

First Deed of Variation to Planning Agreement

112 Talavera Road Macquarie Park

Parties

Minister for Planning and Public Spaces (ABN 20 770 707 468)

Karimbla Properties (No.52) Pty Limited (ACN168 601 296)

Contents

1	Definitions and interpretation	3
2	Status of this Deed	4
3	Commencement	4
4	Warranties and representations	4
5	Variation to Planning Agreement	4
6	Expenses	4
7	GST	5
8	Confirmation	5
9	Notices	5
10	General	5
11	Electronic Execution	6
	Schedule 1 - Amendments to Planning Agreement	7
	Execution	8

Date

Parties:

Minister for Planning and Public Spaces (ABN 20 770 707 468) of Level 15, 52 Martin Place, Sydney NSW 2000/-NSW Department of Planning, Housing and Infrastructure of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta, New South Wales 2150
(**Minister**)

Karimbla Properties (No. 52) Pty Limited (ACN 168 601 296) of Level 11, 528 Kent Street, Sydney, New South Wales 2000 (Developer) (**Developer**)

Introduction

- A. The Minister and the Developer entered into the Planning Agreement on 30 July 2022 applying to the VPA Development at 112 Talavera Road Macquarie Park NSW.
- B. Under the Planning Agreement, the Developer is required to make a monetary contribution to the Minister of \$12,528,000 (subject to indexation) in three instalments, with the first 2 instalments being payable before the issue of the first Occupation Certificate for the First Building and the first Occupation Certificate for the Second Building, respectively.
- C. The Developer has sought a reduction in the amount of the monetary contribution payable under the Planning Agreement in light of the provisions of the Ministerial planning order relating to the housing and productivity contribution under Subdivision 4 of Division 7.1 of the Act (**Ministerial planning order**).
- D. The Minister has agreed to a reduction of the monetary contribution based on the rate of \$10,000 per new dwelling (subject to indexation) and \$30 per square metre of gross floor area (subject to indexation) for commercial development that applies in the Greater Sydney Region under the Ministerial planning order if it is paid on commencement of this Deed.
- E. The Planning Agreement is amended as set out in this Deed to reflect the above changes and to make other consequential amendments.

It is agreed:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (a) **Deed** means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.
- (b) **Planning Agreement** means the planning agreement between the Minister and the Developer dated 30 July 2022 relating to 112 Talavera Road Macquarie Park 2113, being registered dealing AS358401.

1.2 Interpretation

- (a) In **this** Deed, unless the contrary intention appears:
 - (i) capitalised words and phrases used but not defined in this Deed have the same meanings they have in the Planning Agreement; and

- (ii) clause 1.2 of the Planning Agreement will apply to the interpretation and construction of this Deed.
- (b) The parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

2 Status of this Deed

This Deed is an amendment to the Planning Agreement as referred to in section 203(5) of the *Environmental Planning and Assessment Regulation 2021*.

3 Commencement

This Deed commences operation on the date it is signed by all parties.

4 Warranties and representations

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

5 Variation to Planning Agreement

- 5.1 On and from the commencement of this Deed, the Planning Agreement is amended as set out in Schedule 1 – Amendments to Planning Agreement.
- 5.2 The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.
- 5.3 Nothing in this Deed:
 - (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or
 - (b) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.

6 Expenses

- 6.1 The Developer must pay its own legal costs and disbursements, and the Minister's reasonable legal costs and disbursements, in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 6.2 The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the *Environmental Planning and Assessment Regulation 2021*, and the review of any submissions received during the public notice period.

- 6.3** The Developer must pay all taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- 6.4** The Developer must provide the Minister with bank cheques or deposit the funds by means of electronic funds transfer into a bank account nominated by the Minister in respect of the Minister's costs pursuant to clauses 6.1 and 6.2:
- (a) where the Minister has provided the Developer with a written notice of the sum of such costs prior to execution, on the date of execution of this Deed; or
 - (b) where the Minister has not provided the Developer with a written notice of the sum of such costs prior to execution, within 10 business days of demand by the Minister for payment.

7 GST

Clause 9 of the Planning Agreement applies as if it forms part of this Deed, with any necessary changes.

8 Confirmation

Upon execution of this Deed by both parties, each Party is bound by the Planning Agreement as amended by this Deed.

9 Notices

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in the manner required by clause 13.16 of the Planning Agreement.

10 General

10.1 Entire agreement

This Deed constitutes the entire agreement between the Parties regarding the variation of the Planning Agreement, including with respect to those matters set out in clauses 1 to 10 (inclusive) of this Deed, and supersedes any prior representations, understandings or arrangements between the Parties, whether orally or in writing.

10.2 Incorporation of provisions of Planning Agreement

Clauses 14.2 to 14.16 of the Planning Agreement are incorporated in this Deed as if they were set out in full in this Deed and references to the Planning Agreement were references to this Deed.

10.3 Assignment and dealings

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

11 Electronic Execution

- (a) Each party consents to this Deed and any variations of this Deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this Deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this Deed and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
 - (ii) insertion of the person's name on to the deed; or
 - (iii) use of a stylus or touch finger or a touch screen to sign the deed,provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the deed;
 - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this Deed and that electronic signing of this Deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this Deed transmitted by email or other means of electronic transmission has the same legal effect as delivery of an original executed copy of this Deed for all purposes.

Schedule 1 – Amendments to Planning Agreement

The Planning Agreement is amended as follows:

[1] Interpretation

Omit the definitions of **CPI**, **CPI Adjustment Date** and **Current CPI** from clause 1.1 and insert the following definition in clause 1.1 in appropriate alphabetical order:

First Deed of Variation means the first deed of variation to this deed following its commencement.

[2] Schedule 4– Development Contribution

Omit Schedule 4 (apart from its heading) and insert instead:

1. Development Contribution

The Developer undertakes to provide the Development Contribution in the manner set out below:

Development Contribution	Value	Timing
Monetary contribution towards designated State public infrastructure	\$10,084,202 (as indexed in accordance with clause 2 of this Schedule 4)	Pursuant to clause 3 of this Schedule 4

2. Indexation

- (a) The amount of \$10,084,202 is to be adjusted, on commencement of the First Deed of Variation, by multiplying it by Current PPI divided by Base PPI where:

Base PPI is the PPI number for the June quarter 2023, and

Current PPI is the most recent PPI number available on the first day of the quarter in which the payment of the contribution is made, being the PPI number for the quarter before the immediately preceding quarter.

PPI means the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics.

Example. If payment is made on 15 September 2024, the current PPI would be the PPI number for the June quarter 2024.

- (b) For the purposes of this clause 2, a quarter is each of the following three-month periods in the calendar year:
- (i) March quarter – 1 January to 31 March,
 - (ii) June quarter – 1 April to 30 June,
 - (iii) September quarter – 1 July to 30 September,
 - (iv) December quarter – 1 October to 31 December.

3. Time at which the Development Contribution to be paid

The Developer must pay the whole of the Development Contribution on the commencement of the First Deed of Variation.

Execution

Executed as a deed.

Signed sealed and delivered by the **Minister for Planning and Public Spaces** (ABN 20 770 707 468) in the presence of:

.....
Signature of witness

.....
Signature of authorised delegate

.....
Name of witness in full

.....
Full name of delegate

.....
Address of witness

*I have signed a counterpart of the deed,
having witnessed the signing of the deed over audio
visual link in accordance with section
14G of the *Electronic Transactions Act 2000*.

Signed, sealed and delivered by **Karimbla Properties (No.52) Pty Limited** (ACN 168 601 296) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full