



Rozelle Interchange and Western Harbour Tunnel Enabling Works Design and Construction Deed

Amendment and Restatement Deed

Transport for NSW

ABN 18 804 239 602

and

CPB Contractors Pty Limited

ABN 98 000 893 667

and

John Holland Pty Ltd

ABN 11 004 282 268

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THIS DEED is made on

18 January

2022

BETWEEN:

- (1) **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) and located at 20-44 Ennis Road, Milsons Point NSW 2061 (**Principal**); and
- (2) **CPB Contractors Pty Limited** (ABN 98 000 893 667) of Level 18, 177 Pacific Highway, North Sydney NSW 2060; and
John Holland Pty Ltd (ABN 11 004 282 268) of Level 5, 380 St Kilda Road Melbourne VIC 3004,
(together, the **Contractor**).

RECITALS:

- (A) The Principal and the Contractor entered into the RI D&C Deed for the design, construction and completion of the Rozelle Interchange and Western Harbour Tunnel enabling works.
- (B) The parties wish to amend and restate the RI D&C Deed in the manner set out in this deed.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this deed:

Condition Precedent means a condition precedent set out in Schedule 1 (*Conditions Precedent*).

Conditions Precedent Satisfaction Date means [REDACTED]

Effective Date has the meaning given in clause 4.1.

Revised RI D&C Deed means the RI D&C Deed, as amended by this deed.

RI D&C Deed means the deed entitled "Rozelle Interchange and Western Harbour Tunnel Enabling Works Design and Construction Deed" between the Principal and the Contractor dated 14 December 2018, but without the amendments effected by this deed.

SWTC means Exhibit I of the RI D&C Deed.

1.2 **Terms defined in the Revised RI D&C Deed**

A term (other than a term defined in clause 1.1) that is defined in the Revised RI D&C Deed has the same meaning in this deed.

1.3 **Rules for interpreting this deed**

Clause 1.2 of the Revised RI D&C Deed will apply to the interpretation of this deed as if set out in full in this deed.

1.4 **Non Business Days**

If the day on or by which a person must do something under this deed is not a Business Day:

- (a) if the act involves a payment, other than a payment which is due on demand, the person must do it on the preceding Business Day; and
- (b) in all other cases, no later than the next Business Day.

1.5 **Multiple parties**

If a party to this deed is made up of more than one person, or a term is used in this deed to refer to more than one party, then unless otherwise specified in this deed:

- (a) an obligation of those persons is joint and several; and
- (b) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

1.6 **Requirement on a person not a party to this deed**

If a provision of this deed requires a person that is not a party to this deed to do, or not to do, a thing, each party must use its reasonable endeavours to ensure that the person does, or does not, do that thing.

2. **CONSIDERATION**

Each party acknowledges that it has received valuable consideration for entering into this deed.

3. **AMENDMENT AND RESTATEMENT**

3.1 **Amendment and restatement of RI D&C Deed**

(a) The RI D&C Deed is amended and restated with effect on and from the Effective Date as follows:

(i) subject to clauses 3.1(a)(ii) and 3.1(a)(iii), the RI D&C Deed (other than Exhibit I (*SWTC*), to which clause 3.1(a)(ii) applies, and any document which was included on a CD or hard drive) is amended to read as set out in Schedule 3 (*Restated form of RI D&C Deed*) to this deed;

(ii) the *SWTC* is amended by:

(A) the *SWTC* existing prior to the date of this deed being renamed as "Part A - *SWTC* (Rozelle Interchange)" but is otherwise retained in the form existing prior to the date of this deed and is deemed to be restated in full, subject only to the clarifications and interpretations set out in Schedule 2 (*SWTC Departures*) to this deed; and

(B) including a new "Part B - *SWTC* (WHT Southern Tunnel Works)", which is included at Part B of Exhibit I as set out in Schedule 3 (*Restated form of RI D&C Deed*) to this deed; and

any document which was included on a CD or hard drive in the RI D&C Deed is not being restated.

3.2 **Effect of amendment**

- (a) This deed is intended only to vary the RI D&C Deed and not terminate, discharge, rescind or replace it.
- (b) The Principal and the Contractor agree that, except as expressly amended by this deed:
 - (i) no changes to the RI D&C Deed are to be inferred or implied;
 - (ii) the amendments to the RI D&C Deed do not affect the validity or enforceability of the RI D&C Deed; and
 - (iii) in all other respects, the RI D&C Deed is confirmed and remains in full force and effect.
- (c) With effect on and from the Effective Date:
 - (i) each party is bound by the Revised RI D&C Deed; and
 - (ii) references in the D&C Documents to:
 - (A) the RI D&C Deed will be read and construed as references to the Revised RI D&C Deed; and
 - (B) a "D&C Document" or the "D&C Documents" will be read and construed as having the meaning given to those terms in the Revised RI D&C Deed.
- (d) Nothing in this deed:
 - (i) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the RI D&C Deed or any D&C Document; or
 - (ii) discharges, releases or otherwise affects any liability or obligation arising under the RI D&C Deed or any other D&C Document before the Effective Date.
- (e) This deed is supplemental to the RI D&C Deed and, except as expressly provided to the contrary, the RI D&C Deed is expressly ratified and confirmed.

4. **CONDITIONS PRECEDENT**

4.1 **Effective Date**

The Effective Date is the date on which the Principal notifies the Contractor in writing under clause 4.3(d) that all of the Conditions Precedent have been satisfied or unconditionally waived.

4.2 **Obligation to satisfy Conditions Precedent**

- (a) The Principal must use reasonable endeavours to satisfy each Condition Precedent that is expressed to be included for the benefit of the Contractor (or the Contractor and the Principal) on or before the Conditions Precedent Satisfaction Date.
- (b) The Contractor must use reasonable endeavours to satisfy each Condition Precedent that is expressed to be included for the benefit of the Principal (or the Principal and the Contractor) on or before the Conditions Precedent Satisfaction Date.

4.3 **Satisfaction of Conditions Precedent**

- (a) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.
- (b) The party receiving a notice given under clause 4.3 will notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (c) If the party receiving a notice given under clause 4.3(a) fails to give the other party a notice under clause 4.3(b) within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.
- (d) The Principal's Representative will notify the Contractor promptly of the date on which the Principal's Representative is satisfied that all Conditions Precedent have been satisfied or unconditionally waived.

4.4 **Waiver of Condition Precedent**

A Condition Precedent is waived if, and only if:

- (a) where the Condition Precedent is included for the benefit of a particular party, that party gives notice in writing of the waiver of the Condition Precedent to the other party; and
- (b) where the Condition Precedent is included for the benefit of both parties, both parties agree in writing to waive the Condition Precedent.

4.5 **Result of non-satisfaction of Conditions Precedent**

- (a) If the Conditions Precedent are not satisfied or unconditionally waived under clause 4.4 by 11:59pm on the Conditions Precedent Satisfaction Date, then either party may give the other party five (5) Business Days' prior written notice of its intention to terminate this deed.
- (b) This deed will terminate upon the expiry of the period of notice referred to in clause 4.5(a) if the Conditions Precedent are not satisfied (or unconditionally waived under clause 4.4) within that period.
- (c) If this deed is terminated in accordance with clause 4.5(a):
 - (i) the Principal must return any Security Bonds provided by the Contractor to the Principal pursuant to Schedule 1 (*Conditions Precedent*) within five (5) Business Days after the date of termination of this deed; and
 - (ii) all rights and obligations under this deed, other than:
 - (A) this clause 4 and clauses 1 (*Interpretation*), 5 (*Confidentiality and Permitted Disclosures*), 6 (*Representations and Warranties*), 7 (*Notices*) and 8 (*General*);
 - (B) any clause which is expressed to survive termination of this deed; and
 - (C) rights that accrue before termination,terminate and have no further effect.

5. **CONFIDENTIALITY AND PERMITTED DISCLOSURE**

The parties acknowledge and agree that clause 30 of the RI D&C Deed applies to this deed as if set out in full in this deed.

6. **REPRESENTATIONS AND WARRANTIES**

6.1 **Representations and warranties of the Contractor**

Each member of the Contractor, on the date of this deed and on the Effective Date, represents and warrants to the Principal that:

- (a) **(authorisations)** it has in full force and effect all authorisations necessary to enter into and perform its obligations under this deed;
- (b) **(power)** it has power to enter into and perform its obligations under this deed, to carry out the transaction which this deed contemplates will be carried out by it and to carry on its business, and the entry into this deed is a proper exercise of power;
- (c) **(deed effective)** its obligations under this deed are valid and binding and are enforceable against it in accordance with its terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditor's rights; and
- (d) **(no contravention)** the execution, delivery and performance of this deed and the transaction under it does not:
 - (i) violate its constituent documents or any law, regulation, treaty, judgment, ruling, order or decree of any court or official directive which is binding on it;
 - (ii) violate any other document or agreement to which it is a party or which is binding on it or any of its assets; or
 - (iii) cause a limitation on its powers or the powers of its directors or other officers to be exceeded.

6.2 **Representations and warranties of the Principal**

The Principal represents and warrants that:

- (a) **(status)** it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) **(authorisations)** it has in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this deed;
- (c) **(power)** it is legally entitled and has all statutory powers to enter into and perform its obligations under this deed, to carry out the transactions contemplated by this deed, and the entry into this deed is a proper exercise of power;
- (d) **(deed effective)** its obligations under this deed are valid and binding and are enforceable against it in accordance with its terms subject to the availability of

equitable remedies and, to the extent applicable, laws relating to the enforcement of creditor's rights; and

- (e) **(no contravention)** the execution, delivery and performance of this deed and the transactions under it do not violate any law to which the Principal is subject.

6.3 **Reliance on representations and warranties**

The Contractor and the Principal acknowledge that the other party has executed this deed and agreed to take part in the transactions that it contemplates in reliance of the representations and warranties that are made in this clause 6.

7. **NOTICES**

7.1 **How to give a notice**

A notice or consent under this deed (**Notice**) is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given;
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) subject to clause 7.1(d), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address; and
- (d) in the case of Notices sent in accordance with clause 7.1(c)(ii), in addition to the Notice sent pursuant to clause 7.1(c)(ii), a copy of the Notice must also be printed and delivered or posted to the person's address in accordance with clause 7.1(c)(i).

7.2 **Effectiveness of notices**

- (a) A Notice referred to in clause 7.1(d) will not be effective unless it is also delivered in accordance with clause 7.1(c)(i).
- (b) A Notice issued pursuant to clause 7.1(c)(ii) and a Notice issued pursuant to clause 7.1(c)(i) must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.

7.3 **When a notice is given**

A Notice that complies with this clause 7 is conclusively regarded as given and received:

- (a) if it is delivered:
 - (i) by 5:00pm (local time in the place of receipt) on a Business Day – on that day; or
 - (ii) after 5:00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day;
- (b) if it is sent by mail:
 - (i) within Australia – 2 Business Days after posting; or
 - (ii) to or from a place outside Australia – 5 Business Days after posting;

- (c) subject to clause 7.3(d), if it is sent by email:
 - (i) by 5:00pm (local time in the place of receipt) on a Business Day – at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; or
 - (ii) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day – on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; and
- (d) where clause 7.1(c)(ii) applies, the relevant Notice will be taken to have been received on the later of:
 - (i) the date determined in accordance with clause 7.3(c); and
 - (ii) the date determined in accordance with clause 7.3(a) or 7.3(b) (as the case may be).

7.4 **Address for notices**

A person's address and email address are those set out below, or as the person notifies the sender:

Principal

Address:

Email address:
Attention:

Contractor

Address:

Email address:
Attention:

7.5 **Communications by email**

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 7.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 7. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email referred to in clause 7.1(c)(ii) will only form part of a communication under this clause 7 if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and

- (c) the parties agree, with respect to any communications under or in connection with this deed:
 - (i) to ensure that their respective firewall and/or mail server (as applicable):
 - (A) allows messages up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received; and
 - (B) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

8. GENERAL

8.1 Governing law

- (a) This deed and any dispute arise out of or in connection with the subject matter of this deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them, in respect of any proceedings arising out of or in connection with this deed.

8.2 Liability for expenses

Each party must bear its own costs, including professional costs and disbursements, associated with the preparation and execution of this deed and any subsequent consent, agreement, approval or waiver hereunder or amendment thereto.

8.3 Stamp duties

As between the parties, the Contractor must pay all stamp, registration and similar taxes includes fines and penalties payable to or required to be paid by any appropriate Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this deed or any payment receipt or other transaction contemplated by this deed.

8.4 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

8.5 Operation of this deed

- (a) Subject to clause 8.5(b), this deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.

- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

8.6 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this deed is excluded to the full extent permitted by law.

8.7 Amendment

This deed can only be amended or replaced by another deed executed by or on behalf of both the Principal and the Contractor.

8.8 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

EXECUTED as a deed.

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

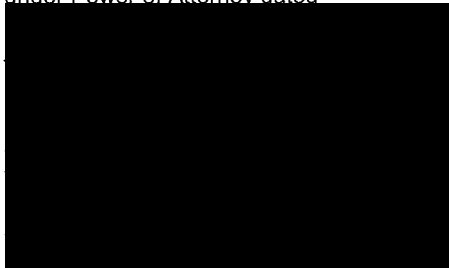
SIGNED, SEALED AND DELIVERED by
TRANSPORT FOR NSW ABN 18 804 239
602, by its authorised delegate, in the
presence of:



Signed sealed and delivered for
CPB Contractors Pty Limited
under Power of Attorney dated

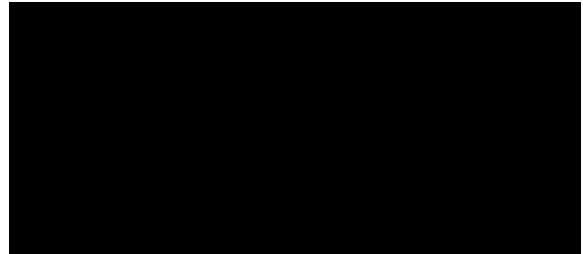
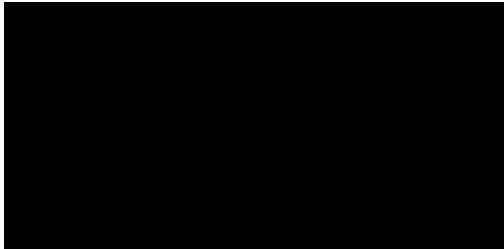
sign here ▶

print name



sign here ▶

print name



Signed sealed and delivered for
John Holland Pty Ltd
under Power of Attorney dated

sign here ▶

print name



sign here ▶

print name

in the presence of

