

DEED OF VARIATION OF PLANNING AGREEMENT

The Council of the City of Sydney
(ABN 22 636 550 790)

and

Toga Development No 15 Pty Limited
(ACN 000 035 861)

and

Toga Project Services Pty Limited
(ACN 000 965 515)

For the variation of Planning Agreement for Sites 2, 3 and 4
Green Square Town Centre (6-12 O’Riordan Street, Alexandria
and 320-322 and 324 Botany Road, Alexandria)

File: X037906



DEED OF VARIATION

THIS DEED is made on

2022

PARTIES

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** ABN 22 636 550 790 of Town Hall House, 456 Kent Street Sydney NSW 2000 (**City**);
- (2) **TOGA DEVELOPMENT NO 15 PTY LIMITED** ABN 27 000 035 861 of Level 5, 45 Jones Street, Ultimo NSW 2007 (the **Landowner**); and
- (3) **TOGA PROJECT SERVICES PTY LIMITED** ABN 56 000 965 515 of Level 5, 45 Jones Street, Ultimo NSW 2007 (the **Developer**).

BACKGROUND

- A. The City and the Service Provider entered into the Agreement.
- B. City and the Service Provider have agreed to vary the Agreement in the manner set out in this Deed of Variation.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

1.1 In this Deed of Variation, unless the context otherwise requires:

Agreement means the voluntary planning agreement between City, the Landowner and the Developer dated 30 March 2022.

Deed of Variation means this deed of variation of minor services agreement and all annexures, schedules, attachments and exhibits.

1.2 Rules for interpreting this Deed of Variation

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

(a) A reference to:

- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The words subsidiary, holding company and related body corporate have the same meanings as in the Corporations Act.
 - (g) A reference to dollars or \$ is to an amount in Australian currency.
 - (h) A reference to this document includes the agreement recorded by this document.
 - (i) Words defined in the GST Act have the same meaning in clauses about GST.
 - (j) A reference to a month is to a calendar month.
- 1.3 A reference to a term defined in the Agreement has the same meaning when used in this Deed of Variation.
- 1.4 This Deed of Variation is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2 VARIATION OF AGREEMENT

The Agreement is varied as follows:

- 2.1 Clause 1.1 (Definitions) is amended by adding the following definition:

Second Construction Certificate means the first in time of:

- (a) the second Construction Certificate to be issued with respect to the Development; or
- (b) any Construction Certificate issued with respect to above ground works for the Development including but not limited to structure, services, façade and roof.

- 2.2 Schedule 3, clause 1 is amended by amending the top row of the table as shown:

2.3

	Public Benefit	Attributed Value	Due date	Additional Specifications
1.	Monetary Contribution	\$4,400,000	Prior to the issue of the Second Construction Certificate for the Development.	Not applicable

3 NO OTHER CHANGE

The parties confirm that the Agreement will continue in full force and effect as varied by this Deed of Variation. Nothing in this Deed of Variation will be read or construed as implying any form of variation or waiver other than as expressly set out in this Agreement.

4 FURTHER ASSURANCE

Subject to clause 5.2, each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed of Variation.

5 LEGAL COSTS

5.1 Subject to clause 5.2, each party will bear its own legal costs in relation to the preparation and execution of this Deed of Variation.

5.2 The Contractor must pay the reasonable costs incurred by the City (including any legal costs and costs arising from the public notice and inspection process) arising from or in connection with this Deed of Variation.

6 GENERAL

6.1 This Deed of Variation contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Deed of Variation are of no effect.

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

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

- 6.3 Nothing in this Deed of Variation in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.
- 6.4 The invalidity, illegality or unenforceability of any provisions of this Deed of Variation will not affect the validity or enforceability of any other provisions.
- 6.5 This Deed of Variation may only be varied in writing by the agreement of the parties.
- 6.6 This Deed of Variation is governed by and construed in accordance with the law of the State of New South Wales.
- 6.7 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed of Variation.

DRAFT

EXECUTION

Executed as a deed on

Signed for and on behalf of THE COUNCIL OF THE CITY OF SYDNEY by its duly authorised officer in the presence of:

Witness:

Signature:

Name (printed):

Name of Authorised Officer:

Signed by **TOGA DEVELOPMENT NO 15 PTY LIMITED (ACN 000 035 861)** in accordance with section 127 of the Corporations Act:

Signature of Director

Signature of Director/Secretary:

Full Name (printed):

Full Name (printed):

Signed by **TOGA PROJECT SERVICES PTY LIMITED (ACN 000 965 515)** in accordance with section 127 of the Corporations Act:

Signature of Director

Signature of Director/Secretary:

Full Name (printed):

Full Name (printed):