

Planning Agreement

Environmental Planning and Assessment Act 1979

112 Talavera Road, Macquarie Park 2113

Minister for Planning (ABN 20 770 707 468)

Karimbla Properties (No. 52) Pty Limited (ACN 168 601 296)

A handwritten signature in blue ink, appearing to read 'Brett Whitehead', with a large circular flourish at the end.A handwritten signature in blue ink, appearing to read 'A. Karim', with a large circular flourish at the end.

Table of contents

1.	Definitions and interpretation	4
1.1	Definitions.....	4
1.2	Interpretation	6
2.	Operation and application of this deed.....	7
2.1	Operation.....	7
2.2	Planning agreement under the Act	7
2.3	Application.....	7
3.	Application of sections 7.11, 7.12 and 7.24 of the Act.....	8
4.	VPA Development.....	8
4.1	Definition	8
5.	Development Contribution.....	8
5.1	Developer to provide Development Contribution.....	8
5.2	Special Infrastructure Contribution	8
5.3	Acknowledgement.....	9
6.	Interest.....	9
6.1	Interest for late payment.....	9
7.	Enforcement	9
7.1	Developer to provide Security	9
8.	Registration	9
8.1	Registration of deed	9
8.2	Evidence of registration.....	10
8.3	Release and discharge of deed.....	10
8.4	Interest in Land.....	10
8.5	Right to lodge caveat	10
9.	Dispute Resolution.....	11
9.1	Not commence	11
9.2	Written notice of dispute	11
9.3	Attempt to resolve.....	11
9.4	Mediation	11
9.5	Court proceedings	11
9.6	Not use information	11
9.7	No prejudice	12
10.	GST.....	12
10.1	Definitions.....	12
10.2	Intention of the parties.....	12
10.3	Reimbursement	12
10.4	Consideration GST exclusive.....	12
10.5	Additional Amounts for GST	12
10.6	Non monetary consideration.....	12
10.7	Assumptions	12
10.8	No merger.....	12

11. Assignment and transfer	13
11.1 Right to assign or novate	13
11.2 Right to transfer Land	13
11.3 Replacement Security	14
12. Capacity.....	14
12.1 General warranties	14
12.2 Power of attorney.....	14
13. Reporting requirement.....	14
14. General Provisions	15
14.1 Entire deed	15
14.2 Variation	15
14.3 Waiver.....	15
14.4 Further assurances	15
14.5 Time for doing acts	15
14.6 Governing law and jurisdiction	15
14.7 Severance.....	15
14.8 Preservation of existing rights	15
14.9 No merger.....	16
14.10 Counterparts.....	16
14.11 Relationship of parties.....	16
14.12 Good faith	16
14.13 No fetter	16
14.14 Explanatory note.....	16
14.15 Expenses and stamp duty	16
14.16 Notices	17
14.17 Electronic Execution	17
Schedule 1.....	19
Schedule 2.....	21
Schedule 3.....	22
Schedule 4.....	23
Schedule 5.....	25
Execution page	27

This deed is dated

30 July 2022



Parties:

Minister for Planning (ABN 20 770 707 468) c/- NSW Department of Planning and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta, New South Wales 2150 (**Minister**)

Karimbla Properties (No. 52) Pty Limited (ACN 168 601 296) of Level 11, 528 Kent Street, Sydney, New South Wales 2000 (**Developer**)

Introduction:

- A The Developer owns the Land.
- B The Developer proposes to carry out the VPA Development on the Land.
- C The Developer proposes to make a Development Application to the Consent Authority in respect of the Land.
- D Clause 6.10 of the LEP provides that the Consent Authority must not grant Development Consent to any part of the VPA Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure referred to in clause 6.10 of the LEP.
- E The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

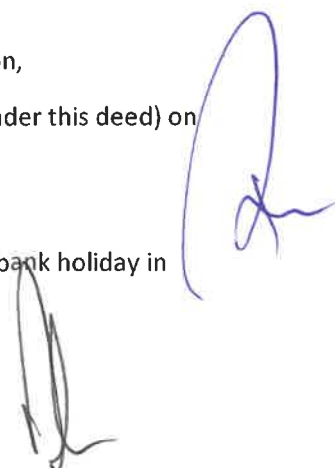
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2020.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Concept Development Application has the same meaning as in the Act.



CoRD Holder Consent means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contribution Amount means an amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

CPI means the Consumer Price Index (All Groups Index) for Sydney published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2021 and each anniversary of 1 July 2021.

Current CPI means the CPI number for the quarter ending 31 March in the calendar year in which the relevant adjustment is made.

Dealing means, in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose of, encumber or otherwise deal with the Land in whole or part.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the sum of the Contribution Amounts to be provided by the Developer in accordance with Schedule 4.

ELNO has the same meaning as in the *Electronic Conveyancing National Law (NSW)*.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GFA means gross floor area as defined in the standard local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* as amended from time to time.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insurance Bond means an irrevocable and unconditional undertaking:

(a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and subject to prudential supervision by Australian Prudential Regulatory Authority.

Land means the land described in Schedule 3.

LEP means *Ryde Local Environmental Plan 2014*.

Lot has the same meaning as in the *Strata Schemes Development Act 2015* (NSW).

Maximum GFA has the meaning given to that term in clause 4.1(b).

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Minister means the Minister for Planning and includes the Secretary and the Secretary's nominee.

Occupation Certificate has the same meaning as in the Act.

Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the carrying out of any part of the VPA Development on the Land, or will, if granted, result in a modification to a Development Consent or the issue of an Occupation Certificate.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Secretary means the Secretary of the Department of Planning and Environment.

Security means a Bank Guarantee or an Insurance Bond.

SIC Amount for the any part of the VPA Development, takes its meaning from clause 5.2(d).

Strata Certificate has the same meaning as in the *Strata Schemes Development Act 2015* (NSW).

Strata Plan has the same meaning as in the *Strata Schemes Development Act 2015* (NSW), but also includes a strata plan of subdivision within the meaning of the *Strata Schemes Development Act 2015* (NSW).

Strata Scheme has the same meaning as in the *Strata Schemes Development Act 2015* (NSW).

Subdivision Certificate has the same meaning as in the Act.

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

VPA Development has the meaning given to that term in clause 4.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing

agreement, to a body or authority having substantially the same objects as the named body or authority;

- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

3. Application of sections 7.11, 7.12 and 7.24 of the Act

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

4. VPA Development

4.1 Definition

- (a) In this deed, subject to this clause 4.1, **VPA Development** means subdivision of the Land and any other development of the Land for mixed use purposes that is:
 - (i) within Stage 2 as referred to in the Concept Development Application LDA 2020/0187 lodged with the City of Ryde Council; and
 - (ii) the subject of a Development Application that is made at any time after the commencement of this deed.
- (b) Development is not **VPA Development** if the grant of Development Consent to a Development Application referred to in clause 4.1 will result in the GFA of the buildings (including proposed buildings) on the Land exceeding 103,992.5 square metres (**Maximum GFA**).
- (c) Development is not **VPA Development** within the meaning of clause 4.1(a) if a modification of a Development Consent to a Development Application referred to in clause 4.1(a) will result in the Maximum GFA being exceeded.
- (d) For the purpose of determining whether the grant of Development Consent to a Development Application (**Subject Development Application**) will result in the Maximum GFA being exceeded, the following are to be taken into account:
 - (i) the GFA of any existing building on the Land; and
 - (ii) any GFA authorised under an existing Development Consent (being a Development Consent which is granted before or at the same time as the Subject Development Application is determined), irrespective of whether any work or development has commenced under the existing Development Consent.

5. Development Contribution

5.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4.

5.2 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 7.23 of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
 - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount for any part of the VPA Development authorised by a relevant Development Consent is less than a Contribution Amount that would otherwise be payable under this deed for that part of the VPA Development, then:
 - (i) the Developer is required to pay only the SIC Amount; and

- (ii) that amount is to be treated as the Contribution Amount for the purposes of Schedule 4.
- (c) Clause 5.2(b) applies only if the Development Contribution has not been paid in full or is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (d) In this clause 5.2, a reference to the SIC Amount for any part of the VPA Development authorised by a relevant Development Consent is a reference to the amount of the monetary contribution for that part of the VPA Development calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 7.24 of the Act had not been excluded by this deed and the Development Consent had been granted on or after the SIC Determination took effect.
- (e) For the avoidance of any doubt, if the SIC Amount is greater than the Contribution Amount payable under this deed for a part of the VPA Development, then the Developer is only required to pay the Contribution Amount under this deed and is not required to pay the SIC Amount.

5.3 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution made by the Developer; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

6. Interest

6.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of the amount due from the due date for payment of that amount until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

7. Enforcement

7.1 Developer to provide Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

8. Registration

8.1 Registration of deed

- (a) Within 15 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:

- (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents;
 - (iii) if required, the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

8.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 8.1(a)(iv) within 15 Business Days of such lodgement.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

8.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

8.4 Interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 8.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 8.

8.5 Right to lodge caveat

- (a) Subject to clause 8.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 8.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 8.5(a), then the Minister will do all things reasonably necessary to:

- (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 8.1.
- (c) If, after one month of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 8.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 8.5(a) to lodge and withdraw a caveat(s) (as applicable).

9. Dispute Resolution

9.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 9.

9.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

9.3 Attempt to resolve

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

9.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 9.2 (or any further period agreed in writing by them) as to:

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

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

9.5 Court proceedings

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

9.6 Not use information

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

9.7 No prejudice

This clause 9 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

10. GST

10.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

10.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

10.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

10.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 10.

10.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

10.6 Non monetary consideration

Clause 10.5 applies to non-monetary consideration.

10.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 10.5 the Developer must assume the Minister is not entitled to any input tax credit.

10.8 No merger

This clause does not merge on completion or termination of this deed.

11. Assignment and transfer

11.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 11.1.

11.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 11.2(a), the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 11.2.
- (d) This clause 11.2 does not affect the entry into a contract of sale by the Developer in respect of a proposed Lot in a proposed Strata Plan, where the Strata Certificate in relation to the proposed Strata Plan has not been issued.

11.3 Replacement Security

Provided that:

- (a) the Developer has complied with clause 11.1 and 11.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

12. Capacity

12.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

12.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

13. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents, modification of Development Consents, Subdivision Certificates, Construction Certificates, Occupation Certificates and Strata Certificates issued in relation to any part of the VPA Development;
 - (ii) a description of the status of the VPA Development including a plan that identifies what parts of the VPA Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of any part of the VPA Development;
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary, are necessary for the Secretary to assess the status of the VPA Development and the Developer's compliance with this deed.

14. General Provisions

14.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

14.2 Variation

This deed must not be varied except by a later written document executed by all parties.

14.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

14.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

14.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

14.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

14.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

14.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

14.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

14.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

14.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

14.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

14.13 No fetter

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

14.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

14.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable valuation costs, legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must pay the Minister's reasonable costs and disbursements in connection with the release and discharge of this deed with respect to any part of the Land pursuant to clause 8.3.
- (e) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 14.15(a), (b) and (d):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or

- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

14.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

14.17 Electronic Execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
 - (ii) insertion of the person's name on to the deed; or
 - (iii) use of a stylus or touch finger or a touch screen to sign the deed,

provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;

 - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or

- (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

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

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4 (3)(b))	See definition of VPA Development in clause 4
Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the VPA Development.
Applicability of section 7.24 of the Act – (section 7.4 (3)(d))	The application of section 7.24 of the Act is excluded in respect of the VPA Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 9
Enforcement of this deed – (section 7.4(3)(g))	See clause 7
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 14.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 8)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (section 21 of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (section 48 of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021)	Yes (see clause 3(e) of Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Email: planningagreements@planning.nsw.gov.au

Developer

Contact: The Directors and Company Secretary

Address: Karimbla Properties (No. 52) Pty Limited
Level 11, 528 Kent Street
SYDNEY NSW 2000

Email: matthewl@meriton.com.au

Schedule 3**Land (clause 1.1)****1. Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
2	1268157	2/1268157

Schedule 4

Development Contribution (clause 4)

1. Development Contribution

- (a) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Monetary contribution towards designated State public infrastructure	\$12,528,000	Pursuant to clause 3 of this Schedule 4

- (b) The Minister and Developer acknowledge and agree that the Development Contribution:
- (i) may be paid in up to three instalments – three Contribution Amounts; and
 - (ii) is the sum of the Contribution Amounts under this deed.

2. Calculation of the value of a Contribution Amount

- (a) The first Contribution Amount will be an amount equal to the sum represented by “X” in the following formula:

$$X = \text{Development Contribution} \times N / \text{Maximum GFA (First Contribution Amount)}$$

“N” means the number of square metres of GFA of a building on the Land in relation to which the first Occupation Certificate is sought (**First Building**).

- (b) The second Contribution Amount will be an amount equal to the sum represented by “X” in the following formula:

$$X = \text{Development Contribution} \times N / \text{Maximum GFA (Second Contribution Amount)}$$

“N” means the number of square metres of GFA of the Second Building on the Land in respect of which an Occupation Certificate is sought.

A reference to the **Second Building** on the Land, in this Schedule 4, is a reference to the building on the Land in respect of which an Occupation Certificate is next sought after one or more Occupation Certificates for the First Building have been sought.

- (c) The third Contribution Amount will be an amount equal to the sum represented by “X” in the following formula:

$$X = \text{Development Contribution} - \text{First Contribution Amount} - \text{Second Contribution Amount (Third Contribution Amount)}$$

- (d) On the CPI Adjustment Date, each Contribution Amount is to be adjusted by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.

- (e) For the avoidance of doubt, the omission or absence of any adjustment to a Contribution Amount in accordance with clause 2(d) of this Schedule 4, does not waive the requirement for that Contribution Amount to be adjusted in accordance with that clause.
- (f) In this clause and in clause 3 of this Schedule 4 a reference to a building on the Land is a reference to a building erected as part of VPA Development.
- (g) For the purposes of clause 2(a) and clause 2(b) of this Schedule 4, an Occupation Certificate is sought in relation to the First Building, or the Second Building, on the Land even if it is sought only for a part of the building. However, the GFA for the whole of the building concerned is to be determined in order to calculate "N", when applying the formula in each of those clauses. The Developer agrees that:
 - (i) the Minister may have regard to any information available for the purpose of determining the GFA, including in a Development Application for the erection of the building or an application for a Construction Certificate for the building, and
 - (ii) the Developer will provide the Minister with such information as the Minister (acting reasonably) requests for that purpose.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee the First Contribution Amount prior to the issue of the first Occupation Certificate in relation to the First Building.
- (b) The Developer must pay to the Minister or the Minister's nominee the Second Contribution Amount prior to the issue of the first Occupation Certificate in relation to the Second Building.
- (c) The Developer must pay to the Minister or the Minister's nominee the Third Contribution Amount on the earlier of:
 - (i) prior to the issue of the final Occupation Certificate for a building or part of a building on the Land; and
 - (ii) the date that is five years after the date of this deed.
- (d) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for an Occupation Certificate, if a Contribution Amount must be paid before the issue of that certificate in accordance with this Schedule 4.
- (e) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of an Occupation Certificate referred to in clause 3(d) of this Schedule 4 within the meaning of section 48 of [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Regulation 2021](#).

Schedule 5

Security terms (clause 7)

1. Developer to provide Security

- (a) In order to secure the performance of the Developer's obligations under this deed the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 20 770 707 468" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Security

- (a) At the time the Developer signs this deed, the Developer must provide the Security to the Minister having a face value amount of \$40,000 (**Security Amount**) in order to secure the Developer's obligations under this deed.
- (b) From the date of execution of this deed until the date that the Developer has satisfied all of its obligations under this deed, the Minister is entitled to retain the Security.

3. Claims under Security

- (a) The Minister may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount for any part of the VPA Development on or after the date for payment under this deed (or perform any other obligation on or after the day for performance under this deed); and
 - (ii) retain and apply such monies towards the Contribution Amount (or other obligation) and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon the Security; and
 - (ii) applies all or part of such monies towards the Contribution Amount (or other obligation) and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this Schedule, the Minister is in possession of Security for a face value equivalent to the Security Amount.

4. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Security;
and
- (b) the whole of the monies secured by the Security has not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Minister will return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Security (as the case may be), to the Developer no later than 20 Business Days after the Developer has satisfied all of its obligations under this deed secured by the Security.

Execution page

Executed as a deed

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



Signature of witness

Amanda Beaumont

Name of witness in full



Signature of delegate of the Minister for Planning **ELECTRONIC SIGNATURE OF MG**

BRETT WHITWORTH

Name of delegate of the Minister for Planning

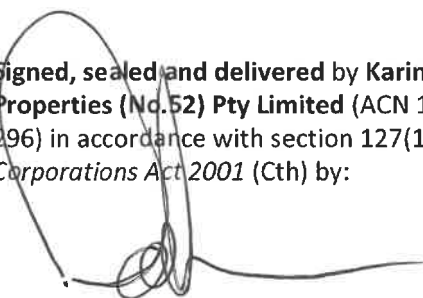
AFFIXED BY ME ON 30 July 2022

Level 17, 12 Darcy Street, Parramatta NSW 2150

Address of witness

*By signing this deed, the witness states that they witnessed the signing of this deed by Brett Whitworth [NAME] over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed, sealed and delivered by Karimbla Properties (No.52) Pty Limited (ACN 168 601 296) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:



Signature of Director

DAVID CREMONA

Name of Director in full



Signature of Director/Secretary

ROBYN McCULLY

Name of Director/Secretary in full