

Minister for Planning and Infrastructure
ABN 38 755 709 681

and

Jacfin Pty Ltd
ABN 44 000 967 902

Ropes Creek

Planning Agreement

Environmental Planning and Assessment Act 1979

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This Deed is made on

5 September 2014

~~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/- PricewaterhouseCoopers, 201 Sussex Street, Sydney, New South Wales, 2000 (**Landowner**).

Introduction

- A The Landowner owns the Land and intends to develop the Land progressively in stages over time.
- B The Initial Concept Plan and Initial Stage 1 Project Approval were approved on 24 October 2011.
- C The Landowner has lodged the Modification Applications in relation to the Initial Concept Plan and Initial Stage 1 Project Approval with the Minister.
- D The Landowner is prepared to make the Development Contributions to the Minister for the provision of Regional Infrastructure for public purposes in connection with the Development in accordance with this deed.
- E This deed constitutes the planning agreement referred to and required under condition 14 of the Stage 1 Project Approval.
- F The Landowner has offered to enter into this deed with the Minister to secure the Development Contributions.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

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

Actual Contributions Report has the meaning given to it in clause 4 of Schedule 5.

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.

Adjusted Monetary Contribution Amount means a monetary amount determined with reference to the Base Monetary Contribution Amount as adjusted for:

- (a) any applicable indexation in accordance with clause 4 of Schedule 4; and
- (b) any applicable reduction in accordance with clause 5 of Schedule 4.

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 TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking on demand.

Base Monetary Contribution Amount means a monetary amount determined with reference to the net developable area in respect of a component of the Development in accordance with clause 2 and clause 3 of Schedule 4.

Base CPI means the CPI Number for the quarter ending 31 March in the year a relevant Development Approval is approved.

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.

Concept Plan Application means application MP10_0127.

Concept Plan means the concept plan approval approved by the Minister under the Act in relation to the Concept Plan Application, as modified from time to time.

Construction Certificate has the same meaning as in the Act.

Contributions Estimate Notice has the meaning given to it in clause 2 of Schedule 5.

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

CPI Number 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.

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

Development means the development of the Land progressively over time in accordance with the Concept Plan and relevant Development Approvals.

Development Approval means any Project Approval (including the Stage 1 Project Approval), Development Consent or other approval under the Act, including any modification from time to time, required for the lawful:

- (a) use of land;
- (b) subdivision of land;
- (c) erection of a building;
- (d) carrying out of a work; or
- (e) demolition of a building or work,

on part of the Land, generally in accordance with the Concept Plan.

Development Consent has the same meaning as in the Act.

Development Contributions means the contributions to be provided by the Landowner in accordance with clause 4, Schedule 4 and Schedule 5.

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

Excess Contributions Credit as the meaning given to it in clause 5 of Schedule 5.



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

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

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

GST Amount has the meaning given to it in clause 9.5.

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

Indexed Monetary Contribution Amount means a monetary amount determined with reference to the Base Monetary Contribution Amount as adjusted for any applicable indexation in accordance with clause 4 of Schedule 4.

Initial Concept Plan means the concept plan approved by the Minister under the Act in relation to the Concept Plan Application on 24 October 2011.

Initial Stage 1 Project Approval means the Project Approval approved by the Minister under the Act in relation to the Stage 1 Application on 24 October 2011.

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

Land Actual means the value of the land subject to a Land Contribution at the time of transfer from the Landowner as agreed between the parties, or otherwise determined, in accordance with clause 4 of Schedule 5.

Land Contribution means the dedication of land to be provided by the Landowner as agreed between the parties in conjunction with a component of the Development subject to a Development Approval for the provision of Regional Infrastructure for public purposes in respect of the Development, and includes, but not necessarily limited to land for Regional Road One.

Land Estimate means the estimate for the value of the land subject to a Land Contribution as agreed between the parties in accordance with clause 2 of Schedule 5.

Local Roads refers to Local Road One, Local Road Two, Local Road Three, Local Road Four, Local Road Five and Local Road Six as identified on the plan attached to this deed and marked Annexure A (being a map attached to the Modification Applications).

Modification Applications means the applications lodged on behalf of the Landowner pursuant to section 75W of the Act to modify the Initial Concept Plan and Initial Stage 1 Project Approval.

Monetary Contribution means the monetary amounts to be paid by the Landowner for the provision of Regional Infrastructure for public purposes in connection with the Development in accordance with Schedule 4.

Monetary Contribution Amount means either the Indexed Monetary Contribution Amount or, if applicable, the Adjusted Monetary Contribution Amount, to be paid by the Landowner in connection with a component of the Development in accordance with Schedule 4.

Monetary Contribution Notice has the meaning given to it in clause 6 of Schedule 4.

Monetary Contribution Security has the meaning given to it in clause 3 of Schedule 6.

Monetary Contribution Security Amount means \$20,000.

Planning Agreement means this deed.

Practical Completion:

- (a) has the meaning given to it in a Road Works Agreement in relation to a Works-in-Kind Contribution; or



- (b) where the expression is not defined in a Road Works Agreement in relation to a Works-in-Kind Contribution, means the time when the works for a Works-in-Kind Contribution have been completed and are ready for their intended public use and occupation, except for minor omissions and minor defects which, to the extent relevant:
- (i) do not impede use of the works by the public for the continuous safe passage of vehicular traffic and pedestrians; and
 - (ii) will not prejudice the convenient and safe use of the works during any rectification; and
 - (iii) an authorised representative of RMS (or other relevant Roads Authority) determines that the Landowner has reasonable grounds for not rectifying prior to public use and occupation.

Project Approval means an approval approved under section 75J of the Act.

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

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

Regional Infrastructure refers to regional transport infrastructure and services in the Western Sydney Employment Area including Regional Road One and any roads forming a major traffic route supporting the Western Sydney Employment Area regional road network and regional linkages identified as forming part of the Southern Link Road Network.

Regional Road One refers to Regional Road One as identified on the plan attached to this deed and marked Annexure A (being a map attached to the Modification Applications).

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

Required Obligations has the meaning given to it in clause 10.2.

RMS means Roads and Maritime Services being the Authority constituted under section 46 of the *Transport Administration Act 1988* (NSW).

Roads Authority has the same meaning as in the *Roads Act 1993* (NSW).

Road Works Agreement means a works authorisation deed or other legally binding agreement between the Landowner and the RMS (or other relevant Roads Authority) which governs the carrying out and completion of a Works-in Kind Contribution.

Stage 1 Application means application MP10_0128.

Stage 1 Project Approval means the Project Approval approved by the Minister under the Act in relation to the Stage 1 Project Application, as modified from time to time.

SIC Amount has the meaning given to it in clause 4.3.

SIC Credit has the meaning given to it in clause 4.3.

SIC Determination has the meaning given to it in clause 4.3.

Special Infrastructure Contribution means a contribution determined in accordance with section 94EE of the Act with respect to the Land.

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.

Top up Contribution has the meaning given to it in clause 6 of Schedule 5.

Transferee has the meaning given to it in clause 10.2.

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

Works-in-Kind Actual means the actual costs incurred by the Landowner to provide a Works-in-Kind Contribution as agreed between the parties, or otherwise determined, in accordance with clause 4 of Schedule 5. In accordance with clauses 1(d) and 2 of Schedule 5, the Works-in-Kind Actual will not exceed the Works-in-Kind Maximum.

Works-in-Kind Contribution means the design and construction of capital works or other services to be provided in kind by the Landowner:

- (a) as required under a Development Approval, or
- (b) as agreed between the parties to be delivered with a component of the Development subject to a Development Approval,

for the provision of Regional Infrastructure for public purposes in respect of the Development, and includes, but is not necessarily limited to, Regional Road One.

Works-in-Kind Contribution Security has the meaning given to it in clause 3 of Schedule 6.

Works-in-Kind Estimate means the cost estimate for providing a Works-in-Kind Contribution, including reasonable contingencies, as agreed between the parties in accordance with clauses 1 and 2 of Schedule 5.

Works-in-Kind Maximum means the maximum value for a Works-in-Kind Contribution as agreed between the parties in accordance with clauses 1(d) and 2 of Schedule 5, as revised from time to time in accordance with clause 3 of Schedule 5.

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 latest of the following:

- (a) the date this deed is signed by all the parties; or
- (b) the date each of the Modification Applications is determined under the Act.

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 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 Contributions

4.1 Landowner to provide Development Contributions

The Landowner agrees to provide, or procure the provision of, the Development Contributions to the Minister, or the Minister's nominee, in accordance with the provisions of Schedule 4 (which includes a restriction on the issue of a Subdivision Certificate or Construction Certificate, whichever is relevant, at clause 6(d) of Schedule 4) and, where relevant, Schedule 5 to this deed.

4.2 Acknowledgement

The Landowner acknowledges and agrees that the Minister:

- (a) has no obligation to use or expend the Development Contributions for a particular purpose; and
- (b) has no obligation to repay the Development Contributions (noting that the provision of any credit to the Landowner under clause 4.3 or Schedule 5 is not a repayment); and
- (c) in circumstances where Development Contributions are transferred to another Authority, has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by any Authority to which the Minister transfers the Development Contributions.

4.3 Determination of 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 Land is part of a special contributions area under the Act (**SIC Determination**); and
 - (ii) had the SIC Determination been made prior to the grant of the Initial Concept Plan, an amount for Special Infrastructure Contributions would have been payable by the Landowner in association with the Development (**SIC Amount**).
- (b) Where the value of a Monetary Contribution Amount the Landowner is required to provide under this deed is less than a SIC Amount:
 - (i) the Landowner must provide to the Minister the Monetary Contribution Amount; and
 - (ii) no further provision will be required from the Landowner relating to any portion of the Land in respect of which the Monetary Contribution Amount has been or will be provided pursuant to this deed.
- (c) Where a SIC Amount is less than the value of a Monetary Contribution Amount the Landowner is required to provide under this deed and the Landowner has not provided the Monetary Contribution Amount 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 a SIC Amount is less than the value of a Monetary Contribution Amount the Landowner is required to provide under this deed and the Landowner has provided the Monetary Contribution Amount 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 Monetary Contribution Amount has been provided pursuant to this deed; and
 - (ii) 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 (including to offset Monetary Contribution Amounts under this deed); and
 - (iii) the value of the credit referred to in subclause (ii) above will:
 - (A) equal the difference between the value of the Monetary Contribution Amount provided pursuant to this deed and the SIC Amount (**SIC Credit**); and



- (B) be adjusted, on each CPI Adjustment Date until the date when the Landowner draws upon the credit, by multiplying the SIC Credit 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.
- (e) For the purpose of this clause, where the Landowner proposes to utilise any Excess Contributions Credit or SIC Credit (as adjusted from time to time) to partly or fully offset an obligation to provide a Monetary Contribution Amount under this deed:
 - (i) the Landowner must provide the Minister with the Monetary Contribution Notice for agreement noting the amount of the credit proposed to be applied in accordance with clause 6 of Schedule 4; and
 - (ii) the Landowner is taken to have provided the Monetary Contribution Amount:
 - (A) where a Monetary Contribution Amount is offset in its entirety, on the date the Minister has agreed to the Monetary Contribution Notice; or
 - (B) where a Monetary Contribution Amount is offset partially, on the date the Landowner provides the Monetary Contribution Amount in accordance with this deed.

5 Interest

5.1 Interest for late payment

- (a) If the Landowner fails to provide an Adjusted Monetary Contribution Amount payable to the Minister under this deed on the due date for payment, the Landowner must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6 Enforcement

6.1 Landowner to provide security

The Landowner has agreed to provide security to the Minister for the provision of the Development Contributions by the Landowner by:

- (a) registering this deed on the title to the Land in accordance with clause 7; and
- (b) providing Bank Guarantees to the Minister in accordance with the terms and procedures set out in Schedule 6 (which includes a restriction on the issue of a Subdivision Certificate or Construction Certificate, whichever is relevant, at clause 3(e) of Schedule 6).

7 Registration on Title

7.1 Land ownership

The Landowner represents and warrants that it is:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.2(b)(i) to assist, cooperate and to

otherwise do all things necessary for the Landowner to comply with its obligations under clause 7.2.

7.2 Registration of Deed

- (a) As contemplated by section 93H of the Act, the Landowner agrees to lodge this deed for registration under the Real Property Act in the relevant folio of the Register within 10 Business Days of the date that this deed is returned to the Landowner by the Minister.
- (b) The Landowner, at its own expense, will take all practical steps to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed or an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (c) The Landowner will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

7.3 Release and discharge of Deed

Once:

- (a) the Landowner has satisfied all of its obligations under this deed;
 - (b) the Minister has released all security provided by the Landowner in accordance with this deed; and
 - (c) the Landowner has utilised all credits it is entitled to utilise under this deed,
- the Minister agrees to do all things reasonably required by the Landowner in order to have the Registrar-General remove this deed from the relevant folio of the Register or the General Register of Deeds (as the case may be).

8 Dispute Resolution

8.1 Not commence

Subject to clause 8.7, a party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

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

8.3 Attempt to resolve

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

8.4 Mediation

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

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

8.5 Court proceedings

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

8.6 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 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

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

8.8 Disputes about Works-in Kind Actual and Land Actual values

The parties acknowledge that:

- (a) clause 4 of Schedule 5 and Schedule 7 include provisions relevant to disputes where the parties cannot agree on the value of a Works-in-Kind Actual or Land Actual; and
- (b) in relation to such disputes, a party must not commence the dispute resolution procedures under this clause 8 until a party claims a dispute has arisen under or in relation to the procedures under Schedule 7.

9 GST

9.1 Definitions

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

9.2 Intention of the parties

The parties intend that:

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

9.3 Reimbursement

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

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount as additional consideration, subject to the prior receipt of a Tax Invoice. 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.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

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

9.8 No merger

This clause 9 will not merge on completion or termination of this deed.

10 Assignment

10.1 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.

10.2 Dealings with Land

- (a) The Landowner must not sell, transfer or dispose of the whole or any part of the Land unless, before it sells, transfers or disposes of any such part of the Land to another person (**Transferee**):

- (i) the Landowner satisfies the Minister acting reasonably that the proposed Transferee is financially capable of complying with the Landowner's obligations under this deed as the Minister acting reasonably shall nominate must be adopted by the Transferee (**Required Obligations**);
 - (ii) the Transferee signs a deed to the Minister containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Landowner (including obligations which arose before the transfer or assignment);
 - (iii) any default by the Landowner has been remedied by the Landowner, unless that default has been waived by the Minister; and
 - (iv) the Landowner and the Transferee pay the Minister's reasonable costs in relation to that assignment.
- (b) If the Landowner sells, transfers or disposes of the whole or any part of the Land and fully satisfies the requirements of clause 10.2(a), the Landowner will be released from its obligations under this deed with respect to that Land subject to the sale, transfer or disposal.

11 Capacity

11.1 General warranties

Each party warrants to each other party that:

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

11.2 Power of attorney

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

12 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

- (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 or Schedule 5 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.
- (c) The parties acknowledge that in circumstances where there is any inconsistency between the conditions of the Concept Plan or a Development Approval and any provision of this deed, the parties will enter into negotiations to effect a variation of this deed to conform the rights and obligations under the deed to the Concept Plan or Development Approval conditions (to the extent of the inconsistency).



- (d) The parties acknowledge that in circumstances where the State reviews the level of security it requires from developers to secure development contributions for land within the Western Sydney Employment Area and adopts a lower amount than the Monetary Contribution Security Amount, the parties will enter into negotiations to effect a variation of this deed to reflect the reduced security amount.

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 every thing 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, will not merge on the occurrence of that event but will remain 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 shall be construed as requiring either 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 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 12.15(a) and (b) above:
 - (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.

12.16 Notices

- (a) Any notice, demand, consent, approval, report, 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; or
 - (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.

SCHEDULE 1

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

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

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(1)) 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) Yes. (c) No.
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3.
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b)(i))	N/A.
Description of development to which this deed applies – (section 93F(3)(b)(ii))	See definition of Development in clause 1.1.
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See clause 4 and Schedule 4.
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))	Yes.
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 8.
Enforcement of this deed – (section 93F(3)(g))	See clause 6.
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 12.13.

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clauses 6 and 7).
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 6 of Schedule 4 and clause 3 of Schedule 6).
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No.
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 6 of Schedule 4 and clause 3 of Schedule 6).

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)

Lot 121 on Deposited Plan 1175762 as subdivided and developed over time in accordance with the Concept Plan and Development Approvals.

SCHEDULE 4

Development Contributions (clause 4)

1 Development Contributions

- (a) The Landowner undertakes to provide the following Development Contributions in connection with the application for and approval of Development Approvals for each component of the Development in the manner set out in the table below:

Type	Amount / Value	Manner of Delivery	Timing
Monetary Contribution	Equal to the Monetary Contribution Amount for the part of the Land subject to a Development Approval, calculated pursuant to Schedule 4.	Cash or bank cheque or electronic funds transfer.	Pursuant to clause 6 of this Schedule 4.
Works-in-Kind Contribution	Equal to the Works-in-Kind Actual (if any), calculated in accordance with clauses 2 and 4 of Schedule 5. (Value of the Works-in-Kind Actual is not to exceed the Works in-Kind Maximum.)	Practical Completion of the Works-in-Kind Contribution.	The date for Practical Completion agreed to by the Minister in accordance with clauses 2 and 3 of Schedule 5.
Land Contribution	Equal to the Land Actual (if any), calculated in accordance with clauses 2 and 4 of Schedule 5.	Dedication to a relevant Roads Authority of title to that part of the Land subject to the Land Contribution at no cost to the Minister or the relevant Roads Authority.	If related to a Works-in-Kind Contribution, on the date of Practical Completion of the Works-in-Kind Contribution or otherwise as agreed in writing between the parties.

- (b) The parties acknowledge and agree that:
- (i) the Landowner is only required to provide a Works-in-Kind Contribution or a Land Contribution where:
 - (A) a Works-in-Kind Contribution is required under a Development Approval; or
 - (B) the parties agree a Works-in-Kind Contribution or Land Contribution will be delivered in conjunction with development authorised under a Development Approval in accordance with clause 2 of Schedule 5; and
 - (ii) the Landowner will provide updated ledgers in the format provided at Schedule 8 when a Monetary Contribution Notice is sent to the Minister in accordance with clause 6 of this Schedule 4 to identify the value of all Development Contributions that have been provided by the Landowner, any credit amounts that have been

generated and agreed to by both parties, and any Monetary Contribution Security or Works-in-Kind Contribution Security that has been provided by the Landowner.

2 Monetary Contributions

- (a) The parties acknowledge and agree that a Monetary Contribution is a cash contribution towards the provision of Regional Infrastructure within the Western Sydney Employment Area.
- (b) The parties also acknowledge and agree that for a component of the Development:
 - (i) the Base Monetary Contribution Amount is calculated:
 - (A) once a Development Approval has been approved; and
 - (B) on the basis of \$180,000 per hectare of the net developable area of the part of the Land subject to the Development Approval as described in clause 3 of this Schedule 4;
 - (ii) the Base Monetary Contribution Amount is subject to indexation in accordance with clause 4 of this Schedule 4; and
 - (iii) the Indexed Monetary Contribution Amount may be subject to a reduction in accordance with clause 5 of this Schedule 4;
 - (iv) subject to the process in clause 6 of this Schedule 4, the Landowner can utilise any existing Excess Contributions Credit or SIC Credit (as adjusted from time to time) to partly or fully offset an obligation to provide a Monetary Contribution Amount required to be provided under clauses 1(a) and 6 of this Schedule 4; and
 - (v) before the provision of any Monetary Contribution Amount, the parties must agree on the quantum of the Monetary Contribution Amount in accordance with the process involving the provision and agreement of the relevant Monetary Contribution Notice in accordance with clause 6 of this Schedule 4.

3 Net developable area

- (a) Subject to subclauses (b) and (c) below, for the purposes of determining net developable area to calculate the Base Monetary Contribution Amount for a component of the Development in accordance with clause 2 of this Schedule 4, the net developable area is the area of the part of the Land, in hectares, to which a Development Approval relates.
- (b) The net developable area for a component of the Development includes the area of any land that the Development Approval authorises, or requires, to:
 - (i) be used as a road; or
 - (ii) reserved or dedicated as a public road,including the Local Roads, other than a road referred to in subclause (c) below.
- (c) The net developable area for a component of the Development excludes:
 - (i) any area of the Land identified for the regional road network servicing the Western Sydney Employment Area, including Regional Road One;
 - (ii) any area of the Land required for:
 - (A) roads that will service developments within the Western Sydney Employment Area not used solely by the Landowner or for access solely to the Landowner's land within the Western Sydney Employment Area (to avoid doubt, these roads do not include the Local Roads); or

- (B) the E2 environmental conservation zone under the Concept Plan; or
- (C) roads, or other public amenities or public services, in connection with which development contributions may be imposed in accordance with a planning agreement under the Act with a relevant council;
- (iii) the area of any existing road in respect of which the Development Approval authorises, or requires, road work (such as road widening) to be carried out;
- (iv) the area of any land that the Development Approval authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
 - (A) passenger transport facility;
 - (B) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*);
 - (C) public transport corridor (other than a road corridor);
 - (D) public utility undertaking;
 - (E) bus depot, whether or not owned or operated by a public authority;
 - (F) recreation area;
 - (G) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act; or
 - (H) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination or an earlier determination of the Minister under section 94EE of the Act;
- (v) any part of the Land subject to the Development Approval that is at or below the level of a 1:100 ARI (average recurrence interval) flood event, if that part of the land is unsuitable for the relevant development by virtue of it being at or below that level;
- (vi) any part of the Land subject to a Development Approval that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act; or
- (vii) any lot that the Director-General has, having regard to relevant planning controls, certified to the consent authority is a lot that will be further subdivided in accordance with a further Development Approval (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

4 Indexation of Base Monetary Contribution Amounts

On each CPI Adjustment Date until provision of any Monetary Contribution Amount in accordance with clauses 1(a) and 6 of this Schedule 4, the Base Monetary Contribution Amount will be adjusted by multiplying the Base Monetary Contribution Amount by a factor equal to the Current CPI divided by the Base CPI (***Indexed Monetary Contribution Amount***).

5 Reduction of Indexed Monetary Contribution Amounts

- (a) Where:
- (i) the Landowner is required to or has agreed to provide a Works-in-Kind Contribution or Land Contribution for a component of the Development; and
 - (ii) the parties have agreed in accordance with clause 2 of Schedule 5 on a Works-in-Kind Estimate and Land Estimate before the Landowner is required to provide a Monetary Contribution Amount in accordance with clauses 1(a) and 6 of this Schedule 4; and
 - (iii) the Landowner has provided the Minister with a Works-in-Kind Contribution Security in accordance with clause 3(c) of Schedule 6,
- the Indexed Monetary Contribution Amount for that component of the Development will be reduced in part or in full by the sum of any:
- (iv) Works-in-Kind Estimate; and
 - (v) Land Estimate
- (Adjusted Monetary Contribution Amount).**
- (b) Any reduction of an Indexed Monetary Contribution Amount under this clause is made on the date the Landowner is required to provide the Monetary Contribution Amount for that component of the Development in accordance with clauses 1(a) and 6 of this Schedule 4.
- (c) To avoid any doubt:
- (i) where an Indexed Monetary Contribution Amount is reduced in part only, the remaining part constitutes the Adjusted Monetary Contribution Amount the Landowner is required to provide in accordance with clauses 1(a) and 6 of this Schedule 4 for that component of the Development; and
 - (ii) where this clause does not apply and there is no reduction to the Indexed Monetary Contribution Amount, the Monetary Contribution Amount required to be provided by the Landowner in accordance with clauses 1(a) and 6 of this Schedule 4 will be the Indexed Monetary Contribution Amount for that component of the Development.

6 Provision of Monetary Contribution Amounts

- (a) Prior to the provision of a Monetary Contribution Amount, the Landowner must:
- (i) provide the Minister with a written notice showing the calculation of the value of the Monetary Contribution Amount for that component of the Development (**Monetary Contribution Notice**), including where applicable the values of:
 - (A) any indexation calculated in accordance with clause 4 of this Schedule 4;
 - (B) any reduction calculated in accordance with clause 5 of this Schedule 4;
 - (C) any Excess Contributions Credit calculated in accordance with clause 5 of Schedule 5 applied to offset the Monetary Contribution Amount; and
 - (D) any SIC Credit calculated in accordance with clause 4.3(d) applied to offset the Monetary Contribution Amount; and
 - (ii) update the ledgers in Schedule 8 (or another format agreed between the parties) showing the value of the Development Contributions, any Monetary Contribution

Security or Works-in-Kind Security required and any credit amounts and submit this to the Minister with the Monetary Contribution Notice.

- (b) Within 10 Business Days of receiving a Monetary Contribution Notice from the Landowner, the Minister must advise the Landowner in writing whether it agrees with the calculation of the relevant Monetary Contribution Amount and the basis of any adjustments or offsets in the Monetary Contribution Notice.
- (c) The Landowner must provide to the Minister or the Minister's nominee the Monetary Contribution Amount in respect of a component of the Development (or an amount identified in a Monetary Contribution Notice that the Minister has agreed to in writing) prior to the issue of the:
 - (i) Subdivision Certificate; or
 - (ii) Construction Certificate,relevant to the first Development Approval approved for that component of the Development, whichever occurs first.
- (d) The parties agree that:
 - (i) the requirement to provide a Monetary Contribution Amount is a restriction on the issue of a:
 - (A) Subdivision Certificate, within the meaning of section 109J of the Act; or
 - (B) Construction Certificate, within the meaning of section 109F of the Act;and
 - (ii) where the amount of a Monetary Contribution Amount is offset in its entirety, the Landowner is taken to have provided the Monetary Contribution Amount for that component of the Development under this clause once the Minister has agreed in writing to the amount identified in a Monetary Contribution Notice.

SCHEDULE 5

Works-in-Kind Contributions and Land Contributions (clause 4 and Schedule 4)

1 Works-in-Kind Contribution and Land Contribution

The parties acknowledge and agree that:

- (a) the Landowner is only required to provide a Works-in-Kind Contribution or Land Contribution for a component of the Development in accordance with this Schedule 5 where:
 - (i) a Development Approval requires such a contribution to be made; or
 - (ii) the parties agree such a contribution will be made in conjunction with a component of the Development subject to a Development Approval;
- (b) any Works-in-Kind Contribution or Land Contribution are contributions towards the provision of Regional Infrastructure within the Western Sydney Employment Area;
- (c) the process for determining the values of any Works-in-Kind Contribution or Land Contribution will follow a three step process, set out below in clauses 2, 3 and 4 of this Schedule 5, which, in summary only, follows these steps:
 - (i) **(Step 1 – Estimates)** reaching agreement on suitable estimates of the value of the Works-in-Kind Contribution and/or Land Contribution;
 - (ii) **(Step 2 – Delivery)** undertaking the necessary works to achieve Practical Completion of the Works-in-Kind Contribution and/or dedicating the Land Contribution; and
 - (iii) **(Step 3 – Reconciliation)** reaching agreement, or otherwise having determined as outlined below, a reconciliation of actual expenses incurred by the Landowner, and the value of the land dedicated at the date of transfer, with the estimates agreed in Step 1 above; and
- (d) the value of any Works-in-Kind Contribution will equal the Works-in-Kind Actual in respect of that component of the Development up to and including, but not to exceed, the Works-in-Kind Maximum; and
- (e) time is of essence for negotiations under clauses 2, 3 and 4 of this Schedule 5.

2 Step 1 – Contributions Estimates

- (a) Prior to commencing works for a Works-in-Kind Contribution or prior to dedicating a Land Contribution, the Landowner must:
 - (i) obtain all necessary approvals required to carry out the works for the Works-in-Kind Contribution, including entering into any relevant Road Works Agreement; and
 - (ii) give written notice to the Minister (**Contributions Estimate Notice**) seeking agreement to:
 - (A) the specification details, location, nature, extent and timing of the works for the Works-in-Kind Contribution;
 - (B) the exact location and bounds of the land to be subject to the Land Contribution, depicted on a survey plan;



- (C) a cost estimate for providing the Works-in-Kind Contribution, including reasonable contingencies;
 - (D) a maximum value for the Works-in-Kind Contribution amount; and
 - (E) an estimate of the value of the land to be provided for the Land Contribution,
- and with details of:
- (F) the approvals obtained to carry out the works for the Works-in-Kind Contribution;
 - (G) the date for the Practical Completion of the Works-in-Kind Contribution required by the RMS (or other relevant Roads Authority); and
 - (H) whether the RMS (or other relevant Roads Authority) requires security for carrying out the works for the Works in-Kind Contribution under any Road Works Agreement.
- (b) After the Landowner provides a Contributions Estimate Notice to the Minister for consideration, the Minister must provide a written response within 20 Business Days of the provision of the notice stating whether the Minister agrees or disagrees with the matters outlined in the notice, including, but not limited to:
- (i) the date for Practical Completion of the Works-in-Kind Contribution;
 - (ii) the value of the Works-in-Kind Estimate and/or the Land Estimate that will be adopted by the parties for the purposes of making any reduction to the Indexed Monetary Contribution Amount for that component of the Development in accordance with clause 5 of Schedule 4; and
 - (iii) the value of the Works-in-Kind Maximum that will be adopted by the parties for the purposes of limiting the Works-in-Kind Actual in accordance with clause 1(d) of this Schedule 5,
- and in the case of disagreement, the basis of the disagreement.

3 Step 2 – Delivery – Works-in-Kind Contribution and/or Land Contribution

- (a) Where the parties agree on the matters outlined in the Contributions Estimate Notice in accordance with clause 2 of this Schedule 5 that the Landowner will provide a Works-in-Kind Contribution and/or a Land Contribution, the Landowner must in relation to a Works-in-Kind Contribution:
- (i) enter into a Road Works Agreement with RMS (or other relevant Roads Authority) upon terms and conditions which each of the RMS (or other relevant Roads Authority) and the Landowner have agreed in respect of the carrying out and completion of the Works in-Kind Contribution;
 - (ii) achieve Practical Completion of the Works-in-Kind Contribution within the timing specified in the Road Works Agreement;
 - (iii) notify the Minister promptly following entry into a Road Works Agreement and provide the Minister with a copy of that agreement; and
 - (iv) give the Minister written notice 40 Business Days prior to the date of Practical Completion of the relevant Works-in-Kind Contribution.
- (b) If the Landowner is to provide a Land Contribution, within 20 Business Days of the parties reaching agreement on the applicable matters in the Contribution Estimate Notice, the

Minister must give notice to the Landowner nominating which Roads Authority the land for the Land Contribution is to be transferred.

- (c) The Landowner must (at its cost) prepare and register a plan of subdivision to create a separate lot or lots for any Land Contribution.
- (d) The Landowner agrees to:
 - (i) procure the transfer of any Land Contribution to the Minister (or, if directed, to the Minister's nominee) for \$1; and
 - (ii) deliver to the Minister (or, if the Minister directs, to the Minister's nominee):
 - (A) a form of transfer in respect of the land subject to a Land Contribution executed by the Landowner and in registrable form; and
 - (B) the certificates of title for the Land Contribution,and must take any other necessary action (including paying stamp duty associated with the transfer or contract for sale) to give effect to the transfer of the title of the Land Contribution to the Minister (or, where appropriate, the Minister's nominee) free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).
- (e) Upon transfer, the Land Contribution will be free from any encumbrances other than service easements or other encumbrances as agreed with the Minister.
- (f) 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 contamination that is required by law to be cleaned up by an Authority over the whole or any part of the Land Contribution, but only in relation to contamination that existed on or before the date that the Land Contribution is transferred to the Minister (or his nominee).
- (g) The Landowner must promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of any Land Contribution.
- (h) The Landowner will pay all rates and taxes owing in respect of any Land Contribution up to and including the date that the Landowner delivers the form of transfer and certificates of title for the Land Contribution pursuant to clause 3(d) of this Schedule 5, after which time the Minister will be responsible for all rates and taxes in relation to the land subject to the Land Contribution.
- (i) If the Landowner does not procure the transfer of a Land Contribution in accordance with clause 3 of this Schedule 5, the Landowner consents to the Minister (or his nominee) compulsorily acquiring the Land Contribution in accordance with the Acquisition Act for the consideration of:
 - (i) the amount of \$1 on the transfer; and
 - (ii) the Minister agrees that if such a compulsory acquisition of the Land Contribution occurs the Landowner will be entitled to a credit in the amount of the market value of the subject land acquired from the Landowner at the date of transfer in accordance with section 56(1) of the Acquisition Act. That credit is for the benefit of the Landowner and may be utilised by the Landowner as though it is an Excess Contributions Credit.
- (j) The Landowner and the Minister agree that:
 - (i) clause 3(i) of this Schedule 5 is an agreement between the Landowner and the Minister for the purpose of section 30 of the Acquisition Act; and



- (ii) in clause 3(i) of this Schedule 5, the Landowner and the Minister have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (k) If the Minister must pay compensation under Part 3 of the Acquisition Act to any person, other than the Landowner, in accordance with the compulsory acquisition arrangements under clause 3(i) of this Schedule 5, the Landowner:
 - (i) must reimburse the amount of that compensation to the Minister on request; and
 - (ii) will be entitled to utilise any Excess Contributions Credit (or SIC Credit) to offset against its obligations to reimburse a compensation amount required under this clause.
- (l) Where:
 - (i) the Landowner is required to provide a Works-in-Kind Contribution; and
 - (ii) prior to the date of Practical Completion, the Landowner becomes aware of any latent condition of the land subject of the works for the Works-in-Kind Contribution that will have a materially adverse impact on the Works-in-Kind Maximum,

the parties agree to discuss in good faith, with the RMS (or other Roads Authority where appropriate), the need to adopt a revised amount for the Works-in-Kind Maximum.
- (m) Where:
 - (i) the Landowner is required to provide a Land Contribution for a component of the Development and is not required to provide a Works-in-Kind Contribution in combination with that Land Contribution; and
 - (ii) prior to the transfer of the Land Contribution, the Landowner becomes aware of any latent condition of the land subject of the Land Contribution that will result in the Land Actual being materially lower than the Land Estimate,

the parties agree to meet and discuss in good faith, with the transferee Authority, the need to adopt a revised amount for the Land Estimate and any indemnities provided by the Landowner.

4 Step 3 – Contributions Reconciliation

- (a) After:
 - (i) Practical Completion of the Works-in-Kind Contribution has been achieved and the related Land Contribution has been transferred, for a component of the Development involving a Works-in-Kind Contribution; or
 - (ii) the Land Contribution has been transferred, for a component of the Development requiring a Land Contribution without a related Works-in-Kind Contribution,

the Landowner must submit a report to the Minister (**Actual Contributions Report**) providing:

 - (iii) a copy of the title and survey plan of the land subject to any Land Contribution;
 - (iv) accounts for the actual costs incurred by the Landowner in providing the Works-in-Kind Contribution;
 - (v) a reconciliation of the actual costs incurred by the Landowner in providing the Works-in-Kind Contribution in comparison to the Works-in-Kind Estimate and Works-in-Kind Maximum;

- (vi) a reconciliation of the actual value of the land subject to the Land Contribution at the date of transfer in comparison to the Land Estimate;
 - (vii) the value of any Excess Contributions Credit, calculated in accordance with clause 5 of this Schedule 5 below; and
 - (viii) the value of any Top up Contribution, calculated in accordance with clause 6 of this Schedule 5 below.
- (b) After the Landowner provides an Actual Contributions Report for the Minister's consideration, the Minister must provide a written response within 20 Business Days of the provision of the report stating whether the Minister agrees or disagrees with the matters outlined in the report, including, where applicable, the values of:
- (i) the Works-in-Kind Actual;
 - (ii) the Land Actual;
 - (iii) the Excess Contributions Credit; and
 - (iv) the Top up Contribution,
- and in the case of disagreement, the basis of the disagreement.
- (c) If the parties cannot agree on the Works-in-Kind Actual, being the value of the actual costs incurred by the Landowner in providing a Works-in-Kind Contribution, the parties must agree on and jointly appoint an independent, suitably qualified person to determine the actual costs in accordance with the expert determination procedures at Schedule 7.
- (d) If the parties cannot agree on the Land Actual, being the value of the land subject to a Land Contribution at the date of transfer, the parties must agree on and jointly appoint an independent, suitably qualified person to determine the value in accordance with the expert determination procedures at Schedule 7, where the value will be determined by that person in accordance with section 56(1) of the Acquisition Act as if the land had been acquired by compulsory acquisition at the date of transfer.

5 Credit for Excess Contributions

Where, for a component of the Development, the sum of:

- (a) any Works-in-Kind Actual, as agreed by the parties or determined in accordance with clause 4 of this Schedule 5;
- (b) any Land Actual, as agreed by the parties or determined in accordance with clause 4 of this Schedule 5; and
- (c) the Monetary Contribution Amount provided by the Landowner in accordance with clause 6 of Schedule 4:

exceeds:

- (d) the Indexed Monetary Contribution Amount calculated in accordance with clause 4 of Schedule 4,

then:

- (e) the Landowner will be entitled to a credit in the amount of the difference between the sum of items (a) to (c) inclusive above, less the value of item (d) above (**Excess Contributions Credit**);

- (f) the Landowner will be entitled to utilise the Excess Contributions Credit to offset against its obligations to pay development contributions for:
 - (i) future components of the Development, including to reduce in part or in full any:
 - (A) Monetary Contribution Amounts required under this deed, subject to compliance with the process set out in clause 6 of Schedule 4; or
 - (B) Top up Contribution required under clause 6 of this Schedule 5; or
 - (ii) development of land which the Landowner owns within the Western Sydney Employment Area for the purpose of Regional Infrastructure; and
- (g) on each CPI Adjustment Date until the date when a subsequent planning agreement that draws upon the Excess Contributions Credit is executed (or, if there is no planning agreement required, the date when the Landowner draws upon the credit), the Excess Contributions Credit will be adjusted by multiplying the amount by a factor equal to the Current CPI divided by the CPI Number for the quarter ending 31 March in the year when:
 - (i) the Works-in-Kind Contribution is completed, where the Landowner becomes entitled to the Excess Contributions Credit for providing a Works-in-Kind Contribution and related Land Contribution; or
 - (ii) the Land Contribution is transferred in accordance with this Schedule 5, where the Landowner becomes entitled to the Excess Contributions Credit for providing a Land Contribution without a related Works-in-Kind Contribution.

6 Top up Contribution by Landowner

Where, for a component of the Development, the sum of:

- (a) any Works-in-Kind Actual, as agreed by the parties or determined in accordance with clause 4 of this Schedule 5;
- (b) any Land Actual, as agreed by the parties or determined in accordance with clause 4 of this Schedule 5; and
- (c) the Monetary Contribution Amount provided by the Landowner in accordance with clauses 1(a) and 6 of Schedule 4,

is less than:

- (d) the Indexed Monetary Contribution Amount calculated in accordance with clause 4 of Schedule 4,

then:

- (e) the Landowner must make a further monetary contribution in the amount of the difference between the value of item (d) above, less the sum of items (a) to (c) inclusive above (**Top up Contribution**); and
- (f) the Top up Contribution is to be made by the Landowner within 20 Business Days of the date of the agreement or determination under clause 4 of this Schedule 5.

SCHEDULE 6

Security (clause 6.1(b))

1 Bank Guarantees

Each Bank Guarantee provided by the Landowner pursuant to this Schedule 6 must:

- (a) name the "Minister for Planning and Infrastructure and Department of Planning and Infrastructure ABN 38 755 709 681" as the relevant beneficiaries; and
- (b) not have an expiry date.

2 Ledger of Bank Guarantees

The parties agree to periodically, or at the request of a party, and in any case in accordance with clause 6 of Schedule 4, update ledgers in the format provided at Schedule 8 to record the Bank Guarantees provided by the Landowner in accordance with this Schedule 6.

3 Landowner to provide Bank Guarantees

- (a) Within 10 Business Days of a Development Approval being approved, the Landowner will provide to the Minister a Bank Guarantee for, or Bank Guarantees totalling, a face value equivalent to the Monetary Contribution Security Amount as security for the provision of a Monetary Contribution Amount (**Monetary Contribution Security**).
- (b) Subclauses (c), (d), (e), (f)(ii) and (g) below only apply where the parties agree that in accordance with Schedule 5 of this deed, the Landowner is to provide a Works-in-Kind Contribution for a particular component of the Development.
- (c) Prior to an Indexed Monetary Contribution Amount being reduced in accordance with clause 5 of Schedule 4, the Landowner will provide to the Minister a Bank Guarantee for, or Bank Guarantees totalling, a face value equivalent to the Works-in-Kind Estimate for the works subject to the Works-in-Kind Contribution as security for the provision of the Works-in-Kind Contribution (**Works-in-Kind Contribution Security**).
- (d) The Landowner must provide to the Minister or the Minister's nominee any Works-in-Kind Contribution Security prior to the issue of a:
 - (i) Subdivision Certificate; or
 - (ii) Construction Certificate,relevant to the first Development Approval approved for that component of the Development, whichever occurs first.
- (e) The parties agree that the requirement to provide a Works-in-Kind Contribution Security under this clause is a restriction on the issue of a:
 - (i) Subdivision Certificate, within the meaning of section 109J of the Act; or
 - (ii) Construction Certificate, within the meaning of section 109F of the Act.
- (f) The Minister will be entitled to retain the Monetary Contribution Security until
 - (i) the date that the Landowner has provided the Monetary Contribution Amount for the relevant component of the Development in accordance with clauses 1(a) and 6 of Schedule 4; or
 - (ii) the date that the Minister agrees that the Landowner is not required to provide a Monetary Contribution Amount for that component of the Development (i.e. the



Monetary Contribution Amount is reduced or offset in its entirety) in accordance with clause 6 of Schedule 4; or

- (iii) where the sum of the Works-in-Kind Estimate and Land Estimate equals or exceeds the Monetary Contribution Security Amount for the relevant component of the Development, the date that the Landowner provides the Works-in-Kind Contribution Security.
- (g) The Minister will be entitled to retain the Works-in-Kind Contribution Security until:
 - (i) the date of Practical Completion of the relevant Works-in-Kind Contribution; or
 - (ii) if the Landowner is required to provide security to the RMS (or another relevant Roads Authority) under a separate Road Works Agreement in relation to the Works-in-Kind Contribution, the date that the Landowner provides the Minister with evidence that the security required under that other agreement has been provided to the RMS (or another relevant Roads Authority).

4 Claims under the Bank Guarantees

- (a) The Minister may call upon the Monetary Contribution Security where the Landowner has failed to:
 - (i) provide the relevant Monetary Contribution Amount on or before the date for payment under clauses 1(a) and 6 of Schedule 4; or
 - (ii) provide one or more Bank Guarantees to ensure that at all times the value of the security held by the Minister is for the face value equivalent to the Monetary Contribution Security Amount for that component of the Development,and may retain and apply such monies towards the costs and expenses incurred by the Minister in rectifying any such failures by the Landowner.
- (b) The Minister may call upon a Works-in-Kind Contribution Security where the Landowner has failed to:
 - (i) provide the relevant Works-in-Kind Contribution on or before the date agreed with the Minister or RMS or other Roads Authority (as the case may be); or
 - (ii) provide one or more Bank Guarantees to ensure that at all times the value of the security held by the Minister is for a face value equivalent to the Works-in-Kind Estimate for that component of the Development,and retain and apply such monies towards the costs and expenses incurred by the Minister in rectifying such failures by the Landowner.
- (c) Prior to calling upon any Bank Guarantee provided by the Landowner under this Schedule 6, the Minister must give the Landowner not less than 10 Business Days written notice.
- (d) If:
 - (i) the Minister calls upon a Bank Guarantee in accordance with this clause; and
 - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying a default by the Landowner,then the Landowner must provide to the Minister replacement Bank Guarantees to ensure that the Minister is in possession of Bank Guarantees for a face value equivalent to the Monetary Contribution Security Amount or the Works-in-Kind Estimate, as the case

may be for that component of the Development, at all times until the releases of the relevant Banks Guarantees in accordance with clause 5 of this Schedule 6.

5 Release of the Bank Guarantees

(a) Where, in relation to a component of the Development:

- (i) the Landowner has provided the Monetary Contribution Amount in accordance with clauses 1(a) and 6 of Schedule 4 and the whole of the monies secured by the Monetary Contribution Security have not been expended and the monies accounted for in accordance with clause 4 of this Schedule 6; or
- (ii) the sum of the Works-in-Kind Estimate and Land Estimate equals or exceeds the Monetary Contribution Security Amount and the Landowner provides the Works-in-Kind Contribution Security in accordance with clause 3 of this Schedule 6,

then the Minister will promptly return the Monetary Contribution Security for that component of the Development (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Monetary Contribution Security (as the case may be), to the Landowner.

(b) Where, in relation to a component of the Development:

- (i) Practical Completion of a Works-in-Kind Contribution is achieved and the whole of the monies secured by the Monetary Contribution Security have not been expended and the monies accounted for in accordance with clause 4 of this Schedule 6; or
- (ii) the Landowner has provided evidence to the Minister that the Landowner has provided security to the RMS (or another relevant Roads Authority) under a relevant Road Works Agreement,

then the Minister will promptly return the Works-in-Kind Contribution Security for that component of the Development (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Works-in-Kind Contribution Security (as the case may be), to the Landowner.

SCHEDULE 7

Expert Determination (Schedule 5)

1 Application

- (a) This Schedule applies in circumstances where the parties cannot agree on the value of any Works-in-Kind Actual or Land Actual for a component of the Development in accordance with clause 4 of Schedule 5.
- (b) A party claiming that a dispute has arisen under or in relation to this Schedule can commence the dispute resolution procedures under clause 8 of this deed.

2 Nomination of Expert

- (a) Within 10 Business Days of failing to agree upon the value of any Works-in-Kind Actual or Land Actual, the parties must take reasonable steps to identify and agree on an independent and suitably qualified person to act as an expert to determine the relevant value/s.
- (b) Failing agreement between the parties, either party may request the president of the Law Society of NSW or the president's delegate to nominate the expert.
- (c) Where the president (or his or her delegate) is requested to nominate an expert in accordance with subclause (b) above, a party shall not make any request or suggestion that a particular person be appointed as the expert.

3 Appointment of Expert

- (a) Within 5 Business Days after the expert has been nominated, the expert shall provide the parties with an estimate of the fees and disbursements for the expert determination, and the proposed terms of the expert's retainer.
- (b) The parties must use their best endeavours to finalise the terms of the expert's retainer and confirm the appointment of the expert within 5 Business Days of receiving the estimate and proposed retainer terms.
- (c) The parties may agree to nominate a substitute expert in accordance with the procedures established by clause 2 if the estimate is considered excessive or proposed terms unreasonable.

4 Replacement of Expert

If the expert appointed under clause 3 of this Schedule 7 dies or resigns during the expert determination, the parties may agree to nominate and then appoint a substitute expert in accordance with the procedures established by clauses 2 and 3.

5 Disclosure

- (a) If the expert becomes aware at any stage of any circumstance that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert must inform the parties immediately.
- (b) In such circumstances the appointment of the expert will terminate, unless the parties agree otherwise.



6 Role and powers of the expert

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) act independently of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of presenting its case and countering any arguments of any opposing party, and a reasonable opportunity to make submissions on the procedure for the expert determination;
- (c) proceed in any manner he or she thinks fit;
- (d) determine whether it is appropriate to co-opt legal or other technical expertise to assist his or her coordination of the dispute;
- (e) conduct any investigation which he or she considers necessary to resolve the dispute;
- (f) examine such documents, and interview such persons, as he or she may require; and
- (g) make such directions for the conduct of the expert determination as he or she considers necessary.

7 Steps leading to commencement of expert determination

The parties agree to comply with any procedural directions the expert may give in the preparation for or in the course of a preparatory conference.

8 Representation and attendance

During any conference or any stage of the expert determination, the parties may wish to be represented by a legal representative and other persons with information or knowledge relevant to the expert determination.

9 Obligations of parties

The parties shall take all reasonable steps for the expeditious and cost-effective conduct of the expert determination. These steps include, but are not limited to, complying without delay with any direction or ruling by the expert as to the procedural or evidentiary matters.

10 Confidentiality

Confidential information disclosed to the expert by the parties or by others attending in the course of the expert determination shall not be divulged by the expert, unless authorised in writing by both parties. The parties agree that they will not compel the expert to divulge records, reports or other documents (electronic or otherwise) received by him or her while serving in that capacity, or testify in regard to the expert determination in any adversarial proceeding, judicial forum or body.

11 Determination of expert

- (a) The determination of the expert:
 - (i) must be in writing, accompanied by reasons;
 - (ii) subject to subclause (b) below, will be final and binding; and
 - (iii) is not an arbitration within the meaning of any statute.
- (b) If the determination of the expert contains a clerical mistake, an error arising from an accidental inclusion or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then:

- (i) the expert must correct the determination; or
- (ii) the parties may agree to appoint a substitute expert in accordance with the procedures established by clause 2 of this Schedule 7.

12 Costs

Each party will:

- (a) bear its own costs in respect of any preparation and/or representation at any expert determination, and
- (b) pay one-half of the expert's costs and any incidental costs of facilitating the expert determination.

13 Payment of interest

Unless otherwise agreed by the parties, the expert determination may include the payment of interest on any monetary component of the expert determination in such amount as the expert may determine.

14 No suspension of contractual obligations

The referral of a dispute for expert determination under this Schedule 7 does not suspend the contractual obligations of the parties under this deed.

15 No prejudice

This Schedule 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.

SCHEDULE 8

Development Contributions Ledger (Schedule 4, Schedule 5 and Schedule 6)

1 Register of Monetary Contributions

Item	Development Approval	Description of component of Development	Base Monetary Contribution Amount	Debit (Indexation)	Credit (Reduction for Works-in-Kind Estimate / Land Estimate)	Adjusted Monetary Contribution Amount	Credit (Excess Contribution Credit / SIC Credit)	Amount payable

Register of Works-in-Kind Contributions

Item	Development Approval	Description of Works-in-Kind Contribution	Works-in-Kind Actual	Debit (Excess Contribution Credit)	Credit (indexation)



3 Register of Land Contributions

Item	Development Approval	Description of Land Contribution	Land Actual	Debit (Excess Contribution Credit)	Credit (indexation)

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4 Register of Bank Guarantees

Item	Development Approval	Monetary Contribution Security	Date Provided	Date Released (Amount on release)	Works-in-Kind Contribution Security	Date Provided	Date Released (Amount on release)

Dr

Executed and delivered as a Deed in Sydney.

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

DAAR
Signature of Witness

David Kevin Arthur Badich
Name of Witness in full

As delegate
Signature of the Minister for Planning and Infrastructure

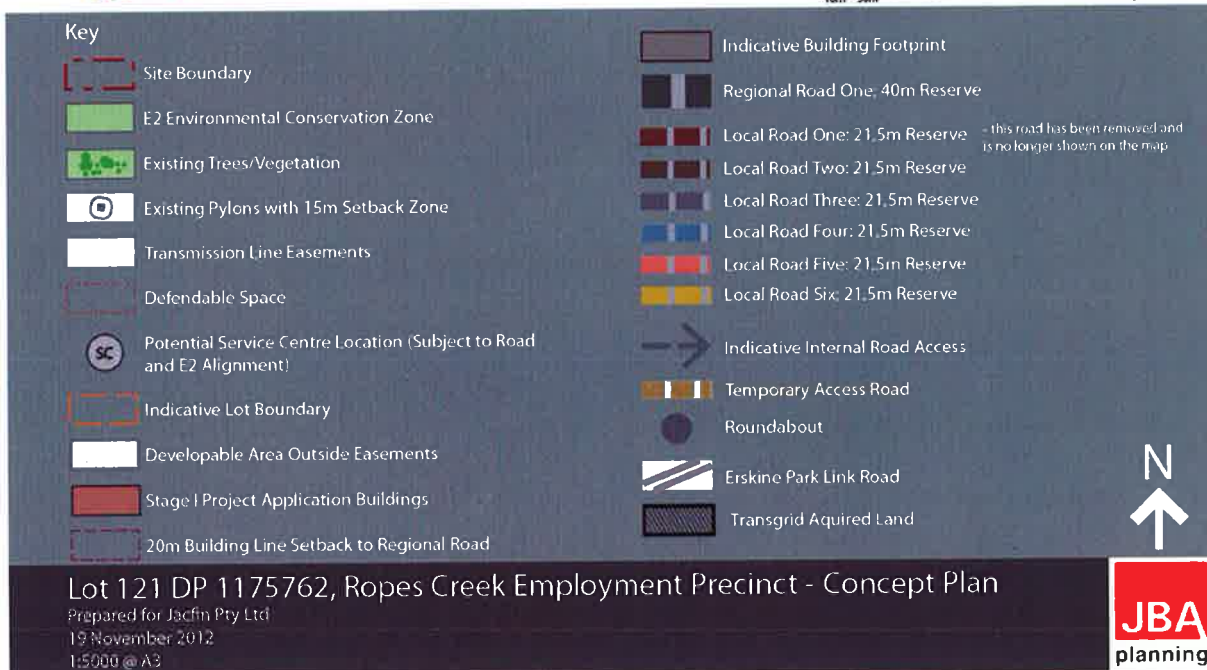
SIGNED by me ANDREW JAMES JACKSON as delegate of the Minister for Planning and Infrastructure, 1979, and I hereby certify that I have no notice of the revocation of such delegation.

Executed in accordance with section 127 of the *Corporations Act 2001* by **Jacfin Pty Ltd** ABN 44 000 967 902 in the presence of:

N. Bergman
Witness Signature
Naomi Bergman
Print Name

Jacfin Pty Ltd
Sole Director and Secretary Signature
JACQUELYN WATERHOUSE

Annexure A



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