

SECOND DEED OF VARIATION OF PLANNING AGREEMENT (HFS)

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

and

QQT Investment 1 Pty Limited (ACN 622 746 936) as trustee for the QQT Investment Trust 1 (ABN 46 943 240 895)

QQT Investment 2 Pty Limited (ACN 622 746 945) as trustee for the QQT Investment Trust 2 (ABN 27 287 335 070)

For 50 Bridge Street, Sydney

Reference: S127349
CoSVer2/2017

DEED OF VARIATION

THIS DEED is made on

2020

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) **QQT Investment 1 Pty Limited ACN 622 746 936 as trustee for the QQT Investment Trust 1 ABN 46 943 240 895** and **QQT Investment 2 Pty Limited ACN 622 746 945 as trustee for the QQT Investment Trust 2 ABN 27 287 335 070** both of Level 2, 33 Alfred Street, Sydney NSW 2000 (**the Developer**).

BACKGROUND

- A. The City and the Developer entered into the Agreement.
- B. The City and the Developer agreed to vary the Agreement as reflected in the Deed of Variation of Planning Agreement dated 10 July 2018.
- C. The City and the Developer have agreed to further vary the Agreement in the manner set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

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

Agreement means the planning agreement for Heritage Floor Space for 50 Bridge Street, Sydney between the City and the Developer dated 12 April 2018 and varied by way of Deed of Variation of Planning Agreement date 10 July 2018.

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

- 1.2 **Rules for interpreting this Deed**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, 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 2001* (Cth).
 - (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 Law have the same meaning in clauses about GST.
 - (j) A reference to a month is to a calendar month.
- 1.3 Unless otherwise defined in this Deed, a reference to a term defined in the Agreement has the same meaning when used in this Deed.
- 1.4 This Deed 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

From the date of this Deed, the parties agree that the Agreement is amended by:

- 2.1 deleting and replace the definition of "Occupation Certificate" as follows:

Occupation Certificate means the first occupation certificate issued in respect of the Development but excluding any occupation certificate issued solely in relation to the 33 Alfred Street Loading Dock (and no other aspect of the Development) in accordance with D/2015/929/J.

- 2.2 deleting and replacing items 13 and 14 of Schedule 1 of the Agreement as follows:

Item	Term	Description
13	Due Date	The earlier of: (a) 31 August 2021; or (b) the date that is one month before the Occupation Certificate is issued for the Development.
14	Call Date	The earlier of: (a) 30 September 2021; or (b) the date that the Occupation Certificate is issued for the Development.

3 NO OTHER CHANGE

The parties confirm that the Agreement will continue in full force and effect as varied by this Deed. Nothing in this Deed will be read or construed as implying any form of variation or waiver other than as expressly set out in this Deed.

4 FURTHER ASSURANCE

Subject to clause 5.2, 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.

5 LEGAL COSTS

- 5.1 Subject to clause 5.2, each party will bear its own legal costs in relation to the preparation and execution of this Deed.
- 5.2 The Developer must pay the reasonable 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.

6 GENERAL

- 6.1 This Deed contains the entire agreement between the parties and any previous negotiations, Agreements, representations or warranties relating to the subject matter of this Deed 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 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 will not affect the validity or enforceability of any other provisions.
- 6.5 This Deed may only be varied in writing by the agreement of the parties.
- 6.6 This Deed 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.
- 6.8 This Deed may be executed in counterparts. All counterparts taken together constitute one instrument.

7 Trustee limitation of liability

- 7.1 Any party who is a trustee ("**Trustee Party**") of a trust ("**Trust**") enters into this Deed only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee Party only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee Party is actually indemnified for the liability. This limitation of liability applies despite any other provision of this Deed and extends to all Obligations of the Trustee Party in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- 7.2 No party may sue the Trustee Party in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator an administrator or any similar person to the Trustee Party or prove in any liquidation, administration or arrangement of or affecting the Trustee Party (except in relation to property of the Trust).
- 7.3 The Trustee Party is not obliged to do or refrain from doing anything under this Deed (including, without limitation, incur any liability) unless the Trustee Party's liability is limited in the same manner as set out in clauses 7.1 and 7.2.
- 7.4 No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Trustee Party in a way which exposes the Trustee Party to any liability.
- 7.5 The provisions of this clause 7 shall not apply to any Obligation of the Trustee Party to the extent that it is not satisfied because, under the constitution of the Trust or by operation of law, there is a reduction in the extent of the Trustee Party's indemnification out of the assets of the Trust, as a result of the Trustee Party's fraud, negligence or breach of trust.
- 7.6 For the purposes of this clause 7, **Obligations** means, in respect of a party to this Deed, all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon that party under or in respect of this Deed or any document, agreement or other instrument

collateral herewith or given or entered into pursuant hereto whether express or implied by statute or other legal requirements or arising otherwise howsoever.

DRAFT

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:

Signature:

Name (printed):

Name of Authorised Officer:

Executed by QQT Investment 1 Pty Limited ACN 622 746 936 as trustee for the QQT Investment Trust 1 ABN 46 943 240 895 by its authorised Power of Attorney:

Signature of Attorney

Signature of Attorney:

Full Name (printed):

Full Name (printed):

Executed by QQT Investment 2 Pty Limited ACN 622 746 945 as trustee for the QQT Investment Trust 2 ABN 27 287 335 070 by its authorised Power of Attorney:

Signature of Attorney

Signature of Attorney:

Full Name (printed):

Full Name (printed):