

Attachment D

Planning Agreement

Planning Agreement

The Council of the City of Sydney and

Karimbla Properties (No. 60) Pty Ltd and

Investments & Loans Pty Ltd

118-130 Epsom Road and 905 South Dowling Street,
Zetland NSW 2000

Reference: S153606

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BETWEEN:

- (1) **The Council of the City of Sydney** ABN 22 636 550 790 of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **Karimbla Properties (No. 60) Pty Ltd** ABN 44 622 383 724 of Level 11, 528 Kent Street, SYDNEY NSW 2000 (**Developer**).
- (3) **Investments & Loans Pty Ltd** ABN 42 000 079 738 of 134-138 William Street, Woolloomooloo NSW 2011 (**Landowner**).

BACKGROUND

- (A) The Landowner is the owner of the Land.
- (B) On 1 November 2021 the Landowner and the Developer entered into a Deed of Option to purchase and sell the Land pursuant to which the Landowner agreed to sell and the Developer agreed to purchase the Land in the event that the options are exercised (**Option Deed**).
- (C) The Developer, with the Landowner's consent has requested the Planning Proposal which would permit the Development to be undertaken on the Land.
- (D) The Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document if the future Development relies on the Alternative Height of Buildings Map proposed under the Planning proposal.
- (E) The Landowner has agreed to be a party to this document solely in its capacity as the owner of the Land pending exercise of the option and subsequent sale and purchase .
- (F) If:
 - (1) the Options under the Deed are not exercised such that the Developer does not become the owner of the Land: and
 - (2) the Landowner transfers the Land to a third party,
 - (3) the third party will be responsible for the obligations on both of the Developer and the Landowner under this document if the third party relies on the Alternative Height of Buildings Map unless assigned under the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

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

Alternative Height of Buildings Map means the alternative height controls that may be relied upon by the Developer under a future Development Application as proposed under the Planning Proposal.

Attributed Value means the value the City and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this document, as set out in clause 1 of Schedule 3 of this document.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or gazetted public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Policies means all formally adopted policies and procedures relevant to the provision of the Public Benefits, as notified by the City in writing to the Developer.

City's Representative means the person named in Item 3 of Schedule 1 or his/her delegate.

Concept Development Application means the same as a Concept Development Application of the Act.

Confidential Information means:

- (a) information of a party (**disclosing party**) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Construction Certificate has the same meaning as in the Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Dealing means selling, transferring, assigning, novating, charging, or encumbering and, where appearing, **Deal** has the same meaning.

Developer means Karimbla Properties (No. 60) Pty Ltd, or, to the extent that this document is novated to another entity pursuant to clause 13, that entity.

Developer's Representative means the person named in Item 4 of Schedule 1 or his/her delegate.

Development means the development of the Land described at Item 2 of Schedule 1.

Development Application means the development application identified in Item 5 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means any consent granted to the Development Application for the Development and includes all modifications made under section 4.55 of the Act.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011 (NSW)*;
- (b) the *Protection of the Environment Operations Act 1997 (NSW)*; and
- (c) the *Contaminated Land Management Act 1997 (NSW)*.

Environmental Performance Initiatives means those parts of the Public Benefit described as "Environmental Performance Initiatives" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Gross Floor Area has the meaning given to that term in the *Sydney Local Environment Plan* in effect at the date of this document.

GST means the same as in the GST Act.

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

Index Number means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Instrument Change means an amendment to the Sydney LEP in accordance with the Planning Proposal.

Land means the land described in Item 1 of Schedule 1 of this document.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

Occupation Certificate has the same meaning as in the Act.

Personal Information means:

- (a) personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* (NSW);
- (b) health information within the meaning of the *Health Records and Information Privacy Act 2002* (NSW); and
- (c) any information which does not fall within the scope of paragraphs (a) and (b) above, but is personal information within the meaning of the *Privacy Act 1988* (Cth).

Personnel means the Developer's officers, employees, agents, contractors or subcontractors.

Planning Proposal means the planning proposal for the Land which received Gateway Determination from the Department of Planning and Environment on 2 March 2023 (PP-2022-2530).

Practical Completion means when the building construction is completed except for any omissions or defects that do not prevent the building from being reasonably capable of being used for its intended purpose.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW); the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, regulations, guidelines, codes and the City's Policies relating to the handling of Personal Information.

Public Benefits means the provision of benefits to the community by the Developer in the form and at the times specified in Schedule 3.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Subdivision of Land has the same meaning as in the Act.

Sydney LEP means *Sydney Local Environmental Plan 2012* (NSW).

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.

- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **including** means "including, without limitation".
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (h) A reference to **this document** includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. **APPLICATION OF THE ACT AND THE REGULATION**

2.1 Application of this document

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to:

- (a) the Land; and
- (b) the Instrument Change.

2.2 Public Benefits to be made by Developer

Clause 5 and Schedule 3 set out the details of the:

- (a) Public Benefits to be delivered by the Developer;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

2.3 Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.

2.4 City rights

This document does not impose an obligation on the City to:

- (a) grant Development Consent for the Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

2.5 Explanatory note

The explanatory note prepared in accordance with clause 205 of the Regulation must not be used to assist in construing this document.

3. OPERATION OF THIS PLANNING AGREEMENT

3.1 Commencement

This document will commence on the later of:

- (a) the date of execution of this document by all parties to this document; or
- (b) the date the Instrument Change enters into force.

3.2 Assignment

To avoid doubt, upon the sale of the Land by the Landowner to the Developer (or any other third party) and subject to compliance with clause 12.2, the Landowner is released from all future obligations under this document.

4. WARRANTIES

4.1 Mutual warranties

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted,
and it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) **(no controller)** no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 Developer warranties

- (a) The Developer warrants to the City that, at the date of this document:
 - (i) it is legally entitled to request and pursue all consents and approvals that are required by this document and, subject to obtaining such consents and approvals, do all things necessary to give effect to this document;
 - (ii) all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Developer's size and experience; and
 - (iii) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.
- (b) The Developer warrants to the City that, prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

4.3 Landowner warranties

The Landowner warrants to the City that, at the date of this document:

- (a) it is the registered proprietor of the Land;
- (b) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document; and
- (c) it is not aware of any matter which may materially affect the Landowner's ability to perform its obligations under this document.

5. **PUBLIC BENEFITS**

5.1 Developer to provide Public Benefits

The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document if it undertakes the Development that relies on the Alternative Height of Buildings Map.

5.2 Non-completion of Public Benefits

- (a) If the Developer makes a request by notice in writing not to complete the Public Benefits (or any part of the Public Benefits) the City may permit the Developer not to complete the Public Benefits (or any part of the Public Benefits) by issuing a notice in writing to the Developer stating that completion of the items identified in that notice is not required to fulfil the Developer's obligations under this document.
- (b) If the Developer fails to complete the whole of the Public Benefits in the form and to the standards required under the Development Consent or this document then the City may either:
 - (i) complete the Public Benefits itself; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consent and this document.

6. **INDEMNITY**

6.1 From Developer

The Developer indemnifies the City and the Landowner against all damage, expense, loss or liability of any nature suffered or incurred by the City or the Landowner arising from any act or omission by the Developer (or any Personnel) in connection with the performance of the Developer's obligations under this document, except where the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City or the Landowner (or any person engaged by the City or Landowner).

7. **DEFECTS LIABILITY**

Not used

8. **REGISTRATION**

8.1 Registration of this document

(a) The Developer and Landowner:

(i) consent to the registration of this document at the NSW Land Registry Services on the certificate of title to the Land;

(ii) warrant that they have obtained all consents to the registration of this document on the certificate of title to the Land; and

(iii) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this document on the certificate of title to the Land, including but not limited to:

(A) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and

(B) the Developer providing the City with a cheque or electronic funds transfer for registration fees payable in relation to registration of this document at NSW Land Registry Services.

(b) The Developer, the Landowner and the City must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

(c) The City will notify the Developer and Landowner of any registration of this document by the City and provide the Developer and Landowner with a copy of all documents confirming any such registration.

8.2 Release of this document

If:

(a) the City is satisfied, acting reasonably, that the Developer has provided all Public Benefits (unless waived by the City in accordance with this document or otherwise the subject of a notice issued under clause 6.3(a)) and otherwise complied with this document; or

(b) this document is terminated in accordance with clause 13,

then the City must promptly do all things reasonably required to remove this document from the certificate of title to the Land.

9. **ENFORCEMENT**

This document may be enforced in accordance with its terms.

10. **DISPUTE RESOLUTION**

10.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 10.

10.2 Negotiation

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative and the City's Representative and the Landowner's Representative for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 10; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Developer's Representative and the City's Representative and the Landowner's Representative must meet at least once to attempt to resolve the Dispute.
- (c) The Developer's Representative and the City's and the Landowner's Representative may meet more than once to resolve a Dispute. The Developer's Representative and the City's Representative and the Landowner's Representative may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (d) Notwithstanding any other provisions of this agreement, the Landowner can be a party to the dispute and exercise the rights set out in Clause 10.2, but only until such time that the Developer becomes the registered proprietor of the Land.

10.3 Not use information

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 10 is to attempt to settle the Dispute. Neither party may use any information or documents obtained through any dispute resolution process undertaken under this clause 10 for any purpose other than in an attempt to settle the Dispute.

10.4 Condition precedent to litigation

Subject to clause 10.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

10.5 Summary or urgent relief

Nothing in this clause 10 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

11. TAXES AND GST

11.1 Responsibility for Taxes

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.
- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 11.1(a).

11.2 GST free supply

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

11.3 Supply subject to GST

To the extent that clause 11.2 does not apply to a supply made under this document, this clause 11.3 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.

- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 11.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 11.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 11.3.
- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

12. **DEALINGS**

12.1 Dealing by the City

- (a) The City may Deal with its interest in this document without the consent of the Developer if the Dealing is with a Government Agency. The City must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The City may not otherwise Deal with its interest in this document without the consent of the Developer, such consent not to be unreasonably withheld or delayed.

12.2 Dealing by the Developer and Landowner

- (a) The Developer and the Landowner may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land by the Landowner to the Developer and provided the City is given prior notice.
- (b) Prior to registration of this document in accordance with clause 8;
 - (i) the Developer must not Deal with this document without:
 - (A) the prior written consent of the City (such consent not to be unreasonably withheld); and
 - (B) the City, the Developer, the Landowner and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms substantially similar to this document.
 - (ii) other than as permitted under clause 12.2 (a), the Landowner must not Deal with this document without:
 - (A) the prior written consent of the City (such consent not to be unreasonably withheld); and

- (B) the City, the Landowner and the third party the subject of the Dealing entering into a Novation Deed.
- (c) Other than as permitted under clause 12.2 (a), on and from registration of this document in accordance with clause 8:
 - (i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land;
 - (ii) the Developer may register a plan of strata subdivision, and the City consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan; and
 - (iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
 - (A) the prior written consent of the City (such consent not to be unreasonably withheld); and
 - (B) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City.
 - (iv) the Landowner must not otherwise Deal with this document to a third party that is a purchaser of the whole or any part of the Land without
 - (A) the prior written consent of the City (such consent not to be unreasonably withheld); and
 - (B) the City, the Landowner and the third party the subject of the Dealing entering into a Novation Deed in respect of the Dealing.
- d) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 12.2.
- e) If a third party is acquiring an interest in the Land as a purchaser of one or more strata lots in a strata scheme (whether or not the relevant strata scheme has been registered at NSW Land Registry Services), then:
 - (i) The Developer is not required to comply with clauses 12.1(b)(i) or 12.2(c)(iii); and
 - (ii) The Landowner is not required to comply with clauses 12.2(b)(ii) or 12.2(c)(iv).

13. **TERMINATION**

- (a) Either party may terminate this document by notice in writing to the other parties if:
 - (i) the Instrument Change does not enter into force within 24 months after the date of this document; or

- (ii) the Sydney LEP is subsequently amended by an environmental planning instrument made after the Instrument Change, in a way that prevents the Development from proceeding; or
 - (iii) the Instrument Change is declared to be invalid by a Court of competent jurisdiction.
- (b) If this document is terminated in accordance with clause 13(a), then:
- (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss each party may suffer as a result of the termination of this document; and
 - (iii) the City will, at the Developer's cost, do all things reasonably required to remove this document from the certificate of title to the Land in accordance with clause 8.

14. **CONFIDENTIALITY, DISCLOSURES AND PRIVACY**

14.1 Use and disclosure of Confidential Information

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 14.2 or 14.3.

14.2 Disclosures to personnel and advisers

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 14.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 14.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 14.2(b)(i).

14.3 Disclosures required by law

- (a) Subject to clause 14.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 14.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

14.4 Receiving party's return or destruction of documents

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

14.5 Security and control

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

14.6 Media releases

Either party must not issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits without the prior written consent of the other party.

14.7 Privacy

- (a) Without limiting its obligations at law with respect to privacy and the protection of Personal Information, the Developer:

- (i) must not, directly or indirectly collect, use or disclose any Personal Information under or in connection with this document except to the extent necessary to perform its obligations under this document; and
- (ii) must in the delivery of the Public Benefits and the performance of all its other obligations under this document comply with the Privacy Laws and must not do any act or engage in any practice that would breach the Privacy Laws or which if done or engaged in by the City would be a breach of any Privacy Laws.

15. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.
- (b) A person's address and email address are those set out in Schedule 1 for the City's Representative, the Developer's Representative and Landowner's Representative, or as the person notifies the sender in writing from time to time.

16. **GENERAL**

16.1 Governing law

- (a) This document is governed by the laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

16.2 Access to information

In accordance with section 121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Developer agrees to allow the City immediate access to the following information contained in records held by the Developer:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Developer from the City to enable the Developer to deliver the Public Benefits.

16.3 Liability for expenses

- (a) The Developer must pay its own and the City's expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) The Developer must pay for all reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulations and for any consent the City is required to provide under this document.

16.4 Relationship of parties

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

16.5 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

16.6 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this document,

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

16.7 Severance

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

16.8 Preservation of existing rights

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

16.9 No merger

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

16.10 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

16.11 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

16.12 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

16.13 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Developer,

the order of precedence between them will be the order listed above, this document having the highest level of precedence.

16.14 No fetter

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

16.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	Lot 7 in DP 24134, known as 118-130 Epsom Road and Lot 2 in DP 830870, known as 905 South Dowling Street, Zetland 2017.
2.	Development	The development which relies on the Alternative Height of Buildings Map that is permitted by the controls proposed in the Planning Proposal and subject to the resultant Instrument Change.
3.	City's Representative	Name: Director, Planning, Development and Transport Address: Level 1, 456 Kent Street, Sydney NSW 2000 Email: planningsystemsadmin@cityofsydney.nsw.gov.au
4.	Developer's Representative	Name: General Counsel Address: Level 11, 528 Kent Street, Sydney NSW 2000 Email: generalcounsel@meriton.com.au
5.	Landowner's Representative	Name: Michael Winnem Address: Level 1, 134 William Street, Woolloomooloo NSW 2011 Email: Michael.winnem@suttons.com.au
6.	Development Application	Means any development application submitted to the City in connection with the Development.

SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) No</p> <p>(c) No</p>
2.	<p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p>	Item 1 of Schedule 1.
3.	<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)</p>	The environmental planning instrument as described in clause 2.1.
4.	<p>The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)</p>	Schedule 3
5.	<p>Whether this document excludes (wholly or in part) of does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)</p>	<p>Section 7.11 not excluded</p> <p>Section 7.12 not excluded</p> <p>Section 7.24 not excluded</p>
6.	<p>Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)</p>	The application of section 7.11 of the Act is not excluded in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 10
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 9
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
11.	Registration of this document (section 7.6 of the Act)	Clause 8
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Nil
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Not applicable
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Provision of the Public Benefits
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation)	Clause 2.5

SCHEDULE 3

Public Benefits (clause 5)

1. PUBLIC BENEFITS - OVERVIEW

The Developer must provide the Public Benefits in accordance with Schedule 3 and this document if the future Development Applications for the Development rely on the Alternative Height of Buildings Map. The Attributed Value, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below

Item	Public Benefit	Attributed Value	Due date	Additional specifications
1.	Environmental Performance Initiatives	Nil	<p>On or before the date of issue of the first Occupation Certificate for each building in the Development.</p> <p>On or before the date of issue of the first Construction Certificate for each residential component, building or stage in the Development.</p> <p>On or before the date of issue of the first Occupation Certificate for each building in the Development.</p>	<p>Design and construct all future buildings in the Development to be capable of providing a dual reticulation system for non-potable recycled water (Refer to Clause 2.1 below).</p> <p>Submission to the City of BASIX Certificates demonstrating an energy and water BASIX score of at least 5 points above the target Refer to Clause 2.2 below).</p> <p>Installation of infrastructure to enable all residential parking spaces in the Development to be capable of being fitted with an Electric Vehicle Charger Refer to Clause 2.3 below)</p>
2.	Non-residential floor space	Nil	On or before the date of issue of the first Development Consent for the Concept Development Application for the Development.	The Concept Development Application submitted by the Developer is to enable the provision of a minimum of 3,696 square metres of non-residential Gross Floor Area (GFA) within the Development to ensure that there is a genuine provision of retail, childcare and

				other non-residential services provided within the Development to serve the day-to-day needs of the local area within a walkable/accessible location and reduce car dependency.
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2. ENVIRONMENTAL PERFORMANCE INITIATIVES

2.1 Non-potable Recycled Water Dual Reticulation

- (a) The Developer must design and construct all buildings on the Land so as to be capable of providing a dual reticulation water system for water consumption. The system must be capable of fully connecting to the non-potable recycled water network provided by the City and must be configured to supply all toilets, washing machine taps, car wash bays, cooling towers and irrigation usage on the Land. It is to be noted that car wash bays are to be dedicated to car washing and not shared with any other purpose such as visitor parking.
- (b) As part of these requirements, the Developer must connect to the Non-potable Recycled Water Network installed by the City, in the event that Council’s Non-potable Recycled Water Network system is not operational at that time, connect the non-potable water pipes in the building to the utility mains potable water supply pipes downstream of the Sydney Water mains supply water meter (Non Potable Water Connection Point) and allow the City to disconnect the potable water supply from the non-potable water system and connect the recycled water network as soon as it becomes operational.
- (c) Provide space of 1m x 1m x 2.4m (or as otherwise agreed by the City) and access for metering equipment, isolation valves and incoming pipes for recycled water at the non-potable water connection point at a location to be agreed between the parties.
- (d) Provide space and access from the property boundary to the non-potable water connection point for installation of recycled water pipes of 1 metre in width.
- (e) Non-potable recycled water supply static pressure will be a minimum of 15m head at the property boundary; and the Developer must design a reticulation system, including buffer storage of at least 35,000 litres or more storage as necessary, to adequately supply all the non-potable water end uses, specified in (a) above at all times.
- (f) Non-potable recycled water supply quality will comply with the relevant National and State guidelines for water recycling (including but not limited to Australian Guidelines for Water Recycling) regarding supply to toilets, washing machine taps, car wash bays, cooling towers and irrigation usage and have a Total Dissolved Solids consistent within the Australian Drinking Water Guidelines.

2.2 Residential Component Energy and Water BASIX

- (a) For all residential components of the Development, the Developer commits to the achievement of:

- (i) an energy BASIX score at least 5 points above the target required for a BASIX Certificate;
 - (ii) a water BASIX score at least 5 points above the target required for a BASIX Certificate.
- (b) The Developer must provide the City with a copy of all BASIX Certificates issued for the Development prior to the issue of a Construction Certificate for each residential component, building or stage of the Development.
- (c) In the event that the new State Environmental Planning Policy (Sustainable Buildings) 2022 comes into force, then the provisions of that Policy will apply to the Development and will supersede the requirements of this Clause 2.2.

2.3 Electronic Vehicle Charging

To enable all residential parking spaces within the Development to be capable of being fitted with an Electric Vehicle Charger, electric vehicle charging infrastructure shall be provided as follows:

- (a) Power supply and distribution boards for electric vehicle charging in accordance with Section J9D4 'Facilities for electric vehicle charging equipment' in NCC 2022 Volume One – Building Code of Australia, and
- (b) All residential parking spaces are to be located within 10 metres of a cable tray sized to accommodate cabling for 100% of spaces it serves and terminates at the closest electric vehicle distribution board.

EXECUTED as a deed.

Signed, sealed and delivered for
**THE COUNCIL OF THE CITY OF
SYDNEY** (ABN 22 636 550 790) by
its duly authorised officer, in the
presence of:

Signature of witness

Name

456 Kent Street, Sydney NSW 2000

Address of witness

Signature of officer

Name of officer
Authorised delegate pursuant to
section 377 of the Local Government
Act 1993

Position of officer

**EXECUTED BY KARIMBLA
PROPERTIES (NO. 60) PTY LTD**
(ABN 44 622 383 724) in accordance
with section 127 (1) of the
Corporations Act 2001 (Cth):

Signature of Director:

Name (printed):

Signature of Director/Secretary:

Name (printed):

**EXECUTED by Investments &
Loans Pty Ltd** ABN 42 000 079 738]
in accordance with s127(1) of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

