

Dated

2024

Planning Agreement

Environmental Planning and Assessment Act 1979

Blackwattle Bay Precinct

Infrastructure NSW (ABN 85 031 302 516)

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



12/09/2024

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This Planning Agreement is dated

Parties:

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

Infrastructure NSW (ABN 85 031 302 516) of AON Tower, Level 27, 201 Kent Street, Sydney NSW 2000

Introduction:



- A** The Developer owns the Developer's Land.
- B** The Developer has been investigating the Blackwattle Bay Precinct for potential rezoning and redevelopment following the preparation of the June 2021 *Blackwattle Bay State Significant Precinct Study (Precinct Study)*.
- C** Based on the Precinct Study, the Developer sought changes to relevant environmental planning instruments applying to land within the Blackwattle Bay Precinct in accordance with SEPP Proposal 1, and the Minister made the Precinct SEPP which commenced on 8 September 2023 to effect SEPP Proposal 1.
- D** Around June 2024, the Developer sought further changes to relevant environmental planning instruments applying to land within the Blackwattle Bay Precinct to remove minimum non-residential floor space requirements within Area 17 and to make other necessary consequential changes in accordance with SEPP Proposal 2.
- E** The Developer has made an offer to enter into this deed with the Minister to secure the Development Contribution in connection with SEPP Proposal 1 and SEPP Proposal 2, and in relation to the Development which the Developer proposes to carry out in accordance with relevant Approvals.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise (including by way of a specific definition for the purpose of part of or a schedule to this deed):

Accepted Cost Estimate has the meaning given to that term in clause 3(a)(v) of Schedule 5.

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

Activity has the same meaning given to that word in Part 5 of the Act.

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

Approval means any approvals, consents, certificates, permits, licences, conditions or permissions (and any modifications or variations to them) which may be required by Law or by any Authority exercising its functions and powers, for the commencement and carrying out of any works

required under this deed or the Development and includes a Development Consent, assessment of an Activity under Part 5 of the Act, or other approval under the Act.

Area 17 means the area denoted by orange outline and the words "Area 17" in Sheet FSR_008 of the Floor Space Ratio Map adopted under the Sydney LEP, pursuant to the definition of 'Area' in clause 6.68(3) of the Sydney LEP.

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

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

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

Bank and Miller Street Intersection Works Contribution means carrying out of intersection upgrades, including intersection reconfiguration and signals, generally in accordance with the Design Guidelines, and subject to the satisfaction of the Roads Authority, at the land identified as 'B' in the plan labelled 'Proposed Works' at Annexure A, as specified in Schedule 6.

Bank Street Cycleway Land means the land shown in red outline and coloured shading on the plan labelled 'Bank St Cycleway - Indicative Alignment' dated 17 April 2024 at Annexure F.

Bank Street Cycleway Land Contribution means the transfer and/or dedication of the Bank Street Cycleway Land, as specified in Schedule 7, if required in accordance with the requirements of clause 5 of Schedule 6.

Bank Street Cycleway Works Contribution means construction of a cycleway within the Bank Street Cycleway Land, as specified in Schedule 6, as shown on the plan at Annexure F.

Bank Street Park Land means the parcels of land shown in coloured shading on the plan labelled 'Bank St Park' dated 17 April 2024 at Annexure D.

Bank Street Park Land Contribution means the transfer and/or dedication of the Bank Street Park Land for public recreation (including Community Facilities) of an area of not less than 400 square metres and ancillary permissible land uses, as specified in Schedule 7.

Bank Street Park Works Contribution means works, including demolition, site preparation, remediation, seawall, landscaping and embellishment of open space for public recreation and Community Facilities of an area of not less than 400 square metres, and other ancillary permissible land uses, carried out on the Bank Street Park Land, as specified in Schedule 6.

Bank Street Road Reserve means the area comprising the road reserve, from time to time, of the road labelled 'Bank Street', the location of which is denoted on the plan labelled 'Proposed Works' at Annexure A.

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

Blackwattle Bay Precinct means the area identified in the 'Illustrative Precinct Plan' at Figure 2 of the Design Guidelines as extracted at Annexure I, and any replacement of Figure 2 under a

subsequent version of the Design Guidelines but only to the extent that the area is consistent with the area identified in the figure extracted at Annexure I.

Boardwalk Land means land identified in red outline and coloured shading on the plan labelled 'Boardwalk' dated 17 April 2024 at Annexure C.

Boardwalk Works Contribution means construction of a boardwalk over water on the Boardwalk Land as specified in Schedule 6.

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

Certification when used in relation to Crown building work as defined under the Act, means certification required for Crown building work under section 6.28(2) of the Act, and in relation to work or Activity which is not Crown building work, means any other certification required to be obtained under Part 6 of the Act.

City of Sydney means The Council of the City of Sydney constituted under section 219 of the *Local Government Act 1993* (NSW).

Commencement Date means the date this deed commences in accordance with clause 2.1.

Community Facilities for the purposes of this deed may include, for the avoidance of doubt, dragon boat storage, community centre space and amenities at 1-3 Bank Street.

Complying Development Certificate has the same meaning as in the Act.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contaminated Land Consultant means a certified environmental practitioner under the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) (CEnvP(SC)) scheme or a certified professional soil scientist under the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

Contaminated Land Report means a report provided by the Contaminated Land Consultant to support the Contaminated Land Statement.

Contaminated Land Statement means a statement from the Contaminated Land Consultant with the content required in clause 2(d) in Schedule 7.

Contamination has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

Contractor means a person engaged by the Developer under an agreement to deliver and develop part or all of the Development including the Works Contribution on behalf of the Developer.

Cost Estimate has the meaning given to that term in clause 3(a)(iii) of Schedule 5.

Costs means any loss, cost, fee, charge, expense, tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

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

Cultural and Creative Uses Land means the land on which the Cultural and Creative Uses Works Contribution is to be constructed and, for the avoidance of doubt, may be managed as public domain or under the management of a private entity.

Cultural and Creative Uses Land Contribution means the dedication or transfer of the Cultural and Creative Uses Land, as specified in Schedule 7.

Cultural and Creative Uses Works Contribution means construction of approximately 1,200 square metres (GFA) of space for cultural and creative uses which may include meeting rooms, indoor recreation facilities/amenities and the like, carried out on the Development Area, as specified in Schedule 6 and for the avoidance of doubt, may be managed as public domain or under the management of a private entity.

Current CPI has the meaning given to the term in clause 3(a)(ix) of Schedule 5.

Defect means anything inherent in the Public Domain Works at the time they are completed that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality, use or enjoyment of the Public Domain Works, or any part of the Public Domain Works.

Defect Liability Period means, in relation to a Public Domain Work, the period of 12 months commencing on the day immediately after the Minister or the Minister's Nominated Authority determines under clause 3(c) of Schedule 6 that the Public Domain Work is completed.

Defect Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect;
- (b) specifying the works or actions that are required to rectify the Defect; and
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Department means the NSW Department of Planning, Housing and Infrastructure and its successors.

Design Guidelines means the "Blackwattle Bay Design Guidelines", as defined in the Sydney LEP, available on the NSW planning portal.

Developer means Infrastructure NSW.

Developer's Land means that part of the Land owned by the Developer, being:

- (a) the Development Area; and
- (b) that part of the Works Contribution Land owned by the Developer as identified in Schedule 4.

Development has the meaning given to that term in clause 1.3 of this deed.

Development Agreement has the meaning given to that term in clause 10.3(a) of this deed.

Development Application has the same meaning as in the Act.

Development Area means the land described in Schedule 3.

Development Consent has the same meaning as in the Act.

Development Contribution means the following contributions to be provided by the Developer under this deed in accordance with Schedule 5, Schedule 6 and Schedule 7:

- (a) Monetary Contribution;
- (b) Works Contribution; and
- (c) Land Contributions.

Dwelling has the same meaning given to that term in the Standard Instrument.

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

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

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

GFA means gross floor area as that term is defined in the Standard Instrument.

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

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

Intended Use means the intended use of the Public Domain Land as set out in the table in clause 1(a)(i) of Schedule 7.

Land means the Development Area and Works Contribution Land.

Land Contributions means the transfer and/or dedication of the Public Domain Land in accordance with Schedule 7 if required under clause 1(a)(i) of Schedule 7 and the transfer and/or dedication of the Bank Street Cycleway Land if required under clause 5 of Schedule 6.

Law means:

- (a) any law applicable including legislation, rules, ordinances, codes, regulations, proclamations or by-laws and other subordinate legislation; and
- (b) any Approval, including any condition or requirement under it.

Local Infrastructure Contribution means that part of the Monetary Contribution to be paid by the Developer to the City of Sydney towards the provision of local infrastructure as described in item 2 of the table in clause 1(a)(i) of Schedule 5, comprising the total sum of all Local Infrastructure Contribution Amounts payable.

Local Infrastructure Contribution Amount has the meaning given to that term in clause 3(a)(ii) of Schedule 5, being an amount payable towards the Local Infrastructure Contribution calculated in accordance with clause 3(a) of Schedule 5.

Maintain when used in relation to a physical work carried out or developed (whether by construction, installation or otherwise) means keeping the work in a good state of repair and working order, and includes repairing any damage.

Miller Street Reserve Land means the area of land shown in red outline and coloured shading on the plan labelled Miller St Reserve dated 17 April 2024 at Annexure G.

Miller Street Reserve Land Contribution means the transfer and/or dedication of the Miller Street Reserve Land, as specified in Schedule 7.

Miller Street Reserve Works Contribution means works, including demolition, remediation and embellishment works, at the Miller Street Reserve Land, as specified in Schedule 6.

Minister means the Minister administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Nominated Officer.

Minister's Nominated Authority means Place Management NSW or any other NSW Government agency or the City of Sydney nominated by the Minister for the purpose of receiving a Development Contribution under the deed.

Monetary Contribution means the monetary contributions described in Schedule 5, being the Local Infrastructure Contribution and the Station Contribution.

Nominated Officer means an officer of the Department for the time being holding a position nominated by the Secretary for the purposes of this deed.

Occupation Certificate has the same meaning as in the Act.

Place Management NSW means the statutory corporation constituted under section 10 of the *Place Management NSW Act 1998* (NSW).

Plan of Subdivision means a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Precinct Study means the *Blackwattle Bay State Significant Precinct Study* dated June 2021.

Precinct SEPP means *State Environmental Planning Policy Amendment (Blackwattle Bay Precinct) 2022* which the Minister made on 16 December 2022, and that commenced on 8 September 2023, including the associated replacement of land zoning maps in the Sydney LEP, to effect the changes to relevant environmental planning instruments sought by the Developer in SEPP Proposal 1.

Proposed Precinct (Further Amendment) SEPP means any State environmental planning policy or other environmental planning instrument made to effect the changes to relevant environmental planning instruments sought by the developer in SEPP Proposal 2.

Public Art means an artistic work, structure or piece (other than an architectural feature for a building) that is located in the public domain, or within a publicly accessible space, within the Blackwattle Bay Precinct.

Public Art Contribution means the provision of Public Art in accordance with the Public Art Plan, to the value set out in at clause 2(b) in Schedule 6.

Public Art Plan means a plan prepared by the Developer in accordance with clause 2(a) of Schedule 6 for the location, selection, and installation of Public Art in strategic locations for the purposes of the Public Art Contribution.

Public Domain Land means the:

- (a) Bank Street Cycleway Land;
- (b) Bank Street Park Land;
- (c) Miller Street Reserve Land;

- (d) Pyrmont Bridge Road Cycleway Extension Land;
- (e) Sydney Fish Market Urban Park Land;
- (f) Waterfront Promenade Land; and
- (g) Cultural and Creative Uses Land.

Public Domain Works means the following Works Contribution items to be provided in accordance with Schedule 6 and listed in 'List 1' in the table at clause 1(a) of that Schedule:

- (a) Bank Street Cycleway Works Contribution;
- (b) Bank Street Park Works Contribution;
- (c) Boardwalk Works Contribution;
- (d) Miller Street Reserve Works Contribution;
- (e) Public Art Contribution;
- (f) Pyrmont Bridge Road Cycleway Extension Works Contribution;
- (g) Sydney Fish Market Urban Park Works Contribution;
- (h) Waterfront Promenade Works Contribution; and
- (i) Cultural and Creative Uses Works Contribution.

Public Domain Works Deed means a deed between the Developer, the Minister or the Minister's Nominated Authority, in relation to the provision of the Public Domain Works.

Pyrmont Bridge Road Cycleway Extension Land means the parcels of land shown in red outline and coloured shading on the plan labelled 'Pyrmont Bridge Rd Cycleway Extension' dated 17 April 2024 at Annexure E.

Pyrmont Bridge Road Cycleway Extension Land Contribution means the transfer and/or dedication of the Pyrmont Bridge Road Cycleway Extension Land, as specified in Schedule 7.

Pyrmont Bridge Road Cycleway Extension Works Contribution means construction of a cycleway for active transport and recreation on the Pyrmont Bridge Road Cycleway Extension Land, as specified in Schedule 6.

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

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

Registered Quantity Surveyor means a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Remediation has the meaning given to it in *State Environmental Planning Policy (Resilience and Hazards) 2021* and **Remediate** has a corresponding meaning.

Representative means the contact specified for each party in Schedule 2.

Roads Authority has the meaning given to it in the *Roads Act 1993* (NSW), and for the purposes of this deed means Place Management NSW, the City of Sydney or TfNSW.

Road Contribution Works means the following Works Contribution items to be provided in accordance with Schedule 6 and listed in 'List 2' in the table at clause 1(a) of that Schedule:

- (a) Bank and Miller Street Intersection Works Contribution; and
- (b) Wattle Street Road Works Contribution.

Road Contribution Works Deed means a deed or agreement entered into by the Roads Authority and the Developer regarding the design and construction of the Road Contribution Works and its handover to the Roads Authority by the Developer, if required by the Roads Authority.

Security means financial security in the form of one or more Bank Guarantees.

Secretary means the Secretary of the Department.

Section 138 Approval means a consent issued pursuant to section 138 of the *Roads Act 1993*.

SEPP Proposal 1 means the proposal by the Developer to rezone and amend development controls relating to the Blackwattle Bay Precinct, by means of changes to relevant environmental planning instruments, which resulted in the Precinct SEPP.

SEPP Proposal 2 means the proposal by the Developer to amend provisions introduced by the Precinct SEPP further by deleting (or making amendments having the same effect as deleting):

- (a) the minimum non-residential floorspace requirement for Area 17 in clause 6.68(2)(c)(v); and
- (b) the reference to 'October 2023' in the definition of 'Blackwattle Bay Design Guidelines' in clause 6.67(1),

of the Sydney LEP, including any amendments ancillary to the above.

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

Station Contribution means that part of the Monetary Contribution to be paid by the Developer to the Minister towards the Pyrmont Peninsula Metro Station, as described in item 1 of the table in clause 1(a)(i) of Schedule 5, comprising the total sum of all Station Contribution Amounts payable.

Station Contribution Amount has the meaning given to that term in clause 2(a)(ii) of Schedule 5, being an amount payable towards the Station Contribution calculated in accordance with clause 2 of Schedule 5.

Subdivision Certificate has the same meaning as in the Act.

Sydney Fish Market Urban Park Land means the parcels of land shown in red outline and coloured shading on the plan labelled Sydney Fish Market Urban Park dated 17 April 2024 at Annexure H.

Sydney Fish Market Urban Park Land Contribution means the transfer and/or dedication of the Sydney Fish Market Urban Park Land, as specified in Schedule 7.

Sydney Fish Market Urban Park Works Contribution means works to be carried out on the Sydney Fish Market Urban Park Land, including foreshore connection works, as specified in Schedule 6.

Sydney LEP means the *Sydney Local Environmental Plan 2012*.

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

TFNSW means Transport for NSW constituted under section 3C of the *Transport Administration Act 1988* (NSW).

Transfer Land has the meaning given to that term in clause 10.2(a) of this deed.

Transferee has the meaning given to that term in clause 10.2(a) of this deed.

Waterfront Promenade Land means the parcels of land shown in red outline and coloured shading on the plan labelled Waterfront Promenade dated 17 April 2024 at Annexure B.

Waterfront Promenade Land Contribution means transfer and/or dedication of the Waterfront Promenade Land for public recreation.

Waterfront Promenade Works Contribution means works, including demolition, remediation, seawall and drainage works and embellishment, carried out on the Waterfront Promenade Land, as specified in Schedule 6.

Wattle Street Road Works Contribution means carrying out of road and intersection works generally in accordance with the Design Guidelines, and subject to the satisfaction of the Roads Authority, at the land identified as "A" in the plan labelled 'Proposed Works' at Annexure A, including intersection reconfiguration and signals, as specified in Schedule 6.

Works Contribution means the Public Domain Works and the Road Contribution Works.

Works Contribution Land means the land on which the Works Contribution items are to be carried out under this deed, as specified in Schedule 4.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to an **Authority** which ceases to exist either in name or in fact is a reference to the Authority prescribed as the successor of that Authority under relevant legislation including administrative orders, having the same statutory responsibilities as the named Authority;
- (d) a reference to the **introduction**, a **clause**, or a **schedule** is a reference to the introduction, a clause, or a schedule to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;

- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds 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.

1.3 Development

- (a) **Development** has the same meaning as in the Act when uncapitalised, and when capitalised means the development that the Developer proposes to carry out on the Land in accordance with any relevant Development Consents or as exempt development or an Activity:
 - (i) that became permissible on the Land as a result of the Precinct SEPP; and
 - (ii) in the case of development within Area 17, includes development for which Development Consent may be granted as a result of the Proposed Precinct (Further Amendment) SEPP.
- (b) To avoid doubt, **Development** does not include any development:
 - (i) for which Development Consent may be granted only as a result of the making of any further environmental planning instrument under the Act after 8 September 2023 (other than the Proposed Precinct (Further Amendment) SEPP); or
 - (ii) that may be carried out without development consent as a result of the making of any further environmental planning instrument after 8 September 2023.

2. Operation and application of this deed

2.1 Operation

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

2.2 Planning agreement under the Act

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

2.3 Application

This deed applies to:

- (a) the Land;
- (b) SEPP Proposal 1;
- (c) SEPP Proposal 2; and
- (d) the Development.

3. Application of development contributions provisions of the Act

The application of the following provisions of the Act to the Development is excluded (or not excluded) to the extent stated in Schedule 1:

- (a) Sections 7.11 and 7.12; and
- (b) Subdivision 4 of Division 7.1.

4. Development Contribution

4.1 Developer to provide Development Contribution

- (a) The Developer undertakes to provide, or procure the provision of, the Development Contribution to the Minister in accordance with the provisions of Schedule 5, Schedule 6 and Schedule 7, including any Works Contributions which are located on land not owned by the Developer.
- (b) In relation to the Developer's obligation to make the Monetary Contribution, the total sum required to be paid to the Minister or the City of Sydney (as the case may be) to discharge the obligation is the total sum of the Station Contribution Amounts and the Local Infrastructure Contribution Amounts calculated under this deed.

4.2 Acknowledgement

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

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

5. Enforcement

- (a) To ensure enforcement of this deed by suitable means in the event of a breach of the agreement by the Developer, the Developer agrees:
 - (i) to register this deed in accordance with clause 6;
 - (ii) that clause 7.2 confers a right on the Minister to lodge a caveat on the titles of the Developer's Land proposed to be transferred under clause 10.2;
 - (iii) that clause 10.2(b)(vi) of this deed requires the Transferee under that clause to provide the Minister with Security if the Developer seeks to transfer any part of the Developer's Land in accordance with clause 10.2; and
 - (iv) that if the Developer enters into a Development Agreement with a Contractor in accordance with clause 10.3, obligations relating to the provision of Security set out in clause 10.3 and the additional measures set out in clause 10.3(b) apply.
- (b) The parties acknowledge and agree that the mechanisms set out in clause 5(a) constitute 'suitable means' of enforcement for the purposes of section 7.4(3)(g) of the Act.

6. Registration

6.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer agrees to procure the registration of this deed on the title to the Developer's Land, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.
- (b) To procure registration of this deed as required in clause 6.1(a), the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in that land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in that land,to the registration of this deed on the title to the Developer's Land and to the terms of this deed;
 - (ii) the execution of any documents; and
 - (iii) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folios of the Register for that land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

6.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 6.1(b)(iii) within 10 Business Days of such lodgement at the NSW Land Registry Services.

- (b) The Developer will provide the Minister with copies of the relevant folios of the Register and copies of the registered dealings containing this deed within 10 Business Days of receipt of notice of registration of this deed.

6.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Developer's Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

6.4 Interest in Land

The Developer represents and warrants that:

- (a) at the date of entry into this deed, it is the owner of the Developer's Land; and
- (b) it is legally and beneficially entitled to obtain all consents and Approvals and to compel any person referred to in or contemplated by clause 6.1(b)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 6.

7. Right to lodge caveat

7.1 Right to lodge caveat if deed not registered on title

- (a) The Developer acknowledges that this deed confers on the Minister an interest in the Developer's Land and entitles the Minister to lodge and maintain a caveat until such time as this deed is registered on the title to the Developer's Land in accordance with clause 6.1, on the title to any lot within the Developer's Land.
- (b) If, after 10 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed on the title to the Developer's Land in accordance with clause 6.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of any exercise by the Minister of the Minister's rights under clause 7.1 to lodge and withdraw a caveat(s) (as applicable).
- (c) If the Minister lodges a caveat in accordance with clause 7.1(a), the Minister will do all things reasonably necessary:
 - (i) to ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) to remove the caveat from the title to any lot within the Land promptly, following registration of this deed in accordance with clause 6.1.

7.2 Right to lodge caveat where Developer's Land proposed to be transferred

Separately to clause 7.1 above, the Developer acknowledges that this deed confers on the Minister an interest in the Developer's Land and entitles the Minister to lodge and maintain a caveat on the title to any lot within the Developer's Land:

- (a) which the Developer proposes to transfer under clause 10.2, until the obligations under clauses 10.2(b) and 10.2(c) are fulfilled to the Minister's satisfaction; and
- (b) which the Developer transfers to a Transferee under clause 10.2, until the Developer and/or Transferee has complied with their obligations under this deed.

8. Dispute Resolution

8.1 Dispute resolution process

Any dispute between the parties arising in connection with this deed is to be resolved in accordance with the following process:

- (a) the disputing party's Representative must give the other party's Representative a notice identifying and providing details of the subject matter in dispute;
- (b) both Representatives from each party will meet and attempt to resolve the dispute as soon as possible and in any event within 20 Business Days of the notice being received;
- (c) where a resolution cannot be reached, the Chief Executive Officer of Infrastructure NSW and the Secretary of the Department will meet to reach agreement upon the resolution of the dispute; and
- (d) if no agreement can be reached the parties will deal with the dispute in accordance with Premier's Memorandum M1997-26.

8.2 No prejudice

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

9. GST

9.1 Definitions

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

9.2 Intention of the parties

The parties intend that:

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

9.3 Reimbursement

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

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.4.

9.5 Additional Amounts for GST

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

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

9.6 Non-monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

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

9.8 No merger

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

10. Assignment, transfer, and entry into development agreements

10.1 Right to assign or novate

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

10.2 Right to transfer Developer's Land

- (a) Subject to clause 10.2(b) and 10.2(c), the Developer must not sell or transfer the whole or any part of the Developer's Land (**Transfer Land**) to another person (**Transferee**):
 - (i) on which this deed remains registered under section 7.6 of the Act;

- (ii) in respect of which a Monetary Contribution required under this deed has not yet been provided;
 - (iii) on which a Works Contribution required under this deed has not been delivered; or
 - (iv) which is subject to a Land Contribution requirement which has not been fulfilled.
- (b) Despite clause 10.2(a), the Developer may sell or transfer the Transfer Land to a Transferee (**Transfer**) if prior to the proposed sale or transfer:
- (i) the Developer notifies the Minister of the proposed Transfer;
 - (ii) the Minister is satisfied, acting reasonably, that the Developer is not in material breach of its obligations under this deed;
 - (iii) the Minister is satisfied, acting reasonably, that:
 - (A) the proposed Transferee has sufficient assets, resources and expertise required to perform the Developer's remaining obligations under this deed; or
 - (B) the Developer will continue to be bound by the terms of this deed as they relate to the Transfer Land after the Transfer;
 - (iv) the Minister provides written notice to the Developer that the Minister is satisfied of the matters in clause 10.2(b)(ii) and 10.2(b)(iii);
 - (v) the Developer procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister under which the Transferee agrees to comply with this deed in relation to the Transfer Land as though the Transferee is the Developer; and
 - (vi) unless the Transferee is an Authority of the NSW government, the Developer procures and provides the Minister with Security in accordance with clause 10.2(c) if required to do so by the Minister under that clause.
- (c) Before the proposed Transfer, the Minister will require the Developer to procure Security from the Transferee on terms acceptable to the Minister that:
- (i) names the Minister and the Department as the beneficiaries of the Security;
 - (ii) has a face value that the Minister reasonably considers is sufficient to cover the Cost of fulfilling any Works Contribution and Monetary Contribution obligations which have not been fulfilled as at the date of the Transfer under this deed in respect of the Transfer Land; and
 - (iii) entitles the Minister:
 - (A) to hold the Security from the commencement of the agreement required under clause 10.2(b)(v) until the Transferee has fulfilled the obligations referred to in clause 10.2(c)(ii); and
 - (B) to call upon the Security if the Transferee fails to fulfil those obligations and to cover and any costs and expenses incurred by the Minister in rectifying any default by the Transferee under this deed.
- (d) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Entry into Development Agreement

- (a) On and from registration of this deed in accordance with clause 6, the Developer may enter into a development agreement with a Contractor (**Development Agreement**) in accordance with this clause 10.3.
- (b) The Developer agrees that any Development Agreement must require the Contractor to provide the Developer with Security that:
 - (i) names the Developer as the beneficiary of the Security;
 - (ii) has a face value of an amount appropriate to secure the delivery of any Works Contributions which the Contractor is responsible for delivering under the Development Agreement (**Contractor Works Contributions**), as determined by the Developer;
 - (iii) entitles the Developer to retain the Security from the date that the Development Agreement commences until the Contractor Works Contributions are complete; and
 - (iv) entitles the Developer to call on the Security to be applied towards the delivery of the Contractor Works Contributions if the Contractor fails to deliver them.
- (c) The Developer agrees that any Development Agreement must require the Contractor to provide the Developer with other security (**Alternate Security**), which may include:
 - (i) where the Contractor is a subsidiary of a parent company, a parent company guarantee from the parent company of the Contractor for the performance of the Contractor's obligations under the Development Agreement which is enforceable against the parent company (**Parent Company Guarantee**) and which:
 - (A) names the Developer as the beneficiary of the Parent Company Guarantee;
 - (B) has a face value of an amount appropriate to secure the delivery of the Contractor Works Contributions, as determined by the Developer; and
 - (C) entitles the Developer to call on the Parent Company Guarantee to be applied towards the delivery of the Contractor Works Contributions if the Contractor fails to deliver them;
 - (ii) a liquidated damages regime under which:
 - (A) the Contractor is required to pay liquidated damages to the Developer for delays and failures in completion and delivery of the Contractor Works Contributions as a debt due and immediately payable to the Developer upon demand; and
 - (B) the payment by the Contractor of liquidated damages does not in any way relieve the Contractor from any of its obligations to achieve completion of the Contractor Works Contribution or from any other obligations and liabilities under the Development Agreement.
- (d) The Developer agrees that entry into a Development Agreement does not release the Developer from its obligations under this deed.
- (e) If the Developer enters into a Development Agreement, the Developer will provide the Minister with:

- (i) a schedule which specifies which Works Contribution items comprise the Contractor Works Contributions and which Works Contribution items the Developer will deliver itself outside of the Development Agreement; and
 - (ii) a copy of the relevant provisions of any executed Development Agreement promptly after execution demonstrating that the Development Agreement includes the provisions required by clauses 10.3(b) and 10.3(c).
- (f) If the Developer reasonably believes that the Contractor is unable to comply with its obligations under the Development Agreement to deliver the Contractor Works Contributions or any part of them, the Developer must:
- (i) notify the Minister; and
 - (ii) complete the relevant Contractor Works Contributions in accordance with the requirements of this deed.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

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

11.2 Power of attorney

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

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Approvals, including Development Consents, Construction Certificates, Subdivision Certificates and Occupation Certificates applied for or granted, or any reviews of environmental factors, in relation to Development and Activities on the Land as the case may be;
 - (ii) a description of the status of any Development or Activity on the Land, whether in respect of the Development, Works Contribution or otherwise, including a plan that identifies what Development and Activities have been completed, are under construction and are to be constructed or carried out; and
 - (iii) a forecast in relation to the anticipated progression and completion of any Development or Activity on the Land.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for

the Secretary to assess any aspect of the planning or carrying out of the Development, the Works Contribution, and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

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

13.2 Variation

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

13.3 Waiver

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

13.4 Further assurances

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

13.5 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 Governing law and jurisdiction

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

13.7 Severance

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

13.8 Preservation of existing rights

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

13.9 No merger

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

13.10 Counterparts

- (a) This deed may be executed in any number of counterparts or copies, each of which may be executed by physical signature in wet ink or electronically (whether in whole or part).
- (b) A party who has executed a counterpart of this deed may exchange it with and deliver it to another party (the Recipient) by:
 - (i) emailing a copy of the executed counterpart to the Recipient; or
 - (ii) utilising an electronic platform (including DocuSign) to circulate the executed counterpart, and will be taken to have adequately identified themselves by so emailing the copy to the Recipient or utilising the electronic platform.
- (c) Each party consents to signatories and parties executing this deed by electronic means and to identifying themselves in the manner specified in this clause.
- (d) Each counterpart constitutes an original (whether kept in electronic or paper form), all of which together constitute one instrument as if the signatures (or other execution markings) on the counterparts or copies were on a single physical copy of this deed in paper form. Without limiting the foregoing, if any of the signatures or other markings on behalf of one party are on different counterparts or copies of this deed, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this deed.

13.11 Electronic Execution

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

provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;

- (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
- (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of his deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

13.12 Relationship of parties

Unless otherwise stated:

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

13.13 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.

13.14 No fetter

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

13.15 Explanatory note

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

13.16 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs, valuation costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all reasonable 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).

- (d) The Developer must pay its own and the Minister's reasonable costs and disbursements in connection with the release and discharge of this deed with respect to any part of the Land pursuant to clause 6.3.
- (e) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.16(a), (b) and (d):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.17 Notices

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

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

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

Requirement under the Act	This agreement
Planning instrument and/or development application – (section 7.4(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	Yes Yes No
Description of land to which this deed applies – (section 7.4(3)(a))	See definition of 'Land' in clause 1.1, Schedule 3 and Schedule 4.
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of 'Development' in clause 1.1.
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	State environmental planning policies to effect changes to relevant environmental planning instruments, as sought by the Developer in SEPP Proposal 1 and SEPP Proposal 2.
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See Schedule 5, Schedule 6 and Schedule 7.
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is excluded in respect of the Development.
Applicability of Subdivision 4 of Division 7.1 of the Act – (section 7.4(3)(d))	The application of Subdivision 4 of Division 7.1 of the Act to the Development is excluded.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))	No.
Mechanism for Dispute Resolution – (section 7.4 (3)(f))	See clause 8.
Enforcement of this deed – (section 7.4(3)(g))	See clause 5 and clause 6.

Requirement under the Act	This agreement
No obligation to grant consent or exercise functions – (section 7.4(9) and section 7.4(10))	See clause 13.14 of this deed.

Table 2 – Other matters

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

Schedule 2– Address for Service

(clause 1.1)

Minister

Contact: The Secretary

Address: C/O- Department of Planning, Housing and Infrastructure
Level 11, 4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2050

Email: planningagreements@planning.nsw.gov.au

**Infrastructure
NSW**

Contact: Geoff Gerring

Address: AON Tower, Level 27, 201 Kent Street, SYDNEY NSW 2000

Email: Geoff.Gerring@infrastructure.nsw.gov.au

Schedule 3 – Development Area

(clause 1.1)

Lots	Deposited Plan	Landowner
2	827434	Developer
1	836351	Developer
1	734622	Developer
1	74155	Developer
1 and 2	125720 (Auto consol 3200-167)	Developer
17	1027254	Developer

Schedule 4 – Works Contribution Land

(clause 1.1)

Lots	Deposited Plan	Landowner
1	85206	The Maritime Services Board of New South Wales
1	188671	The Maritime Services Board of New South Wales
2	827434	Developer
1	734622	Developer
1	74155	Developer
1 and 2	125720 (Auto consol 3200-167)	Developer
1	439245	Developer
19	803159	TFNSW
20	803159	TFNSW
21	803159	Roads and Traffic Authority of New South Wales**
22	803159	Roads and Traffic Authority of New South Wales**
5	803160	TFNSW
6	803160	TFNSW
Part Lot 1	835794	TFNSW
2	1064339	TFNSW
Part Lot 107	1076596	TFNSW
1 and 2	1089643	Developer
Parts of the Bank Street Road Reserve	The City of Sydney and/or TFNSW	

Note to table:

** These lots contain a pylon for the Anzac Bridge. While works may be proposed within these lots to ensure interface with the park, the lots do not form part of the Works Contribution Land as it is not proposed to transfer/dedicate them. The lots will remain in ownership of TfNSW as the Authority exercising roads authority functions over the Anzac Bridge.

Schedule 5– Development Contribution (Monetary Contribution)

(clause 4)

1. Monetary Contribution

(a) Monetary Contribution table

- (i) The Developer undertakes to provide the Monetary Contribution to the Minister in the manner and at the times summarised in the table below:

No.	Item	Description	Value	Timing
1.	Station Contribution	Monetary contribution towards the Pymont Peninsula Metro Station payable in relation to each Relevant Development.	As calculated in accordance with clause 2(a) of this Schedule 5.	In accordance with clause 2(b) of this Schedule 5.
2.	Local Infrastructure Contribution	Monetary contribution towards the provision of local infrastructure payable in relation to each Relevant Development.	As calculated in accordance with clause 3(a) in this Schedule 5.	In accordance with clause 3(b) of this Schedule 5.

- (ii) In this Schedule 5:

Development Consent does not include a Complying Development Certificate.

Order means, in relation to Relevant Development, the *Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024* (NSW), or any other subsequent Ministerial planning order under Subdivision 4 of Division 7.1 of the Act, as in force at the time when development consent is granted, or a complying development certificate is issued, for the Relevant Development.

Relevant Development means a part of the Development in the Development Area for which Development Consent is granted or a Complying Development Certificate is issued for residential or commercial purposes or uses, excluding any such Development Consent or Complying Development Certificate for any part of the Works Contribution.

2. Station Contribution – calculation and timing of payment

(a) Calculation of the value of Station Contribution

- (i) This clause 2(a) applies to the making of the Station Contribution under this deed.

- (ii) The Developer must pay an amount towards the Station Contribution in relation to each Relevant Development in accordance with this clause 2 (**Station Contribution Amount**).
 - (iii) The Station Contribution Amount payable for each Relevant Development is to be determined in accordance with the Order as if a transport project component (but only a transport project component) of a housing and productivity contribution is required.
- (b) **Timing of payment of Station Contribution**
- (i) Each Station Contribution Amount payable determined in accordance with clause 2(a) of this Schedule 5 is to be paid prior to the issue of a Construction Certificate for the Relevant Development.
 - (ii) Despite clause 2(b)(i) above, if no Construction Certificate is required, the Developer must pay the Station Contribution Amount before the commencement of any work authorised by a Development Consent or Complying Development Certificate for the Relevant Development.
 - (iii) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention:
 - (A) to lodge an application for a Construction Certificate;
 - (B) to certify its Crown building work under section 6.28 of the Act, as the case may require; or
 - (C) to lodge an application for a Complying Development Certificate,
 unless the Station Contribution Amount has already been paid for the Relevant Development.
 - (iv) The parties agree that the requirement to pay each Station Contribution Amount under this deed, in accordance with this Schedule 5, is a restriction on the issue of a Construction Certificate for the Relevant Development within the meaning of section 21 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

3. Local Infrastructure Contribution – calculation and timing of payment

- (a) **Calculation of the value of Local Infrastructure Contribution**
- (i) This clause 3(a) applies to the making of the Local Infrastructure Contribution under this deed.
 - (ii) The Developer must pay an amount towards the Local Infrastructure Contribution in relation to each Relevant Development, in accordance with this clause 3 (**Local Infrastructure Contribution Amount**).
 - (iii) Before lodging a Development Application or application for a Complying Development Certificate for the Relevant Development, the Developer must provide the Minister with an estimate of costs for the Relevant Development prepared:
 - (A) by a Registered Quantity Surveyor; and

- (B) in accordance with the methodology in section 208 of the Regulation relating to levies under section 7.12 of the Act (subject to clause 3(a)(iii) of this Schedule 5),

(Cost Estimate).

- (iv) The Minister may, at the Minister's discretion:

(A) require the Developer to provide a further Cost Estimate by a Registered Quantity Surveyor; or

(B) engage, at the Developer's cost, a Registered Quantity Surveyor,

to review the Cost Estimate provided by the Developer. Without limiting the Minister's discretion, the Minister may require the Developer to provide a further Cost Estimate under this clause 3(a)(iv) if that part of the Relevant Development, to which the Cost Estimate relates, is modified.

- (v) The Minister is to notify the Developer in writing of the Cost Estimate accepted by the Minister (**Accepted Cost Estimate**), including the Cost Estimate as revised by the Minister having regard to any information arising from the exercise of the Minister's discretion under clause 3(a)(iv) in this Schedule 5.

- (vi) Each Local Infrastructure Contribution Amount payable is an amount equal to "Z" in the following formula:

$$Z = C \times 0.03$$

Where:

"C" is the Accepted Cost Estimate determined by the Minister under clause 3(a)(v) of this Schedule 5 for the Relevant Development

"0.03" is the decimal format of the percentage figure of 3%.

- (vii) If:

(A) the City of Sydney approves a contributions plan under Division 7.1 of the Act, for the purpose of imposing conditions under section 7.12 of the Act, and that plan applies to the part of the land on which the Relevant Development is to be carried out; and

(B) the percentage of the cost of carrying out development specified in the plan that would apply to the Relevant Development (but for the exclusion of the application of section 7.12 by this deed) is less than 3%,

that lesser percentage of the cost of carrying out development specified in the plan is to be used to calculate the Local Infrastructure Contribution Amount instead of the factor of "0.03" (being 3%) in the formula in clause 3(a)(vi) of this Schedule 5.

- (viii) For the purpose of calculating a Local Infrastructure Contribution Amount for the Relevant Development, the Accepted Cost Estimate is to be adjusted, as at the day before payment of the Local Infrastructure Contribution Amount, by multiplying it by an amount equal to the Current CPI divided by the Base CPI.

- (ix) For the purposes of this clause 3(a), the Current CPI is:

- (A) if the Local Infrastructure Contribution Amount is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
- (B) if the Local Infrastructure Contribution Amount is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

(b) Timing of and Direction for payment of Local Infrastructure Contribution

- (i) If the Relevant Development is the subject of a Development Consent, the Developer must pay the Local Infrastructure Contribution Amount to the City of Sydney:
 - (A) before the issue of the first Construction Certificate in respect of building work for the Relevant Development; or
 - (B) in relation to any part of the Development which is Crown building work carried out by or on behalf of the Developer for which the Developer does not apply for a Construction Certificate, before the Certification of any Crown building work by or on behalf of the Developer under section 6.28 of the Act.
- (ii) If the Relevant Development is the subject of a Complying Development Certificate, the Developer must pay the Local Infrastructure Contribution Amount for the Relevant Development to the City of Sydney before whichever of the following is the earlier time:
 - (A) 60 days from the date endorsed on the certificate as the date on which it becomes effective and operates and, in the case of a “deferred commencement” certificate (being a certificate subject to a condition of a kind referred to in section 4.28(9A) of the Act), 60 days from it becoming operative; or
 - (B) the commencement of any work authorised by the certificate.
- (iii) The Developer must provide the Minister with not less than 10 Business Days’ written notice of its intention:
 - (A) to lodge an application for a Construction Certificate or Complying Development Certificate; or
 - (B) to certify its Crown building work under section 6.28 of the Act, as the case may require,

unless the Local Infrastructure Contribution Amount has already been paid for the Relevant Development.
- (iv) The Developer must provide the Minister with written confirmation that a Local Infrastructure Contribution Amount for a Relevant Development has been paid, together with appropriate evidence of payment, within 10 Business Days’ of payment.
- (v) The parties agree that the requirement to pay the Local Infrastructure Contribution Amount for a Relevant Development is a restriction on the issue of the relevant Construction Certificate within the meaning section 21 of *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Schedule 6 - Development Contribution (Works Contribution)

(clause 4)

1. Works Contribution**(a) Works Contribution table**

The Developer undertakes to provide the Works Contribution to the Minister or the Minister's Nominated Authority in the manner and at the times set out in the table below in respect of each Works Contribution, subject to clause 1(b) of this Schedule 6 below:

No	Item	Timing
List 1 – Public Domain Works		
1.	Bank Street Cycleway Works Contribution	Before: (a) the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first); and (b) the provision of the Bank Street Cycleway Land Contribution (if required), subject to clause 5 of this Schedule 6.
2.	Bank Street Park Works Contribution	Before: (a) the issue of the first Occupation Certificate for Development within the Development Area; and (b) the provision of the Bank Street Park Land Contribution.
3.	Boardwalk Works Contribution	Before the issue of the first Occupation Certificate for Development within the Development Area.
4.	Miller Street Reserve Works Contribution	Before: (a) the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first); and (b) the provision of the Miller Street Reserve Land Contribution.
5.	Public Art Contribution	Before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area

No	Item	Timing
		exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).
6.	Pymont Bridge Road Cycleway Extension Works Contribution	Before: (a) an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first); and (b) the provision of the Pymont Bridge Road Cycleway Extension Land Contribution.
7.	Sydney Fish Market Urban Park Works Contribution	Before: (a) the issue of the first Occupation Certificate for Development within the Development Area; and (b) the provision of the Sydney Fish Market Urban Park Land Contribution.
8.	Waterfront Promenade Works Contribution	Before: (a) the issue of the first Occupation Certificate for Development within the Development Area; and (b) the provision of the Waterfront Promenade Land Contribution.
9.	Cultural and Creative Uses Works Contribution	Before: (a) the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first); and (b) the provision of the Cultural and Creative Uses Land Contribution.
List 2 – Road Contribution Works		
10.	Bank and Miller Street Intersection Works Contribution	Before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).
11.	Wattle Street Road Works Contribution	Before the issue of the first Occupation Certificate for Development within the Development Area.

- (b) **Timing of Works Contribution items which are Crown development and required before Occupation Certificate**

If the Developer is the Crown (for the purposes of Part 6 of the Act) and does not intend to apply for an Occupation Certificate, but would otherwise be required to provide a Works Contribution before the issue of an Occupation Certificate in accordance with the table at clause 1(a) of this Schedule 6, the Developer undertakes instead to provide the Works Contribution to the Minister or the Minister's Nominated Authority before the earlier of the following:

- (i) the occupation of the building or part of the building concerned; and
 - (ii) 2 years from the issue of the Construction Certificate for the building or part of the building concerned or 2 years from the Certification of the Crown building work involved under section 6.28 of the Act.
- (c) **Notification to Minister of intention to apply for Occupation Certificate or to occupy**
- (i) The Developer, if it is the Crown for the purposes of Part 6 of the Act, must notify the Minister in writing as to whether it intends to apply for an Occupation Certificate for any part of a building, or to occupy any part of a building, within 10 days of the issue of the Construction Certificate for the part of the building or the Certification of the building work concerned under section 6.28 of the Act.
 - (ii) If the Developer notifies the Minister under clause 1(c)(i) of this Schedule 6 that it does not intend to apply for an Occupation Certificate for the part of the building concerned, the parties agree that, for the purposes of clause 1(b) of this Schedule 6, the Developer must make the relevant Works Contribution as required by clause 1(b) of this Schedule 6.
 - (iii) The Developer agrees that each requirement in the table at clause 1(a) of this Schedule 6 relating to the making of a Works Contribution before the issue of an Occupation Certificate is a restriction on the issue of an Occupation Certificate for the purposes of section 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

2. Public Art Contribution

(a) Approval of the Public Art Plan

- (i) This clause 2 sets out the process to be followed for the approval of the Public Art Plan.
- (ii) Prior to the issue of any Construction Certificate for the Development (other than a Construction Certificate relating to the Bank Street Park Works Contribution) the Developer must prepare a Public Art Plan.
- (iii) The Public Art Plan must:
 - (A) be prepared in consultation with Place Management NSW; and
 - (B) include:
 - (I) the proposed location(s) of the Public Art in strategic locations, including the Waterfront Promenade Land; and
 - (II) how the Public Art Contribution will be provided, for example by way of a monetary contribution and/or the provision of Public Art, or both; and

(III) the process for selection of the Public Art.

(iv) The Developer must provide the Minister with a copy of the Public Art Plan by no later than 10 Business Days after finalisation of the Public Art Plan.

(b) Value of Public Art Contribution

The provision of Public Art in accordance with the Public Art Plan and clause 2(a) of this Schedule, must be to the value \$400,000.

3. Public Domain Works

(a) Public Domain Works Deed

(i) This clause 3 applies to Public Domain Works.

(ii) The Developer must, at its cost, enter into one or more Public Domain Works Deeds with the Minister or the Minister's Nominated Authority (as appropriate) on terms satisfactory to the Minister or the Minister's Nominated Authority and consistent with the terms of this deed, prior to the issue of the first Construction Certificate or other Certification for any part of the Development.

(iii) Each Public Domain Works Deed must include (at a minimum):

- (A) a description of the nature of the Public Domain Works to be provided;
- (B) the standards and specifications for the Public Domain Works to be provided;
- (C) the value of the Public Domain Works to be provided;
- (D) how the Public Domain Works are to be provided;
- (E) a process for confirming that the Public Domain Works have been completed, including a requirement for the Developer to obtain certification from a registered certifier that the Public Domain Works have been completed in accordance with the relevant Approvals for the Public Domain Works **(Completion Process)**;
- (F) provision for the Defect Liability Period for the Public Domain Works, with a requirement that the Developer remedy any Defects at the Developer's cost to the reasonable satisfaction of the Minister's Nominated Authority; and
- (G) a requirement that the Developer Maintain the Public Domain Works for a maintenance period of 36 months commencing on the day immediately after the Developer completes the Public Domain Works in accordance with clause 3(c) of this Schedule 6.

(iv) The Developer must provide the Minister with a copy of each Public Domain Works Deed within 10 Business days of execution of the relevant Public Domain Works Deed and in any event, prior to the commencement of any works in connection with the Public Domain Works.

(b) Carrying out of Public Domain Works

(i) Prior to the commencement of any works in connection with the Public Domain Works, the Developer must, at its cost:

- (A) obtain any necessary Approvals for the Public Domain Works; and
 - (B) provide the Minister with evidence in writing that it has obtained all necessary Approvals for the Public Domain Works for the purposes of the Public Domain Works Deed.
- (ii) The Developer must carry out and complete the Public Domain Works in accordance with:
- (A) the timing specified in the table at clause 1(a) of this Schedule 6 for the completion of Public Domain Works;
 - (B) all applicable Approvals; and
 - (C) the relevant Public Domain Works Deed.
- (c) **Completion of Public Domain Works**
- (i) For the purposes of this deed, a Public Domain Work is taken to have been completed when:
 - (A) the Developer provides the Minister with a notice in writing from the Minister's Nominated Authority which states that the Developer has satisfied the Completion Process in the relevant Public Domain Works Deed, together with copies of all documents submitted by the Developer to the Minister's Nominated Authority in accordance with the Completion Process (**Completion Notice**); and
 - (B) following receipt of the Completion Notice, the Minister provides the Developer with a notice in writing which states that the Public Domain Work that is the subject of the Completion Notice has been completed having regard to the Completion Notice, such confirmation not to be unreasonably withheld or delayed.
 - (ii) For the avoidance of doubt, the Minister will provide confirmation in accordance with clause 3(c)(i)(B) if the Developer provides the Minister with the Completion Notice under clause 3(c)(i)(A).
 - (iii) The Developer must ensure that the Public Domain Land at item nos. 1, 5 and 6 of the table in clause 1(a)(i) of Schedule 7 is made available to the public for its Intended Use from the date of completion of the relevant Public Domain Works in accordance with this clause 3(c) of Schedule 6.

4. Road Contribution Works

(a) Application

This clause 4 applies to the Road Contribution Works.

(b) Conditions to Commencement of the Road Contribution Works

Prior to the commencement of the Road Contribution Works, the Developer must:

- (i) if Development Consent is required, provide evidence to the Minister that it has obtained Development Consent for the Road Contribution Works;
- (ii) if required by the Roads Authority:

- (C) enter into a Road Contribution Works Deed, on such terms and conditions as are:
 - (I) consistent with the requirements of this deed, including this Schedule 6;
 - (II) acceptable to the Roads Authority and the Minister; and
 - (III) not inconsistent with the provisions of a Public Domain Works Deed;
 - (D) provide to the Minister a copy of the executed Road Contribution Works Deed to carry out the Road Contribution Works; and
 - (E) provide evidence to the Minister of any Security provided for the Road Contribution Works in accordance with the Road Contribution Works Deed; and
- (iii) if a Section 138 Approval is required in relation to the Road Contribution Works, provide to the Minister a copy of the Section 138 Approval.
- (c) **Construction contract for the Road Contribution Works**
- (i) The Developer must provide written notice to the Minister which confirms that it intends to commence the Road Contribution Works (**Notice**).
 - (ii) The Developer may only enter into a construction contract with a contractor who is approved by the Roads Authority and meets all of the Roads Authority's requirements.
 - (iii) The Notice must be accompanied by a copy of each construction contract in place for the Road Contribution Works.
 - (iv) If further construction contract(s) are entered into after the Notice has been issued the Developer must provide a written notice to the Minister of that fact as soon as is practicable and follow the process for appointing a construction contractor described in this clause. The Developer will provide the Minister with a copy of the further construction contract(s).
 - (v) Each construction contract must:
 - (A) identify a superintendent for the Road Contribution Works;
 - (B) provide a reasonable itemisation of works comprising the Road Contribution Works, which, in relation to construction work, may be by a bill of quantities;
 - (C) identify the contract value for each item of the Road Contribution Works; and
 - (D) identify the terms and conditions applicable to the carrying out of the Road Contribution Works.
- (d) **Timing of Road Contribution Works**
- The Developer must complete the Road Contribution Works in accordance with the Road Contribution Works Deed by no later than the timing specified in the table at clause 1(a) of this Schedule 6.

5. Provisions relating to the Bank Street Cycleway Works Contribution and Bank Street Cycleway Land

- (a) The parties acknowledge and agree that as at the date of this deed the Bank Street Cycleway Land (or part of) is owned by the City of Sydney.
- (b) The Developer must use best endeavours to enter into an agreement or other appropriate arrangement with the City of Sydney:
 - (i) to allow the Developer to carry out the Bank Street Cycleway Works Contribution by the time required under this Schedule 6; and
 - (ii) subject to completion of the Bank Street Cycleway Works Contribution, to dedicate or transfer the Bank Street Cycleway Land to the Minister or the Minister's Nominated Authority by the time required under Schedule 7, if required, where the Bank Street Cycleway Land does not form part of the existing road reserve.
- (c) Any agreement reached under clause 5(b) of this Schedule 6 must include terms which are consistent with the Developer's obligations under this deed.
- (d) If the Developer has used best endeavours as required in clause 5(b) of this Schedule 6 but is unable to reach an agreement:
 - (i) the Developer must inform the Minister, providing evidence of the best endeavours taken; and
 - (ii) the Minister, at the Minister's discretion, may discuss alternate arrangements with the Developer in relation to the Bank Street Cycleway Works Contribution and dedication of the Bank Street Cycleway Land, if required.

Schedule 7 - Development Contribution (Land Contributions)

(clause 4)

1. Land Contributions**(a) Table of Land Contributions**

- (i) Subject to clause 1(c) of this Schedule 7, the Developer undertakes to provide or procure the provision of the Land Contribution to the Minister or the Minister's Nominated Authority in the manner and at the times set out in the table below:

No.	Item	Description of Intended Use	Timing
1.	Bank Street Park Land Contribution	Recreation area in perpetuity	Following the completion of the Bank Street Park Works Contribution and before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).
2.	Bank Street Cycleway Land Contribution	Road reserve/ cycleway in perpetuity unless otherwise agreed with the relevant roads authority	If required under an agreement under clause 5 of Schedule 6 – following the completion of the Bank Street Cycleway Works Contribution and before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).
3.	Miller Street Reserve Land Contribution	Recreation area in perpetuity	Following the completion of the Miller Street Reserve Works Contribution and before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).

No.	Item	Description of Intended Use	Timing
4.	Pymont Bridge Road Cycleway Extension Land Contribution	Road reserve/ cycleway in perpetuity unless otherwise agreed with the relevant roads authority	Following the completion of the Pymont Bridge Road Cycleway Extension Works Contribution and before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).
5.	Sydney Fish Market Urban Park Land Contribution	Recreation area in perpetuity	Following the completion of the Sydney Fish Market Urban Park Works Contribution and before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).
6.	Waterfront Promenade Land Contribution	Recreation area in perpetuity	Following the completion of the Waterfront Promenade Works Contribution and before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).
7.	Cultural and Creative Uses Land Contribution	Cultural and creative uses in perpetuity, unless otherwise agreed by the Minister	Following the completion of the Cultural and Creative Uses Works Contribution and before the issue of an Occupation Certificate for Development within the Development Area that will result in the GFA on land within the Development Area exceeding 129,290 square metres or 95% of the total GFA for the Development Area (whichever is achieved first).

- (ii) If the Developer is the Crown (for the purposes of Part 6 of the Act) and does not intend to apply for an Occupation Certificate, but would otherwise be required to provide a Land Contribution before the issue of an Occupation Certificate in accordance with the table to clause 1(a)(i) of this Schedule 7, the Developer undertakes to instead provide the Land Contribution to the Minister or the Minister's Nominated Authority before the earlier of the following:
 - (A) the occupation of the building or part of the building concerned; and
 - (B) 2 years from the issue of the Construction Certificate for the building or part of the building concerned or 2 years from the Certification of the Crown building work involved under section 6.28 of the Act.
 - (iii) The Developer, if it is the Crown for the purposes of Part 6 of the Act, must notify the Minister in writing as to whether it intends to apply for an Occupation Certificate for any part of a building, or to occupy any part of a building, within 10 days of the issue of the Construction Certificate for the part of the building or the Certification of the building work concerned under section 6.28 of the Act.
 - (iv) If the Developer notifies the Minister under clause 1(a)(iii) of this Schedule 7 that it does not intend to apply for an Occupation Certificate for the part of the building concerned, the parties agree that, for the purposes of clause 1(a)(ii) of this Schedule 7, the Developer must make the relevant Land Contribution as required by clause 1(a)(ii).
 - (v) The Developer agrees that each requirement in clause 1(a)(i) of this Schedule 7 relating to the making of a Land Contribution before the issue of an Occupation Certificate is a restriction on the issue of an Occupation Certificate for the purposes of section 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
- (b) **Intended Use of Public Domain items**
- With reference to the Public Domain Land items in the Table at clause 1(a)(i) of Schedule 7, the parties acknowledge and agree that:
- (i) all Public Domain Land will be used for the Intended Uses of each item in perpetuity and the Developer agrees that it will not do anything to affect the ability for any Public Domain Land to be used for its Intended Uses in perpetuity;
 - (ii) the Public Domain Land in the Table at clause 1(a)(i) of Schedule 7 will remain in public ownership and be used for the Intended Uses of each item in perpetuity; and
 - (iii) the Public Domain Land at item no. 7 in the Table at clause 1(a)(i) of Schedule 7 for 'Cultural and Creative Uses Land Contribution' may be managed as public domain or under the management of a private entity but must be used for its Intended Use in perpetuity.
- (c) **Alternate means to satisfy provision of Land Contributions – Minister's discretion**
- (i) Notwithstanding clause 1(a)(i) of this Schedule 7, but subject to clause 1(c)(iii) of this Schedule 7, the Minister in the Minister's discretion may decide that the Developer does not have to provide an item of Public Domain Land as a Land Contribution if:

- (A) the parties have complied with the procedure and provisions in clause 1(c)(iv) of this Schedule 7 in relation to the item of Public Domain Land; and
- (B) the Developer has provided the Minister with documentary evidence proving the registration of:
 - (I) the public positive covenant and easement in gross (and if necessary, restrictive covenant) on the title to the item of Public Domain Land, on the terms agreed by the Minister under clause 1(c)(iv)(B); and
 - (II) a caveat over any item of Public Domain Land over which the Developer may lodge a caveat to prevent the registration of an incoming interest or dealing on the title to the Public Domain Land (but noting that it is not necessary for the Developer to lodge a caveat over any item of Public Domain Land owned by the Developer).
- (ii) If the Minister provides written notice to the Developer stating that the Minister has made a decision under clause 1(c)(i) that the Developer does not have to make the Land Contribution, the Developer does not have to provide the relevant item of Public Domain Land as a Land Contribution despite the obligation in clause 1(a)(i) of this Schedule 7, and without affecting any of the Developer's other obligations in relation to that item of Public Domain Land.
- (iii) The Minister will not unreasonably withhold written notification under clause 1(c)(ii) of this Schedule 7 if the Minister has received the evidence required under clause 1(c)(i)(B) of this Schedule 7.
- (iv) The procedure and provisions which the parties must comply with before the Minister exercises the Minister's discretion under clause 1(c)(i) by issuing written notification under clause 1(c)(ii) of this Schedule 7 are as follows:
 - (A) At least 60 business days before the day on which a Land Contribution is to be made, the Developer will issue a written notice to the Minister:
 - (I) informing the Minister of the Public Domain Land in respect of which the Developer proposes not to make a Land Contribution together with reasons why the Developer does not propose to make the Land Contribution;
 - (II) providing the Minister with evidence that the Public Domain Land the subject of the written notice will remain in public ownership and be used for the Intended Purpose;
 - (III) warranting that no third party has acquired an interest, nor become entitled to an option to purchase an interest, in the Public Domain Land the subject of the Land Contribution requirement in question; and
 - (IV) providing the proposed terms of a public positive covenant and easement in gross (and if necessary, restrictive covenant) which would ensure, as a right or interest of relevant public authorities including the Minister, that the Intended Use of the Public Domain Land is preserved in perpetuity.

- (B) The Minister in the Minister's absolute discretion may then provide written notice to the Developer stating that the Minister accepts the terms of the public positive covenant and easement in gross (and, if necessary, restrictive covenant), set out in the written notice provided by the Developer under clause 1(c)(iv)(A).
- (C) Prior to the timing specified for the dedication and/or transfer of the Public Domain Land in this Schedule 7, the Developer will procure:
 - (I) registration of the public positive covenant and easement in gross (and, if necessary, restrictive covenant), on the title to the Public Domain Land, on the terms agreed by the Minister under clause 1(c)(iv); and
 - (II) a caveat over the relevant Public Domain Land over which the Developer may lodge a caveat to prevent the registration of an incoming interest or dealing on the title to the Public Domain Land.
- (v) If, at any time during which a caveat referred to at clause 1(c)(iv)(C)(II) of this Schedule 7 is recorded on the title(s) of any Public Domain Land, the Developer, as caveator, receives notice that the relevant Public Domain Land is subject to a transfer, the Developer must:
 - (A) as soon as reasonably practicable after receiving such notice, notify the Minister of the proposed transfer of that Public Domain Land; and
 - (B) not give its caveator's consent to the registration of a transfer affecting any Public Domain Land, unless it has first obtained the Minister's consent to the giving of its caveator's consent.
- (vi) The Developer must furnish the Minister with any records and/or information as the Minister reasonably requires to allow the Minister to consider a request for consent under clause 1(c)(v)(B) of this Schedule 7.
- (vii) Before making a decision and issuing a notice under clause 1(c)(iv)(B) above, the Minister may request, and the Developer must provide within a reasonable time, any further information relating to the written notice which the Minister requests.

2. Requirements for the transfer or dedication of the Public Domain Land

- (a) This clause 2 sets out the requirements for the transfer or dedication of any part of the Public Domain Land that is to be dedicated or transferred pursuant to clause 1 of Schedule 7.
- (b) **Subdivision of the Public Domain Land**
 - (i) The Developer must, at its cost:
 - (A) obtain Development Consent and any other Approvals necessary to create one or more separate lots for the Public Domain Land; and
 - (B) prepare a proposed Plan of Subdivision to create one or more separate lot(s) for the Public Domain Land.

- (ii) A proposed Plan of Subdivision prepared in accordance with clause 2(b)(i)(B) above in relation to any Public Domain Land which will be open space must provide for that land to be dedicated as a public reserve in accordance with section 49 of the *Local Government Act 1993*.

(c) **Timing for Provision of the Public Domain Land**

The Developer must provide the Public Domain Land in accordance with the timing specified in the table at clause 1(a)(i) of this Schedule 7 (**Land Dedication Date**).

(d) **Dedication or transfer of the Public Domain Land**

- (i) Prior to the dedication or transfer of the Public Domain Land, the Developer must:
 - (A) deliver to the Minister or the Minister's Nominated Authority for approval a proposed Plan of Subdivision referred to in clause 2(b)(i)(B) of this Schedule 7 (**Proposed Plan of Subdivision**);
 - (B) if required, deliver to the Minister or Minister's Nominated Authority for approval a form of transfer that, on registration, will dedicate the Public Domain Land to the Minister's Nominated Authority;
 - (C) deliver to the Minister or Minister's Nominated Authority a Contaminated Land Report and Contaminated Land Statement from a Contaminated Land Consultant in respect of the Public Domain Land which:
 - (I) state that the Public Domain Land is suitable or will be suitable for use for public recreation at the Land Dedication Date;
 - (II) are addressed to the Minister or the Minister's Nominated Authority; and
 - (III) are otherwise on terms satisfactory to the Minister or Minister's Nominated Authority (acting reasonably);
- (ii) The Minister will provide a response to the Proposed Plan of Subdivision within 20 Business Days of receipt.
- (iii) Upon receipt of approval from the Minister or the Minister's Nominated Authority:
 - (A) lodge the Proposed Plan of Subdivision at the NSW Land Registry Services for registration; or
 - (B) provide evidence that a form of transfer has been lodged for registration through an ELNO;
 - (C) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the dedication or transfer of the Public Domain Land; and
 - (D) take any other necessary action to give effect to the dedication or transfer of the Public Domain Land for public recreation free of all encumbrances (including any mortgages, easements, covenants and other planning agreements) and affectations (including any charge or liability for rates, Taxes and charges) other than service easements or such other encumbrances as agreed by the Minister or the Minister's Nominated Authority in writing.

- (iv) Part of the Land Contribution is taken to be made when the Minister is given copies of the title searches for the Public Domain Land showing the Minister or the Minister's Nominated Authority as the registered proprietor of the Public Domain Land.
- (v) If the Developer does not comply with clause 2(d)(i) above, the Minister or the Minister's Nominated Authority may:
 - (A) refuse to accept the transfer of the Public Domain Land; and
 - (B) require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Minister or the Minister's Nominated Authority (acting reasonably), so as to enable the Developer to comply with clause 2(d),
 in which case the Developer must comply with the Minister's requirements.
- (vi) For avoidance of doubt, clause 2(d)(iii)(D) of this Schedule 7 does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the Developer could not prevent from affecting the Public Domain Land and in respect of which no action can be taken by the Developer.
- (vii) Despite clause 2(d)(iii)(D) of this Schedule 7 if, having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 2(d), then:
 - (A) the Developer may request that the Minister's Nominated Authority agree to accept the land subject to those encumbrances and affectations; and
 - (B) if the encumbrance or affectation:
 - (I) does not prevent the future use of the land for public recreation; or
 - (II) is not a charge arising as a result of unpaid taxes or charges,
 the Minister or Minister's Nominated Authority may agree to accept the land subject to those encumbrances; and
 - (C) in other circumstances, the Minister or the Minister's Nominated Authority may withhold the Minister's or Minister's Nominated Authority's agreement at their absolute discretion.
- (viii) If the Minister or the Minister's Nominated Authority, as the case may be, is required by an Authority to Remediate any Contamination over the whole or any part of the Public Domain Land, the Developer will be responsible for any Costs associated with the Remediation required, but only in relation to Contamination that existed on or before the Land Dedication Date.
- (ix) The Developer will pay all rates and Taxes owing in respect of the Public Domain Land up to and including the date that the Developer dedicates the Public Domain Land for the purpose of public recreation pursuant to clause 2(d) of this Schedule 7 or the date of acquisition (as applicable), after which time the Minister's Nominated Authority will be responsible for any rates and Taxes in relation to the Public Domain Land.

- (x) The Developer indemnifies and keeps indemnified the Minister (or at the Minister's election, the Minister's Nominated Authority) in relation to any failure of the Developer to comply with 2(b) – (d) of this Schedule 7.
- (xi) The parties agree that clause 2 of this Schedule 7 operates as a deed poll in favour of the Minister or Minister's Nominated Authority (where applicable).

Execution page

Executed as a deed

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

.....
Signature of witness

Date of signature:

.....
Name of witness in full

.....
Address of witness

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

Date of signature:

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

Signed, sealed and delivered by the Chief
Executive Officer of Infrastructure NSW (ABN
85 031 302 516) pursuant to section 9(3) of
the *Infrastructure NSW Act 2011 (NSW)*, in
the presence of:


.....
Signature of witness

Date of signature: 12/09/2024.....

Zennab Farhat
.....
Name of witness in full

201 Kent Street, Sydney.
.....
Address of witness


.....
Signature of the Chief Executive Officer of
Infrastructure NSW

Date of signature: 12/09/2024.....

Tom Cellibrand
.....
Name of Chief Executive Officer

Annexure A – Proposed Works Plan

Proposed Works

1. Waterfront Promenade
 2. Boardwalk
 3. Bank St Park
 4. Pyrmont Bridge Rd Cycleway Extension
 5. Bank St Cycleway
 6. Miller St Reserve
 7. Sydney Fish Market Urban Park - Foreshore Connection Works
- A. Wattle Street Intersection
B. Bank St/Miller St Intersection



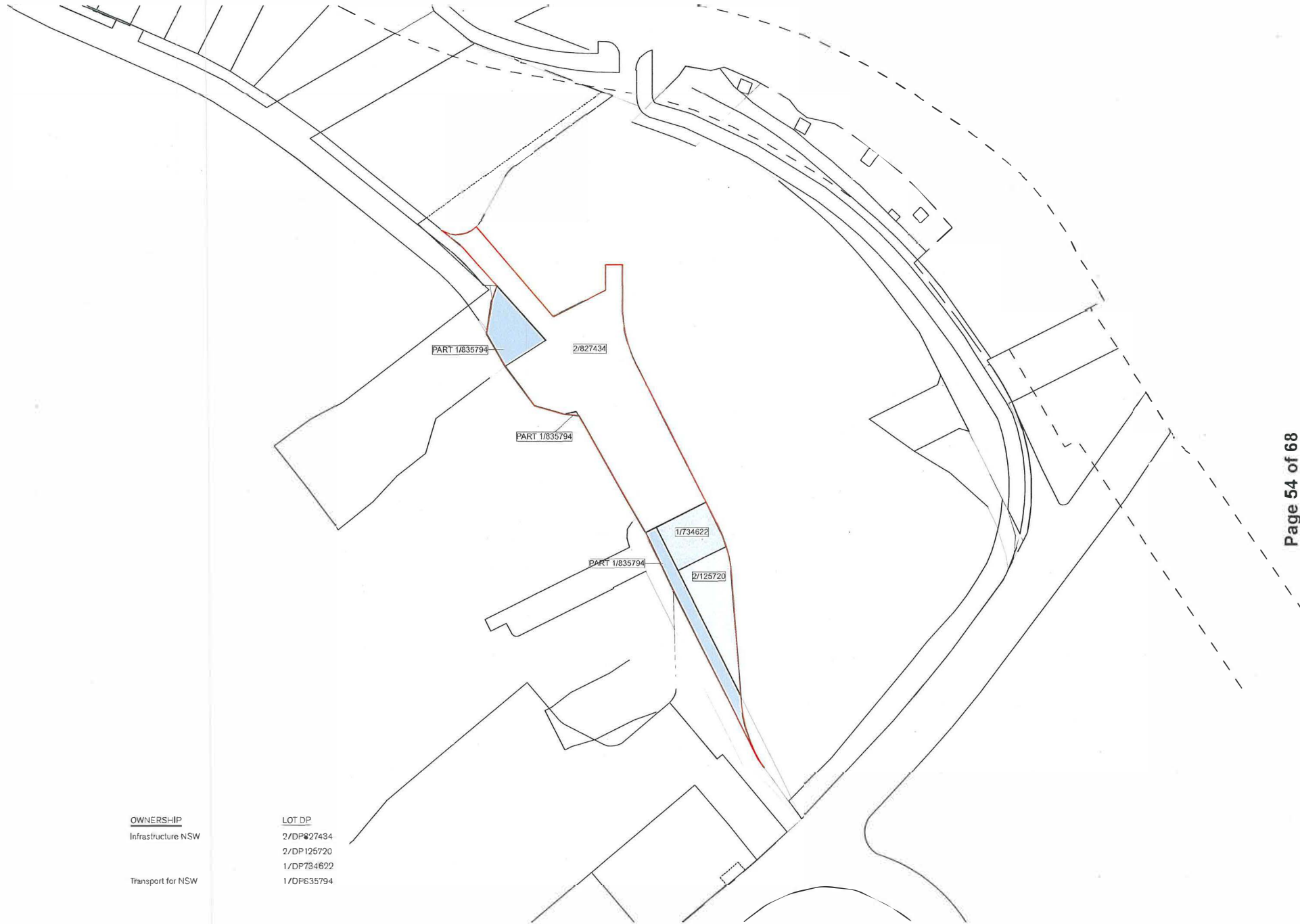
Proposed Works

Blackwattle Bay

1:3000 @ A3

For Information

Annexure B – Waterfront Promenade Land



PROPOSED WORKS
1. Waterfront Promenade

OWNERSHIP
Infrastructure NSW

Transport for NSW

LOT DP
2/DP827434
2/DP125720
1/DP734622
1/DP635794



Waterfront Promenade
Blackwattle Bay Precinct

1:1500 @ A3
For Information

Annexure C – Boardwalk Plan

0

PROPOSED WORKS
2. Boardwalk

OWNERSHIP
Transport for NSW

LOT DP
107/DP1076596
1/DP835794



Boardwalk
Blackwattle Bay Precinct

1:1500 @ A3
For Information

Annexure D – Bank Street Park Land



PROPOSED WORKS
3. Bank St Park

OWNERSHIP
Infrastructure NSW

Transport for NSW

LOT DP
1/DP1089643
2/DP1089643
1/DP439245
1/DP85206
1/DP188671
20/DP803159
22/DP803159
21/DP803159
19/DP803159
5/DP803160
6/DP803160

Bank St Park

INSW - Blackwattle Bay Precinct Plan

1:1500 @ A3

For Information



Annexure E – Pymont Bridge Road Cycleway Extension Land



PROPOSED WORKS
4.. Pyrmont Bridge Rd Cycleway
Extension (indicative)

OWNERSHIP
Infrastructure NSW

Transport for NSW

LOT DP
1/DP125720
2/DP125720
1/DP74155
1/DP835794



Pyrmont Bridge Rd Cycleway Extension

INSW - Blackwattle Bay Precinct Plan

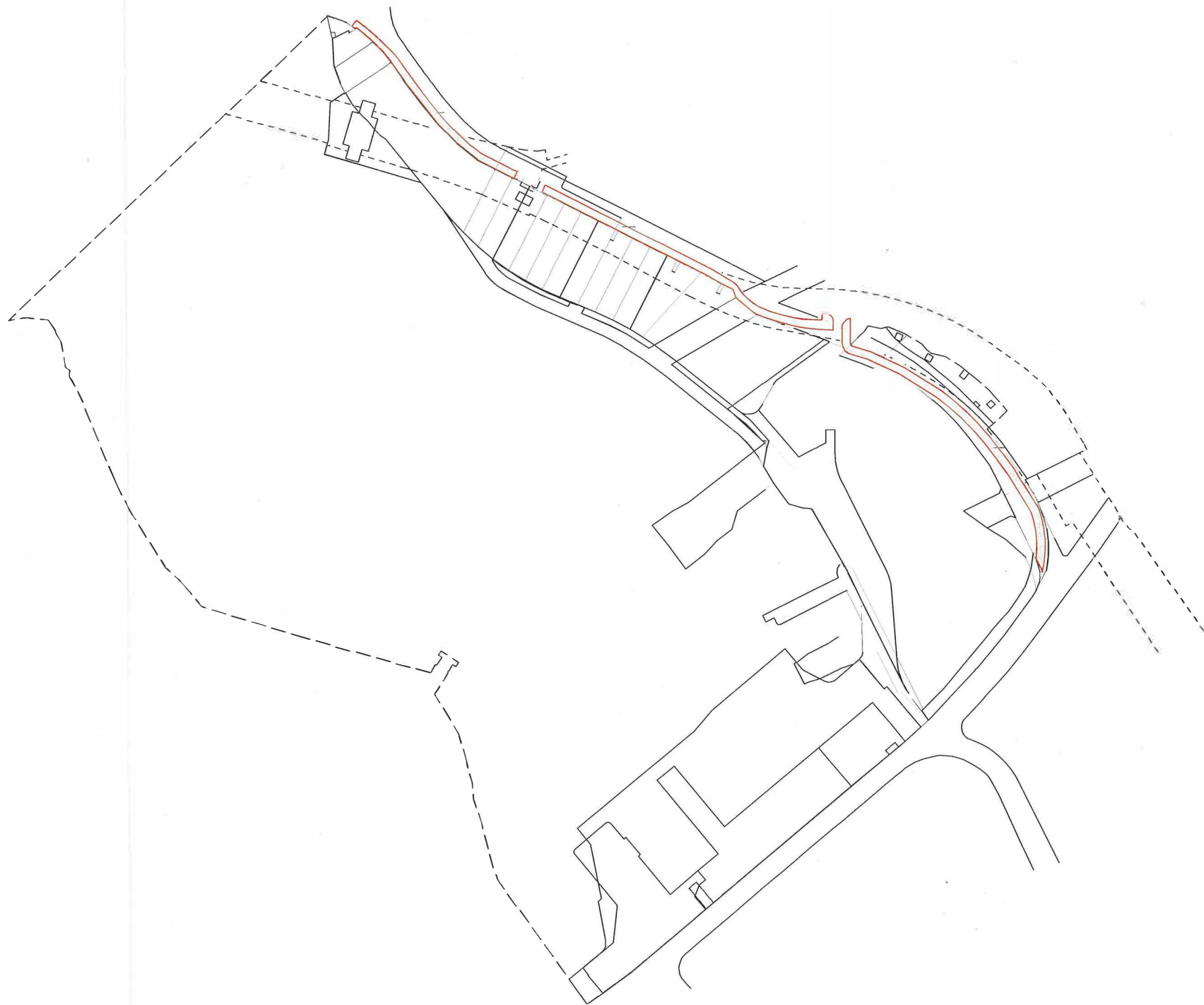
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For Information

17/04/2024



Annexure F - Bank Street Cycleway Land

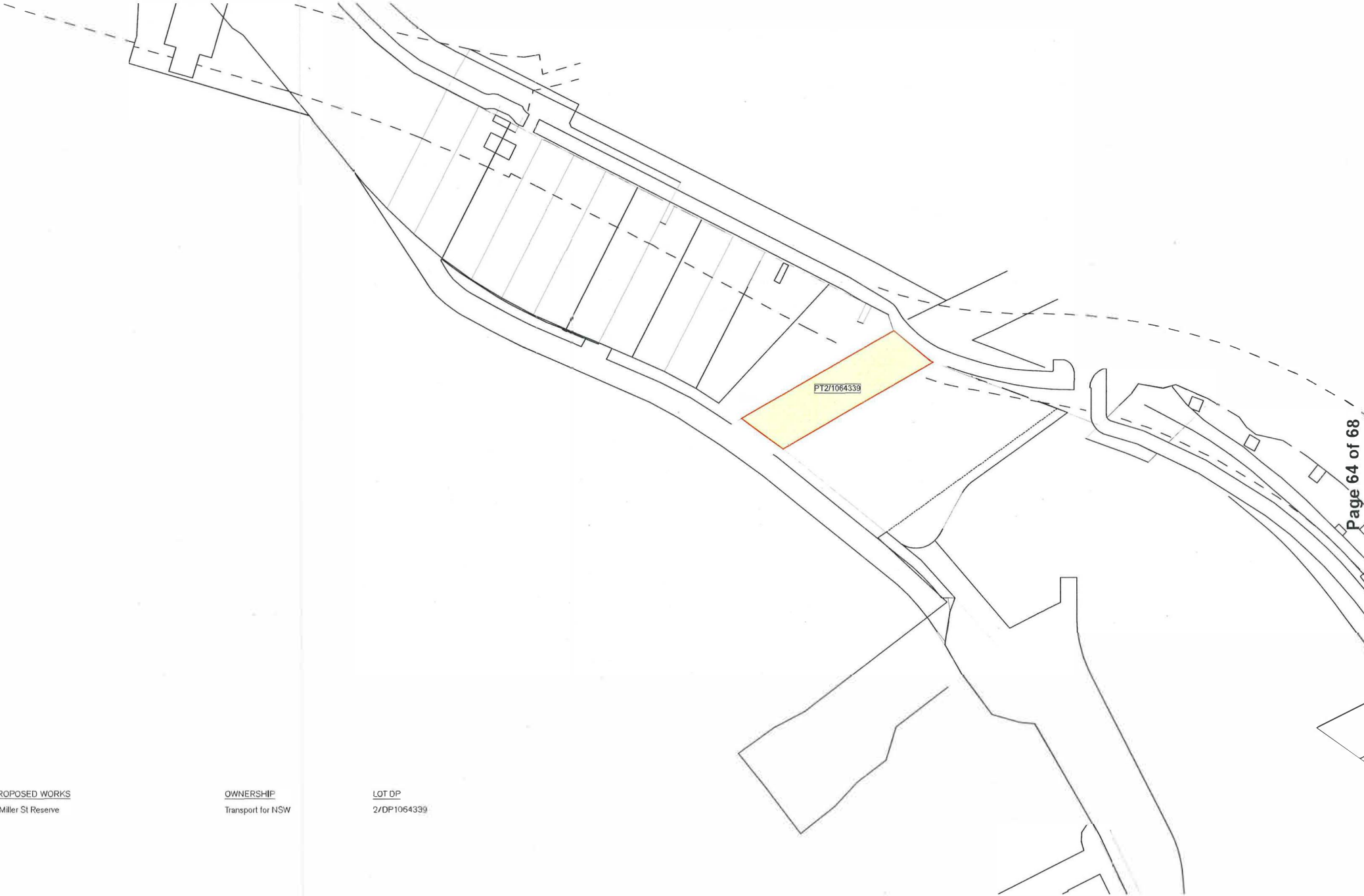


PROPOSED WORKS

5. Bank St Cycleway (indicative alignment)



Annexure G – Miller Street Reserve Land



PROPOSED WORKS
6 Miller St Reserve

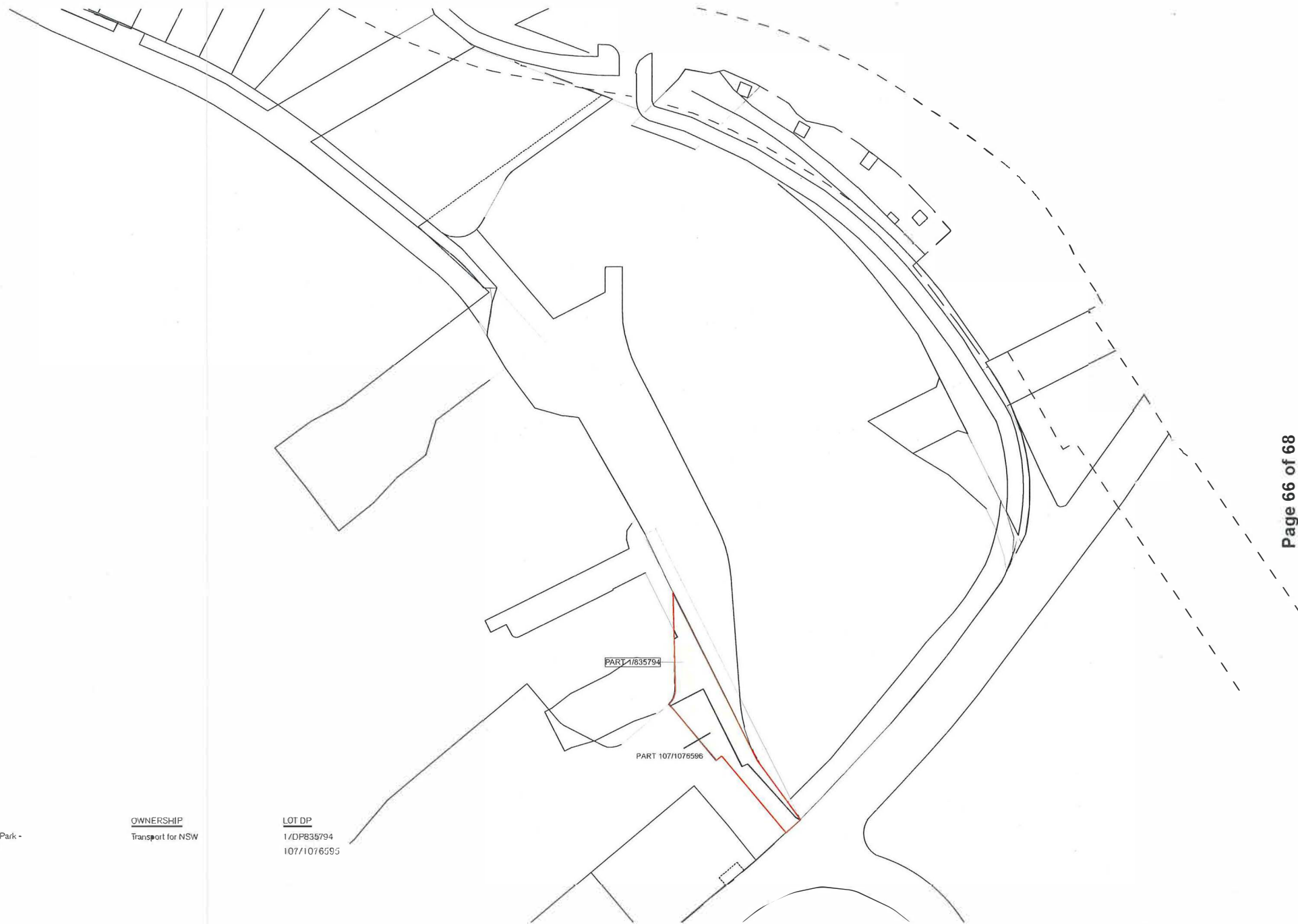
OWNERSHIP
Transport for NSW

LOT DP
2/DP1064339



Annexure H – Sydney Fish Market Urban Park: Foreshore Connection Works Plan

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PROPOSED WORKS
7. Sydney Fish Market Urban Park -
Foreshore Connection Works

OWNERSHIP
Transport for NSW

LOT DP
1/DP835794
107/1076596



Sydney Fish Market Urban Park

INSW - Blackwattle Bay Precinct Plan

1:1500 @ A3

For Information

17/04/2024

Annexure I – Illustrative Precinct Plan



Figure 2 Illustrative Precinct Plan