

Date 10, 7, 2014

Planning Agreement

330 Church Street Parramatta – David Frater Carpark

Parramatta City Council
ABN 49 907 174 773

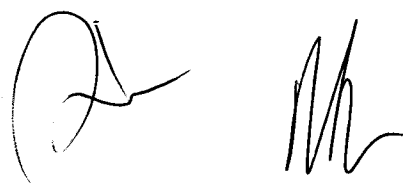
and

Karimbla Properties (No. 22) Pty Limited
ABN 97 115 509 478

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Schedule 1 – Reference Schedule

Schedule 2 – Easement Land

Schedule 3 – Part Lot 102

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Planning Agreement

330 Church Street Parramatta – David Frater Carpark

Dated / /


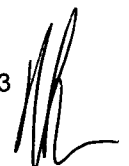
Parties

Name	Parramatta City Council ABN 49 907 174 773
Address	30 Darcy Street, Parramatta, NSW
Facsimile	
Short name	Parramatta

Name	Karimbla Properties (No. 22) Pty Ltd ABN 97 115 509 478
Address	Level 11, 528 Kent Street, Sydney, NSW
Facsimile	
Short name	Developer

Background

- A. The NSW Minister for Planning and Infrastructure ("Minister") is the Consent Authority pursuant to the EPAA Act for the Development and the Modification.
- B. The Developer is the owner, or is entitled to be the owner, of the Land.
- C. The Land and the Development are within Parramatta's local government area,
- D. The Consent authorises the Development being carried out.
- E. The Developer intends to change the nature and scope of the Development authorised by the Consent and to facilitate such change is seeking the Modification.
- F. The parties wish to enter into a planning agreement in relation to the Developer's offer to provide the Public Benefits on the terms and conditions contained in this planning agreement.



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It is agreed

1. Definitions

In this planning agreement unless expressed or implied to the contrary:

Airbridge means the airbridge currently situated within part of the Carpark Land.

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Business Day means any day on which trading banks are open for business in New South Wales other than a Saturday, Sunday or a public holiday in New South Wales.

Carpark Lease means lease registered number 9233091R between Parramatta (as lessor) and the Developer (as tenant) in respect of the Carpark Land.

Carpark Land means the land leased under the Carpark Lease, being the land comprised in Folio Identifier 102/1031459, Auto Consuls 151127-108, 6792-237 and Volume 555505 Folio 211.

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense.

Claimant has the meaning given to that term in clause 15.1.

Claim Notice has the meaning given to that term in clause 15.1.

Consent has the meaning given to that term in Item 3 of Schedule 1.

Consent Authority means the governmental agency having the function to determine a development application or major project approval for the Development or any modification of the Development on the Land.

Construction Certificate has the meaning given to that term in the EPAA Act.

Consumer Price Index means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Dealing has the meaning given to that term in clause 16.1.

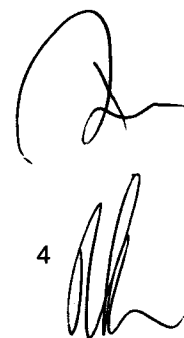
Development means the development of all buildings approved under Major Project Application MP10_0171 dated 19 October 2012, comprising the demolition of existing structures on site and construction of a mixed used building (residential / retail / serviced apartments), basement with 597 car parking spaces, public domain works and installation of utility services, as amended from time to time.

Discretion has the meaning given to that term in clause 5.1.

Dispute Notice has the meaning given to that term in clause 15.4.

Easement Land means that part of Lot 101 shown hatched in the plan at Schedule 2.

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



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

Incoming party has the meaning given to that term in clause 16.1.

Index Number means:

- (a) the consumer price index (all groups) for Sydney published from time to time by the Australian Bureau of Statistics; or
- (b) if the Index Number no longer exists, it means an index that the Landlord decides reflects changes in the cost of living.

Item means an item in Schedule 1.

Land means the land described in Item 1 of Schedule 1.

Law means:

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

Lot 101 means Lot 101 DP 1031459, currently owned by the Developer.

Modification means the Instrument of modification issued the Planning Assessment Commission on 19 December 2013.

Monetary Contribution means the amount stated in Item 6 of Schedule 1, as adjusted in accordance with clause 9.2.

New Law means a Law that is amended, varied or changed or a new Law either of which comes into force on or after the date of this planning agreement.

Occupation Certificate means a certificate referred to in section 109C(1)(b) of the EPAA Act.

Part Lot 102 means the land described in Item 7 of Schedule 1.

Parramatta Land means Lot 102 DP 1031459.

planning agreement means this document and includes all schedules and annexures to it.

Podium Level means that stage of the Development when both the proposed buildings reach a height of RL23.3 AHD.

Podium Level Date means the date the Development reaches Podium Level, determined in accordance with clause 10.2.3.

Prescribed Rate means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgment debts, calculated daily and compounded on the last day of each month.

Public Benefits means the public benefits described in Item 4 of Schedule 1 to be delivered under this planning agreement.

Public Pedestrian Thoroughfares means the right of access and the physical pedestrian access to be provided by the Developer in accordance with clause 13.

Quarter means each consecutive period of three months (or part of it) ending on the respective last days of March, June, September and December.

Register means the Torrens Title register held by the New South Wales office of Land and Property Information.

Respondent has the meaning given to that term in clause 15.1.

Review Date means each anniversary of the date of this planning agreement.

Schedule means a schedule to this planning agreement.

Security means an unconditional and irrevocable bank guarantee or bank guarantees for the Security Amount issued by a trading bank or other financial institution acceptable to Parramatta which does not have an expiry date and is otherwise on terms and conditions acceptable to Parramatta.

Security Amount means the amount stated in Item 8 of Schedule 1 adjusted from time to time under clause 14.2.

2. Interpretation

2.1 Governing Law and Jurisdiction

This planning agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

2.2 Persons

In this planning agreement, a reference to:



- 2.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 2.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 2.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

2.3 Joint and Several

If a party consists of more than one person, this planning agreement binds them jointly and each of them severally.

2.4 Legislation

In this planning agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

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2.5 Clauses and Headings

In this planning agreement:

- 2.5.1 a reference to this planning agreement or other document includes this planning agreement or the other document as varied or replaced regardless of any change in the identity of the parties;
- 2.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this planning agreement all of which are deemed part of this planning agreement;
- 2.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 2.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this planning agreement;
- 2.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 2.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation';
- 2.5.7 a reference to **governmental agency** means the Crown, any government, any governmental ministry or department, or any Crown, governmental, semi-governmental, statutory, parliamentary, administrative, fiscal, public, municipal, local, judicial or regulatory entity, agency, instrumentality, authority, court, commission, tribunal or statutory corporation having jurisdiction over or in respect of the Land or its use or both; and
- 2.5.8 a reference to any notice, claim, demand, consent, agreement, approval, authorisation, specification, direction, disclosure, notification, request, communication, appointment, or waiver being given or made by a party to this Agreement is a reference to its being given or made in writing, and the expression **notice** includes any of the foregoing.

2.6 Severance

- 2.6.1 If a provision in this planning agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 2.6.2 If it is not possible to read down a provision as required in this clause 2.6, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or any other provision of this planning agreement.

2.7 Business Day

If a payment or other act is required by this planning agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

2.8 Number and Gender

In this planning agreement, a reference to:

- 2.8.1 the singular includes the plural and vice versa; and



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2.8.2 a gender includes the other genders.

2.9 Explanatory Note

Any Explanatory Note prepared in relation to this Planning Agreement under clause 25E of the EPAA Regulation must not be used to assist in construing this planning agreement.

3. Planning agreement under the EPAA Act

3.1 Section 93F

The parties agree that this document is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the EPAA Act.

3.2 Application

The planning agreement constituted by this document applies to the:

3.2.1 the Land; and

3.2.2 the Development.

4. Operation and Consent Lapsing

4.1 Planning Agreement Operation

The parties agree that this planning agreement takes effect on the execution of this planning agreement by the parties to it.

4.2 Consent Lapsing

4.2.1 This planning agreement will be at an end and taken to have been revoked and neither party will have any obligation to the other if the Consent:

(a) lapses by the effluxion of time; or

(b) is surrendered.

4.2.2 Each party will sign all documents and do all things reasonably required to procure the removal of this planning agreement as an encumbrance on the Register by appropriate notification or request if the Consent:

(a) lapses by the effluxion of time; or

(b) is surrendered.

4.3 Effect on other Agreements

4.3.1 For the avoidance of doubt, this planning agreement has no effect on the voluntary planning agreement entered into in accordance with condition A8 of Major Project Application MP10_0171, requiring transfer of land to Parramatta and embellishment of the river foreshore and retaining wall adjacent to the site boundary, and that voluntary planning agreement continues to operate.

5. No Fetter

5.1 Discretion

This planning agreement is not intended to operate to fetter, in any unlawful manner:

- 5.1.1 the sovereignty of the Parliament of the State of New South Wales to make any Law;
- 5.1.2 the power of the executive government of the State of New South Wales to make any statutory rules; or
- 5.1.3 the exercise of any statutory power or discretion of any Minister of the State of New South Wales or any governmental agency (including Parramatta),

(all referred to in this planning agreement as a '**Discretion**').

5.2 No Fetter

No provision in this planning agreement is intended to, or does, constitute any unlawful fetter of any Discretion. If, contrary to the operation of this clause 5, any provision of this planning agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- 5.2.1 they will take all practice steps, including the execution of any further documents to ensure the objective of this clause 5 is substantially satisfied;
- 5.2.2 in the event that clause 5.1 cannot be achieved without giving rise to unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this planning agreement has full force and effect; and
- 5.2.3 to endeavour to satisfy the common objectives of the parties in relation to the provision of this planning agreement which is held to be unlawful fetter to the extent that is possible having regard to the relevant Court judgement.

5.3 Conflict



In the event of any conflict between the exercise of any Discretion and the performance or obligations under this planning agreement, the former prevails.

6. Registration

6.1 Procure Registration

The Developer must:

- 6.1.1 procure registration of this planning agreement on the Register pertaining to the Land no later than 20 Business Days after the date of this planning agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land; and
- 6.1.2 deliver to Parramatta a title search of the Land confirming registration of this planning agreement.

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6.2 Effect of Registration

The parties agree and acknowledge that if any of the Land is subdivided and sold, then all of the obligations of this planning agreement are jointly and severally binding on, and enforceable against, the owner of each subdivided parcel of land from time to time, on whose title this planning agreement is registered, as if each owner for the time being had entered into this planning agreement.

6.3 Release

Parramatta agrees to provide a release and discharge of this planning agreement with respect to any part of the Land if the Developer requests a release and discharge of this planning agreement (whether in full or part) and:

- 6.3.1 in the case of a request for a full release and discharge, the Developer has complied with all its obligations under this planning agreement to Parramatta's satisfaction ; or
- 6.3.2 in the case of a request for partial release and discharge, the Developer has, at the time of the request complied with its obligations under this planning agreement to Parramatta's satisfaction to the extent that they effect that part of the Land to which the partial release relates.

6.4 Removal of registration

Within ten (10) Business Days of:

- 6.4.1 Parramatta confirming any release and discharge under clause 6.3; or
- 6.4.2 The surrender of the Car Park Lease in accordance with clause 10 and registration of the transfer of Part Lot 102 from the Developer to Parramatta in accordance with clause 12, whichever is the later,

Parramatta will, at the cost of the Developer, do all things necessary to enable the extinguishment of this planning agreement from the Register pertaining to the Land or that part of the Land to which the release and discharge relates.

7. EPAA Act Application

7.1 Sections 94 and 94A of the EPAA Act

- 7.1.1 The application of Sections 94, 94A and 94EF of the EPAA Act to the Development are not excluded by this planning agreement.
- 7.1.2 The benefits under this planning agreement are to be taken into consideration in determining development contributions applicable to the Development under section 94(6) of the EPAA Act.
- 7.1.3 For the avoidance of doubt and for the purposes of any consideration under section 94(6) of the EPAA Act, the parties have agreed and acknowledge that the Monetary Contribution to be paid under this planning agreement has been calculated in the following manner:

- (a) Adding:



- (i) The value of contributions payable under s94A of the EPAA Act for the Development prior to Modification, being \$4,495,000.00; and
 - (ii) The value of additional contributions that would be payable under s94A of the EPAA Act for the Development after Modification, calculated, being \$1,802,534.75 ; and
 - (iii) The estimated value of Part Lot 102 that will be transferred to the Developer in accordance with this planning agreement, being \$3,100,000.00; and
 - (iv) A contribution for bonus floor space in the Development after Modification, being \$3,367,050.00; and
- (b) Subtracting from the amount determined in clause 7.1.3(a) the value of the Carpark Lease to be surrendered under this planning agreement, being \$10,000,000.00.

8. Public Benefits

8.1 Delivery

The Developer must do all things reasonably required to deliver the Public Benefits in accordance with this planning agreement.

8.2 Public Purpose

The Public Benefits are made for the purposes of providing public amenities and public services including the provision of open space and public domain areas by enabling Parramatta to carry out activities consistent with its Riverbank Urban Design Strategy, adopted April 2009 and providing public thoroughfares to the riverfront.

9. Monetary Contribution

9.1 Monetary Contribution Payment



9.1.1 The Developer covenants to pay the Monetary Contribution to Parramatta.

9.1.2 The Developer must pay the Monetary Contribution by way of a single instalment on or before the date on which the first Occupation Certificate granted for the residential component of the development (interim or otherwise) is issued in respect of any Development on the Land.

9.1.3 All payments of the Monetary Contribution or other moneys payable by the Developer under this planning agreement must be without deductions and free of any right of set off to Parramatta (using a direct debit payment method or such other payment method as Parramatta reasonably requires) as Parramatta may in otherwise direct.

9.1.4 Parramatta need not make demand for any amount payable by the Developer unless this planning agreement says that demand must be made.

9.1.5 The monetary contribution will be made for the purposes of this planning agreement when cleared funds are deposited by means of electronic transfer into a bank account nominated by Parramatta.

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9.2 Monetary Contribution Adjustment

The Monetary Contribution is to be adjusted on each Review Date in accordance with the following calculation:

$$A = \frac{B \times D}{C}$$

where:

- A is the adjusted Monetary Contribution applicable from the relevant Review Date;
- B is the Monetary Contribution applicable immediately prior to the relevant Review Date Review Date;
- C is the Index Number for the Quarter ending immediately before the date of this planning agreement or the last prior Review Date (whichever is the later); and
- D is the Index Number for the Quarter ending immediately before the relevant Review Date.

10. Car park Lease



10.1 Acknowledgment

The parties acknowledge that:

- 10.1.1 as at the date of this planning agreement the Developer is lessee under the Carpark Lease; and
- 10.1.2 unless otherwise expressly stated in this planning agreement, nothing in this planning agreement derogates from the rights and obligations of the Developer (as lessee under the Carpark Lease).

10.2 Podium Level

- 10.2.1 After the issue of a Construction Certificate for the Development:
 - (a) The Developer must keep Parramatta informed as to the progress of the Development, including the height of the Development; and
 - (b) Parramatta may request at any time information as to the progress of the Development, including the height of the Development, and the Developer will respond to that request within at least three (3) Business Days;
- 10.2.2 If either the Developer or Parramatta considers that the Development has reached Podium Level, the Developer must provide to Parramatta a certificate prepared by a registered surveyor confirming the height the Development has reached.
- 10.2.3 If any certificate produced by a registered surveyor as a result of actions undertaken in clause 10.2.2 confirms that the Development has reached Podium

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Level, then the Development will be taken to have reached Podium Level on the date that certificate was issued.

10.3 Surrender

- 10.3.1 On the Podium Level Date the Developer must surrender its interest in the Carpark Lease and Parramatta must accept that surrender.
- 10.3.2 On the Podium Level Date, the Carpark Lease is to be treated as having been surrendered as if the Developer had duly completed, delivered and registered an instrument formally recording such surrender.

10.4 Sublease of Carpark Lease

- 10.4.1 Prior to the surrender of the Carpark Lease occurring in accordance with clauses 10.3.1 and 10.3.2, the Developer must ensure that any sublease of the Carpark Lease is terminated.
- 10.4.2 The parties acknowledge that Parramatta may enter into separate arrangements with any sublessee of the Carpark Lease.
- 10.4.3 The Developer indemnifies and releases Parramatta from any Claim arising out of the surrender of the Carpark Lease or termination of any sublease.

10.5 Airbridge

- 10.5.1 The parties acknowledge that the Airbridge is situated within part of the Carpark Land and the Development includes the demolition of the Airbridge.
- 10.5.2 The Developer shall not be required by Parramatta to reinstate or reconstruct the Airbridge at any location if the Developer demolishes the Airbridge.
- 10.5.3 Once the Airbridge is demolished, the Developer must ensure that the location of the Airbridge and its immediate surrounding area is made safe and, to the extent reasonably required by Parramatta, carry out works to remediate the immediate surrounding area in a proper and workmanlike manner and otherwise in accordance with the direction of Parramatta, at the Developer's sole cost.

10.6 Procure Registration

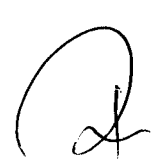

No later than 20 Business Days after that date on which the Carpark Lease is surrendered, the Developer must:

- 10.6.1 procure registration on the Register pertaining to the Carpark Land the surrender of the Carpark Lease; and
- 10.6.2 deliver to Parramatta a title search of the Carpark Land confirming registration of the surrender of the Carpark Lease.

11. Parramatta Land Transfer

11.1 Subdivision of Parramatta Land

- 11.1.1 From the date the Modification is approved by the Minister Parramatta will use its best endeavours to cause the registration of a plan of subdivision of the Parramatta Land, creating Part Lot 102 as a separate lot.

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- 11.1.2 For the purposes of clause 11.1.1, the Developer must prepare any relevant survey plans of the proposed subdivision, obtain any Approval required prior to the subdivision being registered and arrange for the registration of the plan or plans effecting the subdivision.
- 11.1.3 The Developer will pay all reasonable costs associated with the subdivision of the Parramatta Land to create Part Lot 102, including survey costs, application fees, legal fees, uplift fees and registration fees (excluding Parramatta's internal administrative costs).

11.2 Transfer Part Lot 102

- 11.2.1 Within 10 Business Days of the registration of a plan of subdivision of the Parramatta Land creating Part Lot 102 as a separate lot, Parramatta agrees that it will transfer Part Lot 102 to the Developer by registering under the *Real Property Act 1900* an instrument that is effective to transfer title to the land (free from encumbrances unless otherwise agreed in writing) to the Developer.
- 11.2.2 The Developer will attend to the preparation and registration of any instrument required to effect the transfer referred to in clause 11.2.1 and must pay all costs expenses associated with the transfer under this clause 11 (excluding any of Parramatta's legal or administrative costs and expenses in respect of the transfer of Part Lot 102 under this clause 11.2).

11.3 Owner's Consent



Until the Parramatta Land is transferred in accordance with clause 11.2, Parramatta agrees:

- 11.3.1 the Developer may include the area of the Parramatta Land that will form Part Lot 102 in any calculation of floor space ratio for the Development and the Modification; and
- 11.3.2 it will not unreasonably withhold landowner's consent to any application for approval of the Modification required under the EPAA Act, on the sole grounds that the application includes that part of the Parramatta Land that will form Part Lot 102.

12. Transfer of Land

12.1 Transfer of Part Lot 102

- 12.1.1 Subject to the Developer complying with all its obligations under the planning agreement, including its obligations under clause 9.1, the Developer must do (or procure to be done) all things required to transfer the land comprising Part Lot 102 to Parramatta (including transfer of ownership in fee simple) for \$1.00 on the Podium Level Date. Transfer of the land comprising Part Lot 102 will be made for the purposes of this planning agreement when the Developer registers under the *Real Property Act 1900* an instrument that is effective to transfer title to the land (free from encumbrances unless otherwise agreed by Parramatta in writing) to Parramatta.
- 12.1.2 The Developer must pay all costs expenses associated with the transfer under this clause 12.1 (excluding any of Parramatta's legal or administrative costs and expenses in respect of the transfer of Part Lot 102 under this clause 12.1).

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12.2 Directions

The Developer must comply with any reasonable directions given by Parramatta in respect of the transfer of Part Lot 102 to Parramatta, including any reasonable requirement relating to the physical state of Part Lot 102 prior to transfer.

13. Public thoroughfares

13.1 Easement in gross

13.1.1 Prior to the issue of any Occupation Certificate (interim or otherwise) for the Development, easements in gross in favour of Parramatta are to be registered against the title to Lot 101 at no cost to Parramatta.

13.1.2 The easements in gross referred to in clause 13.1.1 will include:

- (a) a right of footway granting full and free right to Parramatta and every person authorised by it including any member of the public, to go, pass and repass on foot at all times and for all purposes without animals or vehicles over the Easement Land;
- (b) a right of access permitting Parramatta, and any person authorised by it, to:
 - (i) by any reasonable means pass across the Easement Land for the purpose of exercising or performing any of its powers, authorities, duties or functions;
 - (ii) do anything reasonably necessary for passing across the Easement Land including entering Lot 101, taking anything onto Lot 101 and carrying out work on the Easement Land such as constructing, place, repairing or maintaining trafficable surfaces, driveways or structures; and
 - (iii) carry out any works considered by Parramatta to improve the public amenity of the Easement Land.

13.2 Access through the Carpark Land

13.2.1 Prior to the issue of a Construction Certificate for the Development, the Developer must establish and construct a physical pedestrian access through and or adjacent to the Carpark Land, generally in the location identified in the diagram at Schedule 2.

13.2.2 The pedestrian access established under clause 13.2.1 must be adequate to provide safe pedestrian access through and or adjacent to the Carpark Land and will be subject to an inspection by Parramatta to confirm that it is satisfactory.

13.2.3 The pedestrian access established under clause 13.2.1 must be maintained by the Developer until the surrender of the Carpark Lease in accordance with this planning agreement.

14. Security

14.1 Delivery

On the date of the first Construction Certificate in respect of any Development of the Land, the Developer must deliver the Security to Parramatta as security for the performance by the Developer of its obligations under this planning agreement.

14.2 Security Amount Adjustment

The Security Amount is to be adjusted on each Review Date in accordance with the following calculation:

$$A = \frac{B \times D}{C}$$

where:

- A is the adjusted Security Amount applicable from the relevant Review Date;
- B is the Security Amount applicable immediately prior to the relevant Review Date;
- C is the Index Number for the Quarter ending immediately before the date of this planning agreement or the last prior Review Date (whichever is the later); and
- D is the Index Number for the Quarter ending immediately before the relevant Review Date.

14.3 Security Substitution or Top up

The Developer agrees to give Parramatta a substitute or supplement Security for the revised Security Amount no later than 20 Business Days after each Review Date.



14.4 Appropriation

The Developer acknowledges and agrees that:

- 14.4.1 Parramatta may make an appropriation from the Security to compensate or reimburse Parramatta for loss it has suffered or the costs and expenses it has incurred as a result of any breach considered serious of this planning agreement by the Developer; and
- 14.4.2 Parramatta may make an appropriation from the Security despite any objection, claim or direction by the Developer to the contrary.

14.5 Replacement bank guarantee

At Parramatta's request, the Developer must provide an additional or supplement Security for the Security Amount if there has been appropriation that results in the value of the Security held by Parramatta after appropriation being less than Security Amount.

14.6 Security return

Parramatta must return the Security to the Developer without delay after payment of the contributions pursuant to clause 9.1 if there is no subsisting default by the Developer under this planning agreement that has not been waived by Parramatta.

14.7 Occupation Certificate Requirements

14.7.1 In accordance with s109H(2) of the EPAA Act, the obligation to pay the Monetary Contribution under clause 9 of this planning agreement must be satisfied prior to the issue of the first Occupation Certificate (interim or otherwise) for the residential component of the Development.

14.7.2 In accordance with s109H(2) of the EPAA Act, the obligation to provide the Public Pedestrian Thoroughfare under clause 13 of this planning agreement must be satisfied prior to the issue of the first Occupation Certificate (interim or otherwise) for the Development.

15. Dispute Resolution

15.1 Notice of Dispute

If a party claims that a dispute has arisen under this planning agreement (**Claimant**), it must give notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).

15.2 Claim Notice Response

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

15.3 Negotiation

The nominated representatives must:

15.3.1 meet to discuss the matter in good faith within 10 Business Days after the Respondent has given a notice advising of its representatives; and

15.3.2 use reasonable endeavours to settle or resolve a dispute within 15 Business Days after they have met.

15.4 Further Notice

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a notice calling for the termination of the dispute (**Dispute Notice**).

15.5 Mediation

The parties agree that a dispute will be mediated if it is the subject of a Dispute Notice, in which case:

15.5.1 the parties must agree to the terms of reference for the mediation within 5 Business Days of receipt of the Dispute Notice, the terms shall include a requirement that the mediation rules at the Institute of Arbitrators and Mediators Australia (NSW Chapter) applies;

- 15.5.2 the mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- 15.5.3 the mediator appointed pursuant to clause 15.5.2 must:
- (a) have reasonable qualifications and practical experience in the area of the dispute; and
 - (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose and such interest or duty before his appointment;
- 15.5.4 the mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- 15.5.5 the parties must within 5 Business Days of receipt of the Dispute Notice notify each other if their representatives will be involved in the mediation;
- 15.5.6 the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which the subject of the mediation settlement for the purpose of enforcing that mediation settlement;
- 15.5.7 in relation to costs and expenses:
- (a) each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) the costs of the mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation be borne by that party.

15.6 Litigation

If a dispute is not finally resolved in accordance with this clause 16, either party is at liberty to litigate the dispute.

15.7 Continue to Perform Obligations

Each party must continue to perform its obligations under this planning agreement, notwithstanding the existence of a dispute to the extent to which the dispute does not affect each party's performance of its obligations under this planning agreement.

16. Assignment and Other Dealings

16.1 Land Owner Dealings

The Developer must not sell, transfer, assign, mortgage, lease or otherwise deal with (**Dealing**) its right, title and interest in the Land (if any) or its rights and obligations under this planning agreement, or allow any interest in them to arise or be varied, in each case, without Parramatta's consent and unless, before any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- 16.1.1 gives Parramatta not less than 10 Business Days notice of the proposed Dealing; and

- 16.1.2 procures that the transferee, assignee or novatee (**incoming party**) signs and delivers to Parramatta prior to any such Dealing taking effect, a deed in favour of the Developer in form and substance acceptable to Parramatta whereby:
- (a) the incoming party becomes contractually bound to perform all of the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this planning agreement; and
 - (b) Each party agrees to pay their own legal costs and expenses incurred in connection with the negotiation, preparation and signature of such deed.

16.2 Restriction on Transfer of Shares

If the Developer is a corporation (other than a corporation listed on the Australian Stock Exchange (**ASX**)), a change in effective control of the Developer (by way of change in shareholding ownership or otherwise) is deemed to be a dealing for the purposes of clause 16.1 and the requirements of clause 16.1 apply.

17. Costs, GST and Interest

17.1 Preparation Costs

Each party must pay its own costs in relation to the negotiation, preparation and signature of this planning agreement.

17.2 Advertising Costs

No later than 10 Business Days after being given a demand by Parramatta, the Developer must pay or reimburse all Parramatta's costs and expenses in connection with the advertising and exhibition of this planning agreement in accordance with the EPAA Act.

17.3 GST

- 17.3.1 In this clause 17.3 words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.
- 17.3.2 All consideration payable under this planning agreement in relation to any supply is GST exclusive unless otherwise stated.
- 17.3.3 If GST is payable in respect of any supply made by a supplier under this planning agreement, subject to clause 17.3.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this planning agreement.
- 17.3.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under this clause 17.3.3.

17.4 Interest

If the Developer does not pay any other moneys payable under this planning agreement on time, the Developer must pay interest at the Prescribed Rate on the outstanding amount for the period from the day the unpaid money was due until it is paid. The interest must be paid to Parramatta no later than 10 Business Days after Parramatta has given the Developer a demand for any interest.



18. Notices**18.1 Service of Notice**

A notice or other communication required or permitted, under this planning agreement, to be served on a person must be in writing and may be served:

- 18.1.1 personally on the person;
- 18.1.2 by leaving it at the person's current address for service;
- 18.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 18.1.4 by facsimile to the person's current number for service.

18.2 Particulars for Service

- 18.2.1 The particulars for service of each party are set out on page one of this planning agreement under the heading 'parties'.
- 18.2.2 A party may change the address, facsimile or email number for service by giving notice to the other party.
- 18.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

18.3 Time of Service



A notice or other communication is deemed served:

- 18.3.1 if served personally or left at the person's address, upon service;
- 18.3.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;
- 18.3.3 if served by facsimile, subject to clause 18.3.4, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 18.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

19. Approvals and Consents

The parties acknowledge that:

- 19.1.1 except as otherwise stated in this planning agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this planning agreement in that party's absolute discretion and subject to any conditions determined by the party;
- 19.1.2 a party is not obliged to give its reasons for giving or withholding approval or consent or for giving approval or consent subject to conditions; and

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- 19.1.3 this planning agreement does not impose any obligations on a governmental agency to:
- (a) grant a development consent where it is acting as a Consent Authority; or
 - (b) exercise any function under any Laws (including the EPAA Act).

20. Representations and Warranties

The parties represent and warrant that they have the 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.

21. New Laws

If the Developer is obliged by a New Law to do something to pay an amount which it is already contractually obliged to do or pay under this planning agreement then, to the extent only that the relevant obligation is required under both the New Law and this planning agreement, compliance with the New Law will constitute compliance with the relevant obligation under this planning agreement.

22. General

22.1 Amendment

This planning agreement may only be varied or replaced by a document duly signed by the parties.

22.2 Entire Understanding

This planning agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this planning agreement and have no effect.

22.3 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to affect, perfect or complete the transactions contemplated by this planning agreement.

22.4 Waiver and Exercise of Rights



- 22.4.1 A single or partial exercise or waiver of a right relating to this planning agreement does not prevent any other exercise of that right or the exercise of any other right.
- 22.4.2 No party will be liable for any loss or expenses incurred by the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

22.5 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this planning agreement.

22.6 No Relationship

- 22.6.1 No party to this planning agreement has the power to obligate or bind any other party.
- 22.6.2 Nothing in this planning agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.
- 22.6.3 Nothing in this planning agreement will be deemed to authorise or empower a party to act as agent for the other party.



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Signing Page

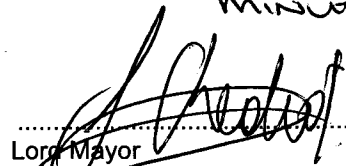
Executed by the parties

THE OFFICIAL SEAL of PARRAMATTA CITY COUNCIL was affixed in the presence of _____, and the sealing is attested by:

THE COMMON SEAL OF THE COUNCIL OF THE CITY OF PARRAMATTA WAS HEREUNTO AFFIXED THIS 4 DAY OF JULY 2014 PURSUANT TO A RESOLUTION OF COUNCIL PASSED AT ITS MEETING HELD ON THE 11 DAY OF NOVEMBER 2013. MINUTE 14295.


.....
Chief Executive Officer

G. C. DYER
.....
Name of Chief Executive Officer

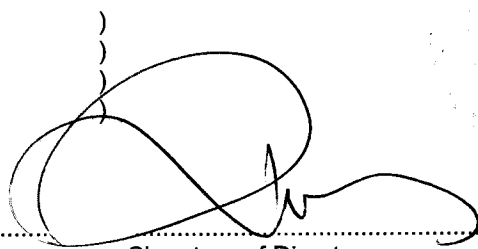

.....
Lord Mayor

.....
Name of Lord Mayor

EXECUTED by KARIMBLA PROPERTIES (NO. 22) PTY LIMITED in accordance with Section 127 of the Corporations Act 2001 in the presence of:


.....
Signature of Secretary/Director

Peter Spira
.....
Name of Secretary/Director


.....
Signature of Director

ROBYN McCULLY
.....
Name of Director



SECRETARY



Schedule 1

Reference Schedule

Item	Name	Description
1	Land	The land comprised in Lots 2 & 3 in Deposited Plan 788637 and known as 330 Church Street, Parramatta, NSW.
2	Development	The development of the Land authorised by the Consent involving (without limitation) demolition and the construction of improvements comprising residential towers, basement car parking, retail authorised by the Consent, as amended from time to time.
3	Consent	The determination of major projects application MP10 0171 by the Minister under Part 3A of the EPAA Act issued by the Department of Planning & Infrastructure on 19 October 2012, as amended from time to time.
4	Modification	The modification of the Consent to authorise: <ul style="list-style-type: none">▪ the increase in Floor Space Ratio to 8.25:1;▪ an increase in the height of the East Tower by 5 storeys (+ 24.8 metres) to 27 storeys;▪ an increase in the height of the West Tower by 16 storeys (+ 59.5 metres) to 50 storeys above podium;▪ and a change of podium, so that the podium height increases by 1 storey (+ 3.1 metres) to 4 storeys.
5	Public Benefits	The benefits to Parramatta under this planning agreement including <ul style="list-style-type: none">• Payment of the Monetary Contribution;• Transferring ownership in fee simple of the Part Lot 102 to Parramatta;• Surrender of the Carpark Lease; and• Providing the Public Pedestrian Thoroughfares.



6	Monetary Contribution	\$2,764,584.75
7	Part Lot 102	That part of the Parramatta Land shown in the plan contained in Schedule 3 having an area of approximately 720 square metres.
8	Security Amount	\$2,764,584.75

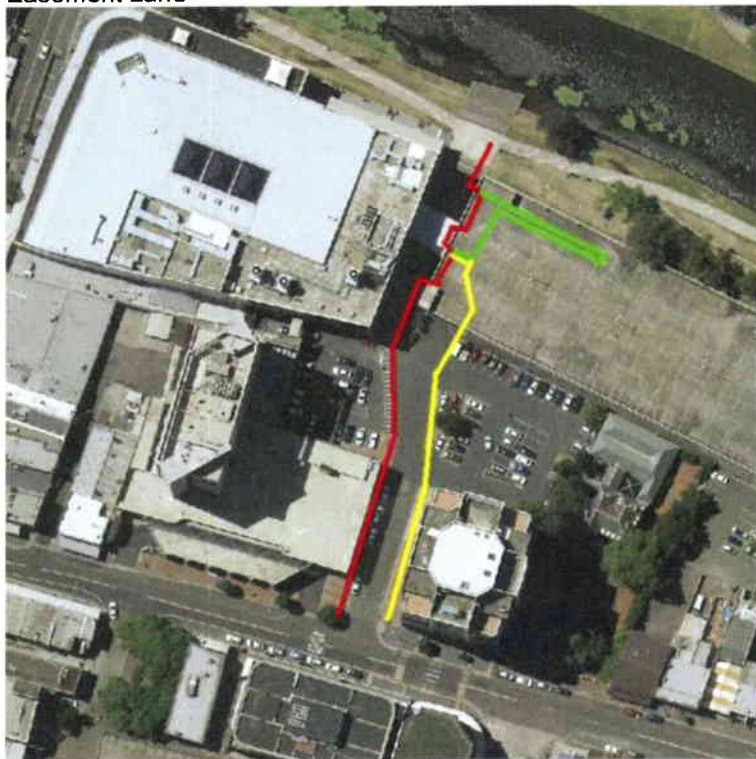
 

Schedule 2



Meriton to provide access through David Frater Carpark

Easement Land

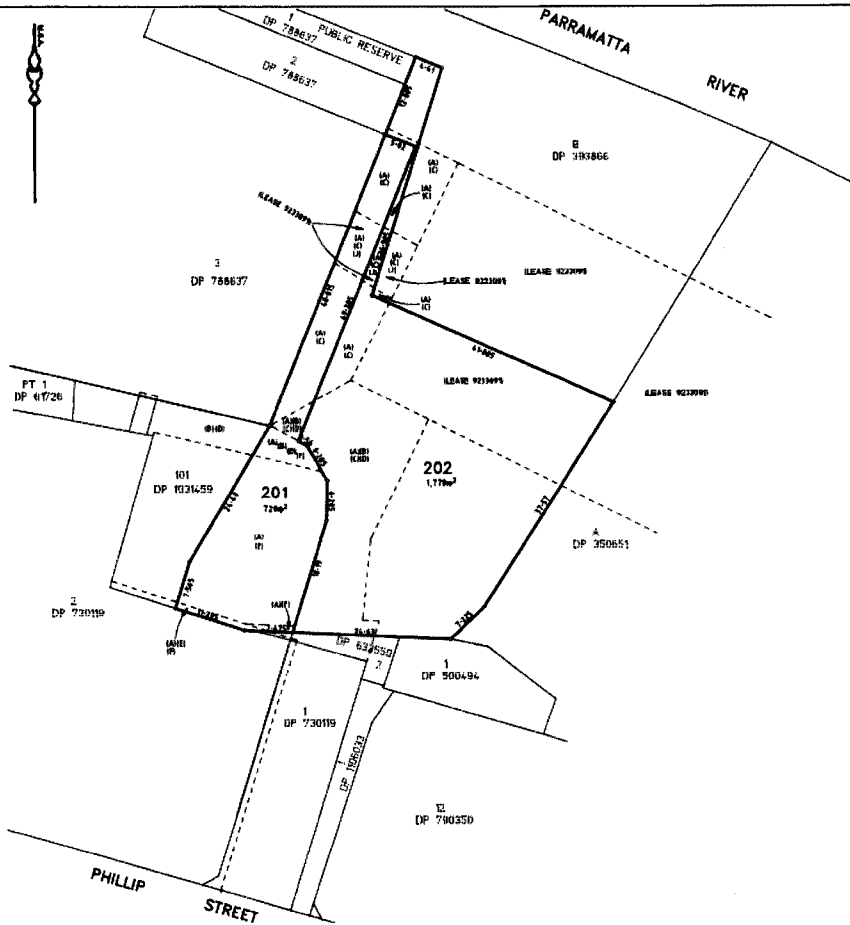


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Schedule 3

Part Lot 102



GENERAL NOTES:

1. THE PURPOSE OF THIS PLAN IS TO SHOW THE GENERAL CONCEPT OF A PROPOSED SUBDIVISION OF THE SUBJECT LAND. ALL DIMENSIONS AND AREAS SHOWN ARE SUBJECT TO FINAL SURVEY.

- (A) RIGHT OF CARRIAGEWAY 12-31 WIDE & VARIABLE WIDTH (DP 1031459)
- (B) RIGHT OF CARRIAGEWAY 12-31 WIDE, 5 WIDE & VARIABLE WIDTH (DP 1031459)
- (C) RIGHT OF CARRIAGEWAY 12-31 WIDE & VARIABLE WIDTH (DP 1031459)
- (D) RIGHT OF CARRIAGEWAY 12-31 WIDE, 5 WIDE & VARIABLE WIDTH (DP 1031459)
- (E) EASEMENT FOR UNDERGROUND CABLES 1 WIDE & VARIABLE WIDTH (DP 1031459)
- (F) EASEMENT FOR RIGHT OF ACCESS AND RIGHT OF MANOEVRING VARIABLE WIDTH (DP 1031459)

(A) DENOTES THAT PART OF THE RIGHT OF CARRIAGEWAY 12-31 WIDE AND VARIABLE WIDTH DENOTED (A) AND THAT PART OF THE RIGHT OF CARRIAGEWAY 12-31 WIDE AND VARIABLE WIDTH DENOTED (C) WHICH ARE LIMITED IN HEIGHT TO A HORIZONTAL PLANE AT RL 9.30 AND ARE UNLIMITED IN DEPTH.

Handwritten signatures and initials, including a large stylized 'R' and 'AA'.