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planning • environment • local government

Modified Affordable Housing Planning Agreement

Relating to the Former Carlton United Breweries Site, Broadway

Under s93F of the *Environmental Planning and Assessment Act 1979*

Redfern-Waterloo Authority
Frasers Broadway Pty Limited

Dated 28 NOVEMBER 2008

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MODIFIED AFFORDABLE HOUSING PLANNING AGREEMENT

Relating to the Former Carlton United Breweries Site, Broadway

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Redfern-Waterloo Authority ABN 26 306 591 292 of Level 11, Tower 2, 1 Lawson Square, Redfern, New South Wales 2016 (RWA)

Fraser's Broadway Pty Limited ABN 50 122 575 286 of Level 11, 488 Kent Street, Sydney NSW 2000 (Land Owner)

Background

- A. The Land Owner is the Owner of the Land.
- B. On 21 July 2006, the Project was declared to be a project to which Part 3A of the Act applies.
- C. On 8 December 2005, the Previous Land Owner¹ made an application to the Director-General of the Department for the Instrument Change to facilitate an application to be made for the Project Concept Application Approval.
- D. On 25 October 2006, the Previous Land Owner made a Project Concept Application.
- E. On 9 February 2007, the Minister granted the Project Concept Application Approval.
- F. On 20 May 2008, the Land Owner made the Modified Project Concept Application.
- G. The Minister is responsible under the Act for considering the Instrument Change and the Modified Project Concept Application.
- H. The Land Owner has offered to enter into the Modified Planning Agreement in connection with the Modified Project Concept Application to specify the Affordable Housing Contributions to be made to the RWA in connection with the carrying out of the Modified Project subject to and in accordance with this Agreement.

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- I. The Minister may have regard to this Agreement when deciding whether to grant the Modified Project Concept Application Approval or a Modified Project Approval
- J. A consent authority, when deciding whether to grant any Modified Project Approval under Part 4 of the Act, must have regard to any relevant aspect of this Planning Agreement.

Operative provisions

1 Definitions and interpretation

1.1 In this Agreement the following definitions apply:

ACDC means the Australian Commercial Disputes Centre.

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

Affordable Housing, has the same meaning as in the Act.

Note: *Affordable housing* is defined in s4(1) of the Act to mean housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument. Clause 8 of *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* provides that very low income households, low income households and moderate income households are those whose gross incomes fall within the following ranges of percentages of the median household income for the time being for the Sydney Statistical Division according to the Australian Bureau of Statistics: very low income household - less than 50%; low income household - 50 or more but less than 80%; Moderate income household - 80–120%.

Affordable Housing Contribution means the monetary contribution towards the provision of Affordable Housing within the Operational Area required by clause 4.1 of this Agreement.

Bank Bill Rate means, the average bid rate for Bills having a tenor of 180 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, means:

- (a) the rate the RWA calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the RWA which provide rates for display on the

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"BBSW" page of the Reuters Monitor System for Bills of a 180 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or

- (b) where the RWA is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the RWA in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 180 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The RWA may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the Bank Bill Rate under this planning agreement despite any calculation by the payee under paragraph (a) or (b).

Department means the New South Wales Department of Planning

Fund means the Redfern-Waterloo Fund established by s34 of the *Redfern Waterloo Authority Act 2004*,

Gross Floor Area has the same meaning as in the *Standard Instrument (Local Environmental Plans) Order 2006*.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means the amendment sought by the Land Owner to *State Environmental Planning Policy (Major Projects) 2005* as described in the Concept Plan Modification document prepared by JBA Urban Planning Consultants dated May 2008.

Land means land that was the former Carlton and United Breweries Site at Broadway, Sydney, and other land specified or described in Schedule 2.

Land Owner means the Owner of the Land specified in Part 1 of Schedule 2 (or any relevant part of it) and includes the successors and assigns of the Land Owner.

Minister means the Minister administering the Act.

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Modified Planning Agreement means the provisions of this Agreement under which the Land Owner is required to make Affordable Housing Contributions in connection with the carrying out of the Modified Project.

Modified Project means the Project to be carried out on the Land described in Schedule 1 as modified by the Modified Concept Application Approval and any modification of that approval under s75O of the Act.

Modified Project Approval means a consent or approval (other than a construction, occupation or subdivision certificate) granted under the Act that enables the Modified Project or any part of it to be carried out whether or not the carrying out of the consent or approval is conditional under the Act upon the issuing of a construction, occupation or subdivision certificate.

Modified Project Concept Application means the application for the Minister's approval under s75W of the Act to modify the Project Concept Application Approval made by or on behalf of the Land Owner dated 20 May 2008 and includes any amendments made to that application from time to time.

Modified Project Concept Application Approval means any approval granted by the Minister under s75O of the Act to the Modified Project Concept Plan Application.

Operational Area has the same meaning as in the *Redfern Waterloo Authority Act 2004*.

Note: Section 5(1) of, and Schedule 1 to, the *Redfern Waterloo Authority Act 2004* define the Operational Area.

Owner means, in relation to land under the provisions of the *Real Property Act 1900*, means the *registered proprietor* of that land.

Party means a party to this agreement, including their successors and assigns.

Previous Land Owner means Carlton and United Breweries (NSW) Pty Limited of 77 Southbank Boulevard, Southbank, Victoria 3006.

Project means the development the subject of the Project Concept Application Approval.

Project Concept Application means the concept plan No. MP06_0171 submitted to the Director-General of the Department in respect of the Project under s75M(3) of the Act by or on behalf of the Previous Landowner on 25 October 2006.

Project Concept Application Approval means the approval granted by the Minister under s75O of the Act to the Project Concept Application on 9 February 2007.

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Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Stage in relation to the Project means any aspect of the Project the subject of a Project Approval.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

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- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules, appendices and attachments form part of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Modified Project.

3 Status of this Agreement

- 3.1 Until the Modified Planning Agreement operates, this Agreement constitutes the Land Owner's offer to enter into the Modified Planning Agreement in connection with the Modified Project Concept Application.

4 Payment of Affordable Housing Contribution

- 4.1 The Land Owner is to pay an Affordable Housing Contribution to the RWA in accordance with this clause 4 and otherwise in accordance with this Agreement.
- 4.2 The amount of the Affordable Housing Contribution is to be determined in accordance with the following Table:

Table

Maximum Gross Floor Area of Modified Project (in Square Metres)	Amount of Affordable Housing Contribution \$
1. Less than 230,000	The amount that would proportionately equate to the maximum Gross Floor Area of the Modified Project based on the Gross Floor Areas

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		and amounts specified in items 2 - 5 of this Table.
2.	230,000	29, 300, 000
3.	240,000	30, 300, 000
4.	250,000	31, 300, 000
5.	260,000	32, 300, 000
6.	Greater than 260,000	The amount that would proportionately equate to the maximum Gross Floor Area of the Modified Project based on the Gross Floor Areas and amounts specified in items 2 - 5 of this Table.

- 4.3 If the Gross Floor Area of the Modified Project is between any of the Gross Floor Areas specified in items 2-5 of the Table to clause 4.2, or below 230,000 m², or above 260,000 m², the amount of the Affordable Housing Contribution is the amount that would proportionately equate to the maximum Gross Floor Area of the Modified Project based on the Gross Floor Areas and amounts specified in paragraphs 2 - 5 of this Table. For example, if the Gross Floor Area of the Modified Project is 257,000 m², the amount of the Affordable Housing Contribution would be \$32,000,000, and if the Gross Floor Area of the Modified Project is 267,000 m², the amount of the Affordable Housing Contribution would be \$33,000,000
- 4.4 The Affordable Housing Contribution is to be paid in five annual instalments commencing on 30 June 2009.
- 4.5 Each instalment of the Affordable Housing Contribution, except the final instalment, is to be \$6,000,000.
- 4.6 The final instalment is to be the balance of the Affordable Housing Contribution.
- 4.7 The Parties agree that the dates on which the instalments of the Affordable Housing Contribution are payable under this clause 4 is an essential term of this Agreement.
- 4.8 If the Land Owner fails to pay an instalment of the Affordable Housing Contribution or any part of it on the date on which it is payable under this Agreement, the Land Owner is to pay the RWA interest on the unpaid amount on and from the date on which the instalment was required to be paid until and including the date on which it is paid.

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- 4.9 The interest payable under clause 4.8 is to be calculated on daily balances at the rate of 2% per annum above the Bank Bill Rate.
- 4.10 Any interest payable under clause 4.8 that remains unpaid may be capitalised by the RWA at intervals determined by the RWA from time to time or, if no determination is made, on the first day of each calendar month after the interest becomes payable.
- 4.11 Interest is payable on capitalised interest under clause 4.10 at the rate and in the manner specified in this clause 4.
- 4.12 The Land Owner's obligation to pay interest (capitalised or otherwise) is not affected by any other provision of this Agreement.
- 4.13 Clause 8, Dispute Resolution, does not apply to any matter to which this clause 4 applies.

5 Application of Affordable Housing Contribution by the RWA

The RWA is to hold the Affordable Housing Contribution made by the Land Owner under this Agreement for the purpose for which it was made and apply it towards the provision of Affordable Housing within the Operational Area.

6 Explanatory Note Relating to this Agreement

- 6.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 6.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in Appendix B is not to be used to assist in construing the Planning Agreement.

7 Registration of this Agreement

- 7.1 This clause applies to the land specified in Part 1 of Schedule 2.
- 7.2 The Parties agree to register this Agreement under and subject to s93H of the Act in respect of the land to which this clause applies.
- 7.3 This Agreement is intended by the Parties to bind successors in title to the land to which this clause applies as provided by s93H(3) of the Act or otherwise to that effect.
- 7.4 On execution of this Agreement, the Land Owner must provide the RWA with a request for registration of the Agreement duly executed by the Land Owner



and otherwise in registrable form together with the written and irrevocable consent of each person referred to in s93H(1) of the Act to that registration.

- 7.5 The RWA must promptly agree to a request by the Land Owner for the lodging of a request for the registration of this Agreement to be removed from the title to that parcel of land once the Affordable Housing Contribution has been made.
- 7.6 A Party must agree to a request by the other for the lodging of a request for the registration of this Agreement to be removed from the titles to the land to which this clause applies if the Agreement is terminated.
- 7.7 The Parties may at any time agree to the lodging of a request for the registration of this Agreement to be removed from the titles to the land to which this clause applies or any part.

8 Dispute Resolution

- 8.1 Any dispute between the Parties in connection with the Project must be dealt with in accordance with this clause.
- 8.2 Should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.
- 8.3 If the dispute is not resolved within 14 days of the date that a Party first raises the issue about which there is a dispute, either Party may refer the dispute to mediation administered by the ACDC by a suitably qualified mediator and the other Party must participate in the mediation.
- 8.4 If a matter is referred to mediation and the dispute is not resolved in accordance with ACDC process, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 8.5 Any mediation is to be conducted in accordance with the ACDC Mediation Guidelines in force from time to time including in relation to costs.
- 8.6 However, rather than referring a dispute to mediation, and if the Parties agree that a dispute relates to a technical matter which requires technical expertise to resolve, the Parties may agree to settle the dispute by expert determination administered by the ACDC in accordance with the ACDC Expert Determination Guidelines in force at the time.
- 8.7 If following referral, the Parties cannot agree on the appointment of a technical expert to conduct the expert determination within 5 business days, the appointment may be made by the ACDC on the request of either Party.
- 8.8 An expert determination under this clause is final and binding on the Parties.

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

9 Enforcement

9.1 The Land Owner is not to cause, suffer or permit any 'development' forming part of the Modified Project to be carried out if:

- (a) any instalment of the Affordable Housing Contribution or any part of it has not been paid strictly in accordance with clause 4, or
- (b) any interest payable under clause 4 that has not been paid.

In this clause 'development' has the same meaning as in the Act.

9.2 The Land Owner is not to oppose, obstruct or hinder, nor allow any other person to oppose, obstruct or hinder any action that may be taken by the RWA, the Minister or any other person:

- (a) to enforce payment of the Affordable Housing Contribution under this Agreement, or
- (b) to require the carrying out of the Modified Project to cease,

in the circumstances specified in clause 9.1.

9.3 Without limiting clauses 9.1 and 9.2, this Agreement may be enforced by either Party in any court of competent jurisdiction.

9.4 For the avoidance of doubt, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement,
- (b) the Minister or the RWA from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

10 Notices

10.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

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- (a) delivered or posted to that Party at its address set out in Schedule 3,
- (b) faxed to that Party at its fax number set out in Schedule 3,
- (c) emailed to that Party at its email address set out in Schedule 3.

10.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

10.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address,
- (b) if it is sent by post, 2 business days after it is posted,
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

10.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

11 Costs

11.1 The Parties agree to bear their own costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

12 Entire agreement

12.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

13 Further acts

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- 13.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

14 Governing law and jurisdiction

- 14.1 This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

15 Joint and individual liability and benefits

- 15.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

16 No fetter

- 16.1 Nothing in this Agreement shall be construed as requiring RWA to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

17 Representations and warranties

- 17.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

18 Severability

- 18.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

19 Modification

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- 19.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

20 Waiver

- 20.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

21 GST

- 21.1 Words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- 21.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- 21.3 If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply.
- 21.4 The recipient will pay the amount referred to in clause 21.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.
- 21.5 The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 21.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- 21.6 Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled, and
 - (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

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22 Application of sections 94, 94A and 94EF of the Act to the Project

- 22.1 This Agreement does not exclude the application of s94, s94A or s94EF of the Act to the Project.

23 Effect of conditions requiring contributions for affordable housing

- 23.1 This clause applies if a Modified Project Approval is granted to any Stage of the Project subject to a condition requiring the making of an affordable housing contribution under s30 of the *Redfern-Waterloo Authority Act 2004* or s94F of the *Environmental Planning and Assessment Act 1979* or any other law authorising the imposition of such a condition.
- 23.2 The value of the affordable housing contribution required to be made under a condition referred to in clause 23.1 may be deducted from any instalment of the Affordable Housing Contribution that is payable under this Agreement at any time after the date on which the contribution required by the condition is made.
- 23.3 For the purposes of clause 23.2, the value of the relevant affordable housing contribution is:
- 23.3.1 in the case of a requirement to pay a monetary contribution - the amount required to be paid under the condition,
- 23.3.2 in the case of a requirement to dedicate land free of cost, the compensation that would have been payable to the owner if the land had been compulsorily acquired from that person pursuant to Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991*,
- 23.3.3 in the case of a requirement for any other form of contribution, the value of the contribution as agreed between the parties.
- 23.4 If the Parties cannot agree in relation to the value of a contribution referred to in clause 23.3.3 within a reasonable time, the Parties agree that either Party may refer the dispute to expert determination in accordance with clause 8.

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Schedule 1

(Clause 1)

Modified Project

The development described in approved Concept Plan MP06-0171, as modified by the approved Modified Project Concept Application.



Schedule 2

(Clause 1)

The Land

Part 1

Folio Identifier 1539/43748	Folio Identifier 1/207743
Folio Identifier 1/189736	Folio Identifier 1/43731
Folio Identifier 2/630747	Folio Identifier 1/190327
Folio Identifier 1/228682	Folio Identifier 1/185453
Folio Identifier 1/76719	Folio Identifier 1/630747
Folio Identifier 1/723984	Folio Identifier 1/87874
Folio Identifier 1/807298	Folio Identifier 1/191230
Folio Identifier Volume 4519 Folio 40	Folio Identifier 11/626951
Folio Identifier 1/722227	Folio Identifier 2/722227
Volume 3872 Folio 23	Auto Consol 7514-74
Folio Identifier 26/650913	Folio Identifier 1/101611
Auto Consol 15024-245	Auto Consol 6335-184
Auto Consol 8630-206	Volume 9832 Folio 183
Folio Identifier 1/709452	Auto Consol 6203-118
Folio Identifier 1/191024	Lot 1 DP 185 787

Part 2

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Land owned by Sydney County Council (Energy Australia)

- Folio Identifier A/430090

Roads owned by the City of Sydney

- Irving Lane, Chippendale between Carlton Street and Balfour Street;
- Balfour Street, Chippendale between O'Connor Street and the southern boundary of Lot 1DP 43731;
- Balfour Street, Chippendale between O'Connor Street and Wellington Street; and
- Kensington Street, Chippendale between Outram Street and Regent Street.

Land owned by Roderick John Rogerson but to be transferred to Fraser's Broadway Pty Limited
in accordance with a contract for sale due to settle on 18 December 2008

- Lot 2 DP 33953

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Schedule 3

(Clause 10)

Contact for Notices

Redfern Waterloo Authority

Attention: The Chief Executive Officer
Address: Level 11, Tower 2, 1 Lawson Square, Redfern NSW 2016
Fax Number: (02) 9202 9111
Email: Not Applicable

Land Owner

Attention: The Company Secretary
Fraser's Broadway Pty Limited
Address: Level 488 Kent Street, Sydney NSW 2000
Fax Number: 8823 8801
Email: Not Applicable

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Appendix

(Clause 6)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Modified Affordable Housing Planning Agreement

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Under s93F of the *Environmental Planning and Assessment Act 1979*

1 Parties

Redfern-Waterloo Authority of Level 11, Tower 2, 1 Lawson Square, Redfern
NSW 2016 (RWA)

Frasers Broadway Pty Limited of Level 11, 488 Kent Street, Sydney NSW 2000]
(Land Owner)

2 Description of Subject Land

The former Carlton and United Breweries Site and other land as more fully described in
Schedule 2 of the Planning Agreement.

3 Description of Modified Project Application

An amendment of *State Environmental Planning Policy (Major Projects) 2005* to include
land to which this Agreement relates in Schedule 3 and to insert in that Schedule in
relation to that land provisions relating to the carrying out of development.

**4 Summary of Objectives, Nature and Effect of the Modified
Planning Agreement**

The objective of the Modified Planning Agreement is to provide for contributions to be
made towards the provision of affordable housing within the operational area of the
Redfern-Waterloo Authority in relation to the carrying out of the Modified Project if
approved.

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**Redfern-Waterloo Authority
Frasers Broadway Pty Limited**

Affordable housing is defined as housing for very low income households, low income households and moderate income households whose gross incomes fall within the following ranges of percentages of the median household income for the time being for the Sydney Statistical Division according to the Australian Bureau of Statistics:

- very low income - less than 50%
- low income household - 50% or more but less than 80%
- moderate income household - 80-120%

The Modified Planning Agreement is made in connection with the application by the Landowner for an amendment of *State Environmental Planning Policy (Major Projects) 2005* to include land to which the Agreement relates in Schedule 3 and to insert in that Schedule in relation to that land provisions relating to the carrying out of development.

Under the Planning Agreement, the Landowner is required to make contributions to the RWA at an agreed rate. The agreed rate is dependant on the amount of gross floor area approved by a concept plan which may be issued by the Minister.

Contributions for the Modified Project are required to be made in five annual instalments commencing on 30 June 2009.

The RWA is required to hold the contributions made by the Land Owner for the purpose they were made and apply them towards the provision of affordable housing within the operational area.

Payment of the contributions is secured by registration of the Planning Agreement on the title to the Land and a prohibition on the carrying out of the Modified Project if any instalment or interest on an instalment has not been paid.

5 Assessment of the Merits of the Modified Planning Agreement

The Planning Purposes Served by the Modified Planning Agreement

- the provision of affordable housing so that a socially diverse residential population representative of all income groups is created and maintained in the Redfern Waterloo Operational Area
- to promote and provide for housing choices which reflect the needs of very low, low and moderate income households
- to promote and provide for housing schemes which meet the needs of very low, low and moderate income households
- to ensure the ongoing availability of affordable housing dwellings for very low, low and moderate income households

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- to ensure that the standard of affordable housing is comparable to the standard of other dwellings in the Area

How the Modified Planning Agreement Promotes the Public Interest

The Planning Agreement will promote the public interest by:

- facilitating access to housing for very low, low and moderate income households within the RWA operational area
- facilitating a diverse social mix
- ensuring that people of all social and economic groups have access to a range of opportunities provided in the area
- strengthening the diversity and sustainability of the community living in the RWA operational area.
- facilitating the urban renewal objectives of the Redfern-Waterloo Plan.

Other Public Authorities - How the Modified Planning Agreement Promotes the Objects (if any) of the Act under Which It is Constituted

The Draft VPA will support the following objects and functions of the RWA as constituted under the Redfern-Waterloo Authority Act 2004:

- encourage of the development of Redfern-Waterloo into an active, vibrant and sustainable community (s3(a))
- promotion of greater social cohesion in Redfern-Waterloo (s3(e))
- promotion of housing choices in the operational area including for Aboriginal residents.(s15(1)(b))
- maintenance of a social mix of income levels, household types and cultural groupings (s27(2)(i))
- the provision of affordable housing for owners and tenants (including publicly funded housing) (s 27(2)(j))

Whether the Modified Planning Agreement Conforms with the Authority's Capital Works Program

The works on which the monetary contributions to be made under the Agreement will be applied are to be included in the authority's capital works programs in future years.

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Redfern-Waterloo Authority
Fraser's Broadway Pty Limited

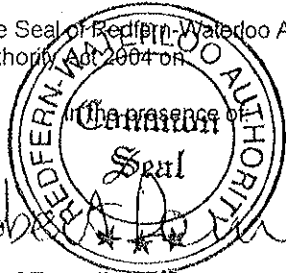

Execution


Dated: 28 NOVEMBER 2008

Executed as an Agreement:

On behalf of the Redfern-Waterloo Authority:


The Seal of Redfern-Waterloo Authority was affixed in accordance with s43 of the Redfern-Waterloo Authority Act 2004 on


in the presence of

Chief Executive Officer


Witness **STUART SMINGTON**

On behalf of Fraser's Broadway Pty Limited in accordance with section 127 of the Corporations Act 2001 (Cth):


Company Secretary/Director
PAUL BARBER
Name of Company Secretary/Director (print)


Director
DR SHS QUEK
Name of Director (print)

