

Second Deed of Amendment to Planning Agreement

Karimbla Properties (No. 41) Pty Ltd
Developer

Northern Beaches Council
Council

Meriton Properties Pty Ltd
Guarantor

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Deed of Amendment to Planning Agreement

Date

Parties

Karimbla Properties (No. 41) Pty Ltd ACN 160 693 372 of Level 11, 528 Kent Street, Sydney NSW 2000 (**Developer**)

Northern Beaches Council ABN 31 565 068 406 of Civic Centre, 725 Pittwater Road, Dee Why NSW 2099 (**Council**)

Meriton Properties Pty Ltd ACN 000 698 626 of Level 11, 528 Kent Street, Sydney NSW 2000 (**Guarantor**)

Background

- A. On 12 December 2008, the former Warringah Council (now the Northern Beaches Council) entered into the Planning Agreement with the Former Developer and the Former Guarantor.
- B. On 31 January 2014, the Planning Agreement was assigned from the Former Developer and the Former Guarantor to the Developer and the Guarantor.
- C. On 6 April 2016, the Developer and the Guarantor entered into the First Amendment Deed.
- D. The parties have agreed to further amend the Planning Agreement on the terms of this Deed.
- E. The purpose of the further amendment is to vary the scope of the Town Square Works so they include the erection and removal of the Temporary Pedestrian Access Works and to vary the timing for Practical Completion of the Town Square Works and Pedestrian Connection Works.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

First Amendment Deed means the agreement dated 6 April 2016 entitled 'Deed of Amendment to Planning Agreement' between the Council, the Developer and the Guarantor.

Former Developer means Multiplex Dee Why Pty Ltd ABN 47 112 246 072.

Former Guarantor means Brookfield Multiplex Developments Australia Pty Ltd ABN 17 109 219 810.

Planning Agreement means the agreement dated 12 December 2008 entitled 'Planning Agreement' between the former Warringah Council (now the Northern Beaches Council), the Former Developer and the Former Guarantor, as assigned on 31 January 2014, and as amended by the First Amendment Deed.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and

- (b) unless the context indicates a contrary intention:
- (i) a word or expression defined in the Planning Agreement has the same meaning when used in this Deed;
 - (ii) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iii) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (iv) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (v) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
 - (vi) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (vii) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
 - (viii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (ix) "includes" in any form is not a word of limitation;
 - (x) a reference to "\$" or "dollar" is to Australian currency;
 - (xi) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed; and
 - (xii) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the Act.

2. Amendment of Planning Agreement

2.1 Amendments

The parties agree that on and from the date of this Deed, the Planning Agreement is amended as follows:

- (a) Clause 4.1 **Definitions** of the Planning Agreement is amended to insert the following definitions:

"Building A means the tower shown on the plan at Exhibit C and marked 'Building A'."

"Building B means the eastern tower shown on the plan at Exhibit C and marked 'Building B'."

"Temporary Pedestrian Access Works means a safe pedestrian passage, covered by protective awnings and hoardings through the Town Square Area, between the Pedestrian Connection Area and Howard Avenue/Pittwater Road for the full frontage of Building A and Building B".

- (b) The plan at Annexure A to this Deed is added as Exhibit C to the Planning Agreement.
- (c) The table at Schedule 3 to the Planning Agreement is deleted and replaced with the amended table as set out in Annexure B to this Deed (and in which changes are shown underlined).
- (d) Table 1 of Schedule 5 to the Planning Agreement is deleted and replaced with the amended Table 1 set out in Annexure C to this Deed (and in which changes are shown underlined).
- (e) Clause (c) of Schedule 6 to the Planning Agreement is deleted and replaced with the following:
 - "(c) *that if the Land 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 Land that is subject to a strata scheme under the Strata Schemes (Freehold Development) Act 1973 with the exception of any common Property allotment or any allotment on which Contribution Works have been or are to be carried out;*"

2.2 Confirmation

The parties each ratify and confirm their respective obligations under the Planning Agreement as varied by this Deed.

2.3 Ratification by Guarantor

The Guarantor separately confirms and ratifies each of its obligations under the guarantee and indemnity contained in Schedule 10 of the Planning Agreement including any obligations as varied by this Deed.

3. Costs

- (a) The Developer is responsible for the reasonable legal and administrative costs and expenses incurred by the Council in relation to the preparation and exhibition of this Deed.
- (b) The Developer is responsible for the registration fee for the registration of this Deed.

4. Further acts

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.

5. Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

6. No fetter

Nothing in this Deed will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

7. Representations and warranties

The Parties represent and warrant that they have power to enter into this Deed.

8. GST

8.1 Additional amounts for GST

If a party to this Deed (the **Supplier**) makes a supply under or in connection with this Deed and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

8.2 Reimbursement

If this Deed requires a party to pay for, or reimburse any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.

8.3 Provision of Tax Invoices and other documentation for GST

Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Deed.

8.4 Amounts GST exclusive

Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Deed are GST exclusive.

8.5 No merger

This clause will not merge on completion or termination of this Deed.

9. Registration on title

- (a) The Developer agrees, at its own cost and in accordance with the requirements of clause 8 of the Planning Agreement (as though that clause relates to the registration of this Deed), to lodge this Deed for registration at the Department of Lands within 20 Business Days from the date of this Deed.
- (b) The Developer will notify the Council following registration of this Deed by the Developer and forward a copy of the registered Deed to the Council.

10. Explanatory note

The Parties agree that the explanatory note is not to be used to assist in construing this Deed or the Planning Agreement.

Executed as a deed.

Executed for and on behalf of **Northern Beaches Council** (ABN 31 565 068 406) by its Attorney pursuant to Power of Attorney Book No _____ :

Signature of General Manager

Signature of witness

Name of witness

Executed by **Karimbla Properties (No.41) Pty Ltd** (ACN 160 693 372) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Name of director

Signature of company secretary/director

Name of company secretary/director

Executed by **Meriton Properties Pty Ltd** (ACN 000 698 626) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Name of director

Signature of company secretary/director

Name of company secretary/director

Annexure A – Exhibit C

[NBC note: Insert plan showing Building B]



Annexure B – Schedule 3 Amended Table

Column 1	Column 2
Development Contribution	Intended Use / Detail
<p>Item 1.</p> <p>Contribution Works</p> <p>\$1,720,000 (subject to paragraph 2 of Schedule 4 and subject to indexation by R&BCI as provided for in Schedule 5)</p>	<p>Provision of Town Square Works on the Town Square Area. The Town Square Works will involve the design, construction and embellishment of the Town Square Area in accordance with Approvals consisting of:</p> <ul style="list-style-type: none"> • <u>the erection and removal of the Temporary Pedestrian Access Works;</u> • paving works to the Town Square Area; • associated drainage; • lighting; • landscaping and street tree planting; • outdoor furniture; • storm water recycling tanks; and • water features. <p>In accordance with paragraph 1(d) of Schedule 4, the Developer must grant a right of way and other appropriate rights, providing the public with a non-exclusive right to use the Town Square Area 24 hours a day 7 days a week, subject to the Developer's right to use the Town Square Area for any other purpose associated with the Development (not inconsistent with the public right of way). The easement must contain provisions granting the Council the right to use the Town Square for 30 days (at its selection) per calendar year (subject to reasonable prior notice being given to the Developer) for any community events without any occupancy cost to Council. Council acknowledges that it will accept certain obligations in relation to taking out public liability insurance and keeping the Town Square Area clean and in good repair during its use of the Town Square Area for these purposes.</p>
<p>Item 2.</p> <p>Contribution Works</p> <p>\$471,000 (subject to paragraph 2 of Schedule 4 and subject to indexation by R&BCI as provided for in Schedule 5)</p>	<p>Provision of Pedestrian Connection Works on the Pedestrian Connection Area between the Town Square Area and Oaks Avenue with a minimum width of approximately 14m and to be designed such that it will allow for natural light and an 'open to the sky' feel. The Pedestrian Connection Works will involve the design, construction and embellishment of the Pedestrian Connection Area in accordance with Approvals consisting of:</p> <ul style="list-style-type: none"> • paving works to the Pedestrian Connection Area; • associated drainage; • lighting; • street tree planting; and • landscaping works. <p>In accordance with paragraph 1(e) of Schedule 4, the Developer must grant a right of way and other appropriate rights, providing the public with a non-exclusive right to use the</p>

Column 1	Column 2
Development Contribution	Intended Use / Detail
	<i>Pedestrian Connection Area 24 hours a day 7 days a week, subject to the Developer's right to use the Pedestrian Connection Area for any other purpose associated with the Development (not inconsistent with the public right of way).</i>
<p><i>Item 3A.</i> <i>Dedication of land in stratum</i></p>	<p><i>Dedication of land in stratum for Road Widening to a standard footpath finish, for the purpose of a future bus setback area on Pittwater Road, to the requirements of Transport for NSW.</i></p> <p><i>The Developer will embellish the Road Widening prior to dedication and as required by the Development Consent.</i></p>
<p><i>Item 3B.</i> <i>Contribution Amount</i> <i>\$300,000 (subject to indexation by R&BCI as provided for in Schedule 5 which indexation will be calculated as from 12 December 2010 (being the second anniversary of the Planning Agreement))</i></p>	<p><i>The provision of a monetary contribution for the purpose at civic improvements, to be used consistent with Council's Capital Works Program.</i></p>
<p><i>Item 4.</i> <i>Contribution Amount</i> <i>\$500,000 (subject to indexation by R&BCI as provided for in Schedule 5 which indexation will be calculated as from 12 December 2010 (being the second anniversary of the Planning Agreement)).</i></p>	<p><i>The provision of a monetary contribution for the construction and dedication (by Council) of Church Lane located to the east of the site bordering St Kevin's Church.</i></p>

Annexure C - Schedule 5 Amended Table 1

Column 1	Column 2	Column 3
Development Contribution	Development Contribution Works	Date for Practical Completion of Contribution Works
Item 1 of the table in Schedule 3	The Town Square Works	<p>Practical Completion of:</p> <p>(a) <u>the Town Square Works (excluding the erection of the Temporary Pedestrian Access Works) prior to the earlier of:</u></p> <p><u>(i) the issue of an Occupation Certificate for any part of the upper two levels of Building B; or</u></p> <p><u>(ii) the date that is 6 months after Practical Completion of the Temporary Pedestrian Access Works;</u></p> <p>(b) <u>the erection of the Temporary Pedestrian Access Works prior to the first day that any part of the retail component of the Development with frontage to the Town Square Area is open for trading.</u></p>
Item 2 of the table in Schedule 3	The Pedestrian Connection Works	<p>Practical Completion of the Pedestrian Connection Works prior to the earlier of:</p> <p>(a) <u>the issue of an Occupation Certificate for any ground level component of the Development with frontage to the Pedestrian Connection Area;</u></p> <p>(b) <u>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</u></p> <p>(c) <u>the date for Practical Completion of the Town Square Works (excluding the erection of the Temporary Pedestrian Access Works).</u></p>
Item 3A of the table in Schedule 3	Dedication of land in stratum for Road Widening	<p>Dedication of land in stratum for Road Widening, for the purpose of a future bus setback area prior to the earlier of:</p> <p>(a) <u>the issue of an Occupation Certificate for any ground level component of the Development fronting Pittwater Road; or</u></p> <p>(b) <u>the first day that any part of the retail component of the Development fronting Pittwater Road is open for trading; or</u></p> <p>(c) <u>the issue of a subdivision certificate relating to a strata subdivision for any part of the Land.</u></p>