

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Proposed draft Second Deed of Amendment to Planning Agreement dated 12 December 2008 (Second Amendment Deed)¹.

Unless the context clearly indicates otherwise, capitalised terms in this Explanatory Note have the meanings given to them in the Planning Agreement as amended by the First Amendment Deed, and as would be amended by the Second Amendment Deed.

1 Parties

Northern Beaches Council, ABN 31 565 068 406 (*Council*)

Karimbla Properties (No.41) Pty Ltd, ACN 160 693 372 (*Developer*)

Meriton Properties Pty Ltd, ACN 000 698 626 (*Guarantor*)

2 Description of subject land

Dee Why Town Centre "Site B" which comprises the following parcels of land at Pittwater Road, Howard Avenue and Oaks Avenue, Dee Why:

- Lot 1 DP307937 & Lot 3 DP307937
- Lot A DP416469
- Lot 1 DP504212
- Lot10 DP231418 & Lot 11 DP231418
- Lot A DP339410
- Lot 7 DP8172 SEC 16
- Lot 1 DP209503 & Lot 1 DP 212382
- Lot 2 DP212382
- Lot A DP371110 & Lot B DP371110
- Lot 3 DP212832

3 Relevant documents

- Planning Agreement dated 12 December 2008 (TRIM 2008/010281)
- First Amendment Deed dated 6 April 2016 (TRIM 2016/111047)
- Draft Second Amendment Deed (TRIM 2018/064619)

4. Description of proposed change to environmental planning instrument/development application/planning agreement

This Explanatory Note supports the public notification of the Second Amendment Deed. It is proposed that the Planning Agreement (as amended by the First Amendment Deed) be further amended to change the scope of the Town Square Works to include the erection and removal of the Temporary Pedestrian Access

¹ S93F *Environmental Planning and Assessment Act 1979*

Works, and to vary the timing for Practical Completion of the Town Square Works and the Pedestrian Connection Works.

5 Summary of objectives, nature and effect of the proposed amendment to the Planning Agreement

The purpose of the Second Amendment Deed is to vary the scope of the Town Square Works to include the erection and removal of Temporary Pedestrian Access Works in order to facilitate safe pedestrian passage during construction works, and to vary the timing for completion of the Town Square Works and the Pedestrian Connection Works in order to ensure the safety of users of the Town Square.

6 Timing of delivery of the public community benefit.

The Town Square Works are currently required to be completed prior to the issue of an Occupation Certificate for any ground level component of the Development or commencement of any retail use on the ground floor of the Development during the construction of proposed Building "B" on the site.

The Pedestrian Connection Works are currently required to be completed prior to the earlier of:

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

The Second Amendment Deed would vary the timings for completion so that:

(a) Practical Completion of the Town Square Works (excluding the erection of the Temporary Pedestrian Access Works) must occur prior to the earlier of:

- (i) the issue of an Occupation Certificate for any part of the upper two levels of Building B; or
- (ii) the date that is 6 months after Practical Completion of the Temporary Pedestrian Access Works;

(b) Practical Completion of the erection of the Temporary Pedestrian Access Works must occur prior to the first day that any part of the retail component of the Development with frontage to the Town Square Area is open for trading;

(c) Practical Completion of the Pedestrian Connection Works must occur prior to the earlier of:

- (i) the issue of an Occupation Certificate for any ground level component of the Development with frontage to the Pedestrian Connection Area;
- (ii) the first day that any part of the retail component of the Development with frontage to the Pedestrian Connection Area is open for trading; or

- (ii) the date for Practical Completion of the Town Square Works (excluding the erection of the Temporary Pedestrian Access Works).

7 The merits of the proposed amendment to the Planning Agreement will be assessed against:

a) The planning purposes served by the proposed amendment to the Planning Agreement

The Second Amendment Deed will help ensure the safety of pedestrians and proposed users of the new Town Square during the final stages of building construction on the site whilst allowing reasonable access by the community to ground floor retail services.

b) How the proposed amendment to the Planning Agreement promotes the objects of the Environmental Planning and Assessment Act 1979 (EPAA)

The draft Second Amendment Deed promotes the following Objects of the EPAA:

Section 5 (a):

- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
- (iv) the provision of land for public purposes

The draft Second Amendment Deed is not inconsistent with other Objects of the EPAA.

c) How the proposed amendment to the Planning Agreement promotes the public Interest

The draft Second Amendment Deed will help ensure the safety of pedestrians and proposed users of the new Town Square during the final stages of building construction on the site whilst allowing reasonable access by the community to ground floor retail services. It will limit delays to the delivery of the Town Square to a maximum of 6 months from the erection of the Temporary Pedestrian Access Works.

d) Public Authority – how the proposed amendment to the Planning Agreement promotes the objects (if any) of the Act under which it is constituted

The draft Second Amendment Deed is in accordance with section 7 of the *Local Government Act 1993* as it allows Council to carry out activities, appropriate to the current and future needs of the local community and of the wider public.

e) How the proposed amendment to the Planning Agreement promotes the elements of Council's charter under Section 8 of the Local Government Act 1993

The draft Second Amendment Deed promotes Council's Charter under section 8 of the *Local Government Act 1993* by:

- Providing services and facilities for the community;

- ensuring that public facilities provided by the Developer under the Planning Agreement are transferred to and managed by the Council or are otherwise subject to Council's control.

f) Whether the proposed amendment to the Planning Agreement conforms with Council's capital works program

The draft Second Amendment Deed is not inconsistent with Council's Capital Works Program.

g) Whether the proposed amendment to the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes. See 6 above.

h) The impact of the proposed amendment to the Planning Agreement on the public or any section of the public

The draft Second Amendment Deed will help ensure the safety of pedestrians and proposed users of the new Town Square during the final stages of building construction on the site whilst allowing reasonable access by the community to ground floor retail services. It will limit delays to the delivery of the Town Square to a maximum of 6 months from the erection of the Temporary Pedestrian Access Works.

8 Other Matters

The Explanatory Note is not to be used to assist in construing the Planning Agreement.

This Explanatory Note has been prepared jointly by the parties as required by clause 25E of the Regulation.