

## **Deed**

**BATA II Site- 128 Bunnerong Road & 120 Banks  
Avenue, Eastgardens**

### **Planning Agreement**

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

**Bayside Council**

**Karimbla Properties (No. 39) Pty Ltd**

**Meriton Properties Pty Ltd**

Date:



**BATA II Site- 128 Bunnerong Road and 120 Banks  
Avenue, Eastgardens**  
**Planning Agreement**

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**BATA II Site- 128 Bunnerong Road & 120 Banks  
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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:** meredith.wallace@bayside.nsw.gov.au

**Representative:** General Manager

**Developer:**

**Name:** Karimbla Properties (No. 39) 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 Part 4, Part 5, and Schedule 1.

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

See clause 8.

**Enforcement:**

See Part 8.

**Registration:**

See clause 36.

**Restriction on dealings:**

See clause 37.

**Dispute Resolution:**

See Part 7.

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**Meriton Properties Pty Ltd**

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## **BATA II Site- 128 Bunnerong Road & 120 Banks Avenue, Eastgardens 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. 39) Pty Ltd** ABN 96 160 693 283 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 1 DP 1187426 and Lot 24 DP1242288 (**'Land'**).
- B The Developer has submitted the Planning Proposal seeking the LEP Amendment in relation to the Land.
- C The value of the Land will increase significantly if the LEP Amendment is made.
- D The Developer agrees to share the increased value with the Council by way of provision of Development Contributions being monetary contributions, the dedication/transfer of land and the carrying out of work.
- E The Developer, the Council and Guarantor have agreed to enter into this Deed to provide a range of public benefits as a result of the LEP Amendment being made.
- F The Parties also agree to amend the BATA I VPA as set out in Schedule 7 of this Deed.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:



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**Karimbla Properties (No. 39) Pty Ltd**

**Meriton Properties Pty Ltd**

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

**Affordable Housing** has the same meaning as in the Act.

**Affordable Housing Unit** or **AHU** means a Dwelling that is Affordable Housing in a location and to a specification approved by the Council.

**Affordable Housing Unit Contributions Credit** means, in respect of an AHU that has been selected by the Council under clause 18, the amount of monetary contributions under s7.11 of the Act that has been paid in respect of that unit.

**AHU Standards** means the Council's standards for Affordable Housing Units as set out in Schedule 2 of this Deed.

**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.

**BATA I Development Consent** means Development Consent to concept development application DA14/96 granted by the Land and Environment Court in proceedings 10730 of 2014 and dated as entered 31 August 2015 in respect of the BATA I Land, as modified from time to time.

**BATA I Land** means land comprising Lots 21, 22, 23 and 24 DP1242288, Lot 3 DP1236520 and any lots owned by the Developer within SP97153 as subdivided from time to time

**BATA I VPA** means the planning agreement under s7.4 of the Act entered into between the Developer and the Council dated 7 August 2015 and as amended from time to time.

**Building** has the same meaning as in the Act.

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

**Compliance Certificate** means a compliance certificate within the meaning of s6.4(e)(iv) of the Act.



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

**Concept Masterplan** means the approved plans under DA 2019/386 (as amended) from time to time

**Construction Certificate** has the same meaning as in the Act.

**Contributions Plan** means the contributions plan approved by the Council under s7.18 of the Act and titled '*Former City of Botany Bay s7.11 Development Contributions Plan 2016 Amendment 1*', as amended and replaced from time to time.

**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** in respect of a Work means the period of 1 year commencing on the day immediately after the Land on which the Work is located is dedicated to the Council.

**Development** means development on the Land in accordance with a Development Consent (as modified or substituted from time to time under the Act) granted pursuant to the BATA I Development Consent or as a consequence of the making of the LEP Amendment.

**Development Application** has the same meaning as in the Act and to avoid doubt includes a Concept Development Application.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication/transfer 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.

**Dwelling** has the same meaning as in the LEP.

**ELNO** has the meaning given to that term in the Participation Rules.

**Embellishment Work** means embellishment of the open space to be dedicated under this Deed.

**Embellishment Work Concept Plan** means the Concept Plan in Schedule 6 prepared by Meriton dated 06 October 2020 and approved under the Concept Masterplan

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**Embellishment Work Credit Value** means the amount that is 86.5% of the Embellishment Work Value.

**Embellishment Work Value** means \$10,091,535 as per Schedule 5 being the estimated value of the Embellishment Work subject to clause 13.5.

**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.

**Floor Space Ratio or FSR** has the same meaning as in the LEP.

**Future Agreed Embellishment Work Specification** means the future agreed specification to be agreed in writing between parties for the carrying out and completion of embellishment of open space to be dedicated, or made publicly accessible, under this Deed as per the Agreed Embellishment Value (Schedule 5) and the Embellishment Work Concept Plan (Schedule 6) to the satisfaction of Council acting reasonably.

**Gross Floor Area or GFA** has the same meaning as in the LEP.

**GST** has the same meaning as in the GST Law.

**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.

**Independent Quantity Surveyor** means an appropriately qualified quantity surveyor, jointly appointed by the Parties for the purposes of this Deed.

**Item** means an item specified in Column 1 of the Table in Schedule 1.

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

**Land** means land comprising Lot 1 DP 1187426 and Lot 24 DP1242288, otherwise known as 128 Bunnerong Road, Eastgardens and 120 Banks Avenue, Eastgardens, and any lot or strata lot created from a subdivision or strata subdivision of those lots.

**LEP** means the *Botany Bay Local Environmental Plan 2013*.

**LEP Amendment** means an amendment to the LEP as a result of the Planning Proposal.

**LG Act** means the *Local Government Act 1993*.

**Local Contribution** means a monetary Development Contribution required to be paid under Item 1 of the Table in Schedule 1.

**Lot 24** means land comprising Lot 24 DP1242288 and any lot or strata lot created from a subdivision or strata subdivision of those lots.

**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.

**Major Defect** means:

- (a) a Defect in a Work that is attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the



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structural performance requirements of the National Construction Code (or any combination of these), and that causes, or is likely to cause:

- (i) the inability to inhabit or use the Work (or part of the Work) for its intended purpose, or
  - (ii) the destruction of the Work or any part of the Work, or
  - (iii) a threat of collapse of the Work or any part of the Work, or
- (b) if the external cladding of a Work causes or is likely to cause a threat to the safety of any occupants of the Work if a fire occurs, or
- (c) the use of a building product (within the meaning of the *Building Products (Safety) Act 2017*) in contravention of that Act.

**Minor Defect** means a Defect that is not a Major Defect.

**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)*.

**Planning Proposal** means the document proposing amendments to the LEP submitted by the Developer to the Council in April 2017 and the subject of the gateway determination dated 12 December 2017 (as altered on 9 October 2018) under s3.34 of the Act and as varied pursuant to s3.35 of the Act.

**Proposed Subdivision Plan** means the plan in Schedule 4 prepared by SJB Architects titled 'Lot Subdivision Plan' with Job No. 5826, Drawing No. A-0102 Revision 14 dated 1 October 2020.

**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 a bond (including 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.

**Seniors Housing** has the same meaning as in the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

**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.

**Stage 1 DA** means the Concept Development Application in respect of the Land to facilitate Development on the Land as a consequence of the making of the LEP Amendment.

**Subdivision Certificate** has the same meaning as in the Act.



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**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.
  - 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 'transfer' or 'dedication' in relation to land is a reference to dedicate or dedication or transfer 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 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.
- 3.3 The Parties agree that any provisions in this Deed requiring the provision of Development Contributions do not apply until the LEP Amendment takes effect.

## **4 Application of this Deed**

- 4.1 This Deed applies to:
- 4.1.1 the LEP Amendment,
  - 4.1.2 the Land,
  - 4.1.3 the Development, and
  - 4.1.4 the BATA I Land and the BATA I 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 the validity of this Deed or any condition in the Approval requiring compliance with this Deed.

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

- 8.1 This Deed excludes the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 This Deed does not exclude the application of s7.24 to the Development.

## **Part 2 –Preliminary Actions to be taken by the Developer**

### **9 Preliminary Actions**

- 9.1 Within 12 Months after the date the LEP Amendment takes effect, the Developer
  - 9.1.1 is to make a Development Application or the Stage 1 DA to the Council for the Development, and
  - 9.1.2 is to make a Development Application which will include a detailed proposal for the first stage of development the subject of the Development Application or Stage 1 DA referred to in clause 9.1.1 authorising the construction of a building in the Development containing a Dwelling.
- 9.2 If a Development Consent is granted to allow construction of the Development, the Developer is to commence carrying out the Development within 6 months of the date of the Development Consent.

## **Part 3 – Amendment to BATA I VPA**

### **10 Amendment to BATA I VPA**

- 10.1 On and from the date the LEP Amendment takes effect, the BATA I VPA is amended in accordance with Schedule 8.



## **Part 4 – Development Contributions**

### **11 Provision of Development Contributions**

- 11.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1 and any other provision of this Deed relating to the making of Development Contributions.
- 11.2 Any value specified in this Deed in relation to a Development Contribution comprising a Work does not serve to define the extent of the Developer's obligation to carry out the Work.
- 11.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 11.4 Despite clause 11.2 and except as provided in clause 12.4, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 11.5 The Council may:
  - 11.5.1 classify Affordable Housing Units that have been transferred to it under this Deed as 'operational' under the Division 2 of Part 6 of the LG Act, and
  - 11.5.2 in respect of any Affordable Housing Unit classified operational, sell the unit not sooner than 10 years after its transfer to the Council and hold the net proceeds of sale in trust in the Council's trust fund established under s411 of the LG Act to be applied towards reinvestment in the provision of Affordable Housing in the Council's area.
- 11.6 If the Council decides to sell one or more of the AHU's to a person other than a provider of Affordable Housing, it agrees to give Karimbla Properties (No. 39) Pty Ltd the first right of refusal to purchase the unit at market value.

### **12 Monetary Contributions**

- 12.1 If the LEP Amendment takes effect, the Developer is to make a monetary Development Contribution to the Council, in an amount of \$23,900,000.00 subject to clause 12.2.
- 12.2 The Parties acknowledge that:
  - 12.2.1 if the LEP Amendment authorises an FSR of more than 2.4:1 for the Land, the Developer is to pay an additional monetary Development Contribution calculated in accordance with the following formula:

$$\text{AMDC} = \$113.54 \times \text{SMA}$$

where

**AMDC** is the additional monetary Development Contribution

**SMA** is the number of square metres of GFA above 210,490sqm that is authorised by the LEP Amendment calculated by reference to the FSR for the Land

- 12.2.2 if the LEP Amendment authorises an FSR of less than 2.3:1 for the Land, the amount of monetary Development Contribution the Developer is to pay under clause 12.1 is to be reduced by an amount calculated in accordance with the following formula:

$$\text{RMDC} = \$113.54 \times \text{SMB}$$

where

**RMDC** is the amount of reduction of monetary Development Contribution

**SMB** is the number of square metres of GFA below 210,490sqm that is authorised by the LEP Amendment calculated by reference to the FSR for the Land

- 12.3 The monetary Development Contribution the Developer is required to pay under this clause 12 is to be paid as set out in Schedule 1.
- 12.4 The monetary Development Contribution paid by the Developer under this clause 12 is to be applied towards upgrading the Botany Aquatic Centre or the provision or upgrading of any other public infrastructure facility that the Council considers would benefit residents in the local and broader community.

### **13 Local Contribution Credit**

- 13.1 In this clause, **Local Contribution Credit** means the amount calculated in accordance with the following formula:

$$\text{LCC} = \text{EWCV} + \text{AHUCC} - \text{AA}$$

Where:

**LCC** is the Local Contribution Credit

**EWCV** is the Embellishment Work Credit Value

**AHUCC** is the sum of all Affordable Housing Unit Contributions Credits for all AHUs that have been selected under clause 17.

**AA** means the total amount of Local Contribution Credit that has been applied to satisfy a Local Contribution under clause 13.2.

- 13.2 If a Local Contribution becomes payable under this Deed, the Developer may apply the Local Contribution Credit in satisfaction of the requirement to pay the Local Contribution.
- 13.3 The Developer is to specify the amount of the Local Contribution Credit to be applied under clause 13.2 in respect of Dwellings proposed in a Development Application, prior to the granting of Development Consent to the Development Application.
- 13.4 The Council is not required to pay the Developer any part of the Local Contribution Credit that remains unapplied at the conclusion of the of the Development.



- 13.5 As agreed in writing between Parties, within an agreed timeframe after the first Development Consent for the Development and before a Local Contribution is due to be paid, the Parties are to jointly request an Independent Quantity Surveyor to calculate the value of the Embellishment Work approved in the first Development Consent with regard to the Embellishment Work Value (Schedule 5) and provide a written report to the Parties.
- 13.6 The Embellishment Work approved in the first Development Consent is taken to be the Future Agreed Embellishment Work Specification for that particular item of Work in this Deed as agreed in writing between the Parties.
- 13.7 The value of Embellishment Work calculated by the Independent Quantity Surveyor in clause 13.5 is taken to be the new Embellishment Work Value for that particular work item in this Deed, replacing the value for that particular item of work from Schedule 5. Schedule 5 and the Future Agreed Embellishment Work Specification may be varied from time to time as agreed in writing between Parties for each subsequent item of Work in line with each new Development Application in accordance with Clause 13.5.

#### **14 Payment of monetary Development Contributions**

- 14.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or 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.
- 14.2 A monetary Development Contribution the Developer is required to pay under this Deed is to be indexed in accordance with quarterly movements in the CPI from the date of this Deed, or such date as expressly identified in Schedule 1 (if any), until the date the monetary Development Contribution is paid in full to the Council.
- 14.3 In respect of the monetary Development Contribution Item 2 in Schedule 1, without limiting any other clause in this Deed, if any such monetary Development Contributions are not paid by the date they are required to be paid, then:
- 14.3.1 in addition to the amount of monetary Development Contributions as indexed, the Developer is to pay to the Council interest calculated on the indexed amount at the Reserve Bank of Australia cash rate plus 2% (rounded up to the nearest half per cent) in respect of the period from the date the monetary Development Contributions were required to be paid until the date of payment, and
- 14.3.2 no Occupation Certificates in respect of the Development are to be issued unless and until the Council has provided written confirmation to the Developer that all outstanding monetary Development Contributions as indexed and any interest on them have been paid to the Council.



## **15 Dedication of land**

- 15.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 15.1.1 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
- 15.1.2 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;
- 15.1.3 the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 15.2 The Developer is to do all things reasonably necessary to enable registration of the transfer to occur.
- 15.3 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.
- 15.4 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.
- 15.5 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 15.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

## **16 Variation to timing of payment of monetary Development Contributions and Dedication of Land**

- 16.1 The timing for provision of monetary Development Contribution or dedication or transfer of land that is required to be paid, dedicated or transferred under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 16.2 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.

- 16.3 The timing for provision of the relevant Development Contribution is taken to be varied when the Party to whom the request is made gives its Approval to the request.
- 16.4 Subject to clause 16.5, the Party to whom a request under clause 16.1 is made may give or withhold its approval to the request in that Party's sole discretion.
- 16.5 The Party to whom a request under clause 16.1 is made is not to unreasonably delay or withhold its approval to the request if it is satisfied that the request arises due to financial impact of the COVID-19 pandemic.

## **Part 5 - Provisions relating to Affordable Housing**

### **17 Affordable Housing Units**

- 17.1 The Affordable Housing Units to be provided by the Developer under this Deed are to:
  - 17.1.1 be located on the BATA I Land or the Land or both,
  - 17.1.2 if located on the Land, be located within the first Stage of the Development,
  - 17.1.3 comprise a mixture of 1, 2 and 3 bedroom units totalling 100 bedrooms contained in a maximum of 50 units in total, and
  - 17.1.4 comprise approximately:
    - (a) 20% of bedrooms in 1 bedroom units,
    - (b) 30% of bedrooms in 2 bedroom units, and
    - (c) 50% of bedrooms in 3 bedroom units,
  - 17.1.5 be constructed in accordance with the AHU Standards.
  - 17.1.6 have the same storage areas as similar units within the Building in which they are located which have the same number of bedrooms as the AHU,
  - 17.1.7 subject to clause 17.2, have an average of:
    - (a) 0.5 car parking spaces across all 1 bedroom AHUs,
    - (b) 1 car parking space across all 2 bedroom AHUs, and
    - (c) 1.5 car parking spaces across all 3 bedroom AHUs.
- 17.2 For the purposes of clause 17.1.7, if an AHU has already been created as separate strata lot under the *Strata Schemes Development Act 2015*, at the commencement of this Deed, then the AHU is to have car parking spaces as allocated to that AHU under the strata plan that created the strata lot.
- 17.3 The Parties are to work together in good faith towards supporting an amendment of the LEP which provides additional GFA for the Land in order to



compensate for AHUs provided by the Developer under this Deed at a rate of at least 100m<sup>2</sup> per AHU transferred.

## **18 Selection process for Affordable Housing Units**

- 18.1 At the time the Developer makes the first Development Application to the Council for the carrying out of the Development which includes construction of the first Stage of the Development, the Developer is to nominate Dwellings comprising a minimum of 120 rooms from which the Council is to select as AHUs to be provided to the Council under this Deed.
- 18.2 No more than 30% of the Dwellings nominated by the Developer under clause 18.1 are to be Dwellings which receive no direct sunlight between 9am and 3pm in the mid winter (21 June).
- 18.3 The Council must select the AHU's within 21 days of notification being given by the Developer under clause 18.1.
- 18.4 The Parties acknowledge and agree that as at the date this Deed commences, the Developer has nominated and the Council has selected the AHUs to be transferred or dedicated under this Deed.
- 18.5 Despite clause 18.4, the Parties acknowledge and agree that if there is an amendment to the Development Application for the carrying out of the Development which impacts on any aspect of the AHUs selected by the Council, then the selection process in clauses 18.1 and 18.3 re-applies.
- 18.6 The Council acknowledges that the AHU's to be transferred may be used by the Developer for residential purposes prior to transfer to the Council and in respect of such AHUs, the Developer is to repair, replace and renew any aspect of the AHU's to the reasonable satisfaction of the Council prior to transfer to the Council.
- 18.7 Prior to transfer of an AHU under this Deed, the Developer permits the Council to access and inspect the AHU.

## **Part 6 - Provisions relating to carrying out of Work**

### **19 Carrying out of Work**

- 19.1 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.
- 19.2 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.



## **20 Variation to Work**

- 20.1 The timing for provision, 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, without the necessity for an amendment to this Deed.
- 20.2 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 20.3 The timing for provision, design or specification of a Work is taken to be varied when the Party to whom the request is made gives its Approval to the request.
- 20.4 Subject to clauses 20.5 to 20.9, the Party to whom a request under clause 20.1 is made may give or withhold its approval to the request in that Parties sole discretion.
- 20.5 The Party to whom a request under clause 20.1 is made to amend the timing for provision of a work is not to unreasonably delay or withhold its approval to the request if it is satisfied that the request arises due to financial impact of the COVID-19 pandemic .
- 20.6 Without limiting clause 20.1, 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.
- 20.7 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 20.6.
- 20.8 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.
- 20.9 The Developer is to comply promptly with a direction referred to in clause 20.8 at its own cost.
- 20.10 If Council requests a variation of the Embellishment Work after the review of the Embellishment Work Value under clause 13.5, then the Parties are to recalculate the Embellishment Work Value in accordance with clauses 13.5 to 13.7

## **21 Access to land by Developer**

- 21.1 The Council authorises the Developer to enter, occupy and use land owned or controlled by the Council for the purpose of performing its obligations under this Deed.
- 21.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 21.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 21.1 or 21.2.

## **22 Access to land by Council**

- 22.1 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.
- 22.2 In accessing the land under clause 22.1, the Council is to comply with the reasonable directions of the Developer relating to work, health and safety.
- 22.3 The Council is to give the Developer prior reasonable notice before it enters land under clause 22.1.

## **23 Protection of people, property & utilities**

- 23.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 23.1.1 all necessary measures are taken to protect people and property,
- 23.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 23.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 23.2 Without limiting clause 23.1, 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.

## **24 Repair of damage and maintenance**

- 24.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the land on which the Work is located is dedicated to the Council or such later time as agreed between the Parties.
- 24.2 From the date the land on which a Work is located is dedicated to the Council until the issuing of the last Occupation Certificate for the last Building in the Development, the Developer is to maintain the Work in accordance with the operation and maintenance strategy and an operation and maintenance agreement agreed and entered into between the Parties under clause 24.3 and 24.4.
- 24.3 For the purposes of clause 24.2, the Parties are to agree on an operation and maintenance strategy to be prepared by a suitably qualified person at the expense of the Developer which outlines the operational objectives and specifications for the operation and maintenance of a Work.
- 24.4 For the purposes of clause 24.2, the Parties are to enter into an operation and maintenance agreement which includes, without limitation, the following terms:
- 24.4.1 the Developer is not responsible for:
- (a) repairing, replacing or renewing any fair wear and tear of the Work, or



- (b) any Major Defect outside of the Defects Liability Period or
  - (c) malicious damage (other than graffiti) that would not ordinarily be covered under a maintenance agreement,
- 24.4.2 the Developer is responsible for:
  - (a) any Major Defect within the Defects Liability Period,
  - (b) any Minor Defect in the Work, and
  - (c) any damage caused by graffiti, and
  - (d) other damage that would ordinarily be covered under a maintenance agreement,
- 24.4.3 the Developer's approach to achieving the operations and management objectives and performance measures set out in the operation and maintenance strategy agreed between the Parties under clause 24.3,
- 24.4.4 the procedures, timing, intervention levels, specifications for activities including but not limited to:
  - (a) inspections,
  - (b) operational activities,
  - (c) scheduled maintenance
  - (d) preventative maintenance
  - (e) reactive maintenance, and
  - (f) request/response management.
- 24.5 The operation and maintenance strategy and operation and maintenance agreement referred to in clauses 24.3 and 24.4 are to be agreed and entered into within 9 months of the commencement of this Deed.
- 24.6 The Developer is to carry out its obligation under clause 24.1 at its own cost and to the satisfaction of the Council.

## **25 Completion of Work**

- 25.1 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.
- 25.2 The Council is to inspect the Work the subject of the notice referred to in clause 25.1 and provide written notice to the Developer of such an inspection within 21 days of the date specified in the notice for completion of the Work.
- 25.3 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.
- 25.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 25.3 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.

- 25.5 Before the Council gives the Developer a notice referred to in clause 25.3, 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.
- 25.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 25.5.

## **26 Rectification of defects**

- 26.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 26.2 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.
- 26.3 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.
- 26.4 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 26.1.

## **27 Works-As-Executed-Plan**

- 27.1 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 electronic format in respect of the Work.
- 27.2 The Developer, being the copyright owner in the plan referred to in clause 27.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

## **28 Removal of Equipment**

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

## **Part 7 – Dispute Resolution**

### **29 Dispute resolution – expert determination**

- 29.1 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:



- 29.1.1 the Parties to the Dispute agree that it can be so determined, or
- 29.1.2 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.
- 29.2 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.
- 29.3 If a notice is given under clause 29.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 29.4 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.
- 29.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 29.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 29.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

## **Part 8 - Enforcement**

### **30 Guarantee**

- 30.1 The Guarantor gives this guarantee and indemnity in consideration of the Council agreeing to enter into this Deed.
- 30.2 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.
- 30.3 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.
- 30.4 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 Guarantors of a tax invoice for the amount payable.
- 30.5 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.

## **31 Security for performance of obligations**

- 31.1 The Developer is to provide Security to the Council in the amount of \$250,000.00 in relation to the performance of its obligations under this Deed.
- 31.2 The Developer is to provide the Security to the Council before it commences any part of the Development.
- 31.3 The Council, in its absolute discretion and despite clause 20, 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.
- 31.4 The Council may call-up and apply the Security in accordance with clause 34 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.
- 31.5 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.
- 31.6 The Developer may at any time provide the Council with a replacement Security.
- 31.7 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 31.8 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.
- 31.9 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

## **32 Caveat and Discharge**

- 32.1 The Developer agrees that:
  - 32.1.1 the Council may lodge a caveat on the title of the Land (excluding any lot created by the registration of a strata plan or a strata plan of subdivision under the *Strata Schemes Development Act 2015*),
  - 32.1.2 notwithstanding clause 32.1.1 the Council may lodge a caveat on the title to any land that is to be dedicated/transferred to the Council under this Deed and for the avoidance of doubt includes any AHU that has been selected by the Council under clause 18 but only once a separate title is created that solely contains the land to be transferred and the individual strata lot that contains an AHU.
  - 32.1.3 the Council cannot be required to have the caveat removed from the title other than in accordance with clause 32.2.
- 32.2 The Developer is not to object or challenge, or cause or procure any objection or challenge to the registration of a caveat under clause 32.



- 32.3 The Council is to withdraw the caveat from the title to any land on which this Deed is registered.
- 32.4 The Council agrees that the caveat shall not prevent the registration of a plan of subdivision, strata plan or strata plan of subdivision in respect of the Land and the BATA I Land.

### **33 Acquisition of land required to be dedicated**

- 33.1 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.
- 33.2 The Council is to only acquire land pursuant to clause 33.1 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.
- 33.3 Clause 33.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 33.4 If, as a result of the acquisition referred to in clause 33.1, 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 recover that amount in any court of competent jurisdiction.
- 33.5 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.
- 33.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 33, including without limitation:
  - 33.6.1 signing any documents or forms,
  - 33.6.2 giving land owner's consent for lodgement of any Development Application,
  - 33.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
  - 33.6.4 paying the Council's costs arising under this clause 33.

### **34 Breach of obligations**

- 34.1 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:
  - 34.1.1 specifying the nature and extent of the breach,
  - 34.1.2 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,
- 34.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 34.2 If the Developer fails to fully comply with a notice referred to in clause 34.1, the Council may direct the Guarantor to remedy the Developer's breach and the Guarantor is to comply with the notice.
- 34.3 Without limiting clause 34.2, if the Developer fails to comply with a notice given under clause 34.1 relating to the carrying out of Work under this Deed and the Guarantor also fails to comply with a notice under clause 34.2, the Council may 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.
- 34.4 Any costs incurred by the Council in remedying a breach in accordance with clause 34.2 or clause 34.3 may be recovered by the Council by either or a combination of the following means:
  - 34.4.1 by calling up and applying the Security provided by the Developer under this Deed, or
  - 34.4.2 as a debt due in a court of competent jurisdiction.
- 34.5 For the purpose of clause 34.4, the Council's costs of remedying a breach the subject of a notice given under clause 34.1 include, but are not limited to:
  - 34.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 34.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 34.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 34.6 Nothing in this clause 34 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.

### **35 Enforcement in a court of competent jurisdiction**

- 35.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 35.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 35.2.1 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



- 35.2.2 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 9 – Registration & Restriction on Dealings**

### **36 Registration of this Deed**

- 36.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 36.2 Upon commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 36.2.1 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
- 36.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 36.3 Upon the Council selecting any AHUs on the BATA I Land, the Developer is to deliver to the Council in registrable form:
- 36.3.1 an instrument requesting registration of this Deed on the title to those AHUs duly executed by the Developer and each person (other than the Council) required by the Registrar-General to execute such instrument, and
- 36.3.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 36.4 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 36.5 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:
- 36.5.1 in so far as the part of the Land is a lot created by the registration of a strata plan or a strata plan of subdivision under the *Strata Schemes Development Act 2015*, that is not an AHU selected under clause 18, common property or a lot to be transferred to the Council or to be made publicly accessible under this Deed,
- 36.5.2 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.
- 36.6 For the avoidance of doubt, nothing in this clause requires the Council to release this Deed from the title to:
- 36.6.1 any common property on the Land prior to the completion of the Developer's obligations under this Deed,

- 36.6.2 any land required to be transferred to the Council under this Deed prior to the transfer of the Land to the Council in accordance with this Deed,
- 36.6.3 any land required to be made publicly accessible under this Deed prior to the registration of an easement in gross on the title to that land in accordance with this Deed.

### **37 Restriction on dealings**

- 37.1 The Developer is not to:
  - 37.1.1 sell or transfer the Land or any part, or
  - 37.1.2 sell or transfer any AHUs on the BATA I Land that have been selected under clause 18, or
  - 37.1.3 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
  - 37.1.4 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
  - 37.1.5 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
  - 37.1.6 the Developer is not in breach of this Deed, and
  - 37.1.7 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 37.2 Subject to clause 37.3, 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 37.1.
- 37.3 Clause 37.1 does not apply in relation to any sale or transfer of:
  - 37.3.1 the land if this Deed is registered on the title to the land at the time of the sale, or
  - 37.3.2 a lot created or to be created by the registration of a strata plan or a strata plan of subdivision under the *Strata Schemes Development Act 2016* that is not an AHU selected under clause 18, common property or a lot to be transferred to the Council or to be made publicly accessible under this Deed, or
  - 37.3.3 any part of the Land where the sale or transfer is solely for the purposes of providing Seniors Housing on that part of the Land and the Council is given not less than 30 days notice of the sale or transfer.



## **Part 10 – Indemnities & Insurance**

### **38 Risk**

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

### **39 Release**

- 39.1 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.

### **40 Indemnity**

- 40.1 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.

### **41 Insurance**

- 41.1 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:
- 41.1.1 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,
  - 41.1.2 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,
  - 41.1.3 workers compensation insurance as required by law, and
  - 41.1.4 any other insurance required by law.
- 41.2 If the Developer fails to comply with clause 41.1, 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:
- 41.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
  - 41.2.2 recovery as a debt due in a court of competent jurisdiction.

- 41.3 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 41.1.

## **Part 11 – Other Provisions**

### **42 Notices**

- 42.1 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:
- 42.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 42.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 42.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 42.2 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.
- 42.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 42.3.1 delivered, when it is left at the relevant address,
  - 42.3.2 sent by post, 2 business days after it is posted,
  - 42.3.3 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
  - 42.3.4 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.
- 42.4 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.

### **43 Approvals and Consent**

- 43.1 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.
- 43.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.



#### **44 Costs**

- 44.1 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.
- 44.2 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.

#### **45 Entire Deed**

- 45.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 45.2 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.

#### **46 Further Acts**

- 46.1 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.

#### **47 Governing Law and Jurisdiction**

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

#### **48 Joint and Individual Liability and Benefits**

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

## **49 No Fetter**

- 49.1 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.

## **50 Illegality**

- 50.1 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.

## **51 Severability**

- 51.1 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.
- 51.2 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.

## **52 Amendment**

- 52.1 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 25D of the Regulation.

## **53 Waiver**

- 53.1 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.
- 53.2 A waiver by a Party is only effective if it:
- 53.2.1 is in writing,
  - 53.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 53.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 53.2.4 is signed and dated by the Party giving the waiver.
- 53.3 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.



- 53.4 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.
- 53.5 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.

## **54 GST**

- 54.1 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.

- 54.2 Subject to clause 54.4, 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.
- 54.3 Clause 54.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 54.4 No additional amount shall be payable by the Council under clause 54.2 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.
- 54.5 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:
- 54.5.1 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;
- 54.5.2 that any amounts payable by the Parties in accordance with clause 54.2 (as limited by clause 54.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

- 54.6 No payment of any amount pursuant to this clause 54, 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.
- 54.7 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.
- 54.8 This clause continues to apply after expiration or termination of this Deed.

## **55 Explanatory Note**

- 55.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 55.2 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.



36



**Schedule 1**

(Clause 11)

**Development Contributions**

| Column 1              | Column 2       | Column 3        | Column 4 |
|-----------------------|----------------|-----------------|----------|
| Item/<br>Contribution | Public Purpose | Manner & Extent | Timing   |

**A. Monetary Contributions**

1. Local monetary  
contribution per  
Dwelling

Public purposes specified in the  
Contributions Plan

The Developer is to pay to the  
Council an amount per Dwelling in  
the Development calculated in  
accordance with the Contributions  
Plan, being an amount that would  
have been required to be paid under  
s7.11 of the Act if s7.11 applied to  
the Development.

The amount per Dwelling is to be paid prior to the issuing of  
the Occupation Certificate for the Dwelling.

2. Clause 12  
monetary  
Development  
Contribution

As per Clause 12.4

\$23,900,000 as varied in accordance  
with clause 12.2. and indexed in  
accordance with Clause 14.2.

The amount is to be paid in the following instalments:

1. \$1,500,000 (as indexed) to be paid within 15 business days of the later of:
  - a. the granting of Development Consent to the Development Application DA2020/303; and
  - b. the date this Deed commences,
 or as otherwise agreed in writing between the Parties.
2. \$16,400,000 (as indexed) to be paid before the later of:
  - a. 1 July 2021, and
  - b. the date that is 15 business days after the granting of Development Consent to a Development Application that was lodged prior to the 31st January 2021 which authorises the construction of a building in the Development containing a Dwelling over Lot E, if any such Development Application is lodged,
 or as otherwise agreed in writing between the Parties.
3. The balance (as indexed) to be paid before the later of:
  - a. 1 July 2022, and
  - b. the date that is 15 business days after the granting of any Development Consent to a Development Application that was lodged after 1st February 2021 and within the remainder of the 2021 calendar year which authorises the construction of a building in the Development



containing a Dwelling, if any such Development Application is lodged,

or as otherwise agreed in writing between the Parties.

**3. BATA I VPA  
monetary  
contributions**

- Upgrading the intersection of Page Street and Wentworth Avenue including works and services at the intersection
- Upgrading the intersection of Baker Street and Wentworth Avenue including works and services at the intersection
- Upgrading Jellicoe Park by providing a new sports amenities building (change rooms, referees room, toilets, kiosk, kitchenette, storage and the like) and upgrade to perimeter fencing
- Improvements to Mutch Park, including provision of a skate park and the supply or building of other recreational facilities; and,
- Undertaking other works with any remaining funds being works to be

\$2,478,000 indexed in accordance with the CPI from 2nd March 2018

The amount is to be paid prior to the issuing of any Occupation Certificate that authorises the occupation of any part of a Building in the Development containing a Dwelling

undertaken at the sole discretion of the Council, for use in respect of any public purpose]

## **B. Dedication of Land**

|                             |                           |   |  |
|-----------------------------|---------------------------|---|--|
| 4. Public open space        | Open space and recreation | Dedication to the Council free of cost to the Council not less than 16,995m2 of land as public open space generally in the location marked as 'Open Space 01', 'Open Space 02', 'Open Space 03', 'Open Space 04', 'Open Space 06', 'Open Space 07', 'Open Space 08' on the Proposed Subdivision Plan. | A public open space lot shown on the Proposed Subdivision Plan is to be dedicated upon the earlier of the completion of the Work that is located on the open space lot or prior to the issuing of any Occupation Certificate for any Building in the last Stage of the Development.  |
| 5. Public road              | Roads                     | Dedication of all roads approved in the Development, being those generally as shown on the Concept Masterplan   | Roads to be dedicated prior to the issuing of any Occupation Certificate for any Building in the last Stage of the Development.  |
| 6. Affordable Housing Units | Affordable housing        | Transfer to the Council free of cost the AHUs as selected by the Council under clause 18  | In respect of AHUs located on the BATA I Land, they to be transferred to the Council in stages as follows:<br><br>1. 5 AHU's to be transferred prior to the issuing of the first Construction Certificate that authorises the erection of a Building in the Development containing a Dwelling.<br><br>2. Remaining AHU's are to be transferred as directed by the Council in writing from time to time provided that the Council is to give the Developer at least 120 days' |



notice for each stage of the AHU's to be transferred, the AHU's are to be transferred in groups of not less than 10 AHU's per stage, and the Developer may transfer the AHU's at any time within the 120 day notice period.

In respect of all AHUs located on the Land, each AHU is to be transferred prior to the issuing of the first Occupation Certificate for any part of the Building in which the AHU is located.

### **C. Carrying out of Work**

7. Embellishment Work

Open space and recreation

Carrying out and completion of embellishment of open space to be dedicated, or made publicly accessible, under this Deed as per the Embellishment Work Value and Future Agreed Embellishment Work Specification and the Embellishment Work Concept Plan to the satisfaction of the Council (acting reasonably).

Embellishment to be completed before the time the open space is required to be dedicated or made publicly accessible (as the case may be) under this Deed.

8. Public art

Open space and public amenity

Procure and complete installation of public art on Open Space 04 and Open Space 06 (Or as agreed in writing between the Parties) in accordance with any relevant Council policy or guideline document in respect of public art applicable at the time of public art selection and installation as notified to the

Installation of public art to be completed before the time the open space on which the public art is located is to be dedicated or made publicly accessible (as the case may be) under this Deed.

Developer and with a cost of supply of the public art consistent with Schedule 5. If there are no Council policy or guideline documents applicable at the time of public art selection or installation, the Developer is to consult with the Council in relation to the selection of the public art and the public art is to be selected solely by the Council. For the avoidance of doubt the Parties agree that Schedule 5 does not include the cost of installation of the public art which shall be at the Developer's additional cost.

#### **D. Other material public benefit**

9. Publicly accessible Open space and recreation open space

In respect of the land generally in the location marked as 'Open Space 05' on the Proposed Subdivision Plan with an area of not less than 3,131m<sup>2</sup>

Registration of an easement in gross in favour of the Council on terms satisfactory to the Council generally in accordance with the terms set out in Schedule 7 which allows the public access onto, over and across the land.

The easement in gross is to be registered on the title to the land upon the later of:

- (a) the registration of the strata plan containing the Publicly accessible open space, and
- (b) prior to the issuing of the Occupation Certificate for the last Building located on the land containing the Publicly accessible open space;

Or otherwise as agreed between the parties.



**BATA II Site- 128 Bunnerong Road & 120 Banks Avenue,**

**Bayside Council**

**Karimbla Properties (No. 39) Pty Ltd**

**Meriton Properties Pty Ltd**

**Eastgardens Planning Agreement**

10. Publicly  
accessible pedestrian  
link

Pedestrian access

In respect of the land generally in the location marked as 'Pedestrian Link 765m2', 'Pedestrian Link 815m2', 'Pedestrian Link 574m2', 'Pedestrian Link 1587m2' and 'Pedestrian Link 819m2' on the Proposed Subdivision Plan with a total area of not less than 4,560m2

Registration of an easement in gross in favour of the Council on terms satisfactory to the Council generally in accordance with the terms set out in Schedule 7 which allows the public access onto, over and across the land.

The easement in gross is to be registered on the title to the land upon the later of:

- (a) the registration of the strata plan containing the Publicly accessible pedestrian link, and
- (b) prior to the issuing of the Occupation Certificate for the last Building located on the land containing the publicly accessible pedestrian link;

Or otherwise as agreed between the parties.



## **Schedule 2**

(Clause 1.1)

### **AHU Standards**

Each Affordable Housing Unit (AHU), car space and storage space to be transferred to the Council will be to the following standards:

- The quality and standards of construction and finish of an AHU, car space and storage space to be transferred to the Council is to be the same as any other similar unit, car space and storage space in the Building which is not an AHU or for the purposes of an AHU.
- All fixtures, fittings and inclusions in an AHU, car space and storage space to be transferred to the Council are to be consistent with and of the same quality and standards as other similar units, car spaces and storage spaces within the Building unless otherwise required to comply with Australian Standards 1428 and/or Australian Standard 4299, or as otherwise agreed between the parties in a detailed Schedule of Finishes,
- The AHU, car space and storage space will comply with appropriate Australian Standards and the Building Code of Australia
- The AHU will be equipped with the following minimum fittings, if not already included in an agreed schedule of finishes or as otherwise agreed between the Parties in writing:
  - floor coverings to all rooms (tiled kitchens, bathrooms, laundries and hallways; and carpet in living, lounge and bedroom/s),
  - light fittings fit for purpose in each room,
  - telephone and television aerial points in the lounge and main bedroom,
  - cable television fittings if provided in the Building,
  - allocation of car and storage spaces as set out in clause 16 of this Deed,
  - all opening windows to have and blinds consistent with other units, if other units do not have blinds then blinds are to be installed for the AHU to a type and standard approved by the Council,
  - sliding doors to have blinds consistent with other units
  - provision of air conditioning to living area and bedroom/s,
  - security and/or intercom system
- Where specified provision of an AHU including car spaces will comply with Australian Standard 4299 (AS4299). An AHU will be designed in such a way that it can be modified easily in the future to become accessible to both occupants and visitors with disabilities or progressive frailties




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**Karimbla Properties (No. 39) Pty Ltd**

**Meriton Properties Pty Ltd**

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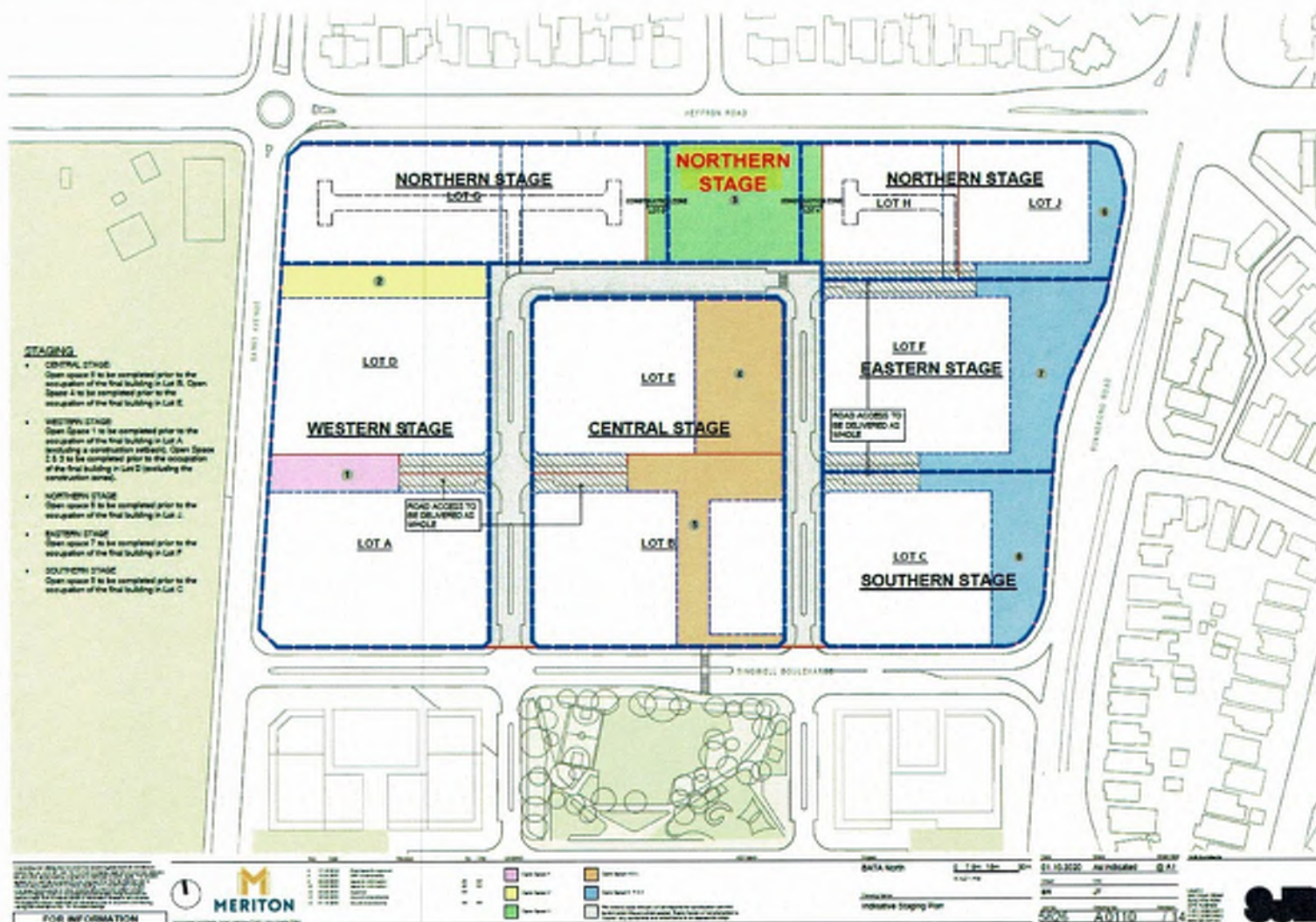
### **Schedule 3**

(Clause 1.1)

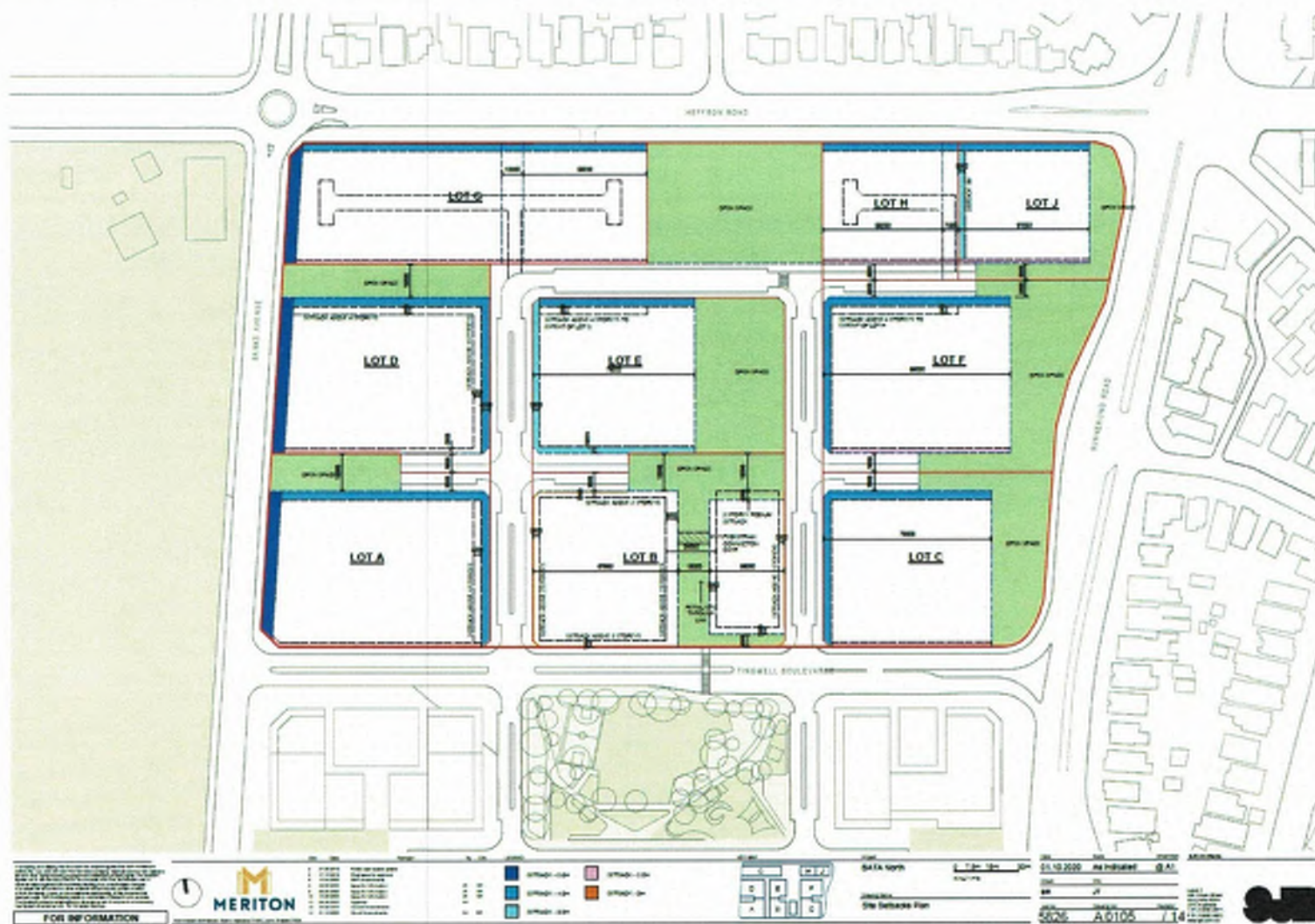
## **Concept Masterplan**

Concept Masterplan on the next page.



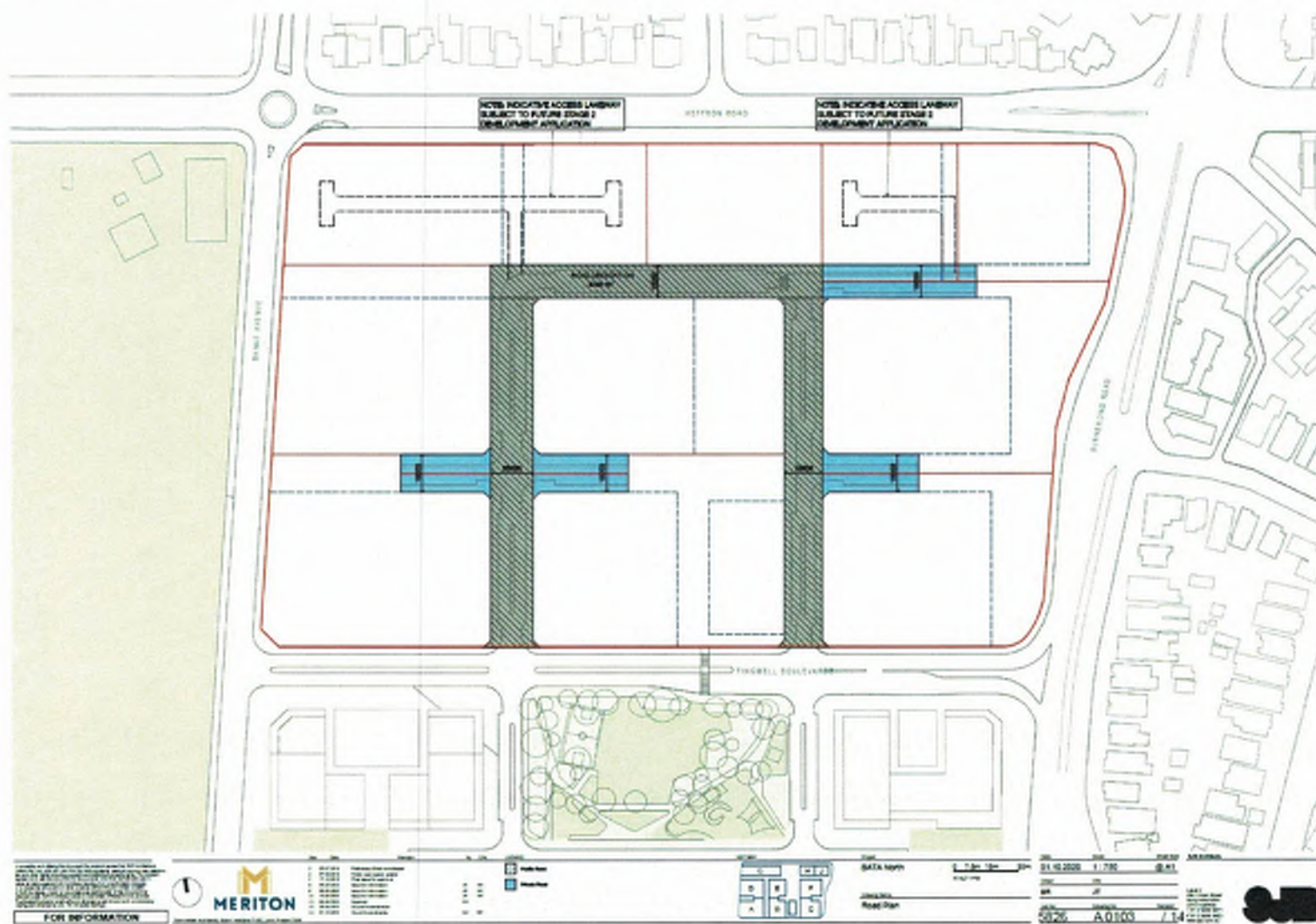




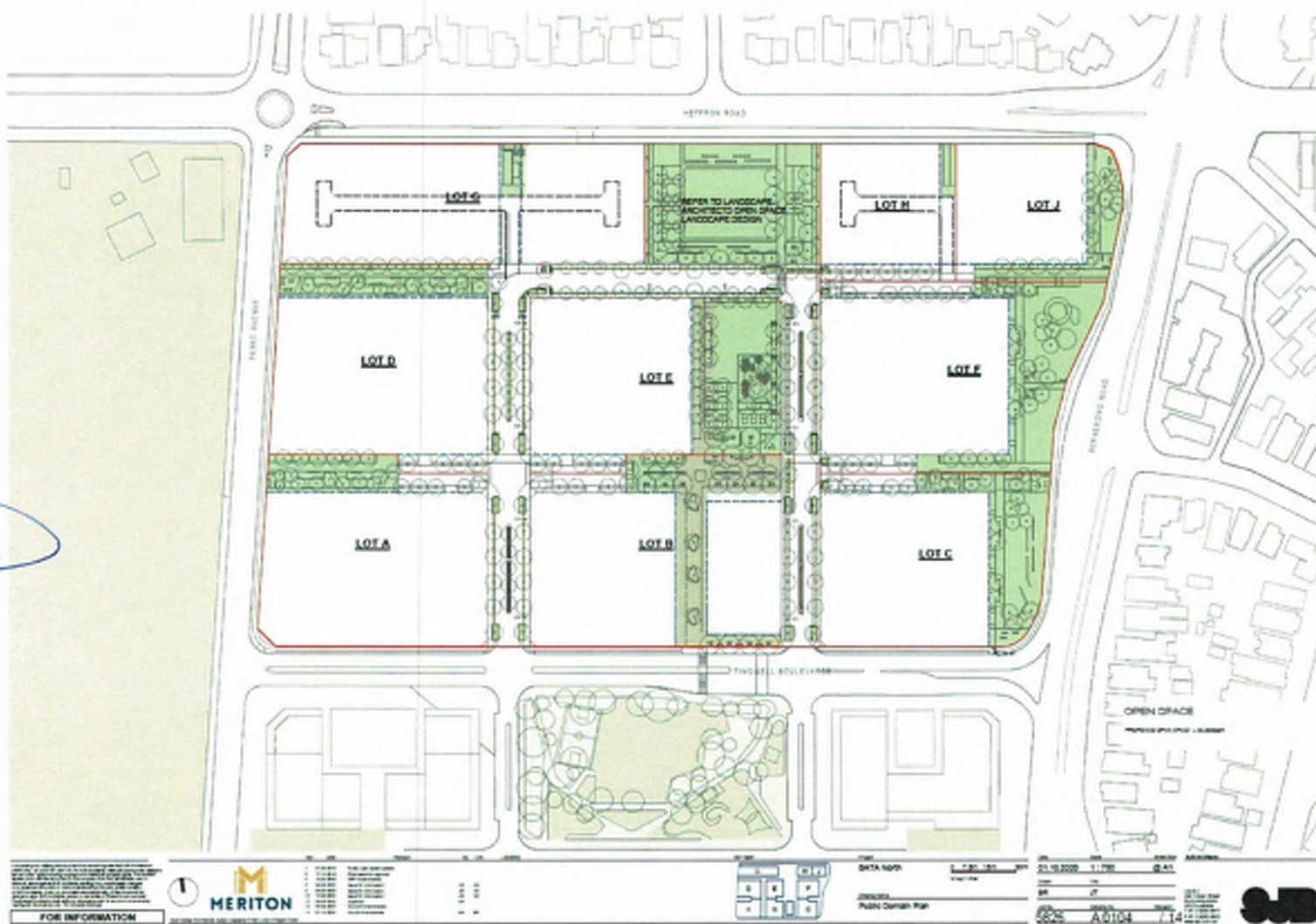


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**SUB**





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## **Schedule 4**

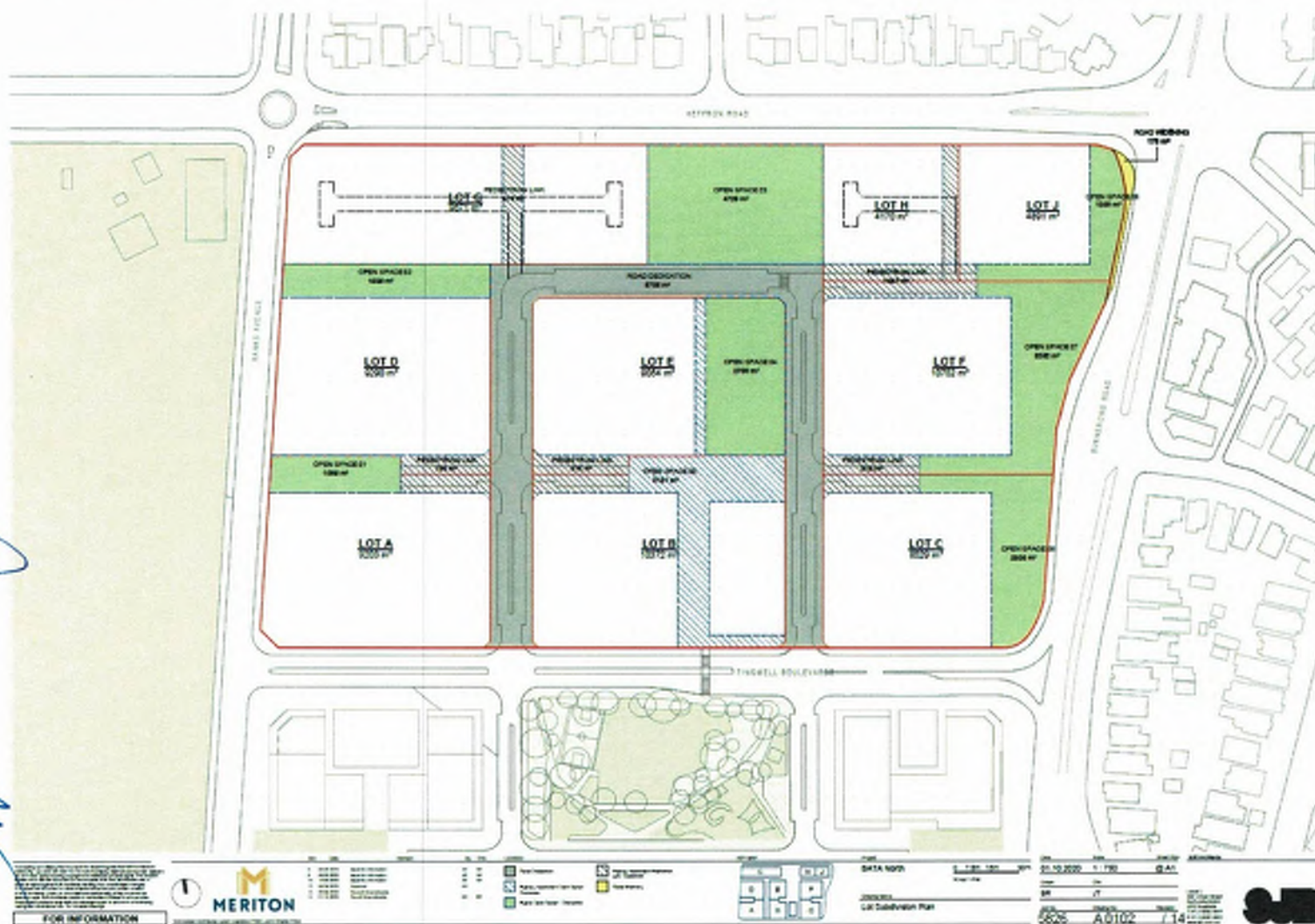
(Clause 1.1)

### **Proposed Subdivision Plan**

Proposed Subdivision Plan is on the next page.


## Eastgardens Planning Agreement





## **Schedule 5**

(Clause 10)

### **Embellishment Work Value**

Carrying out and completion of embellishment of open space to be dedicated, or made publicly accessible, under this Deed as per the below Embellishment Work Value and Future Agreed Embellishment Work Specification and the Embellishment Work Concept Plan to the satisfaction of the Council, acting reasonably, inclusive of a Public Art allocation of \$120,000

| <b>Embellishment Work Value</b>  |              |                        |
|----------------------------------|--------------|------------------------|
| <b>OS</b>                        | <b>SQM</b>   | <b>\$ Value</b>        |
| Open Space 01                    | 1098         | \$398,747.95           |
| Open Space 02                    | 1558         | \$565,800.83           |
| Open Space 04                    | 2709         | \$983,796.17           |
| Open Space 03                    | 4729         | \$1,717,376.19         |
| Open Space 08                    | 2330         | \$846,159.13           |
| Open Space 06 &<br>Open Space 07 | 4571         | \$1,659,997.16         |
| Open Space 05                    | 3131         | \$1,137,049.03         |
| <b>TOTAL</b>                     | <b>20126</b> | <b>\$7,308,926.45</b>  |
| Contingency                      | 5.0000%      | \$365,446.32           |
| Preliminaries                    | 18.9000%     | \$1,381,387.10         |
| Margin                           | 9.2925%      | \$679,181.99           |
| Design                           |              | \$356,593.00           |
| <b>TOTAL</b>                     | <b>20126</b> | <b>\$10,091,534.86</b> |



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## **Schedule 6**

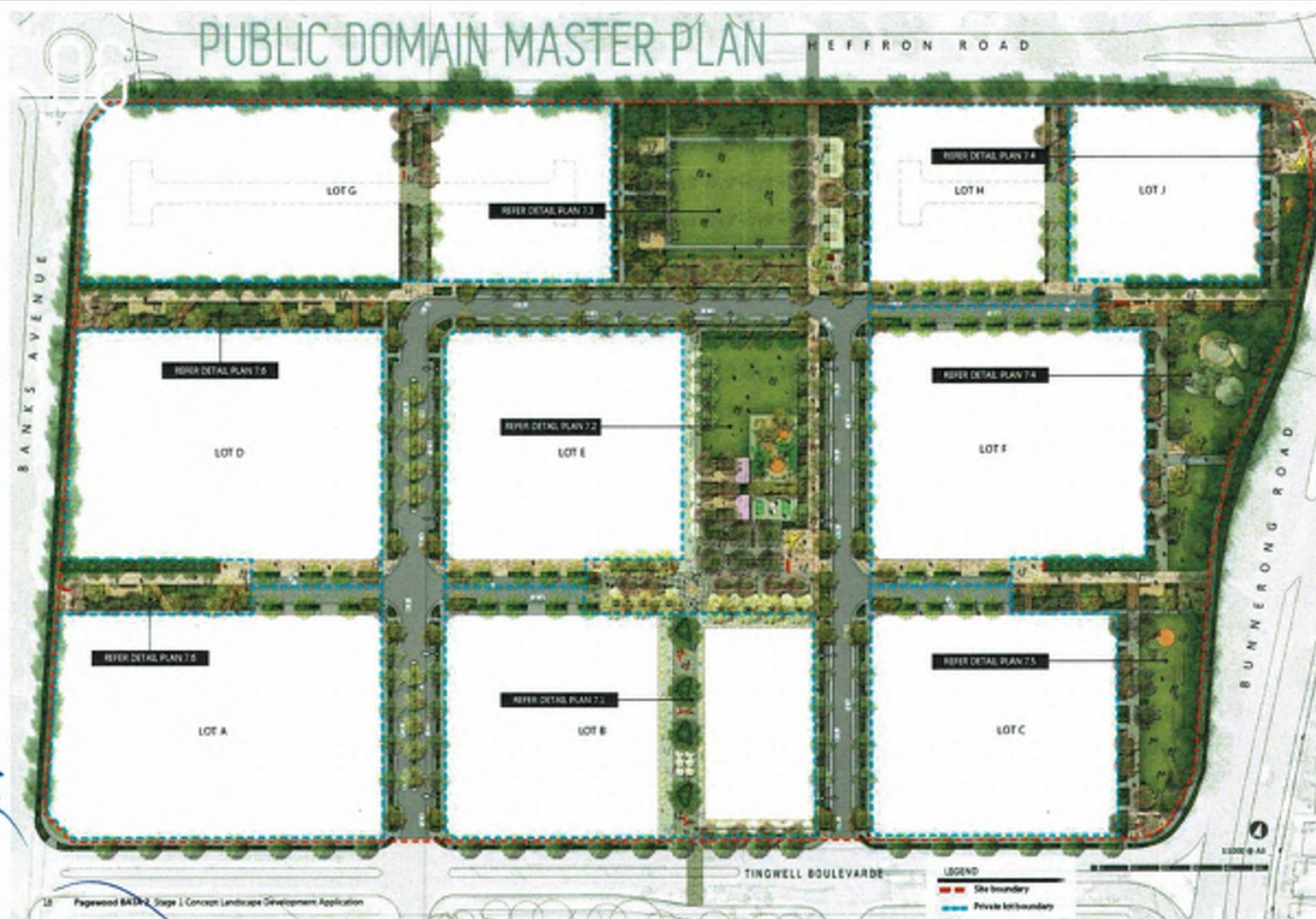
(Clause 10)

### **Embellishment Work Concept Plan**

Embellishment Work Concept Plan on the next page









## 6.1 URBAN HEART & RETAIL LINK



- LEGEND**
- ① Pedestrian crossing from BATA2 to existing Penguin Park
  - ② Retail Link, raised platform with integrated seating, flexible hard stand area
  - ③ Public Domain streetscape including pedestrian channelway
  - ④ Arrival Retail Plaza addressing Penguin Park connection
  - ⑤ Retail / office dining activation
  - ⑥ Flexible community square activated with public art, shaded seating, performance and pop-up space opportunities
  - ⑦ Sharedway Plaza, connecting the site side pedestrian channelway network





## 6.2 URBAN HEART & COMMUNITY PARK



### LEGEND

- ① Shared Hub public art, wayfinding signage, integrated bike racks & seating
- ② Village terrace, informal & formal seating
- ③ Passive community rooms, outdoor work from home stations
- ④ Village engagement, bocce, chess, table tennis opportunities
- ⑤ Active family area, interactive play
- ⑥ Community event lawn
- ⑦ Wood deck
- ⑧ North-south pedestrian/cycle shareway
- ⑨ Retail / Alfresco dining interface
- ⑩ Integrated shade arbour

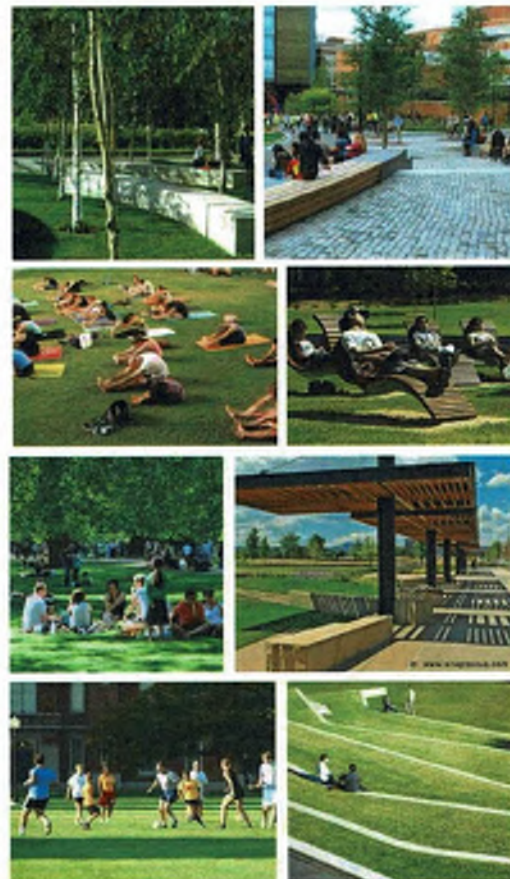


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IN CONSULTATION WITH BAYSIDE COUNCIL



### 6.3 RECREATIONAL PARK





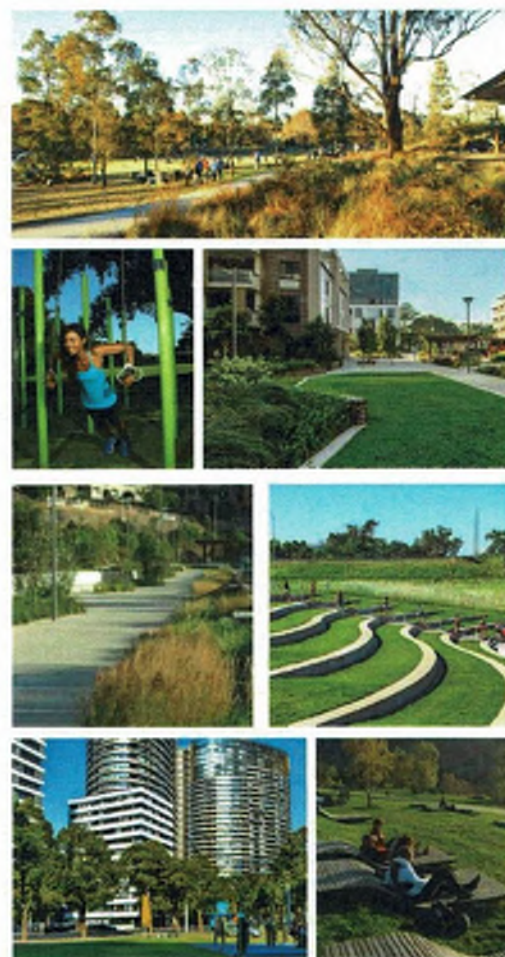
#### 6.4 RESERVE PARK (NORTH)



22 Papewood BATA II Stage 1 Concept Landscape Development Application



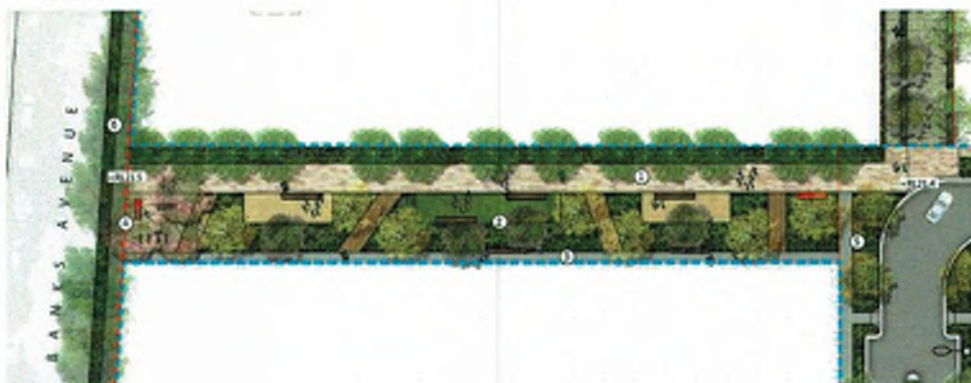
# 6.5 RESERVE PARK (SOUTH)



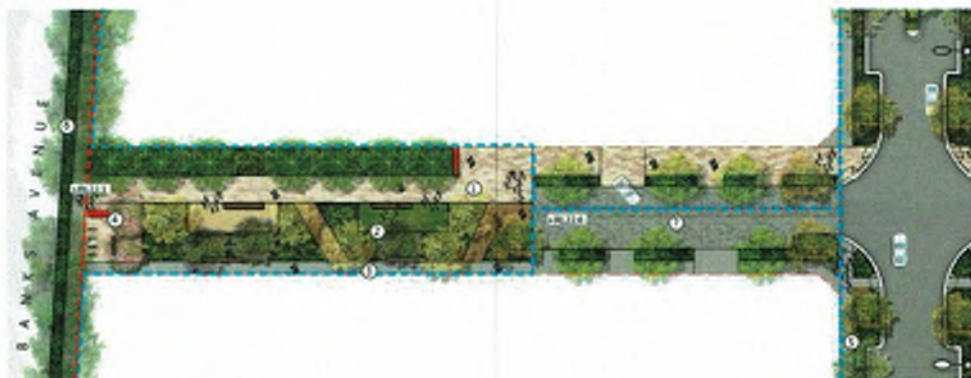


## 6.6 SHAREWAY LINKS

### LINK 1



### LINK 2



#### LEGEND

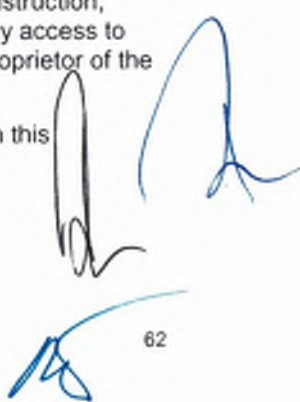
- 1 East-west pedestrian/cycle shareway
- 2 Shareway (Link Path) with integrated WWO, passive gathering & seating
- 3 Secondary pedestrian path addressing residential private terraces
- 4 Shareway routes to perimeter public domain/landscape network, wayfinding signage
- 5 Streetscape path & planting
- 6 Perimeter public domain/landscape path upgrades
- 7 Private access road to Residential buildings



## **Schedule 7**

(Clause Schedule 1 Item D.8)

### **Terms of Easement in Gross**

- ##.1 The authority benefitted and any person authorised by it including members of the public ("Authorised Users") have full and free right to access, pass and repass at all times onto, over and across the lot burdened / easement site for pedestrian access and passive recreation purposes:
- (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 The owner of the lot burdened may, with prior written consent of the authority benefitted, temporarily suspend access to and use of the [lot burdened/easement site] for the purpose of construction access, maintenance and repair.
- ##.3 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.
- ##.4 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.
- ##.5 The authority benefitted is not required to maintain, replace, renew or carry out any other work within the [lot burdened/easement site], or contribute to any such work within the [lot burdened/easement site]. All such work including any construction, maintenance or repair work and the costs of temporarily suspending any access to the [lot burdened/easement site] is to be at the cost of the registered proprietor of the burdened lot.
- ##.6 The only party with the authority to release, vary or modify or extinguish this easement is Bayside Council.
- 



**BATA II Site- 128 Bunnerong Road & 120 Banks Avenue,  
Eastgardens Planning Agreement**

**Bayside Council**

**Karimbla Properties (No. 39) Pty Ltd**

**Meriton Properties Pty Ltd**

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## **Schedule 8**

(Clause 10)

### **Amended BATA I VPA**

See following pages.



Handwritten signatures in blue ink, including a large stylized signature and a smaller one below it.

**THIS PLANNING AGREEMENT** made the 7 August 2015

**BETWEEN:** **COUNCIL OF THE CITY OF BOTANY BAY** of 141 Coward Street,  
Mascot in the State of New South Wales ("the Council") of the first  
part

**AND:** **KARIMBLA PROPERTIES (No.39) PTY LTD (ABN 96 160 693 283)**  
of L.11, 528 Kent Street Sydney NSW 2000 ("Karimbla") of the  
second part.

**WHEREAS:**

- A. Karimbla is the owner of land located at 130-150 Bunnerong Road Pagewood,  
being land comprising Lot 2 in Deposited Plan 1187426 ("the site").
- B. Karimbla is a "developer" as defined at Section 93F(1) of the Environmental  
Planning and Assessment Act 1979 ("the Act").
- C. The Council is a consent authority legally entitled to determine development  
applications within the Botany Bay Local Government Area and legally entitled to  
enter into Planning Agreements.
- D. On 1 May 2014 an integrated development application 14/096 ("DA14/096") was  
submitted to the Council by Karimbla seeking consent for a staged development  
application setting out the concept proposal ("the stage 1 approval") for  
development of the site. The plans and proposal have been altered during the  
course of negotiations. DA 14/096 presently seeks consent for the following  
concept proposal:
  - i. subdivision into seven lots, known as Urban Blocks;
  - ii. subdivision of lots for open space being a Central Park (Open Space lot 1)  
and Linear Park, Open Space lot 2;
  - iii. subdivision into lots for public roads being Road lot 1 (East West  
Boulevard), Road lot 2 (North South Street 2), Road lot 3 (Civic Boulevard),



- Road lot 4, Road lot 5, (North South Street 1) and Local Street Road lot 6;
- iv. staging of the development in order of sequence being Stage 1 subject of DA 14/159, lodged by Karimbla Construction Services (NSW) Pty Ltd on 15 July 2014 for the kerb-to-kerb construction of East-West Boulevard and the realignment of the existing stormwater channel, Stage 2A(2) development of Urban Block 5W, Stage 2A(3) development on Urban Block 5C and construction of Central Park, Stage 2A(3) development of Urban Block 5 East, Stage 2B development of Urban Block 4 and Urban Block 5E, Stage 2C development of Urban Block 3, Stage 2D development of Urban Block 2 and Stage 2E development of Urban Block 1 and Open Space lot 2 "Linear Park";
  - v. an indicative maximum of 2223 residential apartments, up to 5000 sq m of retail space and four child care centres;
  - vi. building envelopes showing building dimensions, setbacks from streets and above podiums, building separation, articulation zone for balconies and heights on each Urban Block;
  - vii. maximum Gross Floor Area (GFA) and Floor Space Ratio (FSR) for the proposed lots and Urban Blocks as shown in **Table 1 to Annexure A** of this planning agreement;
  - viii. building heights (as defined in BBLEP 2013) as shown in **Table 2 to Annexure A**;
  - ix. residential unit mix in accordance with **Table 3 to Annexure A** ;
  - x. residential unit sizes in accordance with **Table 4 to Annexure A** ;
  - xi. car parking provided in above ground and basement car parking facilities, in accordance with the rates in **Table 5 in Annexure A** ;
  - xii. public open space being "Central Park" comprising 8000 sq m and Open

Space Lot 2 "Linear Park" comprising 2703 sq m;

- xiii. on site stormwater detention system and water sensitive urban design (WSUD) principles.
- E. Once development consent is obtained for Stage 1, Development Applications are to be submitted by Karimbla seeking consent for construction of the development at the site ("the stage 2 and future DAs").
- F. In April and May 2015 Karimbla provided amended plans indicating the components of the Stage 1 concept application. Annexed hereto and marked with the "B" are those plans.
- G. On 1 April 2015, the parties proposed to enter into a Planning Agreement. By way of the proposal, Karimbla has agreed with the Council to offer public benefits including the following public works, land dedications and monetary contributions.
  - i. embellishment, construction and dedication at no cost to the Council of 8000 sq m of land on the site for the purpose of a public park/public recreational space being land of land identified on the approved plans as "Central Park" proposed Open Space Lot 1 Annexed hereto and marked with the letter "C".
  - ii. ~~Not used; embellishment, construction and dedication, at no cost to the Council of and 2703 sq m being land identified on the approved plans as "Linear Park", proposed Open Space as Lot 2 Annexed hereto and marked with the letter "C";~~
  - iii. construction of, public domain embellishment, and dedication for the use of a public road and at no cost to the Council that part of the site comprising roads identified on the approved plans as:
    - East West Boulevard, proposed road Lot 1;
    - Civic Avenue, proposed road Lot 3;



- North South Street 2, proposed road Lot 2;
- North South Street 1, proposed road Lot 4 ~~and 5~~;
- ~~— Local Street Road, proposed road Lot 6; and~~

Annexed hereto and marked with the letter "D" is the most up to date plan identifying the location of the proposed public roads;

- iv. undertaking at no cost to the Council the design and construction works inclusive of traffic lights and any other necessary traffic control devices and signals so as to upgrade the intersection of Banks Avenue and Heffron Road as part of Stage 2A(2) and prior to the issue of any occupation certificate for development on Urban Block 5W in accordance with the plan Annexed hereto and marked letter "E" ;
- v. undertaking at no cost to the Council the design and construction of works inclusive of traffic lights and any other necessary traffic control devices and signals so as to upgrade the intersection of Bunnerong Road Heffron Road and Maroubra Road as part of Stage 2A(2) and prior to the issue of any occupation certificate for development on Urban Block 5W in accordance with the plan Annexed hereto and marked letter "F" ;
- vi. Providing a monetary contribution of \$8,022,000 ~~10.5 million~~ to Council for use as follows:
  - a. Upgrade the intersection of Page Street and Wentworth Avenue including works and services at the intersection; and
  - b. Upgrade the intersection of Baker Street and Wentworth Avenue including works and services at the intersection; and,
  - c. Upgrade to Jellicoe Park by providing a new sports amenities building (change rooms, referees room, toilets, kiosk, kitchenette,

- storage and the like) and upgrade to perimeter fencing; and,
- d. Improvements to Mutch Park, including provision of a skate park and the supply or building of other recreational facilities; and,
  - e. Undertake other works with any remaining funds being works to be undertaken at the sole discretion of the Council, for use in respect of any public purpose (public purpose being defined at section 93F(2) of the Act) within the local area (with details to be provided to the developer).

Payment shall be made as follows:

- f. \$8,022,000 as part of Stage 2A(2) and prior to the issue of any occupation certificate for Urban Block 5W in accordance with the plan Annexed hereto and marked letter "G";
- g. ~~not used. \$2,478,000 to be paid at the earlier of an occupation certificate being issued by Council for Urban Block 1 or Urban Block 2 OR any occupation certificate being issued for any residential uses on Lot 2 DP1187426 north of Tingwell Boulevard. This payment shall be indexed in accordance with the Consumer Price Index (All Groups Index - Sydney), from the date of the initial stage 1 payment.~~

- H. On 7 August 2015 the Council and Karimbla entered into an agreement pursuant to s.34 (3) of the Land and Environment Court Act with conditions of consent to DA 14/096 being Annexure "H" to that agreement.
- I. Condition 4 of the conditions consent to DA 14/096 requires Karimbla, at no cost or expense to the Council, to enter into this Planning Agreement.
- J. Annexed hereto and marked with the letter "I" is a true copy of the development consent to DA 14/096.



- K. The parties have agreed to enter into a Planning Agreement in accordance with section 93F of the Act, the purpose of the said Planning Agreement being for Karimbla to provide a material public benefit in the form of public works, dedications and monetary contributions as described at clause G herein.
- L. Pursuant to Section 93F of the Act the parties hereto now enter into this Planning Agreement.

**NOW THIS DEED WITNESSES** as follows:

1. This Planning Agreement shall:
  - (a) be binding on the parties hereto and upon their respective heirs, executors, transferees and assigns;
  - (b) takes effect on the date of this Planning Agreement is executed by both parties;
  - (c) becomes operative at such time as the benefit of the development consent is taken up; and
  - (d) terminates when Karimbla or its respective heirs, executors, transferees or assigns has satisfied all of its obligations under this Agreement or when the development consent lapses in accordance with the Act.
2. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of the Council existing at law or which the Council would otherwise have available to it.
3. In case one or more of the provisions contained in this Planning Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions contained therein shall not thereby be effected.
4. Karimbla covenants and agrees with the Council that it shall at Karimbla's expense and to the Council's satisfaction undertake all works and dedications required under this planning agreement and as set out in this agreement and/or

the consent given by Council to integrated development application DA 14/096. All works and dedications are to be undertaken in accordance with the timeframes set out at table 3 to condition 11 of the Council's development consent given in relation to integrated development application DA 14/096. Agreed works, dedications and monetary contributions are as follows:

- i. embellish, construct and dedicate at no cost to the Council of 8000 sq m of land on the site for the purpose of a public park / public recreational space being land on the approved plans as "Central Park";
- ii. ~~not used, embellish, construct and dedicate at no cost to the Council of 2703 sq m of land on the site for the purpose of a public park / public recreational space being land of land identified on the approved plans as Proposed Lot 2 Open Space "Linear Park",~~
- iii. construct and dedicate for the use of a public road and embellish the public domain at no cost to the Council that part of the site comprising roads identified on the approved plans as "East West Boulevard", "Civic Avenue", Road Lot 2 "North South Street 2", Road Lot 4 ~~and Road Lot 5~~ "North South Street 1", ~~and Local Street Road Lot 6,~~
- iv. undertake at no cost to the Council the design and construction of works inclusive of traffic lights and any other necessary traffic control devices and signals so as to upgrade the intersection of Banks Avenue and Heffron Road;
- v. undertake at no cost to the Council the design and construction of works inclusive of traffic lights and any other necessary traffic control devices and signals so as to upgrade the intersection of Bunnerong Road, Heffron Road and Maroubra Road;
- vi. Providing a monetary contribution of \$8,022,000 ~~\$10.5 million~~ to Council for use as follows:



- a. Upgrade the intersection of Page Street and Wentworth Avenue including works and services at the intersection; and
- b. Upgrade the intersection of Baker Street and Wentworth Avenue including works and services at the intersection; and,
- c. Upgrade to Jellicoe Park by providing a new sports amenities building (change rooms, referees room, toilets, kiosk, kitchenette, storage and the like) and upgrade to perimeter fencing; and,
- d. Improvements to Mutch Park, including provision of a skate park and the supply or building of other recreational facilities; and,
- e. Undertake other works with any remaining funds being works to be undertaken at the sole discretion of the Council, for use in respect of any public purpose (public purpose being defined at section 93F(2) of the Act) within the local area (with details to be provided to the developer).

Payment shall be made as follows:

- f. \$8,022,000 as part of Stage 2A(2) and prior to the issue of any occupation certificate for Urban Block 5W in accordance with the plan Annexed hereto and marked letter "G";
- g. ~~Not used \$2,478,000 to be paid at the earlier of an occupation certificate being issued by Council for Urban Block 1 or Urban Block 2 OR any occupation certificate being issued for any residential uses on Lot 2 DP1187426 north of Tingwell Boulevard. This payment shall be indexed in accordance with the Consumer Price Index (All Groups Index—Sydney), from the date of the initial stage 1 payment.~~

- 5. Karimbla covenants and agrees that there will be no off sets or reductions to any contributions payable under section 94 of the Act for any of the works and dedications referred to in clause 4 herein and Karimbla agrees that the works as

set out at clause 4 herein do not replace in any way and are additional to the requirement for Karimbla to pay contributions in accordance with Section 94 of the Act, with the said section 94 contributions to be paid by Karimbla in accordance with the Section 94 Contributions Plan that applies at the time that any Stage 2 or later development application is lodged (or at the time otherwise stated in the Plan), except as otherwise agreed by Council.

6. Karimbla covenants and agrees with the Council:

- (a) that prior to it lodging a development application for any stage 2 development including a building (but excluding DA 14/159 for East West Boulevard and Sydney Water infrastructure, which is already lodged) it shall do all things reasonably necessary to register this Planning Agreement over the title to the site pursuant to Section 93H of the Act from all persons who have an interest in the site;
- (b) that forthwith it shall cause this Planning Agreement to be registered on the title of the site (being only the site being Lot 2 DP 1187426 and in the future after subdivision of the site, only the development lots and future public domain lots – but excluding any lots created under a strata plan that are not common property lots), excluding Lot 24 DP1242288 and any lot or strata lot created from a subdivision or strata subdivision of that lot, until such time as all obligations arising under this agreement have been met;
- (c) that if this Planning Agreement is not registered on the title to the site, and if Karimbla should propose to sell the site, then Karimbla shall:
  - i. within seven (7) days of listing the site for sale, either through an agent or privately, notify the Council of such intention;
  - ii. as a condition of any sale, require that the incoming purchaser enter into with Council a like Planning Agreement to this present Planning



Agreement in which the same covenants as set out herein shall apply;

- iii. within seven (7) days of exchange of contracts, notify the Council of the sale and provide the Council with a copy of the contract;
- iv. within twenty one (21) days of receipt from the Council of a replacement Planning Agreement between the Council and the purchaser substantially in the form of this Planning Agreement, have it executed by the purchaser and return it to the Council;
- v. that if this Planning Agreement is not registered on the title to the site, and if Karimbla should propose otherwise than by sale to transfer or assign their interest in the site or any part thereof to a transferee or assignee, then Karimbla shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Planning Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.

- 7. The Council acknowledges that if an incoming purchaser of the site as a whole enters into with the Council a like Planning Agreement to this present Planning Agreement in which the same covenants as set out herein apply, Karimbla will be released from any future obligation under this Agreement. Such release will not release Karimbla from any liability to the Council for any antecedent breaches of this Agreement by Karimbla.
- 8. Karimbla further covenants and agrees with the Council that pending the registration of this Planning Agreement on the title of the site as required by clause 6(b), the Council shall be entitled to register a caveat at Land & Property Information New South Wales over the title to the Development Site to protect its

interest therein pursuant to this Planning Agreement.

9. If Council lodges a caveat pursuant to clause 8, then the Council must promptly do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:
  - (a) this Agreement;
  - (b) any plan of consolidation or subdivision contemplated, required or permitted under this Agreement or any development consent;
  - (c) any other dealing contemplated, required or permitted under this Agreement or any development consent; and
  - (d) the transfer of any part of the site to a related body corporate of the Owner or a trust or fund of which a related body corporate of the Owner is trustee, manager or responsible entity.
10. The parties agree that if the site is subdivided such that development takes place in more than one stage, the registration of this Agreement will be removed from the title of any allotment of the site subject to a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* except that registration of this agreement will remain over the title to any common property.
11. The Parties will, upon termination of this Agreement in accordance with clause 1(d), do all things required to enable the removal of the Agreement from the title of the Site
12. If a caveat is registered on the title of the site in accordance with clause 8 of this Agreement, then such caveat is to be removed immediately upon registration of the Planning Agreement being registered on the title of the site.
13. Karimbla shall pay Council's reasonable solicitor/client costs of preparing this Planning Agreement and any cost of registering the Planning Agreement.
14. Should it be necessary for Council to consent to the registration of any lease,



mortgage, consolidation of title, strata plan or other document as a result of a caveat being registered on the titles to the site Karimbla shall pay the Council's reasonable solicitor/client costs of providing Council's consent to such registration. Karimbla shall also pay the Council's reasonable costs of preparing any substitute Planning Agreement between Council and any incoming purchaser, assignee or transferee of the site. Council must give Karimbla a tax invoice for any amount payable by Karimbla under this clause.

15. Should Karimbla be in breach of any terms of this Planning Agreement, and not rectify the default within twenty one (21) days of receiving notice from Council to do so (except if a delay in rectification is likely to cause irremediable damage or prejudice to Council, in which case no notice is required) Council shall be entitled, at its option, to enforce by way of injunctive relief in the Supreme Court any provisions of this Planning Agreement which have been breached, or to seek damages or seek to enforce the provisions of any development consent which relate to the Development Site whether by way of order under Section 121B of the Environmental Planning and Assessment Act 1979, or Class 4 proceedings in the Land and Environment Court, or otherwise.
16. Any amendment or variation to this Planning Agreement is not effective unless it is in writing and signed by both parties.
17. The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.
18. In the event of any disagreement between the parties hereto arising out of the provisions of this Planning Agreement, and if the parties are unable within a reasonable time to resolve such disagreement amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney.

The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation. The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party, an expert or the conciliator during the conciliation relating to a possible settlement of the dispute;
- (b) admissions or concessions made by a party during the conciliation in relation to the dispute; and
- (c) information, documents or other material, including any confidential information, concerning the dispute which is disclosed by a party during the conciliation unless such information, documents or facts would have been otherwise discoverable in judicial or arbitral proceedings.

19. (a) All words in this clause which are also defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("the GST Act") have a corresponding meaning to that in the GST Act
- 
- (b) the consideration for any supply under this Planning Agreement excludes GST;
  - (c) where a party to this Planning Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no



monetary consideration is payable when the maker of the supply demands payment;

- (d) the maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply;
- (e) despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Planning Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

ANNEXURE A

TABLE 1

GFA and FSR

| 2013 LEP Zone    | Proposed Lot <sup>a</sup> | Urban Block <sup>b</sup> | Site Area sq m <sup>c</sup> | GFA sq m <sup>d</sup> | FSR <sup>e</sup> | Indicative Unit Nos. |
|------------------|---------------------------|--------------------------|-----------------------------|-----------------------|------------------|----------------------|
| B4               | 1                         | UB5 West                 | 13,507                      | 51,712                | 3.83             | 517                  |
| B4               | 2                         | UB5 Central              | 13,095                      | 45,306                | 3.84             | 453                  |
|                  |                           |                          |                             | 5,000 <sup>f</sup>    |                  |                      |
| B4               | 3                         | UB5 East                 | 9,011                       | 22,412                | 2.49             | 224                  |
| B4               | part lot 4                | part UB4                 | 826                         | 18,225                | 2.30             | 182                  |
| R3               | part lot 4                | part UB4                 | 7,089                       |                       |                  |                      |
| B4               | part lot 5                | part UB3                 | 999                         | 37,011                | 3.92             | 370                  |
| R3               | part lot 5                | part UB3                 | 8,435                       |                       |                  |                      |
| R3               | 6                         | UB2                      | 9,021                       | 28,603                | 3.17             | 286                  |
| R3               | 7                         | UB1                      | 13,302                      | 19,018                | 1.43             | 190                  |
| <b>Sub Total</b> |                           |                          | <b>75285</b>                | <b>227,287</b>        | N/A              | <b>2223</b>          |
| B4               | part road lot 3           | part Civic Avenue        | 1361                        |                       |                  |                      |
| R3               | part Road lot 3           | part Civic Avenue        | 1096                        |                       |                  |                      |
| R3               | road lot 4                |                          | 1359                        |                       |                  |                      |
| R3               | road lot 2                |                          | 1224                        |                       |                  |                      |
| R3               | road lot 1                | East West Boulevard      | 8778                        |                       |                  |                      |
| R3               | road lot 5                |                          | 2023                        |                       |                  |                      |
| R3               | road lot 6                |                          | 1596                        |                       |                  |                      |
| R3               | Open Space lot 2          | Linear Park              | 2703                        |                       |                  |                      |
| R3               | Central Park              | Central Park             | 8000                        |                       |                  |                      |
| <b>sub total</b> |                           |                          | <b>28140</b>                |                       |                  |                      |
| <b>TOTAL</b>     |                           |                          | <b>103,425</b>              | <b>227,287</b>        | N/A              | <b>2223</b>          |

**Notes**

- Proposed lots shown on Drawing No. A014 dated 29/4/15
- Urban Blocks shown on Drawing No. A004 dated 29/4/15
- Site area shown on Plan of Subdivision of Lot 2 DP1187426 dated 28/4/15
- GFA is Residential and Child Care Centres unless as noted, taken from Drawing No. A001 dated 29/4/15
- FSR calculated from Table shown on Drawing No. A001 dated 29/4/15 and Drawing No. A014 dated 29/4/15.
- Maximum 5000 sq m retail



**TABLE 2**  
**Building Height**

| Block No.      | Tower No.          | Maximum Podium Height | Maximum Building Height    | Maximum Plant Room Height |
|----------------|--------------------|-----------------------|----------------------------|---------------------------|
| Urban Block 1  | A1, A2, A3, A4, A5 | N/A                   | 7.6m (RL29.6) plus Attic a | N/A                       |
|                | B1, C1             | N/A                   | 13.8m (RL35.8)             | 16.4m (RL38.4)            |
|                | B2, C3             | N/A                   | 20.0m (RL42.0)             | 22.6m (RL44.6)            |
| Urban Block 2  | A1, A2             | 10.7m (RL32.7)        | 26.2m (RL48.2)             | 28.8m (RL50.8)            |
|                | B2, C2             | 13.8m (RL35.8)        | 35.5m (RL57.5)             | 38.1m (RL60.1)            |
| Urban Block 3  | A1, A2             | 13.8m (RL35.8)        | 35.5m (RL57.5)             | 38.1m (RL60.1)            |
|                | B1, B2             | 13.8m (RL35.8)        | 44.8m (RL66.8)             | 47.4m (RL69.4)            |
|                | A3, A4             | 16.9m (RL38.9)        | 51.0m (RL73.0)             | 53.6m (RL75.6)            |
| Urban Block 4  | A1                 | 16.9m (RL38.9)        | 20.0m (RL42.0)             | 22.6m (RL44.6)            |
|                | A2                 | 16.9m (RL38.9)        | 26.2m (RL48.2)             | 28.8m (RL50.8)            |
| Urban Block 5W | A1, A2, A4, A5     | 16.9m (RL38.9)        | 51.0m (RL73.0)             | 53.6m (RL75.6)            |
|                | A3, A6             | 16.9m (RL38.9)        | 63.4m (RL85.4)             | 66.0m (RL88.0)            |
| Urban Block 5C | B1, B2b            | 18.8m (RL40.8)        | 40.5m (RL62.5)             | 43.1m (RL65.1)            |
|                | B4, B5             | 18.8m (RL40.8)        | 52.9m (RL74.9)             | 55.5m (RL77.5)            |
|                | B3, B6             | 18.8m (RL40.8)        | 65.3m (RL87.3)             | 67.9m (RL89.9)            |
| Urban Block 5E | B2, B3             | 16.9m (RL38.9)        | 20.0m (RL42.0)             | 22.6m (RL44.6)            |
|                | B1                 | 10.7m (RL32.7)        | 26.2m (RL48.2)             | 28.8m (RL50.8)            |
|                | B4                 | 10.7m (RL32.7)        | 51.0m (RL73.0)             | 53.6m (RL75.6)            |

a: Attic is as defined in Botany Bay LEP 2013

**TABLE 3**  
**Unit Mix**

| Unit Size <sup>a</sup> | Proportion  | Indicative Maximum Number of Units |
|------------------------|-------------|------------------------------------|
| Studios                | N/A         | 0                                  |
| One bedroom            | Maximum 20% | 445                                |
| Two Bedroom            | 50%         | 1112                               |
| Three + bedroom        | Minimum 30% | 668                                |
| <b>TOTAL</b>           |             | <b>2223</b>                        |

**TABLE 4**

**Unit Size**

| Unit Type     | Area     | Size sq m  |
|---------------|----------|--|
| One bedroom   | Internal | 65   |
|               | External | 12   |
| Two bedroom   | Internal | 85   |
|               | External | 12   |
| Three bedroom | Internal | 50% of units per urban block 124<br>50% of units per urban block 110 |
|               | External | 24 for 124 sq m units<br>15 for 110 sq m units                       |

**Note:** a **Internal area** means the area inside the enclosing walls of a dwelling but excludes wall thickness, vents, ducts, staircases and lift wells.

**TABLE 5**

**Car parking Rates**

| Use                      | Min number car spaces            | Indicative minimum number of car spaces |
|--------------------------|----------------------------------|---|
| <b>Residential</b>       |                                  |   |
| One bedroom              | 1                                | 445                                     |
| Two bedroom              | 1.5                              | 1668                                    |
| Three bedroom            | 2                                | 1336                                    |
| Residential Visitor      | 1 per 10 units                   | 222                                     |
| Car Share Spaces         | 22 including min 10 in basements | 22                                      |
| <b>Total residential</b> |                                  | <b>3693</b>                             |
| <b>Other Uses</b>        | As per BBDCP 2013                |   |



IN WITNESS WHEREOF the parties have set their hands and seals on the day first  
hereinbefore written.

THE COMMON SEAL of the CITY )  
OF BOTANY BAY COUNCIL was )  
hereunto affixed pursuant to a resolution )  
of the Council passed on the day )  
of )  
.....

.....  
General Manager

EXECUTED by KARIMBLA PROPERTIES  
No.39 PTY LTD  
(ABN 96 160 693 283)

by:

.....  
Director

.....  
Secretary

.....  
Witness

DATED

2015

**BETWEEN:**

**THE COUNCIL OF THE CITY OF  
BOTANY BAY**

("the Council")

**AND:**

**KARIMBLA PROPERTIES No. 39 PTY  
LTD (ABN 96 160 693 283)**

("Karimbla")

**PLANNING AGREEMENT**

**HOUSTON DEARN O'CONNOR**

Solicitors

Suite 33, 5<sup>th</sup> Floor

12 Railway Parade

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BATA II Site- 128 Bunnerong Road & 120 Banks Avenue,  
Eastgardens Planning Agreement  
Bayside Council  
Karimbla Properties (No. 39) Pty Ltd  
Meriton Properties Pty Ltd

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## 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 DAVID CREMONA DIRECTOR

  
Name/Position ROBYN McCULLY SECRETARY



**BATA II Site- 128 Bunnerong Road & 120 Banks Avenue,  
Eastgardens Planning Agreement**

**Bayside Council**

**Karimbla Properties (No. 39) Pty Ltd**

**Meriton Properties Pty Ltd**

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

  
Name/Position **DAVID CREMONA**

**DIRECTOR**

  
Name/Position

**ROBYN McCULLY**

**SECRETARY**





## **Appendix**

(Clause 54)

*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. 39) Pty Ltd** ABN 96 160 693 283 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**

This Planning Agreement applies to Lot 1 DP 1187426 and Lot 24 DP1242288 ('Land') and land comprising Lots 21, 22, 23 and 24 DP1242288, Lot 3 DP1236520 and any lots owned by the Developer within SP97153 ('BATA I Land').

### **Description of Proposed Development and Planning Proposal**

The Planning Agreement is proposed to be entered into in connection with the Planning Proposal.

The Draft Planning agreement relates to development, within the meaning of the Act, on the Land which is the subject of Development Consent comprising mixed use and residential development and associated roads and open space that is permissible pursuant to the BATA I Development Consent or as a consequence of the making of the LEP Amendment.

## **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 Affordable Housing, road infrastructure and embellished open space and monetary contributions to be applied towards public facilities to meet the requirements of the Development.

Specifically, the Developer will make the following contributions:

- (a) Transfer of Affordable Housing Units containing a total of 100 bedrooms,
- (b) Embellishment and dedication of, or making publicly accessible, open space of not less than 20,000sqm of open space,
- (c) Dedication of public roads,
- (d) Monetary contribution of \$23,900,000.00,
- (e) Monetary contributions that would otherwise have been required to be paid for the Development under the Contributions Plan.

The Draft Planning Agreement also amends the BATA I VPA and requires payment of monetary contributions that were required to be paid for Lot 24 under the BATA I VPA.

### **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).

The Draft Planning Agreement also amends the BATA I VPA.

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development,
- excludes the application of s 7.11 of the EPA Act to the Development, and requires an equivalent amount of Local Contributions to be paid,
- excludes the application of s 7.12 of the EPA Act,
- does not exclude the application of s 7.24 of the EPA Act to the Development,
- requires Affordable Housing to be provided,



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- requires payment of \$23,900,000.00 over stages
- requires payment of monetary contributions that would have been required to be paid under the BATA I VPA in respect of Lot 24,
- requires dedication of land, registration of easements and carrying out of works for open space and pedestrian access,
- 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 and any affordable housing units that have been selected on the BATA I Land,
- allows for compulsory acquisition arrangements for the land dedication,
- is to be registered on the titles to the Land and any affordable housing units that have been selected on the BATA I Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or any affordable housing units on the BATA I Land or assigning an interest under the Agreement,
- provides a dispute resolution method 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; and

## **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,
- allows for funding for the delivery of community facilities,
- provides land and makes land publicly accessible for public purposes in connection with the Development, specifically open space and roads and Affordable Housing,
- 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 make monetary, works-in-kind, land dedication and registration of easement contributions to Council, to facilitate the development of the Land in connection with the provision of necessary infrastructure, community facilities and affordable housing.

### **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(a), (c) and (j); and
- delivering affordable housing, road infrastructure, open space and funding for community services and facilities which benefit the local and wider community.

**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***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- 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***

Some of the works proposed form part of the Council's capital works program. Some work are proposed to form part of the Council's future capital works program.

***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 Construction Certificates and Occupation Certificates are issued.

