

Dated

6 April

2016

Karimbla Properties (No.41) Pty Ltd
ACN 160 693 372

Warringah Council
ABN 31 565 068 406

Meriton Properties Pty Ltd
ACN 000 698 626

Deed of Amendment to Planning Agreement

PARTIES:

KARIMBLA PROPERTIES (No.41) PTY LTD (ACN 160 693 372) of Level 11, 528 Kent Street, Sydney NSW 2000 (**Developer**)

and

WARRINGAH COUNCIL (ABN 31 565 068 406) of Civic Centre, 725 Pittwater Road, Dee Why NSW 2099 (**Council**)

and

MERITON PROPERTIES PTY LTD (ACN 000 698 626) of Level 11, 528 Kent Street, Sydney NSW 2000 (**Guarantor**)

INTRODUCTION:

- A. The parties have agreed to amend the Planning Agreement on the terms of this Amendment Deed.
- B. The purpose of the amendment is to require the Developer to:
- a. dedicate relevant land in stratum to Council for road widening purposes; and
 - b. make a monetary contribution to Council of \$300,000.00,
- in place of the Developer constructing a bus bay in the area shown as Road Widening on the Dedication Plan.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Amendment Deed, unless the context clearly indicates otherwise:

Amendment Deed means this deed.

Planning Agreement means the agreement dated 12 December 2008 entitled 'Planning Agreement' between the Council, Brookfield Dee Why Pty Ltd ABN 47 112 246 072 and Brookfield Multiplex Developments Australia Pty Ltd ABN 17 109 219 810. The Planning Agreement was assigned to the Developer and Guarantor.

1.2 Interpretation

In this Amendment Deed:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) unless the context indicates a contrary intention:
 - (i) a word or expression defined in the Planning Agreement has the same meaning when used in this Amendment Deed;
 - (ii) a reference to a clause, schedule, or annexure is a reference to a clause, schedule or annexure of the Planning Agreement;

- (iii) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (iv) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (v) a reference to a document (including this Amendment Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (vi) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
- (vii) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (viii) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Amendment Deed, and a reference to this Amendment Deed includes all schedules, exhibits, attachments and annexures to it;
- (ix) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (x) "includes" in any form is not a word of limitation;
- (xi) a reference to "\$" or "dollar" is to Australian currency;
- (xii) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Amendment Deed; and
- (xiii) any capitalised term used, but not defined in this Amendment Deed, will have the meaning ascribed to it under, and by virtue of, the Act.

2. AMENDMENT OF PLANNING AGREEMENT

2.1 Amendments

The parties agree that on and from the date of this Amendment Deed, the Planning Agreement is amended as follows:

- (a) Clause 4.1 **Definitions** is amended as follows:
 - (i) by inserting the following additional definition:

*"**Amendment Deed** means the first deed of amendment entered into between Council and the Developer."*
 - (ii) by deleting the entire definition of **Bus Setback**;
 - (iii) by deleting the entire definition of **Bus Setback Area**;
 - (iv) by deleting the entire definition of **Bus Setback Works**;

- (v) by inserting the words "*Item 3B and*" before the words "*Item 4*" in the definition of **Contribution Amount**;
- (vi) by deleting the entire definition of **Contribution Works** and replacing with the following definition:

"Contribution Works means collectively and individually, each of the works described in Item 1, Item 2 and Item 3A in table 1 in Schedule 3."
- (vii) by inserting the following additional definition:

"Dedication Plan means the plan showing the intent for dedicating land in stratum for the purposes of future Road Widening."
- (viii) By inserting the following additional definition:

"Road widening means the area identified as Road Widening in the Dedication Plan to be dedicated in stratum for the purpose of a future bus setback area"

- (b) By inserting the following new Clause 4.3 Development consent condition:

"Clause 4.3 Development consent condition
The Developer has agreed to the imposition of a condition of development consent for the Development requiring the Developer to fulfil all of the obligations under the Planning Agreement, which may be amended from time to time"
- (c) Schedule 3 – 'Development Contributions Schedule' is deleted and replaced with the amended 'Schedule 3' as set out in Annexure A to this deed (and in which key changes are shown underlined);
- (d) Schedule 5 – 'Development Contributions Timetable' 'Table 1' and 'Table 2' is deleted and replaced with the amended 'Schedule 5' 'Table 1' and 'Table 2' as set out in Annexure B to this deed (and in which key changes are shown underlined); and
- (e) Schedule 6 – 'Release and Discharge Terms' is deleted and replaced with the amended 'Schedule 6' as set out in Annexure B to this deed (and in which with key changes shown underlined).

2.2 Confirmation

The parties each ratify and confirm their respective obligations under the Planning Agreement as varied by this Amendment Deed.

2.3 Ratification by Guarantor

The Guarantor separately confirms and ratifies each of its obligations under the guarantee and indemnity contained in Schedule 10 of the Planning Agreement including any obligations as varied by this Amendment Deed.

3. COSTS

- (a) The Developer is responsible for the reasonable and justifiable legal and administrative costs and expenses incurred by the Council in relation to the preparation and exhibition of this Amendment Deed.
- (b) The Developer is responsible for the registration fee for the registration of this Amendment Deed.

4. FURTHER ACTS

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

5. GOVERNING LAW AND JURISDICTION

This Amendment Deed is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

6. NO FETTER

Nothing in this Amendment Deed will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

7. REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power to enter into this Amendment Deed.

8. GST

8.1 Additional amounts for GST

If a party to this Amendment Deed (the "Supplier") makes a supply under or in connection with this Amendment Deed and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

8.2 Reimbursement

If this Amendment Deed requires a party to pay for, or reimburse any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.

8.3 Provision of Tax Invoices and other documentation for GST

Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Amendment Deed.

8.4 Amounts GST exclusive

Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Amendment Deed are GST exclusive.

8.5 No merger

This clause will not merge on completion or termination of this Amendment Deed.

9. REGISTRATION ON TITLE

- (a) The Developer agrees, at its own cost and in accordance with the requirements of clause 8 of the Planning Agreement (as though that clause relates to the registration of this Amendment Deed), to lodge this deed for registration at the Department of Lands within 20 Business Days from the date of this Amendment Deed.
- (b) The Developer will notify the Council following registration of the deed by the Developer and forward a copy of the registered deed to the Council.

EXECUTED as a deed

Signed by Warringah Council
(ABN 31 565 068 406) by its
Attorney pursuant to Power of Attorney
Book 4580 No 889



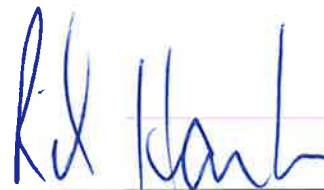
Signature of Witness

Lynne Hamann

725 Pittwater Road, Dee Why

Name of Witness

Address of Witness



Signature

Rik Hart

Name

CENERAL MANAGER

Office

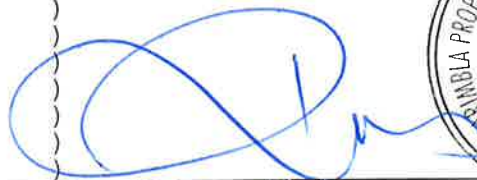
Executed by Karimbla Properties (No.41) Pty
Ltd (ACN 160 693 372) in accordance with
section 127 of the Corporations Act:



Signature of Director

DAVID CREMONA

Name of Director



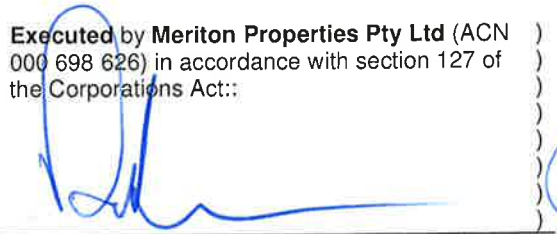
Signature of Director / Secretary

ROBYN McCULLY

Name of Director / Secretary



Executed by Meriton Properties Pty Ltd (ACN
000 698 626) in accordance with section 127 of
the Corporations Act::



Signature of Director

DAVID CREMONA

Name of Director



Signature of Director / Secretary

ROBYN McCULLY

Name of Director / Secretary



Annexure A - replacement 'Schedule 3'

"Schedule 3 – Development Contributions Schedule"

1. Development Contributions

The Developer undertakes to make the following Development Contributions:

Column 1	Column 2
Development Contribution	Intended Use / Detail
<p>Item 1.</p> <p>Contribution Works</p> <p>\$1,720,000</p> <p>(subject to paragraph 2 of Schedule 4 and subject to indexation by R&BCI as provided for in Schedule 5)</p>	<p>Provision of Town Square Work on the Town Square Area. The Town Square Works will involve the design, construction and embellishment of the Town Square Area in accordance with Approvals consisting of:</p> <ul style="list-style-type: none"> • paving works to the Town Square Area; • associated drainage; • lighting; • landscaping and street tree planting; • outdoor furniture; • storm water recycling tanks; and • water features. <p>In accordance with paragraph 1(d) of Schedule 4, the Developer must grant a right of way and other appropriate rights, providing the public with a non-exclusive right to use the Town Square Area 24 hours a day 7 days a week, subject to the Developer's right to use the Town Square Area for any other purpose associated with the Development (not inconsistent with the public right of way). The easement must contain provisions granting the Council the right to use the Town Square for 30 days (at its selection) per calendar year (subject to reasonable prior notice being given to the Developer) for any community events without any occupancy cost to Council. Council acknowledges that it will accept certain obligations in relation to taking out public liability insurance and keeping the Town Square Area clean and in good repair during its use of the Town Square Area for these purposes.</p>
<p>Item 2.</p> <p>Contribution Works</p> <p>\$471,000 (subject to paragraph 2 of Schedule 4 and subject to indexation by R&BCI as provided for in Schedule 5)</p>	<p>Provision of Pedestrian Connection Work on the Pedestrian Connection Area between the Town Square Area and Oaks Avenue with a minimum width of approximately 14m and to be designed such that it will allow for natural light and an 'open to the sky' feel. The Pedestrian Connection Works will involve the design, construction and embellishment of the Pedestrian Connection Area in accordance with Approvals consisting of:</p> <ul style="list-style-type: none"> • paving works to the Pedestrian Connection Area; • associated drainage; • lighting; • street tree planting; and

Column 1	Column 2
Development Contribution	Intended Use / Detail
	<ul style="list-style-type: none"> landscaping works. <p><i>In accordance with paragraph 1(e) of Schedule 4, the Developer must grant a right of way and other appropriate rights, providing the public with a non-exclusive right to use the Pedestrian Connection Area 24 hours a day 7 days a week, subject to the Developer's right to use the Pedestrian Connection Area for any other purpose associated with the Development (not inconsistent with the public right of way).</i></p>
<p>Item 3A.</p> <p><u>Dedication of land in stratum</u></p>	<p><u>Dedication of land in stratum for Road Widening to a standard footpath finish, for the purpose of a future bus setback area on Pittwater Road, to the requirements of Transport for NSW.</u></p> <p><u>The Developer will embellish the Road Widening prior to dedication and as required by the Development Consent.</u></p>
<p><u>Item 3B.</u></p> <p><u>Contribution Amount</u></p> <p><u>\$300,000 (subject to indexation by R&BCI as provided for in Schedule 5 which indexation will be calculated as from 12 December 2010 (being the second anniversary of the Planning Agreement)).</u></p>	<p><u>The provision of a monetary contribution for the purpose of civic improvements, to be used consistent with Council's Capital Works Program.</u></p>
<p>Item 4.</p> <p><u>Contribution Amount</u></p> <p><u>\$500,000 (subject to indexation by R&BCI as provided for in Schedule 5 which indexation will be calculated as from 12 December 2010 (being the second anniversary of the Planning Agreement)).</u></p>	<p><i>The provision of a monetary contribution for the construction and dedication (by Council) of Church Lane located to the east of the site bordering St Kevin's Church.</i></p>

Annexure B - replacement Schedule 5 Development Contributions Timetable Table 1 and Table 2

Table 1

Column 1	Column 2	Column 3
Development Contribution	Development Contribution Works	Date for Practical Completion of Contribution Works
Item 1 of the table in Schedule 3	The Town Square Works	Practical Completion of the Town Square Works prior to the earlier of: (a) the issue of an Occupation certificate for any ground level component of the Development; or (b) the first day that any part of the retail component of the Development is open for trading.
Item 2 of the table in Schedule 3	The Pedestrian Connection Works	Practical Completion of the Pedestrian connection Works prior to the earlier of: (a) the issue of an Occupation Certificate for any ground level component of the Development; or (b) the first day that any part of the retail component of the development is open for trading.
Item 3A of the table in Schedule 3	<u>Dedication of land in stratum for Road Widening</u>	<u>Dedication of land in stratum for Road Widening, for the purpose of a future bus setback area</u> prior to the earlier of: (a) the issue of an Occupation Certificate for any ground level component of the Development <u>fronting Pittwater Road</u> ; or (b) the first day that any part of the retail component of the Development <u>fronting Pittwater Road</u> is open for trading; or (c) <u>the issue of a subdivision certificate relating to a strata subdivision for any part of the Land.</u>

Table 2

Column 1	Column 2	Column 3
Development Contribution	Development Contribution Amount	Date for payment of Contribution Amounts
Item 3B of the table in Schedule 3	\$300,000 (subject to indexation by R&BCI as provided for in Schedule 5 which indexation will be calculated as from 12 December 2010 (being the second anniversary of the Planning Agreement))	Payment of the \$300,000 Contribution Amount prior to the earlier of: (a) <u>The issue of a subdivision certificate relating to a strata subdivision for any part of the Land</u> ; or (b) Within 15 business days of the satisfaction of the condition referred to in clause 3.2(b) of the Planning Agreement
Item 4 of the table in Schedule 3	\$500,000 (subject to indexation by R&BCI as provided for in Schedule 5 which indexation will be calculated as from 12 December 2010 (being the second anniversary of the Planning Agreement))	Payment of the \$500,000 Contribution Amount prior to the earlier of: (a) <u>The issue of a subdivision certificate relating to a strata subdivision for any part of the Land</u> ; or (b) Within 15 business days of the satisfaction of the condition referred to in clause 3.2(b) of the Planning Agreement

Annexure C - amended 'Schedule 6'

"Schedule 6 Release and Discharge Terms

The Council agrees:

- (a) *to provide to the Developer a withdrawal of caveat in respect of any caveat the Council has lodged in respect of the whole or any part of the Land, to the extent the Developer has satisfied its obligations under this deed in respect of that part of the Land;*
- (b) *to provide a release and discharge of this deed with respect to any part of the Land (except any part of the Land which contains the Town Square or the Pedestrian Connection of the Bus Setback Area) upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land;*
- (c) *that if the Land is subdivided such that development takes place in more than one stage, the registration of this Agreement will be removed from the title of any allotment of the Land that is subject to a strata scheme under the Strata Schemes (Freehold Development) Act 1973 with the exception of any common property allotment;*
- (d) *to do all things reasonably required by the Developer to have such release and discharge of this deed registered by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act 1900 or if this deed is terminated in accordance with the terms of this deed."*