

Planning Agreement

Environmental Planning and Assessment Act 1979

12 Hassall Street, Parramatta 2150

Intensive Urban Development Area

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)

GQ Hassall Street Pty Ltd (ACN 653 935 721)

DocuSigned by:

9EF5211C763442E...

DocuSigned by:

711935EF900E4B4...

GQ Australia Fund I Parramatta Pty Ltd (ACN 655 016 005) in its capacity as trustee of GQ BTR Parramatta Trust

DocuSigned by:

9EF5211C763442E...

DocuSigned by:

711935EF900E4B4...

Table of contents

1.	Definitions and interpretation.....	4
1.1	Definitions.....	4
1.2	Interpretation	7
2.	Operation and application of this deed	8
2.1	Operation.....	8
2.2	Planning agreement under the Act	8
2.3	Application.....	8
3.	Application of sections 7.11, 7.12 and 7.24 of the Act.....	8
4.	Development Contribution	8
4.1	Developer to provide Development Contribution.....	8
4.2	Special Infrastructure Contribution	8
4.3	Acknowledgement.....	8
5.	Interest	9
5.1	Interest for late payment.....	9
6.	Enforcement	9
6.1	Developer to provide Security	9
7.	Registration	9
7.1	Registration of deed	9
7.2	Evidence of registration.....	9
7.3	Release and discharge of deed	10
7.4	Interest in Land	10
7.5	Right to lodge caveat	10
8.	Dispute Resolution.....	10
8.1	Not commence	10
8.2	Written notice of dispute	10
8.3	Attempt to resolve.....	10
8.4	Mediation	11
8.5	Court proceedings	11
8.6	Not use information	11
8.7	No prejudice	11
9.	GST	11
9.1	Definitions.....	11
9.2	Intention of the parties.....	11
9.3	Reimbursement	11
9.4	Consideration GST exclusive.....	12
9.5	Additional Amounts for GST	12
9.6	Non monetary consideration.....	12
9.7	Assumptions	12
9.8	No merger.....	12
10.	Assignment and transfer	12
10.1	Right to assign or novate	12
10.2	Right to transfer Land	13
10.3	Replacement Security	13

11. Capacity13

11.1 General warranties 13

11.2 Power of attorney 13

11.3 Trustee Developer 14

12. Reporting requirement15

13. General Provisions16

13.1 Entire deed 16

13.2 Variation 16

13.3 Waiver..... 16

13.4 Further assurances 16

13.5 Time for doing acts 16

13.6 Governing law and jurisdiction..... 16

13.7 Severance..... 16

13.8 Preservation of existing rights 17

13.9 No merger..... 17

13.10 Counterparts..... 17

13.11 Relationship of parties..... 17

13.12 Good faith 17

13.13 No fetter 17

13.14 Explanatory note..... 17

13.15 Expenses and stamp duty 17

13.16 Notices 18

13.17 Electronic Execution 18

Schedule 120

Schedule 222

Schedule 323

Schedule 424

Schedule 525

This deed is dated

Parties:

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)
c/- NSW Department of Planning and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street,
Parramatta, NSW 2150

GQ Hassall Street Pty Ltd (ACN 653 935 721) of Level 38, 120 Collins Street, Melbourne, VIC 3000

DocuSigned by:
9EF5211C7B342E...

DocuSigned by:
711935EF900E4B4...

GQ Australia Fund I Parramatta Pty Ltd (ACN 655 016 005) in its capacity as trustee of **GQ BTR Parramatta Trust** of Level 38, 120 Collins Street, Melbourne, VIC 3000

DocuSigned by:
9EF5211C7B342E...

DocuSigned by:
711935EF900E4B4...

Introduction:

- A** The Landowner owns the Land.
- B** GQ Hassall Street Pty Ltd (ACN 653 935 721) proposes to carry out the Development on the Land and has made a Development Application to the Consent Authority in respect of the Land.
- C** Clause 8.1 of the LEP provides that the Consent Authority must not grant Development Consent for the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of Designated State Public Infrastructure referred to in clause 8.1 of the LEP.
- D** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2022.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

CPI means the Consumer Price Index (All Groups Index) for Sydney published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

Current CPI means the CPI number as provided in clause 2(c) of Schedule 4.

Dealing means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

Designated State Public Infrastructure has the same meaning as in clause 8.1 of the LEP.

Developer means GQ Hassall Street Pty Ltd (ACN 653 935 721) and the Landowner, unless otherwise specified in this deed.

Development means the construction of a 61-storey mixed use building comprising of 5 basement levels for parking, a 4-storey podium providing commercial floor space and residents amenities, and approximately 391 build-to-rent residential units, generally in accordance with Development Application SSD-35609161 lodged with the Department and in accordance with any Development Consent granted to that application.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions to be provided by the Developer in accordance with Schedule 4.

Dwelling has the same meaning as in the Standard Instrument as at the date of this deed.

Note. An example of a dwelling includes, without limitation, an individual apartment in a residential flat building, and an individual townhouse or villa in a dual occupancy or multi dwelling housing development.

ELNO has the same meaning as in *the Electronic Conveyancing National Law* (NSW).

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insurance Bond means an irrevocable and unconditional undertaking:

(a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and subject to prudential supervision by Australian Prudential Regulatory Authority.

Land means the land described in Schedule 3.

Landowner means GQ Australia Fund I Parramatta Pty Ltd (ACN 655 016 005) in its capacity as trustee of GQ BTR Parramatta Trust.

LEP means *Parramatta Local Environmental Plan 2011*.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Minister means the Minister administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Secretary's nominee.

Occupation Certificate has the same meaning as in the Act.

Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

in relation to development on the Land.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Secretary means the Secretary of the Department of Planning and Environment (including that Department if renamed) or, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, the head of any other Department or other Public Service agency that includes that group of staff.

Security means a Bank Guarantee or an Insurance Bond.

Standard Instrument means the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*.

Strata Certificate has the same meaning as in the *Strata Schemes Development Act 2015* (NSW)

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4.

4.2 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution under section 7.23 of the Act for a special contributions area that includes the Land (**SIC Determination**); and
 - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before any Contribution Amount has been paid.
- (b) The Developer may, by written notice, request that the Minister review the Development Contribution to be provided by the Developer under this deed having regard to the monetary contribution required under the SIC Determination for the same type of development. The Minister may determine, in the Minister's absolute discretion, whether to agree to vary this deed as a result of the review.

4.3 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. Enforcement

6.1 Developer to provide Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 15 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) the execution of any documents; and
 - (iii) the electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iii) within 15 Business Days of such lodgement.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

- (a) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.
- (b) For the purposes of clause 7.3(a), the Developer is only taken to have satisfied all of its obligations under this deed in relation to the Land or any part of it, if the Developer has made the Development Contribution relating to those Dwellings in accordance with the provisions of Schedule 4.

7.4 Interest in Land

The Landowner represents and warrants that it is:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, co operate and to otherwise do all things necessary for the Landowner to comply with the obligations under clause 7.

7.5 Right to lodge caveat

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.
- (c) If the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

This clause does not merge on completion or termination of this deed.

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (i) The Developer must not sell, transfer or dispose of the whole or any part of its right, title or interest in the Land to another person (**Transferee**): on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 10.2(a), the Developer may sell, transfer or dispose of its right, title or interest in the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clause 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11.3 Trustee Developer

- (a) GQ Australia Fund I Parramatta Pty Ltd (655 016 005)(**Trustee**) enters into this deed in its capacity as the trustee for the GQ BTR Parramatta Trust (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:
 - (i) warrants that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
 - (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 11.3(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;
 - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
 - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 11.3(b) and the costs and expenses of registering any new deed on the title to the Land.

- (c) Subject to clause 11.3(e), liability arising under or in connection with this deed (except under or in connection with clause 11.3(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) No party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,except under or in connection with clause 11.3(a) above.
- (e) Notwithstanding any other provision of this deed, clauses 11.3(c) and 11.3(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 11.3(e) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents, Construction Certificates, Occupation Certificates and Strata Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and

- (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary, are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties.

13.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

13.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

13.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

13.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

13.13 No fetter

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

13.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable valuation costs, legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must pay its own and the Minister's reasonable costs and disbursements in connection with the release and discharge of this deed with respect to any part of the Land pursuant to clause 7.3.

- (e) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a), (b) and (d):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

13.17 Electronic Execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
 - (ii) insertion of the person's name on to the deed; or

- (iii) use of a stylus or touch finger or a touch screen to sign the deed,
provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;
 - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) N/A (b) Yes, as regards to GQ Hassall Street Pty Ltd (ACN 653 935 721) (c) Yes, as regards to the Landowner
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4 (3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4 (3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	Yes (see clause 3 of Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Email: planningagreements@planning.nsw.gov.au

GQ Hassall Street Pty Ltd (ACN 653 935 721)

Contact: The Company Director(s) and Secretary

Address: Level 38, 120 Collins Street
MELBOURNE VIC 3000

Email: cgorton@gurner.com.au

Landowner

Contact: The Company Director(s) and Secretary

Address: Level 38, 120 Collins Street
MELBOURNE VIC 3000

Email: cgorton@gurner.com.au

Schedule 3

Land (clause 1.1)

1. Lots proposed for development

Lot	Deposited Plan	Folio Identifier
156	1240854	156/1240854

Schedule 4

Development Contribution (clause 4)

1. Development Contribution

- (a) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount - Monetary contribution towards Designated State Public Infrastructure	\$10,000 for each Dwelling in the Development.	Pursuant to clause 3 of this Schedule 4

- (b) The Minister and Developer acknowledge and agree that the Development Contribution is the sum of the Contribution Amounts under this deed.

2. Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount will be an amount equal to “X” in the following formula:

$$X = N \times \$10,000$$

Where:

“N” is the number of Dwellings in a building or part of a building in the Development in respect of which an Occupation Certificate is sought.

- (b) Each Contribution Amount is to be adjusted, at time of payment, by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.
- (c) For the purposes of this clause 2, the Current CPI is:
- (i) if the Contribution Amount is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
 - (ii) if the Contribution Amount is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister’s nominee each Contribution Amount prior to the issue of the relevant Occupation Certificate.
- (b) The Developer must provide the Minister with not less than 10 Business Days’ written notice of its intention to lodge an application for the relevant Occupation Certificate.
- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Occupation Certificate within the meaning of section 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the "Minister administering the *Environmental Planning and Assessment Act 1979*" and the "Department of Planning and Environment ABN 20 770 707 468" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Security

- (a) The Developer agrees that clause 1, and this clause 2, of Schedule 5 operate as a deed poll in favour of the Minister from the date of execution by the Developer of this deed.
- (b) To avoid doubt, clause 1 and this clause 2 of Schedule 5 commence from the date of execution by the Developer, even though this deed has not commenced pursuant to clause 2.1 of this deed.
- (c) At the time the Developer executes this deed, the Developer must provide the Security to the Minister having a face value amount of \$3,910,000 (**Security Amount**) in order to secure the Developer's obligations to make a Development Contribution under this deed when it is executed by the Minister.
- (d) From the date the Developer executes this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Security and call upon it in the circumstances set out in clause 3 of this Schedule 5.
- (e) To the extent necessary, the definitions in clause 1 of this deed apply to the construction of the deed poll created by this clause 2 of Schedule 5.
- (f) The deed poll created by this clause 2 of Schedule 5 will cease to operate 6 months from the execution by the Developer of this deed unless the Minister has executed the deed within that period.

3. Claims under Security

- (a) The Minister may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount for the Development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:

- (i) the Minister calls upon the Security; and
- (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
- (iii) has notified the Developer of the call upon the Security in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the Security Amount.

4. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee has not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Security (as the case may be), to the Developer.

5. Substitution of Security and registration on title

- (a) If the Developer provides the Minister with:

- (i) evidence of registration of this deed on the title to the Land and the Minister is satisfied such registration has been effected; and
- (ii) Security for a face value of \$20,000 (**Replacement Security**),

the Minister will accept the Replacement Security as the Security Amount and return the Security required under clause 2 of this Schedule 5 (**Original Security**) less any costs, charges, duties and taxes payable, or, the remainder of the monies secured by the Original Security, to the Developer subject to clause 5(b) of this Schedule 5.

- (b) The Minister will not be obliged to accept the Replacement Security where the Developer is in breach of its obligations under this deed.
- (c) For the avoidance of doubt, the provisions of this Schedule 5 apply to the Replacement Security in the same way as they apply to the Original Security.

Execution page

Executed as a deed

Signed, sealed and delivered by the **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468) in the presence of:

.....
Signature of witness

.....
Signature of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....
Name of witness in full

.....
Name of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....
Address of witness

The witness named above states that they witnessed the signing of this deed by the signatory in real time over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed, sealed and delivered for GQ Hassall Street Pty Ltd (ACN 653 935 721) by its Attorneys under Power of Attorney made on 26 October 2022:

DocuSigned by:
Edwina Strange
BT34761CE89C427...
Signature of Witness

Edwina Strange
Name of Witness in full
The witness named above states that they witnessed the signing of this deed by the signatory in real time over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

DocuSigned by:
Joan Zhang
65292198869F71...
Signature of Witness

Joan Zhang
Name of Witness in full
The witness named above states that they witnessed the signing of this deed by the signatory in real time over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

DocuSigned by:
Timothy Colin Gurner
9EF5211C783442E...
Signature of Attorney

By executing this deed, the attorney states that the attorney has received no notice of revocation of the power of attorney
Timothy Colin Gurner
Name of Attorney in full

DocuSigned by:
Henry Vu
711935EF900E4B4...
Signature of Attorney

By executing this deed, the attorney states that the attorney has received no notice of revocation of the power of attorney
Henry Vu
Name of Attorney in full

Signed, sealed and delivered by GQ Australia Fund I Parramatta Pty Ltd (655 016 005) in its capacity as trustee of GQ BTR Parramatta Trust by its Attorneys under Power of Attorney made on 26 October 2022:

DocuSigned by:
Edwina Strange
B734761CE85C427
.....
Signature of Witness

Edwina Strange

.....
Name of Witness in full

The witness named above states that they witnessed the signing of this deed by the signatory in real time over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

DocuSigned by:
Joan Zhang
652D3186B58F47E
.....
Signature of Witness

Joan Zhang

.....
Name of Witness in full

The witness named above states that they witnessed the signing of this deed by the signatory in real time over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

DocuSigned by:
Timothy Colin Gurner
9EFS211C783442E
.....
Signature of Attorney

By executing this deed, the attorney states that the attorney has received no notice of revocation of the power of attorney

Timothy Colin Gurner

.....
Name of Attorney in full

DocuSigned by:
Henry Vu
711935EF900E4B4
.....
Signature of Attorney

By executing this deed, the attorney states that the attorney has received no notice of revocation of the power of attorney

Henry Vu

.....
Name of Attorney in full