
Transport for NSW

Cook Cove Nominees No 1 Pty Ltd (ACN 672 807 037) in its capacity as the trustee of the Cook Cove Property Trust 1

Cook Cove Nominees No 2 Pty Ltd (ACN 672 807 046) in its capacity as the trustee of the Cook Cove Property Trust 2

Voluntary Planning Agreement

Cooks Cove, 13, 15, 19 and 19A Marsh St,
Arncliffe

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Date 7 JANUARY 2025

Parties

Transport for NSW ABN 18 804 239 602 of 4 Parramatta Square, 12 Darcy Street,
Parramatta NSW 2150 (**TfNSW**)

and

Cook Cove Nominees No 1 Pty Ltd (ACN 672 807 037) in its capacity as the trustee
of the **Cook Cove Property Trust 1** of Legion House, Level 3, 161 Castlereagh Street
Sydney NSW 2000 (**Cook Cove 1**)

Cook Cove Nominees No 2 Pty Ltd (ACN 672 807 046) in its capacity as the trustee
of the **Cook Cove Property Trust 2** of Legion House, Level 3, 161 Castlereagh Street
Sydney NSW 2000 (**Cook Cove 2** and, together with Cook Cove 1, the **Developer** and
each a **Developer**)

Background

- A Cook Cove 1 owns that part of the Developer Land comprising Lot 31 in DP1231486. Cook Cove 2 owns that part of the Developer Land comprising Lot 100 DP 1231954. The Council owns the Council Land.
- B The Developer intends to carry out the Development on the Land, in respect of which the Developer proposes to make future Development Applications.
- C In order to facilitate the Development on the Land, the Developer has sought the Instrument Change.
- D The Developer offers to make Development Contributions on the terms set out in this deed, in connection with the Instrument Change and the carrying out of Development facilitated by the Instrument Change.

Agreed terms

1 Interpretation

1.1 Definitions

In this deed, the following terms have the following meanings:

Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
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Approval	Any consent, approval, authorisation, determination, licence, registration, order, permission or concurrence required by Law, including those under the deed, and includes a Development Consent.
Approved Security	Security required to be provided to TfNSW under the terms of a WAD.
Authority	Any federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Bank Guarantee	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 recipient, in the recipient's absolute discretion, to pay the face value of that undertaking (being such amount as is required under this deed) on demand.
Bayside LEP	The <i>Bayside Local Environmental Plan 2021</i> , as amended from time to time.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Construction Certificate	Has the meaning given to that expression in the Act and includes, where applicable, a Subdivision Works Certificate.
Costs	Includes any liability, loss, cost, fee, charge, expense, tax, rate, charge, fine, penalty or debt including those incurred in connection with advisors and any compensation payable to any person in accordance with the Law.
Council	Bayside Council ABN 80 690 785 443.
Council Land	The land described as at the date of this deed as: (a) Lot 14 in Deposited Plan 213314 at 19 Marsh Street, Arncliffe; and (b) Lot 1 in Deposited Plan 108492 at 13 Marsh Street, Arncliffe.
Dealing	Selling, transferring, mortgaging, charging or subdividing the land or an interest in land.
Department	The NSW Department of Planning, Housing and Infrastructure.

Developer Land	The land described as at the date of this deed as: (a) Lot 31 in Deposited Plan 1231486 at 19 Marsh Street, Arncliffe; and (b) Lot 100 in Deposited Plan 1231954 at 19A Marsh Street, Arncliffe.
Development	Development of the Land for predominantly mixed-use and logistics purposes, generally in accordance with the Planning Proposal and the Instrument Change.
Development Application	Has the meaning given to it in the Act.
Development Certification Regulation	The <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> (NSW).
Development Consent	Has the meaning given to it in the Act.
Development Contribution	The development contributions to be provided by the Developer in accordance with schedule 2 .
ELNO	Has the meaning given in the <i>Electronic Conveyancing National Law</i> (NSW).
Explanatory Note	The explanatory note included at schedule 4 of this deed.
GFA	Has the meaning given to the term "gross floor area" in the Bayside LEP.
GST	Has the meaning given to that expression in the GST Law.
GST Act	The <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Law	Has the same meaning given to that expression in the GST Act or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
Instrument Change	The change to the Bayside LEP as a result of the Planning Proposal.
Interface Agreement	An agreement between the Developer, TfNSW, the WestConnex Trustees and any other relevant party notified by TfNSW to the Developer, which may include the future operator of the M6 Motorway, relating to any modifications that are or may be required to the Arncliffe Motorway Operations Centre as a result of the Development.

Item of Works	The Works in clause 1.1 of Schedule 2.
Land	The Council Land and the Developer Land.
Law	Any statute, regulation, rule, proclamation, order, ordinance or by law, whether present or future and whether Commonwealth, State, territorial or local, and the common law.
LRS	NSW Land Registry Services.
M6 Stage 1 Project	The State significant infrastructure project approved as SSI-8931 for the construction and operation of a new multi lane road link between the New M5 at Arncliffe and President Avenue at Kogarah.
M8 Motorway Project	The State significant infrastructure project approved as SSI-6788 and formerly referred to as the Westconnex New M5 project, for the construction and operation of a new multi-lane link between the M5 East Motorway (east of King Georges Road) and St Peters.
Monetary Contribution	The monetary payments required to be made by the Developer under schedule 2 .
Novation Deed	The deed attached as Annexure A .
Occupation Certificate	Has the meaning given to that expression in the Act.
Planning Proposal	Planning Proposal PP-2022-1748, which seeks to remove the Land from the operation of Chapter 6 of <i>State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021</i> and insert new provisions into the Bayside LEP to: (a) rezone the Land to SP4 Enterprise, RE1 Public Recreation, C2 Environmental Conservation and SP2 Infrastructure; (b) reclassify the Council Land from community to operational land; (c) introduce an overall maximum building height of RL 51m with transitions across the site; (d) limit gross floor area within different areas of the site to an aggregate of 343,250m² and insert floor area requirements to achieve intended logistics and warehousing outcomes; and (e) permit additional permitted uses within the SP4 Enterprise zone and site-specific planning provisions.

PPI	The Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics.
Practical Completion	The practical completion of Works in accordance with the WAD for those Works.
Public Purpose	Has the meaning given in section 7.4(2) of the Act.
Register	The Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW).
Regulation	The <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Subdivision Works Certificate	Has the meaning given to that expression in the Act.
TfNSW's Nominee	An Authority nominated by TfNSW as being the Authority to which any or part of a Development Contribution is to be provided.
WAD	A works authorisation deed or other infrastructure delivery agreement entered into by TfNSW and the Developer regarding the design, construction, completion and dedication of Works by the Developer.
WestConnex Trustees	WCX M5 PT Pty Ltd and WCX M5 AT Pty Ltd.
WIK Offset Entitlement	Has the meaning given in clause 3.8 of schedule 2 .
Works	The works-in-kind required to be made by the Developer under schedule 2 .

1.2 Construction

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 issued 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, schedule or 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 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) except with respect to obligations or warranties provided by the Developer, an obligation or warranty on the part of 2 or more persons binds them severally but not jointly and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) an obligation or warranty on the part of the Developer binds each Developer jointly and severally;
- (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 later of the date:

- (a) that this deed is signed by all parties; and
- (b) of the Instrument Change.

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;
- (b) the Instrument Change; and
- (c) the Development.

3 Application of sections 7.11, 7.12 and Div 7.1, subdivision 4 of the Act

The application of sections 7.11, 7.12 and Division 7.1, Subdivision 4 of the Act to the Development are excluded to the extent stated in **schedule 1**.

4 Development Contributions

4.1 Developer to provide Development Contributions

The Developer agrees to provide, or procure the provision of, the Development Contributions to TfNSW or TfNSW's Nominee in accordance with **schedule 2**.

4.2 Acknowledgement

The Developer acknowledges and agrees that:

- (a) TfNSW does not have any obligation to use or expend the Development Contributions for any particular Public Purpose;
- (b) TfNSW does not have any obligation to repay or provide any compensation or payment for the Development Contributions, except as provided for in this deed; and
- (c) TfNSW has not made any representation or warranty that, if any part of a Development Contribution is transferred or provided to TfNSW's Nominee or another Authority, the Development Contribution will or must be used for any particular Public Purpose by that or any other Authority.

5 Interest for late provision of Monetary Contribution

- (a) If the Developer is required to pay a portion of the Monetary Contribution under this deed and fails to do so on the due date for provision of that portion of the Monetary Contribution, the Developer must also, on demand, pay to TfNSW (or TfNSW's Nominee, as applicable) interest on the overdue amount at a rate 2% per annum above the annual overdraft index rate quoted by the Commonwealth Bank of Australia from time to time (or if that rate ceases to be publicly available, the rate that is 2% per

annum above the annual overdraft index rate quoted by either Westpac, National Australia Bank or Australia and New Zealand Banking Group (the "Big 4" bank to be selected by TfNSW)). Unpaid interest will compound monthly with the overdue amount.

- (b) Interest will be payable on the daily balance of amounts due from the due date for provision of those amounts until those amounts (including interest on those amounts) have been paid to TfNSW (or TfNSW's Nominee, as applicable).

6 Enforcement

The Developer has agreed to provide security to TfNSW for the performance of the Developer's obligations to provide the Development Contributions under this deed by:

- (a) agreeing to restrictions on the issue of Occupation Certificates under **clauses 2.4 and 3.7(a) of schedule 2**;
- (b) agreeing to a restriction on the issue of a Construction Certificate under **clause 3.7(b) of schedule 2**;
- (c) registering this deed on title to the Land in accordance with **clause 7**; and
- (d) providing security in accordance with **schedule 3**.

7 Registration

7.1 Developer warranty

The Developer represents and warrants that it is:

- (a) the registered proprietor of the Developer Land (specifically, Cook Cove 1 is the registered proprietor of Lot 31 in DP1231486 and Cook Cove 2 is the registered proprietor of Lot 100 in DP 1231954); and
- (b) legally and beneficially entitled to obtain all Approvals and to compel any person referred to or contemplated by **clause 7.2(a)(i)** to assist, cooperate and otherwise do all things necessary for the Developer to comply with its obligations under this **clause 7**.

7.2 Registration of deed

- (a) Within 20 Business Days of the Developer receiving a copy of this deed executed by TfNSW, the Developer must, at its own Cost, take all practical steps and otherwise do anything reasonable and lawful to procure:
 - (i) the consent of each person who has:
 - (A) a Registered estate or interest in the Land; or
 - (B) is seized or possessed of an estate or interest in the Land,

- to the Registration of this deed on title to the Land;
 - (ii) the execution of any documents required to enable Registration of this deed on title to the Land; and
 - (iii) the electronic lodgement of this deed through an ELNO for Registration on the relevant folios of the Register for the Land.
- (b) The Developer must, at its own Cost, take all practical steps and otherwise do anything necessary to procure Registration of this deed on the relevant folios of the Register for the Land as soon as practicable after lodging this deed for Registration, including promptly responding to any requisitions made by the Registrar-General in respect of this deed or any ancillary documents.

7.3 Evidence of Registration

The Developer must provide TfNSW with:

- (a) evidence of the lodgement of this deed under **clause 7.2(a)(iii)** within 10 Business Days of such lodgement at LRS; and
- (b) a copy of the relevant folios 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.

7.4 Right to lodge caveat

- (a) Subject to **clause 7.4(b)**, until such time as this deed is Registered on the title of the Developer Land in accordance with **clause 7.2**, the Developer must not Deal with the Developer Land without TfNSW's prior written consent (such consent which is not to be unreasonably withheld, but which may, if granted, be subject to conditions including conditions to the effect that the Developer and any incoming party comply with the requirements of **clause 11**, including entry into a Novation Deed, prior to any Dealing) and acknowledges that this deed confers on TfNSW an interest in the Developer Land and entitles TfNSW to lodge and maintain a caveat on the title to the Developer Land to prevent any Dealing in respect of the Developer Land.
- (b) If TfNSW lodges a caveat in accordance with **clause 7.4(a)**, then TfNSW 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 Developer Land promptly, following Registration of this deed in accordance with **clause 7.2**.
- (c) If, after 20 Business Days of the Developer receiving a copy of this deed executed by TfNSW, the Developer has failed or has been unable to achieve the Registration of this deed in accordance with **clause 7.2**, the Developer must pay TfNSW's reasonable costs and expenses, including legal costs, of exercising TfNSW's rights under **clause 7.4(a)** to lodge and withdraw a caveat(s) (as applicable).

7.5 Charge over land

- (a) To support the caveat referred to in **clause 7.4**, the Developer charges its rights, titles and interests in the Developer Land in favour of TfNSW to secure:
 - (i) the proper and timely performance of its obligations under this deed; and
 - (ii) any damages that may be payable by that party to TfNSW in the event of any breach by that party of this deed.
- (b) At any time prior to the Registration on title of this deed pursuant to **clause 7.2**, upon receipt of a written request from TfNSW, the Developer must at its cost take all practical steps and otherwise do anything necessary to procure:
 - (i) the consent of each person who has:
 - (A) a Registered estate or interest in the Developer Land; or
 - (B) is seized or possessed of an estate or interest in the Developer Land,to the Registration of a charge on title to the Developer Land;
 - (ii) the execution of any documents required to enable Registration of a charge on title to the Developer Land;
 - (iii) the electronic lodgement of a charge through an ELNO for Registration on the relevant folios of the Register for the Developer Land; and
 - (iv) Registration of the charge as soon as practicable after lodgement, including promptly responding to any requisitions made by the Registrar-General.
- (c) The provisions in **clauses 7.4(b)** and **(c)** also apply in respect of any charge Registered on the title of the Developer Land.

7.6 Release and discharge of deed from Land

- (a) The Developer will be released from its obligations under this deed once the Developer has satisfied its obligations to provide the Development Contributions in accordance with this deed and satisfied all of its other obligations under this deed.
- (b) Following the Developer's satisfaction of its obligations under this Deed, TfNSW will do all things reasonably required by the Developer to have the Registrar-General remove this deed (or any charge Registered on title to the Developer Land) from the relevant folio(s) of the Register for the Land.

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 parties specifying the nature of the dispute and requiring the dispute be addressed in accordance with this **clause 8**.

8.3 Attempt to resolve

On receipt of a notice under **clause 8.2**:

- (a) a party may, within 10 Business Days, provide notice to each other party that it is not interested in the dispute to which the notice relates, and does not wish to be involved in the dispute resolution process, provided that a party cannot issue such a notice if the dispute relates to or arises from any act or omission of that party; and
- (b) the parties to dispute must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

8.4 Mediation

If the parties to the dispute do not agree within 20 Business Days of receipt of a 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 material steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

then, subject to **clause 8.5**, the parties to the dispute must mediate the dispute in accordance with the Law Society of NSW's Mediation Program. The parties to the dispute must, as soon as possible, 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** (or any other period agreed in writing by the parties) then any party to the dispute which has complied with the provisions of this **clause 8** may, by written notice to the other party or parties to the dispute, terminate any dispute resolution process undertaken under this clause and any party to the dispute may then commence court proceedings in relation to the dispute.

8.6 Use of 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 resolve 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 resolve 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.

8.8 Continued performance of obligations

Despite the existence of a dispute under this **clause 8**, but subject to any order of a court or the agreement of the parties, the parties must continue to perform their obligations under this deed.

9 GST

9.1 Construction

In this **clause 9**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Act 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 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this deed is exclusive of GST (**GST-exclusive consideration**). 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 **clause 9.4**.

9.4 Payment of GST

Notwithstanding **clause 9.2**, if GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this deed, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

9.5 Timing of GST payment

The amount referred to in **clause 9.4** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

9.6 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 9.4**.

9.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this deed, any amount that is payable under **clause 9.4** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

9.8 Reimbursements

- (a) Where a party is required under or in connection with this deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or to indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed, contributed to or indemnified by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 9.8** does not limit the application of **clause 9.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 9.8(a)**.

9.9 No merger

This **clause 9** does not merge on the completion, rescission or other termination of this deed or on the transfer of any property supplied under this deed.

10 Trustee Limitation of Liability

- (a) In this clause:
 - (i) **Trust** means:
 - (A) in the case of Cook Cove Nominees No 1 Pty Ltd, the Cook Cove Property Trust 1 established under the trust instrument referred to in **clause 12.2(a)(i)(A)**; and
 - (B) in the case of Cook Cove Nominees No 2 Pty Ltd, the Cook Cove Property Trust 2 established under the trust instrument referred to in **clause 12.2(a)(i)(B)**; and
 - (ii) **Trustee** means each of Cook Cove Nominees No 1 Pty Ltd (ACN 672 807 037) and Cook Cove Nominees No 2 Pty Ltd (ACN 672 807 046).
- (b) Each Trustee enters into this deed in its capacity as trustee of the relevant Trust and in no other capacity.
- (c) A liability arising under or in connection with this deed is limited to and can be enforced against a Trustee only to the extent to which it can be satisfied out of property of the relevant Trust out of which the Trustee is actually indemnified for the liability. Subject to **clause 10(e)**, this limitation of each Trustee's liability applies despite any other provision of this deed and 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) The parties other than the relevant Trustee may not sue a Trustee in any capacity other than as trustee of the relevant Trust, including seeking the appointment of a receiver (except in relation to property of the relevant Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the relevant Trust).
- (e) The provisions of this clause shall not apply to any obligation or liability of a Trustee to the extent that it is not satisfied because under the trust deed establishing the relevant Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification or in respect of which the Trustee is not entitled to be indemnified out of the assets of the relevant Trust, as a result of the Trustee's fraud, negligence or breach of trust.

11 Assignment and Novation

11.1 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 TfNSW and:

- (i) satisfy TfNSW (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 TfNSW substantially in the form of the Novation Deed and on terms satisfactory to TfNSW (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 TfNSW, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay TfNSW's reasonable legal costs and expenses incurred under this **clause 11.1**.

11.2 Right to transfer land

- (a) The Developer must not enter into any Dealing with another person (**Transferee**) with respect to the whole or any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contributions required under this deed remain outstanding.
- (b) Notwithstanding **clause 11.2(a)**, the Developer may sell or transfer the whole or any part of the Land if, prior to the proposed sale or transfer, the Developer:
 - (i) satisfies TfNSW (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 TfNSW, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) unless the Transferee is already a party to this deed, procures the execution of an agreement by the Transferee with TfNSW substantially in the form of the Novation Deed and on terms satisfactory to TfNSW (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 TfNSW, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) Notwithstanding **clause 11.2(a)**, the Developer may mortgage or charge the whole or any part of the Developer Land if, prior to the proposed

mortgage or charge being granted, the Developer procures that the mortgagee or secured party enters into a deed with TfNSW agreeing that in enforcing the mortgage or charge over the Developer Land any right to sell or transfer of the whole or any part of the Developer Land must be exercised in accordance with **clause 11.2(b)**.

- (d) The Developer must pay TfNSW's reasonable legal costs and expenses incurred under this **clause 11.2**.

11.3 Assignment by TfNSW

TfNSW may assign the rights and benefits of this deed to another public Authority in its absolute discretion, without the need for prior consent from the other parties to this deed.

12 Capacity

12.1 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.

12.2 Developer warranties and undertakings

- (a) In this **clause 12.2**:
 - (i) "**Relevant Trust Deed**" means:
 - (A) in respect of Cook Cove 1, the Trust Deed – Cook Cove Property Trust 1 dated 13 December 2023; and
 - (B) in respect of Cook Cove 2, the Trust Deed – Cook Cove Property Trust 2 dated 13 December 2023;
 - (ii) "**Trust**" has the meaning given in **clause 10(a)**; and
 - (iii) "**Trustee**" has the meaning given in **clause 10(a)**.
- (b) Each of Cook Cove 1 and Cook Cove 2 represents and warrants that:
 - (i) it is duly registered and remains in existence;
 - (ii) the execution, delivery and performance of this deed does not violate its constitution, the Relevant Trust Deed or any Law applying to it;
 - (iii) the execution, delivery and performance of this deed does not violate any Law, or any document or agreement to which it is a party or which is binding on it or the Developer Land, including any matters or interests not registered on the title of the Developer Land;

- (iv) any document or agreement to which it is a party or which is binding on it or any of its assets, including any matters or interests not registered on the title of the Developer Land, does not in any way limit its ability to perform its obligations under this deed;
- (v) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on it or the Developer Land, which has not been advised in writing to TfNSW; and
- (vi) in respect of the relevant Trust:
 - (A) it has been duly appointed as the sole trustee of the Trust and has not been removed as the trustee of the Trust;
 - (B) the Trust is properly constituted and no action has been taken to terminate or resettlement the Trust;
 - (C) the copy of the Relevant Trust Deed provided to TfNSW before the date of this deed is a true and up to date copy and discloses all terms of the Trust, other than those as implied by law;
 - (D) no release or revocation of the trustee's powers under the Relevant Trust Deed has occurred;
 - (E) it is not in breach of the Relevant Trust Deed;
 - (F) it has power under the Relevant Trust Deed to execute and perform its obligations under this deed and all necessary action has been taken and approvals obtained (including under the Relevant Trust Deed and "Unitholders Agreement" (as defined in the Relevant Trust Deed) and, if applicable, having obtained any "Unitholder Approval" (as defined in the Relevant Trust Deed)) to authorise the execution and performance of this deed and in doing so it is acting properly;
 - (G) no Trust property has been resettled or vested in any person and no one is presently entitled to call for the distribution of the Trust property;
 - (H) provided that the Trustee is acting in good faith and without fraud or negligence, it enjoys the benefit of and may exercise and enforce rights of indemnity or other rights to apply, use or retain Trust property to satisfy its obligations under this deed, without any further consent or approval and those rights are not subject to any limitation; and
 - (I) after taking into account all other present and contingent liabilities of the Trust, the Trust property is sufficient to

satisfy its indemnity with respect to its obligations in connection with this deed as and when they become due.

- (c) If the trustee of a Trust is to be or is replaced, the Trustee must procure entry by each replacement trustee into a deed with TfNSW substantially in the form of the Novation Deed and on terms satisfactory to TfNSW (acting reasonably) under which each replacement trustee agrees to comply with the terms and conditions of this deed, including the warranties under **clause 12.2(b)**.
- (d) Each Developer must in respect of the relevant Trust:
 - (i) comply with the Relevant Trust Deed;
 - (ii) not without the prior written consent of TfNSW vary or supplement the Relevant Trust Deed in a way that adversely affects or is reasonably likely to adversely affect its rights of indemnity or other rights to apply, use or retain Trust property to satisfy its obligations under this deed;
 - (iii) take all steps available to it to ensure it is actually indemnified out of the Trust property to discharge any liability arising under or in connection with this deed when that liability is due;
 - (iv) not without the prior written consent of TfNSW, resign or retire as trustee of the Trust or cause or permit any other person to become a trustee of the Trust, not resetttle or vest any Trust property and not mix Trust property with other property if that would impair its rights to satisfy its obligations under this deed; and
 - (v) not do anything which results in or is reasonably likely to result in the termination or winding up of the Trust.

12.3 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.

13 Reporting Requirement

- (a) The Developer must provide at least 20 Business Days' written notice to TfNSW and the Department of the lodgement of any Development Application or application for an Occupation Certificate which triggers any obligation under this deed.
- (b) On each anniversary of the date of this deed, or as otherwise agreed with TfNSW and the Department, the Developer must deliver to TfNSW a report which must include those matters set out below, as applicable:
 - (i) a description of the status of the Development and the Development Contribution;
 - (ii) a forecast in relation to the anticipated progression and completion of the Development and the Development Contribution; and

- (iii) an estimated date for when the Developer expects to submit any application for an Occupation Certificate in respect of any part of the Land.
- (c) Within 30 Business Days following receipt of a written request from either TfNSW or the Department, the Developer must deliver to TfNSW and the Department all documents and other information which, in the reasonable opinion of TfNSW, are necessary to assess the status of the Development.

14 General

14.1 Entire agreement

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.

14.2 Variation

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

14.3 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.

14.4 Further assurances

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

14.5 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 5.00pm on the specified day, it is taken to have been done on the following Business Day.

14.6 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.

14.7 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.

14.8 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.

14.9 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, will not merge on the occurrence of that event but will remain in full force and effect.

14.10 Counterparts

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

14.11 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.

14.12 Good faith

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

14.13 No fetter

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

14.14 Explanatory Note

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

14.15 Costs, expenses and stamp duty

- (a) The Developer must pay its own and TfNSW's legal costs and disbursements in connection with the negotiation, preparation, execution, registration and administration of this deed.
- (b) The Developer must pay all legal costs and disbursements incurred by all parties to the Interface Agreement in connection with the negotiation, preparation, execution and administration of the Interface Agreement.
- (c) TfNSW's administrative costs of review of plans, civil works inspections and project management incurred in connection with this deed and the Interface Agreement are to be covered by the Developer, in accordance with the terms of the WAD and the Interface Agreement.
- (d) The Developer must pay all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (e) 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, on any transfer of land).
- (f) The Developer must pay TfNSW's costs pursuant to **clauses 14.15(a) and (c)**:
 - (i) where TfNSW has provided the Developer with written notice of the sum of such costs prior to execution of this deed, on the date of execution of this deed; or
 - (ii) where TfNSW has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by TfNSW for payment.

14.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and either;
 - (i) hand delivered to the address shown below;
 - (ii) sent by email to the email address shown below, but only if the relevant party has included an email address below; or
 - (iii) sent by prepaid ordinary mail within Australia to the address shown below:

TfNSW

Contact: Rachel Cumming

Address: 4 Parramatta Square, 12 Darcy Street, Parramatta NSW
2150

Email: rachel.cumming@transport.nsw.gov.au

Developer

Contact: John Boyd, Director / Peter Bettridge

Address: Level 3 Legion House, 161 Castlereagh Street, Sydney NSW 2000

Email: john@boydproperties.com.au; cc.
peter@boydproperties.com.au

- (b) A Notice may be sent by email only if:
- (i) it states (or any attachment states) the name of the sending party and a person duly authorised by the sending party;
 - (ii) it states (or any attachment states) that the email (or the attachment) is a communication either under this deed or in connection with this deed; and
 - (iii) for an email which contains attachments - the attachments are in a format which the receiving party can open, view and download at no additional cost,
- and communications sent by email are taken to be signed by the named sender.
- (c) A Notice is taken to be given if:
- (i) hand delivered, on the date of delivery; or
 - (ii) sent by email during any Business Day, on the date that the sending party's email records indicate the email was sent, unless the sender also receives a delivery failure notification or other information indicating that the email has not been delivered to the intended recipient; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 5 Business Days after the date of posting.
- (d) A party may change its address, email address or contact information as specified in **clause 14.16(a)** at any time by way of a Notice issued to the other parties.

14.17 Electronic execution

The parties acknowledge and agree that:

- (a) a party may electronically sign a soft copy of this deed and by doing so will:
- (i) bind itself to this deed; and
 - (ii) satisfy any statutory or other requirements for this deed to be in writing and signed by that party as a deed; and
- (b) a soft copy of this deed signed by that party will constitute an executed original counterpart and if that document is printed with that party's electronic signature appearing that print-out will also constitute an executed original counterpart.

Schedule 1

Requirements under the Act

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

Table 1 – Requirements under section 7.4 of the Act

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(1) of the Act) The Developer has: (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.	(a) Yes (b) No (c) No
Description of land to which this deed applies – (section 7.4(3)(a) of the Act)	The Land as defined in clause 1 .
Description of the change to the environmental planning instrument and the development to which this deed applies – (section 7.4(3)(b) of the Act)	The Instrument Change as defined in clause 1 and the Development as defined in clause 1 .
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c) of the Act)	See Schedule 2 .
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d) of the Act)	The application of sections 7.11 and 7.12 of the Act are not excluded in respect of the Development.
Applicability of Division 7.1, Subdivision 4 of the Act – (section 7.4(3)(d) of the Act)	The application of Division 7.1, Subdivision 4 of the Act is excluded in respect of the Development.

Requirement under the Act	This deed
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e) of the Act)	The Development Contribution to be provided by the Developer under this deed must not be taken into consideration in determining a development contribution in respect of the Development under section 7.11 of the Act.
Mechanism for Dispute Resolution – (section 7.4(3)(f) of the Act)	See clause 8.
Enforcement of this deed – (sections 7.4(3)(g) and 7.6 of the Act)	See clause 6.
No obligation to grant consent or exercise functions – (section 7.4(9) of the Act)	See clause 14.13.

Table 2 – Other Matters

Requirement under the Act or regulations	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 the Development Certification Regulation)	Yes – see clause 3.7 of schedule 2.
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (section 48 of the Development Certification Regulation)	Yes – see clause 2.4 and clause 3.7 of schedule 2.
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a	No

Requirement under the Act or regulations	This deed
subdivision certificate is issued – (section 34 of the Development Certification Regulation)	

Schedule 2

Development Contributions

1 Development Contribution

1.1 Provision of Development Contributions by the Developer

The Developer must provide the following Development Contributions in accordance with this **schedule 2**:

Column 1	Column 2	Column 3	Column 4	Column 5
Item No.	Item	Description	Contribution value	Timing (Due Date)
A. Works				
1	Marsh St / Gertrude Street Intersection Enhancement	Revision to concrete medians to create northbound dual right turn bay into Gertrude Street East and southbound dual right turn bay into Gertrude Street Extension (new link road), as indicatively shown on the plan at Annexure B . Construction of Marsh Street southbound deceleration lane to permit left turn into Gertrude Street East.	\$324,519.00, indexed in accordance with clause 3.2 of this schedule 2 .	To be delivered prior to the issue of the first Occupation Certificate for GFA within the Developer Land arising from the Instrument Change.

Column 1	Column 2	Column 3	Column 4	Column 5
Item No.	Item	Description	Contribution value	Timing (Due Date)
		Installation of traffic signals, intersection, and pedestrian line marking. Remove traffic signals serving Innesdale Road and undertake necessary adjustments required to alter medians and line marking to modify permitted movements to left in and left out only to/from Marsh Street, construct pedestrian refuge. New footpaths, fencing, signage, lighting, road sheeting and basic roadside landscaping as required. Utility relocation and adjustment. To be delivered by the Developer pursuant to a WAD.		
2	Marsh Street / Flora Street Intersection Enhancement	Revision to Marsh Street concrete medians to eliminate northbound right turn bay into existing M6/M8 temporary construction compound and lengthening of southbound right turn bay to M5 Motorway, as	\$300,122.00, indexed in accordance with clause 3.2 of this schedule 2 .	To be delivered prior to the issue of the first Occupation Certificate for GFA within the Developer Land arising from the Instrument Change.

Column 1	Column 2	Column 3	Column 4	Column 5
Item No.	Item	Description	Contribution value	Timing (Due Date)
		indicatively shown on the plan at Annexure B. Intersection line marking and traffic signal adjustments including new pedestrian crossing. Extension of the northbound right turn bay to Gertrude Street East. Construction of southbound deceleration / left turn bay to Flora Street East. Construct 4 lane connection to Marsh Street intersection (3 westbound, 1 eastbound). New kerb and gutter, footpaths, required adjustments to Marsh Street east cycleway fencing, signage, lighting, road sheeting, basic roadside landscaping as required. Utility relocations and adjustments.		

Column 1	Column 2	Column 3	Column 4	Column 5
Item No.	Item	Description	Contribution value	Timing (Due Date)
		To be delivered by the Developer pursuant to a WAD and an Interface Agreement.		
3	Flora Street East Extension interface with Arncliffe Motorway Operations Compound	The Developer will be responsible for undertaking all works and all costs arising from any amendments required to the Arncliffe Motorway Operations Centres for the M6 Stage 1 Project and M8 Motorway Project (Arncliffe MOC) as a result of the Development, as indicatively shown on the plan at Annexure B. This includes relocation of impacted assets and adjustments to utilities, fences, gates, controls and cameras leading into and on the Arncliffe MOC site. Access must be maintained to the Arncliffe MOC at all times. These matters will be the subject of an Interface Agreement. Integrate new Flora Street East road design and undertake necessary modifications to the	Nil	The Interface Agreement(s) are to be entered into prior to the issue of a Construction Certificate for GFA within the Developer Land and prior to the issue of a Construction Certificate for any Works within the Council Land arising from the Instrument Change. Developer works the subject of the Interface Agreement to be delivered prior to the issue of an Occupation Certificate for GFA within the Developer Land arising from the Instrument Change.

Column 1	Column 2	Column 3	Column 4	Column 5
Item No.	Item	Description	Contribution value	Timing (Due Date)
		road access arrangements arising from M6 Stage 1 Project to the Arncliffe MOC. Road beyond Marsh Street intersection to be constructed to local council requirements, subject to TfNSW review and approval of access intersection with the Arncliffe MOC. Road base, drainage, subsurface utility relocation. New medians, footpaths, line marking, fencing, signage, lighting and basic roadside landscaping as required.		
4	Signalised intersections	All works relating to any additional length of southbound right-turn bay storage on Marsh Street and Gertrude Street intersection that will be constructed in lieu of existing right-turn bay storage at Innesdale Road. This is anticipated to involve the removal of existing traffic signals at Innesdale Road and construction	\$113,156.00, indexed in accordance with clause 3.2 of this schedule 2 .	To be delivered prior to the issue of the first Occupation Certificate for GFA within the Developer Land arising from the Instrument Change.

Column 1	Column 2	Column 3	Column 4	Column 5
Item No.	Item	Description	Contribution value	Timing (Due Date)
		of new traffic signals at Gertrude Street, as shown indicatively on the plan at Annexure B. To be delivered by the Developer pursuant to a WAD, which will make provision for a 10 year maintenance contribution for each set of new traffic signals, or pro-rata contribution in the circumstances of modification of existing signals.		
5	Bus stops	Northbound and southbound bus stops to the south of the Marsh Street / Gertrude Street intersection. Southbound with signage, recessed bus bay (subject to TfNSW / local council endorsement) and shelter. Northbound bus stop signage only as indicatively shown on the plan at Annexure B. To be delivered pursuant to a WAD for the intersection works on Marsh Street.	\$358,163.00, indexed in accordance with clause 3.2 of this schedule 2 .	To be delivered prior to the issue of the first Occupation Certificate for GFA within the Developer Land arising from the Instrument Change.
B. Monetary Contributions				

Column 1	Column 2	Column 3	Column 4	Column 5
Item No.	Item	Description	Contribution value	Timing (Due Date)
6	Monetary Contribution with estimated total value of \$8.7 million.	Contribution towards regional or State roads and / or regional or State transport improvements within the Bayside local government area.	\$25,346.00 per 1,000 sqm of GFA within the Developer Land arising from the Instrument Change and to which an Occupation Certificate relates, indexed in accordance with clause 2.2 of this schedule 2 .	Payable in instalments, prior to the issue of each Occupation Certificate for GFA within the Developer Land arising from the Instrument Change.

2 Monetary Contribution

2.1 Monetary Contribution

The Developer must pay each instalment of the Monetary Contribution to TfNSW or to TfNSW's nominee:

- (a) in the manner set out in the table at **clause 1.1** of this **schedule 2**; and
- (b) in accordance with this **clause 2** of this **schedule 2**.

2.2 Indexation

The value of the Monetary Contribution amount set out in Column 4 of the table at **clause 1.1** of this **schedule 2** is to be subject to quarterly indexation on 1 January and on the first day of each subsequent quarter to reflect any increase in the PPI, from the date of this deed until paid.

2.3 Delivery of Monetary Contribution

- (a) A Monetary Contribution instalment is paid for the purposes of this Deed when funds are deposited, cleared and credited by means of electronic funds transfer into a bank account nominated by TfNSW.
- (b) The Developer is to give TfNSW not less than 15 Business Days written notice of its intention to pay an instalment of the Monetary Contribution and the amount proposed to be paid.

2.4 Restriction on issue of certificates

The parties agree that the requirement to provide the Monetary Contribution in accordance with **clause 2.1** of this **schedule 2** is a restriction on the issue of an Occupation Certificate within the meaning of section 6.10 of the Act and section 48 of the Development Certification Regulation.

3 Works

3.1 Obligation to provide Works

The Developer must deliver the Works:

- (a) in the manner set out in the table at **clause 1.1** of this **schedule 2**; and
- (b) in accordance with this **clause 3** of this **schedule 2**.

3.2 Indexation

The contribution value for each item of Works set out in Column 4 of the table at **clause 1.1** of this **schedule 2** is to be subject to quarterly indexation on 1 January and on the first day of each subsequent quarter to reflect any increase in the PPI, from the date of this deed until the relevant item of Works is delivered.

3.3 Works Authorisation Deed

Prior to the issue of the first Construction Certificate for GFA within the Developer Land arising from the Instrument Change, the Developer must enter into a WAD with TfNSW in relation to the Works on terms and conditions acceptable to TfNSW including obtaining TfNSW's approval for the design of the Works and the plans submitted in accordance with **clause 3.4(a)(ii)** of this **schedule 2**.

3.4 Commencement

- (a) Prior to commencement of an Item of Works, the Developer must:
 - (i) provide evidence to TfNSW that it has obtained all Approvals required for the Works;
 - (ii) provide certified copies of the civil design plans to TfNSW;
 - (iii) enter one or more Interface Agreements; and
- (b) provide the Approved Security to TfNSW for the Works in accordance with the WAD.

3.5 Delivery

The Developer must carry out and complete each Item of Works in accordance with:

- (a) all Approvals required for the Works;
- (b) all applicable Interface Agreements; and
- (c) the WAD applying to the Works,

and complete each Item of Works by no later than the time specified for that Item of Works in the table at **clause 1.1** of this **schedule 2**.

3.6 Completion

- (a) An Item of Works is taken to be completed for the purposes of this deed when the Works achieve Practical Completion in accordance with the WAD and applicable Interface Agreements.
- (b) The Developer must give TfNSW written notice of Practical Completion of each Item of Works.

3.7 Restriction on issue of certificates

The parties agree that:

- (a) the requirement to deliver the Works in accordance with **clause 3.1** of this **schedule 2** is a restriction on the issue of an Occupation Certificate within the meaning of section 6.10 of the Act and section 48 of the Development Certification Regulation; and
- (b) the requirement to enter into one or more Interface Agreements prior to the issue of a Construction Certificate under **clause 1.1** of this **schedule 2** is a restriction on the issue of a Construction Certificate

within the meaning of section 6.8 of the Act and section 21 of the Development Certification Regulation.

3.8 Works offsets

- (a) TfNSW acknowledges and agrees that the Developer is entitled to offset the contribution value specified for certain Works in Column 4 of the table at **clause 1.1** of this **schedule 2 (WIK Contribution Value)** against its obligation to pay the Monetary Contributions (up to, and capped at, the WIK Contribution Value) (**WIK Offset Entitlement**).
- (b) The WIK Offset Entitlement is to be applied towards the Developer's obligation to pay the instalment of the Monetary Contribution (or any part of it) next payable after Practical Completion of the relevant Works is certified by TfNSW in accordance with the WAD. If the quantum of the WIK Offset Entitlement is greater than the quantum of that instalment of the Monetary Contribution, the WIK Offset Entitlement is to be applied towards the Developer's obligation to pay each subsequent instalment of the Monetary Contribution until such time as the WIK Offset Entitlement has been applied in full.
- (c) TfNSW acknowledges and agrees that where the Developer applies the WIK Offset Entitlement to any part of the Monetary Contribution, the Developer will be deemed to have paid TfNSW (or TfNSW's Nominee, as appropriate), that part of the Monetary Contribution.
- (d) The Developer acknowledges that if the actual costs of carrying out and achieving Practical Completion of the Works exceed the WIK Contribution Value, the Developer accepts the risk for those additional costs and will not be entitled to offset those additional costs against its obligation to pay any part of the Monetary Contribution.

Schedule 3

Security

1 Provision of Security to TfNSW

- (a) Upon execution of this deed, the Developer must provide to TfNSW a Bank Guarantee with a face value amount of \$250,000.00 for legal costs associated with enforcement of this deed and costs associated with delivery of the Development Contributions if the Developer fails to perform its obligations to provide the Development Contributions on the due date.
- (b) The Bank Guarantee provided under **clause 1(a)** of this **schedule 3** must:
 - (i) name "Transport for NSW ABN 18 804 239 602" as the relevant beneficiary; and
 - (ii) not have an expiry date.

2 Claims under the Bank Guarantees

- (a) TfNSW may:
 - (i) call upon any Bank Guarantee provided to it under this deed where the Developer has failed to provide a Development Contribution on or after the date for provision under this deed; and
 - (ii) retain and apply such money towards achieving performance of the Development Contribution and any Costs incurred TfNSW in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon a Bank Guarantee, TfNSW must give the Developer not less than 10 Business Days written notice of the intention to do so.
- (c) If TfNSW:
 - (i) calls upon a Bank Guarantee;
 - (ii) applies all or part of such money towards achieving performance of the Development Contribution and any Costs incurred in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Bank Guarantee in accordance with **clause 2(b)** of this **schedule 3**,

then the Developer must provide TfNSW with a replacement Bank Guarantee to ensure that, at all times, until the date the Bank Guarantees are released in accordance with **clause 3** of this **schedule 3**, TfNSW is in possession of Bank Guarantees for a face

value equivalent to the amount required to be provided in accordance with **clause 1** of this **schedule 3**.

3 Release of Security

If:

- (a) the Developer has paid or satisfied all of its obligations under this deed;
and
- (b) the whole of the Bank Guarantee(s) has not been expended and the money accounted for in accordance with **clause 2** of this **schedule 3**,

then TfNSW will promptly return the Bank Guarantee(s) or the remainder of the money secured by the Bank Guarantee(s) (as the case may be), less any costs, charges, duties and taxes payable, to the Developer.

Schedule 4

Explanatory Note

Explanatory Note

Transport for NSW (ABN 18 804 239 602)

and

Cook Cove Nominees No 1 Pty Limited (ACN 672 807 037) in its capacity as
the trustee of the Cook Cove Property Trust 1

and

Cook Cove Nominees No 2 Pty Limited (ACN 672 807 046) in its capacity as
the trustee of the Cook Cove Property Trust 2

Draft Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties.

Words appearing with capital letters in this note have the meanings given to them in this note or, if not defined in this note, in the Planning Agreement.

This explanatory note must not be used to assist in construing the Planning Agreement.

Parties to the Planning Agreement

The parties to the Planning Agreement are:

- a) Transport for NSW (ABN 18 804 239 602) (**TfNSW**);

- b) Cook Cove Nominees No 1 Pty Ltd (ACN 672 807 037) in its capacity as the trustee of the Cook Cove Property Trust 1 (**Cook Cove 1**); and
 - c) Cook Cove Nominees No 2 Pty Ltd (ACN 672 807 046) in its capacity as the trustee of the Cook Cove Property Trust 2 (**Cook Cove 2**)
- (Cook Cove 1 and Cook Cove 2, together are the **Developer**).

Description of the Land

The Planning Agreement applies to:

- a) Lot 31 in DP1231486, known as 19 Marsh Street, Arncliffe owned by Cook Cove 1; and
 - b) Lot 100 in DP1231954, known as 19A Marsh Street, Arncliffe owned by Cook Cove 2,
- (together the **Developer Land**); and
- c) Lot 14 in DP213314, known as 19 Marsh Street, Arncliffe owned by Bayside Council (**Council**); and
 - d) Lot 1 in DP108492, known as 13 Marsh Street, Arncliffe owned by Council,
- (together the **Council Land**)
- (the Developer Land and the Council Land are together the **Land**).

A plan showing the Land (comprising the Developer Land and the Council Land) is at the end of this explanatory note.

Description of the Proposed Development

The Developer is seeking to carry out development for predominantly mixed-use and logistics purposes on the Land, generally in accordance with Planning Proposal PP-2022-1748 (**Planning Proposal**), which seeks to remove the Land from the operation of Chapter 6 of *State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021* and insert new provisions into the *Bayside Local Environmental Plan 2021* (**Bayside LEP**) to:

- a) rezone the Land to SP4 Enterprise, RE1 Public Recreation, C2 Environmental Conservation and SP2 Infrastructure;

- b) reclassify the Council Land from community to operational land;
- c) introduce an overall maximum building height of RL 51m with transitions across the site;
- d) limit gross floor area within different areas of the site to an aggregate of 343,250m² and insert floor area requirements to achieve intended logistics and warehousing outcomes; and
- e) permit additional permitted uses within the SP4 Enterprise zone and site-specific planning provisions (**Proposed Development**).

The Developer has made an offer to TfNSW to enter into the Planning Agreement in connection with the change to the Bayside LEP resulting from the Planning Proposal (**Instrument Change**) and the carrying out of the Proposed Development facilitated by the Instrument Change.

An indicative plan of the Proposed Development is at the end of this explanatory note.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to facilitate the provision of regional infrastructure within the meaning of Subdivision 4 of Division 7.1 of the Act.

The Planning Agreement requires the Developer to make development contributions in connection with the Proposed Development for the purposes of the provision of regional or State transport infrastructure.

The development contributions comprise:

- a) a monetary contribution with an estimated total value of \$8.7 million to be paid progressively to TfNSW for regional or State roads and /or regional or state transport improvements within the Bayside local government area;
- b) the carrying out of the following Works:
 - i) Marsh Street / Gertrude Street Intersection Enhancement comprising:
 - (1) creation of dual right turn bays into Gertrude Street East and Gertrude Street Extension;

- (2) construction of Marsh Street deceleration lane to permit left turn into Gertrude Street East;
 - (3) creation of left in and left out only to/from Marsh Street at Innesdale Road;
 - (4) a new pedestrian crossing across Marsh Street; and
 - (5) ancillary works to pedestrian refuge, traffic signals, foot pathing and landscaping;
- ii) Marsh Street / Flora Street Intersection Enhancement comprising:
- (1) modifications to Marsh Street concrete medians to remove northbound right turn bay into existing M6/M8 temporary construction compound and lengthening of southbound right turn bay to M5 Motorway;
 - (2) intersection line marking and traffic signal adjustments and new pedestrian crossing;
 - (3) construction of extension of northbound right turn bay to Gertrude Street East;
 - (4) construction of southbound deceleration / left turn bay to Flora Street East;
 - (5) construction of 4 lane connection to Marsh Street intersection (3 westbound and 1 eastbound); and
 - (6) ancillary works including new kerb and gutter, footpaths, required adjustments to Marsh Street east cycleway fencing, signage, lighting, road sheeting and landscaping;
- iii) Flora Street East Extension interface with Arncliffe Motorway Operations Centre (**Interface Works**) comprising:
- (1) works arising from any amendments required to the Arncliffe Motorway Operations Centres for the M6 Stage 1 Project and M8 Motorway Project (**Arncliffe MOC**) as a result of the Development, including relocation of impacted assets and adjustments to utilities,

- fences, gates, controls and cameras leading into and on the Arncliffe MOC site;
 - (2) works to integrate new Flora Street East road and modifications to the road access arrangements arising from M6 Stage 1 Project to the Arncliffe MOC site;
 - (3) construction of road beyond Marsh Street intersection;
 - (4) construction of road base, drainage, subsurface utility relocation; and
 - (5) ancillary works including new medians, footpaths, line marking, fencing, signage, lighting and landscaping;
- iv) Signalised intersections comprising:
- (1) construction of additional length of westbound right-turn bay storage on Marsh Street and Gertrude Street intersection in lieu of existing right-turn bay storage at Innesdale Road, including the removal of existing traffic signals at Innesdale Road and construction of new traffic signals at Gertrude Street;
 - (2) a 10 year maintenance contribution for each set of new traffic signals, or pro-rata contribution in the circumstances of modification of existing signals; and
 - (3) Northbound and southbound bus stops and shelters to the south of the Marsh Street / Gertrude Street intersection, including recessed bus bay at the southbound bus stop; and

An indicative plan of the proposed Works and a table listing the Works with associated capped amounts which the Developer will offset from the total progressive monetary contribution are included at the end of this explanatory note.

The Development Contributions are in lieu of the Developer's statutory liability to pay a Housing and Productivity Contribution (**HPC**) under Division 7.1, Subdivision 4 of the Act.

The Developer will provide security for the Development Contributions in the form of:

- a) registration of the Planning Agreement on the title of the Land;

- b) a Bank Guarantee in the amount of \$250,000 for TfNSW's legal costs associated with enforcement of the Planning Agreement and costs associated with delivery of the Development Contributions if the Developer fails to perform its obligations to provide the Development Contributions on the due date; and
- c) restrictions on the issue of Construction Certificates and Occupation Certificates until certain milestones are reached with respect to the provision of the Development Contributions.

Assessment of Merits of Planning Agreement

The Public Purpose of the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement has the public purpose of facilitating the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

TfNSW and the Developer have assessed the Planning Agreement and each hold the view that the terms of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because the Planning Agreement will ensure that the Developer makes appropriate contributions towards the provision of regional infrastructure.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of regional or State road upgrades and infrastructure, to satisfy needs that arise from the Proposed Development of the Land.

The Developer's offer to contribute towards the provision of regional or State road upgrades and infrastructure will have a positive impact on the public who will ultimately use it.

Whether the Planning Agreement conforms with TfNSW's capital works program (if any)

Not applicable.

Requirements relating to Construction, Occupation and Subdivision Certificates

Subdivision Certificate

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a subdivision certificate.

Construction Certificate

The Planning Agreement requires the Developer to enter into Interface Agreement(s) with TfNSW and the Arncliffe MOC operators prior to the issue of a Construction Certificate for GFA within the Developer Land and prior to the issue of a Construction Certificate for Works within the Council Land.

The Planning Agreement further requires the Developer to enter into a Works Authorisation Deed (WAD) with TfNSW prior to the issue of a Construction Certificate for GFA within the Developer Land in relation to the Works. The Planning Agreement therefore contains a restriction on the issue of a Construction Certificate for the purposes of section 21 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (**Regulation**).

Occupation Certificate

The Planning Agreement requires the Developer to deliver all of the Works prior to the issue of the first Occupation Certificate for GFA within the Developer Land. The Planning Agreement also requires the Developer to pay instalments of the Monetary Contribution (determined at the rate of \$25,346.00 per 1,000 sqm of GFA within the Developer Land to which an Occupation Certificate relates, subject to quarterly indexation), prior to the issue of each Occupation Certificate for GFA within the Developer Land. The Planning Agreement therefore contains a restriction on the issue of an Occupation Certificate for the purposes of section 48 of the Regulation.

The Plans and Table listed below follow this page.

- 1. Plan showing the Land (comprising the Developer Land and the Council Land)**

2. Indicative Plan of the Proposed Development

3. Indicative Works Plan

4. Works in Kind Table

PLAN SHOWING THE LAND (COMPRISING THE DEVELOPER LAND AND THE COUNCIL LAND)

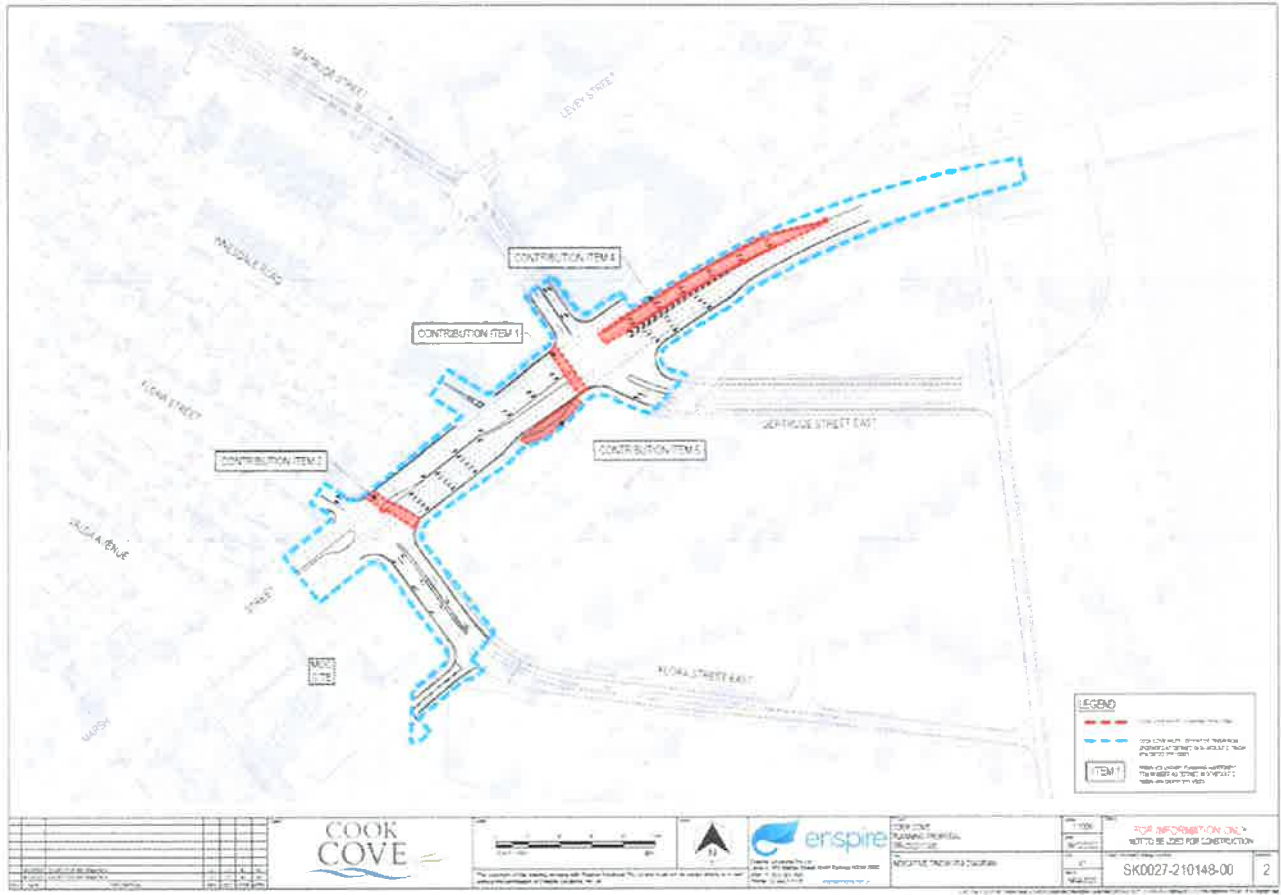


LEGEND

1	Open Lawn
2	Plaza Zone
3	Community Garden
4	Play
5	Community Pavilion
6	Wet Ponds (by NWK)
7	Play Structure
8	OP (Adult) Dog Zone
9	Wet Ponds (by NWK)
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99	Wet Ponds (by NWK)
100	Wet Ponds (by NWK)

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INDICATIVE WORKS PLAN



WORKS IN KIND TABLE

Works in Kind with associated capped amounts which the Developer will offset from the total progressive monetary contribution		
Item A	Description	Offset
Contribution 1	Marsh Street/ Gertrude Street intersection enhancements	\$324,519.00
Contribution 2	Marsh Street / Flora Street intersection enhancements	\$300,122.00
Contribution 4	Additional southbound right-turn bay storage on Marsh Street at Gertrude Street intersection	\$113,156.00
Contribution 5	Southbound bus stop, including indented bus bay on Marsh Street	\$358,163.00

Execution

Executed as a deed.

Signed sealed and delivered by
Transport for NSW ABN 18 804 239 602
by its authorised delegate in the presence
of:



Signature of witness

DIPEN NATHWANI

Name of witness (print)

Electronic signature of me,

[insert full name]

affixed by me on

[insert date and time]

[strike through above if document is not executed electronically]

)
)



Signature of authorised delegate

GRAHAM RICHARDSON

Name of authorised delegate (print)

(A/CHIEF TRANSPORT MANAGER)

Electronic signature of me,

[insert full name]

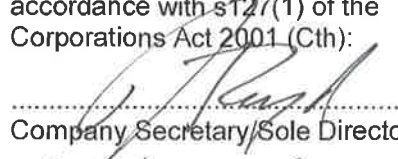
affixed by me on

[insert date and time]

This document was signed in counterpart and witnessed
over audio visual link in accordance with section 14G of the
Electronic Transactions Act 2000 (NSW)

[strike through above if document is not witnessed electronically]

**Signed sealed and delivered by Cook)
Cove Nominees No 1 Pty Ltd (ACN 672)
807 037) in its capacity as the trustee
of the Cook Cove Property Trust 1 in
accordance with s127(1) of the
Corporations Act 2001 (Cth):**


.....
Company Secretary/Sole Director

JOHN DAVID BOYD
.....
Name of Company Secretary/Sole
Director (print)

Electronic signature of me,

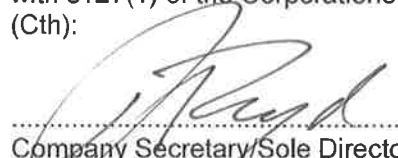
[insert full name]

affixed by me on

[insert date and time]

~~_____
[strike through above if document is not executed
electronically]~~

**Executed by Cook Cove Nominees No)
2 Pty Ltd (ACN 672 807 046) in its)
capacity as the trustee of the Cook
Cove Property Trust 2 in accordance
with s127(1) of the Corporations Act 2001
(Cth):**


.....
Company Secretary/Sole Director

JOHN DAVID BOYD
.....
Name of Company Secretary/Sole
Director (print)

Electronic signature of me,

[insert full name]

affixed by me on

[insert date and time]

~~_____
[strike through above if document is not executed electronically]~~

Annexure A

Novation Deed

Transport for NSW

Cook Cove Nominees No 1 Pty Ltd (ACN 672 807 037) in its capacity as the trustee of the Cook Cove Property Trust 1

Cook Cove Nominees No 2 Pty Ltd (ACN 672 807 046) in its capacity as the trustee of the Cook Cove Property Trust 2

[New Developer]

Novation Deed

For the Cooks Cove Voluntary Planning Agreement

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Date

Parties

Transport for NSW ABN 18 804 239 602 of 4 Parramatta Square, 12 Darcy Street,
Parramatta NSW 2150 (**TfNSW**)

and

Cook Cove Nominees No 1 Pty Ltd (ACN 672 807 037) in its capacity as the trustee
of the **Cook Cove Property Trust 1** of Legion House, Level 3, 161 Castlereagh Street
Sydney NSW 2000 (**Cook Cove 1**)

Cook Cove Nominees No 2 Pty Ltd (ACN 672 807 046) in its capacity as the trustee
of the **Cook Cove Property Trust 2** of Legion House, Level 3, 161 Castlereagh Street
Sydney NSW 2000 (**Cook Cove 2**)

and

[New Developer] ACN [insert] of [insert address] (**New Developer**)

Background

- A TfNSW, Cook Cove 1 and Cook Cove 2 are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land. Cook Cove 1 owns that part of the Developer Land comprising Lot 31 in DP1231486. Cook Cove 2 owns that part of the Developer Land comprising Lot 100 DP 1231954. The Council owns the Council Land.
 - C **[*[Cook Cove 1/ Cook Cove 2] proposes to transfer [the whole / part] of its interests in the Land to the New Developer and wishes to novate all of its rights and obligations under the Original Agreement to the New Developer [in respect of the Novated Rights and Obligations].]**
 - D **[*[Cook Cove 1/ Cook Cove 2] will be replaced by the New Developer as trustee of the Relevant Trust and wishes to novate all of its rights and obligations under the Original Agreement to the New Developer.]**
 - E **[Insert any other appropriate recitals.]**
-

Agreed terms

1 Interpretation

1.1 Definitions

In this deed, the following terms have the following meanings. Capitalised terms which are not defined in this deed have the meanings given to those terms in the Original Agreement:

Effective Date	[insert]
[Novated Rights and Obligations]	[Insert those rights and obligations under the Original Agreement which relate to the Land to be transferred to the New Developer]
Original Agreement	The <i>Voluntary Planning Agreement, Cooks Cove, 13, 15, 19 and 19A Marsh St, Arncliffe</i> , dated [insert] and made between TfNSW, Cook Cove 1 and Cook Cove 2.

1.2 Construction

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 issued 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, schedule or 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 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 each person jointly and severally;
- (l) including and includes are not words of limitation;
- (m) a word that is derived from a defined word has a corresponding meaning;
- (n) monetary amounts are expressed in Australian dollars;
- (o) the singular includes the plural and vice-versa;
- (p) words importing one gender include all other genders;
- (q) a reference to a thing includes each part of that thing; and
- (r) 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 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for [insert outgoing party] as a party to the Original Agreement [in so far as the Original Agreement relates to the Novated Rights and Obligations and the New Developer agrees to perform the Novated Rights and Obligations];
- (b) all references to [insert outgoing party] in the Original Agreement are to be construed as references to the New Developer [in so far as the Original Agreement relates to the Novated Rights and Obligations];
- (c) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of [insert outgoing party] [in so far as the Original Agreement relates to the Novated Rights and Obligations]; and
- (d) [insert outgoing party] is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement [in so far as it relates to the Novated Rights and Obligations], except in respect of any obligation, liability or claim that arose prior to the Effective Date.

2.2 Liability before Effective Date

Despite **clause 2.1**, [insert outgoing party] is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by [insert

outgoing party] occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) [insofar as the Original Agreement relates to the Novation Rights and Obligations].

2.3 Address for notices

TfNSW must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: ☒

Fax: ☒

Contact Person: ☒

Email: ☒

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 Warranties and representations

4.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed;
- (c) this deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this deed do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

4.2 Survival of warranties

The warranties and representations in **clause 4.1** survive the execution of this deed and the novation of the Original Agreement.

5 Limitation of liability

[If any party enters into this deed in its capacity as trustee of a trust, any applicable trustee warranties and/or limitation of liability clauses will need to be inserted.]

6 GST

6.1 Construction

In this **clause 6**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

6.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Act 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.

6.3 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this deed is exclusive of GST (**GST-exclusive consideration**). 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 **clause 6.4**.

6.4 Payment of GST

Notwithstanding **clause 6.2**, if GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this deed, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

6.5 Timing of GST payment

The amount referred to in **clause 6.4** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

6.6 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 6.4**.

6.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this deed, any amount that is payable under **clause 6.4** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

6.8 Reimbursements

- (a) Where a party is required under or in connection with this deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or to indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed, contributed to or indemnified by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 6.8** does not limit the application of **clause 6.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 6.8(a)**.

6.9 No merger

This **clause 6** does not merge on the completion, rescission or other termination of this deed or on the transfer of any property supplied under this deed.

7 General

7.1 Entire agreement

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.

7.2 Variation

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

7.3 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.

7.4 Further assurances

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

7.5 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 5.00pm on the specified day, it is taken to have been done on the following Business Day.

7.6 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.

7.7 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.

7.8 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.

7.9 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, will not merge on the occurrence of that event but will remain in full force and effect.

7.10 Counterparts

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

7.11 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.

7.12 Good faith

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

7.13 No fetter

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

7.14 Costs, expenses and stamp duty

- (a) The New Developer must pay its own and TfNSW's legal costs and disbursements in connection with the negotiation, preparation, execution, registration and administration of this deed.
- (b) The New 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).
- (c) The New Developer must pay TfNSW's costs pursuant to **clause 7.14(a)**:
 - (i) where TfNSW has provided the New Developer with written notice of the sum of such costs prior to execution of this deed, on the date of execution of this deed; or
 - (ii) where TfNSW has not provided the New Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by TfNSW for payment.

7.15 Electronic execution

The parties acknowledge and agree that:

- (a) a party may electronically sign a soft copy of this deed and by doing so will:
 - (i) bind itself to this deed; and

- (ii) satisfy any statutory or other requirements for this deed to be in writing and signed by that party as a deed; and
- (b) a soft copy of this deed signed by that party will constitute an executed original counterpart and if that document is printed with that party's electronic signature appearing that print-out will also constitute an executed original counterpart.

Execution

Executed as a deed.

Signed sealed and delivered by
Transport for NSW ABN 18 804 239 602
by its authorised delegate in the presence
of:

)
)

.....
Signature of witness

.....
Signature of authorised delegate

.....
Name of witness (print)

.....
Name of authorised delegate (print)

Electronic signature of me,

Electronic signature of me,

[insert full name]

[insert full name]

affixed by me on

affixed by me on

[insert date and time]

[insert date and time]

[strike through above if document is not executed
electronically]

This document was signed in counterpart and witnessed
over audio visual link in accordance with section 14G of the
Electronic Transactions Act 2000 (NSW)
[strike through above if document is not witnessed
electronically]

**Signed sealed and delivered by Cook)
Cove Nominees No 1 Pty Ltd (ACN 672)
807 037) in its capacity as the trustee
of the Cook Cove Property Trust 1 in
accordance with s127(1) of the
Corporations Act 2001 (Cth)::**

.....
Company Secretary/Sole Director

.....
Name of Company Secretary/Sole
Director (print)

Electronic signature of me,

[insert full name]

affixed by me on

[insert date and time]

[strike through above if document is not executed electronically]

**Executed by Cook Cove Nominees No)
2 Pty Ltd (ACN 672 807 046) in its)
capacity as the trustee of the Cook
Cove Property Trust 2 in accordance
with s127(1) of the Corporations Act 2001
(Cth):**

.....
Company Secretary/Sole Director

.....
Name of Company Secretary/Sole
Director (print)

Electronic signature of me,

[insert full name]

affixed by me on

[insert date and time]

[strike through above if document is not executed electronically]

[Insert execution block for New Developer]

Annexure B

Works Plan

