

Deed

256 Coward Street, Mascot

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Bayside Council

Karimbla Properties (No. 54) Pty Ltd

Meriton Properties Pty Ltd

[20 June 2019]

256 Coward Street, Mascot Planning Agreement

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Summary Sheet

Council:

Name: Bayside Council
Address: 444-446 Princes Highway, Rockdale NSW 2216
Telephone: (02) 9562 1666
Facsimile: (02) 9562 1777
Email: clare.harley@bayside.nsw.gov.au
Representative: Clare Harley

Developer:

Name: Karimbla Properties (No. 54) Pty Ltd
Address: Level 11 Meriton Tower, 528 Kent St, Sydney NSW 2000
Telephone: (02) 9287 2888
Facsimile: (02) 9287 2777
Email: matthewl@meriton.com.au
Representative: Matthew Lennartz (Executive Manager- Planning and Government)

Guarantor:

Name: Meriton Properties Pty Ltd
Address: Level 11 Meriton Tower, 528 Kent St, Sydney NSW 2000
Telephone: (02) 9287 2888
Facsimile: (02) 9287 2777
Email: matthewl@meriton.com.au
Representative: Matthew Lennartz (Executive Manager- Planning and Government)

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clauses 9 and 10.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

Security:

See Part 4.

Registration:

See clause 30.

Restriction on dealings:

See clause 31.

Dispute Resolution:

See Part 3.

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Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Bayside Council ABN 80 690 785 443 of 444-446 Princes Highway, Rockdale NSW 2216 (**Council**)

and

Karimbla Properties (No. 54) Pty Ltd ABN 12 604 351 797 of Level 11 Meriton Tower, 528 Kent St, Sydney NSW 2000 (**Developer**)

and

Meriton Properties Pty Ltd ABN 49 000 698 626 of Level 11 Meriton Tower, 528 Kent St, Sydney NSW 2000 (**Guarantor**)

Background

- A The Developer owns Lot 101 DP1241951, otherwise known as 256 Coward Street, Mascot.
- B Development Consent was granted to DA14/146 on 12 June 2015 for the carrying out of development involving the construction of two 14 storey mixed used buildings and three basement levels and one ground level of carparking on 256-280 Coward Street, Mascot.
- C Condition 3 of the Development Consent to DA14/146 requires a planning agreement to be entered into for the dedication of approximately 90 carparking spaces and a pedestrian link.
- D Development Consent was then granted to DA2017/1220 on 29 March 2018 for stratum subdivision of the development approved by the Development Consent to DA14/146 to create Lots 100 and 101 DP1241951.
- E The Developer has lodged a New Development Application (DA2018/1187) for development on Lot 101 DP1241951 created pursuant to DA2017/1220. The proposed development is generally consistent with the development approved by Development Consent to DA14/146.
- F The Developer agrees to enter into this Deed in connection with the carrying out of the Development pursuant to the New Development Application.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Control Plan means a plan prepared by the Council showing the layout of the Council Carpark Development and base service provision to allow the future fit out of the Council Carpark Development and should include the following:

- I. Line marking (including but not limited to carshare, motorcycle space, disable space)
- II. General location of the future carpark fit out design (i.e. boom gates, pay station, store rooms etc)
- III. Location and specifications for any kerb or wheel stops
- IV. Location of all future signage (internal and any external requirements) and if it requires any electrical source to support the future fitout by Council
- V. Location and specifications of all base electrical and data provisions

VI. Location and specifications of all base water or hydraulic provisions

Council Carpark Development means a carpark accommodating approximately 90 car spaces that is constructed in accordance with Council Carpark Specifications.

Council Carpark Lot means a single stratum lot created within a building to be constructed on the Land for the Council Carpark Development having an area that accommodates the Council Carpark Development and which has direct access from a public road.

Council Carpark Control Plan means a plan prepared by the Developer in accordance with the Council Carpark Draft Specifications and the Control Plan.

Council Carpark Draft Specifications means the specifications set out in Schedule 1.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

CPI means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work but excludes any intentional damage to the extent it is caused by the Council or any other person other than the Developer.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Development means development on the Land described in the New Development Application the subject of a Development Consent, as modified from time to time.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

GST has the same meaning as in the GST Law.

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

Independent Certifier means an accredited certifier, within the meaning of the Act, jointly appointed by the Parties for the purposes of this Deed.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means land comprised in folio identifier 101/1241951, otherwise known as 256 Coward Street, Mascot, and any lot or strata lot created from a subdivision or strata subdivision of that lot.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Management Statement means a building management statement within the meaning of Division 3B of Part 23 of the *Conveyancing Act 1919* or a strata management statement within the meaning of the *Strata Schemes Development Act 2015* or any other instrument which, without limitation, provides for the allocation of costs of shared expenses relating to the building containing the Council Carpark Development.

Mascot Central Pedestrian Access Easement means the registered easement for pedestrian access 4 wide (limited in stratum) numbered 38 on DP1216316 which is in the location generally shown as 'DP1216316 Easement 38 Pedestrian Access' on the Public Access Plan.

Mascot Central Public Access Easement means the registered easement for public access variable width (limited in stratum) numbered 28 on DP12222198.

Modification Application means an application to modify a Development Consent under s4.55 of the Act.

New Development Application means Development Application DA2018/1187 made by the Developer to the Council on 9 October 2018 for development comprising the construction of a fourteen (14) storey mixed use development including 305 residential units, commercial tenancies, a childcare centre (74 places), basement car parking for 440 cars (including 90 public car parking spaces), associated earthworks, excavation and public and private landscaping works.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law* (NSW).

Public Access Easement means an easement in gross on terms to the satisfaction of the Council (acting reasonably) generally in accordance with the terms set out in Schedule 3 which allows the public access onto, over and across the Public Access Link to and from Coward Street and Jackson Drive enabling access to the Mascot Central Public Access Easement.

Public Access Link means a through-site link with an area of not less than 1,300sqm for public access from Coward Street to Jackson Drive in the location and generally as shown on the Public Access Plan.

Public Access Plan means the plan in Schedule 2.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Security means a Bank Guarantee, or an insurance bond or other form of security to the satisfaction of the Council indexed in accordance with the CPI from the date of this Deed.

Stage means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Strata Lot means a lot created in the Development for separate residential occupation and disposition that is created by the registration of a strata plan or a strata plan of subdivision under the *Strata Schemes Development Act 2015*, not being the Council Carpark Lot, common property or the Public Access Link.

Subdivision Certificate has the same meaning as in the Act.

Vehicular Access Easement means a right of carriageway on terms to the satisfaction the Council (acting reasonably) to be registered on the Land to enable public vehicular access from the Development's carpark entrance at Coward Street to the Council Carpark Lot, being the area generally as shown on the Vehicular Access Plan.

Vehicular Access Plan means the plan in Schedule 4.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.

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- 1.2.6 A reference in this Deed 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.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed otherwise commences and has force and effect on and from the date when the Parties have:
- 3.1.1 all executed the same copy of this Deed, or
- 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11 or s7.12 of the Act to the Development.
- 8.2 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 8.3 This Deed does not exclude the application of s7.24 of the Act to the Development.

Part 2 – Development Contributions

9 Control Plan and Council Carpark Detailed Specifications

- 9.1 The Council is to provide the Developer with the Control Plan within 5 business days of the commencement of this Deed.

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- 9.2 Once the Developer receives the Control Plan from the Council, the Developer is to prepare the Council Carpark Control Plan.
 - 9.3 The Council Carpark Control Plan must be prepared in accordance with the Council Carpark Draft Specifications and the Control Plan.
 - 9.4 The Developer is to submit the Council Carpark Control Plan to the Council for the Council's approval (which approval shall not be unreasonably withheld) prior to the relevant construction certificate.
 - 9.5 The Council is to review the Council Carpark Control Plan submitted by the Developer and must within 5 business days either:
 - 9.5.1 notify the Developer in writing that it approves of those specifications, or
 - 9.5.2 request any changes to those specifications that Council reasonably requires before the Council will give its approval.
 - 9.6 The Developer is to make any changes to the Council Carpark Control Plan required by the Council before resubmitting them to the Council for approval (which approval shall not be unreasonably withheld).
 - 9.7 The Council is to review the Council Carpark Detailed Specifications resubmitted by the Developer under clause 9.6 in accordance with clause 9.5.

10 Completion and Dedication of Council Carpark

- 10.1 The Developer is to carry out and complete:
 - 10.1.1 the construction of a building on the Land containing the Council Carpark Development in accordance with the Control Plan and Council Carpark Control Plan approved by the Council in clause 9, and
 - 10.1.2 the subdivision of the Land to create the Council Carpark Lot upon completion of construction of the building referred to in clause 10.1.1.
- 10.2 The Parties agree that:
 - 10.2.1 the Council will be responsible for the installation and fit-out of any carpark management system, payment system, access control, and signage on the Council Carpark Lot, and
 - 10.2.2 the Developer will act in good faith and use its best endeavours to accommodate the Council's requirements in respect of the fit-out, management and operation of the Council Carpark Development.
- 10.3 The Council Carpark Development is to be completed and the Council Carpark Lot is to be dedicated to the Council prior to the earlier of the following:
 - 10.3.1 the issuing of any Occupation Certificate for the final building for the Development,
 - 10.3.2 the date that is 36 months after the date Development Consent is granted to the Development,or as agreed in writing between the Parties.

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- 10.4 The Council Carpark Lot is to be dedicated to the Council free of cost to the Council for the purposes of a public car park.
- 10.5 The Developer is not to register, or to cause or procure the registration of, any Management Statement in respect of the building containing the Council Carpark Development unless:
- 10.5.1 the Developer has first provided the Council with the draft Management Statement for the Council's approval, and
- 10.5.2 the Management Statement that is lodged for registration is the statement as approved by the Council in writing (which approval shall not be unreasonably withheld or delayed).
- 10.6 For the purposes of clause 10.7, the Council may withhold its approval to a Management Statement if the statement requires the Council to contribute to Costs of the building which:
- 10.6.1 do not relate to the Council Carpark Development, or
- 10.6.2 are not proportional to the use or benefit obtained by the Council Carpark Development,
- 10.6.3 relates to any construction or building defects which are not a direct result of Council's fitout, management and operation of the Carpark whilst Council is the registered proprietor of the Council Carpark Lot.
- and the Council is taken to have reasonably withheld its approval in such circumstances.
- 10.7 The Council may, in its absolute discretion, classify the Council Carpark Lot dedicated to it under this Deed as 'operational' under Division 2 of Part 6 of the *Local Government Act 1993*.

11 Vehicular Access to Council Carpark Lot

- 11.1 The Developer is to register the Vehicular Access Easement on the title to the Land.
- 11.2 The Vehicular Access Easement is to be registered on title at the same time the Council Carpark Lot is dedicated under this Deed.

12 Pedestrian access from John Street to Council Carpark Lot

- 12.1 The Developer is not to:
- 12.1.1 make or amend any Development Application for the Development, or
- 12.1.2 modify, or in any other way seek Development Consent for the Development, or
- 12.1.3 make any application for, or any application to modify, a Construction Certificate to carry out any Work,

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which has the effect of restricting public pedestrian access between John Street and the Council Carpark Lot using the Mascot Central Pedestrian Access Easement.

13 Public Access Link

- 13.1 The Developer is to carry out and complete the construction of the Public Access Link and embellish it in accordance with the Development Consent to the New Development Application.
- 13.2 The Developer is not to make, or cause, suffer or procure the making of, a Development Application or Modification Application which has the effect of modifying any condition of the Development Consent to the New Development Application relating to the embellishment of the Public Access Link, unless the Developer has first obtained the written consent of the Council.
- 13.3 The Developer is to register the Public Access Easement on the title to the land comprising the Public Access Link.
- 13.4 The Public Access Link is to be completed and the Public Access Easement is to be registered on title prior to the earlier of the following:
 - 13.4.1 the issuing of any Occupation Certificate for the final building in the Development,
 - 13.4.2 the date that is 36 months after the date Development Consent is granted to the Development.
- 13.5 Without limiting any other provision of this Deed, on and from the date the Council Carpark Lot is dedicated to the Council until the Public Access Easement is registered, the Developer is to provide a public pedestrian path to enable public pedestrians to access the Council Carpark Lot from Coward Street and Jackson Drive and permit such access by the public.

14 Dedication of land

- 14.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 14.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - 14.1.2 the Council is given:
 - (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and

- (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer,

- 14.1.3 the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 14.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 14.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 14.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 14.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 14.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

15 Carrying out of Work

- 15.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council (acting reasonably), any relevant Approval and any other applicable law.
- 15.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

16 Variation to Work

- 16.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably.
- 16.2 Without limiting clause 16.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 16.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 16.2.
- 16.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work

before the Work is carried out in a specified manner and submit the variation to the Council for approval.

- 16.5 The Developer is to comply promptly with a direction referred to in clause 16.4 at its own cost.

17 Access to land by Developer

- 17.1 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any Council owned or controlled land approved by the Council in order to enable the Developer to properly perform its obligations under this Deed.
- 17.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 17.1.

18 Access to land by Council

- 18.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 18.2 In accessing the land under clause 18.1, the Council is to comply with the reasonable directions of the Developer relating to work, health and safety.
- 18.3 The Council is to give the Developer prior reasonable notice before it enters land under clause 18.1.

19 Protection of people, property & utilities

- 19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 19.1.1 all necessary measures are taken to protect people and property,
 - 19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 19.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 19.2 Without limiting clause 19.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

20 Repair of damage

- 20.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 20.2 The Developer is to carry out its obligation under clause 20.1 at its own cost and to the satisfaction of the Council.

21 Completion of Work

- 21.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 21.2 The Council is to inspect the Work the subject of the notice referred to in clause 21.1 and provide written notice of the inspection within 14 days of the date specified in the notice for completion of the Work.
- 21.3 Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 21.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 21.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 21.5 Before the Council gives the Developer a notice referred to in clause 21.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 21.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 21.5.

22 Rectification of defects

- 22.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 22.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 22.3 The Developer is taken to have complied with a Rectification Notice if the Council is given a Compliance Certificate issued by the Independent Certifier in respect of the Work the subject of the Rectification Notice.
- 22.4 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 22.1.

23 Works-As-Executed-Plan

- 23.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 23.2 The Developer, being the copyright owner in the plan referred to in clause 23.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

24 Removal of Equipment

- 24.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- 24.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
- 24.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

25 Dispute resolution – expert determination

- 25.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 25.1.1 the Parties to the Dispute agree that it can be so determined, or
- 25.1.2 the Chief Executive officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 25.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 25.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 25.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

26 Dispute Resolution - mediation

- 26.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 25 applies.
- 26.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 26.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 26.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 26.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

27 Guarantee

- 27.1 The Guarantor gives this guarantee and indemnity in consideration of the Council agreeing to enter into this Deed.
- 27.2 The Guarantor unconditionally and irrevocably guarantees to the Council the due and punctual provision of the Development Contributions and any other obligations of the Developer under this Deed.
- 27.3 The Guarantor unconditionally and irrevocably indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the performance of this Deed and any breach of this Deed by the Developer.
- 27.4 If the Developer does not make a monetary development contribution as when required under this Deed, and without prejudice to the Council's rights against the Developer, the Guarantor is to pay any money payable under this Deed to Council within 20 business days of receipt by the Guarantor of a tax invoice for the amount payable.

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Meriton Properties Pty Ltd

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- 27.5 Such a payment is made for the purposes of this Deed if Council receives the full amount payable under this Deed by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council, as the case may be.

28 Security for performance of obligations

- 28.1 The Developer is to provide Security to the Council in the amount of \$100,000.00 in relation to the performance of its obligations under this Deed.
- 28.2 The Developer is to provide the Security to the Council before it commences any part of the Development unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 28.3 The Council, in its absolute discretion and despite clause 17, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 28.4 The Council may call-up and apply the Security in accordance with clause 31 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 28.5 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 28.6 The Developer may at any time provide the Council with a replacement Security.
- 28.7 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 28.8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 28.9 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

29 Caveat and release

- 29.1 The Developer agrees that:
- 29.1.1 the Council may lodge a caveat on the title of the Land, and
- 29.1.2 the Council is to release the caveat from a Strata Lot, and

29.1.3 the Council is to release the caveat from the title to any land on which this Deed is registered, and

29.1.4 the Council cannot be required to have the caveat removed from the title other than in accordance with this clause 29.

29.2 The Developer is not to object or challenge, or cause or procure any objection or challenge to the registration of a caveat under clause 29.

29.3 Nothing in this Deed prevents the registration of a plan of subdivision, strata plan or strata plan of subdivision in respect of the creation of the Land, nor the creation of a Strata Lot.

30 Acquisition of land required to be dedicated or easement required to be registered

30.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

30.2 The Council is to only acquire land pursuant to clause 30.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.

30.3 Clause 30.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

30.4 If, as a result of the acquisition referred to in clause 30.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 28.

30.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

30.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 30, including without limitation:

30.6.1 signing any documents or forms,

30.6.2 giving landowner's consent for lodgement of any Development Application,

30.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and

30.6.4 paying the Council's costs arising under this clause 30.

30.7 This clause applies to the requirement to register an easement in the same way as the requirement to dedicate land as if:

30.7.1 all references to '*dedicate*' are a reference to '*register*', and

30.7.2 all references to '*land*' are a reference to '*an easement*'.

31 Breach of obligations

- 31.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 31.1.1 specifying the nature and extent of the breach,
 - 31.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 31.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 31.2 If the Developer fails to fully comply with a notice referred to in clause 31.1, the Council may direct the Guarantor to remedy the Developer's breach and the Guarantor is to comply with the notice.
- 31.3 Without limiting clause 31.2, if the Developer fails to fully comply with a notice referred to in clause 31.1 relating to the carrying out of Work under this Deed and the Guarantor also fails to comply with a direction under clause 31.2, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach, and step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 31.4 Any costs incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:
- 31.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 31.4.2 as a debt due in a court of competent jurisdiction.
- 31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
- 31.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 31.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 31.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

- 31.6 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

32 Enforcement in a court of competent jurisdiction

- 32.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 32.2 For the avoidance of doubt, nothing in this Deed prevents:
- 32.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 32.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

33 Registration of this Deed

- 33.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 33.2 Upon commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 33.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer and each person (other than the Council) required by the Registrar-General to execute such instrument, and
- 33.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 33.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 33.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- 33.4.1 in so far as the part of the Land concerned is a Strata Lot,
- 33.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.
- 33.5 For the avoidance of doubt, nothing in this clause requires the Council to release this Deed from the title to:

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- 33.5.1 any common property on the Land prior to the completion of the Developer's obligations under this Deed,
- 33.5.2 any land required to be dedicated to the Council under this Deed prior to the dedication or transfer of the land to the Council in accordance with this Deed.

34 Restriction on dealings

- 34.1 The Developer is not to:
 - 34.1.1 sell or transfer the Land, or
 - 34.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 34.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 34.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 34.1.5 the Developer is not in breach of this Deed, and
 - 34.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 34.2 Subject to clause 34.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 34.1.
- 34.3 Clause 34.1 does not apply in relation to any sale or transfer of:
 - 34.3.1 the Land if this Deed is registered on the title to the Land at the time of the sale, or
 - 34.3.2 a Strata Lot.

Part 6 – Indemnities & Insurance

35 Risk

- 35.1 The Developer performs this Deed at its own risk and its own cost.

36 Release

- 36.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

37 Indemnity

- 37.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

38 Insurance

- 38.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 38.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works.
 - 38.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 38.1.3 workers compensation insurance as required by law, and
 - 38.1.4 any other insurance required by law.
- 38.2 If the Developer fails to comply with clause 38.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 38.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 38.2.2 recovery as a debt due in a court of competent jurisdiction.
- 38.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 38.1.

Part 7 – Other Provisions

39 Notices

- 39.1 Any notice, consent, information, application or request that is to 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:
- 39.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 39.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 39.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 39.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 39.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 39.3.1 delivered, when it is left at the relevant address,
 - 39.3.2 sent by post, 2 business days after it is posted,
 - 39.3.3 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, or
 - 39.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 39.4 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 5pm 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.

40 Approvals and Consent

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

41 Costs

- 41.1 The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 41.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

42 Entire Deed

- 42.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 42.2 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 Deed was executed, except as permitted by law.

43 Further Acts

- 43.1 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 Deed and all transactions incidental to it.

44 Governing Law and Jurisdiction

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

45 Joint and Individual Liability and Benefits

- 45.1 Except as otherwise set out in this Deed:
 - 45.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 45.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

46 No Fetter

- 46.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

47 Illegality

- 47.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

48 Severability

- 48.1 If a clause or part of a clause 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 in the latter way.
- 48.2 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 Deed, but the rest of this Deed is not affected.

49 Amendment

- 49.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

50 Waiver

- 50.1 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.
- 50.2 A waiver by a Party is only effective if it:
- 50.2.1 is in writing,
 - 50.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 50.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 50.2.4 is signed and dated by the Party giving the waiver.

- 50.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 50.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 50.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

51 GST

- 51.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 51.2 Subject to clause 51.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 51.3 Clause 51.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 51.4 No additional amount shall be payable by the Council under clause 51.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 51.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

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- 51.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 51.5.2 that any amounts payable by the Parties in accordance with clause 51.2 (as limited by clause 51.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 51.6 No payment of any amount pursuant to this clause 51, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 51.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 51.8 This clause continues to apply after expiration or termination of this Deed.

52 Explanatory Note

- 52.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 52.2 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 Planning Deed.

Schedule 1

(Clause 9)

Council Carpark Draft Specifications

DRAFT

256 Coward Street, Mascot Planning Agreement

Bayside Council

Karimbla Properties (No. 54) Pty Ltd

Meriton Properties Pty Ltd

DRAFT



Car park brief

256 Coward Street Mascot Car Park
Specification Brief
Bayside Council
20 June 2019

parking;
traffic;
civil design;
communication;
ptc.

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1. Executive Summary

Council commissioned **ptc.**, specialist traffic and parking consultants to produce a car park specification for inclusion in the Voluntary Planning Agreement (VPA) with Meriton (the developer) for the development at 256-280 Coward Street, Mascot.

The purpose of this specification is to convey the brief requirements for the public car park to Council as the Owner and Operator. It does not include Council's requirements as the Planning Authority. These brief requirements outline:

- the technical specifications required for delivery by the developer in accordance with the VPA
- an overview of features that Council should consider for fitout at its own cost
- the likely service provisions required for 'rough-in' by the developer to cater for Council's fitout.

Objectives for carpark specification are to produce a quality customer experience and an integrated public car park through:

- An efficient design that results in a practical and easy to use car park.
- A contemporary design regarding use of technology and the internal environment.
- An architecturally attractive design.
- A carpark that is low-maintenance.
- A carpark management system with a zonal management system (ptc. recommendation).

This specification calls for a public carpark design that is based on user Classification 2 as defined in AS 2890.1 (2004). The key requirements for the public car park that are further detailed in this specification are highlighted below.

- a. The concept design has been based on the provision of 90 public car park spaces in accordance with AS 2890.1 User Classification 2 for Off- Street car parking facilities within an integrated public car park with consideration for adaptive reuse.
- b. Service provisions that will enable Council to conduct fitout of controlled entry and exit points, zonal wayfinding and car space monitoring technology, access control and security.
- c. The outcome achieved is to be an integrated car park with the ability to charge parking fees from Day 1 of operation and the ability to operate 7 days per week, 24 hours per day.
- d. The design is to be operationally efficient, low maintenance and satisfy all the relevant Australian Standards and Building Codes. The design process should respond to risk assessments in accordance with Work Health and Safety legislation and be compliant with the Disability Discrimination Act.

2. Background

Council received a new Development Application (DA-2018/1187) that is consistent with the primary principles of development consent issued to DA-2014/146 at the site 256-280 Coward Street, Mascot. The approval being sought for this new DA includes the following:

- Construction of a mixed-use development with 305 residential units and 855m² GFA of retail premises
- Construction of two 2 basement levels and one level above ground of car parking consisting of 306 residential spaces, 26 childcare spaces and 18 retail spaces
- Construction of one separate public car park level comprising 90 spaces dedicated to public users
- Provision of two (2) loading dock spaces in a consolidated location on Level 01
- Construction of the vehicular access to/from the private car parking area to Coward Street in the south-eastern corner of the site.

The public car park is located on Ground Level. Residential car parking is provided by the Developer independent of the public car park, across Level 1, B1 and B2.

The public car parking spaces will be within a stratum that is owned by Council and will be delivered via a Voluntary Planning Agreement (VPA) with the developer of the site, Meriton.

This Car Park Specification document is for Council to convey is requirements and expected standards of the public car park to the Developer.

Brief items are set out as Mandatory, Desirable, Undesirable and Prohibited in this document:

Mandatory = The requirement must be met in the proposal.

Prohibited = The design outcome described must not be included in the proposal.

3. Public Car Park General Design Requirements

Council requires the Developer to deliver an efficient, well designed, modern public car park in accordance with the Control Plan to be provided by Council that meets the following:

- a. Is fully integrated into the development.
- b. The carpark is to comply with AS2890. The carpark classification is 2 as per table 1.1 in AS 2890.1 (2004).
- c. Is safe to use and is easy to navigate.
- d. Fit for purpose.
- e. Car park operational requirements;
 - Service provisions (electrical/data/hydraulic) to enable Council fitout of:
 - a zonal wayfinding system providing car space availability information for presentation on an external dynamic sign, near the vehicle entry.
 - CCTV security surveillance to nominated areas that facilitates both the safe operation of the carpark and the safe use of the carpark. As a minimum, the following areas should be covered by CCTV;
 - All points of entry and exit (both vehicular and pedestrian)
 - Lobbies which provide access to the public car park and areas having paystations. All paystations (which may be covered by the above).
 - Council water hoses.
 - The design and operation of the car park is to respond to risk assessments addressing Safer by Design, stairwell designs and appropriate floor finishes to address slip hazards.
 - Have the ability to introduce car parking fees including access control boom gates and associated equipment as per the Control Plan.

Enable Council's implementation of a fully integrated real time information system of car park payment and vacancy information.

Mandatory

The Developer is to work with Council to provide service provisions in order to facilitate Council's installation of:

- a. Security (CCTV).
- b. Access and revenue control (either boom gates and/or number plate recognition or other) as well as automatic paystations for payment for parking by cash and credit card.
- c. Internal wayfinding signage and parking availability indicators at the vehicle entry.
- d. A management system to record data.
- e. Ability to provide real time information of car park payment and zonal vacancy information (either back to base or to a security office/manager).

In order to provide service provisions for installation of the abovementioned items, the developer will require a final Control Plan and detailed specifications of all items required by Council no later than within 5 business days after execution of the Voluntary Planning Agreement. The Council will be responsible and liable for the Control Plan achieving the Design Requirements set out in this document. Should Council not supply the information by this date, the developer will provide service provisions to the locations specified by the most contemporary draft Control Plan. The Developer will also provide a power board (to a position nominated by council) and council will assume responsibility for running any additional cables/conduits etc. they require. Should locations for boom gates and associated equipment differ by request of Council only, Council must assume responsibility for making sure it complies with relevant code and standards.

The developer will require detailed specifications for the required power board including the number of amps required no later 5 business days after execution of the Voluntary Planning Agreement.

4. Building Code Requirements

Mandatory

- a. The car park must comply with the National Construction Code / Building Code of Australia as applicable at the time of construction of each stage
- b. The car park and associated access areas must comply with the relevant Australian Standards, particularly:
 - AS2890.1 (2004) and AS2890.6 (2009)
 - AS1428 (all parts)
 - The Disability Discrimination Act 1992 (DDA)
 - Electrical work to AS3000
 - Degree of Protection to AS1939
 - Water Supply to AS3500.1
 - Plumbing and Drainage to AS3500.2
 - Linemarking and signage to AS1742 and AS2890.1 (2004)

5. Public Car Parking Provision

Mandatory

- a. The car park must include a parking provision for 90 car spaces User Classification 2 as per AS 2890.1 (2004). The 90 space public car park will include 3m floor-to-floor height. A minimum of 2% of this provision must be designed as accessible spaces and are to be designed according to AS2890.6 (2009).
- b. The car park must include 2 car-share spaces, which are included in the overall count of public car spaces within the development.
- c. The car park must include 5 spaces having service provisions for electric vehicle (EV) charging stations (which are included in the overall count of public car spaces within the development). All car charging stations will be supplied, owned, maintained and operated by Council as Embedded Utilities, regardless of whether Council accepts the Car Park Embedded Network Proposal for the overall car park asset. For this provision to be included, the developer will require final position for these spots as well as technical specifications no later than within 5 business days of execution of the Voluntary Planning Agreement.
- d. In addition to the 90 parking spaces, the Ground level should also make provision for a minimum of 35 bicycle parking racks in accordance with AS2890.3, that will be located to the east of the exit ramp at the car park.
- e. Subject to design feasibility, an equivalent of one standard car space must be dedicated to motorcycle parking, which is in addition to 90 car spaces.
 - If design feasibility identifies insufficient space for the motorcycle parking to be in addition to the 90 spaces, these spaces are to be included in the overall count of public car spaces.
- f. The locations of the car share, EV car charging and motorcycle spaces are to be specified on the final Control Plan, provided to the Developer within 5 business days of execution of the Voluntary Planning Agreement.
- g. All parking (e.g. car, motorcycles, and bicycles), servicing and storage associated with the residential and commercial development are to be provided independent of the public car park.

6. Public Car Park Functional Requirements

Mandatory

- a. The public parking spaces are to be located in the Ground Floor.
- b. Council must be able to independently own and operate the stratum lot that will contain the public parking spaces. This includes the provision of separate metering, a fire panel and mechanical plant and equipment to enable Council to manage its consumption of energy and water and fire services, where permitted by the relevant authorities.
- c. Shared facilities will include part of the fire services, fire stairs, sewer, stormwater, lobbies etc as outlined in the DA.
- d. Inclusion of functional stormwater and drainage systems that sufficiently service the public car park, whereby the responsibility of this system lies within the body corporate.
- e. Permanent public parking is to be designed and constructed so that it has the capability to operate 24 hours per day, 7 days per week.
- f. Provide a low-maintenance facility, with with finishes outlined in section 6.1
- g. Lighting should be fit for purpose, comply with the relevant standards, be energy efficient, and provide appropriate levels of visibility for security. The developer will require from council a lighting layout plan no later than 5 days after execution of the Voluntary Planning Agreement. Should the developer not receive the location plan the developer will use its discretion to determine the location of the lights.
- h. Address the principles of Crime Prevention Through Environmental Design (CPTED). Refer to the NSW Police publication "Safer by Design" for guidance.
- i. Service provisions for CCTV cameras must be installed to provide images of all car park vehicular and pedestrian entries and exits (including lobbies) to ensure public safety is addressed. The CCTV images must be remotely viewable by the car park operator and by Council or its security contractors.
- j. Service provision to enable brand intercoms for installation in all automatic pay stations and car park exits.
- k. Provide water hose points for cleaning and maintenance purposes adjacent to each public car park lobby. The developer will require from Council the location of these hose points on the Control Plan no later than 5 business days after execution of the Voluntary

Planning Agreement. Should the developer not receive this plan the developer will use its discretion to determine the locations.

- l. All water and energy use must be independently metered to allow for NABERS certification.
- m. Mechanical ventilation must comply with code requirements and demonstrate energy efficiency.
- n. Provide wheel-stops as required by the relevant building codes (please see Attachment 1 for suggested locations).

Prohibited

- a. Rainforest timbers shall not be used.
- b. Sloping or ramped floors which prevent later conversion to other uses.

6.1 Public Car Park Structure, Services and Finishes

Mandatory

The Developer is to deliver a car park that is fit for its intended use as a public car park with the following finishes.

- a. Structural solution is concrete
- b. Floors – sealed (water-based) concrete
- c. Slab soffits – off-form concrete, untreated
- d. Walls – blockwork and/or off-form concrete
- e. Columns – off-form concrete
- f. Public Car Park lobbies - paint finish to walls and soffit
- g. Ceiling soffit services that are neatly installed and do not impede the operation of the car park
- h. All relevant linemarking
- i. Exposed mechanical services, as required to satisfy Australian Standards
- j. Exposed electrical services including lighting, emergency lighting and power
- k. Exposed fire services including a panel that enables Council to efficiently manage its fire services
- l. Exposed hydraulic services including water, sewer and stormwater

7. Public Car Park Design

7.1 Car Park Class and Definition

Mandatory

7.1.1 User Classification 2

The car park will be based on the model of User Classification 2 as defined in AS2980.1 (2004) *"Long term city and town centre parking, sports facilities, entertainment centres, hotels, motels, airport visitors (generally medium parking)"*.

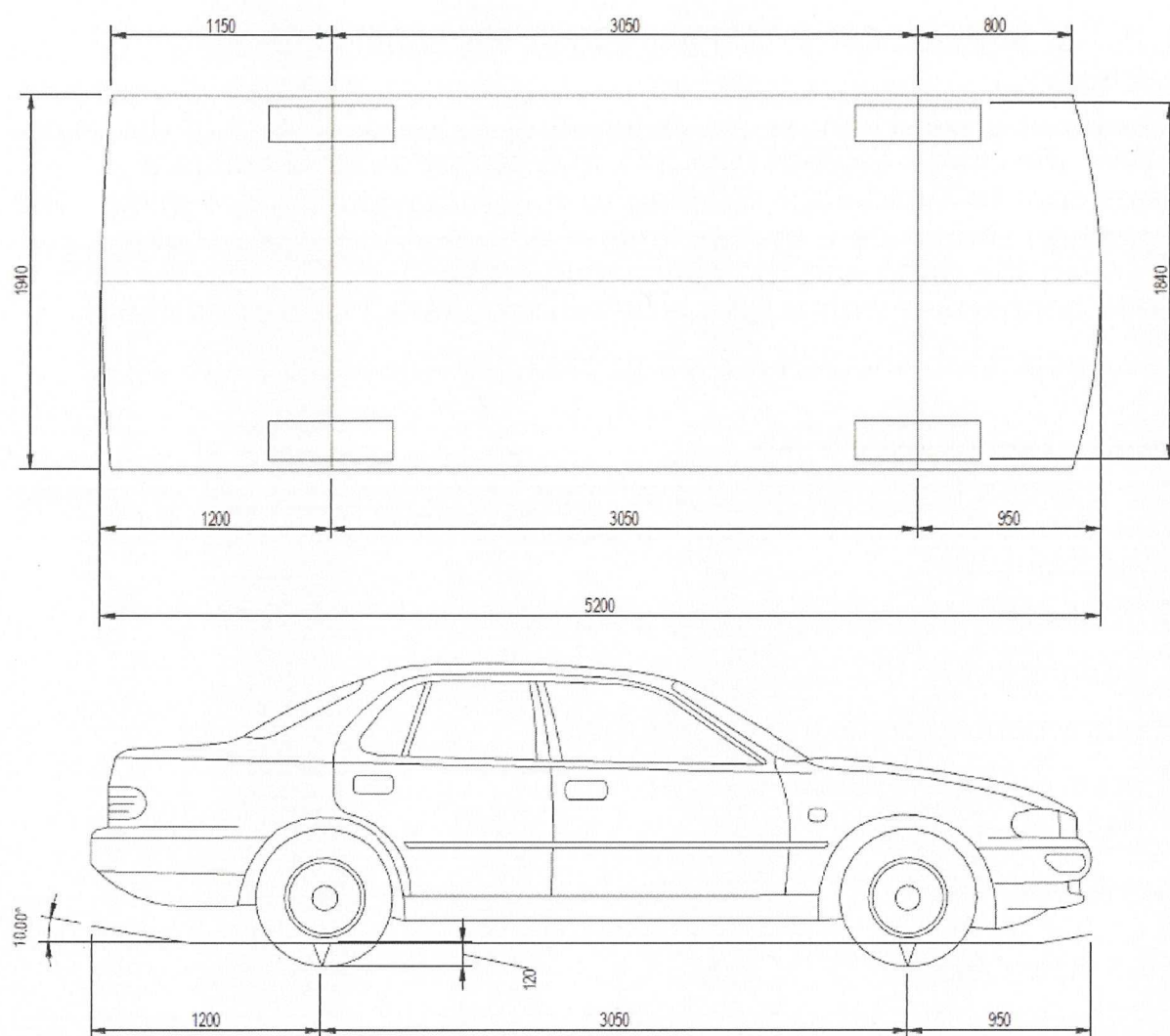
7.1.2 Accessible Spaces

Accessible car spaces will need to be provided within the car park in accordance with the BCA Part 03: 2%

a. 2 spaces for every 100 car parking spaces or part thereof.

7.1.3 Reference Vehicle

AS2890.1 (2004) defines parking space requirements and aisle widths for this User Class based on the B99 reference vehicle. See Figure 1 for reference vehicle B99.



B99 DIMENSIONS

7.2 Ramps

7.2.1 Ramp Gradients

Gradients for ramps

- A 1 in 8 (12.5%) ramp is desirable for a comfortable incline and decline. The recommended 2700mm floor to floor accommodates this grade within the recommended car park modules. A 1:8 grade is to be used as pedestrian zone for internal car park fire travel distance.
- A 1 in 5 grade can be used up to a maximum length of 20 metres.

- A 1 in 6 grade is the maximum grade for ramps longer than 20 metres.

Transition grade changes are required at top and bottom of the ramp where the grade exceeds 1 in 8 (1 in 8 ramps do not require a transition) to avoid floor scraping to the underside of the vehicle. The transition should be 2 metres long and be half the grade change between the ramp and the connecting roadway / aisle (e.g. a 1 in 5 ramp connecting with a level aisle will require a 1 in 10 transition).

The ramp finish should be such to prevent skateboarder use etc.

7.2.2 Layout and Circulation

The position and gradient of the ramps are critical to traffic efficiency, user comfort and yield of the car park. The ramp position will be dependent on:

- Vehicular and pedestrian entry points,
- orientation of the car park
- placement within surrounding roads
- floor to floor heights
- floor configuration
- column grids

7.2.3 Ramp Widths

Ramp widths are defined in AS2890.1 Section 2.5.2 with the minimum noted below:

- One Way Ramp 3.0m minimum between kerbs
- Two Way Ramp 5.5m minimum between kerbs.

Based on swept paths using the 99th percentile vehicle, the following ramp widths are recommended:

- One Way Ramps - 3.4m minimum (to 3.7m maximum between kerbs to work in the recommended efficient grid of 8950 to 9500)
- Two Way Ramps - 6.3m minimum between kerbs.

Wider ramps are ideal but not practical within the assumed grid module created unless the car park yield is compromised.

These recommendations align with either 3 bay or 4 small car space modules.

According to AS2890.1, a lane with automated ticket issue and boomgate has the capacity to process 300 vehicle movements per hour. It is recommended that the access provision be established on

the basis that the car park should be able to fill or empty within one hour.

Having regard for the number of parking spaces, it is also advised that more than one access control (boomgate) should be provided at any entry or exit (at least 2 lanes) to provide a contingency in the case of a breakdown in the system, or of a vehicle within one of the lanes.

7.2.4 CCTV

Cameras at each Ground Floor pedestrian and vehicular entrance.

Coverage to lobbies servicing the public carpark.

8. Public Car Park Pedestrian Access Provisions

Mandatory

The main access to the public parking will be via Lobbies that are safe and inviting to users.

9. Public Car Park Signage & Wayfinding

Mandatory

Council will be installing a signage and way-finding package at its own cost, with the exemption of all linemarking to define individual car parking spaces, directional wayfinding arrows and sculpting linemarking to manage traffic movement, which is to be provided by the developer.

Council and the Developer will need to work collaboratively to ensure service provisions are made available by the Developer with consideration to the following signage and wayfinding features.

- a. A signage and way-finding package that ensures efficient car park circulation and pedestrian safety. This will include static signage and the painting of columns and lobbies.
- b. A vehicle counting system located at entries, exits and ramps is required to ensure the number of available spaces public car park is available to the car park operator and to Council on a real time basis. This system may utilise loop technology at various locations throughout the car park.
- c. A sign at the entrance to the public car park will indicate the number of car parking spaces available.
- d. Internal vehicle signage will be well lit and minimise the potential for conflicts between vehicles and other vehicles / pedestrians.
- e. Colour coded letters or symbols are required to assist motorists to remember the location where the car is parked.
- f. Static directional and wayfinding signage will be provided for each level (including colour coding with letters, numbers etc.).
- g. Clear signage will be provided indicating 'PARKING' or 'WAY OUT' ('EXIT' shall be reserved for emergency exit signage only).
- h. Disabled car parking, car share, bicycle and other such areas must be signed appropriately.
- i. Directions must be provided to automatic pay stations, with car park users prompted to pay for parking prior to returning to their vehicles.
- j. A sign at the entrance to the public car park to show the number of spaces available for long stay and short stay car parking.

10. Ownership and Management

Mandatory

Council will be the owner of the stratum containing the public parking.

Attachment 1 256 Coward Street Public Car Park Plan

Schedule 2

(Clause 1.1)

Public Access Plan

See the following page

DRAFT

256 Coward Street, Mascot Planning Agreement
Bayside Council
Karimbla Properties (No. 54) Pty Ltd
Meriton Properties Pty Ltd

 PUBLIC ACCESS EASEMENT (APPROX. 1300m²)
 DP1216316 EASEMENT 38 PEDESTRIAN ACCESS



1 GROUND FLOOR PLAN
1:200

PUBLIC PARKING
 PROPOSED
 TOTAL PUBLIC PARKING
 TOTAL PUBLIC PARKING
 TOTAL PUBLIC PARKING

PTM
 Project: 256-280 COWARD STREET
 Mascot
 Development Application
 DA-10-1000
 A

Schedule 3

(Clause 1.1)

Public Access Easement

- ##.1 The authority benefitted and any person authorised by the authority benefitted and members of the public ("Authorised Users") have full and free right to pass and repass at all times over and across the Easement for Public Access area for pedestrian access and passive recreation purposes including but not limited to access to and from Coward Street and Jackson Drive and beyond:
- (a) on foot; and/or
 - (b) with wheelchairs or other disabled access aids; and
 - (c) with or without animals; and
 - (d) with bicycles (being walked or ridden); and
 - (e) without vehicles, skateboards, rollerblades and any other similar equipment as nominated by the owner of the lot burdened.
- ##.2 In exercising the rights granted by this easement, the authority benefitted and any Authorised User must:
- (a) cause as little inconvenience as practicable to the owner of the lot burdened and any occupier of the lot burdened; and
 - (b) cause no damage to the lot burdened and any improvements on it.
- ##.3 Any Authorised User must properly dispose of litter either by depositing it in the receptacles provided on the lot burdened, if any, or removing it from the lot burdened.
- ##.4 The authority benefitted is not required to maintain, replace, renew or carry out any other work within the easement area, or contribute to any such work within the easement area.

256 Coward Street, Mascot Planning Agreement
Bayside Council
Karimbla Properties (No. 54) Pty Ltd
Meriton Properties Pty Ltd

Schedule 4

(Clause 1.1)

Vehicular Access Plan

See the following page

DRAFT

256 Coward Street, Mascot Planning Agreement
Bayside Council
Karimbla Properties (No. 54) Pty Ltd
Meriton Properties Pty Ltd



256 Coward Street, Mascot Planning Agreement
Bayside Council
Karimbla Properties (No. 54) Pty Ltd
Meriton Properties Pty Ltd

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act (Cth) 2001

Name/Position

Name/Position

256 Coward Street, Mascot Planning Agreement
Bayside Council
Karimbla Properties (No. 54) Pty Ltd
Meriton Properties Pty Ltd

Executed on behalf of the Guarantor in accordance with s127(1) of the
Corporations Act (Cth) 2001

Name/Position

Name/Position

DRAFT

256 Coward Street, Mascot Planning Agreement
Bayside Council
Karimbla Properties (No. 54) Pty Ltd
Meriton Properties Pty Ltd

Appendix

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Bayside Council ABN 80 690 785 443 of 444-446 Princes Highway, Rockdale NSW 2216 (**Council**)

and

Karimbla Properties (No. 54) Pty Ltd ABN 12 604 351 797 of Level 11 Meriton Tower, 528 Kent St, Sydney NSW 2000 (**Developer**)

and

Meriton Properties Pty Ltd ABN 49 000 698 626 of Level 11 Meriton Tower, 528 Kent St, Sydney NSW 2000 (**Guarantor**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 101 DP1241951, otherwise known as 256 Coward Street, Mascot]

Description of Proposed Development

Development described in Development Application DA14/146 for which Development Consent was granted on 12 June 2015, as modified from time to time.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement are to provide approximately 90 car spaces to the Council for public carparking and an embellished through-site link for public access.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the EPA Act. It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development,
- does not exclude the application of s 7.11, s7.12 or s7.24 of the EPA Act to the Development,
- requires the construction of a carpark with approximately 90 car spaces and dedication of a stratum lot containing that carpark to the Council for public carparking,
- requires the registration of a right of carriageway which ensures public vehicular access from the carpark entrance on Coward Street to the carpark,
- restricts the Developer from seeking Development Consent or Construction Certificate which has the effect of restricting public pedestrian access from John Street to the carpark using an existing public pedestrian access easement,
- requires the construction and embellishment of a through-site link and registration of an easement in gross over the through-site link allowing public access,
- requires the provision of a pedestrian pathway for the public to access the completed carpark until the easement for access is registered,
- requires the Guarantor to guarantee the performance of all the Developer's obligations under the Planning Agreement,
- enables the Council to lodge a caveat over the Land,
- allows for compulsory acquisition arrangements for the land dedication and easement registration,
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the Agreement,

- provides two dispute resolution methods where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Agreement applies,
- provides land for public purposes in connection with the Development, specifically for a public carpark,
- provides and co-ordinates community services and facilities in connection with the Development.

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to construct and dedicate a carpark and to construct a through-site link and allowing public access on it.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the EPA Act set out in sections 1.3(c), (g) and (j); and
- delivering carparking spaces for the public and an embellished through-site link.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Principles for local government (formerly the Council's charter) in the Local Government Act 1993

256 Coward Street, Mascot Planning Agreement
Bayside Council
Karimbla Properties (No. 54) Pty Ltd
Meriton Properties Pty Ltd

The Draft Planning Agreement promotes the principles for local government by:

- o the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- o working with others to secure appropriate services for local community needs,
- o promoting Council's long-term strategic planning on behalf of the local community.

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

This Draft Planning Agreement does not constitute any development contributions that features within Council's current Capital Works Program. Any consideration to place works associated with the fitout of the carpark on any future Capital Works Program will be subject to Council's decision.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

This Draft Planning Agreement contains requirements that must be complied with before Occupation Certificates are issued.