

# Voluntary Planning Agreement

City of Parramatta Council (**Council**)

*ABN 49 907 174 773*

Karimbla Properties (No.13) Pty Ltd (**Developer**)

*ABN 87 115 506 502*

Meriton Properties Pty Ltd (**Guarantor**)

*ABN 49 000 698 626*

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# Agreement

## Date

## Parties

### First party

**Name** City of Parramatta Council (**Council**)  
**ACN** 49 907 174 773  
**Contact** Manager, Land Use Planning  
**Telephone** (02) 9806 5050

### Second party

**Name** Karimbla Properties (No.13) Pty Ltd (**Developer**)  
**ACN** 87 115 506 502  
**Contact** Executive Manger- Planning and Government  
**Telephone** (02) 9287 2888

### Third Party

**Name** Meriton Properties Pty Ltd (Guarantor)  
**ACN** 000 698 626  
**Contact** Executive Manger- Planning and Government  
**Telephone** (02) 9287 2888

## Background

- A. On 10 May 2016, the Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this agreement to make contributions for public purposes associated with the Instrument Change and the Development.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

**Address** means a party's address set out in the Notices clause of this agreement;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

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

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

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

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

**Development** means the proposed future development of the Land for the purposes of mixed use development containing car parking, retail shops, serviced apartments and residential accommodation;

**Development Application** has the same meaning as in the Act;

**Development Consent** has the same meaning as in the Act;

**Easement A** means the 6m wide easement from the eastern boundary of the Land to be provided over the Land marked "Easement A" shown on the plan at Annexure A for the purposes of a pedestrian right of way and on the terms in Schedule 1 (with necessary amendments to defined terms made for the purposes of registration);

**Easement B** means the 4.5m wide easement from the northern boundary of the Land to be provided over the Land marked "Easement B" shown on the plan at Annexure A for the purposes of a pedestrian right of way and on the terms in Schedule 1 (with necessary amendments to defined terms made for the purposes of registration);

**Easement Terms** means the easement terms in Schedule 1;

**Fax Number** means a party's facsimile number set out in the Notices clause of this agreement;

**GST** has the same meaning as in the GST Law;

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

**Instrument Change** means the amendment of the Parramatta LEP to increase the maximum building height limit applying to the Land from 36m to 190m and to increase the maximum floor space ratio limit applying to the Land from 4:1 to 10:1;

**Land** means Lots 201, 202, 203 and 204 DP 1082194 known as 180 George Street, Parramatta;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Monetary Contribution** means the monetary contribution payable by the Developer under clause 6 of this agreement;

**Occupation Certificate** means an occupation certificate as defined under the Act, and, if relevant, includes an interim Occupation Certificate or a final Occupation Certificate or an Occupation Certificate for only part of a building;

**Parramatta LEP** means the principle Parramatta Local Environmental Plan 2011

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW); and

**Transferee** has the meaning given in clause 12.3.

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;

- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 2 of this agreement summarises the requirements for planning agreements under s 93F of the Act and the way this agreement addresses those requirements.

### 4 Application of this agreement

This agreement applies to:

- (a) the Instrument Change, and
- (b) the Development, and
- (c) the Land.

### 5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.



## 6 Contributions to be made under this agreement

### 6.1 Monetary Contribution

- (a) The Developer will pay to Council a monetary contribution of \$7,179,300.00 or an amount calculated in accordance with the following formula, whichever is the greater:

$$\begin{array}{rcl} \$7,179,300.00 & \times & \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this agreement}} \end{array}$$

- (b) The Monetary Contribution must be paid to Council prior to the issue of the first Occupation Certificate for the Development or any part of the Development. For the purposes of this clause 6.1(b) "Development" excludes any development comprising only a refurbishment or change of use of the existing serviced apartments erected upon the Land, being the serviced apartments having frontage to Charles Street.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards revitalisation of the Parramatta River foreshore. .

### 6.2 Easements A & B

- (a) The Developer will, at no cost to Council, register Easement A and Easement B against the relevant title to the Land.
- (b) The obligation to register the easements referred to in clause 6.2 will be taken to have been satisfied when a Certificate of Title is issued by NSW Land and Property Information showing the easements burdening the relevant Land.
- (c) The easements referred to in clause 6.2 must be registered on the relevant title of the Land within 12 months of the issue of the first Occupation Certificate for the Development or any part of the Development unless both parties agree in writing for an alternative date in writing.
- (d) The parties agree and acknowledge that the easements referred to in clause 6.2 will serve the public purpose of enhancing accessibility within the Parramatta CBD and public transport facilities.
- (e) The Developer acknowledges and agrees that Council may require any part of the Development within the easements referred to in clause 6.2 to meet its reasonable standards and specifications for public domain areas.



- (f) Prior to the issue of a final Occupation Certificate for the Development, the Developer will embellish the land to be subject to Easement A and Easement B in a manner that is consistent with Council's public domain areas, in accordance with any public domain standards and policies issued by the Council required under any Development Consent granted for those works.

## 7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

## 8 Registration of this agreement

### 8.1 Developer Interest

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

### 8.2 Registration of this agreement

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
  - (i) The consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land,
  - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
  - (iii) The execution of any documents; and
  - (iv) The production of the relevant duplicate certificates of title,to enable the registration of this agreement in accordance with clause 8.2.

- (c) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
  - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
  - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

### 8.3 Removal from Register

- (a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.
- (b) Council agrees that if the Land is subdivided such that development takes place in more than one stage, the registration of this agreement will be removed from the title of any allotment of the Land subject to a strata scheme under the *Strata Schemes (Freehold Development) Act 1973*, provided that this agreement remains registered against the title to the common property within the strata scheme.

### 8.4 Caveat

- (a) The Developer acknowledges and agrees that:
  - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land.

## 9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

## 10 Dispute Resolution

### 10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

### 10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

### 10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting,
  - (ii) agree that further material or expert advice about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### 10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5.

### 10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

- (c) The mediator appointed pursuant to this clause 10.5 must:
  - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### **10.6 No suspension of contractual obligations**

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

### **11 Enforcement**

#### **11.1 Default**

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

### 11.2 Guarantor

- (a) The Guarantor has agreed to guarantee the performance of the Developer's obligations under this Agreement.
- (b) The Guarantor agrees that it is liable to Council for:
  - (i) the due performance and observance by the Developer of all the provisions in this Agreement; and
  - (ii) the payment of all money which the Developer is obliged to pay to the Council under this Agreement.
- (c) The Guarantor is liable even if:
  - (i) the Developer or any Guarantor dies, or becomes mentally incapable or insolvent;
  - (ii) the Council gives the Developer any time, forbearance or other indulgence;
  - (iii) the Council does not exercise any of its rights under this Agreement, or waives or defers any of those rights;
  - (iv) the Developer or any Guarantor have any actual or alleged set-off, defence, counter-claim or other deductions; and
  - (v) the Council, or any other person does anything or omits to do anything which would, but for this provision, affect or discharge the Guarantor's liability.

### 11.3 Restriction on the issue of Certificates

- (a) In accordance with section 6.10 of the Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, section 109H of the Act), the obligation to pay the Monetary Contribution under clause 6.1 must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.
- (b) For the purposes of this clause 11.2, "Former Building and Subdivision Provisions" has the same meaning as in clause 18 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

### 11.4 Compulsory Acquisition

- (a) If the Developer does not register the easements as required by clause 6.2 of this agreement, the Council may compulsorily acquire the relevant interest of the Easement Land, in which case the Developer consents to the Council compulsorily acquiring that interest in the Land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may recover from the Developer as a debt due, any costs, including legal costs, incurred by the Council on acquisition of the interest.
- (b) Clause 11.4(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.



- (c) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the interest in the Land under clause 11.4(a).
- (d) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.4(a).

#### 11.5 General Enforcement

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

## 12 Assignment and Dealings

### 12.1 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

### 12.2 Arrangements with Mortgagee

- (a) The Developer agrees with the Council that if the Developer mortgages the Land after this agreement is entered into it must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer, and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Developer defaults on the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Developer by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.

### 12.3 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:

- (i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
  - (ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
  - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
  - (iv) The Transferee delivers to the Council replacement Bonds or Bank Guarantees as required by this agreement;
  - (v) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
  - (vi) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.
- (b) The parties agree that clause 12.3(a) does not apply if the Transferee is acquiring an interest in the Land as a purchaser of one or more lots in a strata scheme, (whether or not the plan has, at the date of exchange, been registered at the Land and Property Information).

## 13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 14 No fetter

### 14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

### 14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and



- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

## 15 Notices

### 15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to City of Parramatta Council: PO Box 32, Parramatta, NSW 2124  
Fax: 02 9806 5917  
Email: Council@cityofparramatta.nsw.gov.au  
Attention: Manager, Land Use Planning
  - (ii) to Karimbla Properties (No.13) Pty Ltd: L11 528 Kent Street, SYDNEY  
Fax: (02) 9287 2777  
Email: generalcounsel@meriton.com.au  
Attention: Director
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

### 15.2 Notices sent by email:

- (a) A party may serve a Notice by email if the Notice:
  - (i) includes a signature block specifying:
    - (A) the name of the person sending the Notice; and
    - (B) the sender's position within the relevant party;
  - (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;

- (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
- (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
  - (A) to City of Parramatta Council:      Attention: Manager, Land Use Planning Council@cityofparramatta.nsw.gov.au
  - (B) to (ii) to Karimbla Properties (No.13) Pty Ltd:      Attention: Executive Manager – Planning and Government  
generalcounsel@meriton.com.au
- (b) The recipient of a Notice served under this clause 15.2 must:
  - (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

### 15.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 15.2 is taken to be given or made:
  - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
  - (ii) when the Notice enters an information system controlled by the recipient; or
  - (iii) when the Notice is first opened or read by the recipient,
 whichever occurs first.
- (b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

## 16 **General**

### 16.1 *Relationship between parties*

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

#### **16.2 *Time for doing acts***

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

#### **16.3 *Further assurances***

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

#### **16.4 *Joint and individual liability and benefits***

Except as otherwise set out in this agreement, any agreement, covenant, representation or warranty under this 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.

#### **16.5 *Variation***

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

#### **16.6 *Counterparts***

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

#### **16.7 *Legal expenses and stamp duty***

- (a) The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Developer agrees to pay or reimburse the reasonable costs and expenses reasonably incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.

#### **16.8 *Entire agreement***

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

#### **16.9 *Representations and warranties***

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

#### **16.10 Severability**

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

#### **16.11 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

#### **16.12 Waiver**

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **16.13 GST**

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.
- (d) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.

**16.14 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## Schedule 1 Easement Terms

### Easement A

In this Schedule:

**Easement Land** means that part of the Land the subject of the Easement.

- 1 The owner of the Easement Land grants to the Council and members of the public full and free right to go, pass and repass over the Easement Land at all times:
  - (a) with or without animals; and
  - (b) on foot without vehicles (other than wheelchairs or other disabled access aids);for all lawful purposes.
- 2 The owner of the Easement Land must, to the satisfaction of Council, acting reasonably:
  - (a) keep the Easement Land (including any services in, on or under the Easement Land) in good repair and condition;
  - (b) maintain and repair the Easement Land and all improvements on the Easement Land;
  - (c) keep the Easement Land clean and free from rubbish; and
  - (d) maintain sufficient public liability insurance covering the use of the Easement Land in accordance with the Easement.
- 3 If the owner of the Easement Land does not perform any obligation under clause 2 the Council may undertake the required work and recover the costs of all such work from the owner of the Easement Land as a liquidated debt.
- 4 The owner of the Easement Land must ensure that any rules made by an Owner's Corporation relating to the Easement Land have been approved by the Council, acting reasonably.
- 5 If any member or members of the public loiter or congregate, for any purpose which the owner of the Easement Land, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 6 The owner of the Easement Land may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Land.
- 7 The owner of the Easement Land may engage security personnel to monitor and control the behaviour of the public using the Easement Land, including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Easement Land.
- 8 The owner of the Easement Land may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or restrict access through all or part of the Easement Land for the time and to the extent necessary but only on reasonable grounds for the purposes of:



- (a) construction, construction access, repairs, maintenance, replacement and alteration to the Easement Land or any improvements in, on or under the Easement Land; or
  - (b) security, public safety or evacuation of the Easement Land and adjoining buildings
- 9 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, the owner of the Easement Land may, provided any necessary planning approvals are obtained, use the area of the Easement Land for the purposes of activating ground floor commercial usage and, in particular, the owner of the Easement Land may:
- (i) Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other structures or improvements at ground level on the Easement Land; and
  - (ii) Use the Easement Land,
- in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 9 July 2012 and amended 25 February 2013, or any such policy of the Council that replaces that policy.
- 10 The Council is solely empowered to release the Easement.
- 11 The Easement may only be varied by written agreement between the Council and the owner of the Easement Land.

## **Easement B**

In this Schedule:

**Easement Land** means that part of the Land the subject of the Easement.

- 1 The owner of the Easement Land grants to the Council and members of the public full and free right to go, pass and repass over the Easement Land at all times:
- (a) with or without animals; and
  - (b) on foot without vehicles (other than wheelchairs or other disabled access aids);
- for all lawful purposes.
- 2 The owner of the Easement Land must, to the satisfaction of Council, acting reasonably:
- (a) keep the Easement Land (including any services in, on or under the Easement Land) in good repair and condition;
  - (b) maintain and repair the Easement Land and all improvements on the Easement Land;
  - (c) keep the Easement Land clean and free from rubbish; and
  - (d) maintain sufficient public liability insurance covering the use of the Easement Land in accordance with the Easement.



- 3 If the owner of the Easement Land does not perform any obligation under clause 2 the Council may undertake the required work and recover the costs of all such work from the owner of the Easement Land as a liquidated debt.
- 4 The owner of the Easement Land must ensure that any rules made by an Owner's Corporation relating to the Easement Land have been approved by the Council, acting reasonably.
- 5 If any member or members of the public loiter or congregate, for any purpose which the owner of the Easement Land, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 6 The owner of the Easement Land may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Land.
- 7 The owner of the Easement Land may engage security personnel to monitor and control the behaviour of the public using the Easement Land, including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Easement Land.
- 8 The owner of the Easement Land may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or restrict access through all or part of the Easement Land for the time and to the extent necessary but only on reasonable grounds for the purposes of:
  - (a) construction, construction access, repairs, maintenance, replacement and alteration to the Easement Land or any improvements in, on or under the Easement Land; or
  - (b) security, public safety or evacuation of the Easement Land and adjoining buildings
- 9 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, the owner of the Easement Land may, provided any necessary planning approvals are obtained, use the area of the Easement Land for the purposes of activating ground floor commercial usage and, in particular, the owner of the Easement Land may:
  - (a) Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other structures or improvements at ground level on the Easement Land; and
  - (b) Use the Easement Land,  
in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 9 July 2012 and amended 25 February 2013, or any such policy of the Council that replaces that policy.
- 10 The Council is solely empowered to release the Easement.
- 11 The Easement may only be varied by written agreement between the Council and the owner of the Easement Land.

## Schedule 2

## Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p>x Yes <input type="checkbox"/> No</p> <p>x Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes x No</p>
<p><b>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>See the definition of Land in clause 1</p>
<p><b>Description of the Application – Section 7.4(3)(b)</b></p>	<p>See the definition of Instrument Change in clause 1</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b></p>	<p>See Clause 6</p>
<p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>	<p>See Clause 7</p>
<p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>	<p>See Clause 7</p>
<p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>	<p>See Clause 7</p>
<p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>	<p>See Clause 10</p>
<p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>See Clause 11</p>
<p><b>Registration of the Planning Agreement – Section 7.6</b></p>	<p>See Clause 8</p>
<p><b>No obligation to grant consent or exercise functions – Section 7.4(9)</b></p>	<p>See clause 14 (no fetter)</p>

Executed as an agreement

*The common seal*  
~~Executed for and on behalf of City of~~ *was affixed on*  
Parramatta City Council by its authorised  
delegate in accordance with a resolution  
of the Council on 18/12/2017:

Signature of Witness

*Mark Stapleton*  
Chief Executive Officer

Signature of Authorised Delegate:

*Andrew Wilson*  
Lord Mayor

Print name

Executed by Karimbla Properties  
(No.13) Pty Ltd under seal as Developer  
to this Deed:

Signature of Director

DAVID CREMONA

Print name

Signature of Secretary

ROBYN McCULLY



Print name

Executed by Meriton Properties Pty Ltd  
under seal as Guarantor to this Deed

Signature of Director

DAVID CREMONA

Print name

Signature of Secretary

ROBYN McCULLY



Print name

Print name



27 July 2018

The Chief Executive Officer  
City of Parramatta Council  
DX 8279  
Parramatta

By email  
jcoy@cityofparramatta.nsw.gov.au

Dear Sir

**Planning Agreement for Land at 180 George Street, Parramatta**  
**Our ref: NLS/PAR970-00110**

- 1 We refer to the attached planning agreement, which was originally prepared by the developer, Karimbla Properties (No. 13) Pty Ltd, based on the Council's template.
- 2 We have made amendments to the agreement following Council's instructions. Council staff have negotiated the final terms of the planning agreement with the developer.

**Amendments to agreement**

- 3 The attached version of the agreement is the same as the final draft we sent to Council on 22 June 2018, with an amendment to clause 6.1(b) to include the following:

For the purposes of this clause 6.1(b) "Development" excludes any development comprising only a refurbishment or change of use of the existing serviced apartments erected upon the Land, being the serviced apartments having frontage to Charles Street.

- 4 The following amendments were made to the agreement after its exhibition in late 2017:
  - (a) Amendments to require a 6m wide easement for a pedestrian right of way along the eastern boundary of the site (Easement A) and a 4.5m wide easement for a pedestrian right of way along the northern boundary of the site (Easement B). Prior to this change, the VPA required a single 6m wide public access easement generally in the same location as Easement A and Easement B.
  - (b) An amendment to the definition of "Land" so that the agreement did not apply to any part of SP 74916. The planning agreement now only applies to Lots 201, 202, 203 and 204 DP 1082194 and does not apply to Lots 1, 2, 3, 4 and 21 SP 74916 and the Common Property SP 74916 as originally proposed.
  - (c) An amendment to the plan at Annexure A so that Easement B does not extend over SP 74916.
  - (d) The amendment to clause 6.1(b) as set out in paragraph 3 of this letter.
  - (e) Other administrative amendments to reflect recent amendments to the *Environmental Planning and Assessment Act 1979 (EPA Act)*.

**Newcastle**

Sparke Helmore Building, Level 7, 28 Honeysuckle Dr, Newcastle NSW 2300  
PO Box 812, Newcastle NSW 2300  
t: +61 2 4924 7200 | f: +61 2 4924 7299 | DX 7829 Newcastle | [www.sparke.com.au](http://www.sparke.com.au)

adelaide | brisbane | canberra | melbourne | newcastle | perth | port macquarie | sydney | upper hunter NLS\NLS\65251053\1



## Terms of the agreement

- 5 The agreement requires the developer to:
- (a) pay a monetary contribution in the sum of \$7,179,300 indexed in accordance with increases in the CPI; and
  - (b) register easements for pedestrian access along the northern and eastern boundaries of the site; and
  - (c) develop the easement areas in accordance with Council's public domain standards and policies and any development consent granted for those works.
- 6 The agreement does not exclude the application of sections 7.11, 7.12 and 7.24 of the EPA Act.
- 7 The agreement is to be registered on title. On execution, the Council may register a caveat against the relevant land, which must be withdrawn once the agreement is registered. The developer has 10 business days from execution to register the agreement. Please let us know if you would like us to lodge caveats over the relevant land once Council signs the agreement.
- 8 The delivery of the contributions is not secured by a bank guarantee. Meriton Properties Pty Ltd has agreed to guarantee the performance of the developer's obligations under the agreement.
- 9 The agreement restricts the issue of an Occupation Certificate unless the obligation to pay the monetary contributions has been satisfied. Council is also entitled to compulsorily acquire the easement land for \$1.00 if the developer does not register the easements as required by the agreement.

## Execution

- 10 The agreement has been executed for Karimbla Properties (No. 13) Pty Ltd (as developer) and Meriton Properties Pty Ltd (as guarantor). For the purposes of registering the planning agreement, all signatories must sign the first (front cover) and last (Annexure A) pages. Signatories for the developer and guarantor have not signed the last page. They will need to do this prior to registration, but Council can still execute the agreement.
- 11 The execution clause for Council requires amendment. The Council Resolution of 18 December 2017 provides that the agreement may be executed under the Council's seal. The execution clause for Council should therefore be written as follows:

**The Common Seal of the City of Parramatta Council** was affixed in the presence of:

Councillor Andrew Wilson  
Lord Mayor

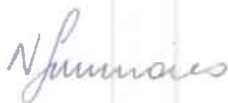
Mark Stapleton  
Chief Executive Officer

- 12 The execution clause can be amended by hand. Any amendments made by hand must be initialled by all signatories. When the executed agreement is provided to the other parties, they should be asked to ensure that the amendments are initialled.
- 13 Clause 400 of the *Local Government (General) Regulation 2005* sets out the requirements for executing an agreement under Council seal. It provides:

**400 Council seal**

- (1) The seal of a council must be kept by the mayor or the general manager, as the council determines.
- (2) The seal of a council may be affixed to a document only in the presence of:
- (a) the mayor and the general manager, or
  - (b) at least one councillor (other than the mayor) and the general manager, or
  - (c) the mayor and at least one other councillor, or
  - (d) at least 2 councillors other than the mayor.
- (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.
- (4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.
- 14 When the Council is ready to sign the agreement, please ensure that:
- (a) both of the signatories are present when the Council seal is affixed;
  - (b) both signatories initial the changes to the execution clause on page 25; and
  - (c) both signatories sign the first and last pages of the agreement so that the Land Registry Service requirements are satisfied.
- 15 The date the Council signs the agreement should be added to page 4.
- 16 Please contact us if you have any queries regarding the execution of the agreement.

Yours faithfully



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m: +61 410 415 416  
e: [naomi.simmons@sparke.com.au](mailto:naomi.simmons@sparke.com.au)

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