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61 Mobbs Lane, Epping
Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parramatta City Council
Karimbla Properties (No. 9) Pty Limited
Meriton Apartments Pty Ltd

//Insert Date//

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61 Mobbs Lane, Epping Planning Agreement

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61 Mobbs Lane, Epping Planning Agreement

Summary Sheet

Council:

Name: Parramatta City Council
Address: 30 Darcy Street, Parramatta NSW 2150
Telephone: 9806 5050
Facsimile: 9806 5917
Email: mail@parracity.nsw.gov.au
Representative: ##

Landowner:

Name: Karimbla Properties (No. 9) Pty Limited
Address: Level 11, 528 Kent Street, Sydney NSW 2000
Telephone: 9287 2888
Facsimile: 9287 2777
Email: benjyl@meriton.com.au
Representative: Benjy Levy

Developer:

Name: Meriton Apartments Pty Ltd
Address: Level 11, 528 Kent Street, Sydney NSW 2000
Telephone: 9287 2888
Facsimile: 9287 2777
Email: benjyl@meriton.com.au
Representative: Benjy Levy

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 4.

Security:

See clause 17.

Dispute Resolution:

Expert determination and mediation. See clauses 19 and 20.

61 Mobbs Lane, Epping Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Parramatta City Council ABN 49 907 174 773 of 30 Darcy Street, Parramatta NSW 2150 (**Council**)

and

Karimbla Properties (No. 9) Pty Limited ABN 90 102 955 635 of Level 11, 528 Kent Street, Sydney NSW 2000 (**Landowner**)

and

Meriton Apartments Pty Ltd ABN 75 000 644 888 of Level 11, 528 Kent Street, Sydney NSW 2000 (**Developer**)

Background

- A The Landowner is the owner of the Land.
- B The Minister has approved the Concept Plan and the Project Application in relation to the Land.
- C The Developer is prepared to make Development Contributions to the Council in accordance with this Agreement in connection with the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;

- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited;
- (f) Westpac Banking Corporation; or
- (g) any other financial institution approved by the Council in response to a request from the Developer.

Compliance Certificate has the same meaning as in the Act.

Concept Plan means Concept Plan No. MP 05_0086 relating to the Land as approved by the Minister under Part 3A of the Act and modified from time to time in accordance with the Act.

Construction Certificate has the same meaning as in the Act.

Contributions Framework means the contributions framework adopted by the Department in respect of the Development as set out in the letter from Sam Haddad to McLachlan Lister dated 27 March 2009.

Defects Liability Period means:

- (a) in relation to the traffic control Work referred to in Item 4 of the table to Schedule 1, the usual defects liability period applied by the Roads and Traffic Authority of New South Wales in relation to work of that type commencing on the date on which the Work is completed, and
- (b) in relation to the open space Work referred to in Item 5 of the table to Schedule 1, the period commencing on the date on which the Work is completed and ending 2 years after that date.

Development means the development the subject of the Concept Plan..

Development Consent has the same meaning as in the Act but also includes a project approval under Part 3A of the Act.

Development Contribution means a monetary contribution, 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.

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.

Item means the object of a Development Contribution specified in Column 1 of Schedule 1.

Land means Lots 1 and 2 in DP 732070, Lots 1 & 2 in DP 129023, Lot 2 in DP 582172 and Lot 1 in DP 570891.

Map means the plan in Schedule 2.

Minister means the Minister for Planning for the State of New South Wales.

Party means a party to this agreement, including their successors and assigns.

Project Application means the project application No. MP 08_0258 for early works in respect of the Development as approved by the Minister and modified from time to time in accordance with the Act.

Public Authority has the same meaning as in the Act.

Rectification Notice means a notice in writing issued in the Defects Liability Period that identifies a defect in a Work and requires rectification of the defect during the Defects Liability Period or during such later period specified in the notice as is reasonable in the circumstances.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Security means a Bank Guarantee or a bond or other form of security to the reasonable satisfaction of the Council.

Stage means Stage 1, Stage 2 or Stage 3 or any two or more as the context requires.

Stage 1 means the part of the Development to be carried on the part of the Land so shown on the Map as stage 1.

Stage 2 means the part of the Development to be carried on the part of the Land so shown on the Map as stage 2.

Stage 3 means the part of the Development to be carried on the part of the Land so shown on the Map as stage 3.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer as a Development Contribution in accordance this Agreement.

1.2 In the interpretation of this Agreement, 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 Agreement.

1.2.2 A reference in this Agreement 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 Agreement 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 Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.

1.2.6 A reference in this Agreement 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 Agreement 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 Agreement.
- 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 Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement and have operative effect according to their tenor.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.
- 1.2.17 A reference to the Developer includes a reference to the Landowner in circumstances where the Landowner would be required to do or refrain from doing a thing in order to give effect to this Agreement, and is a reference to the Landowner in circumstances where an obligation under this Agreement could only be performed by the Landowner.

2 Application & commencement of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.
- 2.2 This Agreement commences when it has been executed by all of the Parties.
- 2.3 The Party who executes this Agreement last is to provide the other Parties with a certified copy of the fully executed version of this Agreement within 2 working days of having executed this Agreement.

3 Further Agreements Relating to this Agreement

- 3.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

4 Application of s94, s94A and s94EF of the Act to the Development

- 4.1 This Agreement excludes the application of s94 to the Development.
- 4.2 This Agreement excludes the application of s94A to the Development.
- 4.3 This Agreement does not exclude the application of s94EF to the Development.

Part 2 – Development Contributions

5 Provision of Development Contributions

- 5.1 The Developer is to make Development Contributions to the Council in accordance with this Agreement.
- 5.2 In addition to payment of the monetary Development Contributions specified in the table to Schedule 1, the Developer is to make a monetary Development Contribution to the Council of \$4,910.83 for each dwelling exceeding 650 that is approved for the Land.
- 5.3 The additional monetary Development Contributions required by clause 5.2 are to be made prior to the issue of a construction certificate for above ground Work relating to the construction of the dwellings referred to in that clause.
- 5.4 The Council is to ensure that each Development Contribution made by the Developer under this Agreement is applied towards the public purpose for which it is made.

6 Monetary Development Contributions

- 6.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement 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.
- 6.2 Monetary Development Contributions required to be made under this Agreement are to be indexed from 1 March 2009 to the date of payment in accordance with quarterly movements in the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

7 Carrying out of Work

- 7.1 Any Work that is required to be carried out by the Developer under this Agreement is to be carried out according to law.

- 7.2 Prior to the carrying out of any Work under this Agreement, the Developer is to provide to the Council a copy of the plans or specifications relating to the Construction Certificate for the Work.
- 7.3 The Developer is not required to carry out Work under this Agreement unless the Council has notified the Developer in writing that it raises no objection to the plans or specifications or the Construction Certificate referred to in clause 7.2.
- 7.4 Any failure by the Developer to carry out Work in accordance with this Agreement resulting solely from a breach by the Council of clause 7.3 is not a breach of this Agreement by the Developer.

8 Inspection of Work by the Council

- 8.1 The Council is to undertake regular periodic inspections of Work that is required to be carried out by the Developer on the Land under this Agreement during the period in which the Work is being carried out.
- 8.2 The Parties are to use their reasonable endeavours to agree on a schedule of inspections for the purposes of clause 8.1.
- 8.3 The Council is to give the Developer reasonable prior notice of its intention to enter the Land to inspect a Work if:
 - 8.3.1 at the time of the proposed inspection, the parties have not reached the agreement referred to in clause 8.2, or
 - 8.3.2 the proposed inspection is, for any reason, to occur on a day or at a time other than the day or time contained in the agreed schedule of inspections under clause 8.2.
- 8.4 The Council is not to give the Developer a Rectification Notice in relation to a defect in a Work that was reasonably discoverable by the Council upon an inspection under clause 8.1 but which was not brought to the Developer's attention by the Council at the time of the inspection.

9 Entry onto Council Land by the Developer

- 9.1 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

10 Protection of people and property

- 10.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 10.1.1 all necessary measures are taken to protect people and property, and
 - 10.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 10.1.3 nuisances and unreasonable noise and disturbances are prevented.

11 Damage and repairs to Work

- 11.1 The Developer, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work taken to have been completed under this Agreement.

12 Variation of Work

- 12.1 A Work is not to be varied by the Developer, unless:
- 12.1.1 the Parties agree in writing to the variation, and
 - 12.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 12.1.3 the Developer bears all of the Council's reasonable costs of and incidental to agreeing to and approving the variation.
- 12.2 For the purposes of clause 12.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

13 Completion of Work

- 13.1 Work is completed for the purposes of this Agreement if the Council, acting reasonably, gives a statement in writing to the Developer to that effect or the Developer gives the Council a Compliance Certificate to that effect.

14 Rectification of defects

- 14.1 During the Defects Liability Period the Council may give the Developer a Rectification Notice.
- 14.2 Subject to the resolution of a dispute in accordance with this Agreement, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.
- 14.3 If the Developer breaches clause 14.2, the Council may have the relevant defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.
- 14.4 Clause 14.1 does not authorise the Council to give the Developer a Rectification Notice in respect of Work:
- 14.4.1 that has been carried out in accordance with any plans and specifications or a Construction Certificate the subject of a notice given by the Council to the Developer under clause 7.3, or
 - 14.4.2 that varies from any such plans or specifications or Construction Certificate by reason only of compliance with the requirements of a Public Authority relating to the Work.

15 Failure to carry out Work

- 15.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of Work, including compliance with a Rectification Notice, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 15.2 A notice given under clause 15.1 is to allow the Developer a period of not less than 28 days to rectify the breach or such further period as is reasonable in the circumstances.
- 15.3 The Council may carry out and complete the Work the subject of a notice under clause 15.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction but subject to the dispute resolution provisions of this Agreement.
- 15.4 If the Council incurs a cost that is not met by calling-up the Security in remedying a breach that has been notified to the Developer under clause 15.1, the Council may recover the cost from the Developer in a court of competent jurisdiction.

Part 3 – Other Provisions

16 Indemnity and Insurance

- 16.1 During the relevant Defects Liability Period for a Work, the Developer 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 a negligent act or omission by the Developer in carrying out the Work.
- 16.2 Within 7 days of receipt of a written request made by the Council to the Developer, the Developer is to take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is completed in accordance with this Agreement:
 - 16.2.1 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,
 - 16.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowner, the Developer and any subcontractor of the Developer, for liability to any third party.
- 16.3 The Developer is to take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to Work required to be

carried out by the Developer under this Agreement up until the Work is completed in accordance with this Agreement:

16.3.1 workers compensation insurance as required by law, and

16.3.2 any other insurance required by law.

16.4 If the Developer fails to comply with clause 16.2 and 16.3, 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:

16.4.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or

16.4.2 recovery as a debt due in a court of competent jurisdiction.

16.5 Within 7 days of receipt of a written request made by the Council to the Developer, the Developer is to provide to the Council satisfactory written evidence of all of the insurances required to be taken out by the Developer under this Agreement.

17 Provision of Security

17.1 Not later than 7 days from the date of receipt of a copy of the fully executed version of this Agreement from the Council, the Developer is to provide the Council with Security in the form of a Bank Guarantee in the amount of \$1,242,000.00.

17.2 The Parties agree that the Security is limited to securing the performance by the Developer of the carrying out of Work required by this Agreement.

17.3 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of compliance by the Developer with its obligations to carry out Work required by this Agreement to the reasonable satisfaction of the Council

17.4 The Council is to progressively release and return the Security to the Developer as and when the Developer complies with its obligations to carry out Work required by this Agreement but only in accordance with written advice provided to the Council by the Developer that has been prepared by a suitably qualified quantity surveyor as to the amount of the Security that should be released and returned at the relevant time.

17.5 The Council is to provide to the Developer, without delay, a copy of any advice it receives from the quantity surveyor as referred to in clause 17.5.

17.6 The Developer may at any time provide the Council with a replacement Security.

17.7 On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.

17.8 The Council may, subject to clause 17.10, call-up the Security if it considers, acting reasonably, that the Developer has not complied with its Development Contributions obligations.

17.9 The Council is not to call-up the Security unless:

17.9.1 it has given the Developer not less than 30 days notice of its intention to do so and the Developer has not remedied the non-compliance to the Council's reasonable satisfaction before that period has expired,

17.9.2 any dispute resolution in accordance with this Agreement has not been completed.

17.10 If the Council calls on the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance

18 Enforcement in a court of competent jurisdiction

18.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.

18.2 For the avoidance of doubt, nothing in this Agreement prevents:

18.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,

18.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

19 Dispute Resolution – expert determination

19.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.

19.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.

19.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.

19.4 If a notice is given under clause 19.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

19.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.

19.6 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

20 Dispute Resolution - mediation

20.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 19 applies.

20.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.

- 20.3 If a notice is given under clause 20.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 20.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 20.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

21 Review of this Agreement

- 21.1 The Parties agree to review this Agreement every 2 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 21.2 For the purposes of clause 21.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 21.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 21.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 21.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 21.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 21.1 is not a dispute for the purposes of clauses 19 and 20 and is not a breach of this Agreement.

22 Notices

- 22.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 22.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 22.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 22.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 22.3 Any notice, consent, information, application or request is to be treated as given or made if it is:



- 22.3.1 delivered, when it is left at the relevant address,
- 22.3.2 sent by post, 2 business days after it is posted, or
- 22.3.3 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.

- 22.4 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.

23 Approvals and Consent

- 23.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's discretion (acting reasonably) and subject to any conditions determined by the Party.
- 23.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

24 Costs

- 24.1 The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment.

25 Entire Agreement

- 25.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 25.2 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 Agreement was executed, except as permitted by law.

26 Further Acts

- 26.1 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 Agreement and all transactions incidental to it.

27 Governing Law and Jurisdiction

- 27.1 This Agreement is governed by the law of New South Wales.

- 27.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 27.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

28 Joint and Individual Liability and Benefits

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

29 No Fetter

- 29.1 Nothing in this Agreement 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.

30 Representations and Warranties

- 30.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

31 Severability

- 31.1 If a clause or part of a clause of this Agreement 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.
- 31.2 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 Agreement, but the rest of this Agreement is not affected.

32 Modification

- 32.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

33 Waiver

- 33.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 33.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 33.3 It 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.

34 GST

- 34.1 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.
- 34.2 Subject to clause 34.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 34.3 Clause 34.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 34.4 No additional amount shall be payable by the Council under clause 34.2 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.
- 34.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement 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:



- 34.5.1 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;
- 34.5.2 that any amounts payable by the Parties in accordance with clause 34.2 (as limited by clause 34.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 34.6 No payment of any amount pursuant to this clause 34, 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.
- 34.7 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.
- 34.8 This clause continues to apply after expiration or termination of this Agreement.

35 Explanatory Note Relating to this Agreement

- 35.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 35.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.



Schedule 1

(Clause 5)

Development Contributions

| Column 1 | Column 2 | Column 3 | Column 4 |
|-------------------------------|--|--|--|
| Item | Public Purpose | Manner & Extent | Timing |
| Monetary Contributions | | | |
| 1 | Community & Cultural, Other and Plan of Management categories of the Council's former s94 contributions plan as described in the Contributions Framework | \$650,012.66 indexed in accordance with CPI from 1 March 2009 to the date of payment | Prior to the issuing of the first construction certificate in respect of above-ground works for Stage 1 of the Development |
| 2 | Community & Cultural, Other and Plan of Management categories of the Council's former s94 contributions plan as described in the Contributions Framework | \$650,012.66 indexed in accordance with CPI from 1 March 2009 to the date of payment | Prior to the issuing of the first construction certificate in respect of above-ground works for Stage 2 of the Development |
| 3 | Community & Cultural, Other and Plan of Management categories of the Council's former s94 contributions plan as described in the Contributions Framework | \$650,012.66 indexed in accordance with CPI from 1 March 2009 to the date of payment | Prior to the issuing of the first construction certificate in respect of above-ground works for Stage 3 of the Development |

Carrying out of Work

| | | | |
|---|-----------------|---|---|
| 4 | Traffic control | Signalisation and associated roadworks of the intersection of Marsden Road/Mobbs Lane in accordance with condition C40 of MP 08_0258 | <p>Where an occupation certificate has been issued for a child care centre within the Development, prior to the issuing of an occupation certificate for the 150th dwelling in the Development</p> <p>Where an occupation certificate has not been issued for a child care centre within the Development, prior to the issuing of an occupation certificate for the 225th dwelling in the Development</p> |
| 5 | Open space | Embellishment Work of a minimum of 0.56 hectares open space/conservation area generally in accordance with Project Application Approval MP No 08_0258 and construction certificate drawings | Prior to the issuing of the final occupation certificate in respect of Stage 3 of the Development |



Execution

Executed as an Agreement

Dated:

Executed on behalf of the Council

General Manager

Witness/Name/Position

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

Name/Position

Name/Position

61 Mobbs Lane, Epping Planning Agreement
Parramatta City Council
Karimbla Properties (No. 9) Pty Limited
Meriton Apartments Pty Ltd



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

Name/Position

Name/Position

Appendix

(Clause 35)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Parramatta City Council ABN 49 907 174 773 of 30 Darcy Street, Parramatta NSW 2150 (**Council**)

and

Karimbla Properties (No. 9) Pty Limited ABN 90 102 955 635 of Level 11, 528 Kent Street, Sydney NSW 2000 (**Landowner**)

and

Meriton Apartments Pty Ltd ABN 75 000 644 888 of Level 11, 528 Kent Street, Sydney NSW 2000 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lots 1 and 2 in DP 732070, Lots 1 & 2 in DP 129023, Lot 2 in DP 582172 and Lot 1 in DP 570891.

Description of Proposed Development

The development the subject of concept plan No. MP 05_0086 approved by the Minister under Part 3A of the *Environmental Planning and Assessment Act 1979* as modified from time to time.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to require the developer to make monetary Development Contributions and carry out Works in relation to traffic control and embellishment of open space in conjunction with the carrying out of the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council, the Developer and the owner of the land to which the agreement applies. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development on the Land,
- excludes the application of s94 and s94A of the Act to the Development but does not exclude s94EF,
- requires the Developer to make certain Development Contributions in conjunction with the carrying out of the Development including:
 - monetary contributions in three stages, in respect of the Development, namely, \$650,012.66 indexed in accordance with CPI from 1 March 2009 to the date of payment for each of Stages 1, 2 and 3 of the Development;
 - signalisation and associated roadworks of the intersection of Marsden Road/Mobbs Lane in accordance with condition C40 of MP 08_0258;
 - embellishment of certain open space generally in accordance with Project Application Approval MP No 08_0258 and construction certificate drawings.
- ordinarily, requires the Council to apply Development Contributions made under the agreement towards the specified purpose for which they are made and at the location, in the manner and to the standard (if any) specified in the agreement,
- imposes obligations on the Developer to rectify defects in the Works before the Works are taken to be completed,
- requires the Developer to provide the Council with a security in an amount and at a time agreed between the parties,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and makes provision in relation to GST payable under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement reasonably provides for the achievement of the following planning purposes:

- promote and co-ordinate the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provide increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iii), (v) and 5(c) of the Act.

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 Elements of the Council's Charter

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

- providing services and facilities for the community,
- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

[Drafting Note: To be Completed by Council]