

# Planning Agreement Novation Deed

**Pennant Hills Estates 88 Pty Limited (Receiver and Manager appointed)  
and Rainbowforce Pty Limited (Receiver and Manager appointed)**  
Original Owner

**Golden Carlingford Pty Limited (Receiver and Manager appointed),  
Pennant Hills Estates 88 Pty Limited (Receiver and Manager appointed)  
and Rainbow Carlingford One Pty Limited (Receiver and Manager  
appointed) (in liquidation)**  
Retiring Party

**Karimbla Properties (No. 61) Pty Limited**  
Substituted Party

**City of Parramatta Council**  
Continuing Party

Clayton Utz  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806  
Sydney NSW 2001  
Tel +61 2 9353 4000  
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Our reference 15120/17468/81007579

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## Planning Agreement Novation Deed

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Date 13 January 2021

**Parties**

**Pennant Hills Estates 88 Pty Limited ACN 102 833 027** (Receiver and Manager appointed) and **Rainbowforce Pty Ltd ACN 095 335 603** (Receiver and Manager appointed) of c/- Newpoint Advisory, Level 36, Governor Phillip Tower, 1 Farrer Place Sydney NSW 2000 (collectively the **Original Owner**)

**Golden Carlingford Pty Limited ACN 604 474 697** (Receiver and Manager appointed), **Pennant Hills Estates 88 Pty Limited ACN 102 833 027** (Receiver and Manager appointed) and **Rainbow Carlingford One Pty Limited ACN 604 122 054** (Receiver and Manager appointed) (in liquidation) of c/- Newpoint Advisory, Level 36, Governor Phillip Tower, 1 Farrer Place Sydney NSW 2000 (collectively the **Retiring Party**)

**Karimbla Properties (No. 61) Pty Limited ACN 622 383 733** of Level 11, 528 Kent Street, Sydney NSW 2000 (**Substituted Party**)

**City of Parramatta Council ABN 49 907 174 773** of PO Box 32, Parramatta NSW 2124 (**Continuing Party**)

### Background

- A. The Original Owner, Golden Mile 1888 Pty Limited ACN 087 922 076 and Hills Shire Council entered into the Planning Agreement.
- B. Golden Mile 1888 Pty Ltd 087 922 076 and Rainbowforce Pty Ltd ACN 095 335 603 (Receiver and Manager appointed) have since transferred their respective interests in the Property to Golden Carlingford Pty Limited ACN 604 474 697 (Receiver and Manager appointed) and Rainbow Carlingford One Pty Limited ACN 604 122 054 (Receiver and Manager appointed) (in liquidation) without first obtaining approval from the Continuing Party.
- C. The Property the subject to the Planning Agreement was transferred from the responsibility of the local government area of the Hills Shire Council to the responsibility of the local government area of the City of Parramatta Council pursuant to the *Local Government (City of Parramatta and Cumberland) Proclamation 2016*.
- D. The Retiring Party intends to sell the Property to the Substituted Party and pursuant to clause 5.1 of the Planning Agreement the Planning Agreement is to be novated to the Substituted Party on and from the Operative Date, in accordance with the terms of this document.
- E. The Continuing Party has agreed to join the novation.

### Operative provisions

#### 1. Definitions and interpretation

##### 1.1 Definitions

In this document unless the context otherwise requires:

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

**Claim** means claim, demand, liability, loss, damages, proceedings, costs, charges and expenses.

**Dedication Lands** has the same meaning given to that term in the Planning Agreement.

**Liability** means all threatened or actual actions, proceedings, demands, notices, costs and expenses, loss or damage.

**Operative Date** means the day of completion of the Sale Contract but occurring immediately after completion has occurred.

**Original Owners** means Golden Mile 1888 Pty Ltd 087 922 076, Rainbowforce Pty Ltd ACN 095 335 603 (Receiver and Manager appointed) and Pennant Hills Estates 88 Pty Limited ACN 102 833 027 (Receiver and Manager appointed) (collectively as the owners and the developer).

**Planning Agreement** means the planning agreement between The Hill Shire Council (as Council), Golden Mile 1888 Pty Ltd 087 922 076, Rainbowforce Pty Ltd ACN 095 335 603 (Receiver and Manager appointed) and Pennant Hills Estates 88 Pty Limited ACN 102 833 027 (Receiver and Manager appointed) (collectively as the owners and the developer) dated on or about April 2015, a copy of which has been provided at Annexure A.

**Property** means folio identifier 1/1219291 known as 277-281 Pennant Hills Road Carlingford NSW 2118.

**Receiver** means Costa Andrew Nicodemou of Newpoint Advisory, Governor Phillip Tower, Level 36 1 Farrer Place Sydney NSW 2000 in his capacity as receiver and manager of Golden Carlingford Pty Limited ACN 604 474 697 (Receiver and Manager appointed), Pennant Hills Estates 88 Pty Limited ACN 102 833 027 (Receiver and Manager appointed) and Rainbow Carlingford One Pty Limited ACN 604 122 054 (Receiver and Manager appointed) (in Liquidation).

**Sale Contract** means the contract of the sale and purchase of the Property between the Retiring Party (as vendor) and the Substituted Party (as purchaser).

## 1.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;

- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly or severally;
- (l) reference to an item is a reference to an item in the schedule to this document;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document; and
- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment.

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## 2. Condition precedent

- (a) This document has no effect until completion of the Sale Contract.
- (b) The Retiring Party must give written notice to the Continuing Party of the Operative Date, within two (2) Business Days of it occurring.

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## 3. Novation

- (a) On and from the Operative Date, the Planning Agreement is novated to the Substituted Party so that:
  - (i) the Substituted Party replaces the Original Owner and Golden Mile 1888 Pty Limited ACN 087 922 076 under the Planning Agreement as if it were an original party to the Planning Agreement; and
  - (ii) each reference in the Planning Agreement to the Original Owner and Golden Mile 1888 Pty Limited ACN 087 922 076 must be read as a reference to the Substituted Party.
- (b) On and from the Operative Date, the Substituted Party:
  - (i) will be bound by and must comply with the Planning Agreement; and
  - (ii) obtains the rights and assumes the obligations of the Original Owner and Golden Mile 1888 Pty Limited ACN 087 922 076 under the Planning Agreement.
- (c) For the avoidance of doubt, the Substituted Party obtains the rights and assumes the obligations under the Planning Agreement or otherwise, regardless of whether such rights or obligations arose before, on or after the Operative Date or relates to any act or omission before, on or after the Operative Date.
- (d) The Continuing Party acknowledges that on and from the Operative Date, the Substituted Party has replaced the Original Owner and Golden Mile 1888 Pty Limited ACN 087 922 076 under the Planning Agreement in accordance with this document and must comply with the Planning Agreement on that basis.

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**4. Representations**

**4.1 Representations and warranties**

Each of the Original Owner, the Retiring Party and the Continuing Party represent and warrant to the Substituted Party that as at the Operative Date there are no written, oral or other agreements varying the terms of the Planning Agreement.

**4.2 Reliance**

Each of the Original Owner, the Retiring Party and the Continuing Party agrees that the Substituted Party has entered into and created this document in reliance upon each representation and warranty contained in this document.

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**5. Release**

In consideration of the Substituted Party assuming the liability of the Original Owner and Golden Mile 1888 Pty Limited ACN 087 922 076 as set out in clause 3 of this document, the Continuing Party releases and discharges the Original Owner and the Retiring Party from any further obligations under the Planning Agreement.

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**6. Indemnity**

The Substituted Party indemnifies and agrees to keep indemnified the Original Owner and the Retiring Party against any Claim or Liability suffered or incurred by the Original Owner or the Retiring Party arising from the Substituted Party's failure to fulfil its obligations under the Planning Agreement, regardless of whether such Claim or Liability arose before, on or after the Operative Date.

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**7. Acknowledgement**

- (a) The Original Owner, the Retiring Party and the Continuing Party disclose to the Substituted Party:
  - (i) that the Original Owner, the Retiring Party and the Continuing Party do not hold an original fully executed copy of the Planning Agreement;
  - (ii) despite clause 22.1 of the Planning Agreement, the Planning Agreement has not yet been registered on the title to the Property by the Registrar-General; and
  - (iii) the Original Owner, the Retiring Party and the Continuing Party are in the process of:
    - A. finalising the survey plan depicting the Dedication Lands pursuant to clause 5.2(b) of the Planning Agreement; and
    - B. trying to register the Planning Agreement on the title to the Property.
- (b) From the Operative Date, if required by the Continuing Party, the Substituted Party must execute a new planning agreement (on terms identical to the Planning Agreement).

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**8. GST**

**8.1 Interpretation**

In this clause 8:

- (a) GST law has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time) (GST Act);
- (b) terms have the meaning given to those terms in the GST law, except where the context suggests otherwise;
- (c) unless expressly stated otherwise, all prices or other sums payable or other consideration (Consideration) to be provided under this document do not, notwithstanding section 9-75 of the GST Act, include an amount in respect of any GST payable (GST Exclusive); and
- (d) references to GST payable and input tax credit entitlement includes the GST payable by, and input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

**8.2 GST Amount**

If a party to this document is liable to pay GST on any supply that it makes under or in connection with this document (Supplier):

- (a) the party liable to pay or provide the Consideration for the supply (Payer) must pay to the Supplier an additional amount equal to the amount of GST payable (GST Amount);
- (b) any Consideration to be paid or provided for any supply which is expressly stated to be inclusive of GST must not be taken into account when calculating the GST Amount under this clause 8.2;
- (c) the Payer must pay the GST Amount at the same time it first pays or provides the Consideration for the supply; and
- (d) the Supplier must deliver a tax invoice to the Payer before it is entitled to receive a GST Amount under this clause 8.2.

**8.3 Reimbursement and similar payments**

Where a party to this document is required to pay, reimburse or indemnify an amount calculated by reference to a cost, expense or other amount paid or incurred by another party, the amount to be paid, reimbursed or Indemnified by the first party will be:

- (a) limited to the total cost, expense or amount less the amount of any Input tax credit entitlement for the acquisition to which the cost, expense or amount relates; and
- (b) increased by a GST Amount calculated in accordance with clause 8.2(b) and 8.2(c) and accompanied by a tax invoice where the payment, reimbursement or indemnity is consideration for a taxable supply.

**8.4 Variation of GST Amount**

If the GST Amount properly payable in relation to a supply made under or in connection with this document varies from the GST Amount paid under clause 8.2 or 8.3, then:

- (a) the payee of the GST Amount will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from the payer. Any payment, credit or refund under this clause 8.4 is deemed to be a payment, credit or refund of the GST Amount under clause 8.2 or 8.3 as the case may be; and
- (b) the payee will, if the variation relates to an adjustment event, arrange for the issue of an adjustment note as soon as is reasonably practicable after the payee becomes aware of the adjustment event.

## 8.5 No merger

This clause 8 will not merge on completion or termination of this document.

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## 9. Receiver and manager appointed

### 9.1 Acknowledgement

Each of the Substituted Party and the Continuing Party:

- (a) acknowledges that the Receiver was appointed as receiver and manager to the Original Owner and the Retiring Party effective from 24 October 2019;
- (b) cannot make a Claim because of:
  - (i) the appointment of the Receiver;
  - (ii) the powers of the Receiver to sell and transfer the Property; and/or
  - (iii) in connection with anything that happened or arose in relation to the Property or the Planning Agreement before the appointment of the Receiver.

### 9.2 Receiver not liable

Each of the Substituted Party and the Continuing Party acknowledges and agrees that the Receiver:

- (a) enters into this document only in his capacity as receiver and manager of the Original Owner and the Retiring Party and not in the Receiver's personal capacity or in any other capacity; and
- (b) has no liability for any breach of this document.

### 9.3 Personal benefit

- (a) The Receiver, by entering into this document on behalf of the Original Owner and the Retiring Party, takes the personal benefit of any provision, guarantee, exclusion, release, acknowledgement or waiver given by the Substituted Party in favour of the Original Owner or the Retiring Party.
- (b) Each of the Substituted Party and the Continuing Party acknowledges that nothing contained in this document (expressly or by implication) or otherwise constitutes a warranty or representation by the Receiver as to any matter or thing.
- (c) The Substituted Party and the Continuing Party agree with the Receiver that it will not sue the Receiver, or commence or permit to be commenced in their names or continue any proceedings against the Receiver of any nature whatsoever and in any way related to any matter or thing arising under this document.



#### 9.4 Release of Receiver

Each of the Substituted Party and the Continuing Party releases the Receiver, the Original Owner and the Retiring Party and their respective officers, employees, advisers and agents from all liabilities which it has or may have after the date of this document which arise out of the negotiations for and subject matter of this document.

#### 9.5 Indemnity for Receiver

The Substituted Party will indemnify and hold harmless the Receiver from and against all liabilities incurred by the Receiver which arise out of the negotiations for and subject matter of this document.

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### 10. General provisions

#### 10.1 Costs

- (a) The Retiring Party must pay to the Continuing Party's fees and reasonable expenses, including legal costs and disbursements on an indemnity basis to negotiate, prepare, execute and perform this document, up to the maximum amount of \$5,500.00 (including GST).
- (b) The Original Owner, the Retiring Party and the Substituted Party must each pay their own costs and expenses for negotiating, preparing, executing and performing this document.

#### 10.2 Assignment

Unless this document provides otherwise:

- (a) before the Operative Date, a party must not transfer any right or liability under this document without the prior written consent of each other party; and
- (b) after the Operative Date, the parties need not obtain the Retiring Party's consent to transfer any right or liability under this document (but they must still obtain the written consent of the other parties).

#### 10.3 Notices

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.
- (b) Any notice to or by a party under this document must be in writing and signed by either:
  - (i) the sender or, if a corporate party, an authorised officer of the sender; or
  - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00 pm local time on a Business Day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next Business Day following delivery or receipt.
- (d) The addresses for services for notices of the parties are:
  - (i) Original Owner

Newpoint Advisory  
 Level 36, Governor Phillip Tower  
 1 Farrer Place  
 Sydney NSW 2000  
 Attention: Costas Andrew Nicodemou

(ii) Retiring Party

Newpoint Advisory  
 Level 36, Governor Phillip Tower  
 1 Farrer Place  
 Sydney NSW 2000  
 Attention: Costas Andrew Nicodemou

(iii) Substituted Party

Karimbla Properties (No. 61) Pty Limited  
 Level 11, 528 Kent Street  
 Sydney NSW 2000

(iv) Continuing Party

City of Parramatta  
 PO Box 32  
 Parramatta NSW 2124  
 Attention: Joshua Coy

#### 10.4 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

#### 10.5 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

#### 10.6 Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

#### 10.7 Pre-contractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any terms of that agreement.

**10.8 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

**10.9 Continuing performance**

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
  - (ii) survives and continues after performance of this document.

**10.10 Waivers**

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

**10.11 Remedies**

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

**10.12 Severability**

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

**10.13 Counterparts**

This document may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes the document of each party who has executed and delivered that counterpart.

**10.14 Electronic signature**

Each party warrants that immediately prior to entering into this document, it has unconditionally consented to:

- (a) the requirement for a signature under any law being met; and
- (b) any other party to this document executing it,

by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

**10.15 Electronic communication**

Without limitation, the parties agree that this document may be exchanged by hand, post or any electronic method that evidences a party's execution of this document, including by a party forwarding a copy of its executed counterpart by hand, post or electronic means to the other party.

**Annexure A - Planning Agreement**

Executed as a deed.

Signed for and on behalf of Golden Carlingford Pty Limited ACN 604 474 697 (Receiver & Manager Appointed) by Costa Andrew Nicodemou (as Receiver and Manager) in the presence of:

*N. Grenfell*  
Signature of witness

*Costa Andrew Nicodemou*  
Costa Andrew Nicodemou

NATALIE ANNE GRENFELL  
Full name of witness

LEVEL 36, 1 FARRER PLACE, SYDNEY  
Address of witness NSW 2000

ACCOUNTANT  
Occupation of witness

Signed for and on behalf of Pennant Hills Estates 88 Pty Limited ACN 102 833 027 (Receiver & Manager Appointed) by Costa Andrew Nicodemou (as Receiver and Manager) in the presence of:

*N. Grenfell*  
Signature of witness

*Costa Andrew Nicodemou*  
Costa Andrew Nicodemou

NATALIE ANNE GRENFELL  
Full name of witness

LEVEL 36, 1 FARRER PLACE, SYDNEY  
Address of witness NSW 2000

ACCOUNTANT  
Occupation of witness

Signed for and on behalf of **Rainbow Carlingford One Pty Limited ACN 604 122 054 (Receiver & Manager Appointed)** (in Liquidation) by **Costa Andrew Nicodemou (as Receiver and Manager)** in the presence of:

*N. Grenfell*  
Signature of witness

*Costa Andrew Nicodemou*  
Costa Andrew Nicodemou

NATALIE ANNE GRENFELL  
Full name of witness

LEVEL 36, 1 FARRER PLACE, SYDNEY  
Address of witness NSW 2000

ACCOUNTANT  
Occupation of witness

Signed for and on behalf of **Rainbowforce Pty Limited ACN 095 335 603 (Receiver & Manager Appointed)** (in Liquidation) by **Costa Andrew Nicodemou (as Receiver and Manager)** in the presence of:

*N. Grenfell*  
Signature of witness

*Costa Andrew Nicodemou*  
Costa Andrew Nicodemou

NATALIE ANNE GRENFELL  
Full name of witness

LEVEL 36, 1 FARRER PLACE, SYDNEY  
Address of witness NSW 2000

ACCOUNTANT  
Occupation of witness

Executed by **Karimbla Properties (No. 61) Pty Limited ACN 622 383 733** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

**Signed for and on behalf of Rainbow Carlingford One Pty Limited ACN 604 122 054 (Receiver & Manager Appointed) (in Liquidation) by Costa Andrew Nicodemou (as Receiver and Manager) in the presence of:**

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Costa Andrew Nicodemou

**Signed for and on behalf of Rainbowforce Pty Limited ACN 095 335 603 (Receiver & Manager Appointed) (in Liquidation) by Costa Andrew Nicodemou (as Receiver and Manager) in the presence of:**

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Costa Andrew Nicodemou

**Executed by Karimbla Properties (No. 61) Pty Limited ACN 622 383 733 in accordance with section 127 of the Corporations Act 2001 (Cth):**

\_\_\_\_\_  
Signature of director

**JAMES SIALEPIS**

\_\_\_\_\_  
Full name of director



\_\_\_\_\_  
Signature of company secretary/director

**ROBYN McCULLY**

\_\_\_\_\_  
Full name of company secretary/director



Signed for and on behalf of City of Parramatta City Council (ABN 49 907 174 773) by its authorised delegate pursuant to section 377 of the Local Government Act 1993 (NSW) in the presence of:

*Davidson*

Signature of witness

*Newman*

Signature of Chief Executive Officer

ELIZABETH DAVIDSON

Print name

BETT NEWMAN

Print name