

Attachment E

Draft Deed of Variation

DEED OF VARIATION OF PLANNING AGREEMENT

The Council of the City of Sydney

and

Baozheng Development Pty Ltd

Property: 890-898 Bourke Street, Zetland

Reference:

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**);
- (2) **BAOZHENG DEVELOPMENT PTY LTD** ABN 72 611 116 280 of 4 Greenway Drive Pymble NSW 2073 (**Developer**)

BACKGROUND

- A. The City entered into the Agreement with the Developer on 5 September 2016.
- B. At the time of the Agreement the Developer agreed to dedicate an area of 210.3 square metres to the City for footpath widening.
- C. Since the time of entering into the Agreement, the City's public domain design has changed and accordingly the City requires an increase to the area of land to be dedicated.
- D. This increase to the area of dedicated land and its attributed value, will increase the attributed value of the Developer's works, and as a result reduce the Developer's monetary contribution.
- E. The City and the Developer have agreed to vary the Agreement to reflect the increase in the area, and attributed value of the dedicated land, the attributed value of the Developers works and the reduction of the amount of the monetary contribution.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

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

Agreement means the planning agreement between the City and the Developer dated 5 September 2016 with registered dealing number AK748324.

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

Land means 890-898 Bourke Street Zetland (100/788794)

- 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 Item 6 of Schedule 1 is amended by deleting the figure "\$68,347.00" and replacing it with the figure "\$74,034.50".

- 2.2 Item 1 of Schedule 3, "Monetary Contribution" is amended by deleting the figure "\$1,123,164.00" and replacing it with the figure "1,113,976.50".
- 2.3 Item 2 of Schedule 3 is amended by deleting the words "210.3 square metres" and replacing it with the words "227.8 square metres"; and deleting the figure "\$43,063.00" and replacing it with the figure "\$45,563.00"
- 2.4 Item 3 of Schedule 3 is amended by deleting the figure "68,347.00" and replacing it with the figure "\$74,034.50".
- 2.5 Annexure A is amended by removing the drawing attached showing the indicative location of the Transfer Land and replacing it with the new drawing attached to this Deed, showing the location of the Transfer Land.

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

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 The Owner must pay \$2,642.50 for 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 but, in all cases, the costs the Owner must pay must not exceed \$2,800.
- 5.2 The Owner must (at its cost) procure registration of this Deed of Variation under the *Real Property Act 1900 (NSW)* in the relevant folio of the Register in accordance with section 7.6 of the *Environmental Planning and Assessment Act 1979 (NSW)*.

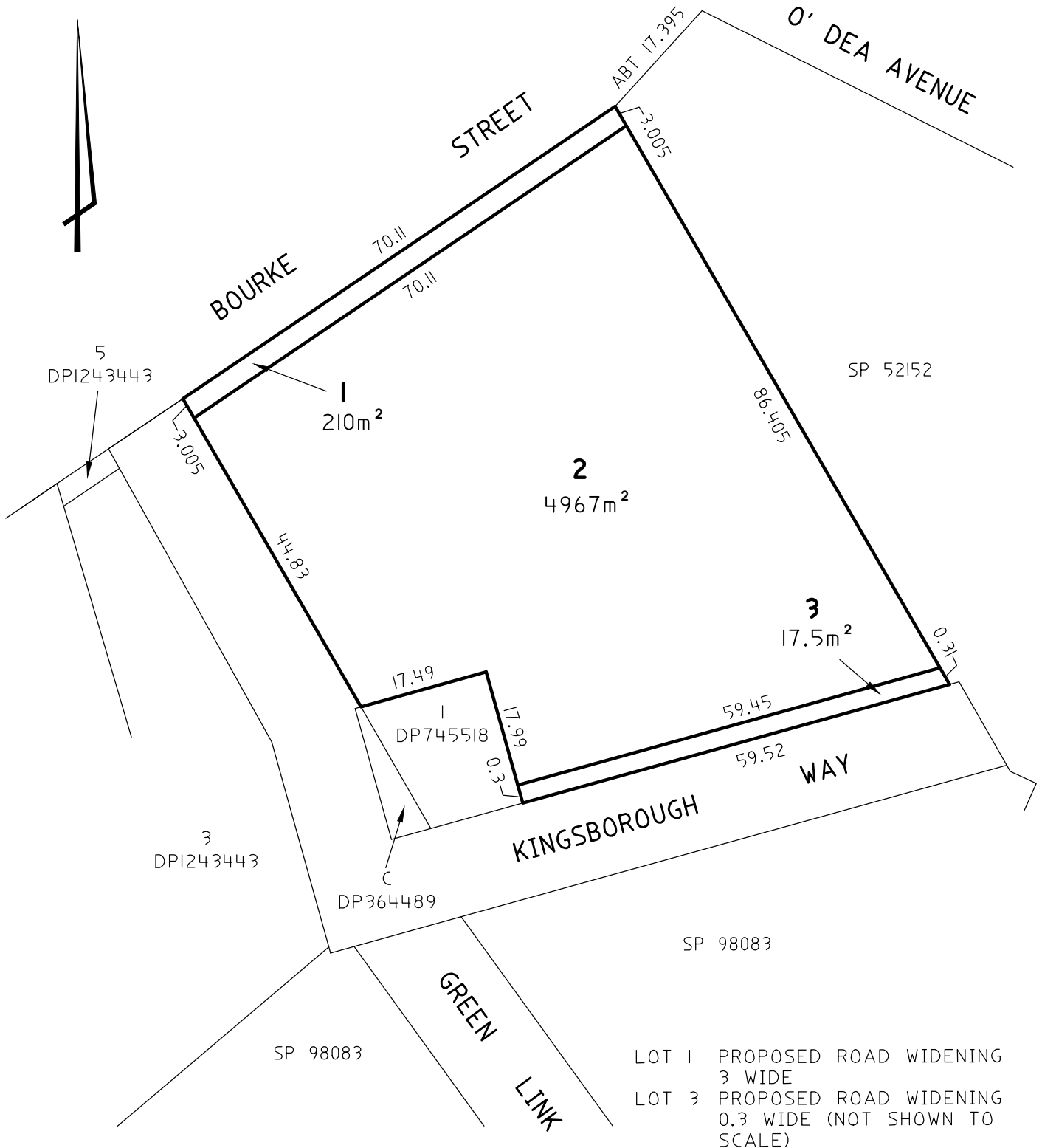
6 GENERAL

- 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.

Plan showing the indicative location of the Transfer Land (marked 1 and 3)

ALL AREAS, SHAPE OF LOTS AND DIMENSIONS SHOWN
ARE SUBJECT TO COUNCIL APPROVAL, FINAL SURVEY
AND REGISTRATION AT THE LANDS TITLES OFFICE



- LOT 1 PROPOSED ROAD WIDENING
3' WIDE
LOT 3 PROPOSED ROAD WIDENING
0.3' WIDE (NOT SHOWN TO
SCALE)



SCALE 1:750

Royston W Lowe, B.Surv
Registered Land Surveyor (#1505)



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L. G. A. ZETLAND

Surveyor: RL

Date of Survey: -

Drawn By: CLP

Reduction Ratio: 1:

Title
PLAN OF PROPOSED SUBDIVISION
OF LOT 100 IN DP788794
AT 890 - 898 BOURKE ST

Client BAOZHENG DEVELOPMENT PTY LTD

Plan No.: SY074570.000.1.2

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:

Name (printed):

Signature:

Name of Authorised Officer:

**Signed for and on behalf of
BAOHZENG DEVELOPMENT PTY LTD
(ACN 611 116 280)** in accordance
with section 127(1) of the Corporations
Act 2001:

Signature of Director

Full Name (printed):

Signature of Director/Secretary

Full Name (printed):