

# DEED OF VARIATION OF PLANNING AGREEMENT

THE COUNCIL OF THE CITY OF SYDNEY  
(ABN 22 636 550 790)

and

357 BLIGH STREET PTY LTD  
(ACN 658 776 571)

Property: 4-6 Bligh Street Sydney NSW 2000

Reference: S128197

## DEED OF VARIATION

**THIS DEED** is made on

### 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**); and
- (2) **357 BLYTH STREET PTY LTD** ACN 658 776 571 of Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113 (**Developer**).

### BACKGROUND

- A. The City and the previous registered proprietor of the Land entered into the Agreement.
- B. The City and the Developer have now agreed to vary the Agreement in the manner set out in this Deed of Variation on and from the Effective Date.

### THE PARTIES AGREE AS FOLLOWS:

#### 1 DEFINITIONS

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

**Agreement** means registered planning agreement AN757249 between the City and the previous registered proprietor dated 24 September 2018.

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

**Effective Date** means the date of this Deed.

**Land** means Folio Identifier 140/1291942, known as 4-6 Blyth Street, Sydney NSW 2000.

**Schedule** means the schedule attached to this Deed of Variation.

#### 2 INTERPRETATION

2.1 Headings are for convenience only, and do not affect interpretation.

2.2 The following rules 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.
  - (k) A reference to a term defined in the Agreement has the same meaning when used in this Deed of Variation.

2.3 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.

### **3 VARIATION OF AGREEMENT**

The parties agree that on and from the Effective Date, the Agreement is varied as follows:

3.1 Deleting the definition of "Monetary Contribution" and replacing with the following:

**"Monetary Contribution** means that part of the public Benefits described as "Monetary Contribution" in clause 1 of Schedule 3, being 'Monetary Contribution – Affordable Housing', 'Monetary Contribution – Central Sydney Infrastructure' and 'Monetary Contribution – 1% Development Cost', to be paid by the Developer to the City in accordance with this document."

3.2 Clause 2.3(b) is deleted.

3.3 Schedule 2, Item 5 is amended by deleting the words "section 7.12 not excluded" and replacing with "section 7.12 excluded in relation to the development application for the Development and the comprehensive redevelopment of the Land, but not excluded in relation to any future development applications or complying development certificates such as alterations, additions, fitouts signage etc".

3.4 Schedule 3, clause 1 is amended by deleting the table and replacing with the following table:

<b>Item</b>	<b>Public Benefit</b>	<b>Attributed Value</b>	<b>Due date</b>	<b>Additional specifications</b>
1.	Monetary Contribution – Affordable Housing	Monetary Contribution rate per square metre of Total floor area (as indexed in accordance with Annexure A)	On or before the issuing of the first Construction Certificate for the Development	see clause 2, Annexure A.
2.	Monetary Contribution – Central Sydney Infrastructure	\$1003 per square metre of strategic gross floor area (as indexed in accordance with Annexure B)	On or before the issuing of the first Construction Certificate for the Development	see clause 2, Annexure B.
3(a)	Environmental Excellence Initiatives – Commercial/Of fice Component	Nil	After the Occupation Certificate is issued in accordance with the NABERS rating assessment process	5 star NABERS Energy for the base building  4 star NABERS Water
3 (b).	Environmental Excellence Initiatives – Hotel Component	Nil	After the Occupation Certificate is issued in accordance with the NABERS rating assessment process	4.5 star NABERS Energy for the whole component
4.	Transfer Land	Nil	Nil	Nil
5.	Developer’s Works	Nil	Nil	Nil
6.	Monetary Contribution –	Monetary Contribution of 1% of the total	On or before the issuing of the first	See Annexure D

	1% Development Cost	Development cost (to be determined in accordance with Annexure D).	Construction Certificate for the Development	
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3.5 Clause 2.1 (Payment) of Schedule 3 is deleted and replaced with the following:

**“2.1 Payment**

The Developer must pay the Monetary Contributions to the City by the due date specified in Items 1, 2 and 5, Clause 1 of Schedule 3 in cash or by unendorsed bank cheque.”

3.6 A new clause 2.4(c) is inserted into Schedule 3 as follows:

“(c) Monetary Contribution – 1% Development Cost to contribute to the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation) in Central Sydney.”

3.7 A new Annexure D is inserted as shown in Schedule 1.

**4 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 Deed of Variation.

**5 FURTHER ASSURANCE**

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.

**6 LEGAL COSTS**

Each party will bear its own legal costs in relation to the preparation and execution of this Deed of Variation.

**7 GENERAL**

7.1 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.

7.2 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.
- 7.3 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.
- 7.4 The invalidity, illegality or unenforceability of any provisions of this Deed of Variation will not affect the validity or enforceability of any other provisions.
- 7.5 This Deed of Variation may only be varied in writing by the agreement of the parties.
- 7.6 This Deed of Variation is governed by and construed in accordance with the law of the State of New South Wales.
- 7.7 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.

**EXECUTION**

**Executed** as a deed on

**Signed for and on behalf of THE COUNCIL OF THE CITY OF SYDNEY** by an Authorised Delegate in accordance with section 377 of the Local Government Act 1993 (NSW) in the presence of:

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Name (printed):

\_\_\_\_\_  
Name of Authorised Officer:

Signed by **357 BLIGH STREET PTY LTD (ACN 658 776 571)** in accordance with section 127 of the Corporations Act:

\_\_\_\_\_  
Sarkis Nassif  
Sole Director/Secretary

## **SCHEDULE 1**

### **Annexure D**

#### **1% Development Cost Contribution**

The Developer must pay a monetary contribution comprising 1% of the total cost of the Development in accordance with the following:

- (a) Prior to a Construction Certificate being issued, evidence must be provided of Council's written verification of the amount of the contribution as required in (b) below, and then that the contribution has been paid to the City in accordance with this condition. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Direct debit, personal or company cheques will not be accepted.
- (b) The contribution must not be paid to the City until it is accompanied by separate written verification by the City of the specific amount payable. In order to obtain such verification, the "City of Sydney Registered Quantity Surveyor's Detailed Cost Report" indicating the itemised cost of the development must be completed and submitted to Council by the Accredited Certifier, together with copies of the plans the subject of the application for the Construction Certificate. A copy of the required format for the "City of Sydney Registered Quantity Surveyor's Detailed Cost Report" may be obtained from the City of Sydney's website ([www.cityofsydney.nsw.gov.au](http://www.cityofsydney.nsw.gov.au)). The information must be submitted to Council's Planning Administration Team at [planningsystemsadmin@cityofsydney.nsw.gov.au](mailto:planningsystemsadmin@cityofsydney.nsw.gov.au).
- (c) The City will consider the documentation submitted under subclause (b) and determine the cost of the proposed development having regard to the information submitted and to such other matters as it considers appropriate and will notify the Accredited Certifier accordingly.
- (d) The items to be included in the calculation of the cost of the Development are demolition works, site remediation including decontamination, excavation and site preparation, construction costs, fit out, professional fees as part of the design (including design competitions) documentation and implementation process, fixed building machinery, equipment and appliances, kitchens and bar areas, car parking, air conditioning plant and equipment, services (fire, mechanical ventilation, electrical, hydraulic), ceilings, fire protection devices, installation of services (power, water, sewer, telephone), lifts and other essential machinery, floor coverings, National Construction Code (previously known as Building Code of Australia) compliance works, replacement of existing materials, fixtures and fittings, construction related insurance, assessment and construction related fees, charges and GST and any other matter not expressly excluded in (e) below. Any item for which an exemption has been granted is still to be included in the total cost of the Development, together with an itemised value to enable the City to calculate the value of the exemption.
- (e) The items to be excluded in the calculation of the cost of the Development are the cost of land, marketing expenses (excluding display suites etc), finance and interest, building insurance after practical completion, drapery, commercial stock inventory, loose furniture, loose equipment, loose electrical appliances, minor maintenance of existing retained fixtures (patching, repainting) and stamp duty.