



MADISON MARCUS  
LAW FIRM

# Deed of Variation

## The Hills Shire Council Planning Agreement

City of Parramatta Council  
(Council)

and

C88 Project Pty Ltd (ACN 165 409 003)  
(C88 Project)

Joseph Khattar (Director)

Sam Fayad (Director / Secretary)

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2958443

AMANDA CHADWICK  
ADMINISTRATOR

  
19.1.17  
GREGORY DYER  
INTERIM GENERAL MANAGER

This Deed is dated the 19 day of January 2016.7

**Parties:** The City of Parramatta Council of 126 Church Street, Parramatta in the State of New South Wales (Council)

and C88 Project Pty Ltd (ACN 165 409 003) of Level 1, 74 Macquarie Street, Parramatta in the State of New South Wales (C88 Project)

**Recitals**

A. On or about 28 April 2015, C88 Project and The Hills Shire Council entered into a written agreement entitled "Planning Agreement" (the Agreement) with respect to C88 Project's development of the following properties:

- (a) 2 Thallon Street, Carlingford in the state of New South Wales;
- (b) 4 Thallon Street, Carlingford in the state of New South Wales;
- (c) 6 Thallon Street, Carlingford in the state of New South Wales;
- (d) 8 Thallon Street, Carlingford in the state of New South Wales;
- (e) 8A Thallon Street, Carlingford in the state of New South Wales;
- (f) 10 Thallon Street, Carlingford in the state of New South Wales;
- (g) 12 Thallon Street, Carlingford in the state of New South Wales;
- (h) 14 Thallon Street, Carlingford in the state of New South Wales;
- (i) 7 Jenkins Road, Carlingford in the state of New South Wales;
- (j) 9 Jenkins Road, Carlingford in the state of New South Wales;
- (k) 11 Jenkins Road, Carlingford in the state of New South Wales; and
- (l) 13 Jenkins Road, Carlingford in the state of New South Wales.

(Collectively referred to herein as the Site).

B. On or about 12 May 2016, Local Government (Council Amalgamations) Proclamation 2016 (the Proclamation) was made pursuant to the Local Government Act 1993 (NSW) by the Governor of New South Wales, the Hon David Hurley AC DSC (Ret'd) and the Minister for Local Government, The Hon Paul Toole MP.

C. On or about 12 May 2016, the Site formed part of the newly amalgamated local government area of the Council.

D. Pursuant to section 17 of the Proclamation anything done or omitted to be done by The Hills Shire Council and having any force or effect immediately before the amalgamation day continues to have effect as if it had been done or omitted to be done by the Council.

E. Clause 25C(3) of the Environmental Planning and Assessment Regulation 2000 (NSW) (the EPA Regulation) permits the parties to vary the Agreement by further written agreement executed by the parties.

- F. The parties want to vary the terms of the Agreement in accordance with clause 25C(3) of the EPA Regulation and in the manner set out in this Deed.
- G. The parties have agreed to be unconditionally bound by this Deed.

**It is agreed:**

**1. Definitions and Interpretation**

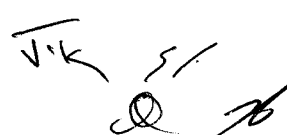
**1.1 Definitions**

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 the C88 Project on or about 28 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 25(c) 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.

J.K. 15/1  
J.K. 16

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## Schedule 1– Variations to the Agreement

### Variations to the Agreement

The Agreement is varied from the Variation Date as follows:

**1. Clause 1.1 – Definitions**

Delete the definition of 'Proposed Development' and insert instead the following:

*'Proposed Development means the development of the Land for mixed use commercial and residential, in the stages described in Schedule 4. References in this Deed to 'Stage 1, 2, 3 or 4 Development' are references to the stages as set out in Schedule 4;'*

Insert a new definition as follows:

*'Special Payment means a payment made by the Developer to the Council in the sum of \$253,000.00 in lieu of its obligation under this agreement to construct the roundabout at the intersection of Boundary Road and Post Office Street, which is to be put toward local traffic works.'*

**2. Amend clause 4.2 (b)**

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

**3. Amend clause 6.2**

Delete the entirety of clause 6.2 and replace it with the following:

*'The Dedication will be effected when Council becomes the registered proprietor of the Dedication Lands as a result of the registration of a transfer of land.'*

**4. Amend Clause 7**

Insert a new clause 7.1A as follows:

**'7.1A Special Payment**

*The Developer must pay the Special Payment to the Council prior to the issue of the Occupation Certificate for the Stage 4 Development.'*

**5. Amend clause 8.2**

Delete the words 'first Strata Certificate for the Land' and insert the words 'Occupation Certificate for the Stage 4 Development'.

**6. Amend Clause 10.1**

Delete '\$618,251' and insert '\$365,251'.

**7. Amend Schedule 1 – Dedication Lands**

Delete the words under the heading of '**Timing of Dedication**' and replace it with the following:

*'The Dedicated Lands are be transferred to the Council prior to the issue of the Occupation Certificate for the Stage 4 Development.'*

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

*J.K. 5/1  
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Delete the entirety of the table and insert the following table:

Contribution type	Value \$	Timing
<b>Works-in-Kind</b>		
Open Space Embellishment - CPLOS3	341,970	<i>Prior to the issue of the Occupation Certificate for the Stage 4 Development.</i>
Cycleway/Pedestrian Path in Transmission Easement	23,281	<i>Prior to the issue of the Occupation Certificate for the Stage 4 Development.</i>
<b>Total value of Works-in-Kind</b>	<b>365,251</b>	
<b>Monetary Contribution Rates</b>		
Monetary rate per 1 bedroom unit	4,058	
Monetary rate per 2 bedroom unit	5,209	
Monetary rate per 3+ bedroom unit	5,929	
<b>For information Purposes only, the Monetary Contribution relates to:</b>		
Signals at Jenkins Rd/Post Office St	115,472	
Upgrade to Jenkins/P'Hills Rd intersection	251,025	
Upgrade to stormwater mgt facilities	521,776	
Carlingford Library	276,128	
Carlingford Community Centre	276,128	
Open Space Embellishment - CPOS1	218,461	
Offset for Corner Park (Lots 1 and 2 DP1028075)	490,550	
<b>Total</b>	<b>2,149,540</b>	

**9. Amend Schedule 4 – Proposed Development**

Insert after "Anticipated Dwellings: 418" in Schedule 4 the following:

*'The parties acknowledge that the Proposed Development is to be undertaken in four (4) separate stages, with the construction of the four (4) separate stages authorised by separate Construction Certificates.*

*The staging of the Proposed Development is described as follows:*

ITEM	PROPOSED DEVELOPMENT STAGE
<b>1</b>	<b>Stage 1 Development</b> means the development and construction of "Building South" and any and all ancillary development and construction in Site 1 as detailed in the Site Plan – Site 1 annexed hereto and marked as

Handwritten initials 'J.K.S.' and a signature.

	<b>Annexure A.</b>
<b>2</b>	<b>Stage 2 Development</b> means the development and construction of "Building West" and any and all ancillary development and construction in Site 1 as detailed in the Site Plan – Site 1 annexed hereto and marked as <b>Annexure A.</b>
<b>3</b>	<b>Stage 3 Development</b> means the development and construction of "Building East" and any and all ancillary development and construction in Site 1 as detailed in the Site Plan – Site 1 annexed hereto and marked as <b>Annexure A.</b>
<b>4</b>	<b>Stage 4 Development</b> means the development and construction of "Building North" and any and all ancillary development and construction in Site 2 as detailed in the Site Plan – Site 2 annexed hereto and marked as <b>Annexure B.</b>

*J. K. S.*  
*Q* *AB*








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 10 October 2016 )


  
Interim General Manager [signature]

GREGORY DYER  
Interim General Manager [print name]

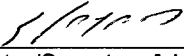
  
Major [signature] Administrator

Amanda Chadwick  
Major [print name] Administrator

EXECUTED by C88 Project Pty Ltd )  
(ACN 165 409 003) pursuant to section )  
127 of the Corporations Act 2001 (Cth) )  
and its Constitution: )

  
Director [signature]

Joseph Khattar  
Director [print name]

  
Director/Secretary [signature]

Sam Fayad  
Director/Secretary [print name]