

Deed of Variation to Planning Agreement

Carter Street Precinct

Parties

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


Karimbla Properties (No. 51) Pty Ltd
(ACN 168 601 250)



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Date

16 December 2020 

Parties **MINISTER FOR PLANNING AND PUBLIC SPACES** (ABN 20 770 707 468) c/-
NSW Department of Planning, Industry and Environment of Level 11, 4 Parramatta
Square, 12 Darcy Street, Parramatta NSW 2150
(Minister)

KARIMBLA PROPERTIES (NO. 51) PTY LTD (ACN 168 601 250) of Level 11,
528 Kent Street, Sydney NSW 2000 (Developer)

Introduction

- A** The Minister and the Developer are parties to the Planning Agreement.
- B** Under the Planning Agreement, the Developer is to make a Contribution Amount for any part of the Land the subject of a Development Application prior to the grant of any Development Consent or modification of a Development Consent in respect of that part of the Land to which the Development Consent or approval of Modification Application relates.
- C** On 22 June 2020, the Minister accepted the Developer's proposal to defer the making of the Contribution Amount for Development proposed under Development Application 501/2019 until prior to the issue of an Occupation Certificate for a building or part of a building on the Land to which that Development Application relates.
- D** The Minister is proposing to amend the ALEP to, among other changes, vary the height of building and floor space ratio controls applying to the Land.
- E** The Developer has offered to make the following further Development Contribution in connection with the change to the ALEP:
- a. to carry out and complete the Open Space Works and transfer the Open Space Land to the Minister (or the Minister's nominee); and
 - b. to carry out and complete the Community Centre Works and transfer the Community Centre Stratum Lot to the Minister (or the Minister's nominee).
- F** The parties have agreed to amend the Planning Agreement as set out in this Deed to reflect the Developer's offer above.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (1) **Deed** means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.
- (2) **Planning Agreement** means the planning agreement between the Minister and the Developer dated 8 November 2019.



1.2 Interpretation

- (1) In this Deed, unless the contrary intention appears:
 - (A) expressions and phrases used but not defined in this Deed have the same meanings they have in the Planning Agreement;
 - (B) clause 18.16 of the Planning Agreement will apply to the interpretation and construction of this Deed.
- (2) The parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

2 Status of this Deed

This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.

3 Commencement

This Deed commences operation on the later of:

- (1) the date the Instrument Change comes into effect; and
- (2) the date this Deed is signed by all parties.

4 Warranties and representations

4.1 Representations and warranties

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

5 Amendment to Planning Agreement

5.1 Amendment

On and from the commencement of this Deed, the Planning Agreement is amended as set out in Appendix 1.

6 Registration of this Deed

6.1 Registration

- (1) As contemplated by section 7.6 of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1990* on the relevant folios of the Register for the Land, within 90 Business Days after the date on which this Deed, executed by the Minister, is returned to the Developer.
- (2) The Developer will provide the Minister with a copy of the relevant folios of the Register and a copy of the registered dealing which provide

evidence that clause 6.1(1) has been satisfied, within 10 Business Days after the date of registration.

7 Expenses

- 7.1 The Developer must pay its own, and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 7.2 The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation, and the review of any submissions received during the public notice period.
- 7.3 The Developer must pay all taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- 7.4 The Developer must provide the Minister with bank cheques or deposit the funds by means of electronic funds transfer into a bank account nominated by the Minister in respect of the Minister's costs pursuant to clauses 7.1 and 7.2 above:
- (1) where the Minister has provided the Developer with a written notice of the sum of such costs prior to execution, on the date of execution of this Deed; or
 - (2) where the Minister has not provided the Developer with a written notice of the sum of such costs prior to execution, within 10 Business Days of demand by the Minister for payment.

8 Amendments not to affect accrued rights and obligations

- 8.1 The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.
- 8.2 Nothing in this Deed:
- (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or
 - (2) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.

9 GST

Clause 16 of the Planning Agreement applies as if it forms part of this Deed, with any necessary changes.

10 Confirmation

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

11 Notices

11.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:

- (1) delivered or posted to that Party at its address set out below; or
- (2) sent to that Party at its email address set out below.

Minister

Attention: The Planning Secretary, NSW Department of
Planning, Industry and Environment

Address: Level 11, 4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

Email address: PlanningAgreements@planning.nsw.gov.au

Developer

Attention: Company Directors and Secretary, Karimbla
Properties (No. 51) Pty Ltd

Address: c/- Meriton Group
Level 11, 528 Kent Street
Sydney NSW 2000

Email address: lwong@meriton.com.au

11.2 Change of address

If a Party gives another Party three Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made to that other Party if it is delivered, posted or sent to the latest address or email address.

11.3 Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (1) if it is delivered, when it is left at the relevant address;
- (2) if it is sent by registered post, two Business Days after it is posted; or
- (3) if it is sent by email and the sender does not receive a delivery failure notice, as soon as the email is sent.

11.4 Receipt – next Business Day

If any notices, consent, information, application or request is delivered on a day that is not a Business Day or after 5pm on any Business Day in the place of the Party to whom it is sent, it is treated as having been given or made at the beginning of the next Business Day.

12 General

12.1 Entire agreement

This Deed constitutes the entire agreement between the Parties regarding the matters set out in this Deed and supersede any prior representations, understandings or arrangements between the Parties, whether orally or in writing.

12.2 Amendment

No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

12.3 Waiver and exercise of rights

- (1) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- (2) A waiver by a Party is only effective if it is in writing.
- (3) 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.

12.4 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requires to affect, perfect or complete this Deed and all transactions incidental to it.

12.5 Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

12.6 Assignment and dealings

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

12.7 No fetter

Nothing in this Deed shall be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation:

- (1) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and

- (2) nothing in this Deed imposes any obligation on an Authority to:
 - (A) grant Development Consent;
 - (B) exercise any functions or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

12.8 Severability

- (1) If any part of this Deed 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 the latter way.
- (2) If any part of the Deed is illegal, unenforceable or invalid, that part is to be treated as removed from this Deed, but the rest of the Deed is not affected.

12.9 Joint and individual liability and benefits

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

12.10 Approvals and Consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this Deed in his absolute discretion and subject to the conditions determined by the Minister. The Minister is not obliged to give his reasons for giving or withholding consent or for giving consent subject to conditions.

12.11 Deed not confidential

The parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.

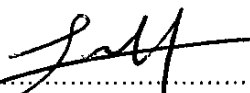
12.12 Deed

This document is a deed. Factors which might suggest otherwise are to be disregarded.

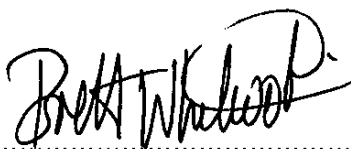
Execution

Executed as a deed.

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

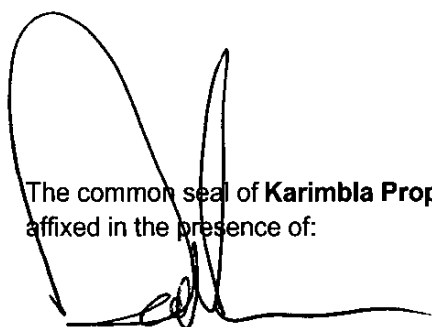

.....
Signature of witness

SANGHYON YANG
.....
Name of witness in full


.....
Signature of authorised delegate

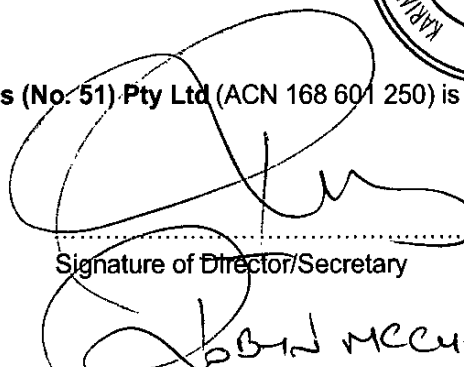
BRETT WHITWORTH
.....
Full name of delegate

12 DARCY ST, PARRAMATTA NSW 2150
.....
Address of witness



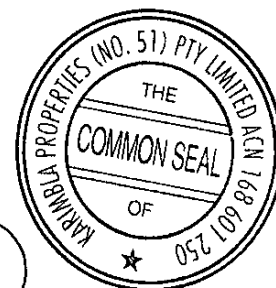
.....
Signature of Director

DAVID CREMONA
COMPANY DIRECTOR
.....
Full name of Director



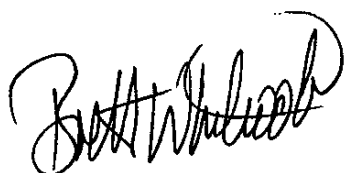
.....
Signature of Director/Secretary

JOHN MCCULLY
.....
Full name of Director/Secretary



The common seal of **Karimbla Properties (No. 51) Pty Ltd** (ACN 168 601 250) is
affixed in the presence of:

Appendix 1 – Amended VPA



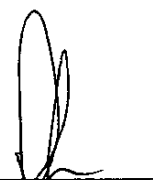
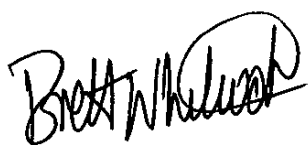
The Minister for Planning and Public Spaces

Karimbla Properties (No. 51) Pty Ltd

Planning Agreement

Carter Street Priority Precinct

1-5, 7, 9 and 11 Carter Street and 23 Uhrig Road,
Lidcombe



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Date

Parties

The Minister for Planning and Public Spaces ABN 20 770 707 468 c/- NSW
Department of Planning, Industry and Environment of Level 1122, 4 Parramatta Square,
12 Darcy Street~~320 Pitt Street, Parramatta~~Sydney NSW 2150~~2000~~ (**Minister**)

Karimbla Properties (No. 51) Pty Ltd ABN 95 168 601 250 of Level 11, 528 Kent
Street, Sydney NSW 2000 (**Developer**)

Background

- A As at the date of this document, the Developer is the owner of the Land.
- B The Land is located in the Carter Street Priority Precinct.
- C On 18 November 2015, the Minister entered into the Original Planning Agreement with the Original Developer. The Original Planning Agreement applied to the whole of the Carter Street Priority Precinct.
- D Under the Original Planning Agreement, the Original Developer:
- a. sought a change to the ALEP in the form of the Planning Proposal to rezone the Carter Street Priority Precinct; and
 - b. agreed to provide Development Contributions in the form of monetary contributions and dedication of land, to meet the needs created by future development of the Carter Street Priority Precinct.
- E On 27 November 2015, the ALEP was amended by way of the SEPP Amendment.
- F On 30 August 2016, the Land (other than the land comprising former Lot 200 in DP1160458 and former Lots 19, 23 and 24 in DP225350) was transferred to the Developer. On 24 February 2017, the land comprising former Lots 19, 23 and 24 in DP225350 was transferred to the Developer. On 17 March 2017, the land comprising former Lot 200 in DP1160458 was transferred to the Developer. The Original Developer's obligations under the Original Planning Agreement with respect to the Land were novated to the Developer pursuant to the Novation Deed dated 24 November 2016.
- G The Developer and the Minister entered into a Deed of Partial Surrender with respect to the Original Planning Agreement, simultaneously upon entry into this document.
- GH The Minister is proposing to amend the ALEP to, among other changes, vary the height of building and floor space ratio controls applying to the Land.
- HI The Developer has offered to amend~~enter into~~ this document to make further Development Contributions in connection with the proposed amendment to the ALEP towards the Public Purpose, subject to the terms and conditions of this document.

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Operative provisions

1 Planning agreement under the Act

The Parties agree that this document is a Planning Agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2 Application of this document

This document applies to:

- (a) the Land; and
- (b) the Development.

3 Operation and commencement of this document

(a) This document will commence on the later of the following dates:

(i) the date of commencement of an environmental planning instrument which amends the ALEP and results in the total permissible GFA (including by utilising incentive provisions) for buildings (including proposed buildings) on the Land (excluding the Open Space Land) being no less than 87,286 square metres (Instrument Change); and

(ii) the date that this document is entered into in accordance with clause 25C(1) of the Regulation, (Commencing Date).

~~(a)(b)~~ For the purpose of clause 3(a)(i), the total permissible GFA for buildings (including proposed buildings) on the Land concerned is the sum of the areas (in square metres) calculated by multiplying each floor space ratio control that applies to any part of the Land by the area of that part and by assuming all incentive provisions relating to GFA are utilised so as to maximise the GFA of buildings on the Land.

4 Definitions

In this document the following terms have the following meanings:

Act	<i>The Environmental Planning and Assessment Act 1979 (NSW).</i>
ALEP	<i>The Auburn Local Environmental Plan 2010, as amended from time to time.</i>
Approval	<u>Any consent, licence, permit or other approval required under any statute, rule,</u>

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Authority

regulation, proclamation, ordinance or by-law (whether federal, State or local) or by an Authority.

Any federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee

Means:

(a) An irrevocable and unconditional undertaking which is substantially in the form of the undertaking attached at **Annexure D** and is:

- i. by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- ii. on terms acceptable to the Minister, in the Minister's discretion (acting reasonably); or

(b) a bond or other form of security acceptable to the Minister, in the Minister's discretion (acting reasonably).

Business Day

A day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Carter Street Priority Precinct

The land identified as the "Carter Street Priority Precinct" on the Priority Precinct Map adopted by the ALEP.

Certificate of Practical Completion

The written certificate confirming that the Open Space Works or the Community Centre Works (as the case may be) have been completed to the Minister's nominee's satisfaction.

Chemical Substance

Without limitation:

- (a) any chemical substance or mixture, including any pollutant, contaminant, chemical, raw material or

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	<p><u>intermediate whether solid, liquid, gaseous or otherwise;</u></p> <p><u>(b) industrial solid, toxic or hazardous substance, material or waste;</u></p> <p><u>(c) petroleum or any fraction thereof;</u></p> <p><u>(d) asbestos or asbestos-containing material (including asbestos in structures);</u></p> <p><u>(e) persistent organic pollutants and chlorinated hydrocarbons;</u></p> <p><u>(f) heavy metals, such as mercury, cadmium and lead;</u></p> <p><u>(g) radionuclides;</u></p> <p><u>(h) volatile organic compounds;</u></p> <p><u>(i) solvents; and</u></p> <p><u>(j) pesticides,</u></p> <p><u>and includes by-products and derivatives of the above and all substances, materials or wastes that are identified in or regulated under any Environmental Law.</u></p>
<u>Claim</u>	<p><u>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, including (without limitation), any claim for compensation arising under or pursuant to the Just Terms Act.</u></p>
Commencing Date	Has the meaning given in clause 3 .
Complying Development Certificate	Has the same meaning as in the Act.
<u>Cold Shell</u>	<p><u>The base building structure shell of a community centre, and includes external walls, windows, doors and other openings, and provision of the base building utilities and services, but excludes all internal fit-outs, fittings, fixtures, walls, flooring, ceilings, bathrooms and kitchens.</u></p>

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Community Centre

The Cold Shell of a community centre with a minimum area of 1000 square metres predominantly on the street level of a building that is part of the Development, and includes all associated plantrooms, metering rooms and storage areas.

Community Centre Stratum Lot

A single stratum lot created within a building to be constructed on land comprising Lot 8 DP1228764 having an area that accommodates the Community Centre in accordance with the relevant guidelines from LRS.

Community Centre Stratum Lot Contribution

Transfer of the Community Centre Stratum Lot by the Developer to the Minister or the Minister's nominee, in accordance with **Schedule 3.**

Community Centre Works

Any building, engineering or construction work in, on, over or under land carried out by the Developer necessary to construct the Community Centre.

Community Centre Works Agreement

A works authorisation deed or other legal binding agreement between the Developer and the Minister's nominee which:

- (a) governs the carrying out and completion of the Community Centre Works in accordance with this document; and
- (b) includes a mechanism for an appropriate licence to be granted by the Minister's nominee to enable the Developer to discharge its obligation to remediate any defects that may arise during the Defects Liability Period.

Community Centre Works Contribution

Carrying out and completion of the Community Centre Works by the Developer in accordance with **Schedule 3.**

Construction Certificate

Has the same meaning as in the Act and includes, where applicable, a Subdivision Works Certificate.

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<u>Contamination</u>	Has the meaning given to that term in the <u>Contaminated Land Management Act 1997 (NSW)</u> . Contaminate and Contaminated have corresponding meanings.
Contribution Amount	The amount of a monetary contribution required to be paid by the Developer in accordance with Schedule 3 .
CPI	The Sydney Consumer Price Index (All Groups) published by the Australian Bureau of Statistics or, if that index no longer exists, any similar index which the Minister may determine in his or her sole discretion.
Dealing	<u>Means:</u> (a) <u>in relation to the Open Space Land,</u> <u>without limitation, selling,</u> <u>transferring, assigning, charging,</u> <u>encumbering or otherwise dealing</u> <u>with the Open Space Land; and</u> (a)(b) <u>in relation to the land other than</u> <u>the Open Space Land, sSelling,</u> <u>transferring or assigning the</u> <u>relevantwhole or any part of the</u> <u>Land.</u>
Deed of Partial Surrender	A Deed of Partial Surrender of the Original Planning Agreement between the Minister and the Developer, substantially in the form of the deed attached at Annexure F .
<u>Defects Liability Period</u>	<u>A period of 12 months after the day a Certificate of Practical Completion is issued.</u>
Department	The NSW Department of Planning, Industry and Environment or any other department replacing it from time to time.
Development	Has the meaning given in clause 4A and excludes: (a) <u>the subdivision of the Land and the stratum subdivision of a building on the Land for the purpose of creating a separate title for the Open Space</u>

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	<u>Land and the Community Centre Stratum Lot respectively; and</u>
	<u>(a)(b) Remediation of the Open Space Land in accordance with the terms of this document.</u>
Development Application	Has the same meaning as in the Act, but also includes any application for a Complying Development Certificate.
Development Consent	Has the same meaning as in the Act and for the avoidance of doubt includes a Complying Development Certificate.
Development Contribution	Dedication of land free of cost, payment of a monetary contribution or provision of any other material public benefit, or any combination of them, to be used for or applied towards a Public Purpose.
ELNO	Has the meaning given to that term in the <i>Electronic Conveyancing National Law</i> (NSW).
Encumbrance	Any encumbrance or affectation, including any mortgage, charge, easement, covenant, planning agreement and any liability for rates, Taxes and charges, but excluding <u>access or service easements, improvements, encumbrances reasonably necessary for the buildings adjoining the Open Space Land to meet the provisions of the Building Code of Australia, encumbrances reasonably necessary for the provision of access and the delivery of services to the Community Centre and adjoining lots, encumbrances reasonably necessary for the stratum lots adjoining the Community Centre Stratum Lot to meet the provisions of the Building Code of Australia, encumbrances reasonably necessary to satisfy the requirements of relevant Authorities or such other encumbrance as may be agreed with the Minister or the Minister's nominee.</u>
<u>Environment</u>	<u>Has the meaning given to that term in the Contaminated Land Management Act 1997 (NSW).</u>
<u>Environmental Law</u>	<u>Any law (including statute, policies and regulations enforceable by statute)</u>

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	<p><u>concerning the Environment, including, without limitation, laws concerning:</u></p> <p><u>(a) emissions of Chemical Substances into the atmosphere, waters and Land;</u></p> <p><u>(b) pollution or Contamination of the atmosphere, waters and Land; and</u></p> <p><u>(c) production, use, handling, storage, transportation and disposal of:</u></p> <p><u>i. waste</u></p> <p><u>ii. Hazardous Materials;</u></p> <p><u>iii. dangerous goods; and</u></p> <p><u>iv. Chemical Substances.</u></p>
Explanatory Note	The Explanatory Note attached at Schedule 5.
Form of Novation Deed	The deed attached at Annexure A.
GFA	Gross floor area, as that term is defined in the <i>Standard Instrument – Principal Local Environmental Plan</i> .
GST	Has the same meaning as in the GST Law.
GST Law	Has the meaning given to that term in A <i>New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of GST.
<u>Hazardous Material</u>	<p><u>Any substance, gas, liquid, chemical, mineral or other physical or biological matter that is:</u></p> <p><u>(a) or may become toxic, flammable or inflammable;</u></p> <p><u>(b) otherwise dangerous, harmful to the Environment or any life form or which may cause pollution, Contamination or any hazard or increase in toxicity in the Environment or may leak or discharge or otherwise cause damage to any person, property or the Environment; or</u></p>

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	<u>(c) a material or compound controlled, prohibited or regulated from time to time by any Environmental Law.</u>
<u>Instrument Change</u>	Has the meaning given in clause 3(a)(i).
<u>Just Terms Act</u>	<u>The Land Acquisition (Just Terms Compensation) Act 1991 (NSW).</u>
Land	The land described in Schedule 2 and shown on the Plan.
<u>Land Contribution</u>	<u>The Open Space Land Contribution and the Community Centre Stratum Lot Contribution.</u>
Loss	Any loss (including loss of profit and loss of expected profit), claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which the Minister pays, suffers or incurs or is liable for, including: <ul style="list-style-type: none"> (a) liabilities on account of Tax; (b) interest and other amounts payable to third parties; and (c) legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts paid in settlement of any claim or action.
<u>LRS</u>	<u>NSW Land Registry Services or any other government agency replacing it.</u>
<u>Minister's nominee</u>	<u>In relation to a Development Contribution, means any Authority nominated by the Minister to receive the contribution and, in the case of the Open Space Works Contribution, Open Space Land Contribution, Community Centre Works Contribution or Community Centre Stratum Lot Contribution, means the City of Parramatta Council, unless another Authority is nominated by the Minister in respect of that contribution.</u>
Modification Application	An application made under section 4.55 of the Act to modify a Development Consent.
New Planning Proposal	An application or request made to the relevant Authority seeking the amendment or making of an environmental planning instrument in relation to the whole or any part of the Land.
Novation Deed	The Deed of Novation for Planning Agreement for Contribution Area 1 dated 24 November 2016 between the Minister, the Developer, the Original Developer and the Original Landowners and Trustees.

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Occupation Certificate

Has the same meaning as in the Act.

Open Space Land

The land comprising Lot 9 in DP1228764 intended to be used for the purposes of public open space (excluding any land intended for use as road reserve).

Open Space Land Contribution

Transfer of the Open Space Land by the Developer to the Minister or the Minister's nominee in accordance with **Schedule 3**.

Open Space Works

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,
generally as shown on the Concept Design attached at **Annexure C**.

Open Space Works Agreement

A works authorisation deed or other legal binding agreement between the Developer and the Minister's nominee which:

- (a) governs the carrying out and completion of the Open Space Works in accordance with this document;
- (b) includes a mechanism for an appropriate licence to be granted by the Minister's nominee to enable the Developer to discharge its obligation to remediate any defects that may arise during the Defects Liability Period; and
- (c) includes a mechanism for appropriate security to be provided by the Developer to guarantee the carrying out and completion of the Open Space Works.

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**Open Space Works
Contribution**

**Carrying out and completion of the Open
Space Works by the Developer in
accordance with Schedule 3.**

Original Developer

Goodman Property Services (Aust) Pty
Limited ABN 40 088 981 793.

**Original Landowners
and Trustees**

- (a) The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665;
- (b) The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320;
- (c) The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229;
- (d) Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665;
- (e) Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320; and
- (f) Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229.

**Original Planning
Agreement**

The registered planning agreement AK233681 and AM18160 dated 18 November 2015 between the Minister, the Original Developer and the Original Landowners and Trustees, as novated in part to the Developer under the Novation Deed.

Party

A party to this document, including their successors and assigns, but only to the extent that assignment is permitted under **clause 13**.

Permitted Lease

Any new lease over any part of the Land which includes a provision requiring the lessee to consent to the Registration of this document on the title to the relevant part of the Land subject to the lease.

Plan

The plan of the Land attached at **Annexure B**.

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Plan of Subdivision	A registered plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919</i> (NSW) and includes, where applicable, a Strata Plan, or Strata Plan of Subdivision.
Planning Agreement	Has the same meaning as in the Act.
Planning Proposal	The Carter Street Lidcombe Urban Activation Precinct Proposal prepared by the Department exhibited in March/April 2014 and dated February 2014 for the rezoning of the Carter Street Priority Precinct and associated Development Control Plan, which includes the Floor Space Ratio Map dated 8 November 2013.
Planning Report	The Carter Street Lidcombe Urban Activation Precinct Planning Report prepared by the Department and dated February 2014.
Planning Secretary	Has the same meaning as in the Act.
Power of Attorney	The irrevocable power of attorney attached at Annexure G .
Public Purpose	Any purpose that benefits the public or a section of the public, including those specified in section 7.4(2) of the Act.
Register	The Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW). Registration has a corresponding meaning.
Regulation	The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
<u>Remediation</u>	<u>Of Contaminated land includes:</u> <ul style="list-style-type: none"> <u>(a) the preparation of a long term management plan for the land;</u> <u>(b) investigating, treating, removing, disposing, destroying, reducing, mitigating, dispersing, remediating or containing the Contamination of the land; and</u> <u>(c) eliminating or reducing any hazard arising from the Contamination of the land (including by preventing the</u>

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	<u>entry or persons or animals onto the land.</u>
	<u>Remediate has a corresponding meaning.</u>
<u>Remediation Works</u>	<u>Has the meaning given to that term in clause 4.2(b) of Schedule 3.</u>
Satisfactory Arrangements Certificate	A certificate issued by the Planning Secretary confirming that satisfactory arrangements have been made in respect of particular development to contribute to the provision of designated State public infrastructure, for the purposes of clause 6.8 of the ALEP or any clause in substantially the same terms as clause 6.8.
SEPP Amendment	<i>State Environmental Planning Policy Amendment (Carter Street Priority Precinct) 2015.</i>
SIC Determination	A determination by the Minister of a Special Infrastructure Contribution for a special contributions area which includes the Land.
<u>Site Auditor</u>	<u>A suitably qualified site auditor duly qualified under the Contaminated Land Management Act 1997 (NSW).</u>
<u>Site Audit Statement</u>	<u>A site audit statement prepared by a Site Auditor in accordance with Part 4 of the Contaminated Land Management Act 1997 (NSW).</u>
Special Infrastructure Contribution	A contribution determined in accordance with section 7.23 of the Act.
Strata Certificate	Has the same meaning as in the <i>Strata Schemes Development Act 2015 (NSW)</i> .
Strata Plan and Strata Plan of Subdivision	Have the same meanings as in the <i>Strata Schemes Development Act 2015 (NSW)</i> .
Subdivision Certificate	Has the same meaning as in the Act and includes where applicable, a Strata Certificate.
Subdivision Works Certificate	Has the same meaning as in the Act.
Tax	A tax, duty (including stamp duty and any other transaction duty), levy, impost,

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charge, fee (including a registration fee)
together with all interest, penalties, fines
and costs concerning them.

4A Development

- (a) In this document, subject to this clause 4A, **Development** means subdivision of the Land and any other development of the Land for residential, retail or commercial purposes that is the subject of a:
- (i) Development Application:
 - (A) made, but not yet determined, as at the Commencing Date;
or
 - (B) that is made at any time after the Commencing Date, or
 - (ii) Modification Application to any Development Consent that is in force as at the Commencing Date or to any Development Consent to a Development Application referred to in **clause 4A(a)(i)**:
 - (A) made, but not yet determined, as at the Commencing Date;
or
 - (B) that is made at any time after the Commencing Date.
- (b) Development is not **Development** within the meaning of **clause 4A(a)(i)** if the grant of Development Consent to a Development Application referred to in that clause will result in the GFA of the buildings (including proposed buildings) on the Land or part of the Land to which the Development Application relates, exceeding the maximum GFA of buildings that the application of the relevant floor space ratio under the ALEP as in force at the Commencing Date allows (being 87,286 square metres).
- (c) Despite **clause 4A(b)**, **Development** includes development that is subject to a Development Application referred to in **clause 4A(a)** even if the grant of Development Consent to the Development Application would result in the maximum GFA, as described in **clause 4A(b)**, being exceeded if that is merely because the applicant makes a request under clause 4.6 (Exceptions to development standards) of the ALEP to the consent authority.
- (d) Development does not cease to be **Development** within the meaning of **clause 4A(a)(i)** merely because a modification or proposed modification of a Development Consent will result in the maximum GFA as described in **clause 4A(b)** being exceeded.
- (e) For the purpose of determining whether the grant of Development Consent to a Development Application (**Subject Development Application**) will result in the maximum GFA referred to in **clause 4A(b)** being exceeded, the following are to be taken into account:
- (i) the GFA of any existing building on the Land; and

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- (ii) any GFA authorised under an existing Development Consent (being a Development Consent which has been granted prior to the time the Subject Development Application is determined), irrespective of whether any work or development has commenced under the existing Development Consent.

5 Development Contributions to be made under this document

5.1 Developer to provide Development Contributions

The Developer undertakes to provide to the Minister or the Minister's nominee the Development Contributions in accordance with the provisions of **Schedule 3**.

5.2 Acknowledgement

The Developer acknowledges and agrees that:

- (a) the Minister must comply with section 7.3 of the Act, but the Minister:
 - (i) does not make any representation or warranty that the Development Contributions must be used for a particular purpose; and
 - (ii) has no obligation to repay the Development Contributions; and
- (b) in circumstances where the Development Contributions are transferred to any Authority, the Minister has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by that Authority.

5.3 Contributions to State Infrastructure

- (a) The Minister agrees that the contributions in this document, to be made by the Developer, wholly fulfil the Developer's obligations to make contributions towards State infrastructure arising from the Development on the Land.
- (b) The Developer agrees that the application of section 7.24 of the Act is excluded only in relation to the Development, and no other development on the Land.
- (c) Accordingly, the Developer acknowledges that:
 - (i) a Special Infrastructure Contribution may need to be made in relation to other development on the Land; or
 - (ii) further satisfactory arrangements may need to be made to contribute to the provision of designated State public infrastructure in relation to other development on the Land.
- (d) Nothing about this **clause 5.3** restricts, offsets, gives rise to credits or otherwise reduces any local infrastructure contributions that may be

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made or be required to be made in conjunction with the Development.
The Development Contributions under this document may not be taken into consideration in determining the local contributions to be made in conjunction with the Development.

- (e) This **clause 5.3** applies on and from the Commencing Date and continues to apply in relation to the Land irrespective of whether any release and discharge of this document from title to the whole or any part of the Land has been granted.

6 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount due to the Minister on the due date for payment, the Developer will be liable to pay the Minister interest on the Contribution Amount, in addition to the Contribution Amount, at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest payable under **clause 6(a)** will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

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

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in **Schedule 1**.

8 Registration

8.1 Registration of this document

- (a) The Developer agrees that it will procure the Registration of this document on the relevant folio(s) of the Register for the Land in accordance with section 7.6 of the Act and the terms of this document.
- (b) The Developer will:
 - (i) at the Developer's expense; and
 - (ii) subject to **clause 8.1(d)**, within 90 Business Days of receiving a copy of this document executed by the Minister,
take all practical steps and otherwise do all things necessary to procure, in relation to the Land:
 - (iii) the consent of each person who:

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- (A) has an estate or interest in the Land registered on the Register; and
 - (B) is seized or possessed of an estate or interest in the Land;
- (iv) the execution of any documents;
- (v) the production of the relevant certificates of title (or electronic lodgement of relevant CoRD Holder Consents through Property Exchange Australia Ltd or another ELNO); and
- (vi) the lodgement of this document on the relevant folio(s) of the Register relating to the Land.
- (c) The Developer must use all reasonable endeavours to procure Registration of this document on the relevant folio(s) of the Register relating to the Land as soon as possible following lodgement.
- (d) Where the Developer is unable to procure Registration of this document in relation to any part of the Land within 90 Business Days of receiving a copy of this document executed by the Minister, because a consent required from a third party has not been given, the Developer must:
 - (i) continue to use all reasonable endeavours to procure Registration of this document until it is registered on all relevant folios of the Register relating to the Land;
 - (ii) in the event that this document has not been lodged on a particular folio of the Register for any part of the Land pending expiration or termination of a lease, lodge this document for Registration over any such folio within 5 Business Days of the expiration or termination of that lease; and
 - (iii) provide a written report to the Minister:
 - (A) on the date that is 90 Business Days after the Developer receives a copy of this document executed by the Minister; and
 - (B) thereafter monthly, on the first day of each month, as to the steps which have been taken by the Developer to secure any required consents and procure Registration of this document on title in respect of that Land.
- (e) The Developer agrees that it will not enter into any new lease over any part of the Land unless that lease is a Permitted Lease. This clause does not prevent the Developer from entering into variations of lease (including by way of exercise of option) or transfers of lease, over any part of the Land, provided that any variation of lease for any part of the Land on which this document is not registered does not extend the term of that lease (including any options) beyond its existing term, other than where:
 - (i) the variation includes the clause contained in the Permitted Lease; or

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- (ii) where the relevant land parcel is the subject of other leases, the variation would not extend the term of the lease in question beyond the term of the lease (including any options) with the longest lease period for that parcel of land.
- (f) Where there is a failure to register this document on the folio(s) of the Register for any part of the Land within 90 Business Days of receiving a copy of this document executed by the Minister:
 - (i) the Developer must comply with the obligation under **clause 8.1(d)** to continue to use all reasonable endeavours to procure Registration of this document on that part of the Land as soon as possible;
 - (ii) the Minister may require provision of a Bank Guarantee or Bank Guarantees with a face value equivalent to the full value of Contribution Amounts required to be made by the Developer under **Schedule 3**, in respect of the relevant part of the Land over which this document has yet to be registered; and
 - (iii) the Developer must provide that Bank Guarantee or the Bank Guarantees to the Minister within 5 Business Days of any such request and **clause 1** of **Schedule 4** will apply to any Bank Guarantee(s) provided under this **clause 8.1(f)**.
- (g) The Minister will return any Bank Guarantee(s) provided under this **clause 8.1(f)** following confirmation of the Registration of this document on the title to the relevant part of the Land.

8.2 Evidence of Registration

In respect of each part of the Land, the Developer must provide the Minister with a copy of the relevant folio(s) of the Register and a copy of the registered dealing within 10 Business Days of Registration of this document.

8.3 Right to lodge caveat

- (a) Subject to **clause 8.3(b)**, until such time as this document is registered on the title of the Land in accordance with **clause 8.1(b)(vi)**, the Developer acknowledges that:
 - (i) this document confers on the Minister, on and from the Commencing Date, an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land (excluding any lot created by the registration of a Strata Plan or a Strata Plan of Subdivision) to prevent any Dealing in respect of the Land; and
 - (ii) upon execution of this document, the Minister may lodge a caveat on the title to the Land, substantially in the form of the caveat attached at **Annexure E**, or complete an electronic caveat substantially in accordance with the terms of the caveat attached at **Annexure E** through Property Exchange Australia Ltd or another ELNO.

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- (b) If the Minister lodges a caveat in accordance with **clause 8.3(a)**, then the Minister:
- (i) must do all things reasonably necessary to:
 - (A) ensure that the caveat does not prevent or delay the Registration of this document over any part of the Land or the Registration of a Plan of Subdivision, Strata Plan or Strata Plan of Subdivision of the Land; and
 - (B) withdraw the caveat from the title to the relevant part of the Land within 5 Business Days of being provided with evidence of Registration of this document over that part of the Land in accordance with **clause 8.2**; and
 - (ii) must, without delay after being requested to do so, provide such consent or other documentation (such as a withdrawal of caveat) required to permit the Registration of:
 - (A) any easements to burden or benefit the Land;
 - (B) any variations of lease (including by way of exercise of option) subject to compliance with **clause 8.1(e)** or transfers of lease over any part of the Land; or
 - (C) any Permitted Lease;
 - (iii) may, after being requested to do so, provide such consent or other documentation (such as a withdrawal of caveat) required to permit the Registration of any instrument recording Dealings in respect of any part of the Land. The Minister may reasonably refuse to provide such consent or other documentation to permit the Registration of any instrument recording a Dealing until such time as either:
 - (A) this document is registered on the title to the relevant part of the Land, in which case the Minister will be required to withdraw the caveat under **clause 8.3(b)(i)(B)**; or
 - (B) all the Development Contributions have been provided in accordance with this document in respect of the relevant part of the Land.
- (c) The Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under **clause 8.3(a)** to lodge a caveat(s) and withdraw caveat(s) and any associated costs.

8.4 Release and discharge of document

- (a) From time to time, the Developer may, following the erection of a building or buildings on any part of the Land pursuant to a Development Consent granted for the Development, request the Minister to facilitate the progressive release and discharge of this document from the relevant

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folio(s) of the Register for that part of the Land, for which at the date of the request:

- (i) Occupation Certificates have been issued for all buildings on that part of the Land; and
 - (ii) no other buildings can be erected on that part of the Land pursuant to Development Consent granted for the Development.
- (b) The Minister agrees to do all things reasonably required by the Developer to, following a request by the Developer under **clause 8.4(a)**:
- (i) release and discharge this document with respect to that part of the Land forming the subject of the request; and
 - (ii) execute the relevant documents to enable the Developer to remove the notation of this document from the relevant folio(s) of the Register in respect of that part of the Land forming the subject of the request,

upon the Minister being satisfied that:

- (iii) the Developer has satisfied all of its obligations under this document in respect of that part of the Land forming the subject of the request; and
 - (iv) the Developer is not otherwise in default of its obligations under this document.
- (c) **Clause 5.3** continues to apply in relation to the Land irrespective of whether any release and discharge of this document has been granted under this **clause 8.4**.
- (d) Notwithstanding **clauses 8.4(a)** and **(b)**, the Developer may request the Minister to execute the relevant documents to enable the Developer to remove the notation of this document from the relevant folio(s) of the Register in respect of any part of the Land, if at the date of the request:
- (i) that part of the Land is a lot created by the registration of a Strata Plan or a Strata Plan of Subdivision;
 - (ii) the Developer has entered into a contract of sale for the lot referred to in **clause 8.4(d)(i)**; and
 - (iii) the Minister is satisfied that the Developer has complied with **clauses 8.4(b)(iii)** and **(iv)** in respect of that part of the Land.

8.5 Land Contribution

- (a) This **clause 8.5** applies to the whole or any part of a Land Contribution, or any part of the Land which includes the whole or any part of a Land Contribution.
- (b) The Developer is not entitled to seek, and the Minister is not required to provide, a release and discharge this document from title to the whole or any part of a Land Contribution until such time as:

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- (i) in respect of the Open Space Land, the Open Space Land has been Remediated in accordance with **clause 4.2 of Schedule 3**; and
- (iii)(ii) the Minister is otherwise satisfied that the Developer has completed all of its obligations under this document that are required to enable dedication or transfer of the Land Contribution in accordance with this document (including but not limited to creation of a separate title for the Land Contribution).

9 Dispute Resolution

9.1 Reference to dispute

If a dispute arises between the Parties in relation to this document, then either Party must resolve that dispute in accordance with this clause.

9.2 Notice of dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

9.3 Representatives of Parties to meet

On receipt of notice under **clause 9.2**, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

9.4 Mediation

If the Parties do not agree within 20 Business Days of receipt of the notice under **clause 9.2** (or any further period agreed in writing by them) as to:

- (a) the dispute resolution techniques and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Law Society of NSW's Mediation Program. The mediation will take place in Sydney, Australia. The parties must, as soon as possible, request the president of the Law Society or the president's nominee to select the mediator and determine the mediator's remuneration.

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9.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under **clause 9.2** then any Party which has complied with the provisions of this **clause 9** may in writing terminate any dispute resolution process undertaken under this **clause** and may then commence court proceedings in relation to the dispute.

9.6 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 9** is to attempt to settle the dispute. No Party may use information or documents obtained through any dispute resolution process undertaken under this **clause 9** for any purpose other than in an attempt to settle the dispute.

9.7 No prejudice

This **clause 9** 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.

9.8 Dispute with the Minister's nominee

If a dispute arises between the Developer and the Minister's nominee in relation to the Open Space Works Agreement, Open Space Works Contribution, Open Space Land Contribution, Community Centre Works Agreement, Community Centre Works Contribution or Community Centre Stratum Lot Contribution, then **clauses 9.2 to 9.4** shall apply to the Developer in resolving the dispute with the Minister's nominee, except rather than the president of the Law Society or the president's nominee selecting the mediator, the Minister, with the agreement of the Minister's nominee, shall be the mediator.

10 Enforcement

10.1 Developer to provide security

The following constitutes the security for the purposes of this document:

- (a) the Registration of this document on the title to the folio(s) of the Register comprising the Land and the other security arrangements in **clause 8**;
- ~~(a)~~(b) **clause 7 of Schedule 3**; and
- ~~(b)~~(c) the security set out in **Schedule 4** and **clauses 4.3 and 6.3 of Schedule 3**.

10.2 Enforcement by any Party

- (a) Without limiting any other remedies available to the Parties, this document may be enforced by any Party in any court of competent jurisdiction. Nothing in this document prevents:

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- (i) a Party from bringing court proceedings to enforce any aspect of this document or any matter to which this document relates; and
 - (ii) the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this document or any matter to which this document relates.
- (b) The Developer indemnifies the Minister from any Loss suffered or incurred in exercising the Minister's enforcement rights under **clause 10.2(a)**, other than Loss that is suffered or incurred:
 - (i) as a result of the Minister bringing proceedings against another Party or Parties in a court of competent jurisdiction to enforce any aspect of this document or any matter to which this document relates; and
 - (ii) in circumstances where, and to the extent that, the court makes orders for the Minister to pay the other Party's or Parties' costs of those proceedings.

11 Notices

11.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this document is only given or made if it is in writing and:

- (a) delivered or posted to that Party at its address set out below;
- (b) faxed to that Party at its fax number set out below; or
- (c) emailed to that Party at its email address set out below.

Minister

Attention: The Planning Secretary
Address: NSW Department of Planning, Industry and Environment
Level 1122, 4 Parramatta Square, 12 Darcy Street
~~320 Pitt Street~~
Parramatta Sydney NSW 2150 2000

Fax Number: Not Used
Email: planningagreements@planning.nsw.gov.au

Developer

Attention: Director, Karimbla Properties (No. 51) Pty Ltd
Address: Meriton Group: Level 11, 528 Kent Street
Sydney NSW 2000
Fax Number: (02) 9287 2835

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Email: lwong@meriton.com.au

11.2 Change of details

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that Party if it is delivered, posted, emailed or faxed to the latest address, email address or fax number.

11.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- (d) If it is sent by email, at the time the email was sent, provided the sender does not receive a delivery failure notice.

11.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

12 Approvals and consent

Except as otherwise set out in this document, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this document in the Minister's absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give reasons for giving or withholding consent or for giving consent subject to conditions.

13 Assignment and dealings

13.1 Restriction on assignment and novation

- (a) The Developer must not:
 - (i) assign the rights or benefits; or
 - (ii) novate the burdens or obligations,of this document to any person, unless the requirements of **clause 13.1(b)** are met.

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- (b) The parties to any assignment or novation of any rights, benefits, burdens or obligations under this document must enter into a deed with the Minister substantially in the form of the Form of Novation Deed. As a condition of entering into such deed, the Minister may require:
 - (i) the provision of additional security required in addition to that identified in **clause 10**; and
 - (ii) an indemnity in favour of the Minister in respect of any breach of this document by the Developer.
- (c) The Minister may assign the rights and benefits of this document in the Minister's absolute discretion, without the need for consent from the Developer.

13.2 Restriction on Dealings

- (a) This **clause 13.2**:
 - (i) applies to any part of the Land where there has not been a release and discharge of this document under **clause 8.4**;
 - (ii) does not apply to the entry into an "off the plan" contract for sale of a proposed lot in a Strata Plan by the Developer.
- (b) The Developer must not complete any Dealing with any third party (**Transferee**) relating to its interests in any part of the Land unless the Developer has complied with the requirements of **clauses 13.2(c) to (k)**.
- (c) Within 20 Business Days of entering into any Dealing, the Developer must give written notice to the Minister of:
 - (i) the existence of the Dealing;
 - (ii) the identity of the Transferee; and
 - (iii) the anticipated date of completion of the Dealing.
- (d) At least 35 Business Days prior to the date proposed for completion of the Dealing, the Developer must give to the Minister:
 - (i) written notice of their intention to complete the Dealing and of the proposed completion date (**Completion Date**);
 - (ii) written notice of the identity of the Transferee (and whether that has changed from the Transferee identified in the notice given under **clause 13.2(c)**); and
 - (iii) the completed novation deed substantially in the form of the Form of Novation Deed which the parties to the Dealing intend to execute under which the Transferee agrees to comply with those obligations of the Developer under this document which relate to the relevant part of the Land the subject of the Dealing (**Required Obligations**) as if the Transferee were the Developer (**Prepared Novation Deed**).

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- (e) At least 20 Business Days prior to the Completion Date, the Minister must give to the Developer written notice of whether the Minister requires:
 - (i) any amendments to be made to the Prepared Novation Deed, provided that any such amendments must remain substantially in the form of the Form of Novation Deed; and
 - (ii) as a condition of entering into the Prepared Novation Deed, the provision of additional security required in addition to that identified in **clauses 10 and 13.1**.
- (f) At least 15 Business Days prior to the Completion Date, the Developer must give to the Minister the final form of the Prepared Novation Deed, incorporating the Minister's requested amendments under **clause 13.2(e)**, for the Minister's final review and approval, to which the Minister must reply within 5 Business Days.
- (g) At least 5 Business Days prior to the Completion Date, the Developer must deliver to the Minister the Prepared Novation Deed in final form (incorporating any amendments required by the Minister under **clause 13.2(e)**) duly executed by the Developer and the Transferee.
- (h) Prior to the Completion Date:
 - (i) any default by the Developer in relation to the relevant part of the Land the subject of the proposed Dealing must be remedied by the Developer, unless that default has been waived expressly by the Minister; and
 - (ii) the Developer and the Transferee must pay all costs reasonably incurred by the Minister in relation to that Dealing, including, without limitation, legal and administrative costs.
- (i) No later than one Business Day prior to the Completion Date, the Developer must provide to the Minister a Bank Guarantee for any additional security required by the Minister as specified in **clause 13.2(e)(ii)**.
- (j) As soon as reasonably practicable after receiving the executed Prepared Novation Deed and any Bank Guarantee referred to in **clause 13.2(i)**, the Minister must:
 - (i) execute the Prepared Novation Deed and deliver a counterpart to the Developer;
 - (ii) return to the Developer its Bank Guarantee(s) referred to in **clause 1.2(a) of Schedule 4** in relation to that part of the Land the subject of the Dealing; and
 - (iii) if requested by the Developer:
 - (A) accept in exchange for the Bank Guarantee referred to in **clause 13.2(i)** a substitute Bank Guarantee provided by the Transferee for the same amount; and

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- (B) return the Bank Guarantee referred to in **clause 13.2(i)** to the Developer.
- (k) If the Developer enters into any Dealing and fully satisfies the requirements of this **clause 13.2** with respect to that Dealing, the Developer will be released from its obligations under this document with respect to the Required Obligations as they relate to the Land the subject of that Dealing.

13.3 Land Contribution

- (a) **This clause 13.3:**
- (i) applies to the whole or any part of a Land Contribution, or any part of the Land which includes a Land Contribution, where there has not been a release and discharge of this document under **clause 8.4** in respect of that land;
 - (ii) does not apply to the entry into an "off the plan" contract for sale of a proposed lot in a Strata Plan by the Developer.
- (b) Until such time as a separate title is created for the Land Contribution, the Developer must not enter into any Dealing with any Transferee relating to its interests in any part of the Land to which this **clause 13.3** applies, unless, prior to entering into such Dealing, the Developer and the Transferee enter into a deed with the Minister in the form of the Form of Novation Deed, on terms acceptable to the Minister.
- (c) At any time after a separate title has been created for the Land Contribution, the Developer and the Transferee must:
- (i) prior to entering into any Dealing relating to its interests in the Land Contribution, enter into a deed with the Minister in the form of the Form of Novation Deed, on terms acceptable to the Minister; and
 - ~~(iv)~~(ii) comply with **clauses 13.2(c) to 13.2(j)** in relation to any Dealing with any Transferee relating to its interests in any part of the Land which previously included the Land Contribution.

14 Capacity

- (a) Each Party warrants to each other Party that this document creates legal, valid and binding obligations, enforceable against the relevant Party in accordance with its terms.
- (b) If an attorney executes this document on behalf of any Party, the attorney declares that it has no notice of the revocation of that power of attorney.

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15 Reporting requirement

- (a) The Developer must provide at least 20 Business Days' notice to the Minister of any application made by the Developer or any other third party in relation to the Land for a New Planning Proposal, Development Consent or modification of Development Consent, Construction Certificate, ~~or Subdivision Certificate~~ or Occupation Certificate which triggers or alters any obligation under this document.
- (b) If any part of the Development is to be carried out without the need for Development Consent but triggers any obligation under this document, then the Developer must provide at least 20 Business Days' notice to the Minister of the date of the proposed commencement of that part of the Development.
- (c) On each anniversary of the Commencing Date or as otherwise agreed with the Planning Secretary, the Developer must deliver to the Planning Secretary a report which must include those matters set out in **clauses 15(d) and 15(e)**, as applicable.
- (d) If the Developer has not provided a Contribution Amount in the 12 month period immediately preceding the relevant anniversary of this document, the report required under **clause 15(c)** must include:
 - (i) a description of the status of the Development;
 - (ii) a forecast in relation to the anticipated progression and completion of the Development; and
 - (iii) an estimated date for when the Developer or any other third party (as applicable) expects to lodge a New Planning Proposal, the next Development Application or Modification Application and any application for a Construction Certificate, ~~or Subdivision Certificate~~ for the relevant part of the Land, or an Occupation Certificate for a building or part of a building on the relevant part of the Land.
- (e) If the Developer has provided one or more Contribution Amounts under this document, the report required under **clause 15(c)** must include:
 - (i) details of all New Planning Proposals, Development Consents or modifications of Development Consent, Construction Certificates, ~~and Subdivision Certificates~~ and Occupation Certificates granted in relation to the Development;
 - (ii) a schedule that details all Contribution Amounts provided under this document as at the date of the report; and
 - (iii) an estimated date for when the Developer or any other third party (as applicable) expects to lodge a New Planning Proposal, the next Development Application or Modification Application and application for any Construction Certificate, ~~or Subdivision Certificate~~ Certificate for the relevant part of the Land or Occupation Certificate for a building or part of a building on the relevant part of the Land.

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- (f) Upon the Planning Secretary's request, the Developer must deliver to the Planning Secretary all documents and other information which, in the reasonable opinion of the Planning Secretary, are necessary for the Planning Secretary to assess the status of the Development.

16 GST

16.1 Construction

In this **clause 16**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlements include:
- (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

16.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided to the Minister under or in connection with this document is exclusive of GST (**GST- exclusive consideration**).

16.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

16.4 Timing of GST payment

The amount referred to in **clause 16.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

16.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 16.3**.

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16.6 Adjustment event

If an adjustment event arises in respect of a supply made by the Supplier under or in connection with this document, any amount that is payable under **clause 16.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

16.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 16.7** does not limit the application of **clause 16.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 16.7(a)**.

16.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

16.9 No merger

This **clause 16** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

17 Rights and obligations under Original Planning Agreement

- ~~(a) The Developer must, on or before the Commencing Date, grant, execute and deliver to the Minister the Power of Attorney.~~
- ~~(b) In the event that, for any reason, the Deed of Partial Surrender is declared invalid, or is terminated, repudiated or frustrated, then on and from the Commencing Date, the Minister:~~

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- ~~(c) waives his or her rights under the Original Planning Agreement to enforce any obligations of the Developer under the Original Planning Agreement;~~
- ~~(d) releases the Developer from its obligations under the Original Planning Agreement; and~~
- ~~(e) may in his or her own right and as attorney for the Developer under the Power of Attorney, take any action or do any thing that he or she has the right or is empowered to do under the Power of Attorney.~~

~~This clause 17 does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.~~

18 General provisions

18.1 Costs, expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this document.
- (b) The Developer must pay all reasonable costs and expenses associated with the giving of public notice of this document and the Explanatory Note in accordance with the Regulation.
- (c) 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.
- (d) The Developer must provide the Minister with bank cheques or deposit the funds by means of electronic funds transfer into a bank account nominated by the Minister in respect of any costs incurred by the Minister pursuant to **clauses 18.1(a), 18.1(b) and 18.1(c)**:
 - (i) where the Minister has provided the Developer written notice of the sum of such costs prior to execution, on the date of execution of this document; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

18.2 Entire agreement

- (a) This document contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this document was executed, except as permitted by law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this document.

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18.3 Variation

- (a) This document must not be varied except by a later written document executed by all Parties.
- (b) Subject to **clause 18.3(c)**, the Parties agree that the requirements of **clause 18.3(a)** will be satisfied where the Minister, in the Minister's absolute discretion, agrees to the Developer making minor amendments relating to the delivery of the Development and those amendments, and the consequences of those amendments under this document, have been agreed by the Parties through an exchange of letters signed by or on behalf of the contact for each Party specified in **clause 11** of this document.
- (c) **Clause 18.3(b):**
 - (i) does not apply where the Act requires public notification of any amendment to this document;
 - (ii) is subject to the Developer obtaining all required approvals including any Development Consent or modification to a Development Consent; and
 - (iii) is subject to **clause 18.7** of this document.

18.4 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this document and all transactions incidental to it.

18.5 Governing law and jurisdiction

This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

18.6 Joint and individual liability and benefits

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

18.7 No fetter

Nothing in this document will be construed as requiring the Minister to do anything that would cause him or her to be in breach of any of his or her obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

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18.8 Representations and warranties

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

18.9 Severability

If a clause or part of a clause of this document 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 document, but the rest of this document is not affected.

18.10 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this document, 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.

18.11 Effect of Schedules

The Parties agree to comply with any terms contained in Schedules to this document as if those terms were included in the operative part of the document.

18.12 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the Parties.

18.13 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this document and to perform its obligations under it.

18.14 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

18.15 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a Party under this document are cumulative and are in addition to any other rights of that Party.

18.16 Interpretation

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;

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- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this document is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this document are payable in Australian dollars;
- (g) a reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (h) a reference in this document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this document includes a reference to the servants, agents and contractors of the Party; and
- (l) any schedules, annexures and attachments form part of this document.

18.17 Headings

Headings do not affect the interpretation of this document.

18.18 Effect of execution

This document is not binding on any Party unless it or a counterpart has been duly executed by each Party.

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Schedule 1

Requirements under the Act

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the document complying with the Act.

Table 1 – Requirements under section 7.4 of the Act (clause 7)

Provision of the Act	This document
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this document applies- (Section 7.4(3)(a))	The Land as defined in Schedule 2 .
Description of the development to which this document applies- (Section 7.4(3)(b)(ii))	The Development as defined in clause 4A .
The scope, timing and manner of delivery of Development Contributions required by this document - (Section 7.4(3)(c))	See Schedule 3 .
Applicability of Section 7.11 of the Act - (Section 7.4(3)(d))	The application of section 7.11 is not excluded in respect of any part of the Development.
Applicability of Section 7.12 of the Act - (Section 7.4(3)(d))	The application of section 7.12 is not excluded in respect of any part of the Development.
Applicability of Section 7.24 of the Act - (Section 7.4(3)(d))	The application of section 7.24 is wholly excluded in respect of any part of the Development.

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Provision of the Act	This document
Applicability of Section 7.4(3)(e) of the Act	Any benefits under this Agreement for a Public Purpose may not be taken into consideration in determining a Development Contribution under section 7.11 of the Act.
Mechanism for dispute resolution - (Section 7.4(3)(f))	See clause 9 .
Enforcement of this document - (Section 7.4(3)(g))	See clause 10, Schedule 3 (clauses 2.5, 3.4 and 5.4) .
No obligation to grant consent or exercise functions - (Section 7.4(9))	See clause 18.7 .

Table 1 – Other Matters

Provision of the Act	This document
Registration of this document (Section 7.6)	Yes – see clause 8
Whether this document specifies that certain requirements must be complied with before a construction certificate is issued (Clause 25E(2)(g) of the Regulation)	No Yes – see clause 2.5 of Schedule 3 .
Whether this document specifies that certain requirements must be complied with before an occupation certificate is issued (Clause 25E(2)(g) of the Regulation)	No Yes – see clauses 2.5, 3.4 and 5.4 of Schedule 3 .
Whether this document specifies that certain requirements must be complied with before a subdivision certificate is issued (Clause 25E(2)(g) of the Regulation)	No Yes – see clause 2.5 of Schedule 3 .

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Schedule 2

Land

Item	Lot and Deposited Plan	Folio Identifier	Landowner
1.	Lot 5 in DP1228764	5/1228764	Karimbla Properties (No. 51) Pty Ltd
2.	Lot 6 in DP1228764	6/1228764	Karimbla Properties (No. 51) Pty Ltd
3.	Lot 7 in DP1228764	7/1228764	Karimbla Properties (No. 51) Pty Ltd
4.	Lot 8 in DP1228764	8/1228764	Karimbla Properties (No. 51) Pty Ltd
5.	Lot 9 in DP1228764	9/1228764	Karimbla Properties (No. 51) Pty Ltd

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Schedule 3

Development Contributions

1 Development Contributions

The Developer undertakes to provide the Development Contributions in accordance with the table below:

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Value	Timing
1	Contribution Amounts: payment of monetary contributions by the Developer to the Minister or the Minister's nominee.	\$1097.4127 per square metre of GFA that will result from carrying out the Development in accordance with a Development <u>Consent</u> , including as <u>modified Application or Modification</u> Application, adjusted in accordance with clause 2.1 of this Schedule.	In accordance with clause 2.2 of this Schedule 3 .
2	<u>Open Space Works Contribution:</u> carrying out and completion of the Open Space Works.		In accordance with clause 3.3 of this Schedule 3 .
3	<u>Open Space Land Contribution:</u> transfer of the Open Space Land by the Developer to the Minister or the Minister's nominee.		In accordance with clause 4.1(c) of this Schedule 3 .
4	<u>Community Centre Works Contribution:</u> carrying out and completion of the		In accordance with clause 5.3 of this Schedule 3 .

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Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Value	Timing
	<u>Community Centre Works.</u>		
5	<u>Community Centre Stratum Lot Contribution:</u> <u>transfer of the Community Centre Stratum Lot to the Minister or the Minister's nominee.</u>		<u>In accordance with clause 6.2(c) of this Schedule 3.</u>

2 Contribution Amount

2.1 Indexation

The value of the Contribution Amounts set out in Column 3 of the Table included at **clause 1** of this **Schedule 3** is to be adjusted on 1 July in each year by multiplying that amount by the following formula:

Current CPI/Base CPI

Where:

Current CPI is the CPI number for the quarter ending immediately before 31 March in the year in which the relevant adjustment is made; and

Base CPI is the CPI number for the quarter ending 31 March 202019.

2.2 Timing for payment of Contribution Amounts

~~(a)~~—The Developer must pay the Contribution Amounts to the Minister or the Minister's nominee in relation to each square metre of GFA (or any part thereof) for any part of the Land the subject of a Development Consent, as it may be modified~~Application or Modification Application~~, prior to the ~~earlier of:~~

~~(b)~~—~~the grant of any Development Consent or approval of any Modification Application in respect of that part of the Land; or~~

~~(c)~~(a) the issue of any Occupation Certificate for a building or part of a building ~~on Construction Certificate or Subdivision Certificate in respect of that part of the Land to which the Development Consent or approval of Modification Application referred to in clause 2.2(a)(i) above applies.~~

(b) Notwithstanding **clause 2.2(a)** of this **Schedule 3**, the Developer is not required to pay any Contribution Amount;

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- (i) for an alteration or fitout to any Development authorised to be carried out by a Development Consent in force as at the Commencing Date that will not result in any additional GFA on the Land; or
- (ii) for the Community Centre if the Development Consent that authorises that part of the Development that includes the Community Centre specifies that the GFA for the Community Centre need not be taken into account in determining whether the maximum permissible GFA for that part of the Development has been exceeded.

2.3 Delivery of Contribution Amounts

- (a) Contribution Amounts are made for the purpose of this **Schedule 3** when cleared funds are deposited by means of electronic funds transfer or bank cheque into a bank account nominated by the Minister.
- (b) The Developer is to give the Minister not less than 20 Business Days written notice of:
 - (i) its intention to pay a Contribution Amount; and
 - (ii) the amount proposed to be paid.
- (c) The Developer is not required to pay a Contribution Amount under this document until the Minister, after having received a notice under **clause 2.3(b)** of this **Schedule 3**, has given to the Developer a tax invoice for the relevant Contribution Amount.

2.4 Satisfactory arrangements

~~Not Used~~ The Developer must not make any request for a Satisfactory Arrangements Certificate in respect of any part of the Development until such time as:

~~the obligation to pay the Contribution Amounts under this Schedule 3 in respect of that part of the Development has been satisfied in accordance with the requirements in this document; and~~

~~the Minister or the Department has provided written confirmation that this obligation has been so satisfied.~~

2.5 Restriction on issue of Occupation Certificate ~~Construction Certificate and Subdivision Certificate~~

The Parties agree that the requirement to provide Contribution Amounts under this **Schedule 3** is a restriction on the issue of an Occupation Certificate within the meaning of clause 154E of the Regulation ~~the following in respect of the Development or any part of the Development:~~

- ~~a Subdivision Certificate; and~~
- ~~a Construction Certificate;~~

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whether Part 4A of the Act, as in force immediately before its repeal on 1 March 2018, applies to the issue of the relevant certificate or Part 6 of the Act (Building and subdivision certification) applies.

3 Open Space Works

3.1 Carrying out and completion of Open Space Works

The Developer must carry out and complete the Open Space Works in accordance with the relevant Development Consent, the Open Space Works Agreement and this **Schedule 3**.

3.2 Conditions to commencement of Open Space Works

Prior to commencement of the Open Space Works, the Developer must:

- (a) provide evidence to the Minister that it has obtained Development Consent for the Open Space Works;
- (b) enter into an Open Space Works Agreement with the Minister's nominee, on such terms and conditions as are:
 - (i) consistent with the requirements of this document, including this **Schedule 3**; and
 - (ii) acceptable to the Minister (acting reasonably) and the Minister's nominee;
- (c) provide to the Minister a copy of the executed Open Space Works Agreement to carry out and complete the Open Space Works; and
- (d) provide evidence to the Minister of the security provided for the Open Space Works under the Open Space Works Agreement having regard to the requirements of **clause 1 of Schedule 4**.

3.3 Timing of Open Space Works

- (a) The Developer must complete the Open Space Works 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) If the Developer considers that it has completed the Open Space Works as referred to in **clause 3.1** of this **Schedule 3**, the Developer must provide to the Minister:
 - (i) a Certificate of Practical Completion from the Minister's nominee;
 - (ii) a certificate from the Minister's nominee confirming that the Defects Liability Period for the Open Space Works has been satisfactorily completed or that satisfactory arrangements have been made with the Minister's nominee to address any defects that may arise during the Defects Liability Period; and

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(iii) such other supporting documentation as is necessary for the Minister (or his or her delegates) to determine whether the Open Space Works have been completed.

(c) The Minister will determine, acting reasonably, within 15 Business Days of receiving the information required under clause 3.3(b) of this Schedule 3, whether the Open Space Works have been completed.

3.4 Restriction of issue of Occupation Certificates

The parties agree that the requirements to complete the Open Space Works specified in clause 3.3(a) of this Schedule 3 and to provide the information specified in clause 3.3(b) of this Schedule 3 represent restrictions on the issue of an Occupation Certificate within the meaning of clause 154E of the Regulation.

4 Open Space Land Contribution

4.1 Transfer obligations

(a) The Developer must transfer the Open Space Land to the Minister or the Minister's nominee for a consideration of \$1.

(b) Transfer of the Open Space Land is made for the purposes of clause 4.1 of this Schedule 3 when the Minister is given either:

(i) a form of transfer, duly executed and in registrable form, that is effective to transfer title to the Open Space Land to the Minister or the Minister's nominee, when Registered; or

(ii) evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.

(c) The Developer must provide to the Minister the form or evidence of transfer referred to in clause 4.1(b) of this Schedule 3 by no later than prior to the issue of an Occupation Certificate for the final building or part of the final building on land comprising Lot 8 DP1228764.

(d) To allow for the Registration of the transfer referred to in clause 4.1(b) of this Schedule 3, the Developer must:

(i) cause the certificate(s) of title for the Open Space Land to be produced to the LRS or provide a direction allowing the certificate(s) of title to be used for that purpose (or lodge a CoRD Holder Consent for the Open Space Land through Property Exchange Australia Ltd or other electronic equivalent);

(ii) give to the Minister an irrevocable undertaking to deliver to the Minister or the Minister's nominee the certificate(s) of title if the certificate(s) are released to the Developer by the LRS; and

(iii) take any other necessary action to give effect to the transfer of the title of the Open Space Land to the Minister or the Minister's

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nominee free of all above ground improvements on the Open Space Land, including without limitation any concrete slab constructed on the Open Space Land, and all Encumbrances (excluding the above ground improvements comprising the Open Space Works).

and the Minister agrees to execute, or procure execution by the Minister's nominee of, all documents necessary to give effect to the transfer of title of the Open Space Land to the Minister or the Minister's nominee promptly upon completion of the obligations under **clauses 4.1(b) to (d)** of this **Schedule 3**, and to provide any other information within the Minister's knowledge which is reasonably required by the Developer to enable the provision of servicing of the Open Space Land referred to in **clause 4.1(g)** of this **Schedule 3**, subject to the Developer's compliance with the Remediation obligations under **clause 4.2** of this **Schedule 3**.

(e) Where the Open Space Land is dedicated to the Minister's nominee, the Developer must give the Minister copies of the title search(es) for the Open Space Land showing the Minister's nominee as the registered proprietor of the Open Space Land within 10 Business Days of the relevant transfer being Registered.

(f) The Developer must pay all rates and Taxes owing in respect of the Open Space Land up to and including the date that the Developer either:

- (i) delivers the form of transfer and certificate(s) of title for the Open Space Land under **clause 4.1(b)(i)** of this **Schedule 3**; or
- (ii) provides evidence under **clause 4.1(b)(ii)** of this **Schedule 3** that the transfer has occurred,

after which time the Minister or the Minister's nominee (as appropriate) will be responsible for any rates and Taxes in relation to the Open Space Land.

(g) Prior to transfer of the Open Space Land, the Developer must, at its cost, ensure and provide evidence to the Minister that the Open Space Land:

(i) is serviced by:

- (A) roads;
- (B) sewer;
- (C) water;
- (D) communications;

(ii) includes the Open Space Works;

(iii) has correct levels established;

(iv) includes topsoil and turf in the landscaped and lawn areas;

(v) provides for one water meter and connection and one tap;

(vi) has an entry for maintenance; and

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(vii) has a perimeter that is secured by way of bollards or other similar devices to prevent car access.

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

4.2 Remediation obligations

- (a) The Developer must, prior to transfer of the Open Space Land, undertake the Remediation Works referred to in **clause 4.2(b)** of this **Schedule 3** and provide to the Minister a Site Audit Statement which certifies that the Open Space Land is suitable for the proposed use as public open space, either unconditionally or subject to conditions which are acceptable to the Minister acting reasonably.
- (b) In this **clause 4** of this **Schedule 3**, "**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 Environmental 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.

4.3 Additional security

- (a) The Minister reserves the right to call for additional security in relation to the transfer of the Open Space Land, but only where:
- (i) the Developer provides written notification to the Minister prior to the transfer of the Open Space Land that it proposes to transfer the Open Space Land subject to any registered Encumbrances noted on the title(s) to the Open Space Land; or
 - (ii) the Developer transfers the Open Space Land subject to Encumbrances.
- (b) Without limitation, the Minister may require the Developer to provide an additional Bank Guarantee in order to secure the costs of removing any Encumbrances noted on the title(s) to the Open Space Land. **Clause 1**

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of Schedule 4 will apply to any Bank Guarantee provided under this clause 4.3 of Schedule 3.

5 Community Centre Works Contribution

5.1 Carrying out and completion of the Community Centre Works

The Developer must:

(a) carry out and complete the Community Centre Works:

- (i) in accordance with the relevant Development Consent, the Community Centre Works Agreement and this Schedule 3; and
- (ii) in consultation with and having regard to the following requirements of the Minister's nominee that the Community Centre:
 - (A) consists of one or more areas on multiple levels of the building;
 - (B) comprises at a minimum, a total area of 1000 square metres (excluding the area of the 5 parking spaces), of which an area of 550 square metres must be at street level;
 - (C) has an area and access at street level facing the public domain on Uhrig Road;
 - (D) is serviced by:
 - (1) sewer;
 - (2) water;
 - (3) electrical;
 - (4) communications;
 - (E) facilitates sufficient solar access and natural ventilation;
 - (F) facilitates acoustic privacy from neighbouring lots in the building;
 - (G) has floor to ceiling height that meets the provisions of the Building Code of Australia;
 - (H) facilitates access arrangements that meet the provisions of the Building Code of Australia;
 - (I) has a total of 5 parking spaces that are designed in accordance with AS/NZS 2890.1:2004, *Parking facilities, Part 1: Off-street car parking* or AS 2890.2—2002, *Parking facilities, Part 2: Off-street commercial vehicle facilities* and RMS Australian Standard Supplements, *Australian Standard—AS2890, Parking Facilities, Parts 1–6*; and

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- (b) consult in good faith with the Minister's nominee and act reasonably in relation to the scope, design and delivery of the Community Centre Works.

5.2 Conditions to commencement of the Community Centre Works

Prior to commencement of the Community Centre Works, the Developer must:

- (a) provide evidence to the Minister that it has obtained Development Consent and all necessary Approvals for the Community Centre Works;
- (b) enter into a Community Centre Works Agreement with the Minister's nominee, on such terms and conditions as are:
 - (i) consistent with the requirements of this document, including this Schedule 3; and
 - (ii) acceptable to the Minister (acting reasonably) and the Minister's nominee; and
- (c) provide to the Minister a copy of the executed Community Centre Works Agreement to carry out and complete the Community Centre Works.

5.3 Timing of the Community Centre Works

- (a) The Developer must complete the Community Centre Works 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) If the Developer considers that it has completed the Community Centre Works as referred to in clause 5.1(a) of this Schedule 3, the Developer must provide to the Minister:
 - (i) a Certificate of Practical Completion from the Minister's nominee;
 - (ii) a certificate from the Minister's nominee confirming that the Defects Liability Period for the Community Centre Works has been satisfactorily completed or that satisfactory arrangements have been made with the Minister's nominee to address any defects that may arise during the Defects Liability Period;
 - (iii) a statement by the Minister's nominee 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 Community Centre Works have been provided to the Minister's nominee;
 - (iv) a statement by the Minister's nominee that all warranties and guarantees obtained by the Developer with respect to any material or goods incorporated in or forming part of the Community Centre Works have been assigned to the Minister's nominee;
 - (v) a statement by the Minister's nominee that all rights to the copyright and any intellectual property which may exist in the

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Community Centre Works that the Developer holds have been assigned to the Minister's nominee; and

(vi) such other supporting documentation as is necessary for the Minister (or his or her delegates) to determine whether the Community Centre Works have been completed.

(c) The Minister will determine, acting reasonably, within 15 Business Days of receiving the information required under clause 5.3(b) of this Schedule 3, whether the Community Centre Works have been completed.

5.4 Restriction on issue of Occupation Certificates

The parties agree that the requirements to complete the Community Centre Works specified in clause 5.3(a) of this Schedule 3 and to provide the information specified in clause 5.3(b) of this Schedule 3 represent restrictions on the issue of an Occupation Certificate within the meaning of clause 154E of the Regulation.

6 Community Centre Stratum Lot Contribution

6.1 Stratum subdivision of a building to create a Community Centre Stratum Lot

The Developer must, at its cost, prepare and procure registration of a plan of stratum subdivision to create the Community Centre Stratum Lot.

6.2 Transfer obligations

(a) The Developer must transfer the Community Centre Stratum Lot to the Minister or the Minister's nominee for a consideration of \$1.

(b) Transfer of the Community Centre Stratum Lot is made for the purposes of clause 6.2(a) of this Schedule 3 when the Minister is given either:

(i) a form of transfer, duly executed and in registrable form, that is effective to transfer title to the Community Centre Stratum Lot to the Minister or the Minister's nominee, when Registered; or

(ii) evidence that a transfer referred to in clause 6.2(b)(i) in this Schedule 3 have been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.

(c) The Developer must provide to the Minister the form or evidence of transfer referred to in clause 6.2(b) of this Schedule 3 by no later than prior to the issue of an Occupation Certificate for the final building or part of the final building on land comprising Lot 8 DP1228764.

(d) To allow for the Registration of the transfer referred to in clause 6.2(b) of this Schedule 3, the Developer must:

(i) cause the certificate(s) of title for the Community Centre Stratum Lot to be produced to the LRS or provide a direction allowing the

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certificate(s) of title to be used for that purpose (or lodge a CoRD Holder Consent for the Community Centre Stratum Lot through Property Exchange Australia Ltd or other electronic equivalent);

- (ii) give to the Minister an irrevocable undertaking to deliver to the Minister or the Minister's nominee the certificate(s) of title if the certificate(s) are released to the Developer by the LRS; and
- (iii) take any other necessary action to give effect to the transfer of the title of the Community Centre Stratum Lot to the Minister or the Minister's nominee free of all Encumbrances,

and the Minister agrees to execute, or procure execution by the Minister's nominee of, all documents necessary to give effect to the transfer of title of the Community Centre Stratum Lot to the Minister or the Minister's nominee promptly upon completion of the obligations under **clauses 6.2(b) to (d)** of this Schedule 3.

- (e) Where the Community Centre Stratum Lot is transferred to the Minister's nominee, the Developer must give the Minister copies of the title search(es) for the Community Centre Stratum Lot showing the Minister's nominee as the registered proprietor of the Community Centre Stratum Lot within 10 Business Days of the relevant transfer being Registered.
- (f) The Developer must pay all rates and Taxes owing in respect of the Community Centre Stratum Lot up to and including the date that the Developer either:
 - (i) delivers the form of transfer or certificate(s) of title for the Community Centre Stratum Lot under **clause 6.2(b)(i)** of this Schedule 3; or
 - (ii) provides evidence under **clause 6.2(b)(ii)** of this Schedule 3 that the transfer has occurred,

after which time the Minister or the Minister's nominee (as appropriate) will be responsible for any rates and Taxes in relation to the Community Centre Stratum Lot.

6.3 Additional security

- (a) The Minister reserves the right to call for additional security in relation to the transfer of the Community Centre Stratum Lot, but only where:
 - (i) the Developer provides written notification to the Minister prior to the transfer of the Community Centre Stratum Lot that it proposes to transfer the Community Centre Stratum Lot subject to any registered Encumbrances noted on the title(s) to the Community Centre Stratum Lot; or
 - (ii) the Developer transfers the Community Centre Stratum Lot subject to Encumbrances.
- (b) Without limitation, the Minister may require the Developer to provide an additional Bank Guarantee in order to secure the costs of removing any

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Encumbrances noted on the title(s) to the Community Centre Stratum Lot. **Clause 1 of Schedule 4** will apply to any Bank Guarantee provided under this **clause 6.3 of Schedule 3**.

7 Compulsory acquisition

- (a) If the Developer does not transfer a Land Contribution by the time specified for the transfer of that Land Contribution under this **Schedule 3**, the Developer consents to the Minister or the Minister's nominee, at the appropriate time, compulsorily acquiring the Land Contribution in accordance with the Just Terms Act for an amount of \$1.
- (b) The Developer and the Minister (or the Minister's nominee, as appropriate), agree that:
 - (i) this **clause 7** of this **Schedule 3** is taken to be an agreement between them for the purpose of section 30 of the Just Terms Act; and
 - (ii) in this **clause 7** of this **Schedule 3**, they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that any Land Contribution to be acquired under this **clause 7** of this **Schedule 3** is free of all Encumbrances on the date that the Developer is liable to transfer the Land Contribution to the Minister or the Minister's nominee in accordance with this **clause 7** of this **Schedule 3**.
- (d) The Developer indemnifies and agrees to keep indemnified the Minister (and the Minister's nominee, where applicable) against all Claims for compensation under the Just Terms Act made against the Minister (or the Minister's nominee) as a result of any acquisition by the Minister (or the Minister's nominee) of the whole or any part of a Land Contribution under this **clause 7** of this **Schedule 3**.
- (e) The Developer must pay to the Minister (or the Minister's nominee), within 20 Business Days of a written demand, an amount equivalent to all costs, charges and expenses incurred by the Minister (or the Minister's nominee) in acquiring the whole or any part of the Land Contribution under this **clause 7** of this **Schedule 3** and the quantum of all determined Claims against the Minister (or the Minister's nominee) in exercising acquisition rights under this **clause 7** of this **Schedule 3**. Where the Developer has not complied, in whole or in part, with **clause 4.2** of this **Schedule 3**, this amount may include any costs associated with the Remediation of the Open Space Land to facilitate the use of the Open Space Land for public open space.
- (f) The parties agree that this document operates as a deed poll in favour of the Minister's nominee insofar as this document relates to the transfer of a Land Contribution to the Minister's nominee.

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Schedule 4

Security

1 Bank Guarantee

1.1 Developer to provide Bank Guarantees

- (a) In order to secure the delivery of the Development Contribution payment of each Contribution Amount, Registration of under this document on title and the removal of any Encumbrances, the Developer has agreed to provide security in the form of a Bank Guarantee.
- (b) A Bank Guarantee required to be provided under this document must:
 - (i) name the "Minister for Planning and Public Spaces and Department of Planning, Industry and Environment ABN 20 770 707 468" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

1.2 Bank Guarantee for enforcement

- (a) Upon execution of this document, the Developer will provide security to the Minister in the form of one or more Bank Guarantees for a face value equivalent of **\$40,000**.
- (b) From the date of execution of this document until the date that this document is released and discharged with respect to any part of the Land, the Minister will be entitled to retain the Bank Guarantee provided under **clause 1.2(a)** of this **Schedule 4** for the relevant part of the Land.
- (c) Where one or more Bank Guarantees are required to be provided to the Minister under **clause 8.1(f)**, such Bank Guarantee(s) must be provided in the amount(s) required by the Minister under that clause. From the date that the Bank Guarantee(s) are provided under **clause 8.1(f)** until the date that this document is registered on all of the folios of the Register comprising the Land, the Minister will be entitled to retain the Bank Guarantee(s) to secure Registration of this document over all of the relevant folios of the Register comprising the Land.

1.3 Bank Guarantee for the Open Space Works

- (a) If, following entry into this document and prior to the grant of Development Consent to a Development Application for Development on land comprising Lot 8 DP1228764, the Developer has:
 - (i) entered into an Open Space Works Agreement with the Minister's nominee for the Open Space Works;

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- (ii) provided security to the Minister's nominee under the Open Space Works Agreement for an amount equal to or in excess of \$1,200,000 (Open Space Works Security Amount); and
- (iii) satisfied the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to the Minister's nominee for the Open Space Works, including providing all information reasonably required by the Minister regarding the security provided under the Open Space Works Agreement.

the Minister will accept the security provided under the Open Space Works Agreement as security for the performance of the Developer's obligation under **Schedule 3** to carry out and complete the Open Space Works, and will provide written notification to the Developer of the Minister's position under this **clause 1.3(a)** of this **Schedule 4** within 20 Business Days of receiving all required information from the Developer regarding the security provided under the Open Space Works Agreement.

- (b) If, following entry into this document and prior to the grant of Development Consent to a Development Application for Development on land comprising Lot 8 DP1228764, the Developer has not entered into an Open Space Works Agreement with the Minister's nominee for the Open Space Works, the Developer must provide a Bank Guarantee to the Minister with a face value equivalent to the face value of the Open Space Works Security Amount, to secure its obligation to carry out and complete the Open Space Works.

- (c) If, following entry into this document and the Developer providing a Bank Guarantee to the Minister under **clause 1.3(b)** of this **Schedule 4**, the Developer:

- (i) enters into an Open Space Works Agreement with the Minister's nominee for the Open Space Works;
- (ii) provides security to the Minister's nominee under the Open Space Works Agreement for an amount equal to or in excess of the Open Space Works Security Amount; and
- (iii) satisfies the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to the Minister's nominee for the Open Space Works, including providing all information reasonably required by the Minister regarding the security provided under the Open Space Works Agreement.

the Minister will accept the security provided under the Open Space Works Agreement as security for the performance of the Developer's obligation under **Schedule 3** to carry out and complete the Open Space Works, and will provide written notification to the Developer of the Minister's position under this **clause 1.3(c)** of this **Schedule 4** within 20 Business Days of receiving all required information from the Developer regarding the security provided under the Open Space Works Agreement.

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- (d) Where **clause 1.3(c)** of this **Schedule 4** applies, the Minister will return the Bank Guarantee provided by the Developer under **clause 1.3(b)** of this **Schedule 4** within 20 Business Days of the Minister notifying the Developer of the Minister's acceptance of the security provided under the Open Space Works Agreement.
- (e) If the Developer does not satisfy the Minister as to the adequacy of the security provided for the Open Space Works under the Open Space Works Agreement in accordance with **clause 1.3(c)** of this **Schedule 4**, then:
 - (i) the Developer will be required to provide a Bank Guarantee to the Minister for the difference between the amount of security provided under the Open Space Works Agreement and the amount required to satisfy the Minister that the security for the Open Space Works is adequate;
 - (ii) upon receipt of the Bank Guarantee required by the Minister under **clause 1.3(e)(i)** of this **Schedule 4**, the Minister will accept that Bank Guarantee and the security provided under the Open Space Works Agreement as securing the performance of the Developer's obligation under **Schedule 3** to carry out and complete the Open Space Works; and
 - (iii) the Minister will return the Bank Guarantee provided under **clause 1.3(b)** of this **Schedule 4** within 20 Business Days of receiving the Bank Guarantee under **clause 1.3(e)(i)** of this **Schedule 4**.

4.31.4 Claims under the Bank Guarantee

- (a) The Minister may:
 - (i) call upon any Bank Guarantee provided under this document where the Developer has failed to ~~pay a Contribution Amount on or before the due date for payment under~~ provide a Development Contribution to which the security relates by the timeframe specified for provision of that Development Contribution in this document or is otherwise in default of its obligations under this document, including with respect to Registration of this document on the relevant folios of the Register to the Land; and
 - (ii) retain and apply such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this document.
- (b) Prior to calling on a Bank Guarantee, the Minister must give the Developer not less than 10 Business Days written notice.
- (c) If:
 - (i) the Minister calls upon any Bank Guarantee; and
 - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this document; and

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- (iii) has notified the Developer under **clause 1.4(b)** of this **Schedule 4**,

then the Developer must provide to the Minister a replacement Bank Guarantee to ensure that at all times until the date that this document is released and discharged with respect to the whole of the Land, the Minister is in possession of:

- (iv) a Bank Guarantee for a face value equivalent to **\$40,000**, subject to any increases resulting from the provision of additional security under **clause 13.1(b)(i)** or **clause 13.2(e)(ii)**;

- (v) a Bank Guarantee for a face value equivalent to **\$1,200 000**, subject to the Developer providing security to the Minister's nominee under the Open Space Works Agreement for an amount equal to or in excess of this amount under **clause 1.3(c)** of this **Schedule 4**; and

- (vi) a Bank Guarantee or Bank Guarantees for any amount(s) required to be provided to the Minister pursuant to **clause 8.1(f)**.

4.41.5 Release of Bank Guarantee

If:

- (a) the Developer has satisfied all of its obligations under this document secured by the relevant Bank Guarantee; and
- (b) the whole of the monies secured by the relevant Bank Guarantee have not been expended and the monies accounted for,

then the Minister will promptly return the relevant Bank Guarantee (less any costs, charges, duties and Taxes payable) or the remainder of the monies secured by the relevant Bank Guarantee (as the case may be) to the Developer within 20 Business Days of a request from the Developer.

2 Charge over Land

2.1 Grant of charge

- (a) To support the caveat referred to in **clause 8.3** of this document, the Developer charges its rights, titles and interests in the Land in favour of the Minister to secure:
- (i) the proper and timely performance of the Developer's obligations under this document; and
- (ii) any damages that may be payable to the Minister in the event of any breach of this document by the Developer.

2.2 Minister may caveat

- (a) For the purposes of **clause 8.3** of this document, the Developer consents to the Minister registering a caveat on the title of the Land to which the charge granted under **clause 2.1** of this **Schedule 4** applies.

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- (b) The Minister agrees that it will not seek to register a Form 06C – Charge on the folios of the Register for the Land.

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Schedule 5

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW)

1 Parties

The Minister for Planning and Public Spaces (**Minister**)

Karimbla Properties (No. 51) Pty Ltd (**Developer**)

2 Description of subject land

- Lot 5 in Deposited Plan 1228764;
- Lot 6 in Deposited Plan 1228764;
- Lot 7 in Deposited Plan 1228764;
- Lot 8 in Deposited Plan 1228764; and
- Lot 9 in Deposited Plan 1228764;

(**Land**).

3 Description of proposed development

Subdivision and development of the Land for residential, retail and commercial purposes.

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4 Summary of objectives, nature and effect of the draft planning agreement

4.1 Objectives of Planning Agreement

The objective of the Planning Agreement is to facilitate the development and improvement of public facilities within the Carter Street Priority Precinct and specifically to allow for the

(a) payment of Contribution Amounts to be paid at the rate of \$1097.4127 per square metre (subject to indexation) of gross floor area (or any part thereof) that will result from carrying out the Development in accordance with a Development Application or application for modification of a Development Consent, including as modified or application for a Complying Development Certificate, payable;

(b) carrying out and completion of the Open Space Works and transfer of the Open Space Land to the Minister or the Minister's nominee for the purpose of public open space; and

—carrying out and completion of the Community Centre Works and transfer of the Community Centre Stratum Lot to the Minister or the Minister's nominee;

(a)(c) —prior to the earlier of:

the grant of any Development Consent or modification of Development Consent or the issue of any Complying Development Certificate in respect of any part of that Land; and

the issue of any Construction Certificate or Subdivision Certificate in respect of any part of that Land to which the Development Consent or modification of Development Consent referred to above applies.

4.2 Nature of Planning Agreement

The Planning Agreement constitutes a planning agreement under section 7.4 of the Act. The Planning Agreement will be registered on the title to the Land.

5 Assessment of the merits of the draft planning agreement

5.1 The planning purposes served by the Planning Agreement

The Planning Agreement:

- (a) promotes the orderly and economic use and development of the Land to which the Planning Agreement applies;
- (b) promotes good design and amenity of the build environment by facilitating the development of the Land in accordance with the Planning Agreement;

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- (c) promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- (d) promotes increased opportunity for the public in environmental planning and assessment.

5.2 How the Planning Agreement promotes the public interest

The Planning Agreement will promote the public interest by promoting the objects of the Act as set out in sections 1.3(c), (g), (i) and (j) of the Act.

5.3 For Planning Authorities:

Development Corporations – How the Planning Agreement promotes its statutory responsibilities

Not Applicable

Other Public Authorities – How the Planning Agreement promotes the objects (if any) of the Act under which it is constituted

Not Applicable

Councils – How the Planning Agreement promotes the elements of the Council's Charter

Not Applicable

All Planning Authorities – Whether the Planning Agreement conforms with the Authority's Capital Works Program

Not applicable

5.4 Certain requirements of the Planning Agreement to be complied with before issue of an Occupation Certificate Development Consent or issue of a Complying Development Certificate, Construction Certificate or Subdivision Certificate

The Developer will be required to:

- (a) pay Contribution Amounts progressively in instalments at the rate of \$1097.4127 per square metre (subject to indexation) of gross floor area (or any part thereof) that will result from carrying out the Development in accordance with a Development Application or application for modification of a Development Consent, as it may be modified prior to the issue of an Occupation Certificate for a building or part of a building on any part of the Land to which the Development Consent relates or application for a Complying Development Certificate, payable;
- (b) carry out and complete the Open Space Works and transfer of the Open Space Land to the Minister or the Minister's nominee for the purpose of public open space prior to the issue of an Occupation Certificate for the final building or part of the final building on land comprising Lot 8 DP1228764; and
- (c) carry out and complete the Community Centre Works and transfer of the Community Centre Stratum Lot to the Minister or the Minister's nominee

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prior to the issue of an Occupation Certificate for the final building or part of the final building on land comprising Lot 8 DP1228764,

~~prior to the earlier of:~~

~~the grant of any Development Consent or modification of Development Consent or issue of any Complying Development Certificate in respect of any part of that Land; or~~

~~the issue of any Construction Certificate or Subdivision Certificate in respect of any part of that Land to which the Development Consent or modification of Development Consent referred to in clause 5.4(a) above applies.~~

The provision of the Development Contributions is secured through the requirement for:

- (a) a Bank Guarantee in respect of the Minister's enforcement costs;
- (b) the ability for the Minister to lodge a caveat over the Land until the Planning Agreement is registered on the title to the Land; and
- (c) the ability for the Minister to call for Bank Guarantees with a face value equivalent to the full value of Contribution Amounts required to be made by the Developer in respect of the relevant part of the Land over which this document has yet to be registered, where the Planning Agreement is not registered on all folios of the Register comprising the Land within 90 Business Days (in addition to the caveat) and then by Registration of the Planning Agreement on the title to the Land;
- (d) a Bank Guarantee to secure the obligation to carry out and complete the Open Space Works;
- (e) the ability for the Minister to call for an additional Bank Guarantee in order to secure the costs of removing any encumbrance noted on title to the Open Space Land;
- (f) the ability for the Minister to call for an additional Bank Guarantee in order to secure the costs of removing any encumbrance noted on title to the Community Centre Stratum Lot; and
- (e)(g) the ability for the Minister to compulsorily acquire the Open Space Land and the Community Centre Stratum Lot in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) if either Land Contribution is not transferred in accordance with the Planning Agreement.

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Execution

Executed as a deed.

Minister

Signed sealed and delivered)
by The Minister for Planning and)
Public Spaces in the presence of:)

.....
Signature of Witness

.....
Signature of Minister

.....
Name of Witness

.....
Name of Minister

.....
Address of Witness

Developer

Executed by Karimbla Properties)
(No. 51) Pty Ltd:)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)



Annexure A

Form of Novation Deed



The Minister for Planning and Public Spaces

Karimbla Properties (No. 51) Pty Ltd

[New Party]

Deed of Novation for Planning Agreement

Carter Street Priority Precinct
1-5, 7, 9 and 11 Carter Street and Uhrig Road,
Lidcombe



Ref: 3453-5962-0874v4

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Date

Parties

The Minister for Planning and Public Spaces ABN 20 770 707 468 c/- NSW
Department of Planning and Environment, Level 22, 320 Pitt Street, Sydney NSW 2000
(**Minister**)

Karimbla Properties (No. 51) Pty Ltd ABN 95 168 601 250 of Level 11, 528 Kent
Street, Sydney NSW 2000 (**Developer**)

[**New Party**] ACN [Insert ACN] of [Insert address] (**New Party**)

Background

- A The Minister and the Developer are parties to the Planning Agreement.
 - B The Planning Agreement relates to the whole of the Land.
 - C The Developer has entered into the Dealing with the New Party in relation to the Transfer Land.
 - D The Developer wishes to novate the Required Obligations, being its obligations under the Planning Agreement which relate to the Transfer Land, to the New Party.
-

Agreed terms

1 Definitions

In this document these terms have the following meanings:

Dealing	[Insert description of dealing e.g. the sale of the Transfer Land to the New Party].
Effective Date	[Insert date]
GST	Has the same meaning as in the GST Law.
GST Law	Has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of GST.
Land	Has the meaning given to that term in the Planning

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	Agreement.
Planning Agreement	The planning agreement dated [Insert date] and made between the Minister and the Developer.
Required Obligations	The Developer's obligations under the Planning Agreement which relate to the Transfer Land, being: [itemise as required for clarity, including substitution of Bank Guarantees prior to/simultaneously with existing Bank Guarantees, registration of the Planning Agreement, provision of Development Contributions and any arrangements in relation to registration of a caveat, if applicable]
Transfer Land	[Insert description of land], being that part of the Land subject to the Dealing.

2 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Party is substituted for the Developer as a party to the Planning Agreement;
- (b) the New Party will be required to perform the Required Obligations in accordance with the Planning Agreement; and
- (c) the Developer is released and discharged from the Required Obligations, and from all claims (whether for costs, damages, fees, expenses or otherwise) relating to the Required Obligations.

2.2 Reference in Original Agreement

All references to the Developer in the Planning Agreement which relate to the Required Obligations are to be construed as references to the New Party.

2.3 Address for notices

The Minister must address all notices and communications to be given or made by it and which relate to the Required Obligations, to the New Party under the Planning Agreement to the following address:

New Party:

Address: [Insert address]
 Fax: [Insert fax]
 Contact Person: [Insert contact]
 Email: [Insert email]

3 Affirmation of the Planning Agreement

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The Planning Agreement will be read and construed subject to this document, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the variation and novation contained in this document, the Planning Agreement will continue in full force and effect.

4 Indemnities

- (a) The New Party indemnifies the Developer on demand against all liabilities, claims, damages and loss which the Developer suffers or incurs in relation to the Required Obligations, including those which arise or relate to acts or omissions occurring on or after the Effective Date.
- (b) The New Party indemnifies the Minister in respect of any breach of the Planning Agreement in respect of the Transfer Land by the Developer on demand, including those which arise or relate to breaches in respect of the Transfer Land occurring before, on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this document and the novation of the Planning Agreement.

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6 GST

6.1 Construction

In this **clause 6**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

6.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

6.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

6.4 Timing of GST payment

The amount referred to in **clause 6.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

6.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 6.3**.

6.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 6.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

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6.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 6.7** does not limit the application of **clause 6.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 6.7(a)**.

6.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

6.9 No merger

This **clause 6** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

7 Stamp duty and costs

The Developer and the New Party are jointly and severally responsible for the Minister's legal costs incidental to the negotiation, preparation and execution of this document.

8 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this document.
- (b) This document binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

9 Amendment

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This document may only be varied or replaced by a document executed by the parties.

10 Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

11 Counterparts

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

12 General

12.1 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

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- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (g) Capitalised terms not defined in this document have the meanings given to them in the Planning Agreement.

12.2 Headings

Headings do not affect the interpretation of this document.

12.3 Effect of execution

This document is not binding on any party unless it or a counterpart has been duly executed by each party.

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Execution

Executed as a deed/agreement.

Minister

Signed, sealed and delivered by The)
Minister for Planning and Public)
Spaces in the presence of:)

.....
Signature of Witness

.....
Signature of Minister

.....
Name of Witness

.....
Name of Minister

.....
Address of Witness

Developer

Executed by Karimbla Properties)
(No. 51) Pty Ltd:)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

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New Party

**Executed by [Insert company name
and ABN]:**

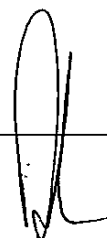
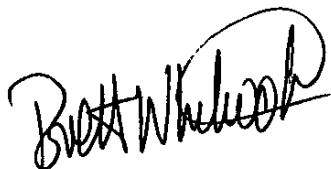
)
)
)

.....
Company Secretary/Director

.....
Director

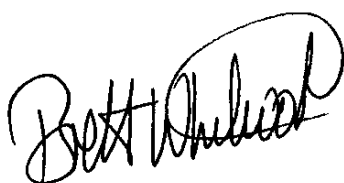
.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)



Annexure B

Plan



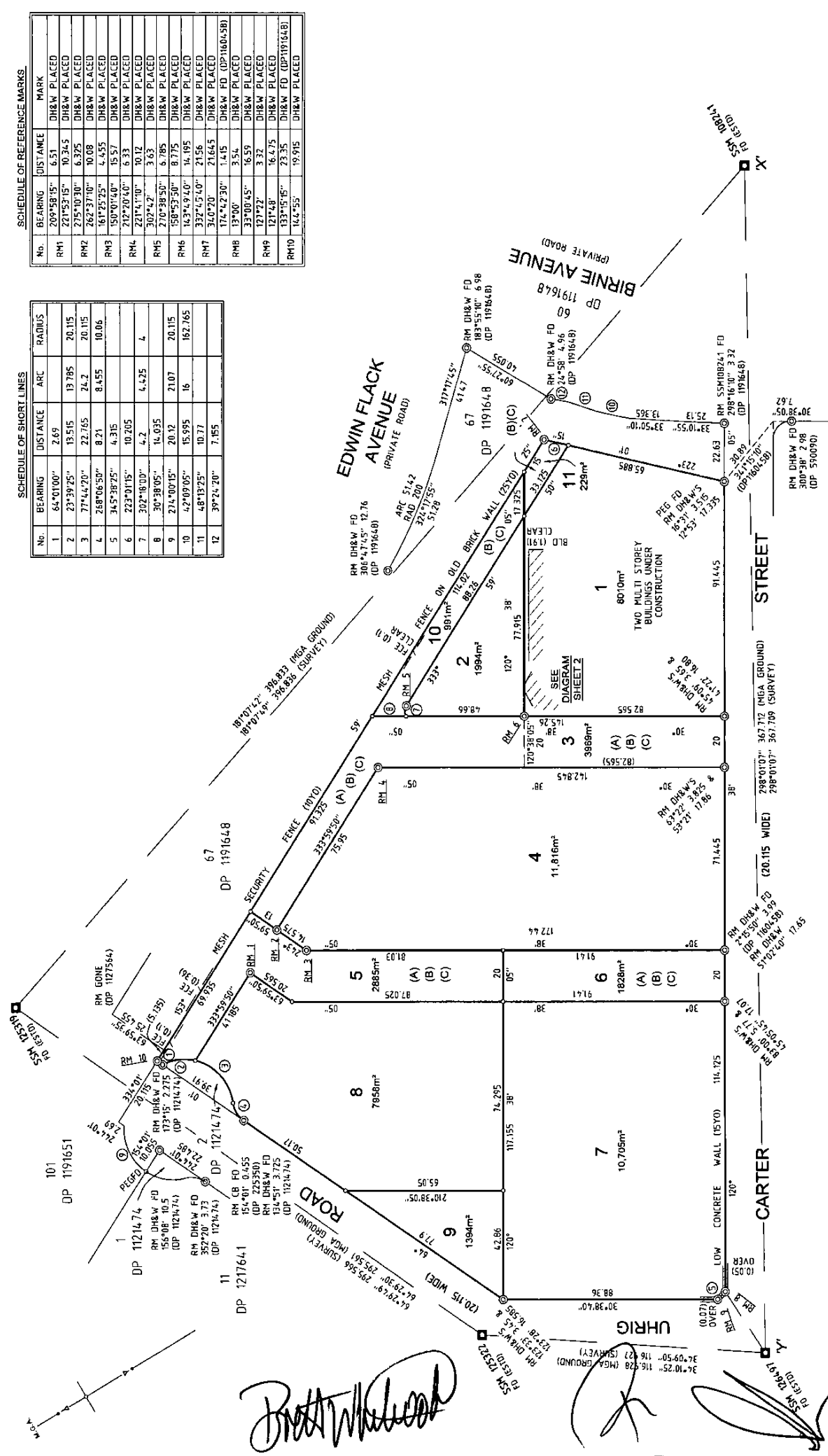
WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

DP1228764

PLAN FORM 2 (A2)

ePlan

Sheet 1 of 2 sheet(s)



SCHEDULE OF SHORT LINES

No.	BEARING	DISTANCE	ARC	RADIUS
1	64°01'00"	2.69		
2	23°39'25"	13.515	13.785	20.115
3	77°44'20"	22.765	24.2	20.115
4	268°06'50"	8.21	8.455	10.005
5	345°38'25"	4.315		
6	223°01'15"	10.205		
7	302°18'00"	4.2	4.425	4
8	30°38'05"	14.035		
9	214°00'15"	20.12	21.07	20.115
10	42°09'05"	15.995	16	162.765
11	48°13'25"	10.77		
12	39°24'20"	7.155		

SCHEDULE OF REFERENCE MARKS

No.	BEARING	DISTANCE	MARK
RM1	209°58'15"	6.51	DH&W PLACED
RM2	221°53'15"	10.345	DH&W PLACED
RM3	275°10'30"	6.325	DH&W PLACED
RM4	262°37'10"	10.08	DH&W PLACED
RM5	161°25'25"	4.455	DH&W PLACED
RM6	150°01'40"	15.57	DH&W PLACED
RM7	212°20'40"	6.33	DH&W PLACED
RM8	221°41'10"	10.12	DH&W PLACED
RM9	302°42'00"	3.63	DH&W PLACED
RM10	270°39'50"	8.785	DH&W PLACED
RM11	158°55'50"	8.775	DH&W PLACED
RM12	163°49'40"	14.195	DH&W PLACED
RM13	332°45'10"	21.56	DH&W PLACED
RM14	340°20'	21.645	DH&W PLACED
RM15	174°42'30"	14.15	DH&W PLACED
RM16	33°00'00"	3.54	DH&W PLACED
RM17	33°00'45"	16.59	DH&W PLACED
RM18	127°22'	3.32	DH&W PLACED
RM19	121°48'	16.475	DH&W PLACED
RM20	332°15'45"	23.35	DH&W PLACED
RM21	144°55'	19.915	DH&W PLACED

SURVEYING AND SPATIAL INFORMATION REGULATION 2017 CLAUSE 70				
MARK	MGA CO-ORDINATES - ZONE 58		CLASS	ORDER
	EASTING	NORTHING		
SSM 108214	370 185 231	6752 478 380	B	2
SSM 125118	370 193 044	6752 675 137	B	2
SSM 125122	370 574 298	6752 747 852	B	2
SSM 126497	370 460 520	6752 651 114	B	2
SOURCE: SCIMS 14022018				
COMBINED SCALE FACTOR 0.998989				

- (A) EASEMENT FOR ACCESS 20 WIDE AND VARIABLE WIDTH
(B) EASEMENT FOR SERVICES 20 WIDE AND VARIABLE WIDTH
(C) EASEMENT FOR OVERLAND FLOW 20 WIDE AND VARIABLE WIDTH

SURVEYOR
Name CHRISTOPHER MARK IVES
Date of Survey 2003/2018
Surveyor's Reference 44740 0360P

PLAN OF SUBDIVISION OF
LOTS 16-19 & 23-24 IN DP 225350 &
LOT 20 IN DP 1160458

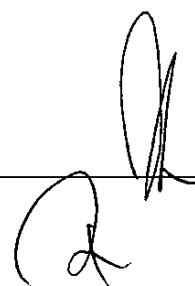
LGA: PARRAMATTA
Locality: LUDCOMBE
Reduction Ratio 1: 1000
Lengths are in metres.

Registered
16.8.2018

DP1228764

Annexure C

Concept Design Not used

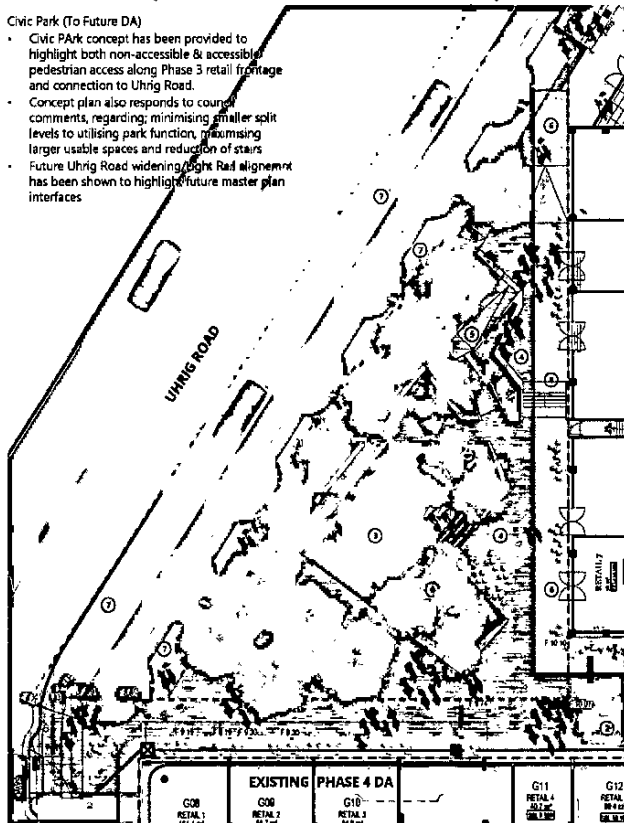


3.3 CIVIC PARK CONCEPT DESIGN

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: minimising smaller split levels to utilising park function, maximising larger usable spaces and reduction of stairs.
- Future Uhrig Road widening/light rail alignment has been shown to highlight future master plan interfaces.



Note:

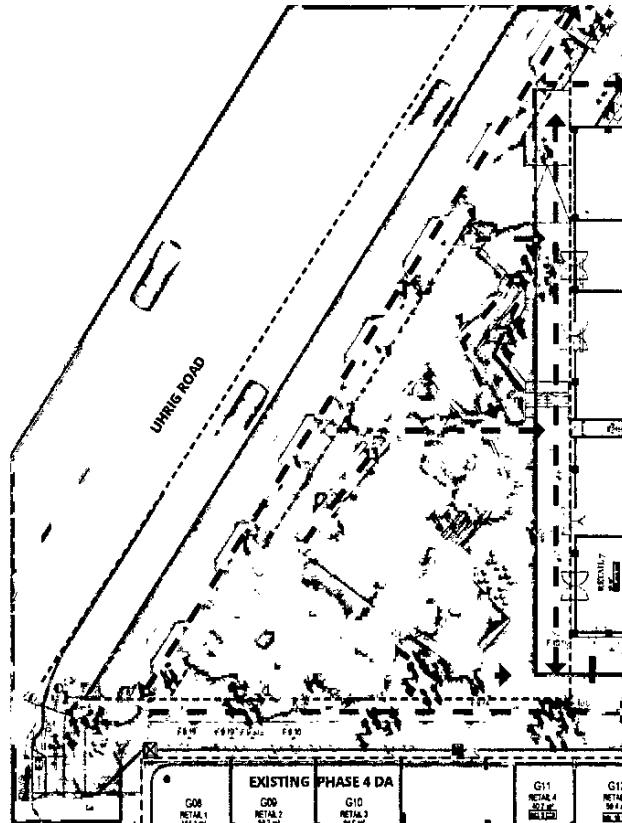
Civic Park is concept only to show potential function and circulation relationship between Phase 3 Retail frontage.

Civic Park to future DA

- ① Phase 3 & 4 Civic Square (trees in paving)
- ② Approved Phase 3 & 4 Through Link
- ③ Open Lawn
- ④ Retail break-out area / alfresco dining opportunities
- ⑤ 1:14 accessible access
- ⑥ Phase 3 retail awning

- ⑦ Future Uhrig Road road & streetscape widening alignment
- ⑧ Stairs
- ⑨ Integrated deep soil garden bed and seagull 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 Merton 11

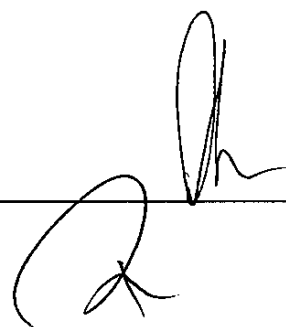
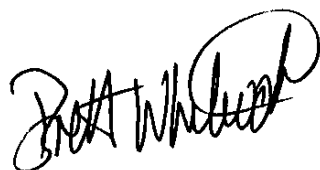
Brett Whitford

R

R

Annexure D

Form of Bank Guarantee



FORM OF BANK GUARANTEE

Date: [Insert Date]

TO: The Minister for Planning and Public Spaces, NSW Department of Planning, Industry and Environment of Level 22, 320 Pitt Street, Sydney NSW 2000

Dear Sirs

Bank Guarantee

NAME OF LENDER (the "**Lender**") has pleasure in detailing the particulars of our Bank Guarantee issued in your favour.

1. At the request of **Karimbla Properties (No. 51) Pty Ltd** (the "**Account Party**") and in consideration of **The Minister for Planning and Public Spaces** and the **Department of Planning, Industry and Environment ABN 20 770 707 468** (the "**Beneficiary**") accepting this Bank Guarantee in relation to security for the obligations set out in the Planning Agreement with the Beneficiary (the "**Secured Transaction**"), the Lender unconditionally undertakes to pay any sum or sums which may from time to time be demanded under this Bank Guarantee by the Beneficiary to a maximum total sum of **A\$40,000**.
2. This Bank Guarantee is to continue until the first to occur of:
 - (a) its return to the Lender; or
 - (b) payment at any time to the Beneficiary by the Lender of the maximum amount available under this Bank Guarantee.
3. If the Lender receives a written demand at its office at **[ADDRESS OF LENDER]** and the demand:
 - (a) purports to be signed on behalf of the Beneficiary;
 - (b) demands payment of all or any part of that sum; and
 - (c) is accompanied by a declaration complying with Clause 4,the Lender will pay to the Beneficiary within **[*]** Business Days of demand, the amount demanded without further reference to the Account Party and despite any notice to the contrary from the Account Party.
4. A declaration accompanying a demand under this Bank Guarantee must state that:
 - (a) the declarants are 2 officers of the Beneficiary, making the declaration on behalf of the Beneficiary;
 - (b) the declarants have authority to make the declaration on behalf of the Beneficiary;
 - (c) the declaration is made under the Bank Guarantee dated **[*]**;

- (d) the amount claimed is not more than the maximum amount available under this Bank Guarantee;
 - (e) the amount claimed represents an amount or amounts remaining unpaid to the Beneficiary in respect of the Secured Transaction; [and
 - (f) demand for payment of that amount has been made by the Beneficiary on the Account Party and the demand remains unsatisfied].
5. This Bank Guarantee is governed by the laws of New South Wales.
6. This Bank Guarantee may not be assigned without prior written consent of the Lender.

Executed in [*].

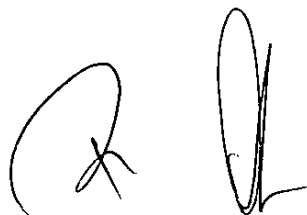
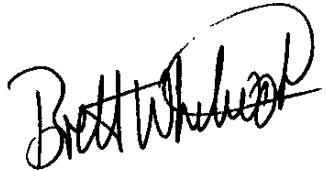
On behalf of **NAME OF LENDER:**

Authorised Officer

Authorised Officer

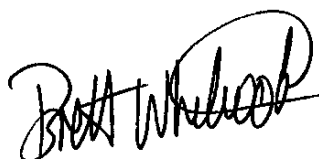
Print Name

Print Name



Annexure E

Form of Caveat



Form:
 Edition: 1309
 Licence: 04-08-443
 Licensee: Corrs Chambers Westgarth

CAVEAT
Prohibiting Recording of a Dealing or Plan
or Granting of a Possessory Application
New South Wales
Section 74F Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

If the claim relates to less than the whole of the land in the Torrens Title, a description of the part or premises affected, consistent with the claim set out on page 2 of this form and in the terms specified by Schedule 4 of the current Real Property Regulation, is required.

Folio identifiers 5/1228764, 6/1228764, 7/1228764, 8/1228764 and 9/1228764

(B) REGISTERED DEALING

Number

Torrens Title

(C) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

X

Reference (optional):

(D) REGISTERED PROPRIETOR

Show only the registered proprietor(s) against whom the claim is made: insert the full name and address

Karimbla Properties (No. 51) Pty Ltd
 Level 11, 528 Kent Street
 Sydney NSW
Postcode: 2000

(E) CAVEATOR

Insert the full name and address (residential if individual/registered office if body corporate)

The Minister for Planning and Public Spaces
 Department of Planning and Environment
 23-33 Bridge Street
 Sydney NSW
Postcode: 2000

(F) NAME AND ADDRESS IN NEW SOUTH WALES FOR SERVICE OF NOTICES ON THE CAVEATOR

IMPORTANT NOTE: The address *must* be a street address. If desired, a Document Exchange box in NSW may be provided *in addition*. If the caveator's name or address for service of notices changes, notification *must* be lodged on form 08CX.

Name: Louise Camenzuli
Street Address:
 Corrs Chambers Westgarth
 Level 17, 8 Chifley
 8-12 Chifley Square
 Sydney NSW
NSW postcode: 2000

Document Exchange Box in NSW (additional):

(G) ACTION PROHIBITED

List by number only the items in Schedule 2 prohibited by this caveat
 1, 2 and 7

(H) The caveator claims to be entitled to the estate or interest specified in Schedule 1 in the above land/registered dealing by virtue of the instrument/facts set out in that schedule and prohibits the Registrar General from taking, with respect to the land/registered dealing, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

WARNING: care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court; compensation may be awarded for lodging a caveat without justification (section 74P Real Property Act 1900). Failure to observe the requirements of regulations 7 and 8 of the current Real Property Regulation may make the caveat invalid.

(I) **SCHEDULE 1 Estate or interest claimed**

Particulars of the estate or interest in the land/registered dealing		
Equitable interest		
By virtue of the instrument referred to below		
Nature of Instrument	Date	Parties
Planning agreement	[insert date]	The Minister for Planning and Public Spaces Karimbla Properties (No. 51) Pty Ltd
By virtue of the facts stated below		
By virtue of the charge over the whole of the land granted by Karimbla Properties (No. 51) Pty Ltd to The Minister for Planning and Public Spaces in the above planning agreement		

(J) **SCHEDULE 2 Action prohibited by this caveat**

1. The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
2. The registration or recording of any plan other than a delimitation plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
3. The registration of delimitation plan¹ No.
4. The granting of any possessory application² with respect to the land in the Torrens Title referred to above.
5. The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
6. The granting of an application to extinguish the restrictive covenant/easement created by dealing/deposited plan No. .
7. The recording in the Register of a writ affecting the estate or interest claimed by the caveator and set out in Schedule 1.

(K) **STATUTORY DECLARATION³**

I solemnly and sincerely declare that-

1. To the best of my knowledge, information and belief
 - (a) the caveator has a good and valid claim to the estate or interest set out in Schedule 1
 - (b) the address specified at (D) as the address of the registered proprietor is the correct address.
2. This caveat does not require the leave of the Supreme Court or the endorsed consent of the registered proprietor/possessory applicant.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 and I certify this caveat to be correct for the purposes of the Real Property Act 1900.

Made and subscribed at Sydney in the State of NSW on _____ in the presence of-

☐ Justice of the Peace (J.P. Number: _____) ☒ Practising Solicitor
☐ Other qualified witness Solicitor,

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person / ~~I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and~~
2. I have known the person for at least 12 months / ~~I have confirmed the person's identity using an identification document and the document I relied on was:~~

Signature of witness: _____

Signature of declarant: _____

Capacity of declarant if other than the caveator: Solicitor for the caveator

1 A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.

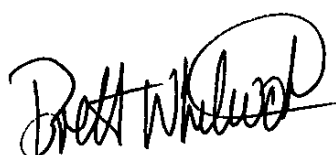
2 An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900

3 As the services of qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. **If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

4 Only one capacity can be selected, either registered proprietor or possessory applicant, cross out whichever does not apply.

Annexure F

Deed of Partial Surrender

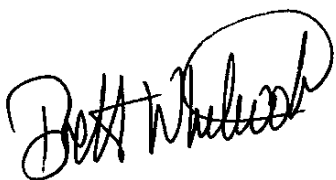


The Minister for Planning and Public Spaces

Karimbla Properties (No. 51) Pty Ltd

Deed of Partial Surrender of Planning Agreement

Carter Street Priority Precinct
Contribution Area 1



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Date

Parties

The Minister for Planning and Public Spaces ABN 20 770 707 468 of c/- NSW
Department of Planning, Industry and Environment of Level 22, 320 Pitt Street, Sydney
NSW 2000 (**Minister**)

Karimbla Properties (No. 51) Pty Ltd ABN 95 168 601 250 of Level 11, 528 Kent
Street, Sydney NSW 2000 (**Developer**)

Background

- A The Parties are parties to the Planning Agreement as novated under the
Novation Deed, which relates to Contribution Area 1.
- B The Parties have agreed, pursuant to clause 21.3 of the Planning Agreement,
to surrender the Planning Agreement insofar as it relates to the Land and to
Contribution Area 1, subject to:
- a. the Parties entering into the New Planning Agreement; and
 - b. the terms and conditions of this document.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document these terms have the following meanings:

Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Claim	Has the meaning given in the Planning Agreement.
Contribution Area 1	Has the meaning given in the Planning Agreement.
First Landowner	The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665.

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First Trustee	Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665.
Land	Lots 16, 17, 18, 19, 23 and 24 in Deposited Plan 225350 and Lot 200 in Deposited Plan 1160458.
New Planning Agreement	The planning agreement (within the meaning of section 7.4 of the Act) between the Minister and the Developer dated [insert].
Novation Deed	The Deed of Novation for Planning Agreement for Contribution Area 1 dated 24 November 2016 between the Minister, the Developer, the Original Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee.
Original Developer	Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793.
Party	A party to this document.
Planning Agreement	The planning agreement dated 18 November 2015 between the Minister, the Original Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee, as novated in part to the Developer under the Novation Deed.
Register	The Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW).
Second Landowner	The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320.
Second Trustee	Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320
Surrender Date	[insert].
Third Landowner	The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229.
Third Trustee	Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) headings do not affect the interpretation of this document;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) 'includes' means includes without limitation;

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- (f) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (g) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion or power;
 - (v) time is to local time in Sydney;
 - (vi) '\$' or 'dollars' is a reference to Australian currency;
 - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (viii) this document includes all schedules and annexures to it; and
 - (ix) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

2 Partial Surrender of Planning Agreement

The Developer and the Minister agree to surrender the Planning Agreement, insofar as it:

- (a) applies to the Land and to Contribution Area 1; and
 - (b) has been novated to the Developer under the Novation Deed,
- on the Surrender Date (or such later date as may be agreed in writing between the Parties), conditional upon the Parties entering into the New Planning Agreement.

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3 Release

- (a) Subject to the terms of this document, the Developer and the Minister release and discharge each other from all Claims and obligations whatsoever under the Planning Agreement arising on or after the Surrender Date.
- (b) Nothing in this **clause 3** or otherwise in this document releases or discharges the Parties from their respective obligations and liabilities under the terms and conditions of the Planning Agreement created or incurred prior to the Surrender Date.

4 Release and discharge of Planning Agreement

- (a) The Developer may, at any time following partial surrender of the Planning Agreement under **clause 2**, submit a written request to the Minister seeking a release and discharge of the Planning Agreement from the relevant folio(s) of the Register in respect of the Land.
- (b) The Minister agrees to do all things reasonably required by the Developer, following receipt of a request by the Developer under **clause 4(a)**, to:
 - (i) release and discharge the Planning Agreement with respect to the Land; and
 - (ii) execute any documents required to remove the notation of the Planning Agreement from the relevant folio(s) of the Register in respect of the Land,

subject to the Developer's compliance with the terms of this document.

5 Consent to surrender

The Developer must, at its cost, obtain the consent of any party required to effect the:

- (a) partial surrender of the Planning Agreement under **clause 2**, prior to the Surrender Date; and
- (b) release and discharge of the Planning Agreement from the relevant folio(s) of the Register in respect of the Land under **clause 4**, prior to submitting any request to the Minister under **clause 4(a)**.

6 Security under Planning Agreement

As soon as reasonably practicable after the Surrender Date, and subject to:

- (a) the Parties entering into the New Planning Agreement; and

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- (b) the Developer providing each Bank Guarantee required to be provided by the Developer upon entry into the New Planning Agreement,
- the Minister will return to the Developer any Bank Guarantee(s) held pursuant to the Planning Agreement.

7 Notices

7.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this document is only given or made if it is in writing and:

- (a) delivered or posted to that Party at its address set out below;
- (b) faxed to that Party at its fax number set out below; or
- (c) emailed to that Party at its email address set out below.

Minister

Attention: The Planning Secretary

Address: NSW Department of Planning, Industry and Environment
Level 22, 320 Pitt Street
Sydney NSW 2000

Fax Number: Not Used

Email: planningagreements@planning.nsw.gov.au

Developer

Attention: Li-Eng Wong, Corporate Counsel

Address: Meriton Group: Level 11, 528 Kent Street,
Sydney NSW 2000

Fax Number: 9287 2888

Email: lwong@meriton.com.au

7.2 Change of details

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that Party if it is delivered, posted, emailed or faxed to the latest address, email address or fax number.

7.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.

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- (b) If it is sent by post, two Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.
- (d) If it is sent by email, at the time the email was sent, provided the sender does not receive a delivery failure notice.

7.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

8 GST

8.1 Construction

In this **clause 8**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

8.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

8.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

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(Supplier) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

8.4 Timing of GST payment

The amount referred to in **clause 8.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

8.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 8.3**.

8.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 8.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

8.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 8.7** does not limit the application of **clause 8.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 8.7(a)**.

9 General

9.1 Duty

- (a) The Developer as between the Parties is liable for, must pay, and indemnify the Minister for any stamp duty or like duties or imposts (including any fine, interest or penalty) payable or assessed in connection with this document and any document contemplated by this document.
- (b) If the Minister pays any duty referred to in **clause 9.1(a)**, in whole or in part, Developer must reimburse the paying party without set-off or deduction immediately on demand.

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9.2 Legal costs

The Developer must pay and, if paid by Minister, reimburse the Minister its reasonable legal and other costs and expenses of negotiating, preparing, executing, stamping and registering this document.

9.3 Amendment

This document may only be varied or replaced by a document executed by the Parties.

9.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

9.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a Party under this document are cumulative and are in addition to any other rights of that Party.

9.6 Consents

Except as expressly stated otherwise in this document, a Party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

9.7 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this document and to perform its obligations under it.

9.8 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in New South Wales.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

9.9 No assignment

- (a) A Party must not assign or deal with any right under this document.
- (b) Any purported assignment or dealing in breach of this clause is of no effect.

9.10 Liability

An obligation of two or more persons binds them separately and together.

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9.11 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

9.12 Entire understanding

- (a) This document contains the entire understanding between the Parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No Party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

9.13 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the Parties.

9.14 Effect of execution

This document is not binding on any Party unless it or a counterpart has been duly executed by each person named as a Party to this document.

9.15 Deed

This document is a deed. Factors which might suggest otherwise are to be disregarded.

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Execution

Executed as a deed.

Signed for and on behalf of **The Minister**)
for Planning and Public Spaces in the)
presence of:)

.....
Witness

.....
Signature of Minister

.....
Name of Witness (print)

.....
Name of Minister

.....
Address of Witness (print)

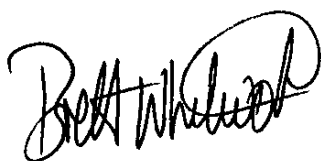
Executed by Karimbla Properties (No. 51) Pty Ltd)
)

.....
Company Secretary/Director

.....
Director

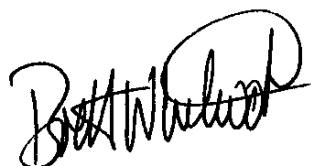
.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)



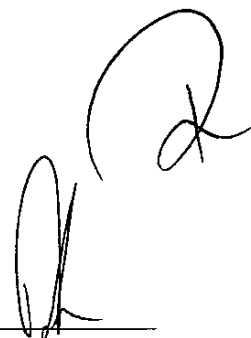
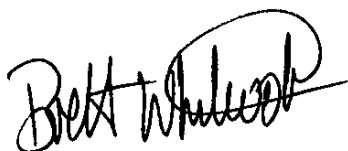
Annexure G

Power of Attorney



Karimbla Properties (No. 51) Pty Ltd

Power of Attorney



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Date

Parties

Karimbla Properties (No. 51) Pty Ltd ABN 95 168 601 250 of Level 11, 528 Kent Street, Sydney NSW 2000 (**Grantor**)

1 Definitions

In this document these terms have the following meanings:

- | | |
|----------------------|--|
| Attorney | The Minister for Planning and Public Spaces ABN 20 770 707 468 of Level 22, 320 Pitt Street, Sydney NSW 2000, including successors and any person or entity that assumes any or all of the statutory responsibilities, functions or powers of the Minister for Planning and Public Spaces. |
| Novation Deed | The Deed of Novation for Planning Agreement for Contribution Area 1 dated 24 November 2016 between: <ul style="list-style-type: none">(a) The Minister for Planning;(b) Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793;(c) The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665;(d) The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320;(e) The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229;(f) Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665;(g) Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320;(h) Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229; and(i) Karimbla Properties (No. 51) Pty Ltd. |

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**Planning
Agreement**

The planning agreement dated 18 November 2015
between:

- (a) The Minister for Planning;
- (b) Goodman Property Services (Aust) Pty Limited
ABN 40 088 981 793;
- (c) The Trust Company Limited ABN 59 004 027 749
as custodian for the Carter Street Trust ABN 12
909 843 665;
- (d) The Trust Company Limited ABN 59 004 027 749
as custodian for the Hill Road Trust ABN 54 244
152 320;
- (e) The Trust Company Limited ABN 59 004 027 749
as custodian for the IBC Trust ABN 30 476 081
229;
- (f) Tallina Pty Ltd ACN 090 716 895 as trustee for
the Carter Street Trust ABN 12 909 843 665;
- (g) Tallina Pty Ltd ACN 090 716 895 as trustee for
the Hill Road Trust ABN 54 244 152 320; and
- (h) Tallina Pty Ltd ACN 090 716 895 as trustee for
the IBC Trust ABN 30 476 081 229,

as novated in part to the Grantor under the Novation
Deed, with registered dealing numbers AK233681 and
AM18160 (insofar as it applies to that part novated to
the Grantor).

2 Appointment

The Grantor irrevocably appoints the Attorney, including any authorised
delegate of the Attorney, as the attorney of the Grantor, with power on behalf of
the Grantor to execute any document that would have the effect of
surrendering or terminating the Planning Agreement but only on and from the
date the Grantor and the Attorney enter into a new planning agreement which
applies to the land at 1-5, 7, 9 and 11 Carter Street and 213 Uhrig Road,
Lidcombe.

3 Exercise of power

The Attorney may:

- (a) exercise a power under this document in the name of the Grantor or in
the name of the Attorney and as the act of the Grantor;
- (b) exercise a power under this document unconditionally or subject to any
conditions that the Attorney thinks fit;

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- (c) appoint one or more substitute attorneys to exercise any of the Attorney's powers and revoke or suspend any appointment; and
- (d) exercise a power notwithstanding that the exercise of the power constitutes a conflict of interest or confers a benefit on the Attorney.

4 Representation

The exercise by the Attorney of any power under this document does not constitute a representation or warranty by the Attorney as to the validity, enforceability, registrability or adequacy of this document or the Planning Agreement.

5 Ratification

The Grantor ratifies and confirms everything the Attorney lawfully does on behalf of the Grantor under this document.

6 Revocation

The Attorney's powers will remain in force until written notice of its revocation is actually received by the Attorney but without prejudice to the validity of any act of the Attorney done before that date, and any person dealing with the Attorney or the Grantor in good faith may assume without enquiry that this document has not been revoked.

7 Registration

The Grantor will promptly on execution and delivery of this document, register it as required by any applicable law. Otherwise, the Attorney may register it on the Grantor's behalf, and the Grantor must pay the Attorney's reasonable costs of doing so within a reasonable time after demand for payment is made.

8 Governing law

This document is governed by and is to be construed in accordance with the laws applicable in New South Wales.

9 Non-execution

This document will be effective and binding upon the Grantor from the date of execution.

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Executed as a deed poll in Sydney.

**Executed by Karimbla Properties
(No. 51) Pty Ltd:**)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

1

