

Schedule 4

Explanatory Note

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Transport for NSW (ABN 18 804 239 602)

and

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

and

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

Draft Planning Agreement

Introduction

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

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

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

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

Parties to the Planning Agreement

The parties to the Planning Agreement are:

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

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

Description of the Land

The Planning Agreement applies to:

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

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

Description of the Proposed Development

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

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

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

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

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

Summary of Objectives, Nature and Effect of the Planning Agreement

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

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

The development contributions comprise:

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

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

fences, gates, controls and cameras leading into and on the Arncliffe MOC site;

- (2) works to integrate new Flora Street East road and modifications to the road access arrangements arising from M6 Stage 1 Project to the Arncliffe MOC site;
- (3) construction of road beyond Marsh Street intersection;
- (4) construction of road base, drainage, subsurface utility relocation; and
- (5) ancillary works including new medians, footpaths, line marking, fencing, signage, lighting and landscaping;

iv) Signalised intersections comprising:

- (1) construction of additional length of westbound right-turn bay storage on Marsh Street and Gertrude Street intersection in lieu of existing right-turn bay storage at Innesdale Road, including the removal of existing traffic signals at Innesdale Road and construction of new traffic signals at Gertrude Street;
- (2) a 10 year maintenance contribution for each set of new traffic signals, or pro-rata contribution in the circumstances of modification of existing signals; and
- (3) Northbound and southbound bus stops and shelters to the south of the Marsh Street / Gertrude Street intersection, including recessed bus bay at the southbound bus stop; and

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

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

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

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

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

Assessment of Merits of Planning Agreement

The Public Purpose of the Planning Agreement

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

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

How the Planning Agreement Promotes the Public Interest

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

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

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

Not applicable.

Requirements relating to Construction, Occupation and Subdivision Certificates

Subdivision Certificate

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

Construction Certificate

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

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

Occupation Certificate

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

The Plans and Table listed below follow this page.

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

2. Indicative Plan of the Proposed Development

3. Indicative Works Plan

4. Works in Kind Table

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



INDICATIVE PLAN OF THE PROPOSED DEVELOPMENT

MASTERPLAN



Corrs Chambers Westgarth

INDICATIVE WORKS PLAN



WORKS IN KIND TABLE

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