

ROADS AND MARITIME SERVICES

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Terminals Operations Trust

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Warehouse Trust

Planning Agreement

Section 7.4 of the Environmental Planning and Assessment Act 1979 (NSW)

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Date

Parties

Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation constituted under section 46 of the *Transport Administration Act 1988* (NSW) of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**RMS**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Terminal Assets Co**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Operations Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Terminal Operations Co**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Warehouse Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Warehouse Development Co**)

Background

- A The Developer is the proponent of the Development on the Land.
- B The Development comprises the Moorebank Intermodal Precinct East Development and the Moorebank Intermodal Precinct West Development.
- C The Developer has been granted the following planning approvals for the Development:
 - (i) Moorebank Intermodal Precinct East – Concept Plan Approval;
 - (ii) Moorebank Intermodal Precinct East – Stage 1 Approval;
 - (iii) Moorebank Intermodal Precinct East – Stage 2 Approval; and
 - (iv) Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.
- D The Developer has lodged the following Planning Applications for the Moorebank Intermodal Precinct West Development:
 - (i) the Moorebank Intermodal Precinct West – Stage 2 Application for the Moorebank Intermodal Precinct West - Stage 2 Development; and
 - (ii) An application to modify the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval, known as SSD 5066 Mod 1.
- E The Moorebank Intermodal Precinct West Development is subject to clause 7.36 of the Liverpool LEP.
- F Clause 7.36 of the Liverpool LEP provides that Development Consent must not be granted to certain development on the Moorebank Intermodal Precinct West Land unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of Relevant State Public Infrastructure in relation to that land.

- G The Developer has offered to enter into this deed to provide Development Contributions to satisfy the Relevant State Public Infrastructure needs that will arise from the Moorebank Precinct West Development – Stage 2 Development to enable a Satisfactory Arrangements Certificate to be issued for the Moorebank Intermodal Precinct West Development – Stage 2 Application.
- H The parties agree that the Development Contributions offered by the Developer under this deed are also being provided to address the regional road infrastructure needs arising from the Moorebank Intermodal Precinct West Development as a whole.

Operative provisions

1 Definitions

1.1 Definitions

In this deed, including in the recitals, these terms have the following meanings:

Approval any approvals, Development Consents, certificates granted or issued under Part 4, Division 4.5 or Part 6 of the Planning Act, determinations under Part 5, Division 5.1 of the Planning Act, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law.

Approved Security has the meaning given to that term in a WAD.

Authority in respect of a particular context or circumstance, means each federal, state or local government, semi-government, quasi-government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

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 RMS, in RMS' absolute discretion,

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

Business Day	a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Complying Development Certificate	has the meaning given to that term in the Planning Act.
Construction Certificate	has the meaning given to that term in the Planning Act.
Dealing	means selling, transferring or subdividing land or an interest in land. For the avoidance of doubt, Dealing does not include the grant of a lease of any tenure.
Dedicate	means to dedicate land as a public road (but not a temporary public road) in accordance with the <i>Roads Act 1993</i> (NSW) and Dedicated and Dedication have the same meaning.
Developer	Terminal Assets Co, Terminal Operations Co and Warehouse Development Co, whose obligations are joint and several.
Development	the: <ul style="list-style-type: none"> a) Moorebank Intermodal Precinct East Development; and b) Moorebank Intermodal Precinct West Development, in the form and scale approved as at the date of this deed pursuant to the Moorebank Intermodal Precinct East – Concept Plan and the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.
Development Consent	has the same meaning as in the Planning Act.
Development Contributions	the contributions to be provided by the Developer in accordance with clause 4 and Schedule 3 .
Due Date	the date(s) on which the Development Contributions must be provided as specified in Column 2 or Column 4 of the Table in clause 1 of Schedule 3 .
Explanatory Note	the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Planning Act, as required by the Planning Regulation.
Land	the: <ul style="list-style-type: none"> a) Moorebank Intermodal Precinct East Land; and b) Moorebank Intermodal Precinct West 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.
Liverpool LEP	the <i>Liverpool Local Environmental Plan 2008</i> (NSW).
Monetary Contribution	the payment of monies in the amount(s) specified in Item 1 of the Table in clause 1 of Schedule 3 .
Moorebank Avenue South Upgrade	means the upgrade of Moorebank Avenue: <ul style="list-style-type: none"> a) from the IMEX Terminal Main access point (as referred to in Condition B13 of the Moorebank Intermodal Precinct East – Stage 2 Approval) to the southern boundary of Lot 1 DP 1048263, so that Moorebank Avenue in this location comprises: <ul style="list-style-type: none"> i) four (4) through lanes with the lanes generally being 3.5 metre wide central travel lanes; ii) any required intersections, including turning lanes at intersections; iii) 4.2 metre wide kerbside travel lanes; iv) a 3.5 metre verge along the northbound and south bound carriageways; and b) associated tie in works to the four (4) through lanes to approximately 120 metres south of the southern boundary of Lot 1 DP 1048263.
Moorebank Avenue South Upgrade Land	means: <ul style="list-style-type: none"> a) a 21 metre wide corridor for the length of the Moorebank Avenue South Upgrade, unless RMS agrees in its absolute discretion to a reduced corridor width as part of any RMS approval of the Moorebank Avenue South Upgrade final design pursuant to a WAD; and b) any additional land required by RMS acting reasonably following practical completion of the Moorebank Avenue South Upgrade.
Moorebank Avenue Realignment	the realignment of Moorebank Avenue, in the general location depicted in the plan at Annexure B , including the following, unless otherwise agreed or required by RMS in writing in its absolute discretion: <ul style="list-style-type: none"> a) four (4) through lanes: <ul style="list-style-type: none"> i) from where the realignment connects with existing Moorebank Avenue (Lot 2 in DP 1197707) in the location of the Defence Joint

Logistics Unit site (Lot 3 in DP 1197707) and Lot 1 in DP 1048263 including any associated tie in works; and

- ii) along the northern and eastern boundaries of Lot 1 in DP 1048263 and to the south eastern boundary of that land,

with the lanes generally being 3.5 metre wide central travel lanes;

- b) two (2) through lanes from the south eastern boundary of Lot 1 in DP 1048263 to the southern boundary of existing Moorebank Avenue (Lot 2 in DP 1197707) at the East Hills Rail line, including any associated tie in works to Moorebank Avenue (Lot 2 DP 1197707) in that location, and with the lanes generally being 3.5 metre wide central travel lanes;
- c) any required intersections, including any required traffic lights and turning lanes at intersections;
- d) 4.2 metre wide kerbside travel lanes;
- e) a 3.5 metre verge along the northbound and south bound carriageways; and
- f) any road work or road related infrastructure required beyond the 3.5 metre verge.

**Moorebank Avenue
Realignment Land**

means:

- a) a 21 metre wide corridor for the length of the land comprising the Moorebank Avenue Realignment, unless RMS agrees in its absolute discretion to a reduced corridor width as part of any RMS approval of the Moorebank Avenue Realignment final design pursuant to a WAD;
- b) any additional land required by RMS at any intersections; and
- c) any additional land required by RMS acting reasonably following practical completion of the Moorebank Avenue Realignment.

**Moorebank
Intermodal Precinct
East Development**

the development and use of the Moorebank Intermodal Precinct East Land as an intermodal facility, including a rail link to the Southern Sydney Freight Line, warehouse and distribution facilities, freight village, stormwater, landscaping, servicing and associated works consistent with the Moorebank Intermodal Precinct East – Concept Plan Approval, and as approved in the Moorebank Intermodal Precinct East – Stage 1 Approval and the Moorebank Intermodal Precinct East – Stage 2 Approval.

Moorebank Intermodal Precinct East Land	the land identified in Table 1 at Schedule 2.
Moorebank Intermodal Precinct East – Concept Plan Approval	the Part 3A concept plan approval (MP10_0193) for the Moorebank Intermodal Precinct East Development concept plan approved by the Minister for Planning on or about 29 September 2014, in the form and scale approved as at the date of this deed.
Moorebank Intermodal Precinct East – Stage 1 Approval	the State significant development consent (SSD 6766) for Stage 1 of the Moorebank Intermodal Precinct East Development approved by the Minister for Planning on or about 12 December 2016, as modified from time to time, consistent with the Moorebank Intermodal Precinct East – Concept Plan Approval.
Moorebank Intermodal Precinct East – Stage 2 Approval	the State significant development application (SSD 16_7628) for Stage 2 of the Moorebank Intermodal Precinct East Development approved by the Minister for Planning on or about 31 January 2018, as modified from time to time, consistent with the Moorebank Intermodal Precinct East – Concept Plan Approval.
Moorebank Intermodal Precinct West Development	the development and use of the Moorebank Intermodal Precinct West Land as an intermodal facility, including a rail link to the Southern Sydney Freight Line, warehouse and distribution facilities and associated works, consistent with the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.
Moorebank Intermodal Precinct West Land	the land identified in Table 2 at Schedule 2.
Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval	the State significant development consent (SSD 5066) concept proposal and Stage 1 (early works) for the Moorebank Intermodal Precinct West Development approved by the Minister for Planning on or about 3 June 2016, in the form and scale approved as at the date of this deed.
Moorebank Intermodal Precinct West - Stage 2 Application	the State significant development application (SSD 16_7709) lodged by the Developer with the Minister for Planning on or about 16 June 2016, as amended by the Response to Submissions report lodged by the Developer with the Minister for Planning in or about July 2017, seeking approval to undertake Stage 2 of the Moorebank Intermodal Precinct West Development, consistent with the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.

Moorebank Intermodal Precinct West - Stage 2 Development	the development the subject of the Moorebank Intermodal Precinct West – Stage 2 Application, as approved, and as modified from time to time, consistent with the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.
Novation Deed	the deed at Annexure A .
NSW LRS	NSW Land Registry Services or any other Authority replacing it.
Party	a party to this deed, including their successors and assigns.
Planning Act	the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Planning Application	<p>a) a development application; or</p> <p>b) a modification application to a Development Consent,</p> <p>made under the Planning Act.</p>
Planning Regulation	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Register	the Torrens title register maintained under the <i>Real Property Act 1990</i> (NSW).
Registration Land	means that part of Moorebank Avenue, Moorebank, comprised in Lot 2 in DP 1197707.
Relevant State Public Infrastructure	has the meaning given to that term in clause 7.36 of the Liverpool LEP.
Satisfactory Arrangements Certificate	in respect of any land means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of relevant State public infrastructure in accordance with clause 7.36 of the Liverpool LEP.
Security	means a Bank Guarantee.
Secretary	the Secretary of the Department of Planning and Environment.
Subdivision Certificate	has the meaning given to that term in the Planning Act.
Subdivision Works Certificate	has the meaning given to that term in the Planning Act.

Trigger Event

means any of the following events:

- a) the issue of a Construction Certificate for any part of the Moorebank Intermodal Precinct West - Stage 2 Development;
- b) the issue of a Subdivision Certificate for any part of the Moorebank Intermodal Precinct West - Stage 2 Development;
- c) the issue of a Subdivision Works Certificate for any part of the Moorebank Intermodal Precinct West - Stage 2 Development; or
- d) if any part of the Moorebank Intermodal Precinct West - Stage 2 Development may be carried out without the need for a Construction Certificate, Subdivision Certificate or Subdivision Works Certificate:
 - i) commencement of that part of the Moorebank Intermodal Precinct West - Stage 2 Development; or
 - ii) the issue of a Complying Development Certificate in respect of that part of the Moorebank Intermodal Precinct West - Stage 2 Development.

WAD

a Works Authorisation Deed or other infrastructure delivery agreement entered into by RMS and the Developer regarding the design, construction, completion and Dedication of road works by the Developer.

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** and **annexures** form part of this deed;

- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 Operation and Application of this deed

2.1 Operation

This deed will operate only if:

- (a) it is signed by the Parties; and
- (b) Development Consent is granted for the Moorebank Intermodal Precinct West - Stage 2 Application.

2.2 Planning agreement under the Planning Act

This deed is a Planning Agreement governed by Part 7, Division 7.1, Subdivision 2 of the Planning Act.

2.3 Application

This deed applies to the:

- (a) Moorebank Intermodal Precinct West - Stage 2 Development; and
- (b) Moorebank Intermodal Precinct West Development as a whole.

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

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

4 Development Contributions

4.1 Provision of Development Contributions

Subject to **clause 4.2**, the Developer must provide, or must procure the provision of, the Development Contributions in accordance with **Schedule 3**.

4.2 Obligation to provide Development Contributions

The Developer's obligations to provide or procure the provision of the Development Contributions in accordance with this **clause 4** and **Schedule 3** of this deed will arise in relation to:

- (a) the Monetary Contribution, on the earlier of:
 - (i) three (3) months after the date that Development Consent is granted for the Moorebank Intermodal Precinct West - Stage 2 Application, unless the Development Consent is surrendered in accordance with the Planning Act prior to that time; or
 - (ii) prior to a Trigger Event occurring; and
- (b) the Moorebank Avenue Realignment or the Moorebank Avenue South Upgrade (as applicable), upon the operation of this deed in accordance with **clause 2.1**, unless the Development Consent is subsequently surrendered in accordance with the Planning Act within three (3) months after the date that Development Consent is granted for the Moorebank Intermodal Precinct West - Stage 2 Application.

Nothing in this **clause 4.2** otherwise affects the Developer's obligations under this deed, including its obligations under **clauses 6** and **8** and **Schedule 4**.

4.3 Notice of Surrender

If the Developer seeks to surrender the Development Consent granted for the Moorebank Intermodal Precinct West - Stage 2 Application in accordance with the Planning Act for the purpose of **clause 4.2**, it must:

- (a) provide RMS with a copy of any notice of surrender prepared in accordance with the Planning Regulation at the same time as any notice is given to the consent authority; and
- (b) immediately provide RMS with a copy of any response(s) or notification(s) received from the consent authority in relation to any notice of surrender.

4.4 Restriction on issue of certificates

The parties agree that the requirement to provide the Monetary Contribution in accordance with **clause 4.2(a)** is a restriction on the issue of:

- (a) a Construction Certificate within the meaning of section 6.8 of the Planning Act and clause 146A of the Planning Regulation; and
- (b) a Subdivision Certificate within the meaning of section 6.15(1)(d) of the Planning Act.

4.5 Acknowledgment

The Developer acknowledges and agrees that RMS:

- (a) has no obligation to use or expend a Development Contribution for a particular purpose;
- (b) has no obligation to repay or provide any compensation or payment for a Development Contribution, except as provided for in this deed; or
- (c) has not made any representation or warranty that, if any part of a Development Contribution is transferred or provided to another Authority, the Development Contribution will or must be used for any particular purpose by it or any other Authority.

5 Interest for late provision of Monetary Contribution

- (a) If the Developer is required to pay a Monetary Contribution under this deed and fails to do so on the Due Date for provision of that Monetary Contribution, the Developer must also pay to RMS interest on the overdue amount at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (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 RMS.

6 Registration of this deed

6.1 Registration of deed

Within 10 Business Days of this deed becoming operative in accordance with **clause 2.1**, the Developer must, at its expense, take all practical steps and otherwise do anything necessary to procure:

- (a) the consent of each person required by the Registrar-General who:
 - (i) has an estate or interest in the Registration Land registered under the *Real Property Act 1990* (NSW); or
 - (ii) is seized or possessed of an estate or interest in the Registration Land,to the registration of this deed on the title of the Registration Land and to the terms of this deed;
- (b) the execution of any documents required to enable registration of this deed on the title of the Registration Land;
- (c) the production of the certificates of title for the Registration Land; and
- (d) the lodgement and registration of this deed by the Registrar-General in the relevant folios of the Register for the Registration Land.

6.2 Evidence of registration

The Developer must provide RMS with:

- (a) evidence of the lodgement of this deed pursuant to **clause 6.1(d)** within 10 Business Days of such lodgement at the NSW LRS; and

- (b) a copy of the relevant folios of the Register and a copy of all registered dealings for the Registration Land within 10 Business Days of registration of this deed.

6.3 Release and discharge of deed

- (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.
- (b) Following the Developer's satisfaction of its obligations under this Deed, RMS will do all things reasonably required by the Developer to have the Registrar-General remove this deed from the relevant folio(s) of the Register.

7 Dispute Resolution

7.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with this **clause 7**.

7.2 Written notice of dispute

A Party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other Party specifying the nature of the dispute and requiring the dispute be addressed in accordance with this **clause 7**.

7.3 Attempt to resolve

On receipt of a notice under **clause 7.2**, the Parties 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.

7.4 Mediation

If the Parties do not agree within 21 Business Days of receipt of a notice under **clause 7.2** (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 7.5**, the Parties must mediate the dispute in accordance with the Law Society of NSW's Mediation Program. The Parties 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.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under **clause 7.2** (or any other period agreed in writing by the Parties) then any Party which has complied with the provisions of this **clause 7** may, by written notice to the other Parties, terminate any dispute resolution process undertaken under this clause and any Party may then commence court proceedings in relation to the dispute.

7.6 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 7** 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 7** for any purpose other than in an attempt to resolve the dispute.

7.7 No prejudice

This **clause 7** 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.

7.8 Continued performance of obligations

Despite the existence of a dispute under this **clause 7**, 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.

8 Enforcement

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

- (a) registering this deed on the title of the Registration Land in accordance with **clause 6**; and
- (b) providing the Security in accordance with **Schedule 4**.

9 Notices

9.1 Delivery

Any notice that must be given or made to a Party under this deed is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Emailed to that Party at its email address set out below.

Developer

Attention: The Company Secretary
Address: Level 27, 45 Clarence Street, Sydney, NSW
2000
Email: Adam.Jacobs@qube.com.au

RMS

Attention: Rachel Cumming, Senior Manager Land Use
Assessment
Address: Level 5/27 Argyle Street Parramatta NSW
2150
Email: rachel.cumming@rms.nsw.gov.au

9.2 Change of details

If a Party gives the another Party 3 Business Days' notice of a change of its address or email address, any notice is only given or made by that other Party if it is delivered, posted or emailed to the latest address.

9.3 Giving of notice

Subject to **clause 9.4**, any notice is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, five Business Days after it is posted.
- (c) If it is sent by email, on the date that the sending Party's email system records indicate the email was sent, unless:
 - (i) the sender receives a delivery failure notification; or
 - (ii) the intended recipient(s) is able to provide information which indicates that the email was not received by the email system of the intended recipient(s).

9.4 Delivery outside of business hours

If any notice is delivered or emailed on a day that is not a Business Day or, if on a Business Day, after 5.00pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

10 Assignment and Novation

10.1 Assignment by Developer

- (a) The Developer must not assign any right or benefit under this Agreement without the prior written consent of the other Parties. RMS must not unreasonably withhold or delay its written consent and must respond within 15 Business Days.
- (b) Any purported dealing in breach of this **clause 10.1** is of no effect.

10.2 Novation by Developer

Prior to a proposed novation of its obligations under this deed, the Developer must seek the written consent of RMS and:

- (a) satisfy RMS, acting reasonably, that the person to whom the Developer's obligations are to be novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
- (b) satisfy RMS of any other reasonable requirements relating to the Incoming Party;
- (c) satisfy RMS, acting reasonably, that the Developer is not in material breach of its obligations under this deed;
- (d) procure the execution of the Novation Deed with RMS, the Developer and the Incoming Party in a form reasonably acceptable to the Parties; and

- (e) the Developer and the Incoming Party must pay all costs reasonably incurred by RMS in relation to the Novation Deed, including legal costs and disbursements.

10.3 Assignment by RMS

RMS 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 Developer.

10.4 Dealings with the Registration Land

The Developer must not enter into any Dealing with a third party (**Transferee**) relating to the Developer's interests in the Registration Land unless before the Dealing is entered into with the Transferee:

- (a) the Developer satisfies RMS (acting reasonably) that the proposed Transferee is financially capable of complying with those of the Developer's obligations under this deed which RMS (acting reasonably) specifies, by written notice to the Developer, must be adopted by the Transferee (**Required Obligations**);
- (b) the Transferee enters into a deed in favour of RMS substantially in the form of the Novation Deed, under which the Transferee agrees to comply with the Required Obligations as if the Transferee were the Developer;
- (c) any default by the Developer in relation to the Registration Land the subject of the proposed Dealing has been remedied by the Developer, unless that default has been waived expressly by RMS in writing; and
- (d) the Developer and the Transferee pay all costs reasonably incurred by RMS in relation to that Dealing, including legal costs and disbursements.

11 Representations and warranties

The Parties represent and warrant that they have power to enter into this deed and comply with their obligations under this deed and that entry into this deed will not result in the breach of any Law.

12 GST

12.1 Construction

In this clause 12:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) 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; and
- (c) 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.

12.2 Intention of the parties

- (a) The parties intend that divisions 81 and 82 of the GST Law 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.

12.3 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 document is exclusive of GST (**GST-exclusive consideration**).

12.4 Payment of GST

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 document, 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.

12.5 Timing of GST payment

The amount referred to in **clause 12.4** 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.

12.6 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 12.4**.

12.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 12.4** 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.

12.8 Reimbursements

- (a) Where a Party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another Party or indemnify another Party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed 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 12.8** does not limit the application of **clause 12.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 12.8(a)**.

12.9 No merger

This **clause 12** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

13 Trustee Limitation of Liability

- (a) This clause applies to each Party that enters into this deed only in its capacity as trustee (**Trustee**) of a trust (**Trust**) and in no other capacity.
- (b) A liability arising under or in connection with this deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of Trust out of which the Trustee is actually indemnified for the liability. This limitation of the 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.
- (c) The parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of Trust, including seeking the appointment of a receiver (except in relation to property of 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 Trust).
- (d) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of Trust, as a result of the Trustee's fraud, negligence or breach of trust.

14 Termination

- (a) If the Developer's obligations to provide or procure the provision of the Development Contributions do not arise in accordance with **clause 4.2** of this deed because the Development Consent for the Moorebank Intermodal Precinct West – Stage 2 Application is surrendered in accordance with the Planning Act within three (3) months after the date that the Development Consent is granted, then:
 - (i) RMS may terminate this deed by written notice to the Developer following notification by the consent authority in accordance with the Planning Regulation that the proposed surrender has taken effect;
 - (ii) the Developer may provide written notice to RMS requesting that RMS exercise its rights under **clause 14(a)(i)** and RMS must accept any such request within 20 Business Days;

- (iii) upon written notice of the termination of this deed being provided by RMS to the Developer:
 - (A) the rights of each Party that arose before the termination or which may arise at any future time for any breach of obligations occurring prior to the termination of this deed are not affected; and
 - (B) RMS will return the Security provided in accordance with **clause 8** and **Schedule 4** of this deed to the Developer after first deducting any amounts owed to RMS in accordance with this deed; and
- (iv) RMS must, within 15 Business Days of any written request by the Developer, and at the Developer's cost, do all things reasonably required to remove this deed from the title of the Registration Land.
- (b) Where this deed is terminated in accordance with this **clause 14**, if any future Planning Application(s) is made by the Developer or any other person in relation to the Moorebank Intermodal Precinct West Development, then the applicant of that Planning Application(s) must comply with the requirements of clause 7.36 of the Liverpool LEP and this deed will have no operation or effect in relation to that Planning Application(s).
- (c) This **clause 14** will survive termination of this deed.

15 General Provisions

15.1 Liability

An obligation of two or more persons binds them separately and together.

15.2 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.

15.3 Variation

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

15.4 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.

15.5 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.

15.6 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.

15.7 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.

15.8 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.

15.9 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.

15.10 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.

15.11 Counterparts

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

15.12 Relationship of Parties

Nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between RMS and the Developer.

15.13 Good faith

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

15.14 No fetter

Nothing in this deed shall be construed as:

- (a) requiring RMS to do anything that would cause RMS to breach any of the RMS' obligations at law; or

- (b) limiting or fettering in any way the discretion of RMS in exercising any of RMS' statutory functions, powers, authorities or duties.

15.15 Explanatory Note

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

15.16 Costs, expenses and stamp duty

- (a) The Developer must pay their own and RMS' legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable, on any transfer of land).
- (d) The Developer must provide RMS with bank cheques in respect of RMS' costs pursuant to **clauses 15.16(a) and (b)**:
 - (i) where RMS 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 RMS 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 RMS for payment.

15.17 Effect of Schedules

The Parties agree to comply with any terms contained in Schedules to this deed as if those terms were included in the operative part of the deed.

Schedule 1

Section 7.4 Requirements

The Parties acknowledge and agree that the Tables set out below provide for certain terms, conditions and procedures for the purpose of this deed complying with the Planning Act.

Table 1 – Requirements under section 7.4 of the Planning Act

Provision of the Planning Act	This deed
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	No
(b) made, or proposes to make, a development application.	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	No
Description of the land to which this deed applies- (Section 7.4(3)(a))	The whole of the Moorebank Intermodal Precinct West Land as defined in clause 1.1 of this Deed.
Description of the development to which this deed applies- (Section 7.4 (3)(b)(ii))	a) the Moorebank Intermodal Precinct West - Stage 2 Development; and b) the Moorebank Intermodal Precinct West Development as a whole, as defined in clause 1.1 of this Deed.
The scope, timing and manner of delivery of Development Contributions required by this deed - (Section 7.4 (3)(c))	See Schedule 3 .
Applicability of Section 7.11 of the Planning Act - (Section 7.4 (3)(d))	The application of section 7.11 of the Planning Act is not excluded in respect of the Moorebank Intermodal Precinct West - Stage 2 Development.
Applicability of Section 7.12 of the Planning Act - (Section 7.4 (3)(d))	The application of section 7.12 of the Planning Act is not excluded in respect of the Moorebank Intermodal Precinct West - Stage 2 Development.

Provision of the Planning Act	This deed
Applicability of Section 7.24 of the Planning Act - (Section 7.4 (3)(d))	The application of section 7.24 of the Planning Act is not excluded in respect of the Moorebank Intermodal Precinct West - Stage 2 Development.
Applicability of Section 7.4 (3)(e) of the Planning Act	The Development Contribution to be provided by the Developer under this deed will not be taken into consideration in determining a development contribution in respect of the Moorebank Intermodal Precinct West - Stage 2 Development under section 7.11 of the Planning Act.
Mechanism for Dispute resolution - (Section 7.4 (3)(f))	See clause 7
Enforcement of this deed - (Section 7.4 (3)(g))	See clause 8
No obligation to grant consent or exercise functions - (Section 7.4 (9))	See clause 15.14

Table 2 – Other Matters

Requirement under the Planning Act or Planning Regulation	This deed
Registration of the Planning Agreement – (section 7.6 of the Planning Act)	Yes, see clause 6
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a Construction Certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	Yes – see clause 4.2(a)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a Subdivision Certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	Yes – see clause 4.2(a)
Whether the Planning Agreement specifies that certain requirements of the	No

Requirement under the Planning Act or Planning Regulation	This deed
agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	

Schedule 2

Land

Table 1: Moorebank Intermodal Precinct East Land

Registered Proprietor		Title	Folio Identifier
TRUST COMPANY LIMITED	1	1048263	1/1048263
COMMONWEALTH OF AUSTRALIA	1	1197707	1/1197707
COMMONWEALTH OF AUSTRALIA	2	1197707	2/1197707
COMMONWEALTH OF AUSTRALIA	4	1197707	4/1197707
COMMONWEALTH OF AUSTRALIA	3002	1125930	3002/1125930
THE COMMONWEALTH OF AUSTRALIA	4	1130937	4/1130937
RAIL CORPORATION NEW SOUTH WALES	1	825352	1/825352
RAIL CORPORATION NEW SOUTH WALES	2	825348	2/825348
RAIL CORPORATION NEW SOUTH WALES	1	1061150	1/1061150
THE COMMONWEALTH OF AUSTRALIA	2	1061150	2/1061150
RAIL CORPORATION NEW SOUTH WALES	1	712701	1/712701
HELEN LOUISE KENNETT	5	833516	5/833516A
FIGELA PTY LIMITED	5	833516	5/833516B
JC & FW KENNETT PTY LIMITED	5	833516	5/833516C
RAIL CORPORATION NEW SOUTH WALES	6	833516	6/833516
RAIL CORPORATION NEW SOUTH WALES	7	833516	7/833516
RAIL CORPORATION NEW SOUTH WALES	101	1143827	101/1143827
RAIL CORPORATION NEW SOUTH WALES	102	1143827	102/1143827
FIGELA PTY LIMITED	103	1143827	103/1143827
J.C. AND F.W. KENNETT PTY LIMITED	104	1143827	104/1143827
RAIL CORPORATION NEW SOUTH WALES	1	1130937	1/1130937
RAIL CORPORATION NEW SOUTH WALES	4	1186349	4/1186349
J.C. & F.W. KENNETT PTY LIMITED	51	515696	51/515696
J C AND F W KENNETT PTY LIMITED	52	517310	52/517310

Registered Proprietor		Title	Folio Identifier
J C & F W KENNETT PTY LIMITED	91	1155962	AUTO CONSOL 14018-92
		Conveyance Book 76 Number 361	
		George's River, Crown Land	
		Crown Road	
		Public road reserve of Moorebank Avenue (north of Anzac Road)	

Table 2: Moorebank Intermodal Precinct West Land

Registered Proprietor		Title	Folio Identifier
COMMONWEALTH OF AUSTRALIA	1	1197707	1/1197707
COMMONWEALTH OF AUSTRALIA	2	1197707	2/1197707
THE COMMONWEALTH OF AUSTRALIA	100	1049508	100/1049508
THE COUNCIL OF THE CITY OF LIVERPOOL	101	1049508	101/1049508
HELEN LOUISE KENNETT	5	833516	5/833516A
FIGELA PTY LIMITED	5	833516	5/833516B
JC & FW KENNETT PTY LIMITED	5	833516	5/833516C
J.C. & F.W. KENNETT PTY. LIMITED	51	515696	51/515696
RAIL CORPORATION NEW SOUTH WALES	102	1143827	102/1143827
FIGELA PTY LIMITED	103	1143827	103/1143827
J.C. AND F.W. KENNETT PTY LIMITED	104	1143827	104/1143827
RAIL CORPORATION NEW SOUTH WALES	4	1186349	4/1186349

Schedule 3

1 Development Contributions

The Developer undertakes to make the following Development Contributions in the manner set out in the Table below and this **Schedule 3**:

Item	Column 1: Type of Contribution	Column 2: Due Date	Column 3: Indexation	Column 4: Additional Specifications /Additional Due Dates
1.	Monetary Contribution of \$48 million: Regional road upgrade works	The earlier of: a) three (3) months after the date that Development Consent is granted for the Moorebank Intermodal Precinct West - Stage 2 Application, unless the Development Consent is surrendered in accordance with the Planning Act prior to that time; and b) prior to a Trigger Event occurring, in accordance with clause 4.2(a) of this deed.	No	Not applicable
2.	Works in Kind and Dedication: Moorebank Avenue Realignment or Moorebank Avenue South Upgrade	a) By 31 December 2021, or such other date agreed by RMS in writing in its absolute discretion, the Developer is to obtain all Approvals required for the Moorebank Avenue Realignment; and b) By 31 December 2023, or such other date agreed by RMS in writing in its	Not applicable	Where the Developer has not obtained all Approvals required for the Moorebank Avenue Realignment by 31 December 2021 or such other date agreed by RMS in writing in its absolute discretion, then the Developer must: a) obtain all Approvals required for the

		<p>absolute discretion, the Developer is to:</p> <ul style="list-style-type: none"> i) achieve practical completion of the Moorebank Avenue Realignment; and ii) take all practical steps and otherwise do anything necessary to procure the Dedication of the Moorebank Avenue Realignment Land, <p>in accordance with clause 3 of this Schedule 3 and subject to the additional specifications in Column 4 of this Table.</p>		<p>Moorebank Avenue South Upgrade by 31 December 2022, or such other date agreed by RMS in writing in its absolute discretion; and</p> <ul style="list-style-type: none"> b) achieve practical completion of the Moorebank Avenue South Upgrade by 31 December 2024, or such other date agreed by RMS in writing in its absolute discretion; and c) take all practical steps and otherwise do anything necessary to procure the Dedication of, the Moorebank Avenue South Upgrade Land by 31 December 2024, or such other date agreed by RMS in writing in its absolute discretion, <p>in accordance with clause 4 of this Schedule 3.</p>
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2 Monetary Contribution

2.1 Monetary Contribution

The Developer must pay the Monetary Contribution to RMS:

- (a) by the Due Date; and
- (b) in accordance with **clause 2.2** of this **Schedule 3**.

2.2 Delivery of Monetary Contribution

- (a) The Monetary Contribution 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 RMS.
- (b) The Developer is to give RMS not less than 15 Business Days written notice of its intention to pay the Monetary Contribution in accordance with this deed.
- (c) If GST is payable in accordance with **clause 12**:
 - (i) the Developer is not required to pay the Monetary Contribution under this deed until RMS, after having received the Developer's notice under **clause 2.2(b)** in this **Schedule 3**, has given to the Developer a tax invoice for the amount of the Monetary Contribution; and
 - (ii) the Developer is not in breach of this deed if it fails to pay the Monetary Contribution at the time required by this deed by reason only of RMS' failure to give to the Developer a tax invoice in relation to the Monetary Contribution.

3 Moorebank Avenue Realignment

3.1 Moorebank Avenue Realignment Proposal

The Developer intends to undertake the Moorebank Avenue Realignment.

3.2 Commencement

Prior to commencing any part of the Moorebank Avenue Realignment, the Developer must:

- (a) provide evidence to RMS that it has obtained all Approvals required for the Moorebank Avenue Realignment by the Due Date specified in **Item 2, column 2** of **clause 1** of this **Schedule 3**;
- (b) enter into a WAD with RMS in relation to the Moorebank Avenue Realignment on terms and conditions acceptable to RMS, including obtaining RMS' approval for the design of the Moorebank Avenue Realignment; and
- (c) provide the Approved Security to RMS for the Moorebank Avenue Realignment in accordance with the WAD.

3.3 Delivery

In carrying out the Moorebank Avenue Realignment, the Developer must comply with:

- (a) all Approvals required for the Moorebank Avenue Realignment; and
- (b) the WAD applying to the Moorebank Avenue Realignment.

3.4 Completion

The Developer must:

- (a) achieve practical completion; and
- (b) take all practical steps and otherwise do anything necessary to procure the Dedication of the Moorebank Avenue Realignment Land,

in accordance with this deed, all Approvals and the WAD applying to the Moorebank Avenue Realignment, and by the Due Date for the Moorebank Avenue Realignment and Dedication of the Moorebank Avenue Realignment Land specified in **Item 2, column 2 of clause 1** of this **Schedule 3**.

4 Moorebank Avenue South Upgrade

4.1 Obligation to provide Moorebank Avenue South Upgrade

Where the Developer has not obtained all Approvals required for the Moorebank Avenue Realignment by 31 December 2021 or such other date agreed by RMS in writing in its absolute discretion, the Developer must deliver the Moorebank Avenue South Upgrade in accordance with this **clause 4** of **Schedule 3**.

4.2 Commencement

Prior to commencing any part of the Moorebank Avenue South Upgrade (**Road Works**), the Developer must:

- (a) provide evidence to RMS that it has obtained all Approvals required for the Road Works by the Due Date specified in **Item 2, column 4 of clause 1** of this **Schedule 3**;
- (b) enter into a WAD with RMS in relation to the Road Works on terms and conditions acceptable to RMS, including obtaining RMS' approval for the design of the Road Works; and
- (c) provide the Approved Security to RMS for the Road Works in accordance with the WAD.

4.3 Delivery of Road Works

In carrying out the Road Works, the Developer must comply with:

- (a) all Approvals required for the Road Works; and
- (b) the WAD applying to the Road Works.

4.4 Completion of Road Works

The Developer must:

- (a) achieve practical completion; and
- (b) take all practical steps and otherwise do anything necessary to procure the Dedication of the Moorebank Avenue South Upgrade Land,

in accordance with this deed, all Approvals and the WAD applying to the Road Works, and by the Due Date for the Road Works and Dedication of the Moorebank Avenue South Upgrade Land specified in **Item 2, column 4** of **clause 1** of this **Schedule 3**.

Schedule 4

Security Requirements

1 Provision of Security

In order to:

- (a) secure the provision of the Moorebank Avenue Realignment required by this deed; and
- (b) the Developer's general compliance with its obligations under this deed, the Developer will provide Security in accordance with this **Schedule 4**.

2 Moorebank Avenue Realignment

2.1 Provision of Security

Within 5 Business Days of Development Consent being granted for the Moorebank Intermodal Precinct West – Stage 2 Application, the Developer must provide RMS with Security, in the form of one or more Bank Guarantees, with a total face value equivalent to \$15 million.

2.2 Claims under Bank Guarantees

- (a) RMS may:
 - (i) call upon the Security where the Developer fails to comply with any obligation in this deed to provide the Moorebank Avenue Realignment; and
 - (ii) retain and apply monies obtained from the call upon the Security towards any costs and expenses incurred by RMS in:
 - (A) rectifying such failures; or
 - (B) taking whatever steps or actions that RMS considers are necessary to respond to the failure by the Developer.
- (b) For the purposes of this deed, any costs and expenses which another Authority incurs in rectifying a failure under this deed are taken to be costs and expenses incurred by RMS in rectifying such a failure.
- (c) Prior to calling upon the Security, RMS must give the Developer not less than 10 Business Days written notice of its intention to call upon the Security.
- (d) The Developer may, within 10 Business Days of the date of the notice in **clause 2.2(c)** of this **Schedule 4**, elect to pay to RMS an amount equivalent to the amount of RMS' proposed call upon the Security. If

payment is made by the Developer within 5 Business Days of such an election by the Developer, RMS shall no longer be entitled to call upon the Security to the extent of the amount that has been paid by the Developer.

2.3 Top-up of Security

If the RMS calls upon the Security in accordance with this **clause 2** of this **Schedule 4** then the Developer must immediately provide to RMS one or more replacement Bank Guarantees to ensure that, at all times until the relevant Bank Guarantee(s) is released in accordance with **clause 2.4** of this **Schedule 4**, RMS is in possession of one or more Bank Guarantees with a total face value equivalent to \$15 million.

2.4 Release of Security

If the Developer:

- (a) obtains all Approvals required for the Moorebank Avenue Realignment in accordance with **clause 3.2** of **Schedule 3** of this deed;
- (b) enters into a WAD with RMS in accordance with **clause 3.2** of **Schedule 3** of this deed;
- (c) pays RMS the Approved Security in accordance with the WAD; and
- (d) the Security has not been expended or applied by RMS in accordance with this deed,

then RMS will promptly return the amount of any Security held by RMS to the Developer and RMS will accept the Approved Security provided by the Developer under the WAD as security for the performance of the Developer's obligations under this deed to provide the Moorebank Avenue Realignment .

2.5 WAD security

- (a) If the Developer breaches any of its obligations under the WAD to increase or maintain the Approved Security:
 - (i) any such breach will constitute a breach of this deed; and
 - (ii) RMS may provide written notice to the Developer requesting that the Developer provide a Bank Guarantee to RMS for an amount determined by RMS, acting reasonably, that will rectify the Developer's breach of the WAD and ensure that sufficient security is available for the Moorebank Avenue Realignment.
- (b) Within 10 Business Days following receipt of a written notice pursuant to **clause 2.5** of this **Schedule 4**, the Developer must provide the Bank Guarantee to RMS.

3 Moorebank Avenue South Upgrade

Where the Developer is required to provide the Moorebank Avenue South Upgrade in accordance with this deed, the parties agree:

- (a) that the terms of **clauses 1 and 2** of this **Schedule 4** will apply to the Moorebank Avenue South Upgrade, as if the Security had originally been provided by the Developer for the Moorebank Avenue South Upgrade and not the Moorebank Avenue Realignment;
- (b) RMS will be able to use the Security for the Moorebank Avenue South Upgrade in accordance with this **Schedule 4**; and
- (c) any references in **clauses 1 and 2** of this **Schedule 4**:
 - (i) to the "Moorebank Avenue Realignment" shall be taken to be a reference to the "Moorebank Avenue South Upgrade"; and
 - (ii) to "**clause 3.2 of Schedule 3**" shall be taken to be a reference to "**clause 4.2 of Schedule 3**".

Execution

Executed as a deed.

EXECUTED by **Roads and Maritime**)
Services (ABN 76 236 371 088) by its)
duly authorised officer in the presence of:)

.....
Signature of Witness

.....
Name of Witness

.....
Signature of authorised officer

.....
Name of authorised officer

.....
Position of authorised officer

Executed by **Qube RE Services (No 2)**)
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Assets Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Company Secretary/~~Director~~

Adam Jacobs


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

.....
Director

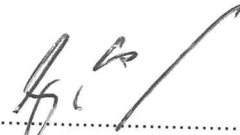
Greg Pauline

.....
Name of Director (print)

Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Operations Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)



.....
Company Secretary/Director
Adam Jacobs

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


.....
Director
Greg Pauline

.....
Name of Director (print)

Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Warehouse Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)


.....
Company Secretary/Director
Adam Jacobs

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


.....
Director
Greg Pauline

.....
Name of Director (print)

Annexure A

Novation Deed

Draft No []
[Date]

ROADS AND MARITIME SERVICES

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Terminals Operations Trust

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Warehouse Trust

[Insert New Developer]

Deed of Novation for Planning Agreement

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Date

Parties

Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation constituted under section 46 of the *Transport Administration Act 1988* (NSW) of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**RMS**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Terminal Assets Co**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Operations Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Terminal Operations Co**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Warehouse Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Warehouse Development Co**)

[Insert New Developer] ACN [insert] of [insert address] New South Wales (**New Developer**)

Background

- A RMS and the Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land.
 - C The Developer has entered into the Dealing with the New Developer in relation to the Dealing Land.
 - D The Developer wishes to novate the Required Obligations, being its obligations under the Original Agreement which relate to the Dealing Land, to the New Developer.
-

Agreed terms

1 Definitions

In this document these terms have the following meanings:

Dealing [Insert description of dealing relating to the Dealing Land e.g. the transfer of all or any part of the Developer's rights, interests and obligations to the New Developer].

Dealing Land	the whole or any part of Lot 2 in Deposited Plan 1197707, including any subdivided, newly created or consolidated lot(s) forming part of that original title.
Developer	has the meaning given to that term in the Original Agreement.
Effective Date	[Insert date on which this deed becomes effective]
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Land	has the meaning given to that term in the Original Agreement.
Original Agreement	the planning agreement dated [insert] between RMS and the Developer.
Required Obligations	The Developer's obligations under the Original Agreement which relate to the Dealing Land, being: [itemise as required, including substitution of Bank Guarantees prior to/simultaneously with existing Bank Guarantees, registration of Original Agreement, provision of Development Contributions etc]

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 the Developer as a party to the Original Agreement;
- (a) 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 the Developer;
- (b) the New Developer will be required to perform the Required Obligations in accordance with the Original Agreement; and
- (c) the Developer is released and discharged from the Required Obligations, and from all claims (whether for costs, damages, fees, expenses or otherwise) relating to the Required Obligations arising under the Original Agreement.

2.2 Liability before Effective Date

Notwithstanding **clause 2.1**, the Developer is not released, relieved or discharge from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Developer

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 Required Obligations.

2.3 Address for notices

RMS must address all notices and communications to be given or made by RMS and which relate to the Required Obligations, to the New Developer under the Original Agreement to the following address:

New Developer:

Attention: [Insert name and title]
Address: [Insert address]
Email: [Insert email]

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this document, 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 document, 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 document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document 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 document 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 document and the novation of the Original Agreement.

5 GST

5.1 Construction

In this **clause 5**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document 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.

5.2 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 document is exclusive of GST (**GST-exclusive consideration**).

5.3 Payment of GST

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 document, 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.

5.4 Timing of GST payment

The amount referred to in **clause 5.3** 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.

5.5 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 5.3**.

5.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 5.3** 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.

5.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed 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 5.7** does not limit the application of **clause 5.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 5.7(a)**.

5.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

5.9 No merger

This **clause 5** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

6 Stamp duty and costs

- (a) The New Developer will pay all stamp duty arising directly or indirectly from this document.
- (b) The Developer and the New Developer are jointly and severally liable for RMS' costs, including legal costs and disbursements, incidental to the negotiation, preparation and execution of this document and must reimburse RMS for such costs promptly on demand.

7 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this document.
- (b) This document binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

8 Entire agreement

This document 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.

9 Amendment

This document may only be varied or replaced by a document executed by the parties.

10 Waiver

A right created by this document 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.

11 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.

12 Relationship of parties

Unless otherwise stated:

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

13 Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those

courts and waives any right to object to any proceedings being brought in those courts.

14 No fetter

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

15 Counterparts

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

16 General

16.1 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (g) Capitalised terms not defined in this document have the meanings given to them in the Original Agreement.

16.2 Headings

Headings do not affect the interpretation of this document.

16.3 Effect of execution

This document is not binding on any party unless it or a counterpart has been duly executed by each party.

Execution

Executed as a deed.

**EXECUTED by Roads and Maritime
Services** (ABN 76 236 371 088) by its
duly authorised officer in the presence of:)
)
)

.....
Signature of Witness

.....
Signature of authorised officer

.....
Name of Witness

.....
Name of authorised officer

.....
Position of authorised officer

**Executed by Qube RE Services (No 2)
Pty Limited in its capacity as the trustee
of the Moorebank Industrial Terminals
Assets Trust** (ACN 605 751 782) in
accordance with s 127(1) of the
Corporations Act 2001 (Cth):)
)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Operations Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Warehouse Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

New Developer

EXECUTED by [Insert company name)
and ABN]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Annexure B

Moorebank Avenue Realignment Plan

