

# OPEN SPACE WORKS AGREEMENT

## AGREEMENT DATED

## PARTIES

1. **CITY OF PARRAMATTA COUNCIL** (ABN 49 907 174 773) of 126 Church Street, Parramatta NSW 2150 ("**Council**")
2. **KARIMBLA PROPERTIES (NO. 51) PTY LTD** ABN 95 168 601 250 of Level 11, 528 Kent Street, Sydney NSW 2000 ("**Developer**")

## RECITALS

- A. The Developer is the owner of the Land.
- B. On 8 November 2019 and 16 December 2020 the Developer and the Minister for Planning and Public Spaces entered into a Planning Agreement that requires the Developer to carry out and complete the Open Space Works and transfer the Open Space Land to Council.
- C. The parties agree that the Developer will carry out the Open Space Works on the terms set out in this Agreement.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

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#### 1.1 Definitions

The following meanings apply to capitalised terms used in this Agreement unless the context otherwise requires:

**Agreement** means this Open Space Works Agreement, including all schedules, attachments and annexures.

**Approvals** means any certificates, licences, consents, permits, approvals or other requirement of any Government Agency.

**Bank Guarantee** has the same meaning ascribed to that term under the Planning Agreement and may include an insurance bond from an insurer reasonably acceptable to Council on terms and conditions reasonable acceptable to Council.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

**Certificate of Practical Completion** means a written certificate confirming that the Open Space Works has been completed to Council's satisfaction (acting reasonably).

**Construction Terms** means the terms and conditions set out in Schedule 3.

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

**Defects** means any defect, deficiency, fault, error or omission in the relevant Open Space Works or Open Space Land (as applicable) and anything that adversely affects, or is likely to adversely affect the appearance, structural integrity or use and enjoyment of the Open Space Land but excludes:

- (a) any intentional damage to the extent that it is caused by the Council or any other person other than the Developer to the extent that the aggregate value of repairing such intentional damage exceeds \$10,000 (ex GST); and
- (b) any works that is not part of the Open Space Works.

**Defects Liability Period** means the period of 12 months from the date on which a Certificate of Practical Completion is issued by Council.

**Defects Liability Security Amount** means an amount equivalent to 10% of the Open Space Security Amount.

**Development** has the meaning ascribed to that term under the Planning Agreement.

**Land** means the land described in Item 3 of Schedule 1.

**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).

**Minister** means the Minister for Planning and Public Spaces.

**Occupation Certificate** has the same meaning given in the *Environmental Planning and Assessment Act 1979*.

**Open Space Security Amount** means \$1,200,000.

**Open Space Works** means any work in, on, over or under the Open Space Land carried out by the Developer necessary to provide the following on the Open Space Land:

- (a) open lawn;
- (b) a retail break out area;
- (c) integrated deep soil garden bed and seating walls;
- (d) accessible paths from Uhrig Road and retail frontage; and
- (e) public domain paths;

as shown on the Open Space Works Plan.

**Open Space Land** means means the land described in Item 3 of Schedule 1 excluding any land intended for use as road reserve.

**Open Space Works Plan** means the plan attached to this greement in Schedule 2.

**Planning Agreement** means the planning agreement between the Minister for Planning and Public Spaces and the Developer dated, 8 November 2019 as varied by Deed of Variation dated 16 December 2020.

**Practical Completion** means that the Open Space Works have been substantially completed to Council's satisfaction, acting reasonable, and Council has issued a Certificate of Practical Completion in accordance with clause 8 of Schedule 3.

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

**Subsisting Breach** means any breach by the Developer in the performance of its obligations under this document which is not rectified within 14 days of written notice of the breach being provided to the Developer by Council.

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

**Transferee** has the meaning given in clause 8(d).

## 1.2 Interpretation

The following rules of interpretation apply to this Agreement unless the context otherwise requires:

- (a) headings and subheadings are for convenience only and do not affect interpretation; and
- (b) words denoting the singular number include the plural, and the converse also applies; and
- (c) words denoting any gender include all genders; and
- (d) a reference to a person includes a natural person, company, corporation, trust, partnership, joint venture, or any other incorporated or unincorporated body, society, association or entity; and
- (e) a reference to a party in this Agreement includes its successors and permitted assigns and substitutes by way of assignment or novation; and
- (f) a reference to **legislation**, includes any State or Federal statute, enactment, ordinance, code or other legislation, or a section or provision of that legislation, includes any order, regulation, rule, bylaw, proclamation or statutory instrument made or issued under that legislation and any amendment, modification, consolidation, re-enactment or replacement of, or substitution for, that legislation from time to time; and

- (g) any term or expression defined in any legislation has the statutory meaning given to that term or expression in relevant legislation when used in this Agreement; and
- (h) 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 and/or its use; and
- (i) a reference to business day means a day that is not a Saturday, a Sunday or a public holiday in New South Wales; and
- (j) Capitalised terms used in this Agreement that are not defined have the same meaning as given in the Planning Agreement.

## **2. OPEN SPACE WORKS**

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### **2.1 Prior to commencement of Open Space Works**

- (a) Prior to the commencement of the Open Space Works, the Developer must obtain all necessary Approvals for the Open Space Works.

### **2.2 Carrying out and completion of the Open Space Works**

- (a) The Developer must carry out and complete the Open Space Works:
  - (i) in accordance with the relevant Approvals, the Planning Agreement and this Agreement including the Construction Terms set out at Schedule 3 of this Agreement and the Approved Design; and
  - (ii) ensure that the Open Space Land satisfies the following requirements:
    - (A) is serviced by:
      - (1) road;
      - (2) sewer;
      - (3) water;
      - (4) communications;
      - (5) electricity;
      - (6) lighting;
    - (B) includes the Open Space Works;
    - (C) has correct levels established;

- (D) includes topsoil and turf in the landscaped and lawn areas;
- (E) provides for one water meter and connection and one tap;
- (F) has an entry for maintenance; and
- (G) has a perimeter that is secured by way of bollards or other similar devices to prevent car access; and

in accordance with any servicing agencies' requirements and to a standard that is suitable for proposed use as public open space.

### **2.3 Practical Completion of the Open Space Works**

- (a) Practical Completion of the Open Space Works will be determined by Council in accordance with clause 8 of Schedule 3.
- (b) Within 10 Business Days of the issue of a Certificate of Practical Completion in accordance with clause 8 of Schedule 3, Council must give the following to the Developer:
  - (i) a statement by Council confirming that complete and legible copies of all drawings, specifications, certificates, approvals (including of any public utility authority) the Developer holds in respect of the Open Space Works have been provided to Council, but only if such drawings, specifications, certificates, approvals have been provided by the Developer to Council's reasonable satisfaction;
  - (ii) a statement by Council confirming that all warranties and guarantees obtained by the Developer with respect to any material or goods incorporated in or forming part of the Open Space Works have been assigned to Council, but only if such warranties and guarantees have been assigned by the Developer to Council's reasonable satisfaction;
  - (iii) a statement by Council confirming that all rights to the copyright and any intellectual property which may exist in the Open Space Works that the Developer holds have been assigned to Council, but only if such rights to copyright and intellectual property have been assigned by the Developer to Council's reasonable satisfaction; and
  - (iv) such other supporting documentation required by the Minister (or his or her delegates) to determine whether the Open Space Works have been completed.

### **2.4 Rectification of Defects**

- (a) If Council notifies the Developer of a Defect in the Open Space Works within the Defects Liability Period, then following written notice from Council, the Developer must promptly correct or replace (at the Developer's expense) the defective element of the Open Space Works and in accordance with clause 8.4 the Construction Terms at Schedule 3.
- (b) Council grants the Developer and its contractors a licence for such period as is reasonably necessary for the Developer and its contractors to access the

Open Space Land to carry out or procure the carrying out of the rectification works.

## **2.5 Security for performance of obligations**

- (a) Prior to the issue of any Development Consent to a Development Application for the development on the land comprising Lot 8, DP1228764, the Developer is to provide a security to Council in the form of a Bank Guarantees on terms acceptable to Council, for an amount equal to or in excess of the Open Space Security Amount.
- (b) The Council may, after providing notice to the Developer, call-up and apply any Bank Guarantee to remedy any Subsisting Breach by the Developer of this Agreement (including during the Defects Liability Period) if developer fails to rectify the breach within 14 days after written notice from Council.
- (c) Subject to the Developer's compliance with clause 2.5(d), the Council is to release and return the Bank Guarantee provided under clause 2.5(a) (if it has not called on it), or any unused part of it, to the Developer within 14 days of the Open Space Works reaching Practical Completion.
- (d) Prior to, or on the date on which Practical Completion of the Open Space Works is achieved, the Developer will provide to Council a Bank Guarantee on terms acceptable to Council, for an amount equal to or in excess of the Defects Liability Security Amount. Council must return the Bank Guarantee provided under this clause 2.5(d) (if has not called on it) to the Developer within 14 days of the expiry of the Defects Liability Period in respect of the Open Space Works.
- (e) If Council calls on any Bank Guarantee, the Developer must, no later than 7 days after Council gives notice to the Developer requesting the Bank Guarantee to be replaced, provide a replacement or additional Bank Guarantee so that the amount held by Council is the full amount of the Open Space Security Amount or Defects Liability Security Amount (as applicable).
- (f) Notwithstanding clause 2.5(d), if during the Defects Liability Period for the Open Space Works, Council issues a Rectification Notice in accordance with clause 8.4 of Schedule 3 and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bank Guarantees provided to it until that Defect has been rectified.
- (g) On each anniversary of the date of this document the Open Space Security Amount applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the Price Index most recently published prior to the relevant anniversary.

## **2.6 Time for completing the Open Space Works**

- (a) The Developer must:
  - (i) take all reasonable steps necessary to understand the Council's requirements for the Open Space Works; and
  - (ii) achieve a Certificate of Practical Completion in respect of the whole of the Open Space Works by prior to the issue of an Occupation

Certificate for the final building or part of the final building on land comprising Lot 8 DP1228764.

- (b) The parties agree that completion of the Open Space Works represents a restriction on the issue of an Occupation Certificate within the meaning of clause 154E of the *Environmental Planning and Assessment Regulation 2000* (NSW) or otherwise agreed in writing between the parties.

## 2.7 Maintenance of the Open Space Works

- (a) In this clause, the following definitions apply:

**Maintain** means works to bring an item to a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, including repairing any defects due to use of poor materials or due to poor workmanship, but does not include removing graffiti or repairing any item damaged as a consequence of vandalism to the extent that the aggregated value of any vandalism repair works exceeds \$10,000 (ex GST). **Maintained** and **Maintenance** have corresponding meanings.

**Maintenance Period** in relation to a particular item of the Open Space Works, is the period of 2 years from the time that item of Open Space Work is delivered to Council and a Certificate of Practical Completion has been issued in accordance with this agreement.

**Maintenance Schedule** means the schedule of proposed Maintenance works as required by clause 2.7(d).

- (b) The Open Space Works or any part of those works, must be Maintained by the Developer to the reasonable satisfaction of the Council for the Maintenance Period.
- (c) The Developer must follow relevant Council policies and obtain all Approvals necessary to carry out the Maintenance required under this clause.
- (d) Prior to the issue of a Certificate of Practical Completion for any part of the Open Space Works, the Developer must:
- (i) provide to the Council a Maintenance Schedule setting out the proposed Maintenance works and estimated costs for the relevant part of the Open Space Works over the Maintenance Period, and
  - (ii) once the Council approves the Maintenance Schedule and within 12 months of the Practical Completion of the Open Space Works and prior to Council returning the Bank Guarantee for the Defects Liability Security Amount, the Developer must provide Council with a Bank Guarantee in the amount of \$10,000 for the remainder of the Maintenance Period (**Maintenance Bond**). The Maintenance Bond is not indicative of the cost of works for the maintenance of the Open Space Works and as such any additional maintenance costs in excess will be required to be borne by the Developer.

- (e) Council agrees to promptly return any Bank Guarantee provided under paragraph (d) of this clause at the end of the Maintenance Period for the relevant item of Open Space Works, subject to paragraphs (j) and (k) of this clause.
- (f) Forty Business Days prior to the end of any Maintenance Period, the Developer must request Council to carry out an inspection of the Open Space Works or any part of those Open Space Works.
- (g) Council must carry out the inspection as requested by the Developer within 10 Business Days of the request.
- (h) Council may, within 10 Business Days of carrying out the inspection notify the Developer of any Maintenance work required, acting reasonably, including any Maintenance required in addition to the work set out in the Maintenance Schedule.
- (i) If the Developer is issued with a notice to carry out Maintenance work under paragraph (h) of this clause, the Developer must, at the Developer's cost, carry out the Maintenance work as specified in the notice and in the timeframe specified by the notice.
- (j) If Council issues a notice under paragraph (h) of this clause, Council may retain any Bank Guarantee provided by the Developer under paragraph (d) of this clause until the maintenance work required under the notice has been completed, or any dispute about the notice has been resolved, despite the expiration of any Maintenance Period.
- (k) If the Developer fails to substantially comply with an approved Maintenance Schedule and does not rectify that failure within 21 Business Days of being notified of that failure or within a reasonable period of time agreed between the parties, or if the Developer fails to comply with a notice issued under paragraph (h) of this clause, Council may, by itself, its employees, contractors or agents, carry out the required works and may:
  - (i) call on any Bank Guarantee provided under paragraph (d) of this clause in satisfaction of the costs of carrying out the maintenance work; and
  - (ii) recover as a debt due to Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Bank Guarantee and the costs incurred by the Council in carrying out the maintenance work.
- (l) Upon completion of the Maintenance Period, the Council will continue to maintain the Open Space Works.



### **3. COSTS**

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#### **3.1 Legal Costs**

- (a) The Developer shall pay Council's legal costs in the amount of \$4,000 (ex GST) in connection with the preparation, negotiation, and completion of this Agreement.

### **4. NOTICES**

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All written notices to or by a party to this Agreement:

- (a) must be signed by the sender or, if a company or other incorporated entity, an authorised officer of the sender;
- (b) will be deemed to be duly given or made:
  - (i) in the case of delivery in person or by post, when delivered, left or received to or at the address or number of the recipient specified in this Agreement or most recently notified to the sender;

but if delivery or receipt does not occur, or occurs later than 4 p.m. local time, on a business day in the place to which the written notice is sent, it shall be deemed to have been duly given or made at the commencement of the next business day in that place; and

- (c) in the case of written notices to be given to the Council, must be addressed to the Council's contact specified in Item 1 of Schedule 1 or as otherwise most recently notified by the Council to the Developer.

### **5. VARIATIONS**

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Any amendment, variation or modification to or of, or consent to departure by any party from the terms of, this Agreement will not bind the parties unless effected by a document signed by the parties.

### **6. SEVERABILITY**

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Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **7. DISPUTES**

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- (a) If a dispute arises between the parties in relation to this Agreement, the Open Space Works or the Open Space Land, then clauses 9.2 to 9.4 of the Planning Agreement shall apply to the Developer in resolving the dispute with Council, except rather than the president of the Law Society or the

president's nominee selecting the mediator, the Minister, with the agreement of the Council, shall be the mediator.

- (b) If the dispute is not resolved within 30 days of the conduct of mediation in accordance with clause 9.4 of the Planning Agreement, any party which has complied with the dispute resolution processes of clause 9 of the Planning Agreement may in writing terminate any dispute resolution process undertaken in accordance with this clause and may then commence court proceedings in relation to the dispute.
- (c) The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 or clause 9 of the Planning Agreement is to attempt to settle the dispute. No party may use information or documents obtained through any dispute resolution process undertaken for any purpose other than in an attempt to settle the dispute.
- (d) This clause 7 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this document.

## **8. ASSIGNMENT, DEALINGS AND TRANSFER OF LAND**

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- (a) A party must not assign or deal with any right under this Agreement without the prior written consent of the other party.
- (b) Any change of ownership or control (as defined in section 50AA of the Corporations Act 2001 (Cth)) 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.
- (d) 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's 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 Developer 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 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.

## 9. CAVEAT

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- (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; and
  - (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 unless this document is registered in the Title of the Land.
- (b) The Council will, at the Developer's cost provide any consent the Developer may reasonably require to enable this Agreement or any Dealing that is not inconsistent with this Agreement to be registered against the title to the Land; and
- (c) For the avoidance of doubt, the Developer acknowledges and agrees that any caveat registered by Council against the title to the Land comprising the Open Space Land may be retained on title until the later of:
  - (i) Practical Completion of the Open Space Works; and
  - (ii) the dedication of the Open Space Land free of cost to Council, the Minister or the Minister's nominee in accordance with the Planning Agreement.

## 10. NO FETTER

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- (a) 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**").
- (b) 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:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied;
  - (ii) in the event that (i) 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
- (iii) 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.
- (c) The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7(5) of the *Environmental Planning and Assessment Act 1979* (NSW) that this Agreement affects the Land.

## **11. PLANNING AGREEMENT DEED POLL**

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The parties acknowledge and agree that if the Council is nominated by the Minister as the 'Minister's nominee' in respect of the transfer of any Land Contribution under the Planning Agreement then insofar as the Planning Agreement relates to the transfer of a Land Contribution or the condition of that Land Contribution, the Planning Agreement operates as a deed poll under which all Developer obligations are also in favour of Council.

## **12. GENERAL**

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### *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.

### *Time for doing acts*

- (d) 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.
- (e) If any act or thing required to be done is done after 4.00 pm on the specified day, it is taken to have been done on the following Business Day.

### *Further assurances*

- (f) 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.

*Joint and individual liability and benefits*

- (g) 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.

*Counterparts*

- (h) This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

*Legal expenses and Taxes*

- (i) The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this Agreement, including the reasonable costs of obtaining any legal advice in connection with this Agreement, no later than 30 Business Days after receiving a demand from the Council to pay such costs.
- (j) The Developer agrees to pay to Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this Agreement.
- (k) The Developer must pay all Taxes assessed on or in respect of this document and any instrument or transaction required or contemplated by or necessary to give effect to this document

*Entire Agreement*

- (l) 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.

*Representations and warranties*

- (m) 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.

*Waiver*

- (n) 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.
- (o) 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.

*GST*

- (p) 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.
- (q) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (r) 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.
- (s) 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.

*Governing law and jurisdiction*

- (t) The laws applicable in New South Wales govern this Agreement.
- (u) 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****Reference Schedule**

<b>Item</b>	<b>Name</b>	<b>Description</b>
Item 1	<b>Council</b>	Name: City of Parramatta Council ABN: 49 907 174 773 Address: 126 Church Street, Parramatta NSW 2150 Contact: Buddy Stephen.
Item 2	<b>Developer</b>	Name: Karimbla Properties (No. 51) Pty Limited ABN: 95 168 601 250 Address: Level 11, 528 Kent Street, Sydney NSW 2000 Contact: Matthew Lennartz
Item 3	<b>Land</b>	Lot 9 in Deposited Plan 1228764

## SCHEDULE 2 OPEN SPACE WORKS PLAN

### 3.2 GROUND LEVEL LANDSCAPE PLAN



#### Legend

- ① Civic Park. To future DA
- ② Retail frontage
- ③ Trees in paving
- ④ Retail frontage/alfresco dining
- ⑤ Lobby forecourt
- ⑥ Childcare open learning. To future DA
- ⑦ Private terrace
- ⑧ Childcare lobby forecourt
- ⑨ Shared pedestrian through link
- ⑩ Streetscape planting. Refer Detailed Public Domain drawings
- ⑪ Approved CC Streetscape
- Site boundary
- Future Road alignment boundary
- Existing back of kerb
- Ⓜ Pavement type 1. Refer to material strategy
- Ⓝ Pavement type 2. Refer to material strategy
- Ⓞ Pavement type 3. Refer to material strategy

#### Notes:

1. Refer to Appendix A Detailed Private Planning Plans - Schedule for plant species and installation sizes
1. Refer to Appendix B Detailed Public Domain Planning Plans - Schedule for plant species and installation sizes
2. Refer to Jackson's Nature Works Arbores Report for existing tree strategy.



### 3.3 CIVIC PARK CONCEPT DESIGN

#### CONCEPT PLAN (TO FUTURE UHRIG ROAD ALIGNMENT)

##### Civic Park (to future DA)

- Civic Park concept has been provided to highlight both non-accessible & accessible pedestrian access along Phase 3 retail frontage and connection to Uhrig Road.
- Concept plan also responds to council comments regarding maintaining higher grade levels to utilising park function, maintaining larger usable spaces and reduction of stairs.
- Future Uhrig Road widening (light Rail alignment) has been shown to highlight future marine plan interfaces.



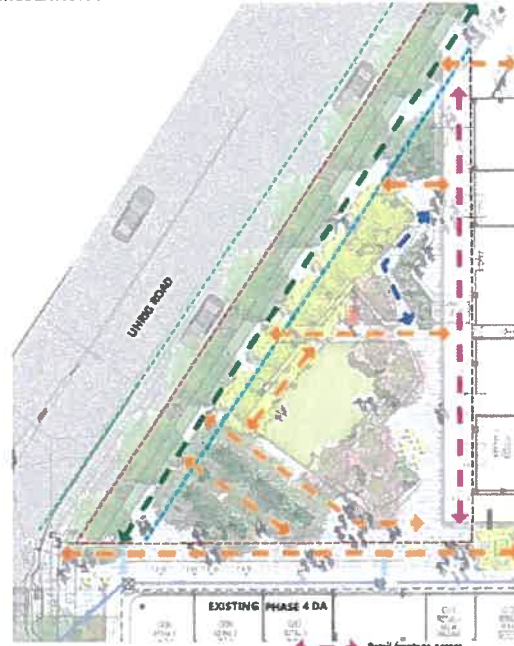
##### Note:

Civic Park is concept only to show potential function and circulation relationship between Phase 3 Retail frontage.

Civic Park to future DA

- ① Phase 3 & 4 Civic Square (street in paving)
- ② Approved Phase 3 & 4 Through Limit
- ③ Open Lawn
- ④ Retail break: outdoor area / alfresco dining opportunities
- ⑤ 1:14 accessible access
- ⑥ Phase 3 retail paving
- ⑦ Future Uhrig Road road & streetscape widening alignment
- ⑧ Stairs
- ⑨ Integrated deep soil garden bed and seepage walls

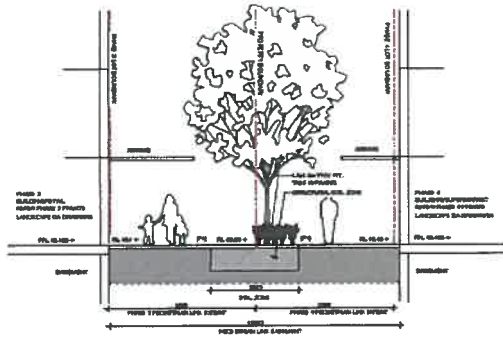
#### CIRCULATION & PROGRAM



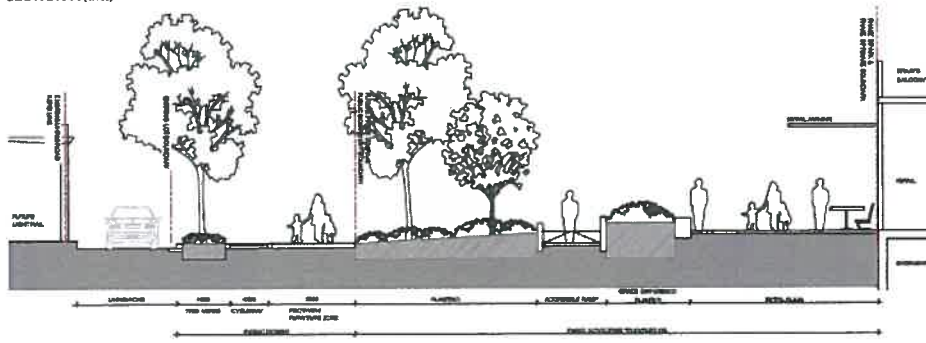
- ➡ Retail frontage access
- ➡ Accessible retail frontage access (1:14 Ramp)
- ➡ Accessible access from Uhrig Road
- ➡ Uhrig Road public domain path

Prepared by Mott MacDonald 11

### 3.4 TYPICAL LANDSCAPE SECTIONS



SECTION A (1:100)



SECTION B (1:100)

## **SCHEDULE 3 CONSTRUCTION TERMS**

### **1 Interpretation**

1.1 For the purposes of this Schedule, unless context indicates a contrary intention:

**Approved Design** has the meaning given in clause 5.3 of this Schedule.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Contamination** has the meaning given to the terms in the *Contaminated Land Management Act 1997* (NSW).

**Draft Design** has the meaning given in clause 5.2 of this Schedule.

**Inspection Date** has the meaning given in clause 7(b) of this Schedule.

**Inspection Schedule** has the meaning given in clause 7(a) of this Schedule.

**Inspection Stage** has the meaning given in clause 7(a) of this Schedule.

**Rectification Date** has the meaning given in clause 8.4(a)(ii) of this Schedule.

**Rectification Notice** has the meaning given in clause 8.4(a) of this Schedule.

**Rectification Works** has the meaning given in clause 8.4(a)(i) of this Schedule.

**Remediation** has the meaning ascribed to that term under the Planning Agreement.

**Services** means all water, road sewer, gas, electricity, lighting, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a Development Consent or an Approval and which are necessary for the construction, operation or occupation of the Open Space Works and the Open Space Land.

**Site Auditor** means a suitably qualified site auditor duly qualified under the *Contaminated Land Management Act 1997* (NSW).

**Site Audit Statement** means a site audit statement prepared by a Site Auditor in accordance with Part 4 of the *Contaminated Land Management Act 1997* (NSW).

### **2 Requirements of Authorities and Approvals**

2.1 These Construction Terms must be read and construed subject to the requirements of and conditions imposed by all relevant Governmental Agencies and all Laws relating to the Open Space Works and the construction of the Open Space Works.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this Agreement, then the Developer will acquire all Approvals necessary to carry out the Open Space Works at its own cost. The Developer must not make any Development Application that is inconsistent with this Agreement, the Open Space Works Plan, or any other design document approved by Council in accordance with clause 5 of this Schedule.

- 2.3 The Developer must ensure that the Open Space Works carried out under this Agreement are carried out:
- (a) in accordance with the relevant Approvals for the Open Space Works and the requirements of all Laws, including without limitation, work health and safety legislation;
  - (b) in accordance with the National Construction Code to the extent required under any Laws, including any regulation or other instrument made under the *Environmental Planning and Assessment Act 1979* (NSW);
  - (c) all other relevant codes, standards and specifications that the Open Space Works are required to comply with under any Laws;
  - (d) in a good and workmanlike manner and so that they are diligently progressed until Practical Completion; and
  - (e) in accordance with this Agreement and the Approved Design,
- and it is acknowledged that to the extent that there is any inconsistency between this Agreement, the Approved Design and any Approval the terms of the Approval shall take precedence.

### **3 Costs of Works**

All costs of the Open Space Works must be borne by the Developer.

### **4 Project Management and Contractor Engagement**

- 4.1 The Developer will be responsible for carrying out and managing the Open Space Works.

### **5 Design of the Open Space Works**

- 5.1 The parties acknowledge and agree that the Open Space Works Plans is a preliminary document, reflective of a concept design of the Open Space Works. The Development of more detailed plans and specifications for the design of the Open Space Works will be required to be prepared by the Developer in accordance with this Clause 5 of Schedule 3 that must comply with the following:
- (a) the Open Space Works Plan;
  - (b) the policies, procedures and standards reasonably required by Council for the Open Space Works;
  - (c) matters not reasonably capable of identification on or before the date of this document; and
  - (d) matters arising out of the relevant Development Consent.
- 5.2 The Developer must prior to the approval of the Development Application in respect of the Development prepare a detailed description, plans and specifications for the Open Space Works (**Draft Design**) consistent with Clause 5.1 of Schedule 3 and submit them to Council for approval, such approval not to be unreasonably withheld and delayed.
- 5.3 Council must promptly and within 15 Business Days of receipt of the Draft Design and if necessary, provide comments to the Developer. The Developer must promptly amend the Draft Design to take into account the comments made by Council and re-submit the Draft Design. When the Draft Design is satisfactory to

Council, then Council must (in its capacity as a party to this Agreement not as a consent authority) notify the Developer that the Draft Design is acceptable and this will be the approved design (**Approved Design**).

- 5.3A The Developer must use all reasonable endeavours to incorporate feedback received from the Council in respect of the design of the Open Space Works and the parties will liaise in good faith in respect of any design development of the Open Space Works.
- 5.3B The Developer must not construct any part of the Open Space Works under this Agreement until Council has notified the Developer that Council considers the Draft Design is an acceptable Approved Design under this clause 5 of Schedule 3 (in Council's capacity as a party to this Agreement not as a consent authority).
- 5.3C If Council does not notify the Developer that the Draft Design is an acceptable Approved Design (in Council's capacity as a party to this Agreement not as a consent authority), then the Developer must continue to resubmit revised versions of the Draft Design to Council and the provisions of this clause 5 of Schedule 3 will continue to re-apply until such point as the Council notifies the Developer that the Draft Design is an acceptable Approved Design.
- 5.3D The Developer must ensure that its construction of the Open Space Works complies with the Approved Design
- 5.4 Before commencing the Open Space Works, the Developer must give Council copies of all Approvals for the Open Space Works.

## **6 Carrying out of Works**

### **6.1 Communication**

The Developer must keep Council reasonably informed of progress of the Open Space Works and provide to Council such information about the Open Space Works as Council reasonably requests.

### **6.2 Standard of Works**

- (a) The Developer shall use suitable new materials and proper and tradesmanlike workmanship when carrying out the Open Space Works.
- (b) The qualitative standard of the design and finishes for the Open Space Works must be no less than those described in the following documents:
  - (i) Any relevant Australian Standard;
  - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed to be accessible to the public in accordance with this Agreement.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.2(b)(ii) of this Schedule from Council if the Council fails to deliver them to the Developer.
- (d) The Developer shall be responsible for care of the whole of the Open Space Works and the Open Space Land from and including the date this

Agreement to the later of the date on which the Open Space Land has been transferred to Council and the date of Practical Completion of the Open Space Works.

### 6.3 **Damage to people, property & utilities**

- (a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this Agreement:
  - (i) all necessary measures are taken to protect people and property;
  - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
  - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 6.3(a) of this Schedule, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## 7 **Inspection**

- (a) Council and the Developer must consult and prepare an agreed schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at reasonable specified stages of the construction of the Open Space Works (**Inspection Stage**). The Inspection Schedule must be agreed and finalised prior to the Open Space Works commencing, but must include the following minimum inspection stages:
  - (i) soil ripping and regrading works to design levels;
  - (ii) subgrade excavation for footings, drainage and pavements, sub-surface drainage and irrigation system;
  - (iii) underground conduit installation;
  - (iv) concrete blinding layer and setout of pavers and all other hardworks, furniture and fittings prior to installation;
  - (v) setout of all softworks including garden edging, trees and garden beds
  - (vi) cultivation of existing soils / subgrades prior to planting and/or placement of imported soils;
  - (vii) paving (including sealant), furniture and fixture installation;
  - (viii) street tree installation (noting that trees must be installed within 24hrs of delivery and require certification in accordance with AS2303:2018); and
  - (ix) planting beds, turf and irrigation installation.
- (b) Five Business Days prior to reaching an Inspection Stage, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Open Space Land to inspect the Open Space

Works being accompanied by the Developer or a nominee, or as otherwise agreed.

- (d) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule), notify the Developer of any defect or non-compliance in the Open Space Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
  - (i) removal of defective or non-complying material;
  - (ii) demolishing defective or non-complying work;
  - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
  - (iv) not delivering any defective or non-complying material to the site of the Open Space Works.
- (e) If the Developer is issued a direction to carry out further work under clause 7(e) of this Schedule, the Developer must, at its cost, rectify the defect or non-compliance specified in the notice within the time period specified in the notice, provided that it is reasonable having regard to the nature of the works.
- (f) If the Developer fails to comply with a direction to carry out work given under 7(e) of this Schedule, the Council will be entitled to refuse to accept that the Open Space Works (or the relevant part of the Open Space Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (g) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under 7(e) of this Schedule does not constitute:
  - (i) acceptance by the Council that the Open Space Works comply with all Approvals and Laws; or
  - (ii) an approval by the Council in respect of the Open Space Works; or
  - (iii) an agreement or acknowledgment by the Council that the Open Space Works or the relevant part of the Open Space Works are complete and may be delivered to the Council in accordance with this Agreement.
- (h) In addition to Council's inspection rights under this clause 7 of this Schedule 3, the parties acknowledge and agree that Council may (but is not obliged to) conduct daily inspections of the Open Space Works for the purpose of viewing progressive paving set out and construction.

## **8 Completion**

### **8.1 Practical Completion**

- (a) When the Developer considers that the Open Space Works, or any part of the Open Space Works, are complete, the Developer must send a notice to the Council accompanied by complete works as executed plans, any relevant

certificates or consents of any public utility authority and a request for written certification from the Council that the Open Space Works are complete.

- (b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule, the Council will carry out an inspection of the Open Space Works and will, acting reasonably, either:
  - (i) provide written certification to the Developer that the Open Space Works have been completed; or
  - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule for written certification that the Open Space Works have been completed.
- (d) For the purpose of this Agreement, Practical Completion will be achieved in relation to the Open Space Works or any part of the Open Space Works when a Certificate of Practical Completion has been issued by Council (acting reasonably) for those Works.
- (e) For the avoidance of any doubt, Council's issue of a Certificate of Practical Completion under this Agreement is solely for the purpose of Council considering whether Practical Completion of the Open Space Works has been achieved under this Agreement and the Developer has completed the Open Space Works. However, the issue of a Certificate of Practical Completion does not release the Developer from any of its obligations under this Agreement in relation to maintenance and rectification of defects.

## **8.2 Delivery of documents**

- (a) The Developer must prior to the issue of the Certificate of Practical Completion in respect of the Open Space Works or any part of the Open Space Works, deliver to the Council complete and legible copies of:
  - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
  - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
  - (iii) copies of all Approvals required for use of the land subject to the Open Space Works.
- (b) The Developer must as soon as practicable, and no later than 10 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Open Space Works or any part of the Open Space Works, provide the Council with a tour of the land subject to the Open Space Works



and provide reasonable instructions on the operation and use of the Services on that Open Space Land.

### 8.3 **Assignment of Warranties and Causes of Action**

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Open Space Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

### 8.4 **Defects Liability Period**

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Open Space Works and specifies:
  - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
  - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
  - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 8.4(d) of this Schedule and, acting reasonably:
  - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this clause 8.4 of this Schedule.
- (g) If the Developer fail to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including upon Council providing the Developer with 7

days' prior written notice, accessing and occupying any part of the Land and may:

- (i) call upon any Bank Guarantee or security still held by Council under this Agreement (if any) to meet its costs of carrying out Rectification Works; and
- (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security or Bank Guarantee and the costs incurred by the Council in carrying out Rectification Works.

## **9 Risk**

The Developer undertakes the Open Space Works entirely at its own risk.

## **10 Indemnities**

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Open Space Works except to the extent such Claim arises either directly or indirectly as a result of the Council or Council's employees, officers, agents, contractors or workmen's negligence, default, act or omission.

## **11 Intellectual Property Rights**

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Open Space Works. To the extent the Developer has or receives intellectual property rights for the Open Space Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

## **12 Risk of contamination**

- (a) The Developer must prior to the transfer of the Open Space Land, undertake the Remediation Works as described in clause 13(b) of this Schedule and provide Council with a Site Audit Statement which certifies the Open Space Land is suitable for the proposed use as public open space, either unconditionally or subject to conditions which are acceptable to Council acting reasonably.
- (b) In this clause 13, '**Remediation Works**' means the Remediation of any Contamination over, on, under, above or migrating through or from the Open Space Land, including by:
  - (i) undertaking Remediation in accordance with any remedial action plan or voluntary management proposal relating to the Contamination or Remediation of the Open Space Land;
  - (ii) undertaking Remediation in accordance with the conditions of all Approvals required to be obtained in order to complete the Remediation of the Open Space Land in accordance with the remedial action plan or any voluntary management proposal relating to the Contamination or Remediation of the Open Space Land;
  - (iii) engaging a Site Auditor to oversee the Remediation of the Open Space Land;

- (iv) obtaining and complying with the conditions of any Approvals required to be obtained under any Law; and
- (v) complying with the requirements, notices and directions issued or administered by any Authority in respect of Contamination of the Open Space Land.

### **13 Plans**

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this Agreement may be necessary having regard to the following matters:


- (a) matters affecting Open Space Works not capable of identification on or before the date of this Agreement; or
- (b) by agreement between the parties.

### **14 Work Health and Safety**

- 14.1 In performing the Open Space Works, the Developer must comply with all Laws and codes of practice relating to the environment, work health and safety and all relevant Australian Standards. The Developer must ensure that the Open Space Works and their manner of supply does not put the health and safety of any person at risk.

**Executed as an agreement**

**SIGNED** on behalf of **CITY OF PARRAMATTA COUNCIL** (ABN 49 907 174 773 by its duly authorised officer in the presence of:

 14/09/2021  
Signature of witness:

Leanne Sutcliffe  
Full Name of witness (printed):

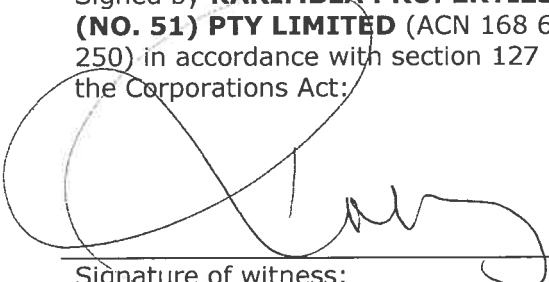
Brett Newman Sep 14, 2021  
Signature of officer:

Brett Newman, Chief Executive Officer  
Name and position of officer (printed):


BJN

By signing this document, the witness states that they witnessed the signature of the signatory over audio visual link in accordance with s14G of the *Electronic Transactions Act 2000* (NSW).

Signed by **KARIMBLA PROPERTIES (NO. 51) PTY LIMITED** (ACN 168 601 250) in accordance with section 127 of the Corporations Act:

  
Signature of witness:

ROBYN McCULLY  
Full Name (printed):

  
Signature of Director/Secretary:



DAVID CREMONA  
Full Name (printed):

By signing this document, the witness states that they witnessed the signature of the signatory over audio visual link in accordance with s14G of the *Electronic Transactions Act 2000* (NSW).

**Signature:**   
Brett Newman (Sep 14, 2021 12:04 GMT+10)

**Email:** bnewman@cityofparramatta.nsw.gov.au






# BN CEO 2021 0164-01 Attachment 1 - Open Space Works Agreement for CEO sign

Final Audit Report

2021-09-14

Created:	2021-09-14
By:	Leanne Sutcliffe (lsutcliffe@cityofparramatta.nsw.gov.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_i0Q1Kxb8Z9P116wv-212G6zTD33QVsU

## "BN CEO 2021 0164-01 Attachment 1 - Open Space Works Agreement for CEO sign" History

-  Document created by Leanne Sutcliffe (lsutcliffe@cityofparramatta.nsw.gov.au)  
2021-09-14 - 1:42:14 AM GMT- IP address: 203.38.105.161
-  Document emailed to Brett Newman (bnewman@cityofparramatta.nsw.gov.au) for signature  
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-  Document e-signed by Brett Newman (bnewman@cityofparramatta.nsw.gov.au)  
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-  Agreement completed.  
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