

<b>ITEM 10.4</b>	<b>APPLICATION TO AMEND MERITON VOLUNTARY PLANNING AGREEMENT</b>
<b>REPORTING MANAGER</b>	<b>EXECUTIVE MANAGER STRATEGIC &amp; PLACE PLANNING</b>
<b>TRIM FILE REF</b>	<b>2018/275111</b>
<b>ATTACHMENTS</b>	<b>1 Karimbla letter in support of VPA amendment (Included In Attachments Booklet)</b> <b>2 Draft Second Deed of Amendment to VPA (Included In Attachments Booklet)</b> <b>3 Draft Explanatory Note (Included In Attachments Booklet)</b> <b>4 Plan of proposed VPA amendments (Included In Attachments Booklet)</b>

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## EXECUTIVE SUMMARY

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### PURPOSE

To seek endorsement to exhibit proposed amendments to the Voluntary Planning Agreement (VPA) between Northern Beaches Council, and Karimbla Properties (No. 41) Pty Ltd and Meriton Properties Pty Ltd, relating to 9, 11, 15 and 17 Howard Avenue, 14-16 and 28 Oaks Avenue and 884, 888 – 890, 892, 894 and 896 Pittwater Road Dee Why (Site B).

### SUMMARY

Meriton Properties has requested an amendment to the VPA originally entered into between the former Warringah Council and Brookfield Multiplex in 2008 for land known as Site B in the Dee Why Town Centre in order to:

- Vary the scope of the Town Square Works to include the erection and removal of Temporary Pedestrian Access Works in order to facilitate safe pedestrian passage during construction works
- Vary the timing for completion of the Town Square Works and the Pedestrian Connection Works in order to ensure the safety of users of the Town Square.

Meriton has confirmed that tower cranes will be operational during the time of opening the retail operations facing the Town Square, with potential for objects to fall on pedestrians.

The completion of the Town Square Works will be required prior to the issue of an occupation certificate for the top two floors of the eastern tower or six (6) months from the installation of the Temporary Pedestrian Access Works (whichever occurs first).

The value to the developer of completing the units at the top of the eastern tower is greater than the cost of the provision of the Town Square. Consequently, the developer remains highly motivated to complete the tower and the Town Square.

No objection is raised to the proposed amendment subject to proposed limitations on the period for completion of the Town Square Works.

Subject to Council's approval, the proposed amendments will be placed on public exhibition for 28 days in accordance with the requirements of the Environmental Planning and Assessment Act and a further report provided to Council.

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**RECOMMENDATION OF GENERAL MANAGER PLANNING PLACE & COMMUNITY**

That:

- A. Council endorses the exhibition of proposed amendments to the Voluntary Planning Agreement between Northern Beaches Council, Karimbla Properties (No. 41) Pty Ltd and Meriton Properties Pty Ltd, relating to 9, 11, 15 and 17 Howard Avenue, 14-16 and 28 Oaks Avenue and 884, 888 – 890, 892, 894 and 896 Pittwater Road Dee Why (Site B) as outlined in the draft Second Deed of Amendment and draft Explanatory Note.
  - B. A report on the outcome of the exhibition is provided to Council.
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**REPORT**

**LOCATION**

The site comprises 13 individual parcels of land at 890-896 Pittwater Road, 9-17 Howard Avenue, 14-16 and 26 Oaks Avenue, Dee Why (commonly referred to as Site B). Figure 1 below shows an aerial view of the site.



Figure 1

**BACKGROUND**

On 4 January 2008, Multiplex Dee Why Pty Ltd lodged Development Application No.2007/1249 for Site B.

Council entered into a VPA with Multiplex Dee Why Pty Ltd and Brookfield Multiplex Developments Australia Pty Limited (Brookfield Multiplex) relating to Site B on 12 December 2008.

The VPA provided for various developer contributions, with a total value of \$2,991,000 and comprising:

- The construction and embellishment of a Town Square and Pedestrian Connection (between Oaks Avenue and the Town Square) open to the public 24 hours a day 7 days a week (secured via right of way)
- Ongoing maintenance of the Town Square and Pedestrian Connection
- The right for Council to use the Town Square for 30 days a year for community and cultural events
- The construction and embellishment of a Bus Set Back area on Pittwater Road

- A cash payment of \$500,000 as a contribution to the cost of construction and dedication of the proposed new road to be constructed on “Site A” (Council’s car park).

DA2007/1249 was approved by the former Warringah Development Assessment Panel (WDAP) in February 2009.

On 6 August 2013 Council adopted the Dee Why Town Centre Masterplan which reconfirmed Site B as the location for a publicly accessible town square and for the tallest built form in the Dee Why Town Centre.

Brookfield Multiplex sold Site B to Karimbla Properties (No. 41) Pty Ltd (Meriton), on 29 November 2013 and the Site B VPA was assigned to Meriton and Meriton Properties Pty Ltd in January 2014.

Following the announcement of a Bus Rapid Transport (B-Line) stop on Pittwater Road adjoining the Meriton site in 2014, Meriton sought approval to amend the Site B VPA to dedicate land in stratum to Council on Pittwater Road for a future Bus Setback area and provide a monetary contribution of \$300,000 in lieu of constructing the previously proposed Bus Set Back area.

Following public exhibition of the proposed amendments, Council resolved to support the changes at its meeting on 22 March 2016 and a Deed of Amendment to the VPA was signed on 6 April 2016.

### **CURRENT VPA REQUIREMENTS FOR THE DELIVERY OF WORKS**

The VPA, as amended by the 2016 Deed of Amendment, requires The Town Square Works and the Pedestrian Connection Works to be completed prior to the earlier of:

- The issue of an Occupation Certificate for any ground level component of the Development; or
- The first day that any part of the retail component of the development is open for trading.

### **APPLICATION TO AMEND VPA TO STAGE CONSTRUCTION WORKS**

In July 2017 Meriton Group contacted Council to request an amendment to the VPA to allow:

- Completion of the Town Square Works prior to the issue of an Occupation Certificate for the upper two levels of Building B (eastern tower) on the site; and
- Completion of the Pedestrian Connection Works by the commencement of trading of the supermarket component of the development fronting the Pedestrian Connection Works.

The request to delay the completion of the Town Square Works until Building B was almost complete is based on concerns for the safety of pedestrians using the Town Square when work was continuing on the eastern tower. By letter dated 22 September 2017, Karimbla Construction Services letter in support of VPA amendment (Attachment 1) provided justification for the new staging of Works.

Meriton notes in other submissions that the value of apartments at the upper two levels of Building B is approximately \$8.2 million – adequate security to ensure delivery of the Town Square which is valued in the original VPA at \$1.72 million.

The request to link the Pedestrian Connection Works to the commencement of trading of the proposed supermarket rather than the issue of an Occupation Certificate for any ground level component of the development was made because the ground floor construction would be subject to multiple occupation certificates, many of which would be unrelated to the commencement of operation of the retail use – the main concern for Council. It is proposed to undertake temporary

pedestrian access works to allow access to shops fronting the proposed Town Square during the completion of work on Building B.

### **CONSULTATION AND PROPOSED AMENDMENTS TO VPA**

All relevant teams within Council were consulted regarding the proposed amendments. No objections have been raised to the staging of delivery works in the circumstances provided sufficient controls are placed on the VPA to ensure the delivery of the Town Square Works is not unduly delayed.

Council's Legal Team were consulted regarding the drafting of amended clauses to ensure this issue has been addressed.

In summary, it was agreed that:

- temporary pedestrian access works could be put into place to allow access to new shops fronting the proposed Town Square during the construction of Building B
- completion of the Town Square must occur within 6 months of the erection of the temporary pedestrian access works or before the issue of an Occupation Certificate for the upper two levels of Building B (whichever occurs earlier)
- completion of the Pedestrian Connection Works must occur before the issue of an Occupation Certificate for any ground level component of the Development with frontage to the Pedestrian Connection Area; or the first day that any part of the retail component of the Development with frontage to the Pedestrian Connection Area is open for trading; or the date for Practical Completion of the Town Square Works (whichever occurs first).

Complete copies of the draft Second Deed of Amendment and draft Explanatory Note are attached and the Plan of Proposed VPA amendments (Attachment 4) shows the proposed Temporary Pedestrian Access Works, the Pedestrian Connection Area, and the Town Square.

### **FINANCIAL CONSIDERATIONS**

The proposed staging of the Town Square Works will have no impact on Council finances.

### **SOCIAL CONSIDERATIONS**

The proposed amended VPA provisions will permit access to shops earlier than would have been the case, providing a much needed service to the community. Whilst completion of the Town Square remains a priority, the safety of pedestrians is paramount.

### **ENVIRONMENTAL CONSIDERATIONS**

The proposed amended VPA will have no significant environmental impacts as it relates only to the timing of the delivery of public benefits.

### **GOVERNANCE AND RISK CONSIDERATIONS**

The proposed VPA amendments address public safety concerns, ensuring pedestrians are not exposed to potential danger from construction activities. There would be a risk to Council and the community should Council not agree to the proposed VPA changes.