

# Ropes Creek Biodiversity Offset

## Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning  
ABN 38 755 709681

Jacfin Pty Ltd as trustee for Jacquelyn Waterhouse Family Trust No. 2  
ABN 44 000 967 902

Clayton Utz  
Lawyers  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806  
Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
[www.claytonutz.com](http://www.claytonutz.com)

Our reference 751/17849/80160795

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**Date****Parties**

**MINISTER FOR PLANNING acting on behalf of the Crown in right of New South Wales** (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales, 2000 (**Planning Minister**)

**JACFIN PTY LTD as trustee for Jacquelyn Waterhouse Family Trust No. 2** (ABN 44 000 967 902) c/of Pricewaterhouse Coopers, 201 Sussex Street, Sydney, New South Wales, 2000 (**Landowner**)

**Introduction**

- A. The Landowner owns the freehold interest in the Offset Land.
- B. The Landowner is the holder of the Project Approval for the Development.
- C. The Development is to be carried out on the Development Land, which does not include the Offset Land.
- D. The Biodiversity Conditions in the Project Approval require, among other things:
  - (a) the establishment and enhancement on the Offset Land of vegetation that is endemic to the Ropes Creek Corridor; and
  - (b) the transfer of the Offset Land to the NSW Government,
 as an offset for the Development.
- E. The Landowner has sought a modification to the Project Approval under section 75W of the Planning Act to remove the Biodiversity Conditions.
- F. The Landowner has offered to enter into this deed with the Planning Minister to provide for the delivery of the offsets which the Biodiversity Conditions require.

**It is agreed**

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**1. Definitions and interpretation****1.1 Definitions**

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

**Access Easements** means the Temporary Access Easement and the Permanent Access Easement, or either of them.

**Access Easement Instruments** means the Temporary Access Easement Instrument and the Permanent Access Easement Instrument, or either of them.

**Access Land** means the land which is, or is to be, subject to an Access Easement. At the date of this deed, the Access Land is generally as identified in the plan at Annexure C, which is part of Lot 54 DP 1194410 and, in the case of the Temporary Access Easement, also includes that part of Lot 53 DP 1194410 which excludes the Offset Land.

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

**Acquisition Cost** means any loss, cost, expense, fee, charge, Tax, rate, fine or penalty in connection with the acquisition of the Offset Land from the Landowner (whether by dedication,

transfer, compulsory process or otherwise) by the Planning Minister, the Planning Ministerial Corporation or the Nominated Transferee.

**Address for Service** for a party means the address, contact or facsimile number (as the case may be) of that party appearing in Schedule 2 or any new address, contact or facsimile number (as the case may be) notified by that party to all other parties as its new Address for Service.

**Authorisation** means a consent, approval, licence, permit, certificate or other form of statutory authorisation, and includes that authorisation as modified, varied or amended from time to time.

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

**Biodiversity Conditions** means conditions 1 and 2 of Schedule 3 of the Project Approval which require, among other things:

- (a) the establishment and enhancement on the Offset Land of vegetation that is endemic to the Ropes Creek Corridor; and
- (b) the transfer of the Offset Land to the NSW Government.

**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.

**CLM Act** means the *Contaminated Land Management Act 1997* (NSW).

**Contamination** has the same meaning as in the CLM Act.

**Contamination Consultant** means Douglas Partners Pty Ltd or such other consultant as agreed by the Planning Minister, in his absolute discretion.

**Covenant** means the restriction on the use of the Ropes Creek Land in the terms set out in the Covenant Instrument.

**Covenant Instrument** means the restriction on use of land form, section 88B instrument or any other instrument by which the Covenant is to be registered, the terms of which will be those set out in Part 3 of Annexure B.

**Development** means the development of the Development Land for the Jacfin warehouse project in accordance with the Project Approval.

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

**Development Contributions Table** means the table in clause 1 of Schedule 4.

**Development Land** means Lot 11 DP 229784.

**DP&E** means the NSW Department of Planning and Environment.

**DP Report** has the meaning given to that term in clause 3(a) of 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 Planning Act, as required by the Planning Regulation.

**GST** includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any other State or Territory).

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

**GST law** has the same meaning as in the GST Act.

**Incorporating Land** has the meaning given to that term in clause 5.2.

**Liabilities** means claims, actions, demands, proceedings, losses, costs, expenses, fines, penalties and other liabilities (including legal costs on an indemnity basis).

**LPI** means Land and Property Information New South Wales.

**Monetary Contribution** means the monetary contribution specified in item 1 of the Development Contributions Table.

**Nominated Transferee** means, if other than the Planning Minister, the person to whom the Offset Land is to be transferred (if and as notified by the Planning Minister to the Landowner in writing prior to the time the Offset Land is to be transferred in accordance with Schedule 4 clause 3).

**Offset Land** means the land identified in Schedule 3.

**Offset Land Contribution** means the provision of the Offset Land in accordance with clauses 1 and 3 - 6 of Schedule 4.

**Offset Land Dedication Date** means the date being 24 weeks after the date of this deed.

**Permanent Access Easement** means the easement for access over land generally to the north of the Offset Land, to enable access between the Erskine Park Link Road and the Offset Land, in the location identified in the plan at Annexure C as the "Permanent Access Easement", and in the terms set out in the Permanent Access Instrument.

**Permanent Access Instrument** means the transfer granting easement, section 88B instrument or any other instrument by which the Permanent Access Easement is granted, the terms of which will be those set out in Part 1 of Annexure B.

**Plan of Subdivision** means the plan of subdivision for the Offset Land within the meaning of section 195 of the *Conveyancing Act 1919* and attached at Annexure A.

**Planning Ministerial Corporation** means the Minister Administering the Environmental Planning and Assessment Act 1979, a corporation sole constituted under section 8 of the Planning Act.

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

**Planning Agreement** has the same meaning as in the Planning Act.

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

**Project Approval** means the project approval 07\_0153 for the Jacfin warehouse project, approved by the Planning Minister under section 75J of the Planning Act on 28 October 2009.

**Ramboll Environ Documents** has the meaning given to that term in clause 3(a) of Schedule 4.

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

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

**Relevant Land** has the meaning given to that term in clause 5.2(c).

**Remediation** has the meaning given to that term in the CLM Act.

**Ropes Creek Land** means the land the subject of the Ropes Creek Project Approval.

**Ropes Creek Project Approval** means the project approval 10\_0128 for the development of warehousing and distribution and subdivision, approved by the Planning Minister under section 75J of the Planning Act on 24 October 2011 and as modified on 15 April 2014.

**Site Auditor** means Rowena Salmon or such other person accredited as a site auditor under the CLM Act as agreed by the Planning Minister, in his absolute discretion.

**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.

**Temporary Access Easement** means the easement for access, for a period of 12 months from date of the transfer of the Offset Land to the Planning Minister or the Nominated Transferee, over land to enable access between the Erskine Park Link Road and the Offset Land, in the location identified in the plan at Annexure C as the "Temporary Access Easement", and in the terms set out in the Temporary Access Instrument.

**Temporary Access Instrument** means the transfer granting easement, section 88B instrument or any other instrument by which the Temporary Access Easement is granted, the terms of which will be those set out in Part 2 of Annexure B.

**Trust** means the Jacquelyn Waterhouse Family Trust No. 2.

**Trust Deed** means the trust deed appointing Jacfin Pty Limited as trustee of the Trust, dated 17 July 1979.

**Trust Property** means all the present and future rights, undertakings and property comprising the trust fund of the Trust.

**Updated DP Report** has the meaning given to that term in clause 3(b) of Schedule 4.

**Updated Ramboll Environ Documents** has the meaning given to that term in clause 3(b) of Schedule 4.

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **Planning Minister** includes a reference to the Secretary of DP&E and also a reference to any person nominated by the Planning Minister for the purposes of this deed specifically or for Planning Agreements to which the Planning Minister is a party generally;
- (b) a reference to **this deed** or another document means this deed or that other document as varied, supplemented, replaced, assigned or novated from time to time, and includes any document which varies, supplements, replaces, assigns or novates this deed or that other document;

- (c) 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;
- (d) 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;
- (e) 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;
- (f) **clause headings**, the **introduction** and the **Contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a **right** or **obligation** of a party is a reference to a right or obligation of that party under this deed;
- (l) 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;
- (m) 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;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) 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.

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## 2. Operation and application of this deed

### 2.1 Operation

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



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

This deed constitutes a Planning Agreement within the meaning of section 93F of the Planning Act.

## **2.3 Application**

This deed applies to the Development and to the Ropes Creek Land.

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## **3. Application of Sections 94, 94A and 94EF of the Planning Act**

The application of sections 94, 94A and 94EF of the Planning Act is not excluded.

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## **4. Development Contributions**

### **4.1 Landowner to provide Development Contributions**

The Landowner agrees to provide, or procure the provision of, the Development Contributions to the Planning Minister in accordance with this clause 4 and the provisions of Schedule 4.

### **4.2 Acknowledgement**

The Landowner acknowledges and agrees that the Planning Minister:

- (a) has no obligation to use or expend the Development Contributions for a particular purpose, and has not made any representation or warranty that she will use or expend the Development Contributions for any particular purpose;
- (b) has no obligation to repay, or provide any compensation or payment for, the Development Contributions; and
- (c) has not made any representation or warranty that, if the Development Contributions are transferred or provided in any way to another Authority, the Development Contributions will or must be used for any particular purpose by that or any other Authority.

### **4.3 Monetary Contribution and Offset Land Contribution**

- (a) The Landowner must provide the Monetary Contribution to the Planning Minister:
  - (i) in the amount which is specified in the Development Contributions Table;
  - (ii) in the manner specified as the "Manner of Delivery" in the Development Contributions Table; and
  - (iii) at or before the time specified as the "Timing" in the Development Contributions Table.
- (b) The Landowner must, provide, or procure the provision of, the Offset Land Contribution to the Planning Minister:
  - (i) in the manner specified as the "Manner of Delivery" in the Development Contributions Table; and
  - (ii) at or before the time specified as the "Timing" in the Development Contributions Table.

## 5. Offset Land ownership and registration of deed

### 5.1 Landowner warranties regarding the Offset Land

The Landowner represents and warrants:

- (a) as at the date of this deed;
- (b) as at the date on which the Landowner proposes to transfer the Offset Land to the Planning Minister; and
- (c) as at the date on which the vesting of the Offset Land in the Planning Minister, the Planning Ministerial Corporation or the Nominated Transferee occurs,

that:

- (d) the Landowner is the registered proprietor of the Offset Land; and
- (e) the Landowner is entitled to the fee simple interest in the Offset Land and to transfer the legal and beneficial interests in the fee simple to the Planning Minister or the Nominated Transferee, subject to any easements which:
  - (i) are registered on the folios of the Register for the Offset Land or (where a separate folio for the Offset Land has not yet been created) the Incorporating Land, in the form in which those easements are registered at the date of this deed; and
  - (ii) directly apply to and affect the Offset Land at the date of this deed; and
- (f) there is no impediment to the Landowner complying with any of its obligations under this deed in respect of the Offset Land.

### 5.2 Registration of deed

- (a) As contemplated by section 93H of the Planning Act, the Landowner agrees to lodge this deed for registration under the Real Property Act in the relevant folios of the Register for:

- (i) the Offset Land; or
- (ii) if there is no separate folio for the Offset Land, then the parcels of land which contain the Offset Land (**Incorporating Land**),

within 20 Business Days after the date on which a counterpart of this deed which the Planning Minister has executed is provided to the Landowner.

- (b) If this deed has been registered in the folios of the Register for the Incorporating Land, then, within 10 Business Days after the later of the date on which a separate folio for the Offset Land is created or the date on which the Permanent Access Easement, the Temporary Access Easement and the Covenant are registered in the folios of the Register for the Incorporating Land:
  - (i) the Landowner, at its own expense, will lodge with LPI at the same time as each other:
    - A. a request for the withdrawal of this deed from the folios in the Register for the Incorporating Land; and

- B. this deed for registration under the Real Property Act in the relevant folios of the Register for the Offset Land; and
  - (ii) the Planning Minister will consent to the action described in clause 5.2(b)(i) within the time described in the opening paragraph of this clause 5.2(b).
- (c) For the purpose of registering this deed on the title to land pursuant to clauses 5.2(a) and 5.2(b) (**Relevant Land**), the Landowner, at its own expense, will procure:
  - (i) the consent of each person who:
    - A. has an estate or interest in the Relevant Land which is registered under the Real Property Act; or
    - B. is seized or possessed of an estate or interest in the Relevant Land,

to the registration of this deed on the title to the Relevant Land; and
  - (ii) the execution of any documents which are required to enable the registration of this deed on the title to the Relevant Land; and
  - (iii) the production of the relevant certificates of title; and
  - (iv) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register.
- (d) The Landowner will provide the Planning Minister with a copy of the relevant folio of the Register and a copy of the registered dealing for the registration of this deed within 10 Business Days after the date of registration of this deed.

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## **6. Dispute resolution**

### **6.1 Not commence**

A party must not commence any court proceedings relating to a dispute under or in relation to this deed unless it has complied with this clause 6.

### **6.2 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 and requiring that the dispute be addressed in accordance with this clause 6.

### **6.3 Attempt to resolve**

On receipt of notice under clause 6.2, 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).

### **6.4 Mediation**

If the parties do not either resolve the dispute or agree in writing as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for implementation of those procedures; or

- (c) the selection and remuneration of any independent person required for such technique,

within 20 Business Days of receipt of notice under clause 6.2 (or any other period which the parties agree in writing) then, subject to clause 6.6, the parties must:

- (d) mediate the dispute in accordance with the Mediation Program of the Law Society of NSW; and
- (e) for the purpose of the mediation, as soon as possible, request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

## **6.5 Costs of alternative dispute resolution**

Each party will be responsible for its own legal and other costs in relation to any process under this clause 6, but the parties must bear equally the costs of any mediator or other independent person appointed under clause 6.4. This clause 6.5 does not apply to court proceedings.

## **6.6 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 6.2 (or any other period agreed in writing by the parties) then any party which has complied with the provisions of this clause 6 may, by written notice to the other parties, terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

## **6.7 Use of information**

The parties acknowledge that, in relation to any exchange of information or documents or the making of any offer of settlement under this clause 6:

- (a) the information, documents and offer (as the case may be) are confidential;
- (b) the purpose of the providing information, documents and offer (as the case may be) is to attempt to resolve the dispute; and
- (c) no party may use any information or documents obtained, or any offer made, through any dispute resolution process undertaken under this clause 6 for any purpose other than undertaking the dispute resolution process itself or an attempt to resolve the dispute.

## **6.8 Continued performance of obligations**

Despite the existence of a dispute or any process under this clause 6, but subject to any order of a court or the agreement of the parties, the parties will (so far as it is reasonably practicable) continue to perform and comply with their respective obligations under this deed.

## **6.9 No prejudice**

This clause 6 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.

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# **7. GST**

## **7.1 Definitions**

In this clause 7:

- (a) words and phrases used in this clause 7 that are defined in the GST Act have the same meaning as in that Act except that:
  - (i) **GST** has the meaning provided in clause 1.1;
  - (ii) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise; and
  - (iii) **Recipient** means a party who provides or is liable to provide consideration under this deed for a supply;
- (b) unless otherwise expressly stated, all consideration to be provided under any other provision of this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 7;
- (c) a reference to a supply is to a supply made under or in connection with this deed or the Project Approval;
- (d) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 7;
- (e) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (f) a reference to input tax credits includes input tax credits to which an entity is notionally entitled in accordance with Division 177 of the GST Act and a reference to input tax credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled.

## 7.2 Intention of the parties

The parties intend that, subject to the following sub-clauses of clause 7:

- (a) Divisions 81 and 82 of the GST Act 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.

## 7.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed that is calculated by reference to an amount paid or incurred will be limited to the total amount less any input tax credit to which an entity is entitled for an acquisition to which the amount relates.

## 7.4 GST payable

- (a) Despite the other provisions of this deed, if the Planning Minister is or becomes liable to pay GST in respect of any supply (or an increasing adjustment in respect of the acquisition of an earlier supply):
  - (i) the Landowner must pay to Planning Minister an additional amount equal to the amount of GST payable on that supply (or the amount of the increasing adjustment) (**GST Amount**);

- (ii) the Planning Minister must issue a valid tax invoice or adjustment note to the Landowner in respect of any such supply made by the Planning Minister;
  - (iii) the GST Amount must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid tax invoice (or adjustment note) for the supply to which the GST amount relates, whichever is the later.
- (b) If the Landowner becomes liable to pay GST in respect of any supply, the parties acknowledge that the consideration to be provided by the Planning Minister to the Landowner for that supply is inclusive of GST (if any), and the Landowner is not entitled to any additional amount on account of GST from the Planning Minister. In such a case, the Landowner must provide a valid tax invoice to the Planning Minister on or before the time at which the Landowner must pay the GST Amount to the Planning Minister in accordance with clause 7.4(a).

## **7.5 Variation of GST**

If the GST Amount recovered by the Planning Minister from the Landowner under clause 7.4(a) for a supply varies for any reason from the amount of GST paid or payable by the Planning Minister on that supply, then the Landowner must pay to the Planning Minister on demand (or the Planning Minister credit the Landowner with) the amount of that difference. If any adjustment event occurs in relation to the supply, the Planning Minister must give the Landowner an adjustment note within 14 days after the date of the adjustment event.

## **7.6 No merger**

This clause 7 will not merge on completion or termination of this deed.

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# **8. Assignment**

## **8.1 Assignment of rights or benefits of this deed**

- (a) The Landowner may not assign the rights or benefits of this deed to any person except with the prior written consent of the Planning Minister, which the Planning Minister may grant or withhold in his absolute discretion.
- (b) The Planning Minister may assign the rights and benefits of this deed in his absolute discretion, without the need for consent from the Landowner, except that the Planning Minister must provide written notice to the Landowner of any proposed assignment 10 Business Days prior to the proposed assignment.

## **8.2 Dealings with Offset Land**

- (a) The Landowner may not sell, transfer, assign, dispose of or mortgage the whole or any part of the Offset Land or its interests in the Offset Land, or grant any interest or right with respect to the Offset Land, except to the Planning Minister in accordance with this deed.
- (b) Nothing in this clause entitles the Planning Minister to damages or any other remedy if any Authority compulsorily acquires all or any part of the Offset Land under the Acquisition Act other than pursuant to clause 6 of Schedule 4.

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# **9. Capacity**

## **9.1 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;
- (b) it has capacity to enter into this deed and perform its obligations under this deed; and
- (c) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

## 9.2 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.

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## 10. Landowner as Trustee

### 10.1 Trustee representations and warranties

The Landowner (as trustee of the Trust) represents and warrants to the Planning Minister that:

- (a) **(Trustee)**: it has power to enter into this deed, and documents created under or in connection with this deed, in its capacity as trustee of the Trust;
- (b) **(Trust validly created)**: the Trust has been validly created and is in existence at the date the Landowner signs this deed;
- (c) **(Trustee validly appointed)**: the Landowner has been validly appointed as trustee of the Trust and is presently the sole trustee of the Trust;
- (d) **(Trust Deed)**: the Trust is solely constituted by the Trust Deed, a true copy of which was sighted by the Planning Minister's solicitors before the Planning Minister signed this Deed;
- (e) **(Vesting date not declared)**: a date has not been declared under the Trust Deed as the date on which the Trust will be vested or come to an end; and
- (f) **(Rights of indemnity and exoneration against Trust assets)**: the Landowner as trustee of the Trust has valid rights of indemnity and exoneration against the assets of the Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by the Landowner under this deed.

### 10.2 Trustee limitation of liability

- (a) Subject to clause 10.2(b):
  - (i) the Landowner enters into this deed in its capacity as trustee of the Trust and in no other capacity; and
  - (ii) the Landowner will have no liability under or in connection with this deed other than to the extent to which the liability is able to be satisfied out of the Trust Property from which the Landowner is actually indemnified for the liability; and
  - (iii) the remedies of the Planning Minister against the Landowner are limited to the right of the Planning Minister to be subrogated to the Landowner's right of indemnity against, and equitable lien over, the Trust Property; and

- (iv) the Planning Minister must not take any step (other than to exercise a remedy contemplated by paragraph (iii) above) to recover an amount that is payable by the Landowner, including by taking any step to have the Landowner wound up or to appoint an administrator or liquidator to the Landowner, to appoint a receiver or receiver and manager to, or carry out any execution or distress on, any property of the Landowner (other than the Trust Property) or to obtain a judgment against the Landowner.
- (b) The provisions of clause 10.2(a) do not apply to limit any obligation or liability of the Landowner or any remedy of the Planning Minister to the extent the Planning Minister is unable to recover any amount owing to him by the Landowner because of the loss of, or a reduction in, the Landowner's right of indemnity or equitable lien for any reason, including due to the Landowner's fraud, negligence, wilful default or breach of trust.
- (c) A reference in this document (other than this clause 10.2) to:
  - (i) the Landowner means the Landowner as trustee of the Trust and not in the Landowner's own right; and
  - (ii) the Landowner's property or business means the property owned, and the business carried on, by the Landowner as trustee of the Trust and not any other property or business.

---

## **11. General provisions**

### **11.1 Entire agreement**

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.

### **11.2 Variation**

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

### **11.3 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.

### **11.4 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.

### **11.5 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 a day, it is taken to have been done on the following Business Day.

## **11.6 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.

## **11.7 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 of the clause) 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.

## **11.8 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.

## **11.9 No merger**

- (a) 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.
- (b) Unless stated otherwise, each indemnity in this deed survives completion, expiration or termination of this deed.

## **11.10 Counterparts**

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

## **11.11 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.

## **11.12 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.

## **11.13 No fetter**

Nothing in this deed shall be construed as requiring either the Planning Minister to do anything that would cause the Planning Minister to breach any of the Planning 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 Planning Minister in exercising any of the Planning Minister's statutory functions, powers, authorities or duties.

#### 11.14 Explanatory Note

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

#### 11.15 Expenses and stamp duty

- (a) The Landowner must pay its own and the Planning Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Landowner must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Planning Regulation.
- (c) The Landowner must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty on this deed, or any instrument pursuant to this deed, and registration fees, if applicable).
- (d) The Landowner must provide the Planning Minister with bank cheques in respect of the Planning Minister's costs pursuant to clauses 10.15(a) and 10.15(b) above:
  - (i) where the Planning Minister has provided the Landowner with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
  - (ii) where the Planning Minister has not provided the Landowner with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by the Planning Minister for payment.

#### 11.16 Notices

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

## Schedule 1

**Table 1 - Requirements under section 93F of the Planning 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 this deed complying with the Planning Act.

| <b>REQUIREMENT UNDER THE PLANNING ACT</b>  | <b>THIS DEED</b>   |
|--|--|
| <b>Planning instrument and/or project application - (section 93F(1))</b><br>The Landowner 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 project/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) No</li> <li>(b) Yes (see paragraph E of the Introduction to this deed)</li> <li>(c) No</li> </ul>                       |
| <b>Description of land to which this deed applies - (section 93F(3)(a))</b>  | See Schedule 3.  |
| <b>Description of the change to the environmental Planning Instrument to which this deed applies – (section 93F(3)(b))</b>   | N/A  |
| <b>Description of development to which this deed applies - (section 93F(3)(b))</b>   | See definition of "Development" in clause 1  |
| <b>The scope, timing and manner of delivery of contribution required by this deed - (section 93F(3)(c))</b>  | See clause 4 and Schedule 4.   |
| <b>Applicability of sections 94 and 94A of the Planning Act - (section 93F(3)(d))</b>  | The application of sections 94 and 94A is not excluded.  |
| <b>Applicability of section 94EF of the Planning Act - (section 93F(3)(d))</b>   | The application of section 94EF is not excluded.   |
| <b>Consideration of benefits under this deed if section 94 applies - (section 93F(3)(e))</b>   | The Development Contributions to be provided by the Landowner under this deed must not be taken into consideration in determining a contribution under section 94. |
| <b>Mechanism for Dispute Resolution - (section 93F(3)(f))</b>  | See clause 6   |
| <b>Enforcement of this deed - (section 93F(3)(g))</b>  | See clause 5.2 and Schedule 4  |
| <b>Registration of the Planning Agreement - (section 93H)</b>  | See clause 5.2   |
| <b>No obligation to grant consent or exercise functions - (section 93F(10))</b>  | See clause 11.13   |

## **Schedule 2**

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

#### **Planning Minister**

Contact: The Secretary

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

Facsimile No: (02) 9228 6191

#### **Landowner**

Contact: Mr Glen Frost / Mr Paul Brassil

Company: Jacfin Pty Ltd

Address: c/- Pricewaterhouse Coopers  
201 Sussex Street  
SYDNEY NSW 2000

Facsimile No: (02) 8286 2266

**Schedule 3****Offset Land (clause 1.1)**

Lot 53 of the unregistered plan of subdivision at Annexure A to this deed

## Schedule 4

### Development Contributions (clause 4)

#### 1. Development Contributions

The Landowner undertakes to provide the following Development Contributions in the manner set out in the table below.

| Item | Contribution             | Amount / Value | Manner of Delivery  | Timing   |
|------|--------------------------|----------------|---|--|
| 1.   | Monetary Contribution    | \$2,255,290    | Cash, bank cheque or electronic funds transfer.   | On execution of this deed.   |
| 2.   | Offset Land Contribution |                | Dedication or transfer to the Planning Minister or Nominated Transferee of unencumbered fee simple title to the Offset Land in accordance with this Schedule 4. | Within 10 Business Days after the date of registration of the Plan of Subdivision on the Register, subject to clauses 3 and 4 of Schedule 4. |

#### 2. Monetary Contribution

Subject to clause 4.2 of this deed, the parties acknowledge and agree that the Monetary Contribution is a cash contribution towards the establishment and conservation in-perpetuity of biodiversity offsets on the Offset Land.

#### 3. Contamination

(a) As at the date of this deed, the Landowner has provided to the Planning Minister:

- (i) a Preliminary Site Investigation Report prepared by Douglas Partners Pty Ltd dated May 2015 (for project 76660.00) (**DP Report**); and
- (ii) a Site Audit Report and Site Audit Statement prepared by Rowena Salmon of Ramboll Environ dated November 2015 (**Ramboll Environ Documents**),

with respect to the Offset Land.

(b) Before the date on which the Landowner provides the Offset Land Contribution and before the Offset Land Dedication Date (or such other time as the Planning Minister determines in accordance with clause 3(c) of this Schedule 4), the Landowner must:

- (i) request that the Contamination Consultant update the DP Report to confirm that:
  - A. the conclusion in the DP Report as to the suitability of the Offset Land for use as biodiversity offset land has not changed since the date of the DP Report; and
  - B. there is no additional Contamination on the Offset Land which was not on the Offset Land at the date of the DP Report;

## Schedule 4

### (Updated DP Report);

- (ii) request that the Site Auditor update the Ramboll Environ Documents to confirm that:
  - A. the conclusion in the Ramboll Environ Documents as to the suitability of the Offset Land for use as biodiversity offset land has not changed since the date of the Ramboll Environ Documents; and
  - B. there is no additional Contamination on the Offset Land which was not on the Offset Land at the date of the Ramboll Environ Documents;

### (Updated Ramboll Environ Documents);

- (iii) provide to the Planning Minister:
  - A. the Updated DP Report prepared in accordance with clause 3(b)(i) of this Schedule 4; and
  - B. the Updated Ramboll Environ Documents, prepared in accordance with clause 3(b)(ii) of this Schedule 4,

where each of the Updated DP Report and the Updated Ramboll Environ Documents:

- A. states that the Offset Land is suitable for use as a biodiversity offset site;
- B. there is no additional Contamination on the Offset Land which was not on the Offset Land at the date of the DP Report or the Ramboll Environ Documents as the case may be; and
- C. is otherwise on terms satisfactory to the Planning Minister (acting reasonably),

within 5 Business Days after the date on which the final version of each of those documents is prepared.

- (c) If the Landowner has not complied with the requirements of clause 3(b) of this Schedule 4 by reason only that it has not done what that clause requires to be done before the Offset Land Dedication Date (**Contamination Requirements**), then:

- (i) the Landowner may, within 2 Business Days after the Offset Land Dedication Date, provide the Planning Minister with a notice which:
  - A. states that the Landowner has used its best endeavours to fulfil the Contamination Requirements within that time frame;
  - B. provides reasons (and, if appropriate, evidence) to support that statement; and
  - C. requests a specific extension of time to fulfil the Contamination Requirements, and referring to this clause 3(c) in that request; and

## Schedule 4

- (ii) the Planning Minister may, in his reasonable discretion, decide whether to extend the time for fulfilling the Contamination Requirements and, if so, the period by which that time is to be extended.
- (d) If the Landowner does not comply with clause 3(a) of this Schedule 4 then, without limiting the Planning Minister's other rights and remedies, the Planning Minister may, acting reasonably:
  - (i) refuse to accept dedication of the Offset Land Contribution until the Landowner has complied with clause 3(a) of this Schedule 4; and
  - (ii) without limiting clause 3(d)(i) of this Schedule 4, require that the Landowner:
    - A. undertake works, at the Landowner's cost and in a time frame which the Planning Minister (acting reasonably after consulting with the Landowner) determines, so as to enable the Landowner to comply with clause 3(a) of this Schedule 4; and
    - B. take such other steps, including the delivery of additional reports, to comply with clause 3(a) of this Schedule 4,

in which case, the Landowner must comply with the Planning Minister's requirements.
- (e) If the Updated DP Report or the Updated Ramboll Environ Documents contain findings, or are on terms, which are not acceptable to the Planning Minister with respect to the Offset Land, the Planning Minister may, in his absolute discretion, and without limiting the Planning Minister's other rights and remedies, accept dedication of the Offset Land without requiring that the Landowner undertake any works to Remediate the Contamination on the Offset Land.
- (f) Any decision which the Planning Minister makes under this clause 3 of Schedule 4, including accepting the dedication of the Offset Land in circumstances where the Landowner has not complied with clause 3(a) of this Schedule 4, does not in any way prejudice any other rights the Planning Minister has under this deed or otherwise at law.

### 4. Transfer of the Offset Land Contribution

- (a) The Landowner must (at its cost):
  - (i) register the Plan of Subdivision to create a single separate lot for the Offset Land as soon as is reasonably practicable after the date of this deed; and
  - (ii) use its best endeavours to have the Plan of Subdivision registered on the Register by the Offset Land Dedication Date.

Nothing in this clause requires the Landowner to bring any Court proceedings to procure the registration of the Plan of Subdivision.
- (b) Within 20 Business Days after later of the date of the registration of the Plan of Subdivision on the Register and the date of this deed, the Landowner must:
  - (i) procure the transfer of the Offset Land to the Planning Minister or the Nominated Transferee;



**Schedule 4**

- (ii) deliver to the Planning Minister or the Nominated Transferee:
  - A. a form of transfer in respect of the Offset Land executed by the registered proprietor of that land and in registrable form; and
  - B. the certificates of title for the Offset Land.
- (c) The Nominated Transferee must be a "public authority" within the meaning of the Planning Act.
- (d) The Landowner will use its best endeavours to promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the Offset Land Contribution.
- (e) The Landowner must promptly take any other necessary action (including paying stamp duty associated with the transfer or contract for sale) to give effect to the transfer of the title of the Offset Land to the Planning Minister or the Nominated Transferee free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges) except as agreed with the Nominated Transferee (if applicable) and the Planning Minister.
- (f) The Landowner must provide the Offset Land Contribution without the Planning Minister, the Planning Ministerial Corporation or the Nominated Transferee incurring any Acquisition Cost in connection with that Offset Land Contribution or the acquisition or transfer of the Offset Land from the Landowner.

**5. Compulsory acquisition of Offset Land**

- (a) If the Landowner does not provide the Offset Land Contribution by the Offset Land Dedication Date, then, without limiting any other rights or remedies which the Planning Minister may have under this deed or otherwise, the Planning Minister may elect that the Planning Minister, the Planning Ministerial Corporation or the Nominated Transferee may compulsorily acquire the Offset Land in accordance with the Acquisition Act.
- (b) The Landowner and the Planning Minister agree that:
  - (i) the Landowner consents to the Planning Minister, the Planning Ministerial Corporation or the Nominated Transferee compulsorily acquiring the Offset Land in accordance with the Acquisition Act, for the amount of \$1.00;
  - (ii) this clause 5 of Schedule 4 is an agreement between each of them and the Planning Ministerial Corporation and the Nominated Transferee for the purposes of section 30 of the Acquisition Act; and
  - (iii) in this Schedule 4, the parties to that agreement have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

**6. Access Easements and Covenant**

- (a) The Landowner consents to:
  - (iv) the terms of the Access Easements and the Covenant;
  - (v) the Access Easement Instruments and the Covenant Instrument; and

**Schedule 4**

- (vi) subject to the terms of this deed:
  - A. the registration of the Access Easement Instruments on the title to the Access Land; and
  - B. the registration of the Covenant Instrument on the title to the Ropes Creek Land.
- (b) The Landowner agrees to do all things reasonably necessary to enable the registration of the Access Easements Instruments and the Covenant Instrument at LPI including:
  - (i) procuring execution of two original counterparts of the Access Easement Instruments and the Covenant Instrument by the Landowner by no later than the Offset Land Dedication Date;
  - (ii) producing or making available the relevant certificates of title for the Access Land and the Ropes Creek Land to the Registrar-General (or other appropriate officer) or LPI, by no later than the Offset Land Dedication Date, for the purpose of registration of the Access Easement Instruments and the Covenant Instrument;
  - (iii) promptly complying with any requisitions issued by the Registrar-General or LPI; and
  - (iv) obtaining any consent required from any person having any interest in the Access Land or and the Ropes Creek Land, including the Landowner's mortgagee, by no later than the Offset Land Dedication Date.
- (c) The Landowner acknowledges that the Landowner is bound by the terms of the Access Easements and the Covenant Instrument, as set out in this deed or as notified in writing by the Planning Minister to the Landowner, on and from the date of the transfer of the Offset Land to the Planning Minister or the Nominated Transferee even though the Access Easements or the Covenant Instrument may not have been stamped or registered at that date. The Landowner acknowledges that the Landowner's occupation and use of the Access Land and the Ropes Creek Land from the date of the transfer of the Offset Land to the Planning Minister or the Nominated Transferee is subject to the terms and conditions of the Access Easements and the Covenant Instrument.

**7. Landowner indemnities**

Despite any other provision of this deed, to the maximum extent permitted by law the Landowner indemnifies and agrees to keep indemnified the Planning Minister, the Planning Ministerial Corporation and the Nominated Transferee from and against all Liabilities arising in any way in connection with:

- (a) any breach of clause 3 occurring up to the date of transfer of the Offset Land to the Planning Minister in accordance with clause 4 of Schedule 4;
- (b) clause 4 of Schedule 4; and
- (c) any compulsory acquisition of the Offset Land under clause 5 of Schedule 4.

**8. Enforcement by Planning Ministerial Corporation and Nominated Transferee**

The parties agree that:

## Schedule 4

- (a) this deed operates as a deed poll in favour of each of the Planning Ministerial Corporation and the Nominated Transferee on and from the date of this deed (for the Planning Ministerial Corporation) and the date on which the Nominated Transferee is nominated by the Planning Minister (for the Nominated Transferee);
- (b) the Planning Ministerial Corporation and the Nominated Transferee have the rights in respect of the Offset Land Contribution which are given to the Planning Minister, the Planning Ministerial Corporation or the Nominated Transferee; and
- (c) the Nominated Transferee or the Planning Ministerial Corporation (as the case may be) may enforce its rights under this deed on that basis.

### 9. Stormwater Flows over Offset Land

- (a) The Planning Minister acknowledges that:
  - (i) the Landowner is transferring the Offset Land under this deed prior to the Landowner commencing the development of the Ropes Creek Land;
  - (ii) the Landowner has not yet completed any detailed design of the stormwater infrastructure servicing that development; and
  - (iii) the Landowner may want legal rights to:
    - A. discharge stormwater on and over the Offset Land; and/or
    - B. access the Offset Land to complete any works associated with (A) above.

**(Stormwater Discharge Rights).**
- (b) At any time after the transfer of the Offset Land to the Planning Minister or its Nominated Transferee, the Landowner (or its nominee) may issue the Planning Minister with a written notice requesting a meeting with the Planning Minister or the registered proprietor of the Offset Land to negotiate any Stormwater Discharge Rights (**Notice**).
- (c) Within 30 Business Days of receipt of the Notice:
  - (i) The Planning Minister (or delegate) must meet with the Landowner (or its nominee) and negotiate in good faith with the Landowner (or its nominee) in respect of the grant to the Landowner (or its nominee) of any Stormwater Discharge Rights which the Landowner proposes in order to progress the development of the Ropes Creek Land; or
  - (ii) If the Planning Minister is not the registered proprietor of the Offset Land, use best endeavours to procure the registered proprietor of the Offset Land to attend such a meeting and undertake the required negotiation.

EXECUTED AS A DEED

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of the Minister for Planning

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Minister for Planning

Signed sealed and delivered for and on behalf of Jacfin Pty Ltd as trustee for Jacquelyn Waterhouse Family Trust No. 2 ABN 44 000 967 902 in accordance with section 127 of the Corporations Act 2001:

  
\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

JACQUELYN WATERHOUSE  
\_\_\_\_\_  
Print name

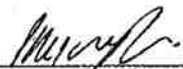
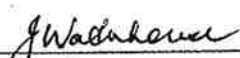
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Print Name

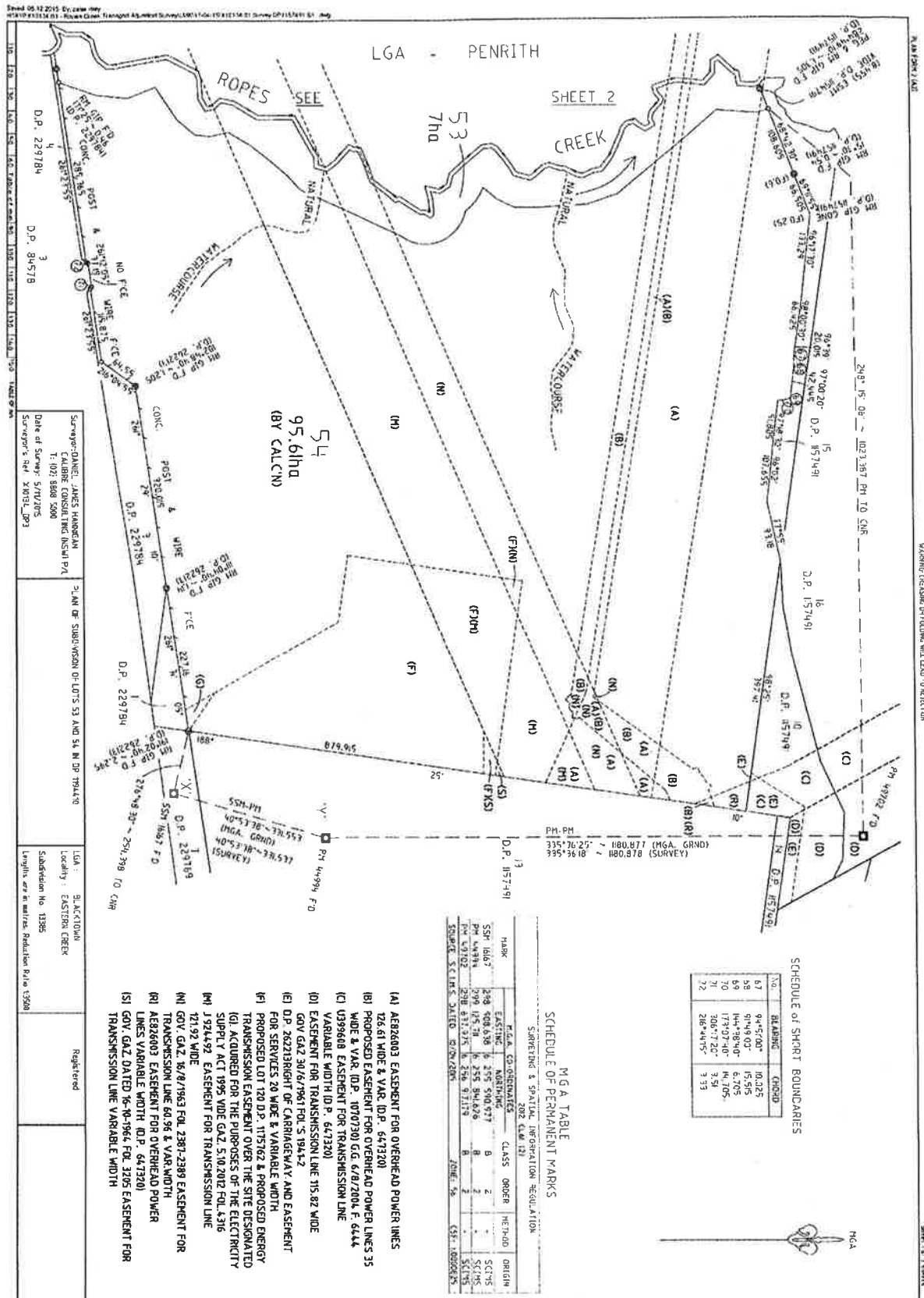
## Annexure A - Plan of Subdivision

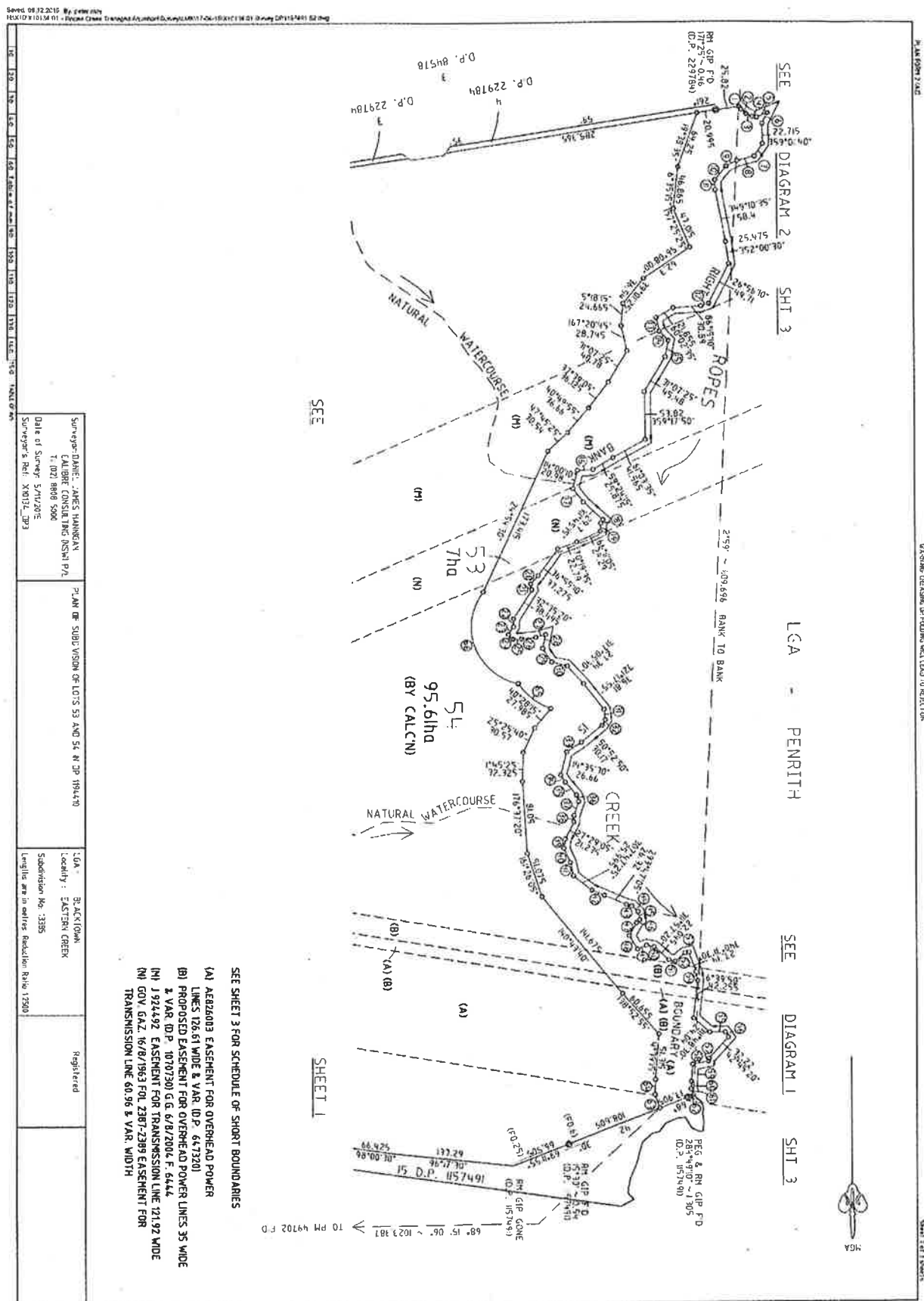
| PLAN FORM 6 (2013) WARNING: Creasing or folding will lead to rejection   |  |
|--|--|
| DEPOSITED PLAN ADMINISTRATION SHEET  |  |
| Sheet 1 of 2 sheet(s)  |  |
| Registered:  | Office Use Only  |
| Title System: TORRENS  | Office Use Only  |
| Purpose: SUBDIVISION   |  |
| <b>PLAN OF SUBDIVISION OF<br/>LOTS 53 AND 54 IN DP 1194410</b>   | LGA: BLACKTOWN<br>Locality: EASTERN CREEK<br>Parish: MELVILLE<br>County: CUMBERLAND  |
| Crown Lands NSW/Western Lands Office Approval  | Survey Certificate   |
| I, ..... (Authorised Officer) In approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.  | I, DANIEL JAMES HANNIGAN of CALIBRE CONSULTING (NSW) PTY LTD (PH: 02 8808 5000)  |
| Signature: .....   | a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> , certify that:  |
| Date: .....  | <del>*(a) The land shown in the plan was surveyed in accordance with the Surveying and Spatial Information Regulation 2012, is accurate and the survey was completed on</del>  |
| File Number: .....   | <del>*(b) The part of the land shown in the plan being <sup>^</sup>excluding <sup>^</sup> LOT 53 was surveyed in accordance with the Surveying and Spatial Information Regulation 2012, is accurate and the survey was completed on 5/11/2015 the part not surveyed was compiled in accordance with that Regulation.</del> |
| Office: .....  | <del>*(c) The land shown in this plan was compiled in accordance with the Surveying and Spatial Information Regulation 2012.</del>   |
| Subdivision Certificate  | Signature: ..... Dated: 5/11/2015  |
| I, <u>Judith Portelli</u> .....<br>*Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.109J of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserves set out herein. | Surveyor ID: 1208  |
| Signature: <u>[Signature]</u>  | Datum Line: 'X' - 'Y'  |
| Accreditation number: <u>N/A</u>   | Type: *Urban/*Rural  |
| Consent Authority: <u>BLACKTOWN CITY COUNCIL</u>   | The terrain is *Level-Undulating / *Steep-Mountainous.   |
| Date of endorsement: <u>22 NOVEMBER 2015</u>   | <del>*Strike through if inapplicable.</del>  |
| Subdivision Certificate number: <u>13385</u>   | <del>^Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</del>  |
| File number: <u>Property 269575</u>  |  |
| *Strike through if inapplicable.   |  |
| Statements of intention to dedicate public roads create public reserves and drainage reserves, acquire/resume land.  | Plans used in the preparation of survey/compilation.<br>DP 1175762, DP 1157491, DP 229784, DP262213, DP 1194410  |
|  | If space is insufficient continue on PLAN FORM 6A  |
| Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A   | Surveyor's Reference: X10134_DP3   |

PLAN FORM 6A (2012)

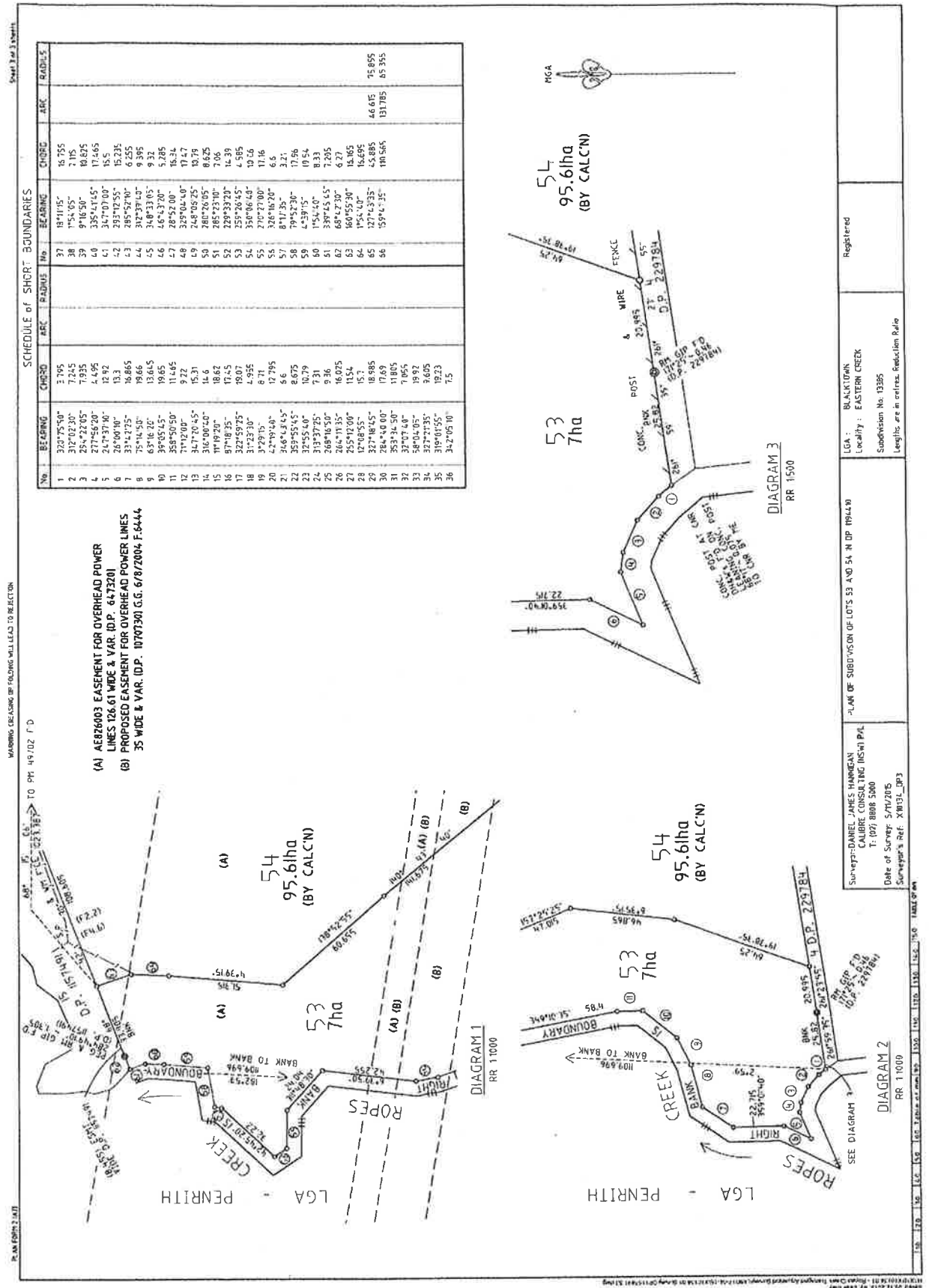
WARNING: Creasing or folding will lead to rejection

| <b>DEPOSITED PLAN ADMINISTRATION SHEET</b>  |   | Sheet 2 of 2 sheet(s) |
|---|---|-----------------------|
| <p style="text-align: center; margin: 0;">Office Use Only</p> <p><b>Registered:</b></p> <p><b>PLAN OF SUBDIVISION OF<br/>LOTS 53 AND 54 IN DP 1194410</b></p> | <p style="text-align: center; margin: 0;">Office Use Only</p>   |                       |
| <p>Subdivision Certificate number: <u>13385</u></p> <p>Date of Endorsement: <u>27/11/15</u></p>   | <p>This sheet is for the provision of the following information as required:</p> <ul style="list-style-type: none"> <li>A schedule of lots and addresses - See 60(c) SSI Regulation 2012</li> <li>Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919</li> <li>Signatures and seals- see 195D Conveyancing Act 1919</li> <li>Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.</li> </ul> |                       |
| <p><b>STREET ADDRESSES FOR ALL LOTS ARE NOT AVAILABLE</b></p>   |   |                       |
| <p><b>Executed in accordance with Section 127 of<br/>The Corporations Act 2001 by <b>Jacfin Pty. Limited</b> ACN: 000 967 902</b></p>                         |   |                       |
| <p><br/>_____<br/>Witness Signature</p>                                    | <p><br/>_____<br/>Sole Director and Sole Secretary Signature</p>  |                       |
| <p><u>PISCALIA MACPHERSON</u><br/>_____<br/>Print Name</p>  | <p><u>JACQUELYN WATERHOUSE</u><br/>_____<br/>Print Name</p>   |                       |
| <p><u>201 SUSSEX ST SYDNEY 2000</u><br/>_____<br/>Address of Witness</p>  |   |                       |
| <p style="text-align: center;">If space is insufficient use additional annexure sheet</p>   |   |                       |
| <p>Surveyor's Reference: X10134_DP3</p>   |   |                       |









## Annexure B - Access Instrument

### Part 1 – Permanent Access Instrument

## 1. Terms of Easement

### 1.1 Access and use rights

This Easement provides full and free, unrestricted and unimpeded right for the Registered Proprietor of the Lot Benefited, and each Authorised User of the Lot Benefited:

- (a) to go onto, remain on, and pass and repass across the Lot Burdened, but only within the Easement Area, by any reasonable means, and with or without vehicles, plant, equipment, materials and any other thing, for the purpose of:
  - (i) obtaining access between the Erskine Park Link Road and the Lot Benefited;
  - (ii) carrying out work or doing any other thing on the Offset Land; and
  - (iii) exercising any of their other rights or complying with any of their other obligations under the terms of this Easement;
- (b) to carry out work (including clearing, removal of obstacles, maintenance and repair work) in the Easement Area for the purpose of enabling the effective exercise of their rights or compliance with their obligations under the terms of this Easement in all weather conditions; and
- (c) to stand or park vehicles and store temporarily plant, equipment, materials and any other thing which may be brought onto the Easement Area.

Nothing in paragraphs (a), (b) or (c) above limits any of the other paragraphs.

### 1.2 Obligations regarding access and use rights

- (a) The Registered Proprietor of the Lot Benefited, and each Authorised User of the Lot Benefited, in exercising their rights under clause 1.1, must, subject to clause 1.2(b):
  - (i) cause as little inconvenience and disruption as is practicable to the Registered Proprietor of the Lot Burdened;
  - (ii) cause as little damage as is practicable to the Lot Burdened and any improvement on it;
  - (iii) to the extent that any damage is caused by the exercise of such a right, restore the Lot Burdened as nearly as is practicable to the condition in which the Lot Burdened was prior to the exercise of the right; and
  - (iv) make good the Easement Area at the end of this Easement.
- (b) Nothing in this Easement requires the Registered Proprietor of the Lot Benefited, or any Authorised User of the Lot Benefited:
  - (i) to give notice to the Registered Proprietor of the Lot Burdened when it exercises or intends to exercise its rights under this Easement; or

- (ii) to do anything in the Easement Area to maintain anything in the Easement Area.

### 1.3 Obligation not to impede access and use rights

In addition to and without limiting the rights conferred under clause 1.1, neither the Registered Proprietor of the Lot Burdened, nor any Authorised User of the Lot Burdened, may lock any gates on the Lot Burdened which might impede the exercise of the rights conferred under clause 1.1 unless the Registered Proprietor of the Lot Burdened or the Authorised User of the Lot Burdened (as the case may be) provides the Registered Proprietor of the Lot Benefited, or any Authorised User of the Lot Benefited, with as many keys to unlock those gates as that person may reasonably require.

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## 2. Definitions and interpretation

### 2.1 Definitions

For the purposes of this Instrument, unless the contrary intention appears, the following terms have the following meanings:

**Authorised User** means every person directly or indirectly authorised by the Registered Proprietor of the Lot Benefited or of the Lot Burdened (as the case may be) to do anything on or in relation to that Lot, or in relation to any activity on that Lot, and includes any person with an estate or interest in possession in, or other right to enter onto, that Lot (including tenants, subtenants, employees, agents, contractors, subcontractors, licensees and sub-licensees of the Registered Proprietor or of the Authorised User).

**Easement Area** means the area marked on the plan at Annexure B to this Instrument as "Easement for Access", being at least 6 metres wide in all locations.

**Erskine Park Link Road** means the road shown on the plan at Annexure B to this Instrument.

**Law** means any statute, regulation or other statutory instrument, and any other instrument which has legal force, as well as the common law and equity, as in force in New South Wales.

**Lot** means either the Lot Benefited or the Lot Burdened, as the context demands.

**Lot Benefited** means [insert Lot and DP for the Offset Land] and includes any part of it.

**Lot Burdened** means [insert Lot and DP for the Access Land] and includes any part of it.

**Offset Land** means Lot [#] of the approved plan of subdivision at Annexure C to this Instrument.

**Registered Proprietor** of either the Lot Benefited or the Lot Burdened means the person or persons appearing on the certificate of title as the freehold proprietor of that Lot.

### 2.2 Rules of Interpretation

Headings contained in this Instrument and the summary section at the start of this Instrument are for information purposes only and must not affect the interpretation of this Instrument.

In addition, the following rules of interpretation apply to this Instrument:

- (a) an obligation or liability assumed by, or a right conferred on, two or more persons including two or more Registered Proprietors of the Lot Benefited or of the Lot Burdened (as the case may be) binds or benefits them jointly and severally;

- (b) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to this Easement or this Instrument, to a document or to any other instrument is to this Easement, this Instrument, that document or that other instrument (as the case may be) as amended, modified, varied, novated, ratified or replaced from time to time;
- (d) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (e) a reference to a clause is a reference to a clause of this Instrument;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) **"includes"** in any form is not a word of limitation;
- (h) one provision of this Instrument does not limit the effect of another;
- (i) a reference to conduct includes any omission, statement or undertaking, whether or not in writing; and
- (j) if at any time any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Instrument; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Instrument.

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### **3. The name of the person empowered to release, vary or modify this Instrument**

The name of the person empowered to release, vary or modify this Instrument is:

The holder for the time being of the freehold interest in the Lot Benefited.

## Part 2 – Temporary Access Instrument

### 1. Terms of Easement

#### 1.1 Access and use rights

This Easement provides full and free, unrestricted and unimpeded right for the Registered Proprietor of the Lot Benefited, and each Authorised User of the Lot Benefited:

- (a) to go onto, remain on, and pass and repass across the Lot Burdened, but only within the Easement Area, by any reasonable means, and with or without vehicles, plant, equipment, materials and any other thing, for the purpose of:
  - (i) obtaining access between the Erskine Park Link Road and the Lot Benefited;
  - (ii) carrying out work or doing any other thing on the Offset Land; and
  - (iii) exercising any of their other rights or complying with any of their other obligations under the terms of this Easement;
- (b) to carry out work (including clearing, removal of obstacles, maintenance and repair work) in the Easement Area for the purpose of enabling the effective exercise of their rights or compliance with their obligations under the terms of this Easement in all weather conditions; and
- (c) to stand or park vehicles and store temporarily plant, equipment, materials and any other thing which may be brought onto the Easement Area.

Nothing in paragraphs (a), (b) or (c) above limits any of the other paragraphs.

#### 1.2 Obligations regarding access and use rights

- (a) The Registered Proprietor of the Lot Benefited, and each Authorised User of the Lot Benefited, in exercising their rights under clause 1.1, must, subject to clause 1.2(b):
  - (i) cause as little inconvenience and disruption as is practicable to the Registered Proprietor of the Lot Burdened;
  - (ii) cause as little damage as is practicable to the Lot Burdened and any improvement on it;
  - (iii) to the extent that any damage is caused by the exercise of such a right, restore the Lot Burdened as nearly as is practicable to the condition in which the Lot Burdened was prior to the exercise of the right; and
  - (iv) make good the Easement Area at the end of this Easement.
- (b) Nothing in this Easement requires the Registered Proprietor of the Lot Benefited, or any Authorised User of the Lot Benefited:
  - (i) to give notice to the Registered Proprietor of the Lot Burdened when it exercises or intends to exercise its rights under this Easement; or
  - (ii) to do anything in the Easement Area to maintain anything in the Easement Area.

### 1.3 Obligation not to impede access and use rights

In addition to and without limiting the rights conferred under clause 1.1, neither the Registered Proprietor of the Lot Burdened, nor any Authorised User of the Lot Burdened, may lock any gates on the Lot Burdened which might impede the exercise of the rights conferred under clause 1.1 unless the Registered Proprietor of the Lot Burdened or the Authorised User of the Lot Burdened (as the case may be) provides the Registered Proprietor of the Lot Benefited, or any Authorised User of the Lot Benefited, with as many keys to unlock those gates as that person may reasonably require.

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## 2. End of Easement

### 2.1 Timing of end

This Easement ends when:

- (a) either:
  - (i) the Registered Proprietor of the Lot Benefited gives to the Registered Proprietor of the Lot Burdened written notice that practical completion of the three water crossings on the Offset Land, which the Registered Proprietor of the Lot Benefited intends to construct at the date of this Easement, has occurred; or
  - (ii) 12 months after the date of registration of this Easement have expired,
 whichever occurs first; and
- (b) an easement burdening the Lot Burdened and benefiting the Lot Benefited which is in terms substantially the same as the terms of this Easement (except this clause 2) has been registered on the title to each of the Lot Burdened and the Lot Benefited.

### 2.2 Notice of practical completion

The Registered Proprietor of the Lot Benefited must take all reasonable steps to give to the Registered Proprietor of the Lot Burdened the written notice described in clause 2.1(a)(i) as soon as practicable after practical completion of the three water crossings on the Offset Land has occurred under the contract which provides for the construction of the water crossings.

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## 3. Definitions and interpretation

### 3.1 Definitions

For the purposes of this Instrument, unless the contrary intention appears, the following terms have the following meanings:

**Authorised User** means every person directly or indirectly authorised by the Registered Proprietor of the Lot Benefited or of the Lot Burdened (as the case may be) to do anything on or in relation to that Lot, or in relation to any activity on that Lot, and includes any person with an estate or interest in possession in, or other right to enter onto, that Lot (including tenants, subtenants, employees, agents, contractors, subcontractors, licensees and sub-licensees of the Registered Proprietor or of the Authorised User).

**Easement Area** means the area marked on the plan at Annexure B to this Instrument as "Easement for Access", being at least 6 metres wide in all locations.

**Erskine Park Link Road** means the road shown on the plan at Annexure B to this Instrument.

**Law** means any statute, regulation or other statutory instrument, and any other instrument which has legal force, as well as the common law and equity, as in force in New South Wales.

**Lot** means either the Lot Benefited or the Lot Burdened, as the context demands.

**Lot Benefited** means [insert Lot and DP for the Offset Land] and includes any part of it.

**Lot Burdened** means [insert Lot and DP for the Access Land] and includes any part of it.

**Offset Land** means Lot [#] of the approved plan of subdivision at Annexure C to this Instrument.

**Registered Proprietor** of either the Lot Benefited or the Lot Burdened means the person or persons appearing on the certificate of title as the freehold proprietor of that Lot.

### 3.2 Rules of Interpretation

Headings contained in this Instrument and the summary section at the start of this Instrument are for information purposes only and must not affect the interpretation of this Instrument.

In addition, the following rules of interpretation apply to this Instrument:

- (a) an obligation or liability assumed by, or a right conferred on, two or more persons including two or more Registered Proprietors of the Lot Benefited or of the Lot Burdened (as the case may be) binds or benefits them jointly and severally;
- (b) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to this Easement or this Instrument, to a document or to any other instrument is to this Easement, this Instrument, that document or that other instrument (as the case may be) as amended, modified, varied, novated, ratified or replaced from time to time;
- (d) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (e) a reference to a clause is a reference to a clause of this Instrument;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) **"includes"** in any form is not a word of limitation;
- (h) one provision of this Instrument does not limit the effect of another;
- (i) a reference to conduct includes any omission, statement or undertaking, whether or not in writing; and
- (j) if at any time any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Instrument; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Instrument.

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**4. The name of the person empowered to release, vary or modify this Instrument**

The name of the person empowered to release, vary or modify this Instrument is:

The holder for the time being of the freehold interest in the Lot Benefited.



## Part 3 – Covenant

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## 1. Terms of Covenant

The Registered Proprietor of the Lot Burdened must not do anything, or knowingly allow any other person to do anything, on the Lot Burdened which causes material harm to the biodiversity values of the Offset Land in connection with water inflows from the Lot Burdened to the Offset Land.

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## 2. Definitions and interpretation

### 2.1 Definitions

For the purposes of this Instrument, unless the contrary intention appears, the following terms have the following meanings:

**Law** means any statute, regulation or other statutory instrument, and any other instrument which has legal force, as well as the common law and equity, as in force in New South Wales.

**Lot** means either the Lot Benefited or the Lot Burdened, as the context demands.

**Lot Benefited** means [insert Lot and DP for the Offset Land] and includes any part of it.

**Lot Burdened** means [insert Lot and DP for the Ropes Creek Land] and includes any part of it.

**Offset Land** means Lot [#] of the approved plan of subdivision at Annexure C to this Instrument.

**Registered Proprietor** of either the Lot Benefited or the Lot Burdened means the person or persons appearing on the certificate of title as the freehold proprietor of that Lot.

### 2.2 Rules of Interpretation

Headings contained in this Instrument and the summary section at the start of this Instrument are for information purposes only and must not affect the interpretation of this Instrument.

In addition, the following rules of interpretation apply to this Instrument:

- (a) an obligation or liability assumed by, or a right conferred on, two or more persons including two or more Registered Proprietors of the Lot Benefited or of the Lot Burdened (as the case may be) binds or benefits them jointly and severally;
- (b) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to this Instrument, to a document or to any other instrument is to this Instrument, that document or that other instrument (as the case may be) as amended, modified, varied, novated, ratified or replaced from time to time;
- (d) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (e) a reference to a clause is a reference to a clause of this Instrument;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (g) "includes" in any form is not a word of limitation;
- (h) one provision of this Instrument does not limit the effect of another;
- (i) a reference to conduct includes any omission, statement or undertaking, whether or not in writing; and
- (j) if at any time any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Instrument; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Instrument.

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### **3. The name of the person empowered to release, vary or modify this Instrument**

The name of the person empowered to release, vary or modify this Instrument is:

The holder for the time being of the freehold interest in the Lot Benefited.

**Annexure C - Access Land**