

THIS PLANNING AGREEMENT made the 7 August 2015

BETWEEN: **COUNCIL OF THE CITY OF BOTANY BAY** of 141 Coward Street, Mascot in the State of New South Wales ("the Council") of the first part

AND: **KARIMBLA PROPERTIES (No.39) PTY LTD (ABN 96 160 693 283)** of L.11, 528 Kent Street Sydney NSW 2000 ("Karimbla") of the second part.

WHEREAS:

- A. Karimbla is the owner of land located at 130-150 Bunnerong Road Pagewood, being land comprising Lot 2 in Deposited Plan 1187426 ("the site").
- B. Karimbla is a "developer" as defined at Section 93F(1) of the Environmental Planning and Assessment Act 1979 ("the Act").
- C. The Council is a consent authority legally entitled to determine development applications within the Botany Bay Local Government Area and legally entitled to enter into Planning Agreements.
- D. On 1 May 2014 an integrated development application 14/096 ("DA14/096") was submitted to the Council by Karimbla seeking consent for a staged development application setting out the concept proposal ("the stage 1 approval") for development of the site. The plans and proposal have been altered during the course of negotiations. DA 14/096 presently seeks consent for the following concept proposal:
 - i. subdivision into seven lots, known as Urban Blocks;
 - ii. subdivision of lots for open space being a Central Park (Open Space lot 1) and Linear Park, Open Space lot 2;
 - iii. subdivision into lots for public roads being Road lot 1 (East West Boulevard), Road lot 2 (North South Street 2), Road lot 3 (Civic

Boulevard), Road lot 4, Road lot 5, (North South Street 1) and Local Street Road lot 6;

- iv. staging of the development in order of sequence being Stage 1 subject of DA 14/159, lodged by Karimbla Construction Services (NSW) Pty Ltd on 15 July 2014 for the kerb-to-kerb construction of East-West Boulevard and the realignment of the existing stormwater channel, Stage 2A(2) development of Urban Block 5W, Stage 2A(3) development on Urban Block 5C and construction of Central Park, Stage 2A(3) development of Urban Block 5 East, Stage 2B development of Urban Block 4 and Urban Block 5E, Stage 2C development of Urban Block 3, Stage 2D development of Urban Block 2 and Stage 2E development of Urban Block 1 and Open Space lot 2 “Linear Park”;
- v. an indicative maximum of 2223 residential apartments, up to 5000 sq m of retail space and four child care centres;
- vi. building envelopes showing building dimensions, setbacks from streets and above podiums, building separation, articulation zone for balconies and heights on each Urban Block;
- vii. maximum Gross Floor Area (GFA) and Floor Space Ratio (FSR) for the proposed lots and Urban Blocks as shown in **Table 1** to **Annexure A** of this planning agreement;
- viii. building heights (as defined in BBLEP 2013) as shown in **Table 2** to **Annexure A**;
- ix. residential unit mix in accordance with **Table 3** to **Annexure A** ;
- x. residential unit sizes in accordance with **Table 4** to **Annexure A** ;
- xi. car parking provided in above ground and basement car parking facilities,

in accordance with the rates in **Table 5** in **Annexure A** ;

- xii. public open space being "Central Park" comprising 8000 sq m and Open Space Lot 2 "Linear Park" comprising 2703 sq m;
 - xiii. on site stormwater detention system and water sensitive urban design (WSUD) principles.
- E. Once development consent is obtained for Stage 1, Development Applications are to be submitted by Karimbla seeking consent for construction of the development at the site ("the stage 2 and future DAs").
- F. In April and May 2015 Karimbla provided amended plans indicating the components of the Stage 1 concept application. Annexed hereto and marked with the "**B**" are those plans.
- G. On 1 April 2015, the parties proposed to enter into a Planning Agreement. By way of the proposal, Karimbla has agreed with the Council to offer public benefits including the following public works, land dedications and monetary contributions.
- i. embellishment, construction and dedication at no cost to the Council of 8000 sq m of land on the site for the purpose of a public park/public recreational space being land of land identified on the approved plans as "Central Park" proposed Open Space Lot 1 Annexed hereto and marked with the letter "**C**".
 - ii. ~~Not used; embellishment, construction and dedication, at no cost to the Council of and 2703 sq m being land identified on the approved plans as "Linear Park", proposed Open Space as Lot 2 Annexed hereto and marked with the letter "C";~~
 - iii. construction of, public domain embellishment, and dedication for the use of a public road and at no cost to the Council that part of the site

comprising roads identified on the approved plans as:

- East West Boulevard, proposed road Lot 1;
- Civic Avenue, proposed road Lot 3;
- North South Street 2, proposed road Lot 2;
- North South Street 1, proposed road Lot 4 ~~and 5~~;
- ~~— Local Street Road, proposed road Lot 6; and~~

Annexed hereto and marked with the letter "D" is the most up to date plan identifying the location of the proposed public roads;

- iv. undertaking at no cost to the Council the design and construction works inclusive of traffic lights and any other necessary traffic control devices and signals so as to upgrade the intersection of Banks Avenue and Heffron Road as part of Stage 2A(2) and prior to the issue of any occupation certificate for development on Urban Block 5W in accordance with the plan Annexed hereto and marked letter "E" ;
- v. undertaking at no cost to the Council the design and construction of works inclusive of traffic lights and any other necessary traffic control devices and signals so as to upgrade the intersection of Bunnerong Road Heffron Road and Maroubra Road as part of Stage 2A(2) and prior to the issue of any occupation certificate for development on Urban Block 5W in accordance with the plan Annexed hereto and marked letter "F" ;
- vi. Providing a monetary contribution of ~~\$10.5 million~~ \$8,022,000 to Council for use as follows:
 - a. Upgrade the intersection of Page Street and Wentworth Avenue including works and services at the intersection; and
 - b. Upgrade the intersection of Baker Street and Wentworth Avenue including works and services at the intersection; and,

- c. Upgrade to Jellicoe Park by providing a new sports amenities building (change rooms, referees room, toilets, kiosk, kitchenette, storage and the like) and upgrade to perimeter fencing; and,
- d. Improvements to Mutch Park, including provision of a skate park and the supply or building of other recreational facilities; and,
- e. Undertake other works with any remaining funds being works to be undertaken at the sole discretion of the Council, for use in respect of any public purpose (public purpose being defined at section 93F(2) of the Act) within the local area (with details to be provided to the developer).

Payment shall be made as follows:

- f. \$8,022,000 as part of Stage 2A(2) and prior to the issue of any occupation certificate for Urban Block 5W in accordance with the plan Annexed hereto and marked letter "G";
- g. ~~not used. \$2,478,000 to be paid at the earlier of an occupation certificate being issued by Council for Urban Block 1 or Urban Block 2 OR any occupation certificate being issued for any residential uses on Lot 2 DP1187426 north of Tingwell Boulevard. This payment shall be indexed in accordance with the Consumer Price Index (All Groups Index – Sydney), from the date of the initial stage 1 payment.~~

- H. On 7 August 2015 the Council and Karimbla entered into an agreement pursuant to s.34 (3) of the Land and Environment Court Act with conditions of consent to DA 14/096 being Annexure "H" to that agreement.
- I. Condition 4 of the conditions consent to DA 14/096 requires Karimbla, at no cost or expense to the Council, to enter into this Planning Agreement.

- J. Annexed hereto and marked with the letter "I" is a true copy of the development consent to DA 14/096.
- K. The parties have agreed to enter into a Planning Agreement in accordance with section 93F of the Act, the purpose of the said Planning Agreement being for Karimbla to provide a material public benefit in the form of public works, dedications and monetary contributions as described at clause G herein.
- L. Pursuant to Section 93F of the Act the parties hereto now enter into this Planning Agreement.

NOW THIS DEED WITNESSES as follows:

1. This Planning Agreement shall:
 - (a) be binding on the parties hereto and upon their respective heirs, executors, transferees and assigns;
 - (b) takes effect on the date of this Planning Agreement is executed by both parties;
 - (c) becomes operative at such time as the benefit of the development consent is taken up; and
 - (d) terminates when Karimbla or its respective heirs, executors, transferees or assigns has satisfied all of its obligations under this Agreement or when the development consent lapses in accordance with the Act.
2. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of the Council existing at law or which the Council would otherwise have available to it.
3. In case one or more of the provisions contained in this Planning Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions contained therein shall not thereby be effected.
4. Karimbla covenants and agrees with the Council that it shall at Karimbla's

expense and to the Council's satisfaction undertake all works and dedications required under this planning agreement and as set out in this agreement and/or the consent given by Council to integrated development application DA 14/096.

All works and dedications are to be undertaken in accordance with the timeframes set out at table 3 to condition 11 of the Council's development consent given in relation to integrated development application DA 14/096.

Agreed works, dedications and monetary contributions are as follows:

- i. embellish, construct and dedicate at no cost to the Council of 8000 sq m of land on the site for the purpose of a public park / public recreational space being land on the approved plans as "Central Park";
- ii. ~~not used, embellish, construct and dedicate at no cost to the Council of 2703 sq m of land on the site for the purpose of a public park / public recreational space being land of land identified on the approved plans as Proposed Lot 2 Open Space "Linear Park",~~
- iii. construct and dedicate for the use of a public road and embellish the public domain at no cost to the Council that part of the site comprising roads identified on the approved plans as "East West Boulevard", "Civic Avenue", Road Lot 2 "North South Street 2", Road Lot 4 ~~and Road Lot 5~~ "North South Street 1", ~~and Local Street Road Lot 6,~~
- iv. undertake at no cost to the Council the design and construction of works inclusive of traffic lights and any other necessary traffic control devices and signals so as to upgrade the intersection of Banks Avenue and Heffron Road;
- v. undertake at no cost to the Council the design and construction of works inclusive of traffic lights and any other necessary traffic control devices and signals so as to upgrade the intersection of Bunnerong Road, Heffron Road and Maroubra Road;

- vi. Providing a monetary contribution of \$8,022,000 ~~\$10.5 million~~ to Council for use as follows:
- a. Upgrade the intersection of Page Street and Wentworth Avenue including works and services at the intersection; and
 - b. Upgrade the intersection of Baker Street and Wentworth Avenue including works and services at the intersection; and,
 - c. Upgrade to Jellicoe Park by providing a new sports amenities building (change rooms, referees room, toilets, kiosk, kitchenette, storage and the like) and upgrade to perimeter fencing; and,
 - d. Improvements to Mutch Park, including provision of a skate park and the supply or building of other recreational facilities; and,
 - e. Undertake other works with any remaining funds being works to be undertaken at the sole discretion of the Council, for use in respect of any public purpose (public purpose being defined at section 93F(2) of the Act) within the local area (with details to be provided to the developer).

Payment shall be made as follows:

- f. \$8,022,000 as part of Stage 2A(2) and prior to the issue of any occupation certificate for Urban Block 5W in accordance with the plan Annexed hereto and marked letter "G";
 - g. ~~Not used \$2,478,000 to be paid at the earlier of an occupation certificate being issued by Council for Urban Block 1 or Urban Block 2 OR any occupation certificate being issued for any residential uses on Lot 2 DP1187426 north of Tingwell Boulevard. This payment shall be indexed in accordance with the Consumer Price Index (All Groups Index — Sydney); from the date of the initial stage 1 payment.~~
5. Karimbla covenants and agrees that there will be no off sets or reductions to any

contributions payable under section 94 of the Act for any of the works and dedications referred to in clause 4 herein and Karimbla agrees that the works as set out at clause 4 herein do not replace in any way and are additional to the requirement for Karimbla to pay contributions in accordance with Section 94 of the Act, with the said section 94 contributions to be paid by Karimbla in accordance with the Section 94 Contributions Plan that applies at the time that any Stage 2 or later development application is lodged (or at the time otherwise stated in the Plan), except as otherwise agreed by Council.

6. Karimbla covenants and agrees with the Council:

- (a) that prior to it lodging a development application for any stage 2 development including a building (but excluding DA 14/159 for East West Boulevard and Sydney Water infrastructure, which is already lodged) it shall do all things reasonably necessary to register this Planning Agreement over the title to the site pursuant to Section 93H of the Act from all persons who have an interest in the site;
- (b) that forthwith it shall cause this Planning Agreement to be registered on the title of the site (being only the site being Lot 2 DP 1187426 and in the future after subdivision of the site, only the development lots and future public domain lots – but excluding any lots created under a strata plan that are not common property lots), [excluding Lot 24 DP1242288 and any lot or strata lot created from a subdivision or strata subdivision of that lot](#), until such time as all obligations arising under this agreement have been met;
- (c) that if this Planning Agreement is not registered on the title to the site, and if Karimbla should propose to sell the site, then Karimbla shall:
 - i. within seven (7) days of listing the site for sale, either through an

- agent or privately, notify the Council of such intention;
- ii. as a condition of any sale, require that the incoming purchaser enter into with Council a like Planning Agreement to this present Planning Agreement in which the same covenants as set out herein shall apply;
 - iii. within seven (7) days of exchange of contracts, notify the Council of the sale and provide the Council with a copy of the contract;
 - iv. within twenty one (21) days of receipt from the Council of a replacement Planning Agreement between the Council and the purchaser substantially in the form of this Planning Agreement, have it executed by the purchaser and return it to the Council;
 - v. that if this Planning Agreement is not registered on the title to the site, and if Karimbla should propose otherwise than by sale to transfer or assign their interest in the site or any part thereof to a transferee or assignee, then Karimbla shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Planning Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.
7. The Council acknowledges that if an incoming purchaser of the site as a whole enters into with the Council a like Planning Agreement to this present Planning Agreement in which the same covenants as set out herein apply, Karimbla will be released from any future obligation under this Agreement. Such release will not release Karimbla from any liability to the Council for any antecedent breaches of this Agreement by Karimbla.
8. Karimbla further covenants and agrees with the Council that pending the

registration of this Planning Agreement on the title of the site as required by clause 6(b), the Council shall be entitled to register a caveat at Land & Property Information New South Wales over the title to the Development Site to protect its interest therein pursuant to this Planning Agreement.

9. If Council lodges a caveat pursuant to clause 8, then the Council must promptly do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:
 - (a) this Agreement;
 - (b) any plan of consolidation or subdivision contemplated, required or permitted under this Agreement or any development consent;
 - (c) any other dealing contemplated, required or permitted under this Agreement or any development consent; and
 - (d) the transfer of any part of the site to a related body corporate of the Owner or a trust or fund of which a related body corporate of the Owner is trustee, manager or responsible entity.
10. The parties agree that if the site is subdivided such that development takes place in more than one stage, the registration of this Agreement will be removed from the title of any allotment of the site subject to a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* except that registration of this agreement will remain over the title to any common property.
11. The Parties will, upon termination of this Agreement in accordance with clause 1(d), do all things required to enable the removal of the Agreement from the title of the Site
12. If a caveat is registered on the title of the site in accordance with clause 8 of this Agreement, then such caveat is to be removed immediately upon registration of

the Planning Agreement being registered on the title of the site.

13. Karimbla shall pay Council's reasonable solicitor/client costs of preparing this Planning Agreement and any cost of registering the Planning Agreement.
14. Should it be necessary for Council to consent to the registration of any lease, mortgage, consolidation of title, strata plan or other document as a result of a caveat being registered on the titles to the site Karimbla shall pay the Council's reasonable solicitor/client costs of providing Council's consent to such registration. Karimbla shall also pay the Council's reasonable costs of preparing any substitute Planning Agreement between Council and any incoming purchaser, assignee or transferee of the site. Council must give Karimbla a tax invoice for any amount payable by Karimbla under this clause.
15. Should Karimbla be in breach of any terms of this Planning Agreement, and not rectify the default within twenty one (21) days of receiving notice from Council to do so (except if a delay in rectification is likely to cause irreparable damage or prejudice to Council, in which case no notice is required) Council shall be entitled, at its option, to enforce by way of injunctive relief in the Supreme Court any provisions of this Planning Agreement which have been breached, or to seek damages or seek to enforce the provisions of any development consent which relate to the Development Site whether by way of order under Section 121B of the Environmental Planning and Assessment Act 1979, or Class 4 proceedings in the Land and Environment Court, or otherwise.
16. Any amendment or variation to this Planning Agreement is not effective unless it is in writing and signed by both parties.
17. The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.
18. In the event of any disagreement between the parties hereto arising out of the

provisions of this Planning Agreement, and if the parties are unable within a reasonable time to resolve such disagreement amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation. The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party, an expert or the conciliator during the conciliation relating to a possible settlement of the dispute;
 - (b) admissions or concessions made by a party during the conciliation in relation to the dispute; and
 - (c) information, documents or other material, including any confidential information, concerning the dispute which is disclosed by a party during the conciliation unless such information, documents or facts would have been otherwise discoverable in judicial or arbitral proceedings.
19. (a) All words in this clause which are also defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("the GST Act") have a corresponding meaning to that in the GST Act
- (b) the consideration for any supply under this Planning Agreement excludes GST;
 - (c) where a party to this Planning Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to

the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment;

- (d) the maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply;
- (e) despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Planning Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

ANNEXURE A

TABLE 1

GFA and FSR

2013 LEP Zone	Proposed Lot ^a	Urban Block ^b	Site Area sq m ^c	GFA sq m ^d	FSR ^e	Indicative Unit Nos.
B4	1	UB5 West	13,507	51,712	3.83	517
	2	UB5 Central	13,095	45,306	3.84	453
B4				5,000 ^f		
B4	3	UB5 East	9,011	22,412	2.49	224
B4	part lot 4	part UB4	826			
R3	part lot 4	part UB4	7,089	18,225	2.30	182
B4	part lot 5	part UB3	999			
R3	part lot 5	part UB3	8,435	37,011	3.92	370
R3	6	UB2	9,021	28,603	3.17	286
R3	7	UB1	13,302	19,018	1.43	190
Sub Total			75285	227,287	N/A	2223
B4	part road lot 3	part Civic Avenue	1361			
R3	part Road lot 3	part Civic Avenue	1096			
R3	road lot 4		1359			
R3	road lot 2		1224			
R3	road lot 1	East West Boulevard	8778			
R3	road lot 5		2023			
R3	road lot 6		1596			
R3	Open Space lot 2	Linear Park	2703			
R3	Central Park	Central Park	8000			
sub total			28140			
TOTAL			103,425	227,287	N/A	2223

Notes

- a. Proposed lots shown on Drawing No. A014 dated 29/4/15
- b. Urban Blocks shown on Drawing No. A004 dated 29/4/15
- c. Site area shown on Plan of Subdivision of Lot 2 DP1187426 dated 28/4/15
- d. GFA is Residential and Child Care Centres unless as noted, taken from Drawing No. A001 dated 29/4/15
- e. FSR calculated from Table shown on Drawing No. A001 dated 29/4/15 and Drawing No. A014 dated 29/4/15.
- f. Maximum 5000 sq m retail

TABLE 2

Building Height

Block No.	Tower No.	Maximum Podium Height	Maximum Building Height	Maximum Plant Room Height
Urban Block 1	A1, A2, A3, A4, A5	N/A	7.6m (RL29.6) plus Attic a	N/A
	B1, C1	N/A	13.8m (RL35.8)	16.4m (RL38.4)
	B2, C3	N/A	20.0m (RL42.0)	22.6m (RL44.6)
Urban Block 2	A1, A2	10.7m (RL32.7)	26.2m (RL48.2)	28.8m (RL50.8)
	B2, C2	13.8m (RL35.8)	35.5m (RL57.5)	38.1m (RL60.1)
Urban Block 3	A1, A2	13.8m (RL35.8)	35.5m (RL57.5)	38.1m (RL60.1)
	B1, B2	13.8m (RL35.8)	44.8m (RL66.8)	47.4m (RL69.4)
	A3, A4	16.9m (RL38.9)	51.0m (RL73.0)	53.6m (RL75.6)
Urban Block 4	A1	16.9m (RL38.9)	20.0m (RL42.0)	22.6m (RL44.6)
	A2	16.9m (RL38.9)	26.2m (RL48.2)	28.8m (RL50.8)
Urban Block 5W	A1, A2, A4, A5	16.9m (RL38.9)	51.0m (RL73.0)	53.6m (RL75.6)
	A3, A6	16.9m (RL38.9)	63.4m (RL85.4)	66.0m (RL88.0)
Urban Block 5C	B1, B2b	18.8m (RL40.8)	40.5m (RL62.5)	43.1m (RL65.1)
	B4, B5	18.8m (RL40.8)	52.9m (RL74.9)	55.5m (RL77.5)
	B3, B6	18.8m (RL40.8)	65.3m (RL87.3)	67.9m (RL89.9)
Urban Block 5E	B2, B3	16.9m (RL38.9)	20.0m (RL42.0)	22.6m (RL44.6)
	B1	10.7m (RL32.7)	26.2m (RL48.2)	28.8m (RL50.8)
	B4	10.7m (RL32.7)	51.0m (RL73.0)	53.6m (RL75.6)

a: Attic is as defined in Botany Bay LEP 2013

TABLE 3

Unit Mix

Unit Size ^a	Proportion	Indicative Maximum Number of Units
Studios	N/A	0
One bedroom	Maximum 20%	445
Two Bedroom	50%	1112
Three + bedroom	Minimum 30%	668
TOTAL		2223

TABLE 4

Unit Size

Unit Type	Area	Size sq m
One bedroom	Internal	65
	External	12
Two bedroom	Internal	85
	External	12
Three bedroom	Internal	50% of units per urban block 124 50% of units per urban block 110
	External	24 for 124 sq m units 15 for 110 sq m units

Note: a **Internal area** means the area inside the enclosing walls of a dwelling but excludes wall thickness, vents, ducts, staircases and lift wells.

TABLE 5

Car parking Rates

Use	Min number car spaces	Indicative minimum number of car spaces
Residential		
One bedroom	1	445
Two bedroom	1.5	1668
Three bedroom	2	1336
Residential Visitor	1 per 10 units	222
Car Share Spaces	22 including min 10 in basements	22
Total residential		3693
Other Uses	As per BBDGP 2013	

IN WITNESS WHEREOF the parties have set their hands and seals on the day first
hereinbefore written.

THE COMMON SEAL of the **CITY**)
OF BOTANY BAY COUNCIL was)
hereunto affixed pursuant to a resolution)
of the Council passed on the day)
of)

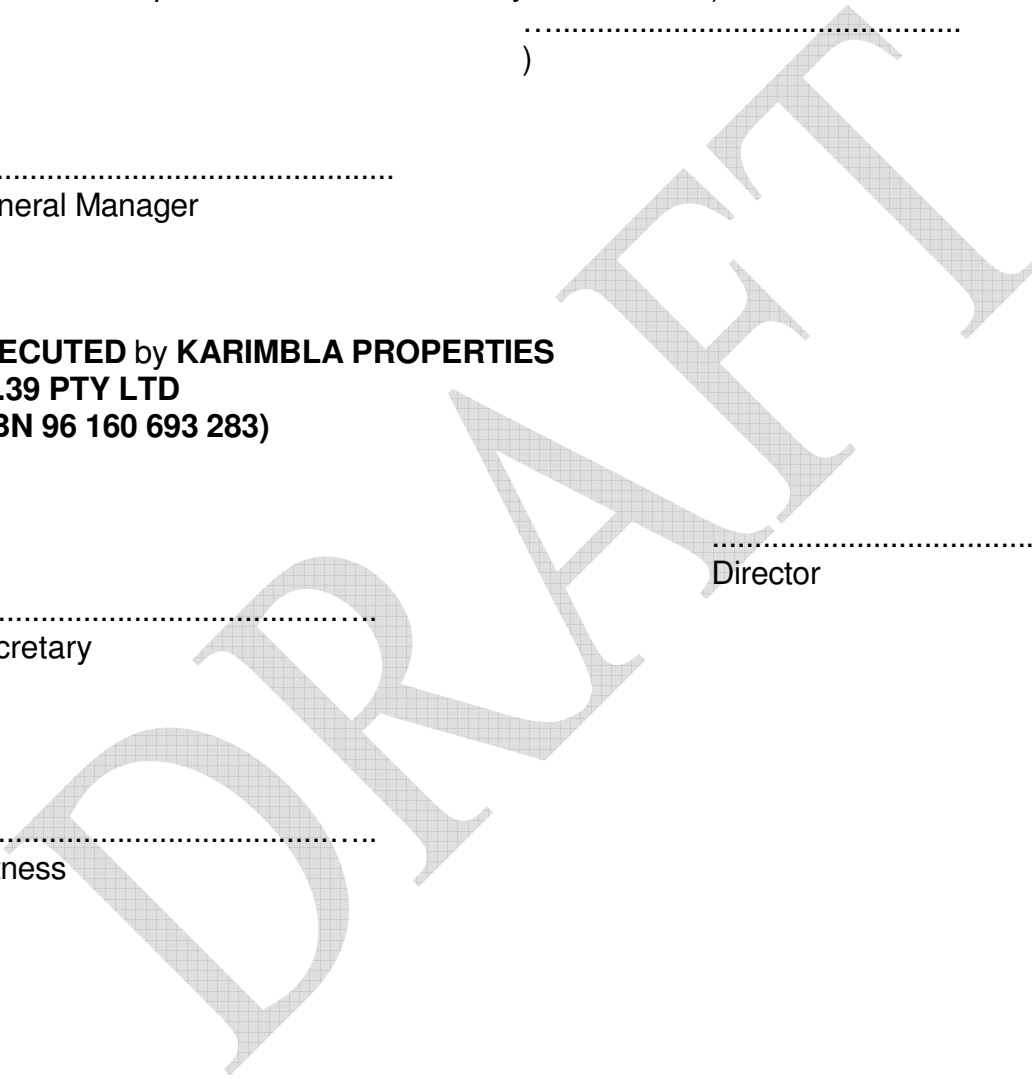
.....
General Manager

EXECUTED by **KARIMBLA PROPERTIES**
No.39 PTY LTD
(ABN 96 160 693 283)

by:
Director

.....
Secretary

.....
Witness



DATED
2015

BETWEEN:

**THE COUNCIL OF THE CITY OF
BOTANY BAY**
("the Council")

AND:

**KARIMBLA PROPERTIES No. 39 PTY
LTD (ABN 96 160 693 283)**
("Karimbla")

PLANNING AGREEMENT

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