

CLAYTON UTZ

Planning Agreement

The Minister for Planning

ABN 38 755 709 681

Minister

Frasers Broadway Pty Ltd

ABN 50 122 575 286

Land Owner

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Planning Agreement made at on

Parties **The Minister for Planning ABN 38 755 709 681** of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 ("Minister")

Frasers Broadway Pty Ltd ABN 50 122 575 286 of Level 11, 488 Kent Street, Sydney NSW 2000 ("Land Owner")

Background

- A. The Land Owner owns the Developer's Land.
- B. The Council owns the Council Land.
- C. The Concept Plan Approval in relation to the Project Land (which comprises the Developer's Land, the Council Land and the Energy Australia Land) has been granted.
- D. A change has been sought to the Major Development SEPP.
- E. The Concept Plan Modification has been granted.
- F. As contemplated by section 93F of the Act, the Parties wish to enter into this Planning Agreement in connection with the Concept Plan Modification and the Project Approval Application.

Operative provisions

1. Status of this Deed

1.1 Operation of Planning Agreement

- (a) The Land Owner made an offer to the Minister dated [*insert date*] to enter into a planning agreement, within the meaning of Section 93I(3) of the Act, generally on the terms of this Deed (**Offer**).
- (b) This Planning Agreement operates, and becomes legally binding on both parties if:
 - (i) the Project Approval dated 22 January 2010 (MP No. MP08_0210) is modified to include a condition (as provided for in section 93I(3) of the Act) requiring this Planning Agreement to be entered into; and
 - (ii) this Planning Agreement is entered into as provided by clause 25C(1) of the Regulation.
- (c) Notwithstanding clause 1.1(b), if the Project Approval dated 22 January 2010 (MP No. MP08_0210) does not contain a condition contemplated by clause 1.1(b)(i), the Minister is nevertheless entitled to accept the Offer from the Land Owner to enter into this Planning Agreement in the manner contemplated by clause 1.1(b)(ii)
- (d) The Minister must notify the Land Owner immediately after the Minister executes this Planning Agreement and promptly provide the Land Owner with the Planning Agreement as executed by the Minister.
- (e) This Planning Agreement operates from the date that this Planning Agreement becomes legally binding on both parties pursuant to clause 1.1(b).

- (f) If a legal challenge to the Concept Plan Approval by a third party results in the Concept Plan Approval being rendered invalid and unenforceable, then the Land Owner may either terminate this Planning Agreement or request the Minister to consider changes to its terms.

1.2 Status

- (a) The Minister and the Land Owner acknowledge that CUB and the Minister entered into the 2007 Planning Agreement in connection with the Project Land.
- (b) The Land Owner has purchased the Developer's Land from CUB.
- (c) The Minister and Land Owner agree that this Planning Agreement replaces, and supersedes the 2007 Planning Agreement.
- (d) As soon as reasonably practicable after the Commencement Date, the Minister agrees to release and discharge the 2007 Planning Agreement with respect to the Developer's Land.

2. Planning Agreement under the Act

- (a) This Planning Agreement constitutes a Planning Agreement within the meaning of section 93F of the Act.
- (b) The Parties enter into this Planning Agreement:
 - (i) anticipating some of the Development Contributions will benefit the Council; and
 - (ii) willing to enter into further legal documentation to provide for the Council to take the benefit of the Land Owner's obligations under this Planning Agreement.

3. Application of this Planning Agreement

The Planning Agreement constituted by this Deed applies to:

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

4. Not used

5. Definitions and interpretation

The meaning of capitalised terms and the provisions relating to the interpretation of this Planning Agreement are set out Schedule 13. The Schedules, Exhibits and Annexures form part of this Planning Agreement.

6. Development Contributions

The Land Owner will provide, or procure the provision of, the Development Contributions in accordance with:

- (a) the Approvals in relation to the Contribution Works; and
- (b) the Development Contributions Schedule; and
- (c) the Development Contribution Procedures in relation to the Contribution Works; and
- (d) the Development Contributions Timetable; and
- (e) this Planning Agreement.

7. No warranty, representation or obligation

The Parties agree that:

- (a) the Minister acknowledges to the Land Owner that it is the Minister's present intention that those parts of the Development Contributions which the Land Owner pays to the Minister in cash will be made available for use or expenditure for the purposes set out in column 2 Table 1 of Schedule 3; and
- (b) to the extent that a Development Contribution may be described in, or implied by, this Planning Agreement, including clause 7(a), as having a particular use (intended or otherwise), the Land Owner acknowledges and agrees that the Minister:
 - (i) has not made any warranty or representation that a Development Contribution must, or will, be used for, or expended on, a particular purpose; and
 - (ii) has no obligation to use or expend a Development Contribution for a particular purpose; and
 - (iii) does not warrant or represent that any specified or unspecified works will be carried out or completed; and
 - (iv) is not required to repay to the Land Owner, and the Land Owner is not entitled to a repayment of, any Development Contribution; and
 - (v) has no obligation to monitor or follow-up the use or expenditure of such a Development Contribution including if Minister transmits a Development Contribution to any Authority.

8. Security and enforcement

8.1 Security

The Land Owner has agreed to provide security to the Minister for performance of the Land Owner's obligations under this Planning Agreement on the terms and conditions of the Security Arrangements.

8.2 Enforcement

- (a) This Planning Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) The Land Owner covenants with the Minister that the Land Owner will not rescind or terminate this Planning Agreement or make a claim that this Planning Agreement is void, voidable, illegal or unenforceable because a condition of a Project Approval

requires the Land Owner to enter into a Planning Agreement on the terms of this agreement (except for paragraph (b) of **Error! Reference source not found.**

- (c) The Land Owner indemnifies the Minister against any liability, loss, claim, damages, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process) arising from or incurred in connection with any breach of the Land Owner's obligations under clause 8.2(b).
- (d) This indemnity is a continuing obligation, separate and independent from the Land Owner's other obligations and survives completion, rescission or termination of this Planning Agreement.
- (e) It is not necessary for the Minister to incur expense or to make any payment before enforcing this indemnity.
- (f) The Land Owner must pay on demand any amount it must pay under this indemnity.

8.3 No prevention to enforcement

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

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

9. Application of s94, s94A and s94EF of the Act to the Development

9.1 Application of sections 94, 94A and 94EF of the Act

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

10. Interests in the Project Land

10.1 Ownership

- (a) The Land Owner represents and warrants to the Minister that it is the legal and beneficial owner of the Developer's Land.
- (b) The Council is the legal owner of the Council Land.

10.2 Registration of this Planning Agreement

- (a) The Land Owner agrees it will procure the registration of this Planning Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Developer's Land in accordance with section 93H of the EP&A Act and if the Land Owner becomes the legal owner of the Energy Australia Land, the Land Owner agrees it will procure the registration of this Planning Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the

Developer's Land in accordance with section 93H of the EP&A and the terms of this clause 10 will apply to the Energy Australia Land with the necessary changes made.

- (b) The Land Owner at its own expense will, prior to the execution of this Planning Agreement, take all practical steps, and otherwise do anything that the Minister reasonably requires, to procure:
 - (i) the consent of each person who:
 - A. has an estate or interest in the Developer's Land registered under the *Real Property Act 1900* (NSW); or
 - B. is seized or possessed of an estate or interest in the Developer's Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,to enable the registration of this Planning Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Developer's Land in accordance with section 93H of the EP&A Act; and
- (c) The Land Owner, at its own expense, will take all practical steps, and otherwise do anything that the Minister reasonably requires:
 - (i) to procure the lodgement of this Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement is entered into by the Parties but in any event, no later than 20 Business Days after that date; and
 - (ii) to procure the registration of this Planning Agreement by the Registrar-General either in the relevant folios of the register for the Developer's Land ; or in the General Register of Deeds if this Planning Agreement relates to land not under the *Real Property Act 1900* (NSW) as soon as reasonably practicable after the Planning Agreement is lodged for registration but, in any event, no later than 20 Business Days after the date on which the Land Owner lodges this Planning Agreement with the Registrar-General.

10.3 Release and discharge of this Deed

The Minister agree to release and discharge this Planning Agreement on the Release and Discharge Terms.

11. Review or Replacement of this Planning Agreement

The Parties agree that this Deed will be reviewed or modified in the circumstances, and in accordance with, the Review or Replacement Procedures.

12. Dispute Resolution

The Parties agree that any disputes under or in relation to this Planning Agreement will be resolved in accordance with the Dispute Resolution Procedures.

13. GST

13.1 Construction

In this clause 13:

- (a) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

13.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are exclusive of GST.

13.3 Payment of GST – additional payment required

- (a) If GST is payable by an entity ("**Supplier**") in respect of any supply made under or referred to in this Deed ("**Relevant Supply**"), then the party required under the other provisions of this Deed to provide the consideration for that Relevant Supply ("**Recipient**") must pay an additional amount to the Supplier ("**GST Amount**"), as calculated under clause 13.3(b), 13.3(c) and/or 13.3(e).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Deed is a payment of money, the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate of GST for that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is **neither**:
 - (i) a payment of money; nor
 - (ii) a taxable supply,

("Non-taxable non monetary consideration"),

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the Non-taxable non-monetary consideration.
- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then subject to clause 13.3(e), no additional amount shall be payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding clause 13.3(d) , if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply ("**Supplier's taxable supply**") is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier in consideration for the Supplier's taxable supply ("**Recipient's taxable supply**") then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.

- (f) The recipient will pay the GST Amount referred to in this clause 0 in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

13.4 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under clause 0. If agreement cannot be reached prior to the time that a party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

13.5 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under clause 0. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

13.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the Recipient under clause 0 will be recalculated to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

13.7 Reimbursements

Where a party is required under this Deed 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) any additional amount payable under clause 0 in respect of that reimbursement.

13.8 Limited gross up – Minister

Notwithstanding any other provision of this clause 13, the Minister shall only be required to pay an additional amount to the Land Owner on account of GST:

- (a) equal to the amount of any input tax credit to which the Minister (or the relevant GST entity through which the Minister acts) is entitled in respect of any acquisition of a taxable supply made from the Land Owner; and
- (b) following receipt by the Minister (or the relevant GST entity through which the Minister acts) of the benefit of such input tax credit by way of refunded negative net amount or inclusion in the calculation of a net amount for a tax period which is greater than or equal to zero.

14. Overdue payments

- (a) The Land Owner agrees to pay the Minister interest on any amount payable by it under this Planning Agreement from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Land

Owner, calculated on daily balances. The rate to be applied to each daily balance is the rate 2% per annum above the Bank Bill Rate.

- (b) Interest which is not paid when due for payment may be capitalised by the Minister at intervals which the Minister determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 14.
- (c) The Land Owner's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this Planning Agreement.
- (d) If a liability under this Planning Agreement becomes merged in a judgment or order, then the Land Owner agrees to pay interest to the Minister on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 14.

15. Release and indemnity

- (a) The Land Owner agrees that the obligation to provide the Development Contributions is at the risk of the Land Owner. Except for the Excluded Risks, the Land Owner releases the Minister from any claim, liability or loss arising from, and Costs incurred in connection with, the Land Owner's obligation to provide the Development Contributions.
- (b) Except for the Excluded Risks, the Land Owner indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Land Owner's obligation to provide the Development Contributions in accordance with this Planning Agreement and/ or the Minister exercising the Minister's rights under or by virtue of paragraph 2 of Schedule 5.
- (c) The indemnity in clause 15(a) is a continuing obligation, independent of the Land Owner's other obligations under this Planning Agreement and continues after this Planning Agreement ends.

“Excluded Risks” means loss, liability and Costs incurred or suffered by the Minister arising from:

- (a) the imposition of GST (including losses or Costs arising due to the timing of a GST liability) other than any liability, directly or indirectly, for GST incurred or paid by the Minister in connection with an exercise of the Minister's rights under or by virtue of paragraph 2 of Schedule 5;
- (b) the negligence, non-compliance with Law, error or omission of the Minister or the Minister's employees, agents, advisers or contractors other than where the Minister exercises the Minister's rights under or by virtue of paragraph 2 of Schedule 5 in which case the risks excluded will be limited to that set out in (b) below;
- (c) the non-compliance with Law by the Minister or the Minister's employees, agents, advisers or contractors where the Minister exercises the Minister's rights under or by virtue of paragraph 2 of Schedule 5;
- (d) any appeal or legal challenge to the validity of any Approval or environmental planning instrument brought or commenced by a person other than the Land Owner; and

- (e) except to the extent excluded in this Planning Agreement, any appeal, proceeding, claim, action, review or dispute which the Land Owner is entitled to commence or bring at Law concerning the Development, Approvals and applications for Approvals relating to the Development.

16. Explanatory Note

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

17. Effect of Scheduled terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this Planning Agreement.

18. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 13.

Executed as a Deed.

Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application - (Section 93F(1)) The Land Owner has: <div> <div>(a)</div> <div>sought a change to an environmental planning instrument.</div> </div> <div> <div>(b)</div> <div>made, or proposes to make, a project application.</div> </div> <div> <div>(c)</div> <div>entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</div> </div>	<div> <div>(a)</div> <div>Yes</div> </div> <div> <div>(b)</div> <div>Yes</div> </div> <div> <div>(c)</div> <div>No</div> </div>
Description of the land to which this Deed applies- (Section 93F(3)(a))	The whole of the land described in Part B of Schedule 2.
Description of change to the environmental planning instrument to which this Deed applies- (Section 93F(3)(b))	An Amendment to the Major Development SEPP relating to the Land.
The scope, timing and manner of delivery of contribution required by this Planning Agreement - (Section 93F(3)(c))	See Schedule 3 to Schedule 5 inclusive.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is excluded.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is excluded.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is excluded.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 12 and Schedule 8.
Enforcement of this Deed - (Section 93F(3)(g))	See clause 8 and Schedule 9.
Registration of this Deed (Section 93F(3)(g)) The Parties agree that this Deed will be registered in accordance with clause 10.	Yes
No obligation to grant consent or exercise functions - (Section 93F(9))	See paragraph 9 of Schedule 12.

Schedule 2 - Project Land

Part A - Developer's Land

1. Title

The whole of the land described in:

Folio Identifier 1/1131320;

Folio Identifier 2/1131320;

Folio Identifier 2/33953;

Folio Identifier 1/76719;

Folio Identifier 1/709452;

Folio Identifier 1/807298;

Folio Identifier 1/185787;

Folio Identifier 1/191024; and

Auto-Consol 6023-118.

2. Development

The carrying out of all works to deliver, the built form and other works contemplated by the Concept Plan Approval.

Part B - Council Land

1. Description

The whole of the land described as:

Irving Lane, Chippendale between Carlton Street and Balfour Street (being part of the area on the map attached in annexure B indicated by the green shading marked "A");

Balfour Street, Chippendale between O'Connor Street and the southern boundary of Lot 1 DP 43731 (being part of the area on the map attached in annexure B indicated by the green shading marked "A");

Balfour Street, Chippendale between O'Connor Street and Wellington Street (being part of the area on the map attached in annexure B indicated by the green shading marked "B"); and

Kensington Street, Chippendale between Outram Street and Regent Street (being part of the area on the map attached in annexure B indicated by the green shading marked "C").

Schedule 3 - Development Contributions Schedule

1. Development Contributions -this Planning Agreement

The Land Owner undertakes to pay, make or provide the following Development Contributions as set out and provided for in the Table below.

Table 1 of Schedule 3

Column 1	Column 2
Development Contribution	Intended use
1. Main Park demolition, drainage and remediation works - \$3,000,000 (Security for which works is to be provided for in the sum of \$1,500,000 as indexed in accordance with Schedule 5).	<p>Demolition, drainage and remediation of, as required for public recreation in relation to the provision of:</p> <ul style="list-style-type: none">the Main Park being an area of approximately 6,300 m² (assuming the Land Owner is authorised by Council to carry out the relevant works to the relevant parts of the Council Land, or in the alternative, an area of approximately 4,862 m²).a stormwater detention system beneath Main Park for the purpose of detaining water to then feed back into the Sydney Water stormwater system.
2. Embellishment of Main Park - to a cost equivalent of a rate of \$560 per square metre (subject to indexation under Schedule 5) and the Dedication of that part of Main Park which is part of Developer's Land having an area of approximately 4,862 m ² (and security for which works and Dedication is to be provided for in the sum of \$3,000,000 as indexed in accordance with Schedule 5).	<p>Public recreation purposes in relation to:</p> <ul style="list-style-type: none">Main Park - the embellishment of a public park with an area of approximately 6,300 m² (assuming the Land Owner is authorised by Council to carry out the relevant works to the relevant parts of the Council Land, or in the alternative, an area of approximately 4,862 m).Public open space for passive recreation purposes.
3. NOT USED.	

<p>4. Road and pedestrian Contribution Works - (Security for which works is to be provided for in the sum of \$500,000 as indexed in accordance with Schedule 5).</p>	<p>Signalised at grade pedestrian crossings</p> <ul style="list-style-type: none"> • Across City Road at Myrtle Street to Victoria Park, • Across Regent Street to improve access to Prince Alfred Park.
<p>5. Balfour Street Park embellishment Contribution Works - to a cost equivalent of a rate of \$560 per square metre (security for which amount is to be provided for a sum determined in accordance with paragraph 1.1(a)(iv) of Schedule 9 as indexed in accordance with Schedule 5).</p>	<p>Embellishment of Balfour Street Park with an approximate area of 479 m².</p>
<p>6. Community Facilities:</p> <p>(a) Contribution Amount - \$2,725,000; or</p> <p>(b) works-in-kind for the provision and Dedication of a Community Facility to the Council, the costs of such works-in-kind to be equivalent to the value of the Community Facility Contribution Amount referred to in Item 6 of Column 1 of Table 1 of Schedule 3 if:</p> <p>(i) directed by the Council pursuant to paragraph 2.34 of Schedule 4; or</p> <p>(ii) elected by the Land Owner pursuant to paragraph 2.34A of Schedule 4</p> <p>(security for which Contribution Amount or works-in-kind and Dedication (as the case may be) is to be provided for in the sum of \$2,725,000 as indexed in accordance with of Schedule 5).</p>	<p>Provision of, or upgrade to, a Community Facility within the Chippendale locality.</p>

2. Development Contributions - conditions of consent

- (a) Subject to paragraph 2(b) of this Schedule 3, the Parties acknowledge and agree that the works set out in Table 2 of this Schedule 3 are anticipated to be the subject of Concept Plan Approval, Concept Plan Modification, one or more Project Approvals and/ or one or more Development Consents in relation to the Development. If the Concept Plan Approval, Concept Plan Modification, a Project Approval and/ or a Development Consent requires the provision of such works, then the particulars set out in Table 2 of this Schedule 3 are deemed to be Contribution Works (and Development Contributions) for the purposes for this Planning Agreement and are taken to be included in Table 1 of this Schedule 3 as if those particulars were expressly set out in Table 1 of this Schedule 3, with any necessary changes made, to the intention and effect that the works referred to in Table 2 of this Schedule 3 must be provided by the Land Owner as if they are Contribution Works for the purpose of, and on the terms of, this Planning Agreement.
- (b) Paragraph 2(a) of this Schedule 3 operates and is effective on the basis that:
 - (i) the timing of the delivery and the provision of security (if any) for those Works set out in Table 2 of this Schedule 3 will be a matter for the relevant Development Consent or Project Approval and not this Planning Agreement; and
 - (ii) except for Item 1 of Column 1 of Table 2 of Schedule 3, there are no costings nominated in Table 2 of Schedule 3 because the scope of the Contribution Works will be determined in accordance with the relevant Approvals.

Table 2 of Schedule 3

Column 1	Column 2
Development Contribution	Intended use
1. Embellishment of Other Parks- such embellishment to be to a cost equivalent of a rate of \$560 per square metre (subject to indexation under Schedule 5).	<p>Remediation (if required) and embellishment for passive public recreation purposes:</p> <ul style="list-style-type: none"> Wellington Street Park - site 5 in the Modified Concept Plan with a minimum area of 650 m² adjacent to Wellington Street. Irving Street Park - site 3 in the Modified Concept Plan. O'Connor Street Park - site 4 in the Modified Concept Plan.
2. Other Embellishment and Dedication.	<ul style="list-style-type: none"> The remediation (if required) and embellishment of site 7 in the Modified Concept Plan (Brewery Yard) and site 8 in the Modified Concept Plan (Brewery Site forecourt) which will be privately owned but must be made available as publicly accessible areas. The remediation (if required) and embellishment of site 11 in the Modified Concept Plan (which is owned by the Council). The remediation and embellishment of site 12 in the Modified Concept Plan, and the Dedication of site 12 after such remediation and embellishment, to the Council. The remediation (if required) and embellishment of the shared zones coloured dark blue on the Modified Concept Plan will be Dedicated (in stratum) by the Land Owner to the Council.
3. Childcare Facility.	Provision of child care spaces in a facility(ies) that will be privately owned and operated, at a rate consistent with the <i>City of Sydney Child Care DCP</i> current at the date of this Planning Agreement.

<p>4. Roads and footpaths.</p>	<p>Internal Roads:</p> <ul style="list-style-type: none"> • Remediation (if necessary) and construction of those roads identified as internal roads on the Concept Plan Modification, including kerbs and guttering, pavement treatments, light, power and other utilities, planting and street furniture. • Site 13 in the Public Domain Plan which is owned by the Council will be reconstructed as part of Carlton Street. • All internal roads within the development site to be Dedicated to the Council as public roads, except for Site 17 and any other internal road coloured dark blue on the Public Domain Plan. • Site 6 in the Public Domain Plan is to be Dedicated to create Wellington Street as a public road with a footpath to be constructed. • Signalised at grade pedestrian crossing across Abercrombie Street in the vicinity of O'Connor Street. <p>New Intersections:</p> <ul style="list-style-type: none"> • At Broadway and Balfour Street an intersection including a full right hand turn in and out and left hand turn in and out (with adjustments necessary to Broadway) with pedestrian intersection. • Regent and Old Kent St Roads to include a left and right hand turn in and a left and right hand turn out of the Site. • Abercrombie and O'Connor Streets to provide right hand turns in and out of the Site. • Abercrombie and Irving Streets to provide right hand turns in and out of the Site. <p>External Footpaths and Road Works:</p> <ul style="list-style-type: none"> • O'Connor and Kensington Streets to be upgraded.
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Schedule 4 - Development Contribution Procedures

1. Land Owner's undertakings

The Land Owner undertakes:

- (a) to pay the Contribution Amount set out in item 6 of column 1 of Table 1 in Schedule 3 to the Minister as contemplated by, and in accordance with, the Development Contributions Timetable, or otherwise construct works-in-kind to provide a Community Facility and Dedicate that Community Facility to the Council in accordance with the provisions of paragraph 2.34 of Schedule 4;
- (b) to carry out or procure the carrying out of, the design and construction of the Contribution Works set out (or taken to be set out in) Table 1 in Schedule 3 as contemplated by, and in accordance with:
 - (i) Paragraph 2 of this Schedule 4; and
 - (ii) the Development Contributions Timetable so as to ensure that Practical Completion of each Contribution Works Portion is achieved by the relevant Date for Practical Completion for each such Contribution Works Portion or as otherwise provided for in any relevant Project Approval or Development Consent;
- (c) to use all reasonable endeavours to Dedicate to the Council Main Park and its improvements by 31 December 2010; and
- (d) to consult regularly with the Minister, respond within a reasonable period to the Minister's questions, queries and enquiries (acting reasonably) and generally keep the Minister informed regarding the progress of the Development to the extent such matters relate to the payment, or provision, of a Development Contribution.

2. Contribution Works Procedures

2.1 Approvals

The Land Owner must at its risk and expense:

- (a) prepare all Applications and obtain all Approvals (and Contribution Works Approvals) necessary to carry out the Contribution Works; and
- (b) comply with all conditions of all such Approvals (and Contribution Works Approvals); and
- (c) consistent with the Public Domain Plan and this Planning Agreement, subdivide the Land by a plan of subdivision or more than one such plan to create separate lots in relation to each part of the Contribution Works to be Dedicated; and
- (d) create such the easements, restrictions on use and covenants as the Minister determines, acting reasonably, are necessary or usual in the circumstances to permit and promote public access to the roads and open spaces contemplated by this Planning Agreement, which easements, restrictions on use or covenants must be registered at or about the same time as the relevant plan of subdivision and may do so on the basis that those easements, covenants and restrictions are not released, varied or modified without the consent of the Minister.

2.1A Contribution Works Approvals

Despite any other provision of this Planning Agreement, the Minister agrees the Land Owner is released from its obligations to provide such of the Contribution Works referred to in item 4 of Table 1 of Schedule 3 for which the Land Owner cannot procure any required Contribution Works Approval.

2.1B Owner's Consent Deed

- (a) The parties acknowledge that the Land Owner has entered into the Owner's Consent Deed with the Council on terms generally consistent with this Planning Agreement under which the Council consents to the lodgement of applications for relevant Approvals and the Land Owner accessing the Council Land, carrying out and completing, or procuring the carrying out and completion of, the Land Owner's Council Works and the Dedication of the Main Park and its improvements to the Council in accordance with paragraph 1(c) of Schedule 4.
- (b) The Land Owner undertakes to comply with its obligations under the Owner's Consent Deed in relation to the Contribution Works and the Development Contributions in column 1 of Table 2 to Schedule 4 (as relevant), including the carrying out of the Contribution Works and Development Contributions in column 1 of Table 2 to Schedule 4 (as relevant) in accordance with that deed.

2.2 Design responsibility

The Land Owner agrees to procure the design of the Contribution Works (and to achieve Practical Completion of each Contribution Works Portion) in accordance with this Planning Agreement.

2.3 Construction phase

The Land Owner must:

- (a) procure the execution and completion of the Contribution Works in accordance with:
 - (i) the Approvals;
 - (ii) its other obligations under this Planning Agreement; and
- (b) ensure that the Contribution Works do not encroach onto land adjoining the Developer's Land except as otherwise provided in this Planning Agreement.

2.4 Review of Contribution Works and Construction Documents

The Land Owner acknowledges and agrees that:

- (a) the Minister is not obliged to critically analyse the plans and specifications of the Contribution Works; and
- (b) the Minister is not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Contribution Works; and
- (c) the Minister is not liable for any liability, loss or Cost incurred by the Land Owner because of any defect in the design or construction of any part of the Contribution Works; and

- (d) no comment, review or information supplied to the Land Owner by the Minister alters or alleviates the Land Owner from its obligation to construct and complete the Contribution Works in accordance with this Planning Agreement.

2.5 Land Owner responsibilities

The Land Owner is responsible for:

- (a) (subject to paragraph (b)), the care of the Contribution Works at all times until the later of Practical Completion or Dedication; and
- (b) the repair and maintenance of the public roads and footpaths for a period of 3 years after the Dedication of such public roads and footpaths to the Council; and
- (c) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Developer's Land where failure to do so may render the Minister or the Land Owner liable under the Law until the later of Practical Completion of the Contribution Works or their Dedication; and
- (d) until the later of Practical Completion of the relevant Contribution Works Portion or Dedication of the relevant part of the Developer's Land, taking any urgent action in relation to the Developer's Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Minister or the Land Owner liable under the Law.

In addition to any other remedies of the Minister, the Minister may take urgent action in the case of an emergency to protect people or property and the costs and liabilities incurred or suffered by the Minister in taking such urgent action constitutes a debt due from the Land Owner to the Minister payable on demand and the Land Owner will keep the Minister indemnified in respect of all such costs and liabilities.

2.6 Damage

If the Land Owner or the employees or agents of the Land Owner damage property, including public utilities and services or property on or adjacent to the Developer's Land, until the later of Practical Completion of the Contribution Works or their Dedication, the Land Owner must promptly make good the damage and pay any compensation which the Law requires the Land Owner to pay.

2.7 Good Industry Practice

The Land Owner must ensure that the Contribution Works it has procured to be designed and carried out are designed and carried out according to Good Industry Practice.

2.8 Quality of Material and Work

The Land Owner must procure the Contribution Works to be carried out:

- (a) using good quality materials, which must be suitable for the purpose for which they are required under this Planning Agreement;
- (b) without the use of asbestos in any form;
- (c) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia as determined by the Commonwealth of Australia and any relevant manufacturers' standards;

- (d) so that the Contribution Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals.

2.9 Insurance

The Land Owner must ensure that there is effected and maintained an insurance policy covering such risks, and on terms, reasonably acceptable to the Minister including physical loss, damage or destruction of the Contribution Works (including any associated temporary works), third party liability, contractors and professional indemnity insurance. The policy must provide cover for the period from the date of the commencement of construction of the Contribution Works until the end of any relevant defects liability period.

2.10 Amount of property insurance

The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the Contribution Works on a full reinstatement and replacement basis (including extra costs of reinstatement, costs of demolition and removal of debris, and professional fees).

2.11 Insurance generally

All insurances which the Land Owner is required by this Deed to effect and maintain:

- (a) must be with insurers and on terms consistent with good construction industry practice;
- (b) must note the rights and interests of the Minister; and
- (c) must not in any respect limit or derogate from the liabilities or obligations of the Land Owner under this Planning Agreement.

2.12 Providing proof of insurance

Whenever reasonably requested in writing by the Minister, the Land Owner must give the Minister certificates of the insurance policies which the Land Owner is required by this Planning Agreement to effect and maintain.

2.13 Premiums

The Land Owner must punctually pay all premiums in respect of all insurances.

2.14 Additional Obligations

The Land Owner must:

- (a) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy; and
- (b) if necessary, rectify anything which might prejudice any insurance policy; and
- (c) reinstate an insurance policy if it lapses; and
- (d) immediately notify the Minister in writing if an insurer gives notice of cancellation in respect of any insurance policy; and

- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

2.15 Application of insurance proceeds

If all or any part of the Contribution Works is damaged or destroyed prior to Practical Completion thereof:

- (a) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Contribution Works; and
- (b) if the insurance proceeds received under the Insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Contribution Works (or those insurances are void or unenforceable and there are no proceeds), the Land Owner must complete the repair and replacement of the Contribution Works using its own funds; and
- (c) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the costs of repairing or replacing the Contribution Works, the Land Owner will be entitled to keep that excess.

2.16 Input tax credits

Where the Land Owner has effected any insurance policy referred to in this Planning Agreement before the date of this Planning Agreement, that party:

- (a) warrants that it informed the insurer of the extent of its entitlement to an input tax credit for the last premium it paid at or before the time of first making any subsequent claim under the insurance policy; and
- (b) must inform the insurer of the extent of its entitlement to an input tax credit for any future premium it pays immediately after paying that premium.

Where the Land Owner effects any insurance policy referred to in this Planning Agreement after the date of this Planning Agreement, the Land Owner must inform the insurer of the extent of its entitlement to an input tax credit for any premium it pays immediately after paying that premium.

2.17 Certification

When the Land Owner is of the opinion that a Contribution Works Portion has been reached Practical Completion, the Land Owner must:

- (a) request the Certifier to issue a Certificate of Practical Completion; and
- (b) at the same time give the Minister a copy of that request.

2.18 Certifier to respond

Within 10 Business Days after the receipt of the Land Owner's request, the Certifier must either:

- (a) give the Land Owner (with a copy to the Minister at the same time) a Certificate of Practical Completion certifying that the Contribution Works Portion has been reached Practical Completion; or

- (b) give the Land Owner (with a copy to the Minister at the same time) the reasons for not issuing that certificate and provide a detailed list of work required to be completed in order for that certificate to be issued.

2.19 Dispute where no Certificate of Practical Completion

If within 10 Business Days after receipt of the Land Owner's request the Certifier does not either issue the Certificate of Practical Completion of the Contribution Works Portion or give the Land Owner reasons for not issuing the certificate, then either the Minister or the Land Owner may regard the circumstances as constituting a dispute between the Minister and the Land Owner.

2.20 Carrying out required work

On receipt of the detailed list referred to in paragraph 2.18(b), the Land Owner must carry out the work referred to in that list and, on completion of that work, request the Certifier to issue a Certificate of Practical Completion. If the Certifier is satisfied that all such work has been completed in accordance with this Deed then, the Certifier must issue the Certificate of Practical Completion within 10 Business Days after receipt of the Land Owner's request. Otherwise the provision of paragraphs 2.18 to 2.20 inclusive re-apply.

2.21 Prerequisites for Certificate of Practical Completion

Despite paragraph 2.18, a Certificate of Practical Completion may not issue unless and until:

- (a) the Land Owner has given the Minister a survey prepared by a licensed surveyor showing the location of the relevant Contribution Works Portion;
- (b) where relevant copies of all necessary documents and Approvals issued by the Consent Authority or relevant accredited certifier acknowledging completion of the Contribution Works Portion, and if appropriate permitting use and occupation of the Contribution Works Portion, including a Compliance Certificate and an Occupation Certificate (if required) have been delivered to the Minister; and
- (c) copies of all other certificates, consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of each relevant part of the Contribution Works have been delivered to the Minister.

2.22 Providing documents to the Minister

If and to the extent reasonably required (and not otherwise previously delivered to the Minister) promptly, and in any event within 90 Business Days, after Practical Completion, the Land Owner must do all things required to procure the issue and delivery to the Minister of copies of the following items in relation to each Contribution Works Portion:

- (a) a copy of as-built drawings and all warranties and operations manuals given in connection with the Contribution Works Portion; and
- (b) all certificates issued by any Authority in relation to any part of the Contribution Works Portion which have not previously been delivered to the Minister.

2.23 Effect of Certificates

The issue of a Certificate of Practical Completion is evidence that Practical Completion has been achieved, but not an acknowledgment that otherwise the Land Owner has complied with its obligations under this Planning Agreement.

2.24 Rectification

- (a) As soon as possible after the Date of Practical Completion the Land Owner must rectify any defects or omissions in the relevant Contribution Works and the roads and footpaths referred to in item 3 of Table 2 to Schedule 3.
- (b) At any time during the period commencing on the Date of Practical Completion and ending on the date being 12 months later, the Minister may inspect the Contribution Works Portion and the works carried out by the Land Owner referred to in item 3 of Table 2 to Schedule 3 for the purpose of ascertaining what defects and omissions (if any) in the Contribution Works Portion and the works carried out by the Land Owner referred to in item 3 of Table 2 to Schedule 3 are required to be made good by the Land Owner.
- (c) The Minister may give notice to the Land Owner that:
 - (i) part of the Contribution Works Portion or the works carried out by the Land Owner referred to in item 3 of Table 2 to Schedule 3 is defective, giving details; and
 - (ii) the works required to rectify the defect; and
 - (iii) provides an estimate of the Costs to rectify such works; and
 - (iv) allows the Land Owner a reasonable period to rectify such works.
- (d) If the Land Owner fails to complete or rectify such works within the period required by a notice issued under paragraph 2.24(c), then the Minister may have such works completed or rectified at the Land Owner's expense.
- (e) The estimated amount will be a debt due from the Land Owner to the Minister payable on demand and amounts so paid must be applied by the Minister in completing or rectifying such works.
- (f) If the amount estimated is less than the actual Costs incurred by the Minister in completing or rectifying such works under this paragraph the shortfall will be a debt due by the Land Owner to the Minister payable on demand.
- (g) If the amount estimated (and that amount has been paid by the Land Owner to the Minister) is greater than the actual Costs incurred by the Minister in completing or rectifying such works under this paragraph the excess will be a debt due by the Minister to the Land Owner payable on demand at any time after such works have been completed or rectified.

2.25 Detailed design and specification process

The Parties agree to implement and comply with the following process for detailing the plans and specifications of each Contribution Works Portion:

- (a) the final plans and specifications must be agreed by the Minister and the Land Owner before the Project Approval Application for development of built form which will have a floor space in excess of 49,999 square metres is granted;
- (b) in this regard, the Parties must use their best endeavours to obtain the co-operation and consent of the Council to carry out such works (to the extent that such works will be carried out on the Council's Land and/ or the land on which such works are carried out are proposed to be Dedicated to the Council upon Practical Completion of the relevant Contribution Works Portion);
- (c) those plans and specifications must be prepared on the basis that the cost of carrying out and completing each Contribution Works Portion will be equivalent to the relevant amounts referred to in column 1 of Table 1 to Schedule 3 (as indexed in accordance with Schedule 5); and
- (d) then the Land Owner's obligations to provide the Contribution Works will relate to the works on the basis of those agreed plans and specifications, with the Land Owner accepting the risk that the actual cost of delivery of those works may exceed the amounts referred to in column 1 of Table 1 to Schedule 3 (as indexed in accordance with Schedule 5).

For the purposes of paragraph 2.25(b) and paragraph 2.25(c) of Schedule 4, the Parties will have regard to any cost report prepared by a City of Sydney registered quantity surveyor providing details of the anticipated costs of carrying out and completing each Contribution Works Portion. The Parties also agree that the cost of carrying out and completing any Contribution Works to the extent it includes embellishments to "Main Park" may include direct external design costs but only to an amount, including GST, that does not exceed \$335,000.

2.26 Standards

The Parties agree that in working up and agreeing the detailed design and specifications of the Contribution Works regard shall be had to the following:

- (a) For childcare facilities – relevant development control plans of the Council;
- (b) for the design and construction of the internal roads including:
 - kerb and guttering;
 - pavement treatment;
 - lighting, power and other public utilities;
 - planting;
 - street furniture,
 the Council's standards;
- (c) for public open space or public roads to be Dedicated - a standard appropriate for their intended use;
- (d) for all electricity infrastructure underground - Energy Australia standards;
- (e) the relevant transport and roadworks:

- for Broadway and Balfour Street - the need for a full right-hand turn in and out and left hand turn in and out, a pedestrian intersection and required upgrades of Broadway;
 - for Regent Street and Old Kent Roads - the need for left and right-hand turn in and left and right-hand turn out of the site;
 - for Abercrombie and Irving Streets - the need for right-hand turns in and out of the site;
 - for Abercrombie and O'Connor Streets - the need for right hand turns in and out of the site;
- (f) for external footpaths and roadworks - the Central Sydney Paving Design Policy and Interim Guidelines (and such work to include the reconfiguration of Wellington Street for footpath widening, including planting of street trees);
- (g) the upgrade of O'Connor Street and Kensington Street - South Sydney City Council Development Specification for Civil Works;
- (h) for public art - a standard approved by a public art consultant approved by the Minister with reference to the City of Sydney Public Art Policy and Public Art Developer Guidelines;
- (i) other relevant standards to which the design and construction of the Contribution Works including:
- road construction including drainage - South Sydney City Council Development Specification for Civil Works;
 - footpaths - Central Sydney Paving Design Policy and Interim Guidelines;
 - kerb and gutter - Central Sydney Paving Design Policy and Interim Guidelines;
 - services infrastructure - the relevant Australian Standards Public Utility Specifications and the City of Sydney Exterior Lighting Strategy;
 - lighting - the City of Sydney Exterior Lighting Strategy;
 - street trees - City of Sydney Tree Master Plan 2004.

2.27 Not used

2.28 Standards as conditions of Approval

The Parties agree that to the extent the Land Owner's obligation to carry out the Contribution Works referred to in paragraphs 2.26 and 2.27 above in accordance with the standards and codes referred to in those paragraphs are inconsistent with the requirements of any condition in any relevant Project Approval or Development Consent, the requirements of that Project Approval or Development Consent shall prevail.

2.29 Not used

2.30 Requirements in respect of road and pedestrian Contribution Work

- (a) The Council or a Government authority may carry out the works specified in Item 4 of Column 1 of Table 1 in Schedule 3 with the consent of the Minister in lieu of the Land Owner carrying out those works in accordance with the provisions of this Deed.
- (b) Before the Land Owner seeks the Minister's consent for the Council or a Government authority to carry out the works referred to in paragraph Schedule 42.30(a) of Schedule 4, the Land Owner must obtain the agreement of the Council or the relevant Government authority to carry out those works in accordance with the terms of this Deed.
- (c) If the Minister gives its consent (in its sole and unfettered discretion) and the Council or Government authority carries out those works, then the Land Owner must pay to:
 - (i) the Council (if the Council carries out those works); or
 - (ii) the Minister (if a Government authority carries out those works),the anticipated costs of the Council or the Government authority (as relevant) in carrying out those works, such anticipated costs not to exceed \$500,000 (as indexed under Schedule 5 from the 2007 Commencement Date), within 90 days of receiving a tax invoice from the Council or the Minister as relevant.

2.31 Requirements for Balfour Street Park Works

- (a) Without limiting the Land Owner's other obligations under this Schedule 4 in respect of the design of the Balfour Street Park Works, the Land Owner must consult the Council as to the design of the Balfour Street Park Works, and the Land Owner must prepare the design of the Balfour Street Park works having regard to its consultations with the Council and to any relevant Council Standards applicable at the relevant time.
- (b) The Land Owner must use reasonable endeavours to complete the Balfour Street Park Works as soon as reasonably practicable, and in any case by 30 June 2010, and consistent with the terms of the Concept Plan Modification and any other relevant Approval.
- (c) The Council may carry out the Balfour Street Park Works with the consent of the Minister in lieu of the Land Owner carrying out those works in accordance with this Deed.
- (d) Before the Land Owner seeks the Minister's consent for the Council to carry out the Balfour Street Park Works (rather than the Land Owner), the Land Owner must obtain the agreement of the Council to carry out those works in accordance with the terms of this Deed. If the Minister gives its consent (in its sole and unfettered discretion) and the Council completes the Balfour Street Park Works, the Land Owner must reimburse the Council for the Council's actual costs of completing those works (to a maximum of \$560 per square metre (subject to indexation under Schedule 5)), within 90 days of receiving a tax invoice from the Council.

2.32 Requirements for certain sites identified in the Modified Concept Plan

Sites 3, 4, 5, 7, 10, 16, 17, 18 and 20 in the Modified Concept Plan may be privately owned, however the Land Owner must ensure that these sites are made accessible to the public in accordance with the requirements of any project approvals, development consents and the Owner's Consent Deed.

2.33 Not used

2.34 Requirements in respect of Community Facilities works

- (a) Notwithstanding the Land Owner's obligations to pay the Community Facilities Contribution Amount referred to in Item 6 of Column 1 of Table 1 of Schedule 3, the Council may direct the Land Owner to construct works-in-kind to provide a Community Facility on the Site by 31 December 2015, as an alternative to paying the Community Facilities Contribution Amount.
- (b) Where the Council directs the Land Owner to construct works-in-kind to provide a Community Facility on the Site, the Land Owner must as soon as reasonably practicable after such direction provide the following to the Minister:
 - (i) details of the costs of the works (which must be equivalent to the value of the Community Facility Contribution Amount referred to in Item 6 of Column 1 of Table 1 of Schedule 3 (subject to indexation in accordance with Schedule 5 from the Commencement Date));
 - (ii) details of the design, location and proposed timing of the works; and
 - (iii) evidence of the Council's consent to all aspects of the proposed Community Facility.
- (c) The Minister agrees that the Land Owner will be deemed to have satisfied its obligations to pay the Community Facilities Contribution Amount to the Minister as required by Item 6 of Column 1 of Table 1 of Schedule 3 where:
 - (i) the Council has directed the Land Owner to construct works-in-kind to provide a Community Facility on the Site;
 - (ii) the Land Owner has complied with paragraph 2.34(b) of Schedule 4;
 - (iii) the Land Owner has completed the works to construct the Community Facility pursuant to paragraph 2.34(a) of Schedule 4 to the satisfaction of the Council; and
 - (iv) the Land Owner has Dedicated the Community Facility to the Council.
- (d) The Minister acknowledges and agrees that for the purposes of this Deed, "Gross Floor Area" of any Community Facility provided by the Land Owner on the Site is not to be taken into account when calculating the Floor Space Ratio and does not form a part of the total "Gross Floor Area" of the Site.

2.34A Land Owner may elect to carry out Community Facilities works

- (a) Where the Council has not directed the Land Owner to construct works-in-kind to provide a Community Facility on the Site pursuant to paragraph 2.34 of Schedule 4, the Land Owner may approach the Minister with a proposal to construct works-in-

kind to provide a Community Facility on the Site, as an alternative to paying the Community Facilities Contribution Amount. Any such proposal must include:

- (i) details of the costs of the works (which must be equivalent to the value of the Community Facility Contribution Amount referred to in Item 6 of Column 1 of Table 1 of Schedule 3 (subject to indexation in accordance with Schedule 5 from the Commencement Date));
 - (ii) details of the design, location and proposed timing of the works; and
 - (iii) evidence of the Council's consent to all aspects of the proposal.
- (b) The Minister will act reasonably in considering any such proposal provided to it by the Land Owner.
- (c) The Minister agrees that if it accepts the Land Owner's proposal to construct works-in-kind to provide a Community Facility on the Site, the Land Owner must carry out and complete those works by the Second Practical Completion Date and in accordance with the designs submitted with the Land Owner's proposal, all relevant Approvals, and otherwise in accordance with this Schedule 4.
- (d) If the Minister is reasonably satisfied that the Land Owner has completed such works pursuant to paragraph 2.34A(c) of Schedule 4 (and the costs of those works are equivalent to the value of the Community Facility Contribution Amount referred to in Item 6 of Column 1 of Table 1 of Schedule 3 (subject to indexation in accordance with Schedule 5 from the Commencement Date)):
 - (i) the Minister must notify the Land Owner of such satisfaction and direct the Land Owner to Dedicate the Community Facility to the Council in that notice; and
 - (ii) the Land Owner must Dedicate the Community Facility to the Council in accordance with the Minister's directions within 60 days of such notice.
- (e) If the Land Owner has constructed a Community Facility and Dedicated that Community Facility to the Council, the Land Owner will be deemed to have satisfied its obligations to pay the Community Facilities Contribution Amount to the Minister as required by Item 6 of Column 1 of Table 1 of Schedule 3.
- (f) The Minister acknowledges and agrees that for the purposes of this Deed, "Gross Floor Area" of any Community Facility provided by the Land Owner on the Site is not to be taken into account when calculating the Floor Space Ratio and does not form a part of the total "Gross Floor Area" of the Site.

Schedule 5 - Development Contributions Timetable

1. Land Owner's Council Works

The Minister acknowledges that the Land Owner has entered into the Owner's Consent Deed with the Council on terms generally consistent with this Planning Agreement under which the Council consents to the lodgement of applications for relevant Approvals and the Land Owner accessing the Council Land, carrying out and completing, or procuring the carrying out and completion of, the Land Owner's Council Works and the Dedication of the Main Park and its improvements to the Council in accordance with paragraph 1(c) of Schedule 4.

2. Land Owner's failure to deliver Contribution Works

In the event the Land Owner fails to achieve Practical Completion of any part of a Contribution Works Portion by the Date for Practical Completion of that Contribution Works Portion or such other nominated date set out in Table 1 of Schedule 5, then the Minister may, at his discretion, elect to carry out such of that Contribution Works Portion required to achieve Practical Completion of that Contribution Works Portion, in which case:

- (a) the Land Owner agrees to pay to the Minister on demand and without set-off or deduction, all costs and expenses incurred by the Minister in carrying out any works required to achieve Practical Completion of the relevant Contribution Works Portion;
- (b) if the Land Owner fails to pay such amounts required in accordance with paragraph 2(a) above, then the Land Owner hereby irrevocably acknowledges and agrees that the Minister may claim upon the Bank Guarantee for such amounts as the Land Owner has failed to pay to the Minister under or by virtue of Schedule 52(a) of this Schedule 5; and
- (c) the Land Owner indemnifies the Minister against all claims, liabilities and losses arising from, and all costs, charges and expenses incurred in connection with, the Minister carrying out any works required to achieve Practical Completion of the relevant Contribution Works Portion and exercising his rights under or by virtue of paragraph 2 of this Schedule 5, to the extent those costs, charges and expenses are not recovered under paragraph Schedule 52(b) of this Schedule 5.

Contribution Amount

Table 1 - Contribution Amount

Column 1	Column 2	Column 3	Column 4
Development Contribution	Contribution Amount	Date for Practical Completion of Contribution Works/Payment of Contribution Amount	Bank Guarantee Amount
1. Item 1 Table 1 Schedule 3 Main Park demolition, drainage and remediation Works - \$3,000,000 and security for which works is to be provided for the sum of \$1,500,000.	$A = CA \times \frac{C}{Z}$	31 December 2010 (subject to any extension of time granted by the Council to the Land Owner under clause 5 of the Owner's Consent Deed.	$A = CA \times \frac{C}{Z}$
2. Item 2 Table 1 Schedule 3 Main Park Embellishment - to an amount equivalent to a rate of \$560 per square metre and the Dedication of that part of Main Park which is part of Developer's Land having an area of approximately 4,862 m ² and security for which works and Dedication is to be provided for the sum of \$3,000,000.	$A = CA \times \frac{C}{Z}$	31 December 2010 (subject to any extension of time granted by the Council to the Land Owner under clause 5 of the Owner's Consent Deed).	$A = CA \times \frac{C}{Z}$
3. Item 4 Table 1 Schedule 3 Road and pedestrian Contribution Works - \$500,000 and security for which works is to be provided for the sum of \$500,000.	$A = CA \times \frac{C}{Z}$	Second Practical Completion Date.	$A = CA \times \frac{C}{Z}$
4. Item 5 Table 1 Schedule 3 Balfour Street Park embellishment and contribution Works - to a cost equivalent of a rate of \$560 per square metre and security for which works is to be provided for the sum which is determined in accordance with paragraph 1.1(a)(iv) of Schedule 9.	$A = CA \times \frac{C}{Z}$	30 June 2010 (subject to any extension of time granted by the Council to the Land Owner under clause 5 of the Owner's Consent Deed).	$A = CA \times \frac{C}{Z}$

Column 1	Column 2	Column 3	Column 4
Development Contribution	Contribution Amount	Date for Practical Completion of Contribution Works/Payment of Contribution Amount	Bank Guarantee Amount
<p>5. Item 6 Table 1 Schedule 3</p> <p>Community Facilities:</p> <p>(a) Contribution Amount - \$2,725,000; or,</p> <p>(b) works-in-kind for the provision and Dedication of a Community Facility to the Council, the costs of such works-in-kind to be equivalent to the value of the Community Facility Contribution Amount referred to in Item 6 of Column 1 of Table 1 of Schedule 3 if:</p> <p>(i) directed by the Council pursuant to paragraph 2.34 of Schedule 4; or</p> <p>(ii) elected by the Land Owner pursuant to paragraph 2.34A of Schedule 4</p> <p>(security for which Contribution Amount or works-in-kind and Dedication (as the case may be) is to be provided for in the sum of \$2,725,000 as indexed in accordance with of Schedule 5).</p>	$A = CA \times \frac{C}{D}$	<p>(a) Second Practical Completion Date for:</p> <p>(i) the payment of the Contribution Amount; or</p> <p>(ii) the provision and the Dedication of a Community Facility to the Council by the Land Owner, pursuant to an election by the Land Owner under paragraph 2.34A of Schedule 4.</p> <p>(b) 31 December 2015 for the provision and the Dedication of a Community Facility to the Council by the Land Owner pursuant to a direction by the Council under paragraph 2.34 of Schedule 4.</p>	$A = CA \times \frac{C}{D}$

Column 1	Column 2	Column 3	Column 4
Development Contribution	Contribution Amount	Date for Practical Completion of Contribution Works/Payment of Contribution Amount	Bank Guarantee Amount
6. Item 1 Table 2 Schedule 3 Embellishment of Other Parks.	$A = CA \times \frac{C}{Z}$	Refer to paragraph (b) of Schedule 3 - the timing of delivery and the provisions of security (if any) for Item 1, Table 2 of Schedule 3 will be a matter for the relevant Development Consent or Project Approval.	Refer to paragraph (b) of Schedule 3 - the timing of delivery and the provisions of security (if any) for Item 1, Table 2 of Schedule 3 will be a matter for the relevant Development Consent or Project Approval.

The amount referred to in:

- (a) Items 4 and 6 of Column 1 of Table 1 and Item 1 of Column 1 of Table 2 above shall be increased or decreased (as the case may be) in accordance with the formula in Column 2 of Table 1 above.
- (b) Item 1, 2 and 5 of Column 1 of Table 1 above shall be increased or decreased (as the case may be) in accordance with the formula in Column 2 of Table 1 above, on and from the day immediately following the date contemplated in Column 3 of Table 1 above (without any extension to that date, despite any extension of time granted in respect of that date by the Council to the Land Owner under clause 5 of the Owner's Consent Deed), if the relevant works are not completed by the date contemplated in Column 3 of Table 1 above (without any extension to that date, despite any extension of time granted in respect of that date by the Council to the Land Owner under clause 5 of the Owner's Consent Deed).

Where:

A means the increased or decreased quantum of each amount referred to in Column 1 of Table 1 above.

CA means the amount set out in Column 1 of the Table 1 above.

BPI means the Building Price Index published by the NSW Department of Commerce, or if that index is no longer published, then any other index which, in the reasonable opinion of the Minister, is a similar index.

C = the most recent BPI published prior to the date that payment is due to be made or the relevant;

D = the most recent BPI published before the Commencement Date; and

Z = the most recent BPI published before the 2007 Commencement Date.

For the avoidance of doubt, the amount of the relevant payment may be increased and decreased.

Schedule 6 - Release and Discharge Terms

1. Release and Discharge Terms

- (a) To the extent the Land Owner has satisfied its obligations under this Planning Agreement in respect of that part of the Developer's Land, the Minister agrees to provide a release and discharge of this Planning Agreement with respect to any part of the Developer's Land:
 - (i) if the Land Owner requests a partial release and discharge of this Planning Agreement for the purpose of selling part of the Developer's Land as a Developed Lot provided that the Minister is satisfied (acting reasonably) that it is reasonable for the Land Owner to market such parts of the Developer's Land for that particular stage of the Development at the relevant time and that the Land Owner's obligations under this Planning Agreement are otherwise adequately secured to the Minister; and
 - (ii) if the Land Owner requests a partial release and discharge of this Planning Agreement in connection with the completion of a sale contract for a Developed Lot; and
 - (iii) if the Land Owner requests a partial release and discharge of this Planning Agreement to effect the transfer of part of the Developer's Land to the Council or any other authority pursuant to this Planning Agreement.
- (b) Once the Minister is satisfied that the Land Owner has fully complied with all of its obligations under this Planning Agreement, the Minister agrees to provide a full release and discharge of this Planning Agreement with respect to the whole of the Developer's Land.

Schedule 7 - Review or Replacement Procedures

1. Review or Replacement Procedures

The Parties may agree to review this Planning Agreement. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties. For clarity, no such review or replacement shall have any force or effect unless and until formal legal documents are signed by the Parties.

Schedule 8 - Dispute resolution

1. Notice of Dispute

If a dispute between any of the Parties arises in connection with this Planning Agreement or its subject matter, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this Planning Agreement if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further steps required before proceedings

Any dispute between the Parties arising in connection with this Planning Agreement or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

3. Disputes for expert determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with the requirements of this Schedule 8.

3A. Expert Determination on Security

- (a) The Parties agree that this paragraph 3A applies to disputes arising from any determination made by the Minister pursuant to paragraphs 1.1(a) and 1.1(b) of Schedule 9 of this Planning Agreement.
- (b) The Parties agree that any dispute referred to in paragraph 3A(a), will be referred for expert determination in accordance with paragraph 4 and paragraphs 3A(c) and (d).
- (c) Subject to paragraph 3A(d), if the expert determines that the relevant Bank Guarantee is to have a face value of a higher amount than the amount in Column 1 of Table 1 in Schedule 3 (as indexed in accordance with the indexation formula in Column 2 of Table 1 in Schedule 5), then the amount determined by the expert is final.
- (d) If the expert determines that the relevant Bank Guarantee is to have a face value of a lower amount than the amount in Column 1 of Table 1 in Schedule 3 (as indexed in accordance with the indexation formula in Column 2 of Table 1 in Schedule 5), then the amount of the relevant Bank Guarantee will be the amount in Column 1 of Table 1 in Schedule 3 (as indexed in accordance with the indexation formula in Column 2 of Table 1 in Schedule 5).

4. Choice of expert

A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the Parties; or
- (b) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
- (c) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 8 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. Directions to expert

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this Planning Agreement.

7. Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and

- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

10. Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

11. Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

12. Other courses of action

If the mediation referred to in paragraph 2 or the expert determination required or agreed under paragraph 3 has not resulted in resolution of the dispute, any one Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

13. Confidentiality of information

The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (a) subject to paragraph (b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 13; or
 - (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (d) views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (e) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
- (f) information, documents or other material concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

Schedule 9 - Security Arrangements (clause 8)

1. Bank Guarantee and Cash Deposit

1.1 Face value of Bank Guarantee - Development Contributions

- (a) No later than the Bank Guarantee Trigger Date, the Land Owner must provide to the Minister one or more Bank Guarantees having a (or an aggregate) face value equivalent to the sum of:
- (i) the amount set out in item 1 of Table 1 in Schedule 3 as indexed in the manner set out in Schedule 5;
 - (ii) the amount set out in item 2 of Column 1 of Table 1 in Schedule 3 as indexed in the manner set out in Schedule 5;
 - (iii) the amount set out in item 4 of Table 1 in Schedule 3 as indexed in the manner set out in Schedule 5;
 - (iv) the amount determined by the Minister (acting reasonably) as the anticipated cost of carrying out all works required in relation to the Contribution Works referred to in item 5 of Column 1 of Table 1 in Schedule 3 but such determination to have regard to the amount referred to in items 5 of that Column 1 as the anticipated cost, or the amount for which security should be provided, as indexed in the manner set out in Schedule 5; and
 - (v) the amount set out in item 6 of Column 1 of Table 1 in Schedule 3 as indexed in the manner set out in Schedule 5,
- but excluding always any item included in Column 1 of Table 2 of Schedule 3 pursuant to paragraph 2 of Schedule 3.
- (b) On the first and each subsequent anniversary of the dates that Bank Guarantees are provided to the Minister pursuant to paragraph 1.1(a) above, the Land Owner must provide additional Bank Guarantees (or must provide a replacements for the Bank Guarantees provided under paragraph 1.1(a) above) so that the face value of the Bank Guarantees provided by the Land Owner to the Minister are equivalent to any revised amount determined by the Minister (acting reasonably) as the anticipated cost of carrying out all the works required in relation to the Contribution Works but such determination to have regard to the amount referred to in items 1, 2, 4 and 5 of Column 1 of Table 1 in Schedule 3 as the anticipated cost, or (as the case may be) the amount for which security should be provided, as indexed in the manner set out in Schedule 5.
- (c) The Minister, in determining the anticipated cost of carrying out all works required in relation to the Contribution Works for the purposes of paragraphs 1.1(a) and 1.1(b) above, must have regard to any information provided by the Land Owner to the Minister in relation to those anticipated costs (although the Land Owner acknowledges that the Minister is not bound to accept any costings so provided by the Land Owner in making his determination for the purposes of paragraphs 1.1(a) and 1.1(b) above.
- (d) If the Land Owner elects to provide a replacement Bank Guarantee, then the Minister must return the Bank Guarantee previously provided by the Land Owner to the Land Owner upon receipt of the replacement Bank Guarantee.

- (e) The Land Owner must procure the Certifier to certify to the Minister when each Contribution Works Portion has achieved Practical Completion.
- (f) Subject to paragraph 1.6 of this Schedule, upon receipt of the Certifier's Certificate of Practical Completion in respect of a Contribution Works Portion, the Minister agrees to return to the Land Owner the Bank Guarantees then held by the Minister upon receipt of a replacement Bank Guarantee having a face value equivalent to what is required to be provided by the Land Owner under this agreement after taking into account the fact that Practical Completion has been achieved in respect of one or more Contribution Works Portions.
- (g) Upon payment to the Minister by the Land Owner of the Contribution Amount or otherwise following Dedication of the Community Facility to the Council set out in item 6 of Table 1 of Schedule 1 (as indexed in accordance with Schedule 5) the Minister agrees to return to the Land Owner the Bank Guarantees then held by the Minister upon receipt of a replacement Bank Guarantee having a face value equivalent to what is required to be provided by the Land Owner under this agreement after taking into account the fact that the Land Owner has paid to the Minister the amount of the Contribution Amount or otherwise following Dedication of the Community Facility to the Council set out in item 6 of Table 1 of Schedule 3 (as indexed in accordance with Schedule 5).

1.2 Expiry of Bank Guarantees

- (a) If any Bank Guarantees provided by the Land Owner are expressed as expiring on a certain date, the Land Owner must provide the Minister with a replacement Bank Guarantee 20 Business Days prior to the expiry of any Bank Guarantee subject to paragraph 1.3.
- (b) The provision of the Bank Guarantee does not:
 - (i) relieve the Land Owner from any of the obligations to be complied with on its part under any other provision of this Planning Agreement;
 - (ii) limit the right of the Minister to recover from the Land Owner in full all money payable to the Minister under this Planning Agreement, including without limitation, interest on any such amounts or damages or other losses incurred by the Minister

1.3 Failure to replace expired Bank Guarantee

If the Land Owner fails to provide the Minister with a replacement Bank Guarantee in accordance with paragraph 1.2, the Minister may call on the full amount of any Bank Guarantee held by the Minister after giving 10 Business Days prior written notice to the Land Owner.

1.4 Cash deposit

- (a) If the Minister makes demand under any Bank Guarantee pursuant to paragraph 1.3, the Minister must hold the full amount so paid to the Minister as a cash deposit ("**Cash Deposit**") in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the Banking Act, 1959 in the name of the Minister and with beneficial ownership vesting at all times in the Minister ("**Cash Deposit Account**"). The Cash Deposit will operate to secure all the obligations of the Land Owner in respect of the relevant Contribution Works, Contribution Amount or Dedication of the Community Facility (if relevant) to which the relevant Bank Guarantee relates under this Planning Agreement.

- (b) As beneficial owner of the Cash Deposit, the Minister may, at any time and without notice to the Land Owner, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Minister for any liability, loss, cost, charge or expense incurred by the Minister because of failure by the Land Owner to comply with the relevant obligations under this Planning Agreement.
- (c) All costs, charges, duties and taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Minister withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Minister under this Planning Agreement and the Land Owner has satisfied all of its obligations under this Planning Agreement, the Minister must pay the balance of the Cash Deposit Account, less all costs, charges, duties and taxes payable in connection with such payment, to the Land Owner.
- (e) For the avoidance of doubt, the Land Owner has no right to require the Minister to release the Cash Deposit until the Minister is reasonably satisfied that no moneys are, or may become, payable to the Minister under this Planning Agreement.

1.5 Release of Cash Deposit

The Minister must release the Cash Deposit to the Land Owner if the Land Owner provides the Minister with a replacement Bank Guarantee complying with the requirements of paragraph 1.1.

1.6 Claims under Bank Guarantee

The Parties agree that the Land Owner may procure and provide to the Minister a separate Bank Guarantee for each of the Contributions Works Portions set out in Table 1 of Schedule 3 and that the Minister may make claims under Bank Guarantees so provided on the following basis:

- (a) in relation to the Contribution Works referred to in item 1 of Column 1 of Table 1 in Schedule 3 the Bank Guarantee provided by the Land Owner as security for those works; and
- (b) in relation to the Contribution Works referred to in item 2 of Column 1 of Table 1 of Schedule 3 the Bank Guarantee provided by the Land Owner as security for those works; and
- (c) in relation to the Contribution Works referred to in item 4 of Column 1 of Table 1 of Schedule 3 the Bank Guarantee provided by the Land Owner as security for those works; and
- (d) in relation to the Contribution Works referred to in item 5 of Column 1 of Table 1 of Schedule 3 the Bank Guarantee provided by the Land Owner as security for those works; and
- (e) in relation to the Contribution Amount or the works-in-kind for the provision and Dedication of the Community Facility referred to in item 6 of Column 1 of Table 1 of Schedule 3 (if the Council directs the Land Owner to carry out such works-in-kind and Dedication pursuant to paragraph 2.34 of Schedule 4 or the Land Owner otherwise elects to carry out such works-in-kind pursuant to paragraph 2.34A of Schedule 4), the Bank Guarantee provided by the Land Owner as security for the

payment of the Contribution Amount or the works-in-kind for the provision and Dedication of the Community Facility; and

- (f) the Minister agrees not to make any claim under any Bank Guarantee without providing at least 10 Business Days' prior written notice to the Land Owner of its intention to do so.

Schedule 10 - Assignment and Dealing Terms

1. Land Owner's right to sell Developer's Land

The Land Owner must not sell, transfer or dispose of the whole or any part of the Developer's Land (other than a Developed Lot) unless before it sells, transfers or disposes of any such part of the Land to another person ("**Transferee**"):

- (a) the Transferee delivers to the Minister a deed signed by the Transferee in a form and of such substance as is acceptable to the Minister containing provisions under which the Transferee agrees to comply with all the obligations of the Land Owner under this Planning Agreement as if it were joined as a party to this Planning Agreement in the place of the Land Owner (including obligations which arose before the transfer, assignment or disposition); and
- (b) any default by the Land Owner under any provision of this Planning Agreement has been remedied by the Land Owner or waived by the Minister on such conditions as the Minister may determine in its absolute discretion; and
- (c) the Land Owner and the Transferee pay the Minister' reasonable Costs in relation to that assignment.

2. Release

If the Land Owner sells, transfers or disposes of the whole of the Land and fully satisfies the requirements of paragraph 1 of this Schedule 10, the Land Owner will be released from its obligations under this Planning Agreement.

Schedule 11 - Costs

1. Costs

Land Owner – 100% (subject to such limits (if any) as the Parties agree in writing from time to time).

Schedule 12 - General terms

1. Notices

1.1 Form

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

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below;

Minister

Address: 22-33 Bridge Street
Sydney, NSW, 2000

Telephone: (02) 9228 6111

Fax: (02) 9228 6195

Attention: Director-General

Land Owner

Address: Level 11, 488 Kent Street, Sydney NSW 2000

Telephone: *[insert]*

Fax: *[insert]*

Attention: *[insert]*

1.2 Change of address

If a Party gives another 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.

1.3 Receipt

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.

1.4 Receipt - next Business Day

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, 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.

2. Approvals and Consent

Except as otherwise set out in this Planning Agreement, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this Planning Agreement in his absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

3. Assignment and dealings

None of the Parties to this Planning Agreement may assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case unless stated otherwise in Schedule 10.

4. Costs

The costs regarding the negotiation, preparation, execution, stamping and registration of documents in relation to this Planning Agreement are to be borne by the Parties and in the proportions as set out in Schedule 11.

5. Entire Agreement

This Planning 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, anything said or done by another Party, or by an Authorised Officer, agent or employee of that Party, before this Planning Agreement was executed, except as permitted by law.

6. Further Acts

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 Planning Agreement and all transactions incidental to it.

7. Governing Law and Jurisdiction

This Planning 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.

8. Joint and individual liability and benefits

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

9. No fetter

Nothing in this Planning Agreement is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this Planning Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing this Planning Agreement imposes any obligation on a Consent Authority to:
 - (i) grant development consent or project approval; or
 - (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

10. Representations and warranties

- (a) The Parties represent and warrant that they have power to enter into this Planning Agreement and comply with their obligations under this Planning Agreement and that entry into this Planning Agreement will not result in the breach of any law.
- (b) The Parties agree that the Minister enters into this Planning Agreement for and on behalf of the State of New South Wales and for the benefit of the State Government as a juristic entity.

11. Severability

- (a) If any part of this Planning 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.
- (b) If any part of this Planning Agreement is illegal, enforceable or invalid, that part is to be treated as removed from this Planning Agreement, but the rest of this Planning Agreement is not affected.

12. Modification

No modification of this Planning Agreement will be of any force or effect unless it is in writing and signed by the Parties as a deed.

13. Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Planning Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) 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.

14. Confidentiality

14.1 This Planning Agreement not confidential

The Parties agree that the terms of this Planning Agreement are not confidential and this Planning Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

Schedule 13 - Definitions and interpretation

1. Definitions

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

"**Application**" means an application for any Approval.

"**Approval**" means any approvals, consents, Modifications, Part 4A Certificates, Part 3A of the Act approvals, certificates, Construction Certificates, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences (including licences under the *Liquor Act 1982* (NSW)), conditions or requirements (and any variations to them) which may be required by law or by adjoining owners for the commencement and carrying out of the Contribution Works.

"**Assignment and Dealing Terms**" means the obligations imposed under on the relevant Parties under, and by virtue of Schedule 10.

"**Authority**" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under section 109T of the Act.

"**Authorised Officer**" means, in the case of any Party, a director or secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this Planning Agreement.

"**Balfour Street Park**" means Site 15 on the Public Domain Plan.

"**Balfour Street Park Works**" means the works contemplated by Item 5 in Table 1 of Schedule 3.

Bank Bill Rate means, the average bid rate for Bills having a tenor of 90 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, **Bank Bill Rate** means:

- (a) the rate the Minister 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 Minister which provide rates for display on the "BBSW" page of the Reuters Monitor System for Bills of a 90 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 Minister 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 Minister 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 90 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 Minister 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).

"Bank Guarantee" means an irrevocable and unconditional undertaking by an Australian bank or such other bank as approved by the Minister in its absolute discretion, and on terms, acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking on demand.

"Bank Guarantee Trigger Date" means in respect of the Bank Guarantee to be provided by the Land Owner in respect of:

- (a) the Contribution Works described in item 4 of Table 1 to Schedule 3, the First Practical Completion Date; and
- (b) all other Development Contributions, the date which is thirty days after the Commencement Date.

"Built Form Subdivision" means a subdivision or consolidation of any built form on or within the Project Land.

"Business Day" means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

"Certifier" means such person with the appropriate qualifications as is agreed by the Parties.

"Compliance Certificate" means a certificate referred to in section 109C(1)(a) of the Act.

"Complying Development Certificate" means a complying development certificate referred to in section 85 of the Act.

"Construction Certificate" means a certificate issued under section 109C(1)(b) of the Act.

"Commencement Date" means the date of this Planning Agreement.

"2007 Commencement Date" means 9 February 2007.

"Concept Plan" means the concept plan forming part of the Concept Plan Approval.

"Concept Plan Approval" means an Approval by the Minister to the Concept Plan pursuant to section 75O of the Act, of the Concept Plan Approval Application, including any Modification of it.

"Concept Plan Approval Application" means an Application pursuant to section 75M of the Act made by the Land Owner on 25 October 2006 to the Minister for approval to the Concept Plan.

"Concept Plan Modification" means the approval to the Application to Modify the Concept Plan Approval (MP06_0171) granted by the Minister on 5 February 2009.

"Consent Authority" means, in relation to an Application, the Authority having the function to determine the Application.

"Contribution Amount" means the amount set out in item 6 in column 1 of Table 1 set out in Schedule 3.

"Contribution Works" means the works described in items 1, 2, 4 and 5 in column 1 of Table 1 of Schedule 3 and includes the Land Owner's Council Works.

"Contribution Works Approval" means:

- (a) any Approval; and

- (b) any land owner consent; and
- (c) the consent of any Authority,

required for the carrying out of any Contribution Works.

"Contribution Works Portion" means each part of the Contribution Works set out separately in each of items 1, 2, 4 and 5 of column 1 of Table 1 in Schedule 3.

"Contribution Works Procedures" means the terms and conditions in relation to carrying out the design and construction of the relevant Contribution Works as provided for in Schedule 4.

"Corporations Act" means the *Corporations Act* 2001 (Cwlth).

"Costs" includes costs, charges and expenses, including those incurred in connection with advisers.

"Council" means the Council of the City of Sydney.

"Council Land" means whole of the land described in Part B of Schedule 2.

"CUB" means Carlton and United Breweries (NSW) Pty Limited.

"Date for Practical Completion" for each Contribution Works Portion means the date set out in Column 3 of the Table in Schedule 5.

"Date of Practical Completion" means for each Contribution Works Portion, the date on which Practical Completion is achieved, being point in time at which the Certifier is satisfied, acting reasonably, that the relevant Contribution Works Portion has reached Practical Completion and the Certifier issues a Certificate of Practical Completion.

"Dedication" means the transfer by the Land Owner of the Land Owner's right, title and interest in the relevant land to the intended transferee.

"Developed Lot" means a lot created by Subdivision (including strata subdivision) forming part of the Developer's Land which at the date of the request for transfer has been improved by completed built form in respect of which an Occupation Certificate, has issued.

"Developer's Land" means the whole of the land comprised in the certificates of title set out in Part A of Schedule 2.

"Development" means the development described in Schedule 2 ("Land").

"Development Application" has the meaning given to that term in the Act.

"Development Consent" has the meaning given to that term in the Act.

"Development Contributions" means the monetary contribution and the provision of the material public benefits referred to in the Development Contributions Schedule and includes the Contribution Amounts and Contribution Works.

"Development Contributions Procedures" means the development contribution procedures set out in Schedule 4 of this Planning Agreement.

"Development Contributions Schedule" means the Development Contributions set out in Schedule 3 of this Planning Agreement.

"Development Contributions Timetable" means the timetable and milestones for each Development Contribution described in Schedule 5 of this Planning Agreement.

"Dispute Resolution Procedures" means the procedures imposed on the relevant Parties under Schedule 8.

"Energy Australia Land" means Lot A in Deposited Plan 430090, known as 98A Broadway, Chippendale, NSW, 2008.

"Explanatory Note" means the explanatory note relating to this Planning Agreement, as required by clause 23E of the Regulation.

"First Practical Completion Date" means the date immediately prior to the date on which the aggregate of the Floor Space of built form:

- (a) for which the Land Owner has lodged with the Department of Lands a plan which contemplates a Built Form Subdivision of any built form constructed on the Land; or
- (b) for which the Land Owner has obtained an Occupation Certificate, where that built form the subject of the Occupation Certificate is not the subject of any Built Form Subdivision,

exceeds 49,999m².

"Floor" means the space within a building that is situated between one floor level and the floor level above or, if there is no floor above, the ceiling or roof above.

"Floor Space" has the same meaning as given to the words "Gross Floor Area" in the *Standard Instrument (Local Environmental Plans) Order 2006*. However to the extent of any inconsistency between the meaning of "Gross Floor Area" given by the *Standard Instrument (Local Environmental Plans) Order 2006* and meaning given that expression by the Major Development SEPP as it applies to the Project Land, then to the extent of that inconsistency, the meaning of "Gross Floor Area" given by the Major Development SEPP shall prevail.

"Floor Space Ratio" means the ratio of Floor Space of all buildings on a site to the area of the site.

"General Register of Deeds" means the land registry so entitled and maintained under the *Conveyancing Act 1919*.

"Good Industry Practice" means the exercise of that degree of professional skill, diligence, and prudence that reasonably would be expected from competent persons performing tasks and functions similar in nature to the Contribution Works and the Development and consistent with the Law.

"GST" has the meaning it has in the GST Act.

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

"Interest Rate" means the aggregate of 2% per annum and the 90 day Bank Bill Swap Reference Rate last published in The Australian Financial Review (or if no such rate has been published, such other rate set by the Minister acting in good faith).

"Irving Street Park" means Site 3 in the Public Domain Plan

"Land" means the land described in Schedule 2.

"Land Owner's Council Works" means such of the Contribution Works to be carried out on Council Land.

"Law" means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

"Legislation" means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

"Main Park" means Sites 1 and 2 on the Public Domain Plan (which are owned by the Land Owner) and Site 14 (which is owned by the Council).

"Main Park Works" means the works contemplated by Item 2 in Column 1 of Table 1 of Schedule 3.

"Major Development SEPP" means State Environmental Planning Policy (Major Development) 2005.

"Minister" means the party described as such the section headed "Parties" of this Planning Agreement.

"Modification" means a "modification" of the Concept Plan Approval within the meaning of section 75W of the Act.

"Modified Concept Plan" means the concept plan forming part of the Concept Plan Modification.

"O'Connor Street Park" means Site 4 in the Public Domain Plan.

"Occupation Certificate" means a certificate referred to in section 109C(1)(c) of the Act and which may be interim or final as provided for in section 109C(2) of the Act.

"Offer" has the meaning given to that term in clause 1.1(a).

"Ovoid Drain" has the meaning given to that term in the Modified Concept Plan.

"Owner's Consent Deed" means the document by that name entered into by the Land Owner and the City of Sydney on 19 January 2007 as amended from time to time.

"Party" means a party to this Planning Agreement, including their respective successors and assigns.

"Planning Agreement" means the Planning Agreement that comes into operation upon satisfaction of the requirements set out in clause 1.1, comprising the form and content of this deed.

"2007 Planning Agreement" means the planning agreement between the Minister and CUB which commenced on the 2007 Commencement Date.

"Practical Completion" means, in relation to any Contribution Works Portion, the point of time at which:

- (a) the Certifier is satisfied that the whole of that Contribution Works Portion has been completed and installed in accordance with all relevant Approvals, this Planning Agreement and the requirements of paragraph 2 of Schedule 4; and
- (b) that Contribution Works Portion is fit for use and occupation, and capable of being lawfully used and occupied for its intended purpose and as contemplated by this Planning Agreement and all relevant Approvals; and
- (c) (if relevant) a Compliance Certificate for the Contribution Works Portion has issued; and
- (d) an Occupation Certificate for the Contribution Works Portion has issued; and
- (e) (if relevant) a Complying Development Certificate for the Contribution Works Portion has issued.

"Project Approval" means approval by the Minister to carry out the Development pursuant to section 75J of the Act, in response to the Project Approval Application, including any Modification of it.

"Project Approval Application" means an Application made by the Land Owner to the Minister for approval to carry out the Development (or any part of it) pursuant to section 75E of the Act.

"Project Land" means the Developer's Land and the Council Land and the Energy Australia Land.

"Public Domain Plan" means the plan described as such and annexed and marked "A".

"Real Property Act" means the *Real Property Act 1900*.

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

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

"Release and Discharge Terms" means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 6.

"Review or Replacement Procedures" means the procedures set out in Schedule 7.

"Second Practical Completion Date" means the date immediately prior to the date on which the aggregate of the Floor Space of completed built form:

- (a) for which the Land Owner has lodged with the Department of Lands a plan which contemplates Built Form Subdivision of any built form constructed on the Land; or
- (b) for which the Land Owner has obtained an Occupation Certificate where that built form the subject of the Occupation Certificate is not the subject of any Built Form Subdivision,

exceeds 99,999m².

"Security Arrangements" means those security arrangements set out in Schedule 9.

"Site 1" means the area marked as such on the Public Domain Plan.

"Site 2" means the area marked as such on the Public Domain Plan.

"**Site 3**" means the area marked as such on the Public Domain Plan.

"**Site 4**" means the area marked as such on the Public Domain Plan.

"**Site 5**" means the area marked as such on the Public Domain Plan.

"**Site 7**" means the area marked as such on the Public Domain Plan.

"**Site 8**" means the area marked as such on the Public Domain Plan.

"**Site 11**" means the area marked as such on the Public Domain Plan.

"**Site 12**" means the area marked as such on the Public Domain Plan.

"**Site 13**" means the area marked as such on the Public Domain Plan.

"**Site 14**" means the area marked as such on the Public Domain Plan.

"**Site 15**" means the area marked as such on the Public Domain Plan.

"**State**" means the State of New South Wales.

"**Statement of Commitments**" means Schedule 4 to the Concept Plan Approval.

"**Sunset Date**" means the date on which the Concept Plan Approval lapses.

"**Wellington Street Park**" means Site 5 in the Public Domain Plan.

"**Works**" means all, or any part, of the works which the Land Owner will procure to be performed or carried out (whether or not on the Project Land) in accordance with the Approvals and as required or contemplated by this Planning Agreement including the Contribution Works.

2. Interpretation

In this paragraph 2:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) if more than one person is identified as the The Minister, that expression refers to them, and the obligations of the The Minister under this Planning Agreement bind them, jointly and severally;

(c) "**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;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(e) a reference to a document (including this Planning Agreement) is to that document as varied, novated, ratified or replaced from time to time;

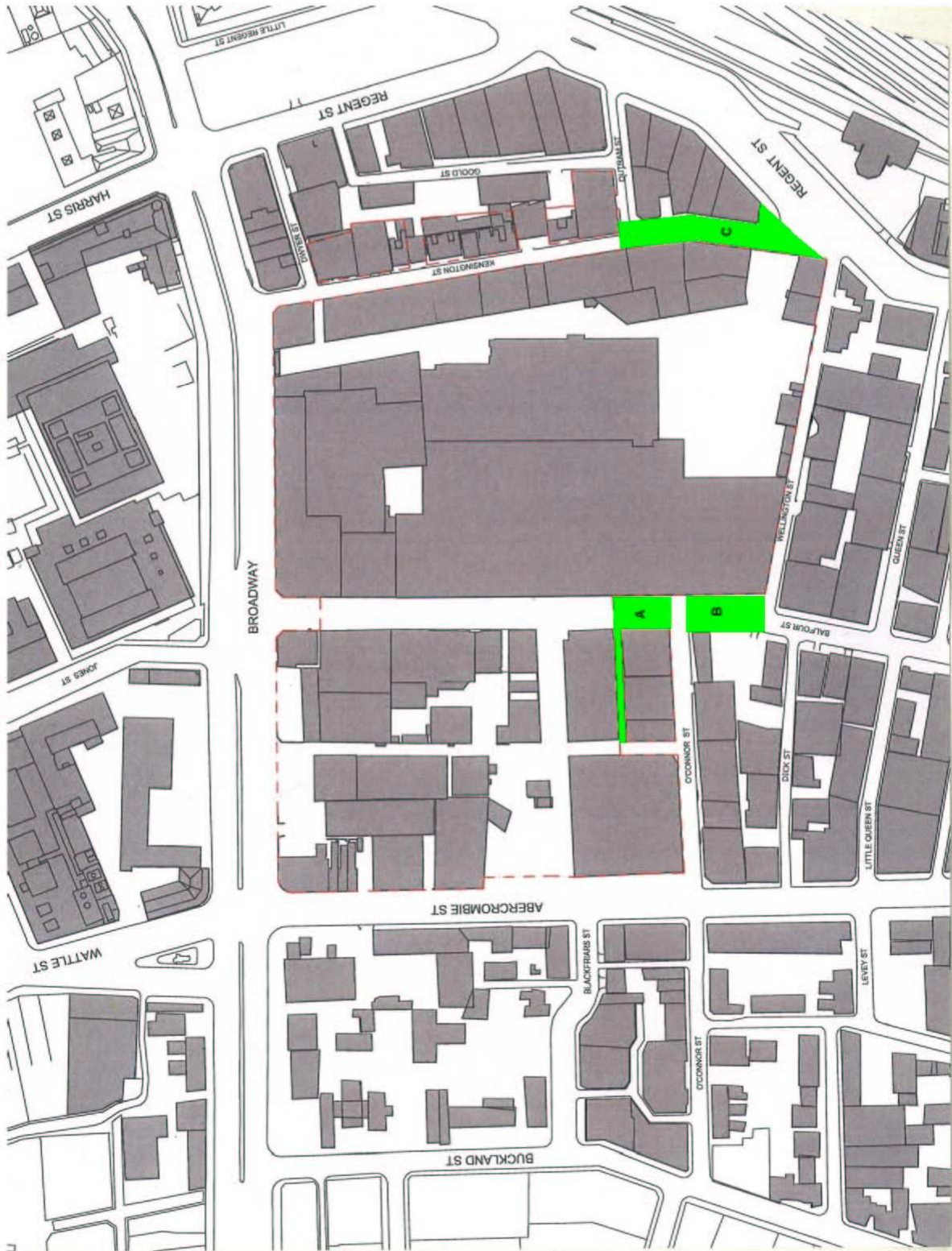
(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Planning Agreement, and a reference to this Planning Agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) **"includes"** in any form is not a word of limitation; and
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency.

Annexure A - Public Domain Plan



Annexure B - Plan of roads owned by the Council



Executed as a deed

**Executed by Frasers Broadway Pty Ltd
ABN 50 122 575 286** in accordance with
section 127 of the *Corporations Act* by or in the
presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director

Name of Director in full

**Signed by The Honourable ANTHONY
KELLY M.L.C.**

Minister for Planning for the State of New South
Wales

Signature of Witness

Name of Witness in full

The Honourable Anthony Kelly M.L.C.
Minister for Planning