

DRAFT

City of Parramatta Council
BaptistCare NSW & ACT

Deed of Variation of Planning Agreement

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Contents

1	Definitions and Interpretation	2
	1.1 Definitions	2
	1.2 Interpretation	3
2	Amendment of Planning Agreement	3
3	Operation	3
4	Variation	3
5	Registration on title	4
	5.1 Registration of Agreement	4
6	General	4
	6.1 Incorporated provisions	4
	6.2 Entire agreement	4
	Schedule 1 – Scope of Works and Land Dedication	5
	Annexure – Plan to form Annexure B to Planning Agreement	11

This Agreement is made on

2024

Parties

- 1 **City of Parramatta Council a body politic under subsection 220(1) of the Local Government Act 1993**, (ABN 49 907 174 773) located at 126 Church St, Parramatta NSW 2150 (**Council**).
- 2 **BaptistCare NSW & ACT** (ABN 90 000 049 525) located at Level 2, 22 Brookhollow Avenue, Norwest NSW 2153 (**Developer**).

Recitals

- A The Council and the Developer entered into the Planning Agreement executed by Council in accordance with a Council Resolution dated 27 May 2019.
- B Since entering into the Planning Agreement, the Developer:
- (a) has carried out development on the northern part of the Land pursuant to Development Consent No. DA/242/2020/D;
 - (b) is in the process of subdividing the Land to create nine lots in accordance with Development Consent No. DA/242/2020/D, which will enable the dedication of certain lots to Council as required by clause 6.2 of the Planning Agreement; and
 - (c) has lodged Development Application No. SSD-33631237 which is currently under assessment by the NSW Department of Planning, Housing and Infrastructure seeking development consent for development on the southern part of the Land.
- C Pursuant to clause 9 of the Planning Agreement and in accordance with subsection 203(5) of Regulation 2021, the Council and the Developer have agreed to amend the terms of the Planning Agreement as set out in this Agreement to:
- (a) separate the various components of Item 1 of Schedule 1 of the Planning Agreement into Items 1A and 1B, and vary the timing for delivery of Item 1B in Schedule 1 to this Agreement;
 - (b) clarify the location of contribution items under the Planning Agreement by reference to the proposed new lots to be created by the Plan of Subdivision; and
 - (c) permit the transfer or disposal of Proposed Lots 1 and 4 by the Developer to BCHL, being a related entity to the Developer.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise, including in the recitals.

BCHL means BaptistCare Community Housing Limited (ACN 667 330 065).

Effective Date means the date on which the last party has executed this Agreement in accordance with subsection 203(3) of Regulation 2021.

Land means Lot 100 DP 1288242, also known as 1 Martins Lane, Carlingford NSW (formerly Lot 1 DP 1033201 and Lot 2 DP 364225, known as 264-268 Pennant Hills Road, Carlingford NSW) or as otherwise described when the new Plan of Subdivision is registered with New South Wales Land Registry Services.

Planning Agreement means the Voluntary Planning Agreement entered into between Council and the Developer in relation to the Land, being registered dealing no. AP564640.

Plan of Subdivision means the Plan of Subdivision annexed to this Agreement.

Proposed Lots 1 and 4 means the land titles described on the Plan of Subdivision as Lots 1 and 4 which will be created when the Plan of Subdivision is registered with New South Wales Land Registry Services.

Regulation 2021 means the *Environmental Planning and Assessment Regulation 2021* (NSW).

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) capitalised words used in this Agreement have the same meaning as in the Planning Agreement;
- (b) clause 2 (Interpretation) of the Planning Agreement applies to the interpretation and construction of this Agreement; and
- (c) the explanatory note prepared pursuant to section 205 of Regulation 2021 is not to be used to assist in construing this Agreement.

2 Amendment of Planning Agreement

This Agreement is an amendment to the Planning Agreement (dealing no. AP564640) within the meaning of section 203(5) of Regulation 2021.

3 Operation

This Agreement takes effect on and from the Effective Date.

4 Variation

On and from the Effective Date, the Planning Agreement is amended as follows:

- (a) Schedule 1 (Scope of Works and Land Dedication) of the Planning Agreement is replaced by Schedule 1 of this Agreement. For convenience, the manner in which Schedule 1 of this Agreement differs from Schedule 1 of the Planning Agreement is shown by using underline to identify new text introduced into Schedule 1 of the Planning Agreement by this Agreement;
- (b) the Annexure to this Agreement, being the Plan of Subdivision, is inserted into the Planning Agreement as Annexure B; and
- (c) clause 12.2 of the Planning Agreement is amended by inserting the following new subclauses (c) and (d):

12.2 Transfer of Land

...

- (c) Subject to the Developer providing to Council's satisfaction evidence that BCHL is a related entity of the Developer:
 - (i) clause 12.2(a) does not apply to the transfer or disposal by the Developer of Proposed Lots 1 and 4 to BCHL; and

- (ii) the Developer may transfer or dispose of Proposed Lots 1 and 4 to BCHL without notice to Council.
- (d) The parties acknowledge that pursuant to sections 7.6(3) and (4) of the Act, upon the transfer or disposal of Proposed Lots 1 and 4 to BCHL pursuant to clause 12.2(c), the obligations which relate to Proposed Lots 1 and 4 as set out in the Planning Agreement bearing the Dealing Number AP564640 and as described in Schedule 1 to this Agreement, will continue to apply as between Council and BCHL as the registered proprietor of Proposed Lots 1 and 4.

5 Registration on title

5.1 Registration of Agreement

The Developer agrees that it will, at its cost, procure the registration of this Agreement on the title to the Land in accordance with clause 8.2 of the Planning Agreement.

6 General

6.1 Incorporated provisions

Clauses 13 (No fetter) and 15 (General) of the Planning Agreement (but excluding clause 15.8 (Entire agreement)) are incorporated into and apply to this Agreement as though those clauses were set out in full in this Agreement.

6.2 Entire agreement

The contents of this Agreement and the Planning Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

Schedule 1 – Scope of Works and Land Dedication

The Works described in column 1 of the table below must be completed in accordance with clause 6.1 within the timeframe specified in column 2, and must be undertaken in accordance with the scope specified in column 3.

Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works	Location (shown on plan in Annexure B)
1A	Public domain improvement works along the western side of Martins Lane <u>north of the East West Road (now known as Wulaba Place)</u>	<p>To be completed:</p> <ul style="list-style-type: none"> - no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or - prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or - the date that is 36 months after the issue of the first Occupation Certificate for any building on the area marked 'Site A' on the Plan, whichever occurs first. <p>Upon completion of the works in Column 3 to the Council's satisfaction, the part of the land indicatively shaded in beige on the Plan (<u>north of the East West Road only, being Lots 7 and 8 shown in Annexure B</u>) will be dedicated to Council within 28 days, the estimated land value of which (<u>together with the land indicatively shaded in beige on the Plan south of the East West Road</u>) is \$2,037,000.</p>	<ul style="list-style-type: none"> • Demolition of existing paths and road pavement as required to complete public domain upgrades. • Tree protection works. • Public domain upgrades including infrastructure, street lighting, landscaped verges, and footpaths 	<u>Lots 7 and 8</u>
1B	<u>Public domain improvement works along the western side of Martins Lane south of the East West Road (now known as Wulaba Place)</u>	<p><u>To be completed within 18 months after the issue of an Occupation Certificate for the first building on the area marked 'Site B' on the Plan.</u></p> <p><u>This period may be extended by 6 months with Council's consent. Any application for an extension is to be made to Council at least 6 months prior to the expiry period.</u></p>	<ul style="list-style-type: none"> • <u>Demolition of existing paths and road pavement as required to complete public domain upgrades.</u> • <u>Tree protection works (in connection with construction of</u> 	<u>Lot 6</u>

Variation of Planning Agreement

Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works	<u>Location</u> (shown on plan in Annexure B)
		<p><u>Upon completion of the works for Item 1B in Column 3 to the Council's satisfaction, the part of the land indicatively shaded in beige on the Plan (south of Wulaba Place, being Lot 6) will be dedicated to Council within 28 days.</u></p>	<p><u>new kerb and gutter and road pavement).</u></p> <ul style="list-style-type: none"> • <u>Public domain upgrades including infrastructure and street lighting.</u> • <u>Tree protection works (during footpath construction works).</u> • <u>The footpath construction works (including landscaping mulch).</u> 	
2A	Martins Lane upgrade (northern section as indicatively shaded in orange on the Plan)	To be completed prior to the issue of an Occupation Certificate for any building on the Land to be used for the purposes of residential accommodation.	<ul style="list-style-type: none"> • Demolition of existing road pavement. • Full width road surface upgrade along the frontage of the land. • New street lighting, subject to agreement by the relevant energy utility provider. • New Colorbond fencing along the eastern side of Martins Lane to replace existing dilapidated fencing to properties, subject to agreement by owners. 	<u>Existing road reserve on Martins Lane</u>

Variation of Planning Agreement

Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works	Location (shown on plan in Annexure B)
2B	Martins Lane upgrade (southern section as indicatively shaded in yellow on the Plan)	<p>To be completed:</p> <ul style="list-style-type: none"> - no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or - prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or - the date that is 36 months after the issue of the first Occupation Certificate for any building on the area marked 'Site A' on the Plan, whichever occurs first. 	<ul style="list-style-type: none"> • Demolition of existing road pavement. • Full width road surface upgrade along the frontage of the land. • New street lighting, subject to agreement by the relevant energy utility provider. • New Colorbond fencing along the eastern side of Martins Lane to replace existing dilapidated fencing to properties, subject to agreement by owners. 	<u>Existing road reserve on Martins Lane</u>
3	Signalisation of the intersection of Pennant Hills Road and Baker Street	<ul style="list-style-type: none"> • The Developer's design of the signalisation works is to be completed to the satisfaction of RMS, and the Works Authorisation Deed executed, prior to the issue of a Construction Certificate for any building on the Land to be used for the purposes of residential accommodation. • Works to be completed and signals operational prior to the issue of an Occupation Certificate for any building on the Land to be used for the purposes of residential accommodation. 	<ul style="list-style-type: none"> • Works include: <ul style="list-style-type: none"> ○ Installation of new traffic signals including milling and re-sheeting existing road surfaces in the vicinity of the intersection. ○ New line-marking. ○ New signage. ○ New pedestrian crossings 	<u>Existing road reserve on Pennant Hills Rd</u>

Variation of Planning Agreement

Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works	<u>Location</u> (shown on plan in Annexure B)
4	Left turn lane	<ul style="list-style-type: none"> • The Developer's design of the left turn lane is to be completed, to the satisfaction of RMS prior to the issue of a Construction Certificate for any building on the Land to be used for the purposes of residential accommodation. • Works to be completed prior to the issue of an Occupation Certificate for any building on the Land to be used for the purposes of residential accommodation. <p>Upon completion of the works in Column 3, the land indicatively shaded in teal on the Plan will be dedicated to Council within 28 days.</p>	Provision of a left turn lane from the northern end of Martins Lane into Pennant Hills Road, in the location indicatively identified on the Plan in teal.	<u>Lot 9</u>
5	Provision of a new north-south road to link with the new east-west road (Item 6)	<p>To be completed:</p> <ul style="list-style-type: none"> - no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or - prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or - the date that is 36 months after the issue of the first Occupation Certificate for any building the area marked 'Site A' on the Plan, whichever occurs first. <p>Upon completion of the works in Column 3 to the Council's satisfaction, the land indicatively shaded in blue on the Plan will be dedicated to Council within 28 days, the estimated land value of which is \$1,464,300.</p> <p>The easement for public access required by clause 6.3(d), and indicatively shaded in pink hatching on the Plan, shall be registered at the time that the land shaded in blue is dedicated to Council.</p>	Provision of new road pavement, including infrastructure, street lighting, line marking, landscaped verges, and combined footpath/cyclepath.	<u>Lot 5 and part of Lot 4 for easement creation</u>

Variation of Planning Agreement

Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works	Location (shown on plan in Annexure B)
6	Provision of a new east-west road through the site linking the north-south road (Item 5) to Martins Lane	<p>To be completed prior to the issue of an Occupation Certificate for any building on the Land to be used for the purposes of residential accommodation.</p> <p>Upon completion of the works in Column 3 to the Council's satisfaction, the land indicatively shaded in green on the Plan will be dedicated to Council within 28 days, the estimated land value of which is \$2,126,100.</p>	Provision of new road pavement, including infrastructure, street lighting, line marking, landscaped verges, and footpaths.	<u>Lot 3</u>
7	Public access and maintenance of the high ecological constraint area and associated Blue Gum High Forest vegetation at the southern portion of the site	An easement for public access with a width of 20m must be registered prior to the issue of an Occupation Certificate for the Development on the area marked 'Site B' on the Plan.	<ul style="list-style-type: none"> • Maintenance of the area identified as High Ecological Impact Zone (20m wide) to a standard to be agreed between Council and BaptistCare. • Registration of an easement in accordance with the Easement Terms. • The easement may exclude some areas within the High Ecological Impact Zone which are designated to be sensitive or areas where public access may result in adverse environmental impacts. 	<u>Lot 2</u>
8	Affordable housing	To be completed prior to the issue of the last Occupation Certificate for the Development of the area marked 'Site A' on the Plan.	Provision of 162 affordable housing dwellings to be managed by BaptistCare NSW & ACT at least until 1 January 2045, in	<u>Lot 1 and Lot 4</u>

Variation of Planning Agreement

Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works	Location (shown on plan in Annexure B)
			accordance with the agreement between BaptistCare NSW & ACT and NSW Department of Family and Community Services	

Annexure – Plan to form Annexure B to Planning Agreement



