

*Affinity*  
*# 8204*

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

and

**Jacfin Pty Limited**  
ACN 000 967 902

**Eastern Creek (West)**

**Planning Agreement**

Environmental Planning and Assessment Act 1979

*by*  
*Quw*

*Jacqueline Blackhouse N. Bogn*

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THIS deed is dated

22 DECEMBER 2016

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**PARTIES:**

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

and

**JACFIN PTY LIMITED** (ACN 000 967 902) of Pricewaterhouse Coopers, 201 Sussex Street, Sydney, New South Wales, 2000 (**Developer**)

**INTRODUCTION:**

- A** The Developer owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** Clause 29 of the SEPP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services.
- D** The Developer has 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 the SEPP.

**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.

*[Handwritten signatures]*

**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 2016.

**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.

**Complying Development Certificate** has the same meaning as in the Act.

**Consent Authority** means Blacktown City Council.

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

**Contributions Credit** means any credit which the Developer is entitled to under this Deed or any of the Other WSEA VPAs which it may utilise to offset development contributions payable by it for development of land within the SEPP boundary for regional infrastructure and services.

**CPI** means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion.

**CPI Adjustment Date** means 1 July 2017 and each anniversary of 1 July 2017 thereafter.

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

**Development** means the future development of the Land for purposes consistent with the SEPP.

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

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

**Development Contribution** means the total cash contributions towards regional transport infrastructure and services 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.

**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).

**Initial Development** means the development of that part of the Land which is subject to three development applications lodged with Blacktown Council, being DA 16-04075 (construction and use of a café and ancillary parking), DA 16-03493 (subdivision of the Land to create Lot 22 in DP 1206129) and DA 16-04421 (construction of an extension to the existing Eastern Creek Drive).

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

**Minister** means the Minister for Planning and includes the Minister's nominee and the Secretary and the Secretary's nominee.

**Net Developable Area** means the net developable area of the Land as defined in Schedule 6 of this Deed or as calculated having regard to any determination made in accordance with s94EE of the Act with respect to the Land.

**Occupation Certificate** has the same meaning as in the Act.

**Other WSEA VPAs** means:

- (a) the Horsley Park Stage 1 Development Planning Agreement between the Minister for Planning and Infrastructure and the Developer dated 21 March 2014;
- (b) the Ropes Creek Planning Agreement between the Minister for Planning and Infrastructure and the Developer dated 5 September 2014;
- (c) the Eastern Creek (Old Wallgrove Road intersection) Planning Agreement between the Minister for Planning and the Developer dated 25 March 2016; and
- (d) any other planning agreement entered into by the Minister and the Developer under section 93F of the Act relating to development of land by the Developer within the SEPP boundary.

**Parcel** means a delineated portion of the Land to be developed as indicated on a plan provided by the Developer to the Minister in accordance with Schedule 4.

**Planning Application** means:

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

which seeks approval for the development of the Land.

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

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

**Satisfactory Arrangements Certificate** means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure in accordance with clause 29 of the SEPP.

**Secretary** means the Secretary of the Department of Planning and Environment from time to time (or nominee, whether nominated before or after the date of this deed).

**SEPP** means the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*

**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.

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

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

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

## 2 OPERATION AND APPLICATION OF THIS DEED

### 2.1 Operation

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

### 2.2 Planning agreement under the Act

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

### **2.3 Application**

This deed applies to:

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

### **3 Application of sections 94, 94A and 94EF of the Act**

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

### **4 DEVELOPMENT CONTRIBUTION**

#### **4.1 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 to this deed.

#### **4.2 Determination of Special Infrastructure Contribution**

- (a) This clause will apply where:
  - (i) the Minister determines a Special Infrastructure Contribution; and
  - (ii) upon the date of determination of the Special Infrastructure Contribution, the Developer has not provided the Development Contribution in full.
- (b) If the determination of a Special Infrastructure Contribution specifies a rate or method of calculation for a contribution amount that if applied to this deed would result in a contribution amount that is less than the amount that would have been payable under this deed having regard to the rate and method of calculation of a Contribution Amount, then:
  - (i) the Special Infrastructure Contribution amount will be deemed to be the Contribution Amount for the purpose of this deed;
  - (ii) the Minister will not be required to refund any part of the Development Contribution paid by the Developer under this deed to the extent that such amounts exceed the Special Infrastructure Contribution; and
  - (iii) the Developer will be entitled to a credit to be offset against the balance of any unpaid Contribution Amounts payable under this deed as at the date of the determination for an amount equal to the difference between:

- (A) all paid Contribution Amounts as at the date of the determination of the Special Infrastructure Contribution; and
- (B) the Special Infrastructure Contribution.

#### **4.3 Acknowledgement**

The Developer acknowledges and agrees that 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 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 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 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**

- (a) 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 reasonably necessary to procure:
  - (i) the consent of each person, as required by the Registrar-General, who:
    - (A) has an estate or interest in the Land registered under the Real Property Act; or
    - (B) 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; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant certificates of title;
  - (iv) the lodgement of this deed in a registrable form at the Land and Property Information for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably necessary to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

### **7.2 Evidence of registration**

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the Land and Property Information.
- (b) The Developer 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**

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; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed, and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 8.1(i) to assist, cooperate and to otherwise do all things necessary for the landowner 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 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 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 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. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will 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 will assume the Minister is not entitled to any input tax credit.

### **9.8 No merger**

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

## 10 ASSIGNMENT AND TRANSFER

### 10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
  - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
  - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
  - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

### 10.2 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:
  - (i) on which this deed remains registered under section 93H of the Act; or
  - (ii) for which the Development Contribution required under this deed remains outstanding.
- (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 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 were 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 (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
  - (i) details of all Development Consents, Construction Certificates. Complying Development Certificates 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 every thing 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, will not merge on the occurrence of that event but will remain 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 shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

#### **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 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;
  - (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

**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                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| <p><b>Planning instrument and/or development application</b> – (section 93F(2))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p> | <p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>                                                       |
| <b>Description of land to which this deed applies</b> – (section 93F(3)(a))                                                                                                                                                                                                                                                                                                    | See Schedule 3                                                                                   |
| <b>Description of change to the environmental planning instrument to which this deed applies</b> – (section 93F(3)(b))                                                                                                                                                                                                                                                         | N/A                                                                                              |
| <b>The scope, timing and manner of delivery of contribution required by this deed</b> – (section 93F(3)(c))                                                                                                                                                                                                                                                                    | See Schedule 4                                                                                   |
| <b>Applicability of sections 94 and 94A of the Act</b> – (section 93F(3)(d))                                                                                                                                                                                                                                                                                                   | The application of sections 94 and 94A of the Act is not excluded in respect of the 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(3)(e))                                                                                                                                                                                                                                                                                   | No                                                                                               |
| <b>Mechanism for Dispute Resolution</b> – (section 93F(3)(f))                                                                                                                                                                                                                                                                                                                  | See clause 8                                                                                     |

| REQUIREMENT UNDER THE ACT                                                       | THIS DEED          |
|---------------------------------------------------------------------------------|--------------------|
| <b>Enforcement of this deed</b> – (section 93F(3)(g))                           | See clause 6 and 7 |
| <b>No obligation to grant consent or exercise functions</b> – (section 93F(10)) | See clause 13.13   |

Table 2 – Other matters

| REQUIREMENT UNDER THE ACT OR REGULATION                                                                                                                                                             | THIS DEED                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| <b>Registration of the Planning Agreement</b> – (section 93H of the Act)                                                                                                                            | 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)  | Yes (see clause 3 of Schedule 4) |
| <b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued</b> – (clause 25E(2)(g) of the Regulation)  | No                               |

**SCHEDULE 2**

**Address for Service (clause 1.1)**

**Minister**

**Contact:** The Secretary

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

**Facsimile No:** (02) 9228 6455

**Developer**

**Contact:** The Company Director

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

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

**SCHEDULE 3**

**Land (clause 1.1)**

That part of Lot 20 in Deposited Plan 1206129 which is shown shaded grey on the plan annexed and marked "Annexure A" to this Deed.

#### SCHEDULE 4

##### Development Contributions (clause 4)

##### 1. Submission of a plan defining a Parcel and Net Developable Area

- (a) The Developer must prepare and submit a written notice (**Parcel Notice**), for approval by the Minister, which:
  - (i) Includes a plan that delineates a Parcel of the Land proposed to be developed;
  - (ii) Specifies the Net Developable Area for the Parcel, as determined by an independent surveyor or other suitably qualified person; and
  - (iii) Specifies the Contribution Amount applicable to the Parcel, calculated in accordance with this Deed, and sets out the basis on which that amount has been determined.
- (b) The Developer is to submit the Parcel Notice to the Minister prior to the issue of the first Development Consent or Complying Development Certificate for Development within a Parcel.
- (c) The Developer agrees not to lodge a plan of subdivision for registration or to undertake any development over any part of the Land until the Developer has received the approval of the Minister to the inclusion of that area of Land in a Parcel, unless otherwise agreed in writing by the Minister.
- (d) The parties acknowledge and agree:
  - (i) a Parcel can only be created on Land which has not been included in any other Parcel;
  - (ii) more than one Parcel of Land can be defined on a plan submitted pursuant to this clause ;
  - (iii) the final Parcel to be identified on a plan in accordance with clause 2(a)(i) of this Schedule 4 shall be of a size equal to the remainder of the Land left to be developed at the completion of the Development.
- (e) Subject to clause 1(d) of this Schedule 4, the parties agree that the location, shape and area of land included in a Parcel is in the absolute discretion of the Developer.
- (f) Following provision of the Parcel Notice by the Developer under clause 1 of this Schedule 4, the Minister, acting reasonably, is to provide the requisite approval, or other response, in writing, generally within 20 Business Days of the provision of the Parcel Notice.
- (g) The parties acknowledge that the Minister's approval referred to in this clause 1(a) and (f) of this Schedule 4 is only for the purposes of confirming whether or not the Minister agrees that the Net Developable Area and Contribution Amount owing have been calculated accurately for the relevant Parcel in accordance with this Deed.

## 2. Development Contributions

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

| Development Contribution                                                               | Value (subject to clauses 1 and 3)                                                                                                      | Timing                                   |
|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| Contribution Amount - Cash contribution towards designated State public infrastructure | \$185,284 per hectare of Net Developable Area for any part of the Land contained within a Parcel subject to clause 3 of this Schedule 4 | Pursuant to clause 4 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.

## 3. Indexation of the value of a Contribution Amount

- (a) On each CPI Adjustment Date, the value of the Contribution Amount for a Parcel in the table in clause 2(a) of this Schedule is to be adjusted by multiplying that amount by an amount equal to the Current CPI divided by the Base CPI.

## 4. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee the Contribution Amount in respect of a Parcel:
- (i) before any Occupation Certificate is issued in respect of any building (or part thereof) located on any part of the Parcel; or
  - (ii) before commencing any occupation or use of any building (or part thereof) located on any Parcel whichever is earlier; or
  - (iii) before the opening of a public road under the Roads Act on any part of the Parcel; or
  - (iv) within 18 months from the date which a Construction Certificate or Complying Development Certificate in respect of Land within a Parcel is issued by a consent authority or private certifier;
- whichever is the earliest.
- (b) The parties further acknowledge and agree that the Developer may elect, in its absolute discretion, to utilise any Contributions Credit available to the Developer at the time of payment of a Contribution Amount to partly or fully offset the Contribution Amount payable. If any Contributions Credits are so utilised by the Developer, the parties agree to amend any applicable ledgers maintained by the parties to reflect an equivalent deduction in the balance of Contribution Credits held by the Developer.
- (c) The Developer agrees to give the Minister a copy of any Construction Certificate or Complying Development Certificate issued to the Developer by a Consent Authority or

private certifier in respect of Development within a Parcel as soon as practicable after the relevant certificate is issued.

- (d) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Occupation Certificate within the meaning of section 109H(2) of the Act.
- (e) For the avoidance of doubt, the Developer agrees that it must pay each Contribution Amount irrespective of whether:
  - (i) it is the owner of the Parcel on the relevant due date for payment; or
  - (ii) it is the applicant for the relevant Occupation Certificate, Construction Certificate or Complying Development Certificate.
- (f) For the purposes of clause 4 of this Schedule 4, the definition of "building" shall exclude any building solely occupied as an internal access road, fire access road, retaining wall, rainwater tank, electrical substation and infrastructure, fire tank, pump room, stormwater detention basin, and pipe and service trench.

## **5. No order of Parcel**

The parties agree that:

- (a) a Parcel is only to be used in determining the timing and quantum of the Contribution Amount in respect of that Parcel;
- (b) the Developer is free to determine (subject to any Development Consent) the order and manner in which it develops the Land, including any Parcel; and
- (c) a Parcel does not comprise any order or stages of development, including for the purpose of a staged development application as defined under Part 4 Division 2A of the Act.

## **6. Initial Development**

The Parties agree and acknowledge that at the date of this Deed:

- (a) the Developer has submitted notices in respect of the Initial Development and that, for the purpose of this Deed, those notices are deemed to be Parcel Notices in accordance with clause 1(a) of this Schedule 4 and the Minister's approval of those notices is deemed to be the requisite approval of those notices as if they were Parcel Notices in accordance with clause 1(f) of this Schedule 4;
- (b) the Developer has provided to the Minister bank guarantees for each of the deemed Parcels forming part of the Initial Development and that, for the purposes of this Deed, those bank guarantees are deemed to be Parcel Bank Guarantees for the relevant Parcels in accordance with clause 2 of Schedule 5; and
- (c) the payment of the Contribution Amount in respect of each deemed Parcel is due to be paid in accordance with clause 4 of this Schedule 4.

## SCHEDULE 5

### Security terms (clause 6)

#### 1. Developer to provide Bank Guarantees

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide security in the form of Bank Guarantees.
- (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.

#### 2. Bank Guarantees

- (a) At the time the Developer signs this deed, the Developer undertakes to provide a Bank Guarantee to the Minister having a face value amount of \$20,000 (**Initial Bank Guarantee**).  
  
Within 5 Business Days of the Minister's approval of the Parcel Notice under clause 1 in Schedule 4, in respect of each and every Parcel, the Developer undertakes to provide a Bank Guarantee to the Minister for a face value equivalent to the Contribution Amount for the relevant Parcel in order to secure the payment of the Contribution Amount for that Parcel (**Parcel Bank Guarantee**).
- (b) From the date of receipt of the Parcel Bank Guarantee until the date the Developer pays the Contribution Amount for the relevant Parcel the Minister will be entitled to retain the Parcel Bank Guarantee for that Parcel and the Initial Bank Guarantee subject to clause 4 below.
- (c) From the date of execution of this Deed until the date that the Developer has provided the Development Contribution in full, the Minister will be entitled to retain the Initial Bank Guarantee subject to clause 4 below.

#### 3. Claims under Bank Guarantees

- (a) The Minister may:
  - (i) subject to clause 3(b) of this Schedule 5, call upon the Initial Bank Guarantee or the Parcel Bank Guarantee as relevant where the Developer has failed to pay a Contribution Amount for a Parcel on or after the date for payment under this deed; and
  - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this Deed.
- (b) Where the Developer has failed to pay the Contribution Amount for a Parcel, the Minister will call on the Parcel Bank Guarantee for that Parcel first and apply the whole of the

available monies from the Parcel Bank Guarantee towards the Contribution Amount, before calling on the Initial Bank Guarantee.

- (c) Prior to calling upon the Initial Bank Guarantee or the Parcel 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 Initial Bank Guarantee and/or the Parcel Bank Guarantee.
- (d) If:
  - (i) the Minister calls upon the Initial Bank Guarantee; and
  - (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this Deed; and
  - (iii) has notified the Developer of the call upon the Initial Bank Guarantee in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Initial Bank Guarantee to ensure that at all times until the date that the Initial Bank Guarantee is released in accordance with clause 4 of this Schedule, the Minister is in possession of an Initial Bank Guarantee for a face value equivalent to \$20,000.

#### **4. Release of Bank Guarantees**

- (a) If:
  - (i) the Developer has paid the Contribution Amount for a Parcel , provided the Minister with the Initial Bank Guarantee and has satisfied all of its obligations under this Deed secured by the relevant Parcel Bank Guarantee; and
  - (ii) the whole of the monies secured by the Parcel Bank Guarantee have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

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

- (b) If:
  - (i) the Developer has provided the Minister with the Initial Bank Guarantee and a Parcel Bank Guarantee for a Parcel that is the subject of a single Development Application relating to the whole of that Parcel; and
  - (ii) either:
    - (A) the Consent Authority refuses to grant Development Consent in relation to the Development Application for the Parcel; or
    - (B) the Developer provides written confirmation from the Consent Authority that it has surrendered the Development Consent for the Parcel under s104A of the Act; and
  - (iii) the whole of the monies secured by the Parcel Bank Guarantee have not been expended and the monies accounted for in accordance with clause 3 of this

## Schedule 5,

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

(c) If:

- (i) the Developer has paid the Development Contribution and has satisfied all of its obligations under this Deed secured by the Initial Bank Guarantee;  
and
- (ii) the whole of the monies secured by the Initial Bank Guarantee has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

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

## SCHEDULE 6

### Definition of Net Developable Area (Schedule 4)

1. The net developable area of a part of the Land is the area of land, in hectares, for a Parcel, subject to the other provisions of this Schedule 6. For the avoidance of doubt, the net developable area of a Parcel includes any land that the proposed development authorises or requires to be used as a road or reserved or dedicated as a public road.
2. The net developable area does not include the area of any land that the Development reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
  - (a) school;
  - (b) TAFE establishment;
  - (c) emergency services facility;
  - (d) health services facility owned or operated by a public authority;
  - (e) golf course;
  - (f) passenger transport facility;
  - (g) place of public worship;
  - (h) public open space, including a public reserve (within the meaning of the Local Government Act 1993);
  - (i) drainage reserve (within the meaning of the Local Government Act 1993);
  - (j) public utility undertaking;
  - (k) bus depot;
  - (l) recreation area;
  - (m) existing roads to which works (such as widening) are required to be carried out;
  - (n) cemetery (within the meaning of the Cemeteries and Crematoria Act 2013);
  - (o) 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;
  - (p) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with any Special Infrastructure Contributions Determination made under section 94EE of the Act; and
  - (q) roads or land reserved or dedicated for regional transport infrastructure.
3. The following areas of land are not to be included in the calculation of the net developable area:
  - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for

developing for the purposes of the development by virtue of it being at or below that level;

- (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act;
- (c) any area of land that is within Zone E2 Environmental Conservation;
- (d) any area of land within the curtilage of a building listed on the State Heritage Register;
- (e) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the development by virtue of the easement; and
- (f) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the development by virtue of it being within the public transport corridor.

4. The net developable area does not include the area of any lot in a proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
5. The net developable area does not include the area of any lot in a proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
6. If a proposed Parcel contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the land at the date this deed commences) and:
  - (a) is no more than 0.1 hectare, the net developable area does not include the area of the Parcel, or
  - (b) is more than 0.1 hectare in area,

the net developable area is reduced by 0.1 hectare for the purpose of calculating the net developable area.

7. If a proposed Parcel is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that Parcel is taken to be 0.1 hectare for the purpose of calculating the net developable area.
8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.

9. In this Schedule 6, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006) (**Standard Instrument**):
- (a) emergency services facility;
  - (b) health services facility;
  - (c) passenger transport facility;
  - (d) place of public worship;
  - (e) public utility undertaking;
  - (f) recreation area; and
  - (g) school.
10. In this Schedule, a reference to:
- (a) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone, and
  - (b) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the Heritage Act 1977, and
  - (c) a “strata scheme” means a reference to a strata scheme as that term is defined in the Strata Scheme (Freehold Development) Act 1973 or a leasehold strata scheme as that term is defined in the Strata Scheme (Leasehold Development) Act 1986.

**EXECUTED** as a deed

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

  
.....  
Signature of Witness

GEORGIA MANTLE  
.....  
Name of Witness in full

  
.....  
Signature of the Minister for Planning or  
delegate

BRENDA NELSON  
.....  
Minister for Planning or delegate

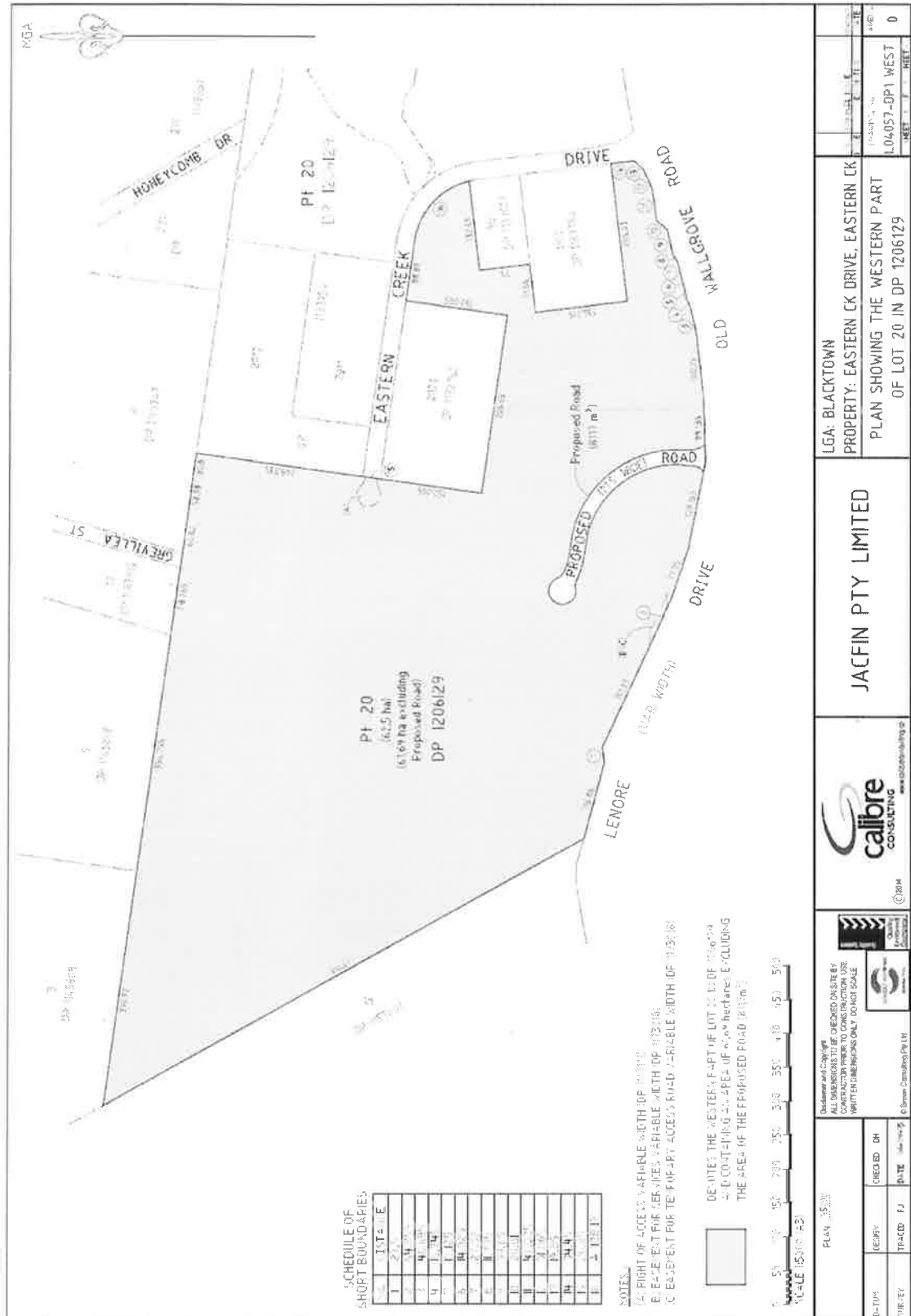
**Signed sealed and delivered by Jacfin Pty** )  
**Limited ( ACN 000 967 902) in accordance with** )  
**section 127 of the Corporations Act 2001:** )

  
.....  
Witness Signature

Naomi Bergman  
.....  
Print name

  
.....  
Sole Director and Secretary Signature  
Jacquelyn Waterhouse

Annexure A



Jacqueline Wadsworth N. Segr