



Planning &  
Environment

## Planning Agreement

### *Environmental Planning and Assessment Act 1979*

Minister for Planning (ABN 38 755 709 681)

and

E.J. Cooper & Son Pty. Limited (ACN 000 269 750);

Feecha Pty Ltd (ACN 126 057 323);

Himbla Pty Ltd (ACN 126 057 305);

Rashka Pty Ltd (ACN 126 057 314);

Printsilk Pty. Limited (ACN 061 556 572);

Pace Land Holdings Pty Limited (ACN 069 532 467); and

Frank George Pace.

*[Handwritten signatures in blue ink]*  
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This deed is dated

24 FEBRUARY 2017

Parties:

**Minister**

**Minister for Planning** (ABN 38 755 709 681)  
of Level 15, 52 Martin Place, Sydney, New South Wales 2000



**Developers**

**E.J. Cooper & Son Pty. Limited** (ACN 000 269 750)  
of 642 Great Western Highway, Girraween NSW 2145

and

**Feecha Pty Ltd** (ACN 126 057 323)  
care of Boroughs Australia Pty Limited, Level 6, 77 Castlereagh Street, Sydney NSW 2000

and

**Himbla Pty Ltd** (ACN 126 057 305)  
care of Grange Business Partners, Suite 402, 39-41 Chandos Street, St Leonards NSW 2065

and

**Rashka Pty Ltd** (ACN 126 057 314)  
care of Boroughs Australia Pty Limited, Level 6, 77 Castlereagh Street, Sydney NSW 2000

and

**Printsilk Pty. Limited** (ACN 061 556 572)  
care of Boroughs Australia Pty Limited, Level 6, 77 Castlereagh Street, Sydney NSW 2000

and

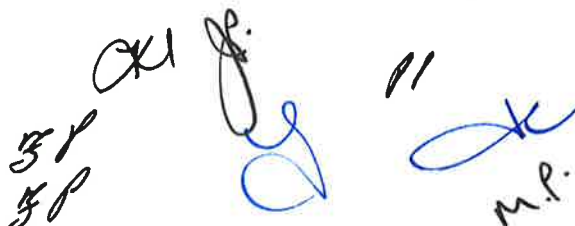
**Pace Land Holdings Pty Limited** (ACN 069 532 467)  
care of Boroughs Australia Pty Limited, Level 6, 77 Castlereagh Street, Sydney NSW 2000

and

**Frank George Pace**  
of 1 Kippist Avenue, Minchinbury NSW 2770

**Introduction:**

- A** Each Developer owns that part of the Land as described in Schedule 3.
- B** The Developers intend to carry out the Development on the Land.
- C** In order to facilitate the development of the Land, the Developers sought an amendment to the LEP to rezone the Land.
- D** Following the rezoning of the Land by *Hawkesbury Local Environmental Plan (Amendment No 5)*, the Developers have made or propose to make a Development Application(s) to the Consent Authority to subdivide the Land into approximately 580 residential lots, to construct an on-site sewerage system on the Land, and to create an open space network that retains dams on the Land and provides for 3 ecological corridors and a riparian corridor along Currency Creek.



- E** Clause 5.13A of the LEP provides that the Consent Authority must not grant Development Consent for the subdivision of the Land unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure referred to in clause 5.13A of the LEP.
- F** The Developers have offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by clause 5.13A of the LEP.

**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.

**Bank Guarantee** means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

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

**Base CPI** means the CPI number for the quarter ending 31 March 2014.

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

**Consent Authority** means Hawkesbury City Council.

**Contribution Amount** means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

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

**Current CPI** means the CPI number for the quarter ending immediately before 31 March in the financial year preceding the date of the relevant adjustment under clause 2 of Schedule 4.

**Developer** means each of E.J. Cooper & Son Pty. Limited, Feecha Pty Ltd, Himbla Pty Ltd, Rashka Pty Ltd, Printsilk Pty. Limited, Pace Land Holdings Pty Limited and Frank George Pace.

**Development** means the subdivision of the Land into approximately 580 Urban Lots, the construction of an on-site sewerage system on the Land and the creation of an open space

network that retains dams on the Land and provides for 3 ecological corridors and a riparian corridor along Currency Creek.

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

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

**Development Contribution** means the contributions to be provided by the Developer in accordance with Schedule 4.

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

**Land** means the land described in Schedule 3.

**LEP** means *Hawkesbury Local Environmental Plan 2012*.

**Minister** means the Minister for Planning and a reference to the Minister includes a reference to the Secretary, or other officer of the Department of Planning and Environment.

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

**Plan of Subdivision** has the same meaning as in section 195 of the *Conveyancing Act 1919* (NSW).

**Note.** The definition of **plan of subdivision** in section 195 of the *Conveyancing Act 1919* extends to various kinds of plans under the *Community Land Development Act 1989*.

**Planning Application** means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the subdivision or other development of the Land.

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

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

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

**Secretary** means the Secretary of the Department of Planning and Environment and a reference to the Secretary includes a reference to other officers of the Department of Planning and Environment.

**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.

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

## **2. Operation and application of this deed**

### **2.1 Operation**

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

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

This deed constitutes a planning agreement within the meaning of section 93F of the Act and the parties agree on the matters set out in Schedule 1.

### **2.3 Application**

This deed applies to:

- (a) the Land;
- (b) the Development; and
- (c) the amendment to the LEP as described in Schedule 1.

**Note:** The amendment to the LEP as described in Schedule 1 was given effect to by *Hawkesbury Local Environmental Plan 2012 (Amendment No 5)*, which commenced on 19 December 2014.

## **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 Developer to provide Development Contribution**

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

### **4.2 Acknowledgement**

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

## **5. Interest**

### **5.1 Interest for late payment**

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.



## **6. Enforcement**

### **6.1 Developer to provide security**

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

## **7. Registration**

### **7.1 Registration of deed**

Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:

- (a) the consent of each person, as required by the Registrar-General, who:
  - (i) has an estate or interest in the Land registered under the Real Property Act; or
  - (ii) is seized or possessed of an estate or interest in the Land,to the registration of this deed on title and to the terms of this deed;
- (b) the execution of any documents;
- (c) the production of the relevant certificates of title;
- (d) payment of any duty liability arising from this deed under the *Duties Act 1997* (NSW) and even if duty is not liable to be paid, the Developer must present this deed for marking at the Office of State Revenue; and
- (e) 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.

### **7.2 Evidence of registration**

The Developer must 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**

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

### **7.4 Developer's interest in Land**

The Developer represents and warrants that it is:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

## **8. Dispute Resolution**

### **8.1 Not commence**

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

### **8.2 Written notice of dispute**

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

### **8.3 Attempt to resolve**

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

### **8.4 Mediation**

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

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

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

### **8.5 Court proceedings**

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

### **8.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

### **8.7 No prejudice**

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

## **9. GST**

### **9.1 Definitions**

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

## **9.2 Intention of the parties**

The parties intend that:

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

## **9.3 Reimbursement**

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

## **9.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are 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 must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer must ensure that:

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

## **9.6 Non-monetary consideration**

Clause 9.5 applies to non-monetary consideration.

## **9.7 Assumptions**

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

## **9.8 No merger**

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

## **10. Assignment and transfer**

### **10.1 Developer's right to assign or novate**

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the Developer must seek the consent of the Minister and:
  - (i) satisfy the Minister (acting reasonably) that the person to whom the Developer's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets,

resources and expertise required in order to perform the Developer's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;

- (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party was the Developer; and
  - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

## **10.2 Developer's right to transfer Land**

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.
- (b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
  - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
  - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee was the Developer; and
  - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

## **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. Reporting requirement**

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report which must include the following matters, as applicable:
  - (i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;
  - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
  - (iii) a forecast in relation to the anticipated progression and completion of the Development;
  - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
  - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

## **13. General Provisions**

### **13.1 Entire deed**

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

### **13.2 Variation**

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

### **13.3 Waiver**

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

### **13.4 Further assurances**

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

### **13.5 Time for doing acts**

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

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

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

#### **13.6 Governing law and jurisdiction**

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

#### **13.7 Severance**

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

#### **13.8 Preservation of existing rights**

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

#### **13.9 No merger**

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

#### **13.10 Counterparts**

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

#### **13.11 Relationship of parties**

Unless otherwise stated:

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

#### **13.12 Good faith**

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.

#### **13.13 No fetter**

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

### 13.14 Explanatory note

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

### 13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
  - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
  - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

### 13.16 Notices

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

## 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.

Requirement under the Act	This deed
<b>Planning instrument and/or development application – (section 93F(2))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Yes</li> <li>(b) Yes</li> <li>(c) N/A</li> </ul>
<b>Description of land to which this deed applies – (section 93F(3)(a))</b>	See Schedule 3
<b>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b)(i))</b>	The amendments to the LEP sought by the Developer include amendments to the Land Zoning Map, Height of Buildings Map, Lot Size Map, Lot Averaging Map and Urban Release Area Map. The amendments have been given effect to by <i>Hawkesbury Local Environmental Plan (Amendment No 5)</i> , resulting in the Land being brought within the following zones: <ul style="list-style-type: none"> <li>a. R2 Low Density Residential;</li> <li>b. R5 Large Lot Residential;</li> <li>c. RE1 Public Recreation; and</li> <li>d. SP2 Infrastructure (sewerage system).</li> </ul>
<b>Description of development – (section 93F(3)(b)(ii))</b>	The subdivision of the Land into approximately 580 Urban Lots, the construction of an on-site sewerage system on the Land and the creation of an open space network that retains dams on the Land and provides for 3 ecological corridors and a riparian corridor along Currency Creek.
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</b>	See Schedule 4
<b>Applicability of sections 94 and 94A of the Act</b>	The application of sections 94 and 94A of the Act



<b>Requirement under the Act</b>	<b>This deed</b>
– (section 93F(3)(d))	is not excluded in respect of the 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 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 8
<b>Enforcement of this deed –</b> (section 93F(3)(g))	See clause 6
<b>No obligation to grant consent or exercise functions –</b> (section 93F(10))	See clause 13.13

Table 2 – Other matters

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Registration of the Planning Agreement –</b> (section 93H of the Act)	Yes (see clause 7)
<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)	Yes (see clause 3 of Schedule 4)

## **Schedule 2**

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

#### **Minister**

**Contact:** The Secretary  
**Address:** Department of Planning and Environment  
23-33 Bridge Street  
SYDNEY NSW 2000  
**Facsimile No:** (02) 9228 6571

#### **Developer – E.J. Cooper & Son Pty. Limited**

**Contact:** John Vassallo  
**Address:** 642 Great Western Highway  
PENDLE HILL NSW 2145  
**Facsimile No:** (02) 9842 1059

#### **Developers – Feecha Pty Ltd; Himbla Pty Ltd; Rashka Pty Ltd and Printsilk Pty. Limited**

**Contact:** Mike Kent  
**Address:** 1 Kippist Avenue  
MINCHINBURY NSW 2770  
**Facsimile No:** (02) 9830 9801

#### **Developer – Pace Land Holdings Pty Limited**

**Contact:** Mike Kent  
**Address:** 1 Kippist Avenue  
MINCHINBURY NSW 2770  
**Facsimile No:** (02) 9830 9801

#### **Developer – Frank George Pace**

**Contact:** Mike Kent  
**Address:** 1 Kippist Avenue  
MINCHINBURY NSW 2770  
**Facsimile No:** (02) 9830 9801

### Schedule 3

#### Land (clause 1.1)

##### 1. Lots proposed for development

Lot	Deposited Plan	Folio Identifier	Owned by
2	533402	2/533402	E.J. Cooper & Son Pty. Limited
52	1104504	52/1104504	E.J. Cooper & Son Pty. Limited
20	214753	20/214753	E.J. Cooper & Son Pty. Limited
3	230943	3/230943	E.J. Cooper & Son Pty. Limited
50	751637	50/751637	E.J. Cooper & Son Pty. Limited
75	214752	75/214752	Feecha Pty Ltd Himbla Pty Ltd Rashka Pty Ltd, and Printsilk Pty. Limited
44	214755	44/214755	Pace Land Holdings Pty Limited
1	784300	1/784300	Frank George Pace and Pace Land Holdings Pty Limited
2	784300	2/784300	Frank George Pace and Pace Land Holdings Pty Limited
3	784300	3/784300	Frank George Pace and Pace Land Holdings Pty Limited

## Schedule 4

### Development Contributions (clause 4)

#### 1. Development Contributions

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

Development Contribution	Value	Timing
Contribution Amount - Cash contribution towards designated State public infrastructure	\$10,000 per Urban Lot to which each Subdivision Certificate application relates.	Pursuant to clause 3 of this Schedule 4

- (b) The Minister and Developer acknowledge and agree that the sum of the Contribution Amounts form the Development Contribution under this deed.

#### 2. Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:

$$X = N \times \$10,000$$

"N" means the number of Urban Lots to which a Subdivision Certificate application relates.

- (b) Each Contribution Amount is to be adjusted by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.

#### 3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee each Contribution Amount prior to the issue of the relevant Subdivision Certificate.
- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act.

#### 4. Urban Lot

- (a) For the purposes of this deed, a reference to an Urban Lot to which a Subdivision Certificate application relates is a reference to a lot that:
- (i) will be created on registration of the Plan of Subdivision for which the certificate is sought; and
  - (ii) the Secretary determines in writing, at the Secretary's discretion, will be developed or used for the purpose of residential accommodation without further subdivision.
- (b) To avoid doubt, a reference to an Urban Lot to which a Subdivision Certificate application relates does not include a reference to:

- (i) a lot shown as community property, precinct property or neighbourhood property in any community plan, precinct plan or neighbourhood plan (within the meaning of the *Community Land Development Act 1989* (NSW)) for which the certificate is sought; or
- (ii) a lot that is wholly within Zone RE1 Public Recreation or wholly within Zone SP2 Infrastructure.

## **Schedule 5**

### **Security terms (clause 6)**

#### **1. Bank Guarantees**

- (a) At the time the Developer signs this deed, the Developer undertakes to provide a Bank Guarantee in the amount of \$20,000 in order to secure the payment of the Development Contribution.
- (b) The Bank Guarantee must:
  - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
  - (ii) not have an expiry date.
- (c) From the date of execution of this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Bank Guarantee.

#### **2. Claims under Bank Guarantees**

- (a) The Minister may:
  - (i) call upon the Bank Guarantee where the Developer has failed to pay a Contribution Amount on or after the date for payment under this deed; and
  - (ii) retain and apply such monies towards the Contribution Amount and costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Bank Guarantee the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call on the Bank Guarantee.
- (c) If:
  - (i) the Minister calls upon the Bank Guarantee; and
  - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
  - (iii) has notified the Developer of the call upon the Bank Guarantee in accordance with clause 2(b) of this Schedule 5,then the Developer must provide to the Minister a replacement Bank Guarantee to ensure that, at the relevant time, the Minister is in possession of the required Bank Guarantee.

#### **3. Release of Bank Guarantees**

If:


- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

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

Execution page

**Executed** as a deed

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

  
Signature of witness

MARY-ROSE GAYNOK  
Name of witness in full

370 PITT ST, SYD  
Address of witness

  
Signature of the Minister for Planning or delegate

BRENDAN NEYON  
Name:

**Executed by E.J. Cooper & Son Pty. Limited**  
(ACN 000 269 750) in accordance with  
section 127 of the Corporations Act:

  
Signature of Director  
John Camilleri

Name of Director

  
Signature of Director/Secretary  
George Tsekouras

Name of Director/Secretary

**Executed by Feecha Pty Ltd** (ACN 126 057  
323) in accordance with section 127 of the  
Corporations Act:

Signature of Director

Name of Director

  
Signature of Director/Secretary  
Sole Director  
PAUL PACE  
Name of Director/Secretary

**Executed by Himbla Pty Ltd** (ACN 126 057 305) in accordance with section 127 of the Corporations Act:

.....  
Signature of Director

.....  
Name of Director

*m. pace*  
.....  
Signature of Director/Secretary  
*Sole Director*

*Matthew Pace*  
.....  
Name of Director/Secretary

**Executed by Rashka Pty Ltd** (ACN 126 057 314) in accordance with section 127 of the Corporations Act:

.....  
Signature of Director

.....  
Name of Director

*Joe Pace*  
.....  
Signature of Director/Secretary  
*Sole Director*  
*Joe Pace*  
.....  
Name of Director/Secretary

**Executed by Printsilk Pty. Limited** (ACN 061 556 572) in accordance with section 127 of the Corporations Act:

*P. Pace*  
.....  
Signature of Director

*PAUL PACE*  
.....  
Name of Director

*m. pace*  
.....  
Signature of Director/Secretary

*Matthew Pace*  
.....  
Name of Director/Secretary



Executed by Pace Land Holdings Pty Limited  
(ACN 069 532 467) in accordance with  
section 127 of the Corporations Act:

*Frank Pace*

Signature of Director

*Frank Pace*

Name of Director

*K Isemonger*

Signature of Director/Secretary

*Kerri-ann Isemonger*

Name of Director/Secretary

Signed sealed and delivered  
by Frank George Pace in the presence of:

*[Signature]*

Signature of witness

*JOHN VASSILO*

Name of witness (in full)

*F Pace*

Signature

*Frank Pace*

Frank George Pace