



MERITON
SUPERIOR QUALITY AND VALUE
SINCE 1963

3 April, 2013.

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Ms Sue Weatherley
Group Manager Outcomes & Development Admin
Outcomes and Development Department
Parramatta City Council
30 Darcy Street
PARRAMATTA NSW 2150

By email: sweatherley@parracity.nsw.gov.au

Dear Ms Weatherley

DEVELOPMENT AT 330 CHURCH STREET PARRAMATTA

As you are aware our company has the benefit of a Development Consent at the above address at a floor space ratio of 6.5:1. Council has recently submitted amended LEP controls varying the maximum floor space ratio which would be achievable across the entire CBD and for the above site this figure has risen to 7.5:1.

We believe that there is potential to increase the density on this site above the 7.5:1 currently proposed by Council. We believe a figure of 8.25:1 is achievable and if Council were to agree to increase the maximum from 7.5:1 to 8.25:1 then we would propose to enter into a Voluntary Planning Agreement (VPA) to contribute funds to Council for the provision of public domain improvements in Parramatta.

Increased floor space which would be achieved if Council agreed to the extra 0.75:1 floor space ratio would be in the order of 5,612 m² and we would propose a contribution of \$600 per m² for this extra floor space, resulting in a contribution of \$3,367,000 to Council in addition to an increase (from the currently approved scheme) in S94 contributions of \$1,801,945. Total financial benefit to Council for an 8.25:1 scheme (including Council's 720m² of Land) would be as follows:

- \$4,495,000 (Current Approval, s94 Contributions)
- \$3,100,000 (Council's 720m² of Land)
- \$1,801,945 (Increased s94 payments)
- \$3,367,050 (5,612m² bonus Floor space, over and above the 7.5:1 scheme GFA of 56,123m²)
- **\$12,763,995 (Total Contributions to Council)**

The VPA would confirm our mutual agreement to surrender the Car Park Lease to Council for the sum of \$10,000,000. Based on the above figures, that would result in a cash payment to Council of \$2,763,995.

We propose that the cash payment be made as a condition of Final Occupation Certificate with surrender of the Car Park Lease at the time when construction of the proposed development reaches Podium Level (approx. RL 23.3m AHD) on the understanding that Council agree to Meriton occupying, at no cost, and

for the purpose and duration of construction, a portion of Lot 102 adjacent to the Public Car Park (see attached plan). We estimate that period to be approximately 2 years.

Further to our meeting of 28 March, 2013, I **enclose** more detailed preliminary drawings of a development at a floor space ratio of 8.25:1 to assist in informing Parramatta City Councillors of the proposal.

We propose to increase the height of the residential tower from the current 37 levels to 55 levels and the Serviced Apartment Tower from 26 levels to 33 levels and to provide the extra car parking which would be required by this increased floor space within the podium, but 'sleeved' by apartments on all visible sides.

Also, to assist Council in delivering its Waterfront Activation Strategy, Meriton is willing to provide the appropriate rights of access to Lot 101 in DP 788637 (see attached plan) in order to facilitate a future public pedestrian thoroughfare from Church Street to the Riverfront Foreshore.

We believe that this development will be a first class project which will provide much needed residential development for Parramatta CBD as well as providing substantial funding for public domain works.

I look forward to your comments as soon as possible.

Yours sincerely
MERITON GROUP



Peter Spira AM
General Manager

Encl.

Date / /

Planning Agreement

330 Church Street Parramatta – David Frater Carpark

Parramatta City Council

ABN 49 907 174 773

and

Karimbla Properties (No. 22) Pty Limited

ABN 97 115 509 478

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Schedule 2 – Easement Land

Schedule 3 – Part Lot 102

Planning Agreement

330 Church Street Parramatta – David Frater Carpark

Dated / /

Parties

Name	Parramatta City Council ABN 49 907 174 773
Address	30 Darcy Street, Parramatta, NSW
Facsimile	
Short name	Parramatta

Name	Karimbla Properties (No. 22) Pty Ltd ABN 97 115 509 478
Address	Level 11, 528 Kent Street, Sydney, NSW
Facsimile	
Short name	Developer

Background

- A. The NSW Minister for Planning and Infrastructure (“Minister”) is the Consent Authority pursuant to the EPAA Act for the Development and the Modification.
- B. The Developer is the owner, or is entitled to be the owner, of the Land.
- C. The Land and the Development are within Parramatta’s local government area,
- D. The Consent authorises the Development being carried out.
- E. The Developer intends to change the nature and scope of the Development authorised by the Consent and to facilitate such change is seeking the Modification.
- F. The parties wish to enter into a planning agreement in relation to the Developer’s offer to provide the Public Benefits on the terms and conditions contained in this planning agreement.

It is agreed

1. Definitions

In this planning agreement unless expressed or implied to the contrary:

Airbridge means the airbridge currently situated within part of the Carpark Land. **Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Business Day means any day on which trading banks are open for business in New South Wales other than a Saturday, Sunday or a public holiday in New South Wales.

Carpark Lease means lease registered number 9233091R between Parramatta (as lessor) and the Developer (as tenant) in respect of the Carpark Land.

Carpark Land means the land leased under the Carpark Lease, being the land comprised in Folio Identifier 102/1031459, Auto Consuls 151127-108, 6792-237 and Volume 555505 Folio 211.

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense.

Claimant has the meaning given to that term in clause 15.1.

Claim Notice has the meaning given to that term in clause 15.1.

Consent has the meaning given to that term in Item 3 of Schedule 1.

Consent Authority means the governmental agency having the function to determine a development application or major project approval for the Development or any modification of the Development on the Land.

Construction Certificate has the meaning given to that term in the EPAA Act.

Consumer Price Index means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Dealing has the meaning given to that term in clause 16.1.

Development means the development approved under Major Project Application MP10_0171 dated 19 October 2012, comprising the demolition of existing structures on site and construction of a mixed used building (residential / retail / serviced apartments), basement with 597 car parking spaces, public domain works and installation of utility services, as amended from time to time.

Discretion has the meaning given to that term in clause 5.1.

Dispute Notice has the meaning given to that term in clause 15.4.

Easement Land means that part of Lot 101 shown hatched in the plan at Schedule 2.

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

Incoming party has the meaning given to that term in clause 16.1.

Index Number means:

- (a) the consumer price index (all groups) for Sydney published from time to time by the Australian Bureau of Statistics; or
- (b) if the Index Number no longer exists, it means an index that the Landlord decides reflects changes in the cost of living.

Item means an item in Schedule 1.

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

Law means:

- (a) the common law including the principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws, or Approvals.

Lot 101 means Lot 101 DP 1031459, currently owned by the Developer.

Modification means the proposed modification of the consent described in Item 4 of Schedule 1.

Monetary Contribution means the amount stated in Item 6 of Schedule 1, as adjusted in accordance with clause 9.2.

New Law means a Law that is amended, varied or changed or a new Law either of which comes into force on or after the date of this planning agreement.

Occupation Certificate means a certificate referred to in section 109C(1)(b) of the EPAA Act.

Part Lot 102 means the land described in Item 7 of Schedule 1.

Parramatta Land means Lot 102 DP 1031459.

planning agreement means this document and includes all schedules and annexures to it.

Podium Level means that stage of the Development when the proposed building reaches a height of RL23.3 AHD.

Podium Level Date means the date the Development reaches Podium Level, determined in accordance with clause 10.2.3.

Prescribed Rate means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgment debts, calculated daily and compounded on the last day of each month.

Public Benefits means the public benefits described in Item 4 of Schedule 1 to be delivered under this planning agreement.

Public Pedestrian Thoroughfares means the right of access and the physical pedestrian access to be provided by the Developer in accordance with clause 13.

Quarter means each consecutive period of three months (or part of it) ending on the respective last days of March, June, September and December.

Register means the Torrens Title register held by the New South Wales office of Land and Property Information.

Respondent has the meaning given to that term in clause 15.1.

Review Date means each anniversary of the date of this planning agreement.

Schedule means a schedule to this planning agreement.

Security means an unconditional and irrevocable bank guarantee or bank guarantees for the Security Amount issued by a trading bank or other financial institution acceptable to Parramatta which does not have an expiry date and is otherwise on terms and conditions acceptable to Parramatta.

Security Amount means the amount stated in Item 8 of Schedule 1 adjusted from time to time under clause 14.2.

2. Interpretation

2.1 Governing Law and Jurisdiction

This planning agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

2.2 Persons

In this planning agreement, a reference to:

- 2.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 2.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 2.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

2.3 Joint and Several

If a party consists of more than one person, this planning agreement binds them jointly and each of them severally.

2.4 Legislation

In this planning agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

2.5 Clauses and Headings

In this planning agreement:

- 2.5.1 a reference to this planning agreement or other document includes this planning agreement or the other document as varied or replaced regardless of any change in the identity of the parties;
- 2.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this planning agreement all of which are deemed part of this planning agreement;
- 2.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 2.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this planning agreement;
- 2.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 2.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation';
- 2.5.7 a reference to **governmental agency** means the Crown, any government, any governmental ministry or department, or any Crown, governmental, semi-governmental, statutory, parliamentary, administrative, fiscal, public, municipal, local, judicial or regulatory entity, agency, instrumentality, authority, court, commission, tribunal or statutory corporation having jurisdiction over or in respect of the Land or its use or both; and
- 2.5.8 a reference to any notice, claim, demand, consent, agreement, approval, authorisation, specification, direction, disclosure, notification, request, communication, appointment, or waiver being given or made by a party to this Agreement is a reference to its being given or made in writing, and the expression **notice** includes any of the foregoing.

2.6 Severance

- 2.6.1 If a provision in this planning agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 2.6.2 If it is not possible to read down a provision as required in this clause 2.6, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or any other provision of this planning agreement.

2.7 Business Day

If a payment or other act is required by this planning agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

2.8 Number and Gender

In this planning agreement, a reference to:

- 2.8.1 the singular includes the plural and vice versa; and
- 2.8.2 a gender includes the other genders.

3. Planning agreement under the EPAA Act

3.1 Section 93F

The parties agree that this document is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the EPAA Act.

3.2 Application

The planning agreement constituted by this document applies to the:

3.2.1 the Land; and

3.2.2 the Development.

4. Operation and Consent Lapsing

4.1 Planning Agreement Operation

The parties agree that this planning agreement takes effect on the execution of this planning agreement by the parties to it.

4.2 Consent Lapsing

4.2.1 This planning agreement will be at an end and taken to have been revoked and neither party will have any obligation to the other if the Consent:

(a) lapses by the effluxion of time; or

(b) is surrendered.

4.2.2 Each party will sign all documents and do all things reasonably required to procure the removal of this planning agreement as an encumbrance on the Register by appropriate notification or request if the Consent:

(a) lapses by the effluxion of time; or

(b) is surrendered.

4.3 Effect on other Agreements

4.3.1 For the avoidance of doubt, this planning agreement has no effect on the voluntary planning agreement entered into in accordance with condition A8 of Major Project Application MP10_0171, requiring transfer of land to Parramatta and embellishment of the river foreshore and retaining wall adjacent to the site boundary, and that voluntary planning agreement continues to operate.

5. No Fetter

5.1 Discretion

This planning agreement is not intended to operate to fetter, in any unlawful manner:

- 5.1.1 the sovereignty of the Parliament of the State of New South Wales to make any Law;
- 5.1.2 the power of the executive government of the State of New South Wales to make any statutory rules; or
- 5.1.3 the exercise of any statutory power or discretion of any Minister of the State of New South Wales or any governmental agency (including Parramatta),

(all referred to in this planning agreement as a '**Discretion**').

5.2 No Fetter

No provision in this planning agreement is intended to, or does, constitute any unlawful fetter of any Discretion. If, contrary to the operation of this clause 5, any provision of this planning agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- 5.2.1 they will take all practice steps, including the execution of any further documents to ensure the objective of this clause 5 is substantially satisfied;
- 5.2.2 in the event that clause 5.1 cannot be achieved without giving rise to unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this planning agreement has full force and effect; and
- 5.2.3 to endeavour to satisfy the common objectives of the parties in relation to the provision of this planning agreement which is held to be unlawful fetter to the extent that is possible having regard to the relevant Court judgement.

5.3 Conflict

In the event of any conflict between the exercise of any Discretion and the performance or obligations under this planning agreement, the former prevails.

6. Registration

6.1 Procure Registration

The Developer must:

- 6.1.1 procure registration of this planning agreement on the Register pertaining to the Land no later than 20 Business Days after the date of this planning agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land; and
- 6.1.2 deliver to Parramatta a title search of the Land confirming registration of this planning agreement.

6.2 Effect of Registration

The parties agree and acknowledge that if any of the Land is subdivided and sold, then all of the obligations of this planning agreement are jointly and severally binding on, and enforceable against, the owner of each subdivided parcel of land from time to time, on whose title this planning agreement is registered, as if each owner for the time being had entered into this planning agreement.

6.3 Release

Parramatta agrees to provide a release and discharge of this planning agreement with respect to any part of the Land if the Developer requests a release and discharge of this planning agreement (whether in full or part) and:

- 6.3.1 in the case of a request for a full release and discharge, the Developer has complied with all its obligations under this planning agreement to Parramatta's satisfaction ; or
- 6.3.2 in the case of a request for partial release and discharge, the Developer has, at the time of the request complied with its obligations under this planning agreement to Parramatta's satisfaction to the extent that they effect that part of the Land to which the partial release relates.

6.4 Removal of registration

Within ten (10) Business Days of:

- 6.4.1 Parramatta confirming any release and discharge under clause 6.3; or
- 6.4.2 The surrender of the Car Park Lease in accordance with clause 10 and registration of the transfer of Part Lot 102 from the Developer to Parramatta in accordance with clause 12, whichever is the later,

Parramatta will, at the cost of the Developer, do all things necessary to enable the extinguishment of this planning agreement from the Register pertaining to the Land or that part of the Land to which the release and discharge relates.

7. EPAA Act Application

7.1 Sections 94 and 94A of the EPAA Act

- 7.1.1 The application of Sections 94, 94A and 94EF of the EPAA Act to the Development are not excluded by this planning agreement.
- 7.1.2 The benefits under this planning agreement are to be taken into consideration in determining development contributions applicable to the Development under section 94(6) of the EPAA Act.
- 7.1.3 For the avoidance of doubt and for the purposes of any consideration under section 94(6) of the EPAA Act, the parties have agreed and acknowledge that the Monetary Contribution to be paid under this planning agreement has been calculated in the following manner:
 - (a) Adding:
 - (i) The value of contributions payable under s94A of the EPAA Act for the Development prior to Modification, being \$4,495,000.00; and
 - (ii) The value of additional contributions that would be payable under s94A of the EPAA Act for the Development after Modification, calculated, being \$1,801,945.00; and

- (iii) The estimated value of Part Lot 102 that will be transferred to the Developer in accordance with this planning agreement, being \$3,100,000.00; and
 - (iv) A contribution for bonus floor space in the Development after Modification, being \$3,367,050.00; and
- (b) Subtracting from the amount determined in clause 7.1.3(a) the value of the Carpark Lease to be surrendered under this planning agreement, being \$10,000,000.00.

8. Public Benefits

8.1 Delivery

The Developer must do all things reasonably required to deliver the Public Benefits in accordance with this planning agreement.

8.2 Public Purpose

The Public Benefits are made for the purposes of providing public amenities and public services including the provision of open space and public domain areas by enabling Parramatta to carry out activities consistent with its Riverbank Urban Design Strategy, adopted April 2009 and providing public thoroughfares to the riverfront.

9. Monetary Contribution

9.1 Monetary Contribution Payment

- 9.1.1 The Developer covenants to pay the Monetary Contribution to Parramatta.
- 9.1.2 The Developer must pay the Monetary Contribution by way of a single instalment on or before the date on which the first Occupation Certificate granted for the residential component of the development (interim or otherwise) is issued in respect of any Development on the Land.
- 9.1.3 All payments of the Monetary Contribution or other moneys payable by the Developer under this planning agreement must be without deductions and free of any right of set off to Parramatta (using a direct debit payment method or such other payment method as Parramatta reasonably requires) as Parramatta may in otherwise direct.
- 9.1.4 Parramatta need not make demand for any amount payable by the Developer unless this planning agreement says that demand must be made.
- 9.1.5 The monetary contribution will be made for the purposes of this planning agreement when cleared funds are deposited by means of electronic transfer into a bank account nominated by Parramatta.

9.2 Monetary Contribution Adjustment

The Monetary Contribution is to be adjusted on each Review Date in accordance with the following calculation:

$$A = \frac{B \times D}{C}$$

where:

- A is the adjusted Monetary Contribution applicable from the relevant Review Date;
- B is the Monetary Contribution applicable immediately prior to the relevant Review Date Review Date;
- C is the Index Number for the Quarter ending immediately before the date of this planning agreement or the last prior Review Date (whichever is the later); and
- D is the Index Number for the Quarter ending immediately before the relevant Review Date.

10. Carpark Lease

10.1 Acknowledgment

The parties acknowledge that:

- 10.1.1 as at the date of this planning agreement the Developer is lessee under the Carpark Lease; and
- 10.1.2 unless otherwise expressly stated in this planning agreement, nothing in this planning agreement derogates from the rights and obligations of the Developer (as lessee under the Carpark Lease).

10.2 Podium Level

- 10.2.1 After the issue of a Construction Certificate for the Development:
 - (a) The Developer must keep Parramatta informed as to the progress of the Development, including the height of the Development; and
 - (b) Parramatta may request at any time information as to the progress of the Development, including the height of the Development, and the Developer will respond to that request within at least three (3) Business Days;
- 10.2.2 If either the Developer or Parramatta considers that the Development has reached Podium Level

the Developer must provide to Parramatta a certificate prepared by a registered surveyor confirming the height the Development has reached; or
- 10.2.3 If any certificate produced by a registered surveyor as a result of actions undertaken in clause 10.2.2 confirms that the Development has reached Podium Level, then the Development will be taken to have reached Podium Level on the date that certificate was issued.

10.3 Surrender

- 10.3.1 On or before the Podium Level Date the Developer must surrender its interest in the Carpark Lease and Parramatta must accept that surrender.
- 10.3.2 On the Podium Level Date, the Carpark Lease is to be treated as having been surrendered as if the Developer had duly completed, delivered and registered an instrument formally recording such surrender.

10.4 Sublease of Carpark Lease

- 10.4.1 Prior to the surrender of the Carpark Lease occurring in accordance with clauses 10.3.1 and 10.3.2, the Developer must ensure that any sublease of the Carpark Lease is terminated.
- 10.4.2 The parties acknowledge that Parramatta may enter into separate arrangements with any sublessee of the Carpark Lease.
- 10.4.3 The Developer indemnifies and releases Parramatta from any Claim arising out of the surrender of the Carpark Lease or termination of any sublease.

10.5 Airbridge

- 10.5.1 The parties acknowledge that the Airbridge is situated within part of the Carpark Land and the Development includes the demolition of the Airbridge.
- 10.5.2 The Developer shall not be required by Parramatta to reinstate or reconstruct the Airbridge at any location if the Developer demolishes the Airbridge.
- 10.5.3 Once the Airbridge is demolished, the Developer must ensure that the location of the Airbridge and its surrounding area is made safe and, to the extent reasonably required by Parramatta, carry out works to remediate the surrounding area in a proper and workmanlike manner and otherwise in accordance with the direction of Parramatta, at the Developer's sole cost.

10.6 Procure Registration

No later than 20 Business Days after that date on which the Carpark Lease is surrendered, the Developer must:

- 10.6.1 procure registration on the Register pertaining to the Carpark Land the surrender of the Carpark Lease; and
- 10.6.2 deliver to Parramatta a title search of the Carpark Land confirming registration of the surrender of the Carpark Lease.

11. Parramatta Land Transfer

11.1 Subdivision of Parramatta Land

- 11.1.1 From the date the Modification is approved by the Minister Parramatta will use its best endeavours to cause the registration of a plan of subdivision of the Parramatta Land, creating Part Lot 102 as a separate lot.
- 11.1.2 For the purposes of clause 11.1.1, the Developer must prepare any relevant survey plans of the proposed subdivision, obtain any Approval required prior to the

subdivision being registered and arrange for the registration of the plan or plans effecting the subdivision.

- 11.1.3 The Developer will pay all reasonable costs associated with the subdivision of the Parramatta Land to create Part Lot 102, including survey costs, application fees, legal fees, uplift fees and registration fees.

11.2 Transfer Part Lot 102

- 11.2.1 Within 10 Business Days of the registration of a plan of subdivision of the Parramatta Land creating Part Lot 102 as a separate lot, Parramatta agrees that it will transfer Part Lot 102 to the Developer by registering under the *Real Property Act 1900* an instrument that is effective to transfer title to the land (free from encumbrances unless otherwise agreed in writing) to the Developer.
- 11.2.2 The Developer will attend to the preparation and registration of any instrument required to effect the transfer referred to in clause 11.2.1 and must pay all duties and the reasonable costs of Parramatta associated with the transfer under this clause 11.

11.3 Owner's Consent

Until the Parramatta Land is transferred in accordance with clause 11.2, Parramatta agrees:

- 11.3.1 the Developer may include the area of the Parramatta Land that will form Part Lot 102 in any calculation of floor space ratio for the Development and the Modification; and
- 11.3.2 it will not unreasonably withhold landowner's consent to any application for approval of the Modification required under the EPAA Act, on the sole grounds that the application includes that part of the Parramatta Land that will form Part Lot 102.

12. Transfer of Land

12.1 Transfer of Part Lot 102

- 12.1.1 Subject to the Developer complying with all its obligations under the planning agreement, including its obligations under clause 9.1, the Developer must do (or procure to be done) all things required to transfer the land comprising Part Lot 102 to Parramatta (including transfer of ownership in fee simple) for \$1.00 on or before the Podium Level Date. Transfer of the land comprising Part Lot 102 will be made for the purposes of this planning agreement when the Developer registers under the *Real Property Act 1900* an instrument that is effective to transfer title to the land (free from encumbrances unless otherwise agreed by Parramatta in writing) to Parramatta.
- 12.1.2 The Developer shall pay all duties and Parramatta's reasonable costs associated with the Transfer pursuant to clause 12.

12.2 Directions

The Developer must comply with any reasonable directions given by Parramatta in respect of the transfer of Part Lot 102 to Parramatta, including any requirement relating to the physical state of Part Lot 102 prior to transfer. .

13. Public thoroughfares

13.1 Easement in gross

13.1.1 Prior to the issue of any Occupation Certificate (interim or otherwise) for the Development easements in gross in favour of Parramatta to be registered against the title to Lot 101 at no cost to Parramatta.

13.1.2 The easements in gross referred to in clause 13.1.1 will include:

- (a) a right of footway granting full and free right to Parramatta and every person authorised by it including any member of the public, to go, pass and repass on foot at all times and for all purposes without animals or vehicles over the Easement Land;
- (b) a right of access permitting Parramatta, and any person authorised by it, to:
 - (i) by any reasonable means pass across the Easement Land for the purpose of exercising or performing any of its powers, authorities, duties or functions;
 - (ii) do anything reasonably necessary for passing across the Easement Land including entering Lot 101, taking anything onto Lot 101 and carrying out work on the Easement Land such as constructing, place, repairing or maintaining trafficable surfaces, driveways or structures; and
 - (iii) carry out any works considered by Parramatta to improve the public amenity of the Easement Land.

13.2 Access through the Carpark Land

13.2.1 Prior to the issue of a Construction Certificate for the Development, the Developer must establish and construct a physical pedestrian access through the Carpark Land, generally in the location identified in the diagram at Schedule [x].

13.2.2 The pedestrian access established under clause 13.2.1 must be adequate to provide safe pedestrian access through the Carpark Land and will be subject to an inspection by Parramatta to confirm that it is satisfactory.

13.2.3 The pedestrian access established under clause 13.2.1 must be maintained by the Developer until the surrender of the Carpark Lease in accordance with this planning agreement.

14. Security

14.1 Delivery

On the date of the first Construction Certificate in respect of any Development of the Land, the Developer must deliver the Security to Parramatta as security for the performance by the Developer of its obligations under this planning agreement.

14.2 Security Amount Adjustment

The Security Amount is to be adjusted on each Review Date in accordance with the following calculation:

$$A = \frac{B \times D}{C}$$

where:

- A is the adjusted Security Amount applicable from the relevant Review Date;
- B is the Security Amount applicable immediately prior to the relevant Review Date Review Date;
- C is the Index Number for the Quarter ending immediately before the date of this planning agreement or the last prior Review Date (whichever is the later); and
- D is the Index Number for the Quarter ending immediately before the relevant Review Date.

14.3 Security Substitution or Top up

The Developer agrees to give Parramatta a substitute or supplement Security for the revised Security Amount no later than 20 Business Days after each Review Date.

14.4 Appropriation

The Developer acknowledges and agrees that:

- 14.4.1 Parramatta may make an appropriation from the Security to compensate or reimburse Parramatta for loss it has suffered or the costs and expenses it has incurred as a result of any breach considered serious of this planning agreement by the Developer; and
- 14.4.2 Parramatta may make an appropriation from the Security despite any objection, claim or direction by the Developer to the contrary.

14.5 Replacement bank guarantee

At Parramatta's request, the Developer must provide an additional or supplement Security for the Security Amount if there has been appropriation that results in the value of the Security held by Parramatta after appropriation being less than Security Amount.

14.6 Security return

Parramatta must return the Security to the Developer without delay after payment of the contributions pursuant to clause 9.1 if there is no subsisting default by the Developer under this planning agreement that has not been waived by Parramatta.

14.7 Occupation Certificate Requirements

- 14.7.1 In accordance with s109H(2) of the EPAA Act, the obligation to pay the Monetary Contribution under clause 9 of this planning agreement must be satisfied prior to the issue of the first Occupation Certificate (interim or otherwise) for the residential component of the Development.
- 14.7.2 In accordance with s109H(2) of the EPAA Act, the obligation to provide the Public Pedestrian Thoroughfare under clause 13 of this planning agreement must be

satisfied prior to the issue of the first Occupation Certificate (interim or otherwise) for the Development.

15. Dispute Resolution

15.1 Notice of Dispute

If a party claims that a dispute has arisen under this planning agreement (**Claimant**), it must give notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).

15.2 Claim Notice Response

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

15.3 Negotiation

The nominated representatives must:

- 15.3.1 meet to discuss the matter in good faith within 10 Business Days after the Respondent has given a notice advising of its representatives; and
- 15.3.2 use reasonable endeavours to settle or resolve a dispute within 15 Business Days after they have met.

15.4 Further Notice

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a notice calling for the termination of the dispute (**Dispute Notice**).

15.5 Mediation

The parties agree that a dispute will be mediated if it is the subject of a Dispute Notice, in which case:

- 15.5.1 the parties must agree to the terms of reference for the mediation within 5 Business Days of receipt of the Dispute Notice, the terms shall include a requirement that the mediation rules at the Institute of Arbitrators and Mediators Australia (NSW Chapter) applies;
- 15.5.2 the mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- 15.5.3 the mediator appointed pursuant to clause 15.5.2 must:
 - (a) have reasonable qualifications and practical experience in the area of the dispute; and
 - (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose and such interest or duty before his appointment;

- 15.5.4 the mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- 15.5.5 the parties must within 5 Business Days of receipt of the Dispute Notice notify each other if their representatives will be involved in the mediation;
- 15.5.6 the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which the subject of the mediation settlement for the purpose of enforcing that mediation settlement;
- 15.5.7 in relation to costs and expenses:
 - (a) each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) the costs of the mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation be borne by that party.

15.6 Litigation

If a dispute is not finally resolved in accordance with this clause 16, either party is at liberty to litigate the dispute.

15.7 Continue to Perform Obligations

Each party must continue to perform its obligations under this planning agreement, notwithstanding the existence of a dispute.

16. Assignment and Other Dealings

16.1 Land Owner Dealings

The Developer must not sell, transfer, assign, mortgage, lease or otherwise deal with (**Dealing**) its right, title and interest in the Land (if any) or its rights and obligations under this planning agreement, or allow any interest in them to arise or be varied, in each case, without Parramatta's consent and unless, before any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- 16.1.1 gives Parramatta not less than 10 Business Days notice of the proposed Dealing; and
- 16.1.2 procures that the transferee, assignee or novatee (**incoming party**) signs and delivers to Parramatta prior to any such Dealing taking effect, a deed in favour of the Developer in form and substance acceptable to Parramatta whereby:
 - (a) the incoming party becomes contractually bound to perform all of the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this planning agreement; and
 - (b) the Developer agrees to pay the legal costs and expenses incurred by Parramatta in connection with the negotiation, preparation and signature of such deed.

16.2 Restriction on Transfer of Shares

If the Developer is a corporation (other than a corporation listed on the Australian Stock Exchange (**ASX**)), a change in effective control of the Developer (by way of change in shareholding ownership or otherwise) is deemed to be a dealing for the purposes of clause 16.1 and the requirements of clause 16.1 apply.

17. Costs, GST and Interest

17.1 Preparation Costs

No later than 10 Business Days after being given a demand by Parramatta, the Developer must pay all Parramatta's legal and administrative costs and expenses in relation to:

- 17.1.1 the negotiation, preparation and signature of this planning agreement;
- 17.1.2 the giving effect to this planning agreement;
- 17.1.3 any enforcement of the rights conferred under this planning agreement; and
- 17.1.4 the costs of any expert determination carried out under this planning agreement.

17.2 Advertising Costs

No later than 10 Business Days after being given a demand by Parramatta, the Developer must pay or reimburse all Parramatta's costs and expenses in connection with the advertising and exhibition of this planning agreement in accordance with the EPAA Act.

17.3 GST

- 17.3.1 In this clause 17.3 words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.
- 17.3.2 All consideration payable under this planning agreement in relation to any supply is GST exclusive unless otherwise stated.
- 17.3.3 If GST is payable in respect of any supply made by a supplier under this planning agreement, subject to clause 17.3.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this planning agreement.
- 17.3.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under this clause 17.3.3.

17.4 Interest

If the Developer does not pay any other moneys payable under this planning agreement on time, the Developer must pay interest at the Prescribed Rate on the outstanding amount for the period from the day the unpaid money was due until it is paid. The interest must be paid to Parramatta no later than 10 Business Days after Parramatta has given the Developer a demand for any interest.

18. Notices

18.1 Service of Notice

A notice or other communication required or permitted, under this planning agreement, to be served on a person must be in writing and may be served:

- 18.1.1 personally on the person;
- 18.1.2 by leaving it at the person's current address for service;
- 18.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 18.1.4 by facsimile to the person's current number for service.

18.2 Particulars for Service

- 18.2.1 The particulars for service of each party are set out on page one of this planning agreement under the heading 'parties'.
- 18.2.2 A party may change the address, facsimile or email number for service by giving notice to the other party.
- 18.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

18.3 Time of Service

A notice or other communication is deemed served:

- 18.3.1 if served personally or left at the person's address, upon service;
- 18.3.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;
- 18.3.3 if served by facsimile, subject to clause 18.3.4, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 18.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

19. Approvals and Consents

The parties acknowledge that:

- 19.1.1 except as otherwise stated in this planning agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this planning agreement in that party's absolute discretion and subject to any conditions determined by the party;
- 19.1.2 a party is not obliged to give its reasons for giving or withholding approval or consent or for giving approval or consent subject to conditions; and

- 19.1.3 this planning agreement does not impose any obligations on a governmental agency to:
- (a) grant a development consent where it is acting as a Consent Authority; or
 - (b) exercise any function under any Laws (including the EPAA Act).

20. Representations and Warranties

The parties represent and warrant that they have the power to enter into this planning agreement and comply with their obligations under this planning agreement and that entry into this planning agreement will not result in the breach of any Law.

21. New Laws

If the Developer is obliged by a New Law to do something to pay an amount which it is already contractually obliged to do or pay under this planning agreement then, to the extent only that the relevant obligation is required under both the New Law and this planning agreement, compliance with the New Law will constitute compliance with the relevant obligation under this planning agreement.

22. General

22.1 Amendment

This planning agreement may only be varied or replaced by a document duly signed by the parties.

22.2 Entire Understanding

This planning agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this planning agreement and have no effect.

22.3 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to affect, perfect or complete the transactions contemplated by this planning agreement.

22.4 Waiver and Exercise of Rights

- 22.4.1 A single or partial exercise or waiver of a right relating to this planning agreement does not prevent any other exercise of that right or the exercise of any other right.
- 22.4.2 No party will be liable for any loss or expenses incurred by the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

22.5 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this planning agreement.

22.6 No Relationship

- 22.6.1 No party to this planning agreement has the power to obligate or bind any other party.
- 22.6.2 Nothing in this planning agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.
- 22.6.3 Nothing in this planning agreement will be deemed to authorise or empower a party to act as agent for the other party.

Schedule 1

Reference Schedule

Item	Name	Description
1	Land	The land comprised in Lots 2 & 3 in Deposited Plan 788637 and known as 330 Church Street, Parramatta, NSW.
2	Development	The development of the Land authorised by the Consent involving (without limitation) demolition and the construction of improvements comprising residential towers, basement car parking, retail authorised by the Consent, as amended from time to time.
3	Consent	The determination of major projects application MP10 0171 by the Minister under Part 3A of the EPAA Act issued by the Department of Planning & Infrastructure on 19 October 2012, as amended from time to time.
4	Modification	The modification of the Consent to authorise the increase in Floor Space Ratio to [insert details], height of the towers to [insert details] and a change of podium, so that [describe change].
5	Public Benefits	The benefits to Parramatta under this planning agreement including <ul style="list-style-type: none"> • Payment of the Monetary Contribution; • Transferring ownership in fee simple of the Part Lot 102 to Parramatta; • Surrender of the Carpark Lease; and • Providing the Public Pedestrian Thoroughfares.
6	Monetary Contribution	\$2,763,995.00
7	Part Lot 102	That part of the Parramatta Land shown in the plan contained in Schedule 3 having an area of approximately 720 square metres.

8	Security Amount	\$2,763,995.00

Schedule 2

Easement Land

[This schedule is to contain a plan that shows that part of Lot 101 over which the Public Pedestrian Thoroughfare is to be established]

Schedule 3

Part Lot 102

[This schedule is to contain a plan that shows that part of the Parramatta Land to be subdivided, transferred to the Developer and subsequently dedicated back to Parramatta]

EXPLANATORY NOTE

Draft Planning Agreement for No 330 Church Street, Parramatta

Prepared in accordance with the requirements of Clause 25E of the Environmental Planning and Assessment Regulation 2000

Introduction

The purpose of this Explanatory Note is to provide a summary to support the public exhibition of a draft Planning Agreement (**Planning Agreement**) made pursuant to Section 93F of the Environmental Planning and Assessment Act 1979, in relation to an approved mixed use development on the site known as 330 Church Street Parramatta.

This Explanatory Note has been prepared jointly by the parties, as required by Clause 25E(3) of the Environmental Planning and Assessment Regulation 2000.

Draft planning agreement

Draft Planning Agreement between Karimbla Properties No.22 Pty Ltd and Parramatta City Council under s93F of the Environmental Planning & Assessment Act, 1979.

Parties to the planning agreement

The parties to the Planning Agreement are Karimbla Properties No. 22 Pty Ltd (**Developer**) and Parramatta City Council (**Council**).

Description of the subject land

The Planning Agreement applies to Lots 2 & 3, DP 788637 and Lot 101 DP1031459 known as 330 Church Street Parramatta (**Land**) and surrounds.

Description of the proposed development application

The Land is subject to an approved Major Project Application (Ref MP10_0171) comprising:

- Demolition of existing structures,
- Construction of a mixed use building (residential/retail/serviced apartments) including podium (3 storeys) and two towers (22 and 32 storeys) in height,
- Four levels of basement car parking accommodating 597 spaces,
- Further related works as detailed in the approved plans and determination issued by the Department of Planning & Infrastructure on 19 October 2012.

A modification application is currently being considered by the Department of Planning & Infrastructure which includes;

- Podium increased height by 1 storey (+ 3.1 metres);

- East Tower increased height by 5 storeys (+ 24.8 metres);
- West Tower increased height by 16 storeys (+ 59.5 metres);
- Increase in 17,594 sqm gross floor area;
- 158 additional residential apartments;
- 96 additional serviced apartments;
- 1,152 sqm less retail floor space;
- Deleted childcare centre;
- 112 additional car parking spaces; and
- Building signage on the serviced apartment tower

Summary of objectives, nature and effect of the draft planning agreement

The objective of the Planning Agreement is to secure public benefits associated with the approved development. The nature and effect of the Planning Agreement will involve the implementation of Developer Obligations, as set out in the Planning Agreement, and include:

- The surrender of the current (50 year) lease over the Council owned car park located immediately adjacent to the development site.
- Demolition of the existing pedestrian bridge connecting the development site to the car park.
- The transfer of a 720m² parcel of Council owned land to the proponent for inclusion as part of the development site and the subsequent return of land to Council at no cost.
- The provision of public pedestrian access through or adjacent to the carpark to the foreshore area until such time as the lease is surrendered to Council.
- Provision of an easement for access over a portion of the site to allow for access to the rear of No. 328 Church Street
- The payment of a cash contribution to Council's Section 94A fund of \$2.76 million dollars.

ASSESSMENT OF THE MERITS OF THE DRAFT PLANNING AGREEMENT

The planning purposes served by the draft planning agreement

In accordance with Section 93F(2) of the EPA Act, the Planning Agreement has the following public purposes:

- The provision of public amenities and facilities

The Developer Obligations outlined in the Planning Agreement provide a suitable means for achieving these purposes.

How the draft planning agreement promotes the objects of the Environmental Planning and Assessment Act 1979

In accordance with Section 5 of the EPA Act, the Planning Agreement promotes the Objects of the EPA Act and specifically achieves the Objectives stated at Section 5(a)(i) to 5(a)(vii) in the following manner:

- Represents an orderly and economic use and development of land; and
- Provides land for public purposes and the provision of community facilities, through the implementation of the Developer Obligations outlined within the Planning Agreement;

How the draft planning agreement promotes the public interest

The Planning Agreement is in the public interest as it will result in the delivery of a key piece of public land in an unencumbered state for potential future embellishment as public open space to the benefit of the local community. In addition, the planning agreement will provide a monetary contribution to Council's Section 94A fund which delivers public infrastructure and services. These components will contribute towards meeting the present and future needs of the local community.

How the draft planning agreement promotes elements of Council's charter

In accordance with Clause 25E(2)(d), Council's charter is provided at Section 8 of the Local Government Act 1993. In this respect, the Planning Agreement promotes the Council's charter in the following ways:

- Provides adequate, equitable and appropriate services and facilities for the community, in the form of the Developer's Obligations, as outlined in the Planning Agreement; and
- Properly manages, develops, protects, restores, enhances and conserves the environment in a manner which is consistent with, and promotes the principles of, ecologically sustainable development.

Whether the agreement, amendment or revocation conforms with Council's capital works program

Council's Management Plan incorporates capital work projects aimed at improving public open space and extending Council's city and foreshore pedestrian and cycleway connections. In this respect, the provision of land in an unencumbered state (through the surrender of a long term lease), the terms of the Planning Agreement conform to that intent.

Whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The planning agreement requires the obligations of the planning agreement to be completed at various stages, as relevant, prior to works reaching levels of completion, occupation certificates being issued for the Development.



Your Reference:
Our Reference: NCA/23/2010
Contact: Sue Weatherley
Telephone: 9806 5101



Mr Peter Spira AM
General Manager
Meriton Group
L11, 528 Kent Street
SYDNEY NSW 2000

15 April 2013

Dear Mr Spira

Re: Development at 330 Church Street, Parramatta

Thank you for your letter of 3 April 2013 outlining your proposal regarding the development at 330 Church Street, Parramatta.

It is noted that the proposed development would be an amendment to an existing Part 3A approval. Council raises no particular concerns regarding this proposal, other than to ensure that the issues of overshadowing and privacy are fully considered. Council will anticipate that the Department of Planning and Infrastructure will undertake a full and proper assessment of the impact of the proposed development.

In relation to your offer of a voluntary planning agreement for the site, Council is prepared to consider such a planning agreement, and we will prepare a draft voluntary planning agreement in line with the terms outlined in your letter of 3 April for your review.

Again, thank you for your proposal, and if you have further questions please contact Ms Sue Weatherley Outcomes and Development on 9806 5101.

Yours sincerely

A handwritten signature in black ink, appearing to read "R. Lang".

Dr Robert Lang
Chief Executive Officer

REPORT OF Manager Development and Traffic Services
RESOLVED (Garrard/Wilson)

13904 **That** the report be received and noted.

10.2 SUBJECT Joint Regional Planning Panel - Council membership
REFERENCE F2005/01801 - D02768373
REPORT OF Group Manager Outcomes and Development
RESOLVED (Finn/Esber)

13905 **That** this matter be considered as an Order of the Day at the next Council Meeting.

10.3 SUBJECT Voluntary Planning Agreement for 21 Hassall Street,
Parramatta
REFERENCE F2013/01432 - D02773462
REPORT OF Project Officer - Land Use Planning
RESOLVED (Garrard/Makari)

13906 (a) **That** Council proceed with negotiations for a Voluntary Planning Agreement (VPA) in relation to a mixed use development at 21 Hassall Street, Parramatta.
(b) **That** delegated authority be given to the CEO to negotiate the VPA on behalf of Council.
(c) **Further, that** a further report be put to Council following the negotiation and assessment of the VPA for Council endorsement prior to public exhibition.

10.4 SUBJECT Outcome of Voluntary Planning Agreement negotiations
- Proposed Mixed Use development at 330 Church
Street Parramatta
REFERENCE NCA/23/2010 - D02775285
REPORT OF Group Manager Outcomes and Development. Also
Group Manager Outcomes and Development
Memorandum dated 7 June 2013.
RESOLVED (Esber/Elmore)

13907 (a) **That** Council endorse the matters for inclusion in a draft Voluntary Planning Agreement (VPA) in relation to proposed amendments to a mixed use development at 330 Church Street, Parramatta.

- (b) **That** the draft VPA be publicly exhibited concurrently with a future application for modification to the approved mixed use development, in accordance with Council's Planning Agreements Policy.
- (c) **That** the outcomes of the public exhibition of the draft VPA be reported back to Council.
- (d) **That** delegated authority be given to the CEO of Council to continue to finalise the legal terms of the draft VPA on behalf of Council.
- (e) **Further, that** delegated authority be given to the CEO of Council to grant landowners consent for the inclusion of a portion of Council land in the development site.

NOTICES OF MOTION

11.1 SUBJECT Telopea Urban Renewal
REFERENCE NCA/1/2010 - D02772992
REPORT OF Councillor J P Abood
RESOLVED (Abood/Makari)

- 13908
- (a) **That** the Lord Mayor and the CEO meet with the relevant Ministers to raise Council's serious concerns about the lack of action to implement the components of the approved Telopea Urban Renewal project which would promote social mix in the precinct.
 - (b) **Further, that** interested Councillors be invited to attend the proposed meeting with the relevant Ministers.

11.2 SUBJECT Carpark at 2 Ancona Ave, Toongabbie
REFERENCE F2008/02910 - D02778441
REPORT OF Councillor S Chowdhury
MOTION (Chowdhury/Shaw)

- (a) **That** the council remove '2 Ancona Avenue, Toongabbie' from the surplus properties list which is a car park now.
- (b) **That** the council erects appropriate signage for the car park and undertake proper surfacing of the land.
- (c) **That** a report be prepared advising steps to be taken on re zoning the site suitable for car park, capital cost of surfacing, annual maintenance cost and ways to fund these.
- (d) **That** Parramatta City Council lobby the State Government for a state government funded commuter car park in Toongabbie.
- (e) **That** Council continue to use Lots 45 and 46 DP 213416 as an at-grade car park.
- (f) **Further, that** a report be prepared highlighting the cost of surfacing, drainage, landscaping and signage for Lots 45 and 46 DP 213416.

ECONOMY AND DEVELOPMENT

ITEM NUMBER	10.4
SUBJECT	Outcome of Voluntary Planning Agreement negotiations - Proposed Mixed Use development at 330 Church Street Parramatta
REFERENCE	NCA/23/2010 - D02775285
REPORT OF	Group Manager Outcomes and Development
OWNER:	Karimbla Properties (No 22) Pty Ltd – 330 Church Street Parramatta City Council – Part lot adjacent to site

PURPOSE:

To seek Council's endorsement on the matters for inclusion in a Voluntary Planning Agreement (VPA) between Council and the applicant for the purposes of public exhibition in relation to a proposed modification to an approved mixed use development at 330 Church Street, Parramatta.

RECOMMENDATION

- (a) **That** Council endorse the matters for inclusion in a draft Voluntary Planning Agreement (VPA) in relation to proposed amendments to a mixed use development at 330 Church Street, Parramatta.
- (b) **That** the draft VPA be publicly exhibited concurrently with a future application for modification to the approved mixed use development, in accordance with Council's Planning Agreements Policy
- (c) **That** the outcomes of the public exhibition of the draft VPA be reported back to Council.
- (d) **That** delegated authority be given to the CEO of Council to continue to finalise the legal terms of the draft VPA on behalf of Council.
- (e) **Further, that** delegated authority be given to the CEO of Council to grant landowners consent for the inclusion of a portion of Council land in the development site.

BACKGROUND

1. On 19 October 2012 the Minister for Planning & Infrastructure granted Development Approval, at 330 Church Street Parramatta for the construction of Mixed Use Residential Development comprised of:
 - demolition of existing structures;
 - four levels of basement car parking accommodating 597 car spaces;
 - 3 storey podium comprised of residential and commercial lobby areas, 8 retail tenancies, a 1928m² supermarket, a 705m² childcare centre and 9 maisonette apartments fronting the river and resident recreational facilities;

- a 22 storey tower above podium (eastern tower) containing 170 serviced apartments;
 - a 32 storey tower above podium (western tower) containing 211 residential apartments.
2. The applicant, Meriton, are preparing a modification application for lodgement with the Department of Planning & Infrastructure to increase the height and floor space of the approved development. The proposed increase in floor space ratio is from the approved 6.5:1 to 8.25:1. The proposed increase in building height is to 31 storeys (including podium) for the serviced apartment tower and to 54 storeys (including podium) for the residential apartment tower. It is also proposed to provide up to three levels of parking within the podium element (i.e. aboveground) of the building.
 3. Following some preliminary discussions with Council officers, Council considered a report on 17 December 2012 and resolved to proceed with formal negotiations on potential matters for inclusion in a Voluntary Planning Agreement.
 4. Since that time several meetings and written correspondence have transpired and an in principle agreement reached.

PLANNING AGREEMENTS

5. A planning agreement can be made under section 93F of the *Environmental Planning and Assessment Act, 1979* and is a voluntary agreement between Council and a land owner, under which the developer may be required to dedicate land, carry out works, pay a monetary contribution or provide other material public benefit, or any combination of these, to be used towards a public purpose. This may be in lieu of section 94 or s94A developer contributions, as a part substitution or an additional benefit.
6. The Act specifies that a public purpose includes the provision of public amenities or public services, the provision of affordable housing, the provision of transport or other infrastructure relating to land, the funding of recurrent expenditure relating to any of these, the monitoring of the planning impacts of a development and the conservation or enhancement of the natural environment.
7. Council has an adopted Planning Agreements Policy which sets out the principles governing such agreements; matters that council will consider in negotiating planning agreements; steps in the negotiating process; public probity; notification requirements and implementation. The *Environmental Planning and Assessment Act 1979 and Regulation 2000* set out the legal and procedural framework for planning agreements.
8. The negotiation of a planning agreement is at Councils discretion. Key principles of Councils Planning Agreements Policy are that:
 - Planning decisions will not be bought or sold through planning agreements;
 - Development that is unacceptable on planning grounds will not be permitted because of the benefits of the planning agreement;

- The benefits of the planning agreement will bear a relationship to the application;
- Council will not give undue weight to a planning agreement when making a decision on a development application;
- Council will not improperly rely on its position in order to extract unreasonable public benefits under planning agreements.

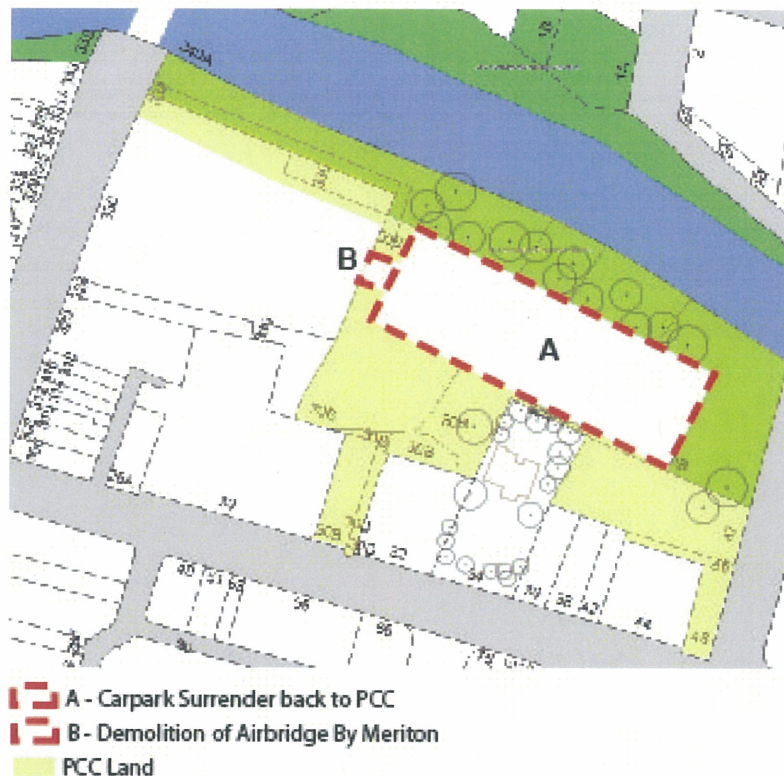
9. In this circumstance the consent authority for any modification to the approved development will be the Minister for Planning and Infrastructure.

DRAFT VPA FOR 330 CHURCH STREET, PARRAMATTA

10. There are several components to the draft VPA which are provided below, along with diagrams, and indicative likely timing.

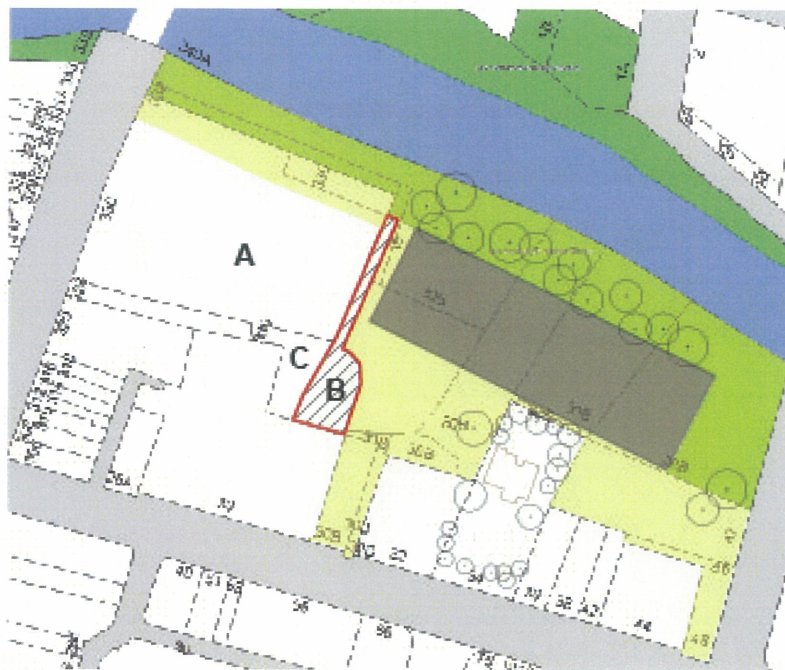
- i) The surrender of the current (50 year) lease over the Council owned carpark and demolition of the existing 'air-bridge' connecting the carpark to the existing building. The lease would be surrendered upon completion of construction reaching the podium level (specified R.L. to be confirmed).

Diagram A- Carpark Surrender



- ii) The transfer of a 720m² parcel of Council owned land (depicted below as 'B') to the proponent for inclusion as part of their development site. The precise timing of transfer and return of this land to Council is to be confirmed and formalised in the legal drafting of the VPA.

Diagram C - Land Transfer and Land Dedication back to PCC



- iii) The provision of unrestricted pedestrian access through the carpark until such time as the lease is surrendered to Council. This will ensure pedestrian access is available to the foreshore during construction.

Diagram D - Carpark Pedestrian Access



Meriton to provide access through David Frater Carpark at their cost

- iv) Provision of an easement for access over land depicted below (as 'A') to ensure access is legally available to the rear of the adjacent business premises.

Diagram E- Easments



- v) Payment of a cash contribution to Council's Section 94A fund of \$2.76 million dollars. Payment will be required prior to the issue of the first occupation certificate on the site.
11. In order to facilitate safe and practical access through and around the site during demolition and construction it is proposed to grant a temporary construction licence over a number of portions of land surrounding and adjacent to the site. The terms of this agreement are yet to be finalised however would be dealt with through a separate construction license agreement as is typically the case.

CONCLUSION

12. The elements of the draft VPA outlined above will deliver a number of public benefits. The key benefit of value from both a monetary and overall public amenity value, is the surrender of the long term lease over Council's carpark. This will enable this critical piece of foreshore land to come into Council's unencumbered control, which, along with the additional dedication of adjacent foreshore land (1065m²) provided via a separate planning agreement, may be developed into a landmark foreshore park for the enjoyment and use of the people of Parramatta.
13. This, along with the remaining components, including the cash contribution (\$2.76million), are considered to represent a positive outcome and high level of public benefit. It is therefore recommended that the draft VPA be publicly exhibited concurrently with the future modification application.
14. The outcome of any public exhibition will be reported to Council for further consideration before a decision is made whether or not to enter any the planning agreement.

Sue Weatherley
Group Manager Outcomes and Development

ATTACHMENTS:

There are no attachments for this report.

REFERENCE MATERIAL