
The Minister for Planning and Public Spaces

Karimbla Properties (No. 51) Pty Ltd

Deed of Partial Surrender of Planning Agreement

Carter Street Priority Precinct
Contribution Area 1

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Date

Parties

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

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

Background

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

Agreed terms

1 Interpretation

1.1 Definitions

In this document these terms have the following meanings:

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

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

1.2 Construction

Unless expressed to the contrary, in this document:

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

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

2 Partial Surrender of Planning Agreement

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

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

3 Release

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

4 Release and discharge of Planning Agreement

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

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

5 Consent to surrender

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

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

6 Security under Planning Agreement

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

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

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

7 Notices

7.1 Delivery

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

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

Minister

Attention: The Planning Secretary

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

Fax Number: Not Used

Email: planningagreements@planning.nsw.gov.au

Developer

Attention: Li-Eng Wong, Corporate Counsel

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

Fax Number: 9287 2888

Email: lwong@meriton.com.au

7.2 Change of details

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

7.3 Giving of notice

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

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

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

7.4 Delivery outside of business hours

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

8 GST

8.1 Construction

In this **clause 8**:

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

8.2 Consideration GST exclusive

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

8.3 Payment of GST

If GST is payable on any supply made by:

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

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

8.4 Timing of GST payment

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

8.5 Tax invoice

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

8.6 Adjustment event

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

8.7 Reimbursements

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

9 General

9.1 Duty

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

9.2 Legal costs

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

9.3 Amendment

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

9.4 Waiver and exercise of rights

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

9.5 Rights cumulative

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

9.6 Consents

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

9.7 Further steps

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

9.8 Governing law and jurisdiction

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

9.9 No assignment

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

9.10 Liability

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

9.11 Counterparts

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

9.12 Entire understanding

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

9.13 Relationship of parties

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

9.14 Effect of execution

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

9.15 Deed

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

Execution

Executed as a deed.

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

.....
Witness

.....
Signature of Minister

.....
Name of Witness (print)

.....
Name of Minister

.....
Address of Witness (print)

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

.....
Company Secretary/Director
ROBYN McCULLY

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



.....
Director

DAVID CREMONA

.....
Name of Director (print)