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29 September 2014

Chris Ritchie
Manager – Industry
Department of Planning and Environment
23-33 Bridge Street
Sydney NSW 2000

By Email

Dear Mr Ritchie

Jacfin Pty Ltd – Application to Modify Project Approval MP 07_0153

We act for Jacfin Pty Ltd (*Jacfin*).

This is an application pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) to modify Project Approval MP 07_0153 (**Approval**).

The modification relates to Jacfin's obligation under the Approval to establish a 7 hectare biodiversity offset area adjacent to Ropes Creek (**Biodiversity Offset**) on part of the land currently described as Lot 121 in DP 1175762 (previously identified as Lot 5 in DP 262213).

The purpose of the modification is to facilitate the conversion of the obligation to establish the Biodiversity Offset from an obligation under a condition of the Approval to an obligation under a voluntary planning agreement.

In connection with this application, Jacfin has made an offer to enter into a planning agreement with the Minister to provide the Biodiversity Offset. A copy of the letter of offer is **attached**.

1 Approval proposed to be modified

Project Approval MP 07_0153 was granted by the Minister under section 75J of the Act on 28 October 2009.

The Approval authorises the development of a warehouse and associated infrastructure on Lot 11 in DP 229784 (**Erskine Park Land**).

2 Proposed modifications

Schedule 3 of the Approval currently provides as follows:

Offset Strategy

- 1. The Proponent shall:
 - (a) conserve 7 hectares of land adjacent to Ropes Creek in Lot 5 in DP262211 (sic¹), generally consistent with Figure 1 of Appendix 2 (sic²); and

¹ The reference to DP262211 is a typographical error. The correct reference is DP262213.

- (b) re-establish and enhance the vegetation on this land, using vegetation that is endemic to the Ropes Creek Corridor, and generally consistent with the plant schedule in the *Biodiversity Management Plan for the Erskine Park Employment Area*,
to the satisfaction of the Director-General.
2. The Proponent shall prepare and implement an Offset Strategy for the project to the satisfaction of the Director-General. This strategy must:
- (a) be prepared by a suitably qualified and experienced expert whose appointment has been endorsed by the Director-General;
 - (b) be submitted to the Director-General for approval within 12 months of the date of this approval;
 - (c) describe the proposed offset for the project (see condition 1 above);
 - (d) include:
 - performance and completion criteria for the proposed offset;
 - a detailed description of the measures that would be implemented to:
 - re-establish and enhance the vegetation within the offset area;
 - control weeds, feral pests, and access to the offset area;
 - maintain and conserve the vegetation in the offset area; and
 - protect the offset area from development in perpetuity;
 - a program to monitor the effectiveness of these measures, and progress against the performance and completion criteria;
 - a protocol for reporting on the implementation of the strategy, which is linked to the periodic review of the strategy;
 - (e) describe who would be responsible for monitoring, reviewing, and implementing the strategy.

Jacfin proposes that the Approval be modified by deleting the above Conditions 1 and 2 of Schedule 3 for the following reasons.

Condition 1

Jacfin has made an offer to enter into a voluntary planning agreement with the Minister under which it is required to establish the Biodiversity Offset. The terms of the proposed planning agreement reflect the requirements in Condition 1 of Schedule 3 of the Approval and ensure that the Biodiversity Offset will be delivered in a manner consistent with that presently imposed by the Approval.

The planning agreement will be registered on the title of the land on which the biodiversity offset is established. The relevant offset area is Lot 53 on the approved plan of subdivision at Appendix B of Project Approval MP 10_0128. As this parcel is yet to have a separate title created, the planning agreement will be registered on the title of the parent lot being Lot 121 in DP 1175762 (formerly Lot 5 in DP 262213) until such time as a separate title is created for the offset area. Upon the approved plan of subdivision being registered, the planning agreement will be removed from registration upon the title of the parent lot and the registration retained on the title to Lot 53. This will secure the delivery of the Biodiversity Offset by Jacfin.

By directly linking the obligation to establish the Biodiversity Offset with the land on which it is to be established, the planning agreement will ensure that the Biodiversity Offset is provided by Jacfin, particularly in the event that the Erskine Park Land is transferred to a third party.

Upon execution of the planning agreement, Condition 1 of Schedule 3 of the Approval will no longer be required to ensure the establishment of the Biodiversity Offset. Accordingly, there is no reason that condition should remain in the Approval.

Condition 2

Jacfin has prepared a Biodiversity Offset Strategy and Bushland Rehabilitation Management Plan in accordance with Condition 2 of Schedule 3 of the Approval. The Director-General approved the Biodiversity Offset Strategy in October 2010. On 12 January 2011, the Department confirmed that

² The Approval contains a typographical error on page 15. The heading for Appendix 3 on that page is incorrectly numbered. The correct heading for page 15 is Appendix 2.

the Director-General was satisfied the Bushland Rehabilitation Management Plan had been developed in accordance with Condition 2 of Schedule 3 of the Approval. Accordingly the remaining obligation under this Condition is to implement the approved Offset Strategy.

Given that the Offset Strategy (as set out in the approved Biodiversity Offset Strategy and Bushland Rehabilitation Management Plan documents) will now be implemented under the terms of a planning agreement, Jacfin considers that Condition 2 of Schedule 3 should also be deleted.

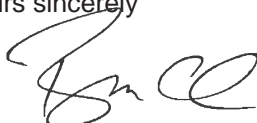
3 Planning assessment

The modification of the Approval as sought by Jacfin will not affect the delivery of the Biodiversity Offset. As noted, it will ensure the provision of the Biodiversity Offset by directly linking the obligation to establish the Biodiversity Offset to the land on which it is to be established, by way of registration of a planning agreement on title.

The modification does not involve any changes to the project as approved and will not result in any additional environmental impacts.

In light of the above, we respectfully request that the proposed modification be approved by the Minister.

Yours sincerely



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Attach

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29 September 2014

Chris Ritchie
Manager – Industry
Department of Planning and Environment
23-33 Bridge Street
Sydney NSW 2000

By Email

Dear Mr Ritchie

**Jacfin Pty Ltd – Ropes Creek Biodiversity Offset
Letter of Offer to Enter into Planning Agreement**

As you are aware, we act for Jacfin Pty Ltd (**Jacfin**).

We refer to our discussion with you on 6 August 2014 and our meeting with Nick Hall and Rebecca Sommer on 25 September 2014.

This letter outlines the proposed terms for Jacfin to enter into a voluntary planning agreement with the Minister for Planning and Environment (**Minister**) in relation to Jacfin's application to modify Project Approval MP 07_0153.

Jacfin offers to enter into a planning agreement with the Minister under section 93F of the *Environmental Planning and Assessment Act 1979* (**Act**) on the following terms:

Subject Land

- 1 The land the subject of the planning agreement will be Lot 53 on the approved plan of subdivision at Appendix B of Project Approval MP 10_0128 (**Offset Land**).
- 2 The Offset Land is depicted on the **attached** plan.

Biodiversity Offset

- 3 Jacfin will re-establish and enhance a 7 hectare biodiversity offset on the Offset Land (**Biodiversity Offset**).
- 4 The Biodiversity Offset will be generally consistent with the plan at Appendix 3 of Project Approval MP 07_0153 (**attached**).
- 5 The Biodiversity Offset will be established using vegetation that is endemic to the Ropes Creek Corridor, and generally consistent with the plant schedule in the *Biodiversity Management Plan for the Erskine Park Employment Area*.
- 6 The Biodiversity Offset shall be implemented in accordance with the Biodiversity Offset Strategy approved by the Director-General in October 2010 and the Bushland Rehabilitation Management Plan approved by the Director-General in January 2011.

Our Ref QNMS:NJSS:206086386

njss A0130366595v1 206086386 29.9.2014

Allens is an independent partnership operating in alliance with Linklaters LLP.

Registration and Assignment

- 7 The Offset Land is yet to be subdivided in accordance with the approved plan of subdivision. The planning agreement will be registered on the title of Lot 121 in DP 1175762 (**Parent Lot**) until such time as the Parent Lot is subdivided to create a separate title to the Offset Land.
- 8 Upon subdivision of the Parent Land, the planning agreement will be removed from registration upon the title of the residue of the Parent Land and will remain registered only on the folio of the Register in relation to the Offset Land.
- 9 The planning agreement will include a requirement to obtain the Minister's consent (acting reasonably) prior to any assignment or transfer of Jacfin's interest in the Offset Land.

Other Provisions

- 10 Jacfin does not intend to enter into the planning agreement in a trustee capacity at this stage. If this position changes, Jacfin will advise details of the relevant trust.
- 11 Jacfin accepts it will be responsible for the reasonable costs of the Department for legal and notification costs for the planning agreement.

A draft version of the voluntary planning agreement is **attached**. We look forward to your response.

Yours sincerely



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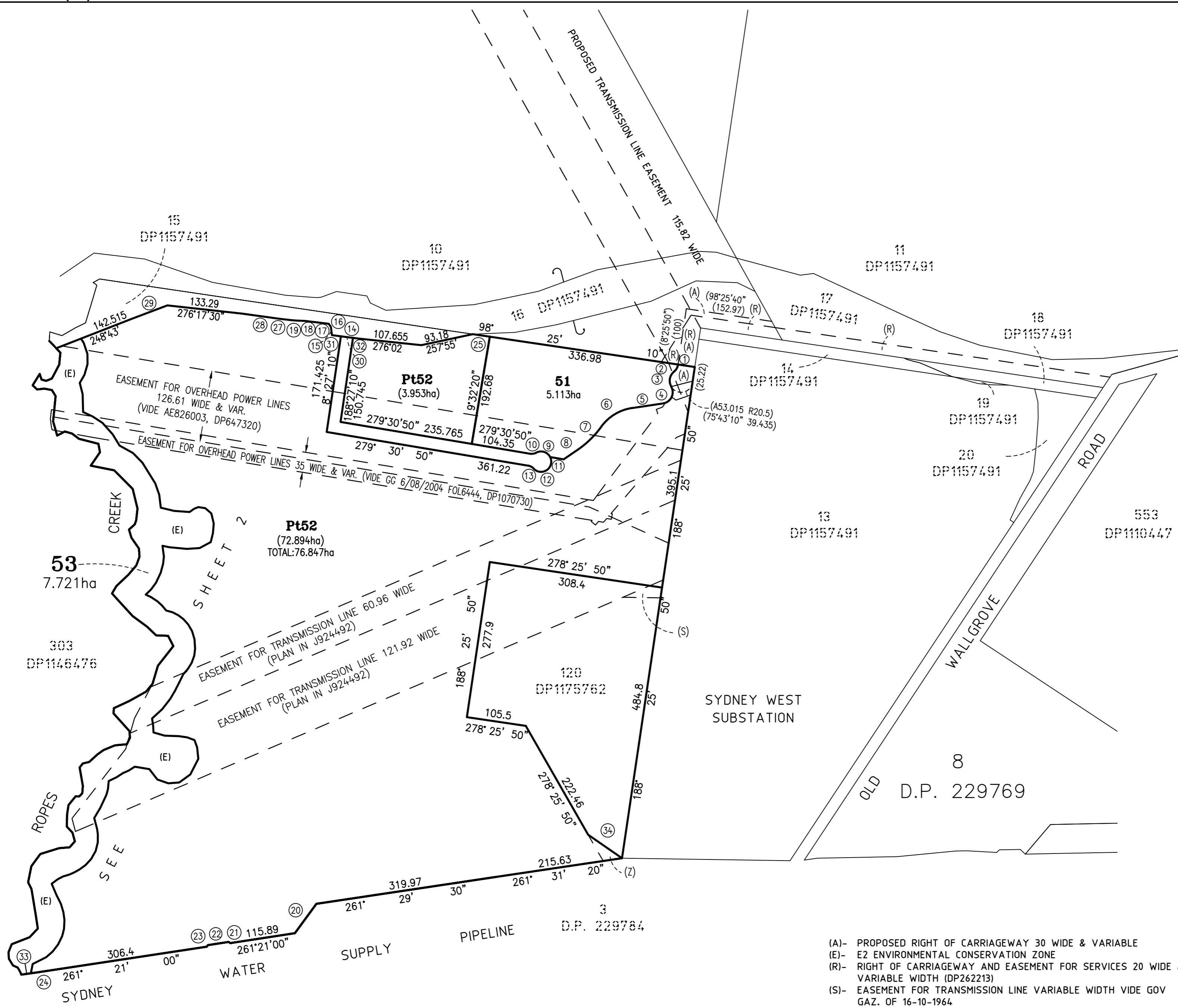
Attach.

CONCEPT PLAN

Plan compiled from architectural CAD data and from information supplied by Land and Property Information NSW.

Plan is subject to a detail survey.

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ISSUE C

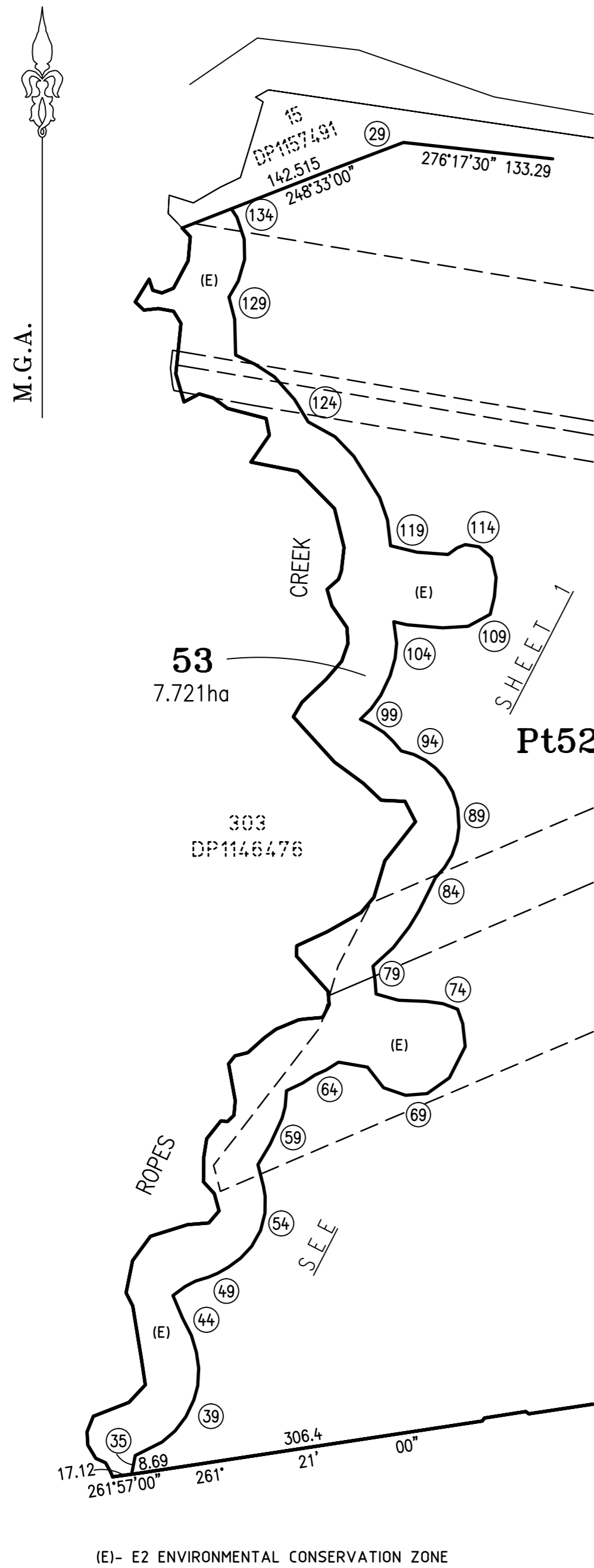


SCHEDULE of SHORT & CURVED BOUNDARIES

No.	BEARING	DIST.	ARC	RAD.
1	98°25'10"	30		
2	29°55'30"	14.655	15.005	20
3	8°25'50"	26.81	29.235	20.5
4	205°41'10"	33.12	39.015	20
5	81°34'25"	55.625		
6	58°39'15"	63.87	65.605	82
7	225°43'25"	58.985	101.52	170
8	55°42'50"	29.28		
9	107°40'40"	25.53	23.38	18
10	81°00'45"	11.425	11.625	18
11	99°30'50"	24.52		
12	54°40'45"	35.635	51.42	18
13	118°00'55"	11.425	11.625	18
14	277°18'30"	51.805		
15	353°07'40"	14.705		
16	324°38'40"	6.705		
17	277°00'20"	42.445		
18	271°49'00"	15.515		
19	274°51'00"	10.025		
20	216°02'00"	64.56		
21	306°14'20"	3.51		
22	261°09'10"	37.2		
23	215°41'20"	3.33		
24	261°57'00"	8.69		
25	98°25'10"	30.43		
27	276°39'00"	20.015		
28	278°00'30"	66.425		
29	249°14'00"	66.495		
30	97°18'30"	21.505		
31	97°18'30"	16.165		
32	97°18'30"	14.135		
33	261°57'00"	17.12		
34	304°40'50"	72.68		

- (A)- PROPOSED RIGHT OF CARRIAGEWAY 30 WIDE & VARIABLE
- (E)- E2 ENVIRONMENTAL CONSERVATION ZONE
- (R)- RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES 20 WIDE & VARIABLE WIDTH (DP262213)
- (S)- EASEMENT FOR TRANSMISSION LINE VARIABLE WIDTH VIDE GOV GAZ. OF 16-10-1964
- (Z)- PROPOSED EASEMENT FOR ELECTRICITY PURPOSES VARIABLE WIDTH (DP1175762)

Surveyor: CAMERON PHILLIP MILES Date of Survey: Surveyor's Ref: SYDW 104650DP	PLAN OF SUBDIVISION OF LOT 121 DP1175762	LGA: BLACKTOWN Locality: ROPES CREEK Subdivision No: Lengths are in metres. Reduction Ratio 1:5000	REGISTERED	DP
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SCHEDULE OF SHORT & CURVED BOUNDARIES

No.	BEARING	CHORD	No.	BEARING	CHORD
1	10°45'10"	16.86	54	7°38'40"	12.4
2	63°15'00"	26.87	55	356°21'30"	16.75
3	49°25'30"	15.08	56	343°09'10"	14.99
4	37°00'00"	15.96	57	329°53'30"	14.32
5	25°37'30"	16.53	58	317°31'50"	12.46
6	14°51'50"	12.92	59	307°05'50"	10.82
7	3°06'50"	15.8	60	297°17'30"	11.58
42	352°14'40"	14.06	61	285°43'10"	11.77
43	343°19'10"	15.62	62	320°00'10"	11.37
44	332°54'50"	17.44	63	313°33'20"	11.23
45	336°54'10"	21.67	64	302°12'40"	13.92
46	53°31'10"	13.67	65	294°59'50"	10.01
47	62°30'50"	10.35	66	45°29'20"	13.32
48	73°22'20"	11.74	67	35°59'00"	14.77
49	66°39'40"	9.06	68	25°12'30"	19.42
50	60°31'20"	10.93	69	15°45'40"	16.03
51	53°44'00"	13.57	70	5°44'30"	13.44
52	42°51'20"	14.29	71	352°43'50"	19.16
53	29°08'00"	16.38	72	102°36'00"	12.06
54	14°02'10"	15.91	73	95°00'50"	31.69
55	0°33'00"	14.6	74	86°37'30"	22.6
56	351°04'30"	9.09	75	61°27'50"	22.41
57	345°39'30"	19.94	76	13°26'00"	15.87
58	30°36'50"	21.18	77	5°05'10"	17.29
59	24°48'30"	25.43	78	346°49'20"	18.49
60	15°15'10"	10.5	79	311°11'50"	14.26
61	4°55'30"	14.33	80	278°46'10"	12.6
62	64°16'00"	16.04	81	247°59'20"	8.03
63	57°02'30"	13.03	82	234°00'20"	9.71
64	65°49'50"	10.72	83	274°00'50"	27.55
65	57°43'10"	13.03	84	283°48'00"	24.35
66	99°36'20"	26.13	85	353°12'20"	22.94
67	142°04'00"	23.16	86	340°58'10"	21.27
68	109°08'50"	20.67	87	328°04'10"	43.28
69	85°33'50"	19.19	88	315°59'20"	23.94
70	54°44'20"	24.36	89	298°53'00"	27.28
71	26°43'10"	31.08	90	328°27'50"	23.43
72	354°02'50"	20.4	125	318°24'30"	27.03
73	340°04'00"	13.67	126	303°00'30"	20.55
74	291°06'30"	13.96	127	295°10'50"	18.93
75	277°49'50"	14.9	128	358°31'30"	31.72
76	272°09'40"	24.89	129	345°42'00"	20.53
77	285°53'10"	20.6	130	30°26'50"	16.55
78	356°31'20"	11.97	131	15°56'50"	19.84
79	351°39'10"	12.89	132	358°58'50"	18.11
80	47°34'10"	24.55	133	341°43'00"	20.5
81	37°32'00"	22.97	134	326°33'30"	9.08
82	30°50'20"	16.74	135	42°26'50"	20.12
83	27°04'50"	21.07	136	56°10'50"	31.65
84	25°22'40"	11.62	137	52°26'50"	19.24
85	41°30'30"	12.26	138	35°43'30"	18.1
86	31°33'30"	12.73			
87	19°32'50"	13.73			

CONCEPT PLAN

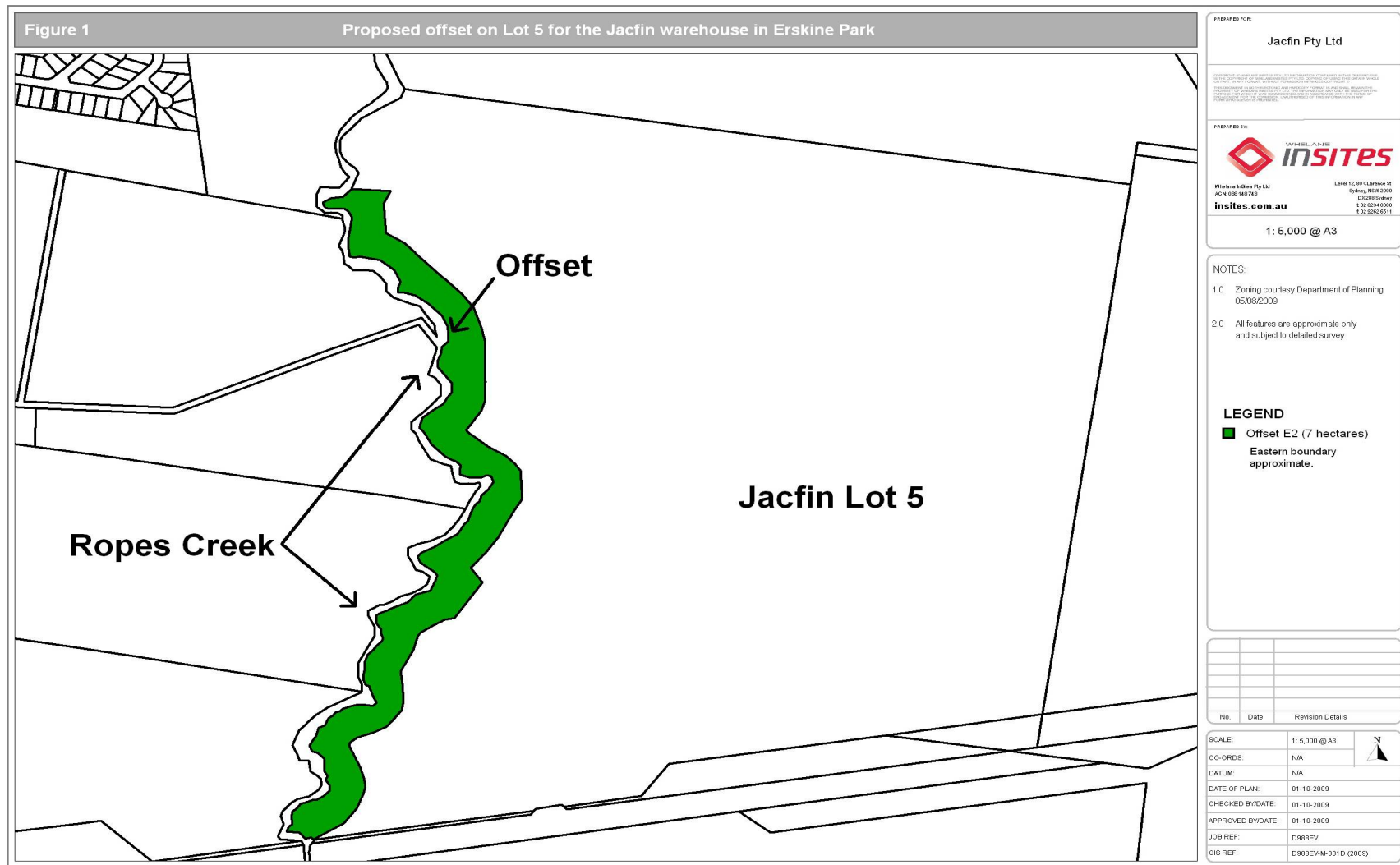
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APPENDIX 2
Figure 1. Offset Area



Minister for Planning and Environment
ABN 38 755 709 681

and

Jacfin Pty Ltd
ABN 44 000 967 902

Ropes Creek Biodiversity Offset

Planning Agreement

Environmental Planning and Assessment Act 1979

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This Deed is made on

2014

Parties

Minister for Planning and Environment (ABN 38 755 709 681) of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (*Minister*).

Jacfin Pty Ltd (ABN 44 000 967 902) c/- PricewaterhouseCoopers, 201 Sussex Street, Sydney, New South Wales, 2000 (*Landowner*).

Introduction

- A The Landowner owns the Land and the Offset Land.
- B The Land has the benefit of Project Approval MP 07_0153 approved on 28 October 2009.
- C The Landowner has lodged a Modification Application in relation to the Project Approval with the Minister.
- D This deed constitutes a planning agreement for the establishment by the Landowner of the Biodiversity Offset on the Offset Land.
- E The Landowner has offered to enter into this deed with the Minister to secure the delivery of the Biodiversity Offset following the modification of the Project Approval.

It is agreed as follows.

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.

Biodiversity Offset means the 7 hectare biodiversity offset area to be established on the Offset Land generally consistent with Schedule 6.

Biodiversity Offset Strategy means the strategy prepared by Whelans Insites Development Consultants dated 20 July 2010, which is Exhibit A to this deed.

Biodiversity Management Plan for the Erskine Park Employment Area means the plan prepared by HLA-Envirosciences Pty Limited dated 2 May 2006, which is Exhibit B to this deed.

Bushland Rehabilitation Management Plan means the plan prepared by Whelans Insites Development Consultants dated 15 December 2010, which is Exhibit C to this deed.

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.

Completion Criteria means the 5 year performance criteria identified in the Biodiversity Offset Strategy and the Bushland Rehabilitation Management Plan.

Development means the development of the Land in accordance with the Project Approval and any Development Approvals.

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

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

Development Consent has the same meaning as in the Act.

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.

Final Report means the final monitoring report prepared by the Project Ecologist under the Biodiversity Offset Strategy and Bushland Rehabilitation Management Plan, which confirms the satisfaction of the Completion Criteria.

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

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

Modification Application means the application lodged on behalf of the Landowner pursuant to section 75W of the Act to modify the Project Approval.

Notice has the meaning given to it in clause 10.16.

Offset Land means the land described in Schedule 4 of this deed.

Parent Land means the land described in Schedule 5 of this deed.

Planning Agreement means this deed.

Project Approval means approval MP 07_0153 approved under section 75J of the Act on 28 October 2009.

Project Ecologist means the person appointed as the project ecologist under the Biodiversity Offset Strategy and appointed as the vegetation management consultant under the Bushland Rehabilitation Management Plan.

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

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

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

Required Obligations has the meaning given to it in clause 8.2.

Residue Parent Land means Lots 51 and 52 on the approved plan of subdivision in Appendix B of the Ropes Creek Project Approval, being the remainder of Parent Land following the subdivision of the Offset Land.

Ropes Creek Project Approval means Project Approval MP 10_0128 approved under section 75J of the Act on 24 October 2011, as modified on 15 April 2014.

Secretary means the Secretary of the Department of Planning and Environment from time to time.

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.

Transferee has the meaning given to it in clause 8.2.

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) the singular includes the plural and vice-versa;
- (p) a reference to a thing includes each part of that thing; and
- (q) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 Operation and Application of this Deed

2.1 Operation

This deed will commence from the latest of the following:

- (a) the date this deed is signed by all the parties; or
- (b) the date the Modification Application is approved under the Act on conditions satisfactory to Jacfin.

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 the Offset Land.

3 Application of Sections 94, 94A and 94EF of the Act

- (a) The application of sections 94, 94A and 94EF of the Act is not excluded by this deed.
- (b) The provision of the Biodiversity Offset by the Landowner is not to be taken into consideration in determining any development contributions payable in relation to the development of the Land or the Offset Land under section 94 of the Act.

4 Biodiversity Offset

4.1 Landowner to provide Biodiversity Offset

- (a) The Landowner agrees to provide, or procure the provision of, the Biodiversity Offset generally consistent with Schedule 6.
- (b) The Biodiversity Offset is to consist of 7 hectares of land adjacent to Ropes Creek on the Offset Land.
- (c) The Landowner shall re-establish and enhance, or procure the re-establishment and enhancement, of the vegetation within the Biodiversity Offset using vegetation that is endemic to the Ropes Creek Corridor, and generally consistent with the plant schedule in the Biodiversity Management Plan for the Erskine Park Employment Area.
- (d) The Biodiversity Offset shall be implemented in accordance with the Biodiversity Offset Strategy and Bushland Rehabilitation Management Plan.

4.2 Completion of Biodiversity Offset

- (a) The Landowner will have satisfied its obligation under this deed to provide the Biodiversity Offset upon the achievement of the 5-year performance criteria under the Biodiversity Offset Strategy and Bushland Rehabilitation Management Plan (**Completion Criteria**).
- (b) The parties acknowledge that the Completion Criteria may be achieved in less than 5 years after the date of this deed.
- (c) Within 20 Business Days of achieving the Completion Criteria, the Landowner shall provide the Minister with the Final Report by the Project Ecologist.
- (d) Within 20 Business Days of receiving the Final Report, the Minister shall confirm in writing to the Landowner that the Landowner has satisfied its obligation to provide the Biodiversity Offset under this deed.

5 Enforcement

5.1 Landowner to provide security

The Landowner has agreed to provide security to the Minister for the provision of the Biodiversity Offset by the Landowner by registering this deed on the title of the Parent Land in accordance with clause 6.

6 Registration on Title

6.1 Land ownership

The Landowner represents and warrants that it is:

- (a) the owner of the Parent Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.2(b)(i) to assist, cooperate and to otherwise do all things necessary for the Landowner to comply with its obligations under clause 6.2.

6.2 Registration of Deed

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

6.3 Release and discharge of Deed from Parent Land prior to satisfying Completion Criteria

- (a) The parties acknowledge that the Landowner may subdivide the Parent Land in accordance with the Ropes Creek Project Approval prior to the achievement of the Completion Criteria.
- (b) In the event that the Parent Land is subdivided in accordance with clause 6.3(a), the Minister agrees to do all things reasonably required by the Landowner in order to have the Registrar-General remove this deed from the folio of the Register relating to the Residue Parent Land, so that this deed remains registered only in the relevant folio of the Register in relation to the Offset Land.

6.4 Release and discharge of Deed on satisfying Completion Criteria

Once the Landowner has achieved the Completion Criteria and the Minister has confirmed this in writing to the Landowner in accordance with clause 4.2(d), the Minister agrees to do all things reasonably required by the Landowner in order to have the Registrar-General remove this deed from the relevant folio of the Register of the Parent Land or Offset Land (as the case may be).

7 Dispute Resolution

7.1 Not commence

Subject to clause 7.7, a party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

7.2 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.

7.3 Attempt to resolve

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques (such as mediation, expert evaluation or other techniques) as agreed by them.

7.4 Mediation

If the parties do not agree within 20 Business Days of receipt of notice under clause 7.2 (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.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 (or any further period agreed in writing by the parties) then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 Use of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 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 7 for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This clause 7 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

8 Assignment

8.1 Consent

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

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has

sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or

- (b) to any other person, with the prior consent of the other party, which the other party must not unreasonably condition or withhold.

8.2 Dealings with Land

- (a) The Landowner must not sell, transfer or dispose of the whole or any part of the Offset Land unless, before it sells, transfers or disposes of any such part of the Offset Land to another person (**Transferee**):
 - (i) the Landowner satisfies the Minister acting reasonably that the proposed Transferee is financially capable of complying with the Landowner's obligations under this deed as the Minister acting reasonably shall nominate must be adopted by the Transferee (**Required Obligations**);
 - (ii) the Transferee signs a deed to the Minister containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Landowner (including obligations which arose before the transfer or assignment);
 - (iii) any default by the Landowner has been remedied by the Landowner, unless that default has been waived by the Minister; and
 - (iv) the Landowner and the Transferee pay the Minister's reasonable costs in relation to that assignment.
- (b) If the Landowner sells, transfers or disposes of the whole or any part of the Offset Land and fully satisfies the requirements of clause 8.2(a), the Landowner will be released from its obligations under this deed with respect to the Offset Land subject to the sale, transfer or disposal.

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; and
- (b) 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.

10 General Provisions

10.1 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.

10.2 Variation

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

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

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

10.10 Counterparts

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

10.11 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.

10.12 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.

10.13 No fetter

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

10.14 Explanatory Note

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

10.15 Expenses and stamp duty

- (a) The Landowner must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Landowner must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Landowner must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Landowner must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 10.15(a) and (b) above:
 - (i) where the Minister has provided the Landowner with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Landowner with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

10.16 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

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- (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
- (i) hand delivered, on the date of delivery; or
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

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

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

REQUIREMENT UNDER THE ACT	THIS DEED
<p>Planning instrument and/or development application – (section 93F(1))</p> <p>The Landowner 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>
<p>Description of land to which this deed applies – (section 93F(3)(a))</p>	See Schedule 4.
<p>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b)(i))</p>	N/A.
<p>Description of development to which this deed applies – (section 93F(3)(b)(ii))</p>	See definition of Development in clause 1.1.
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</p>	See clause 4.
<p>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</p>	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	The application of section 94EF of the Act is not excluded in respect of the Development.
<p>Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))</p>	No.
<p>Mechanism for Dispute Resolution – (section 93F(3)(f))</p>	See clause 7.
<p>Enforcement of this deed – (section 93F(3)(g))</p>	See clause 5.
<p>No obligation to grant consent or exercise functions – (section 93F(10))</p>	See clause 10.13.

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clauses 5 and 6).
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No.
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No.
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No.

SCHEDULE 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary
Address: Department of Planning and Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000
Facsimile No: (02) 9228 6191

Landowner

Contact: Mr Paul Brassil
Address: Jacfin Pty Ltd
c/- Pricewaterhouse Coopers
201 Sussex Street
SYDNEY NSW 2000
Facsimile No: (02) 8286 2964

SCHEDULE 3

Land (clause 1.1)

Lot 11 on Deposited Plan 229784 as subdivided and developed over time in accordance with the Project Approval and Development Approvals.

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SCHEDULE 4

Offset Land (clause 1.1)

Lot 53 on the approved plan of subdivision at Appendix B of the Ropes Creek Project Approval.

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SCHEDULE 5

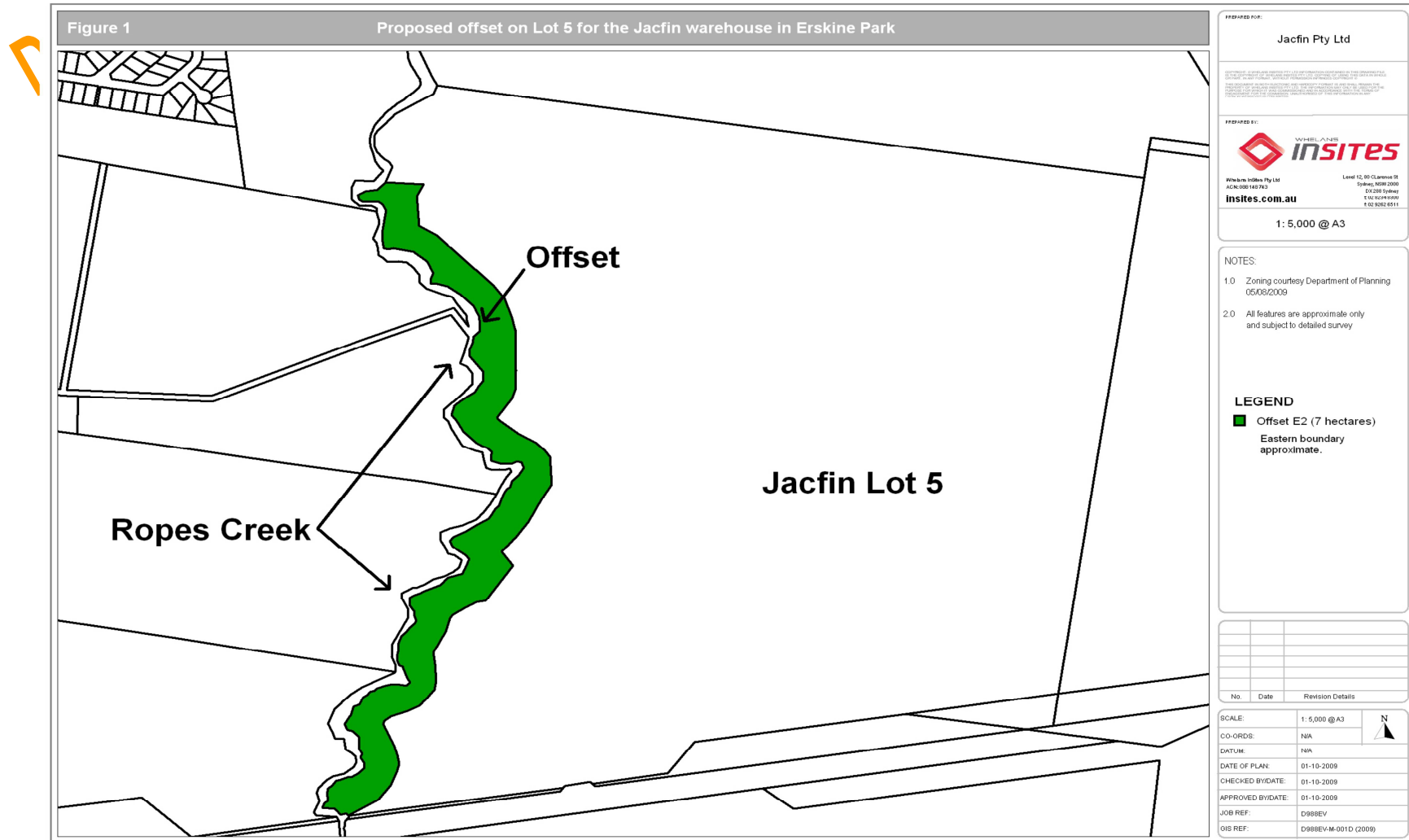
Parent Land (clause 1.1)

Lot 121 on Deposited Plan 1175762

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SCHEDULE 6

Biodiversity Offset (clause 4.1)



Executed and delivered as a Deed in Sydney.

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

Signature of Witness

Signature of the Minister for Planning and Environment

Name of Witness in full

Minister for Planning and Environment

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

Witness Signature

Sole Director and Secretary Signature

Print Name

JACQUELYN WATERHOUSE