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Deed of Variation

The Hills Shire Council Planning Agreement

City of Parramatta Council
(Council)

and

Stamford House 88 Pty Limited (ACN 100 778 336)
(Stamford House)

Joseph Khattar (Director/Secretary)

Sam Fayad (Director)

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In this Deed, except to the extent that the context otherwise requires:

- (a) **Agreement** means the written agreement entitled "Planning Agreement" entered into between The Hills Shire Council and Stamford House on or about 17 April 2015;
- (b) **Variation Date** means the last day this Deed is executed by all parties, being the date of this Deed.
- (c) **EPA Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW);
- (d) All other defined terms have the meaning prescribed to those words in the Agreement.

1.2 Interpretation

- (a) Reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
 - (A) that Statutory Provision as amended or re-enacted from time to time; and
 - (B) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (C) money is to Australian dollars, unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and the table of contents are for convenience only and do not form part of this Deed or affect its interpretation.
- (e) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in it.
- (f) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

1.3 Parties

A party which is a trustee is bound both personally and in its capacity as a trustee.

2. Variation of the Agreement

- 2.1 Pursuant to regulation 25C of the EPA Regulation, the parties agree that the Agreement is varied as set out in Schedule 1 to this Deed.
- 2.2 In all other respects the Agreement remains unchanged, unless inconsistent with the amendments given effect by this Deed, then the amendments to the Agreement given effect by this Deed shall prevail over any other provision of the Agreement to the extent of an inconsistency.

3. Effective Date of Deed

- 3.1 The Agreement is varied and this Deed becomes effective on the last day this Deed is executed by all parties, being the date of this Deed.

4. Rest of the Agreement

- 4.1 In all other respects, the terms of the Agreement remain unaltered.

5. Severability

- 5.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of the Deed remains in force.

6. Variation

- 6.1 An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.

7. Counterparts

- 7.1 This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

8. Governing Law and Jurisdiction

- 8.1 The law of New South Wales governs this Deed.
- 8.2 The parties submit to the exclusive jurisdiction of the Courts of New South Wales and of the Commonwealth of Australia.

Schedule 1– VARIATIONS TO THE AGREEMENT

Variations to the Agreement

The Agreement is varied from the Variation Date as follows:

1. Amend clause 1.1 – Definitions

Insert a new definition as follows:

'Easement means an easement to drain water in favour of SP64797 burdening the Land which is 1.2 metre wide, more accurately described in Section 88B Instrument annexed hereto at Annexure B and in the Plan of Easement annexed hereto at Annexure C.'

2. Amend clause 1.1 – Definitions

After the words 'JP-943/2010' insert the following:

'and any subsequent modification application(s);'

3. Amend clause 1.1 – Definitions

Delete the entirety of the definition of 'Party' and replace it with the following two (2) definitions:

'Party means a party to this document, including their successors and assigns;

Price Index means:

- (a) *All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics; or*
- (b) *If this price index is discounted or abolished or if the items or weighting of the items whose prices are considered varied so as to change the basis of the price index then such price index as Council may select that, as nearly as practicable, serves the same purpose.'*

4. Amend clause 1.1 – Definitions

Insert a new definition as follows:

'Total Development Contribution Value means the total monetary value of the Monetary Contribution, Dedication Lands and the Works, as specified in Schedule 5 of this document.'

5. Amend clause 4.2 (b)

Delete 's931(3)' and insert 's931(3)'.

6. Amend clause 4.3

After the words 'as outlined in' insert the following:

'Schedule 1 and'

7. Amend clause 5.1

After the words 'without first obtaining Council's consent in writing' insert the following:

',' except for the land specified in Clause 6.9 of this document'.

8. Amend clause 5.2

Insert a new clause 5.2(e) as follows:

'(e) Council must not unreasonably withhold its consent to the registration of the Easement over the land specified in Clause 6.9 of this document.'

9. Amend clause 6.9

Insert a new clause 6.9 as follows:

'The Council acknowledges and consents to the registration of the Easement in the terms specified in Annexure B to this document and as depicted in Annexure C to this document.'

10. Amend clause 6.10

Insert a new clause 6.10 as follows:

'Dedication Lands Value Offset

- (a) *The Developer will be entitled to offset the value of the Dedication Lands against the Monetary Contribution set out in Schedule 2 (as adjusted by clause 7) of this document.*
- (b) *The value of the Dedication Lands above the sum of \$1,268,624 (as adjusted for CPI), shall be deducted from the Total Development Contribution Value up to, but no greater than, the value of the Monetary Contribution.*
- (c) *The Dedication Lands Value Offset is calculated in accordance with Schedule 5 of this document.'*

11. Amend clause 8.2

Delete the words *'first Strata Certificate for the Land'* and insert the words *'final Occupation Certificate for the Proposed Development'*

12. Amend Schedule 1 – Dedication Lands

Delete the entirety of the table and insert the following table:

Lot	DP	Owner	Area to be dedicated	Timing of Dedication
100	1221092	Stamford House 88 Pty Ltd	3485 m ²	Prior to the issue of the final Occupation Certificate for the Proposed Development.
Estimated Value			\$4,894,124.00	

13. Amend Figure 1 – Land Dedication

Delete Figure 1 – Land Dedication and replace with the following:



Figure 1 - Land Dedication

-  Land to be dedicated as open space
-  Key Sites



14. Amend Schedule 2 – Monetary Contributions and Works-in-Kind

Delete the entirety of the table and insert the following table:

Contribution type	Value \$	Timing
Works-in-Kind		
Open Space Embellishment – CPLOS2	349,650	Prior to the issue of the final Occupation Certificate for the Proposed Development.
Cycleway/Pedestrian Path in Transmission Easement	24,040	Prior to the issue of the final Occupation Certificate for the Proposed Development.
Total value of Works-in-Kind	373,690	
Total Monetary Contribution		
Monetary Contribution	1,013,431	Pro rata payment in accordance with clause 7 of the document for the proposed additional dwellings
Additional Monetary Contribution	Quantum calculated using Monetary Contribution Rates below	Pro rata payment in accordance with clause 7 of the document
Monetary Contribution Rates		
Monetary rate per 1 bedroom unit	4,157	
Monetary rate per 2 bedroom unit	5,336	
Monetary rate per 3+ bedroom unit	6,073	

15. Amend Schedule 3 – Owners

Delete the entirety of the table and insert the following table:

<i>Legal description</i>	<i>Address</i>	<i>Owner</i>
<i>100/DP1221092</i>	<i>1-7 Thallon Street</i>	<i>Stamford House 88 Pty Ltd</i>

16. Amend Schedule 4 – Proposed Development

Delete the words after “*Demolition of existing structures and erection of ...*” insert the following:

‘21 storey mixed use development comprising:

- 18 one bedroom units;*
- 152 two bedroom units;*
- 21 three bedroom units;*
- 407.9m2 retail floor space at ground level; and*
- Three basement parking levels providing 302 car parking spaces.*

Anticipated Dwellings: 191’

17. Amend Schedule 5 – Total Development Contribution Value

Insert a new Schedule 5 as follows:

‘Schedule 5 – Total Development Contribution Value

The Total Development Contribution Value under this document is calculated as follows:

<i>Contribution</i>	<i>Value</i>
<i>Nominal Monetary Contribution (original Schedule 2 value adjusted for additional dwellings)</i>	<i>\$1,013,431.00</i>
<i>Dedication Lands</i>	<i>\$4,894,124.00</i>
<i>Works</i>	<i>\$373,690.00</i>
<i>Total Development Contribution Value</i>	<i>\$6,281,245.00</i>

Offset of the Dedication Lands

Dedication Lands Offset Value = Value of the Dedication Lands – less the original Schedule 1 dedicated land value

*i.e. \$4,894,124 - \$1,268,624 = **\$3,625,500***

Monetary Contribution = Nominal Monetary Contribution – less the Dedication Lands Offset Value

*i.e. \$1,013,431 - \$3,625,500 = **minus \$2,612,069***

*Pursuant to Clause 6.10 of this agreement, the nett Monetary Contribution = **\$0**.*

Therefore, the total value of the Development Contributions under this document is calculated as follows:

<i>Contribution</i>	<i>Value</i>
<i>Monetary Contribution</i>	<i>\$0.00</i>
<i>Dedication Lands</i>	<i>\$4,894,124.00</i>
<i>Works</i>	<i>\$373,690.00</i>
<i>Total Development Contribution Value</i>	<i>\$5,267,814.00</i>

18. Amend Annexure B – Section 88B Instrument

Insert a new Annexure B as follows (on the following two (2) pages):

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS, RESTRICTION ON USE
AND POSITIVE COVENANT INTENDED TO BE CREATED PURSUANT TO
SECTION 88B OF THE CONVEYANCING ACT 1919**

Lengths are in metres

(Sheet 1 of 2 sheets)

Plan: Plan of Easement within Lot 100 in DP 1221092

Full name and address of the owners of the land: Stamford House 88 Pty Limited
74 Macquarie Street
Parramatta NSW 2150

PART 1

No. of item shown in the intention panel on the plan	Identity of easements to be created and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited Lots
1	Easement to drain water 1.2 Wide (B)	100/1221092	All lots and common property in SP 64797

PART 2

1. Terms of Easement to drain water 1.2 Wide numbered 1 in the plan

Full and free right for every person who is at time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, from time to time and at all times to drain water (whether rain, storm, spring, soakage, or seepage water) in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purpose of the easement, any line of pipes already laid within the servient tenement for the purpose of draining water or any pipe or pipes in replacement or in substitution therefor and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement, and together with the right for the grantee and every person authorised by the grantee, with any tools, implements, or machinery, necessary for the purpose, to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the grantee and the persons authorised by the grantee will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement, will restore that surface as nearly as practicable to its original condition and will:

- (i) Not substantially interfere with the exercise by the body benefited of the rights under the Easement for overhead power lines variable width burdening Lot 100 in Deposited Plan 1221092 and benefiting Energy Australia ; and
- (ii) Obtain the consent of the body benefited under that easement before carrying out any works within the site of the relevant easement.

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS, RESTRICTION ON USE
AND POSITIVE COVENANT INTENDED TO BE CREATED PURSUANT TO
SECTION 88B OF THE CONVEYANCING ACT 1919**

Lengths are in metres

(Sheet 2 of 2 sheets)

Plan:

Plan of Easement within Lot 100 in DP 1221092

PART 2

EXECUTED by)
Stamford House 88 Pty Limited)
ACN 100 778 336)
in accordance with s127 of)
the Corporations Act 2001)

.....
Sam Fayad
Director

.....
Joseph Khattar
Director

Consent of Mortgagee

19. Amend Annexure C – Plan of Easement

Insert a new Annexure C as follows (on the following page):

EXECUTED AS A DEED

EXECUTED by the **City of Parramatta Council** by way of the common seal of the **City of Parramatta Council** affixed under a resolution passed by the City of Parramatta Council on)
)
)
)
)
)

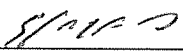
General Manager [signature]

Major [signature]

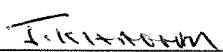
General Manager [print name]

Major [print name]

EXECUTED by **Stamford House Pty Ltd** (ACN 100 778 336) pursuant to section 127 of the *Corporations Act* 2001 (Cth) and its Constitution:)
)
)
)
)
)



Director [signature]



Director/Secretary [signature]

Sam Fayad

Director [print name]

Joe Khattar

Director/Secretary [print name]

