

*Heritage Act 1995**Act No. 93/1995*

## Part 3—The Victorian Heritage Register

s. 48

- (8) If a Crown grant is issued in respect of a registered place that is unalienated Crown land, any matters in the Heritage Register affecting the land must be specified—
- (a) in the Crown grant; or
  - (b) in a notice in the prescribed form to the Registrar of Titles accompanying the Crown grant.

**48. Amendment of planning schemes**

- (1) The Minister administering the **Planning and Environment Act 1987** must prepare and approve an amendment to any planning scheme applying to a place which is included in the Heritage Register to identify the inclusion of that place in the Heritage Register.
- (2) An amendment under sub-section (1) must be prepared—
  - (a) as soon as practicable after notice is given under this Act of the inclusion of a place in the Heritage Register; or
  - (b) in the case of any building or land on the Register of Historic Buildings under the **Historic Buildings Act 1981** immediately before the commencement of this section, as soon as practicable after that commencement.
- (3) An amendment under sub-section (1) may also make any consequential amendments to the planning scheme that are necessary to remove or modify any provisions which are inconsistent with or duplicate the provisions of this Act.

Date 27 October 2006

## Parties

The Secretary to the Department of Infrastructure, a body corporate established under section 35 of the Project Development and Construction Management Act 1994 (Vic), acting pursuant to a nomination order issued in respect of the Project on 30 August 2005 by the Governor in Council on the recommendation of the Premier, for and on behalf of the Crown in right of the State of Victoria (State).

**Kew Development Corporation Pty Ltd** ACN 119 766 264 of Level 7, 3 Rider Boulevard, Rhodes, NSW, 2138 (Developer)

**Walker Group Holdings Pty Ltd** ACN 001 215 069 of Level 7, 3 Rider Boulevard, Rhodes, NSW, 2138 (Guarantor)

## Background

- A Under the RFP, the Secretary sought detailed and costed proposals from pre-qualified organisations to develop the Site and construct the Community Houses.
  - B The Secretary has selected the Developer as the successful party to undertake the Project. A principal reason for selection of the Developer was the Developer's commitment to construct an established community by delivering Stage 1, Stage 2, the Community Houses and the remaining stages as a fully integrated build out development of the Site.
  - C The Developer has agreed to undertake the Project in accordance with the terms and conditions of this Agreement including constructing the Community Houses as part of the initial construction and development of Stage 1 and Stage 2.
  - D The Guarantor has agreed to guarantee the obligations of the Developer under this Agreement on the terms and conditions of the Guarantee and Indemnity.
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### Division of this Agreement into Parts

This Agreement is divided into Parts A, B, C, D and E as follows:

**PART A: General Provisions**

**PART B: Site and Construction Provisions**

**PART C: Subdivision, sales and marketing**

**PART D: Financial and commercial arrangements**

**PART E: Guarantee and Indemnity**

- (d) The Developer has included an allowance of \$3,300,000 (plus GST) for the construction of the Recreation Centre in its Development Budget. This does not include the allowance of \$3,000,000 for the restoration of the Heritage Buildings which may also be utilised if the Recreation Centre is located wholly or partly in the Heritage Buildings. If the Developer becomes aware that the construction cost of the Recreation Centre will exceed the amount allowed for construction, the Developer must discuss and review the proposed construction costs with the State Representative including discussing any modifications to the facilities or design of the Recreation Centre which can be made to reduce the expected construction cost or the deletion of some of the facilities.
- (e) Notwithstanding paragraph (d), unless the State agrees to a modification to the facilities or design of the Recreation Centre (which the State is under no obligation to do so), the Developer must construct the Recreation Centre in accordance with paragraphs (a), (b) and (c).
- (f) Following construction, the Developer must secure an operator to manage and operate the Recreation Centre as an operational facility on an ongoing basis. The initial operator must be approved by the State.
- (g) Ownership of the land on which the Recreation Centre is constructed will remain with the State and may be transferred by the State to another public authority. The State must either enter into the operating agreement for the Recreation Centre with the initial operator or procure another public authority to do so.
- (h) The Developer may allocate the allowances for the Recreation Centre and the Heritage Buildings as required to reflect the final proposal for the Recreation Centre and the Heritage Buildings.

### **B15.3 Heritage Buildings**

- (a) The Developer must carry out building works as necessary to repair the Heritage Buildings in accordance with the Demolition Permit and any additional buildings required to be retained pursuant to any further Demolition Permit in accordance with paragraph (d).
- (b) The Developer has included an allowance of \$3,000,000 (plus GST) for design, site preparation and building costs associated with the repair of the Heritage Buildings in its Development Budget. This does not include the allowance of \$3,000,000 (plus GST) for the Recreation Centre which may also be utilised if the Recreation Centre is located partly or wholly in the Heritage Buildings. If the Developer becomes aware that the estimated cost for repair of the Heritage Buildings will exceed the amount allowed, the Developer must discuss and review the proposed repair works and the estimated costs with the State Representative.
- (c) Notwithstanding paragraph (b), unless the State agrees to a modification of the proposed repair works, the Developer must repair the Heritage Buildings in accordance with the Demolition Permit.
- (d) If:

- (i) the Developer is required to obtain a further Demolition Permit in consequence of changes to the Development Plan to which the initial Demolition Permit related; and
- (ii) that further Demolition Permit requires one or more additional buildings to be retained in addition to the Heritage Buildings,

the Developer must advise the State in writing of the Loss incurred by the Developer as a consequence of the retention of any additional Heritage Buildings. In that event:

- (iii) the Guaranteed Land Payment will be adjusted pro rata to reflect the reduction in the number of Lots arising as a consequence; and
- (iv) the State must pay Compensation to the Developer for any Loss incurred by the Developer as a consequence.

## B16 Sub-Contracting

- (a) The Developer may sub-contract the performance of the Construction Works.
- (b) The Developer is not relieved of any of its liabilities or obligations under this Agreement as a result of any sub-contracting of the Construction Works and the Developer is at all times responsible for the performance of all project contractors to whom any part of the Construction Works have been sub-contracted.
- (c) The State has no liability to any sub-contractor arising from the sub-contract between the Developer and the sub-contractor.

## B17 Inspection and Testing

- (a) The State's Representative, or his or her delegate may at the State's cost:
  - (i) inspect the Public Land Works at all reasonable times on 48 hours notice;
  - (ii) inspect and test the materials used in the construction of the Public Land Works; and
  - (iii) reject any material or workmanship not conforming to the Design Documents, the Design Brief, the good trade practices of the respective trades, relevant regulations or local Laws.
- (b) If the State's Representative considers that the Public Land Works do not comply with this Agreement and that the non-compliance justifies suspension of the whole or part of the Public Land Works, the State's Representative may: