

Deed of Variation of Planning Agreement

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

and

Fabcot Pty Ltd ABN 55 002 960 983, Triton Atlas Corporation
Pty Ltd ABN 45 634 827 839, and The Owners - Strata Plan
No. 22322

For 923 Bourke Street Waterloo

Reference: X131606

DEED OF VARIATION

THIS DEED is made on

2026.

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) **Fabcot Pty Ltd** ABN 55 002 960 983 of 1 Woolworths Way, BELLA VISTA NSW 2153 (the **Developer**); and
- (3) **Triton Atlas Corporation Pty Ltd** ABN 45 634 827 839 of Level 7, 330 Collins Street, MELBOURNE VIC 3000, and **The Owners - Strata Plan No.22322** of 923-925 Bourke Street, WATERLOO NSW 2017 (the **Landowner**).

BACKGROUND

- A. The City, the Developer and the Landowner entered into the Planning Agreement.
- B. The City, the Developer and the Landowner have agreed to vary the Planning Agreement in the manner set out in this Deed of Variation.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS

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

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

Land means Lot 1 in SP22322, Lot 2 in SP22322, Lot 3 in SP22322, and CP in SP22322 known as 923 Bourke Street Waterloo NSW 2017.

Planning Agreement means the planning agreement between City, the Developer and the Landowner for 923 Bourke Street Waterloo dated 18 January 2024.

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 Planning 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 PLANNING AGREEMENT

The Planning Agreement is varied as follows:

3.1 Item 1 of Schedule 1 is deleted and replaced with the following:

1.	Land	<i>Lot 1 in SP22322, Lot 2 in SP22322, Lot 3 in SP22322 and CP in SP22322 known as 923 Bourke Street Waterloo NSW 2017.</i>
-----------	-------------	---

3.2 Item 1 in the table of clause 1 of Schedule 3 is deleted and replaced with the following:

1.	Onsite Affordable Housing	\$3,118,024	<p>(a) Prior to the first Occupation Certificate for the residential component of the Development.</p> <p>(b) Prior to the first Construction Certificate for the Development, excluding any Construction Certificate issued for demolition of existing structures on the Land.</p> <p>(c) Prior to the first Occupation Certificate for the residential component of the Development that include the Affordable Housing Dwellings.</p> <p>(d) Within 30 Business Days of the first Occupation Certificate for the Affordable Housing Dwellings.</p>	<p>(a) Design, construction and fit-out of Affordable Housing on the Land as part of the Development that meets the requirements set out in clause 2 of Schedule 3.</p> <p>(b) Fully executed Community Housing Provider Agreement that meets the requirements set out in clause 3 of Schedule 3.</p> <p>(c) Registration of the Affordable Housing Restriction on each Affordable Housing Dwelling.</p> <p>(d) Transfer of the Affordable Housing Dwellings to the Community Housing Provider in accordance with the Community Housing Provider Agreement and clause 4 of Schedule 3.</p>
----	---------------------------	-------------	---	--

3.3 A new clause 2.6 is inserted below clause 2.5 of Schedule 3 as follows:

2.6 Completion of the Onsite Affordable Housing

For the avoidance of doubt, Completion of the Onsite Affordable Housing component of the Developer’s Works means the point at which all of the additional specifications for that item of Public Benefits as set out in clause 1 of Schedule 3 have been completed including the transfer of the Affordable Housing Dwellings to the Community Housing Provider.

4 NO OTHER CHANGE

The parties confirm that the Planning 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 REGISTRATION

5.1 The Landowner:

- (a) consents to the registration of this Deed of Variation at the NSW Land Registry Services on the certificate of title to the Land;
- (b) warrants that it has obtained all consents to the registration of this Deed of Variation on the certificate of title to the Land; and
- (c) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this Deed of Variation on the certificate of title to the Land, including but not limited to:
 - i. producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and
 - ii. providing the City with payment for registration, electronic lodgement and requisition fees (where applicable) required for registration of this Deed of Variation at NSW Land Registry Services.
- (d) must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this Deed of Variation.

6 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.

7 LEGAL COSTS

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

8 GENERAL

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 The invalidity, illegality or unenforceability of any provisions of this Deed of Variation will not affect the validity or enforceability of any other provisions.
- 8.5 This Deed of Variation may only be varied in writing by the agreement of the parties.
- 8.6 This Deed of Variation is governed by and construed in accordance with the law of the State of New South Wales.
- 8.7 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.
- 8.8 The parties acknowledge and agree that this Deed of Variation may be signed electronically and in counterparts, in accordance with the *Electronic Transactions Act 2000* (NSW).

EXECUTION

Executed as a deed.

Signed for and on behalf of THE COUNCIL OF THE CITY OF SYDNEY
(ABN 22 636 550 790) by its duly authorised officer, in the presence of:

Signature of witness
Electronic signature of:

Signature of officer
Electronic signature of:

Name of witness

Affixed by me on:

Name of officer
Authorised delegate pursuant to section 377 of the Local Government Act 1993
Affixed by me on:

Date signed

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed by FABCOT PTY LTD (ACN 002 960 983) by its attorney pursuant to Power of Attorney BK _____ No _____ (who states that by executing this document that the attorney has received no notice of revocation of the power of the attorney) in the presence of:

Signature of witness
Electronic signature of:

Signature of attorney
Electronic signature of:

Name of witness
Affixed by me on:

Name of attorney
Affixed by me on:

Date signed

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed by TRITON ATLAS CORPORATION PTY LTD (ACN 634 827 839) in accordance with s127(1) of the Corporations Act 2001 (Cth):

Signature of sole director/secretary

Electronic signature of:

Name of sole director/secretary

Affixed by me on:

Dated signed

The common seal of THE OWNERS - STRATA PLAN NO. 22322 was affixed on _____ in the presence of the following person(s) authorised by s273 of the Strata Schemes Management Act 2015 (NSW) to attest to the affixing of the seal:

Signature

Electronic signature of:

Name

Authority

Affixed by me on:

Date signed

Signature

Electronic signature of:

Name

Authority

Affixed by me on:

Dated signed