit Amount by the amount equal to the Current CPI divided by the CPI number for the quarter ending 31 March in the year the Landowner first became entitled to the credit.

## **5 DISPUTE RESOLUTION**

### **5.1 No proceedings**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 5.

### **5.2 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.

### **5.3 Attempt to resolve**

On receipt of notice under clause 5.2, 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.

### **5.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of the notice is given under clause 5.3 (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.

### **5.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 5.3 (or any further period agreed in writing by the parties) then any party which has complied with the provisions of this clause 5 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

### **5.6 Use of information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 5 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 5 for any purpose other than in an attempt to settle the dispute.

#### **5.7 No prejudice**

This clause 5 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.

### **6 GST**

#### **6.1 Definitions**

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

#### **6.2 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.

#### **6.3 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 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.

#### **6.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 6.

#### **6.5 Additional Amounts for GST**

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

the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Landowner will ensure that:

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

## **6.6 Non monetary consideration**

Clause 6.5 applies to non-monetary consideration.

## **6.7 Assumptions**

The Landowner acknowledges and agrees that in calculating any amounts payable under clause 6.5 the Landowner will assume the Minister is not entitled to any input tax credit.

## **6.8 No merger**

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

# **7 ASSIGNMENT**

## **7.1 Consent**

This deed is personal to each party and no party may assign the rights or benefits of this deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
- (b) to any other person, with the prior consent of the other party, which the other party must not unreasonably condition or withhold.

# **8 CAPACITY**

## **8.1 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.

## **8.2 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.

# **9 GENERAL PROVISIONS**

## **9.1 No fetter**

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

## **9.2 Explanatory Note**

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

## **9.3 Expenses**

- (a) The Landowner must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Landowner must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Landowner must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Landowner must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 9.3(a) and (b):
  - (i) where the Minister has provided the Landowner 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 Landowner with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

#### **9.4 Notices**

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
  - (i) hand delivered; or
  - (ii) sent by facsimile transmission; or
  - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
  - (i) hand delivered, on the date of delivery;
  - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
  - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

#### **9.5 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.

#### **9.6 Variation**

- (a) This deed must not be varied except by a later written document executed by all parties.
- (b) The parties acknowledge that in circumstances where the Landowner is entitled to a credit in accordance with clause 4.3 and the State adopts administrative arrangements that permit a refund of credit amounts, the parties will enter into negotiations to effect a variation of this deed to reflect the adopted administrative arrangements.

#### **9.7 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.

## **9.8 Further assurances**

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

## **9.9 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 5pm on the specified day, it is taken to have been done on the following Business Day.

## **9.10 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.

## **9.11 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.

## **9.12 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.

## **9.13 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, will not merge on the occurrence of that event but will remain in full force and effect.

**9.14 Counterparts**

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

**9.15 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.

**9.16 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.



## SCHEDULE 1

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

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

<b>REQUIREMENT UNDER THE ACT</b>	<b>THIS DEED</b>
<b>Planning instrument and/or development application</b> – (section 93F(2))  The Landowner has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No  (b) No  (c) Yes
<b>Description of land to which this deed applies</b> – (section 93F(3)(a))	See Schedule 3
<b>Description of change to the environmental planning instrument to which this deed applies</b> – (section 93F(3)(b))	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed</b> – (section 93F(3)(c))	See Schedule 4
<b>Applicability of sections 94 and 94A of the Act</b> – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Stage 4 Development.
<b>Applicability of section 94EF of the Act</b> – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Stage 4 Development.
<b>Consideration of benefits under this deed if section 94 applies</b> – (section 93F(5))	No
<b>Mechanism for Dispute Resolution</b> – (section 93F(3)(f))	See clause 5
<b>Enforcement of this deed</b> – (section 93F(3)(g))	Not required by the Minister
<b>No obligation to grant consent or exercise functions</b> – (section 93F(10))	See clause 9.1

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
<b>Registration of the Planning Agreement –</b> (section 93H of the Act)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No

## **SCHEDULE 2**

### **Address for Service (clause 1.1)**

#### **Minister**

**Contact:** The Director-General

**Address:** Department of Planning and Infrastructure  
23-33 Bridge Street  
SYDNEY NSW 2000

**Facsimile No:** (02) 9228 6191

#### **Landowner**

**Contact:** Mr Paul Brassil

**Address:** Jacfin Pty Ltd  
c/- Pricewaterhouse Coopers  
201 Sussex Street, SYDNEY NSW 2000

**Facsimile No:** (02) 8286 2964

**SCHEDULE 3**

**Land (clause 1.1)**

The part of the Parent Lot comprising 2.793 hectares and identified as Lot 1101 on the plan attached to this deed and marked **Annexure A**.

## SCHEDULE 4

### Development Contribution (clause 4)

#### 1.1 Development Contribution

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

Contribution Amount	Manner of Delivery	Timing
\$442,740	Cash or bank cheque or electronic funds transfer	Pursuant to clause 1.2 of this Schedule 4

- (b) The Minister and Landowner acknowledge and agree that the Contribution Amount:

- (i) forms the Development Contribution under this deed;
- (ii) is a cash contribution towards designated State public infrastructure;
- (iii) has been calculated on the following basis:
  - (A) \$180,000 per hectare of the Net Developable Area, being 2.793 hectares; and
  - (B) includes the credit of \$60,000 for Stage 2 referred to in the letter dated 1 February 2010 from the Department to Allens Arthur Robinson.

#### 1.2 Payment of Contribution Amount

Upon the date of execution of this deed, the Landowner must deliver to the Minister two executed copies of this deed and the Contribution Amount in full.

**EXECUTED** as a deed

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

.....  
Signature of Witness

.....  
Signature of the Minister for Planning and  
Infrastructure

.....  
Name of Witness in full

.....  
Minister for Planning and Infrastructure

**Signed sealed and delivered** by **Jacfin** )  
**Pty Ltd** ABN 44 000 967 902 in accordance )  
with section 127 of the Corporations Act: )

.....  
Signature of Director

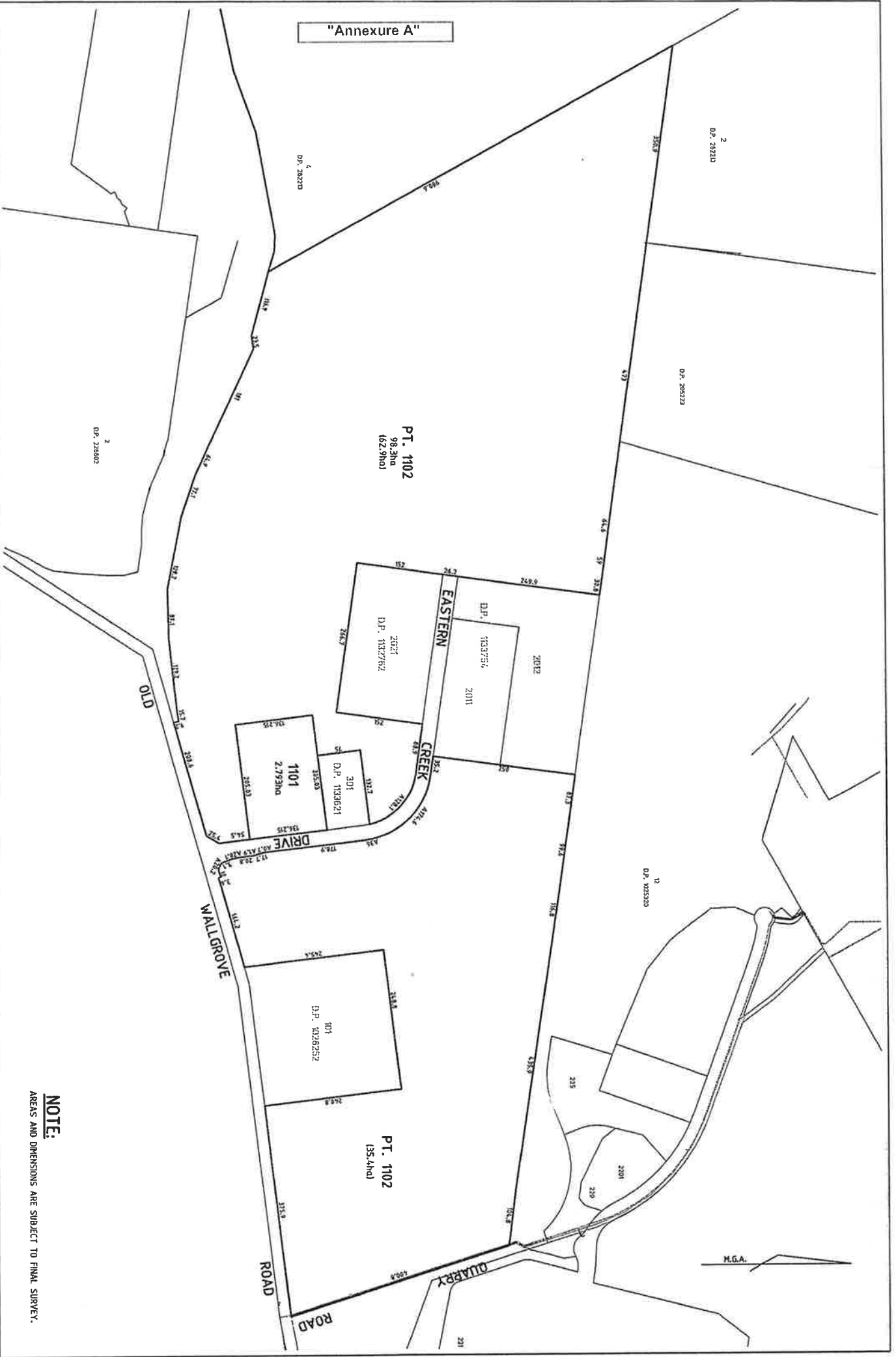
*J Waterhouse*  
.....  
Signature of Director/Secretary

.....  
Name of Director

*J WATERHOUSE*  
.....  
Name of Director/Secretary

[illegible]

**NOTE:**  
AREAS AND DIMENSIONS ARE SUBJECT TO FINAL SURVEY.



2021

1132762

152

56.7

128.7

132.7

301

D.P. 1133621

75

205.03

1101  
2.793ha

136.215

205.03

136.215

54.5

7.57

DRIVE

A36

178.9

17.7 20.8

A0.7 A1.9 A28.1  
3.7 10  
A20.2

3.6

164.2

245.4

WALLGROVE

208.6

15.7

9.2

129.2