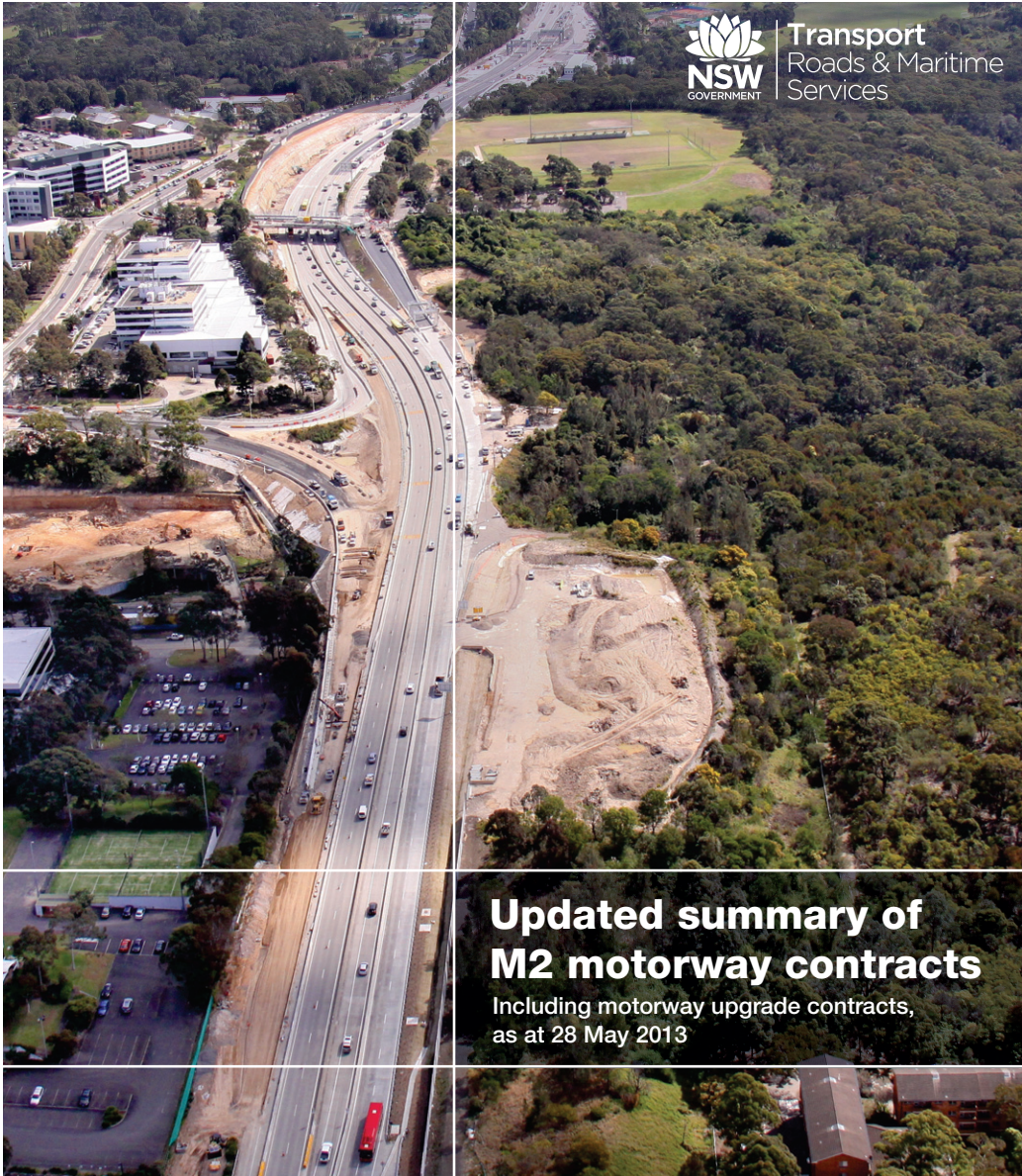




Transport
Roads & Maritime
Services

Updated summary of M2 motorway contracts

Including motorway upgrade contracts,
as at 28 May 2013



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Updated summary of M2 motorway contracts

Including motorway upgrade contracts,
as at 28 May 2013



Preface

This report summarises the main contracts, from a public sector perspective, for Sydney's M2 motorway, as at 28 May 2013, the date on which new and amended contracts associated with a new eastbound ramp from Lane Cove Road onto this motorway in Macquarie Park became effective.

It has been prepared by Roads and Maritime Services, which replaced the former Roads and Traffic Authority on 1 November 2011, in accordance with the public disclosure provisions of the NSW Government's 14 August 2012 *NSW Public Private Partnerships Guidelines*, which are mirrored by similar requirements in the *National Public Private Partnership Guidelines*.

The original contracts for the M2 motorway were executed in August 1994, and the motorway was opened on 26 May 1997.

These original contracts have been amended and added to on several occasions over the years, as outlined in this report. These changes have been associated with:

- Refinancings of the project's debts in 1996, 1999, 2004, 2009 and 2010 and the raising of additional debt finance in 2013
- Changes in the structure and ownership of Hills Motorway and other private sector participants in the project in 1996, 2000, 2004 and 2005
- Advertising on the motorway (1999)
- The motorway's construction and operational interfaces with the Westlink M7 motorway and the Lane Cove Tunnel (2002 and 2003) and its construction interfaces with the Epping–Chatswood rail link (2002, 2003 and 2004)
- The conversion of a westbound portion of the motorway between Lane Cove Road and Beecroft Road from two to three lanes, through the removal of the westbound cycling and emergency breakdown lane from this section (2007)
- Electronic tolling systems on the motorway (2001) and the motorway's subsequent switch to fully electronic tolling on 30 January 2012
- The major upgrading of the motorway that is now underway, with the major contracts for this upgrading and an associated updating and consolidation of the motorway's existing contracts becoming fully effective from 18 November 2010 and with an associated further adjustment of permissible tolls on the motorway, effectively freezing its tolls during the upgrade works and progressively increasing them once specified components of these works are completed, being executed on 13 August 2012
- Remediation works to stabilise an embankment on the motorway near Vimiera Road in Marsfield, with a new contract and associated contract changes being executed on 16 and 17 May 2013, and
- The addition of the new eastbound on-ramp from Lane Cove Road to the motorway to the motorway's upgrade works and an associated further adjustment of permissible tolls on the motorway, with these latest contracts being executed on 21 May 2013 and becoming fully effective on the date of this report, 28 May 2013.

Notwithstanding the fact that some aspects of the older contracts are now largely "spent", most of the original contract provisions, as amended and added to over the years, have been retained in the latest "amended and restated" forms of the motorway's contracts. In addition to recording residual obligations and liabilities, this reflects the fact that the upgrade-related contracts, executed in 2010 and amended in 2011, 2012 and 2013, have numerous, and sometimes complex, interactions with the parties' rights and obligations under the earlier contracts.

However, for clarity, the earlier contract provisions that are now largely of historical interest are generally summarised in much less detail in this report than the more "active" provisions.

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1 Introduction

1.1 The scope of this report

This report summarises the main contracts, from a public sector perspective, for the M2 motorway, as at 28 May 2013, the date on which new contracts and contract amendments associated with a new eastbound ramp from Lane Cove Road onto this motorway became effective.*

It has been prepared by NSW Roads and Maritime Services (“RMS”) in accordance with the public disclosure provisions of section 5.3 of the NSW Government’s 14 August 2012 *NSW Public Private Partnerships Guidelines*. These provisions are essentially the same as those set out in section 5.2 of the NSW Government’s previous guidelines for privately financed “public private partnership” projects, the December 2006 *Working with Government Guidelines for Privately Financed Projects*, which were mirrored in the NSW “jurisdictional requirements” within the *National Public Private Partnership Guidelines* adopted by the Council of Australia Governments on 29 November 2008.

In line with these 2006 and 2013 NSW Government *Guidelines*, this report:

- Focuses on the project contracts to which the State of New South Wales (represented by the Minister for Roads and Ports or his predecessors) and/or RMS (in many cases as the successor to the Roads and Traffic Authority of New South Wales (“RTA”)) are parties, or which otherwise have an actual or potential impact on public sector benefits or risks. Other contracts solely between private sector organisations are referred to only to the extent necessary to explain the public sector’s exposure.
- Does not disclose any matters which are expressly confidential under the contracts or any other “commercial in confidence” provisions of the contracts. The *Guidelines* define the latter as any provisions revealing the Contractors’ financing arrangements, cost structures, profit margins, “base case” financial model(s), intellectual property or “any matter whose disclosure would place the contractors at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future”.

Of necessity, this report’s summaries of the motorway’s contracts refer to numerous aspects of the original contracts for

the M2 motorway project, as amended and added to on several occasions over the last 19 years.

The original contracts were executed in August 1994, before the introduction of public disclosure requirements in the NSW Government’s March 1995 *Guidelines for Private Sector Participation in the Provision of Public Infrastructure* and the adoption of broadly equivalent public disclosure requirements in the initial (November 2001) form of the *Working with Government Guidelines for Privately Financed Projects*. However,

- Significant elements of the original contracts were publicly disclosed at the time, both by the RTA (in accordance with NSW Cabinet decisions in the early and mid-1990s) and by the private sector parties (e.g. in the 1994 Hills Motorway Trust and Hills Motorway Limited prospectus).
- In late 1994 and early 1995 the NSW Auditor-General conducted an independent review of the original contracts and prepared a *Performance Audit Report* under section 38 of the Public Finance and Audit Act 1983. This report was released by the Auditor-General on 31 January 1995. (An earlier draft of the report was tabled in Parliament by the Minister for Roads on 1 December 1994.)
- In response to an order made by the Legislative Council on 21 October 1999, documents concerning the financing of the project, as exchanged between the RTA and two of the principal original private sector participants in the project, Macquarie Bank and its traffic modellers Gutteridge Haskins and Davey, between 1 October 1993 and 7 December 1994, were tabled in Parliament on 28 October 1999, and the Auditor-General subsequently conducted a further independent review of these documents.
- The RTA later responded to Freedom of Information Act requests concerning the M2 motorway’s contracts by providing a summary of the original contracts, which it prepared in line with the content specifications of the November 2001 form of the *Working with Government Guidelines*. This summary was again not subject to the *Guidelines* and was therefore not assessed by the Auditor-General or tabled in Parliament.
- In 2011, following the execution in 2010 of a series of contract amendments and new contracts associated with a major upgrading of the motorway, the RTA prepared the first

* Throughout this report the terms “currently”, “at present” and “now” mean the date of this report, 28 May 2013. In some situations, however, later events, such as the completion of defined “stages” of the motorway’s 2010–15 upgrade works after 28 May 2013, are referred to in footnotes, for the information of readers.

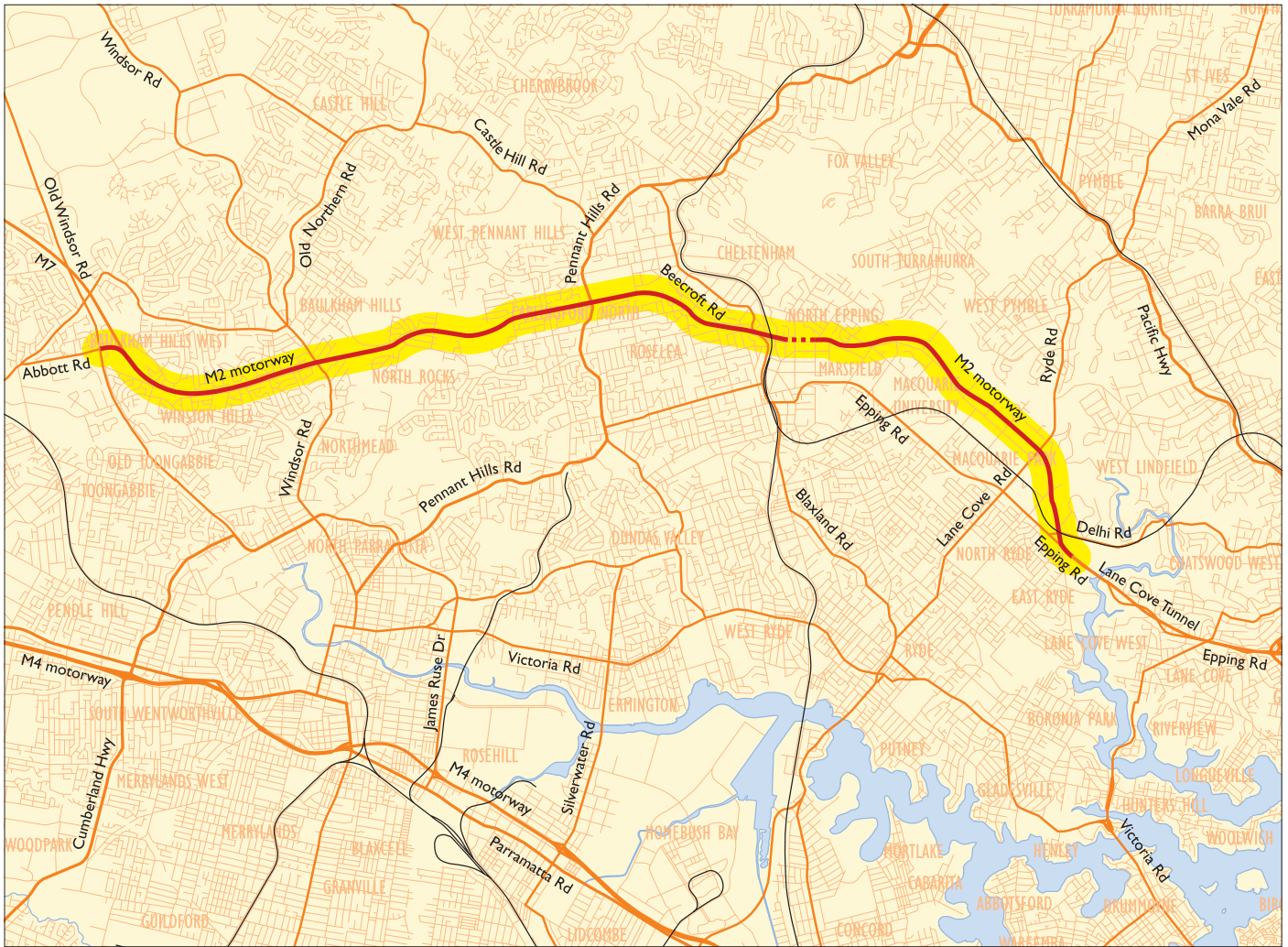


Figure 1.1. The route of the M2 motorway.

generally available public summary of the motorway’s contracts. This report, *M2 Motorway: Summary of Contracts—Including motorway upgrade contracts, as at 18 November 2010* (RTA/Pub. 11.271, ISBN 978-1-921899-51-5), was assessed by the NSW Auditor-General, in line with the December 2006 *Working with Government Guidelines for Privately Financed Projects*, before it was tabled in the NSW Parliament.

The triggers for the preparation of this second, updated public summary of the M2 motorway’s contracts have been a series of new contracts and contract amendments associated with changes to tolling systems and charges and a further upgrading of the motorway in the form of a new on-ramp from southbound Lane Cove Road to the eastbound motorway in Macquarie Park.

Some of the original contractual provisions summarised in this report, and especially those concerning the original design and construction of the motorway, are now primarily of historical interest. However, most of these provisions have deliberately been retained in the latest forms of these contracts, and several of the later contracts have numerous, and sometimes complex, interactions with the parties’ rights and obligations under these earlier contracts. The earlier contracts’ principal provisions are therefore referred to in this report, although those that are largely (but still not wholly) “spent” are generally summarised in much less detail than the more “active” provisions.

Amendments of or additions to the M2 motorway’s contracts taking effect after 28 May 2013, other than future amendments and additions specified in the contracts already in effect on 28 May 2013, are not summarised in this report.

This report should not be relied upon for legal advice and should not be used as a substitute for any of the contracts.

1.2 The motorway’s history

The M2 motorway, originally known as the “North West Transport Link”, is a high-quality, 21 km road link, at present generally of four to six lanes, between Epping Road and the Lane Cove Tunnel in North Ryde and Old Windsor Road and the Westlink M7 motorway in Baulkham Hills (**Figure 1.1**). There is a two-lane busway between the motorway’s general traffic lanes along an 8 km section between Beecroft Road in Epping and Windsor Road in Baulkham Hills.

The M2 motorway forms part of the Sydney Orbital road network (**Figure 1.2**), which comprises the M2, the Lane Cove Tunnel, the Gore Hill freeway, the Warringah freeway, Sydney Harbour Bridge and Tunnel, the Cahill Expressway, the Eastern Distributor, Southern Cross Drive, General Holmes Drive, the M5 East freeway, the M5 motorway and the Westlink M7 motorway.

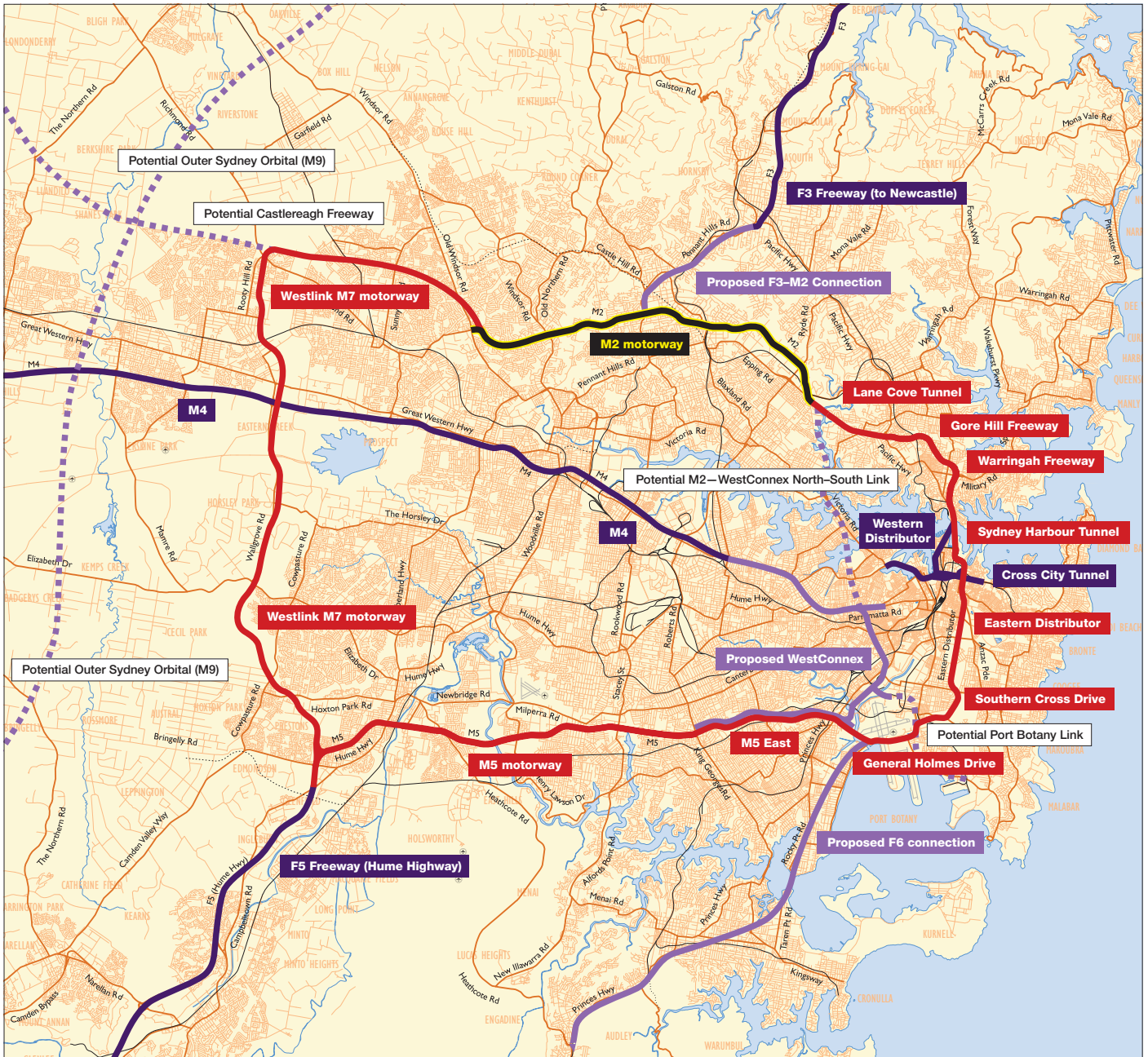


Figure 1.2. The M2 motorway is part of the Sydney Orbital road network. (The routes shown here for proposed and “potential” future motorways, as specified in the NSW Government’s December 2012 NSW Long Term Transport Master Plan, are indicative only.)

1.2.1 1993–95 environmental impact studies and planning approvals

Two environmental impact statements for the motorway, *North West Transport Links East Environmental Impact Statement* and *Environmental Impact Statement North West Transport Link Pennant Hills Road to Old Windsor Road*, were released by the RTA in May 1992, with public submissions being invited until 14 August 1992.

An *Environmental Impact Assessment Report in Relation to Proposal for a North West Transport Link* was issued by the RTA on 19 May 1993.

Planning approval under Part V of the Environmental Planning and Assessment Act 1979 was granted by the Chief Executive of the RTA on 20 May 1993 and announced on 30 May 1993.

This approval was confirmed by the Chief Executive of the RTA on 2 August 1994.

The acting Minister for Roads, Ms Anne Cohen, declared the proposed M2 motorway as a “toll work” under section 46 of the Roads Act 1986 on 28 June 1993. (When the Roads Act 1993 was enacted, the M2 therefore automatically became a “tollway” under the Roads Act, in accordance with transition provisions in clause 18 of Schedule 2 to the Roads Act 1993.)

A *Review of Environmental Factors* on proposals for changes to the design of the motorway between Oakes Road and Pennant Hills Road in West Pennant Hills was publicly exhibited on 30 March 1995, and the RTA agreed to these changes, subject to a number of conditions, on 5 July 1995. Other changes were made in 1995 to the designs of the motorway’s bridge over Terry Creek and the Murray Farm Road bridge over the motorway and Devlins Creek.



The main toll plaza at Macquarie Park in 2008.



The M2 motorway near Devlins Creek bridge in Beecroft, in 1999.



Eastern portals of the M2 tunnels under Norfolk Road, Epping, in 1999.



Devlins Creek bridge, Beecroft, in 1999.



Pennant Hills Road intersection from the east in 1999.



Barclay Road bridge and bus stop, North Rocks, in 1999.



Windsor Road intersection from the east in 1999.

1.2.2 Selection of the project's initial participants, the execution and review of the 1994 contracts and 1994–97 construction of the motorway

Preliminary proposals for the private sector to finance, design, construct, operate and maintain the M2 were sought by the RTA on 6 September 1993.

Preliminary proposals were received from four consortia by the closing date of 2 December 1993:

- Norwest Motorway Company Pty Limited (Statewide Roads, Thiess Contractors, Baulderstone Hornibrook Engineering, Board and Management, AIDC, Commonwealth Bank of Australia, County NatWest Australia and M2 Engineering)
- NW Link Pty Limited (Leighton Contractors, Hochtief, Barclays Bank Australia, Barclays de Zoete Wedd Australia, BZ Nominees, Transfield Construction and Connell Wagner (NSW))
- NTA Consortium (National Transportation Authority (a Perot Group and Greiner Engineering joint venture), Kinhill Engineers, Barclay Mowlem Construction, Concrete Constructions Group, MacMahon Contractors and SBC Dominguez Barry Corporate Finance), and
- The Hills Motorway Limited (Abigroup, Obayashi Corporation, Scetauroute, Westpac, Macquarie Corporate Finance, Banque Paribas, Long Term Credit Bank of Japan and Gutteridge Haskins & Davey).

These preliminary proposals were assessed by an RTA panel, assisted by Evans & Peck (technical evaluations), Infrastructure Development Corporation (financial assessments) and Blake Dawson Waldron (legal issues), under the overview of a probity auditor, Deloitte Touche Tohmatsu. The assessment criteria covered the proposals' physical details and costs, construction timings and stagings, community costs, government financial contributions, financing arrangements, property issues and heavy vehicle and high-occupancy vehicle transport issues.

On 11 February 1994 the Minister for Roads, Mr Bruce Baird, announced that the Hills Motorway consortium had been selected as the sole proponent to undertake a more detailed investigation and submit a firm offer based on its preliminary proposal.

This offer was submitted on 16 May 1994.

The NSW Treasurer approved the RTA's entering into the project's joint financing arrangements under section 20(1) of the Public Authorities (Financial Arrangements) Act 1987 on 22 August 1994, and the State of NSW provided a guarantee of the RTA's performance under section 22B of the Public Authorities (Financial Arrangements) Act on terms satisfactory to the Hills Motorway consortium on 26 August 1994.

As discussed in section 2 of this report, most of the initial M2 motorway project contracts summarised in this report were entered into on 26 August 1994.

As already indicated in section 1.1, between November 1994 and January 1995 the NSW Auditor-General conducted a review of the M2 contracts in response to a resolution by the NSW Legislative Assembly on 22 November 1994. This review criticised several aspects of the agreements on public policy grounds—in particular, it questioned the relative benefits of private and public ownership of urban tollways—but concluded that the contracts were legally valid and recommended that “on financial grounds the M2 arrangements should continue”.

Similarly, in response to a request by the Legislative Council on 21 October 1999, the Auditor-General conducted a further independent review of documents concerning the financing of the project exchanged between the RTA, Macquarie Bank and Gutteridge Haskins and Davey between 1 October 1993 and 7 December 1994, and more specifically at the reasons traffic projections forecast in the project's “base case” financial model were not being met, and the impact of this on the revenue to the State during the concession period and the requirement in the project's principal contract, at that time, for the tollroad operators to be compensated if they were affected by any competing transport links in the same corridor, such as the then-proposed Parramatta–Chatswood rail link. This review concluded that by 1999 the “traffic deviations” were “within the valid range of the initial forecast”, and that a letter to the RTA from Hills Motorway dated 22 August 1994, discussed in section 10.1 of this contracts summary, “may mitigate any claim by Hills against the Government for further funds as a result of the proposed Chatswood to Parramatta rail link, at least to the extent of the Parramatta–Epping section”.

The RTA contributed \$232.6 million to the cost of acquiring land for and building the M2 motorway, including land acquisitions valued at \$120 million. The rest of the project's design and construction costs were met by the private sector parties.

The motorway opened for traffic on 26 May 1997.

1.2.3 Contract changes and additions between 1994 and 2013

Since the execution of the original M2 motorway contracts on 26 August 1994 a series of amending and/or additional contractual arrangements have been entered into between the Minister for Roads and/or the RTA/RMS and companies within the Hills Motorway group, as discussed in more detail later in this report, concerning:

- A refinancing of part of the project's debts in 1996 and associated minor amendments to the project contracts (29 October 1997)
- The RTA's consent to the form of a sublease to be entered into between two of the Hills Motorway parties (27 February 1998)
- Another refinancing of the project's debts in 1999 and associated changes in the identities of two of the parties to the original RTA contracts (29 September 1999)
- Advertising on the motorway (8 December 1999)

- The registration in 2000 of a trust established by the Hills Motorway group as a managed investment scheme, and associated changes in the roles and identity of another party to the original RTA contracts (24 February 2000)
- The effect on tolls of the introduction of the Goods and Services Tax from 1 July 2000
- Cooperation with other tollroad operators on electronic tolling (June 2001, with numerous subsequent amendments and with other Sydney, Melbourne and Brisbane tollroad operators subsequently joining these cooperative arrangements)
- Interfaces between the M2 and the Westlink M7 motorway in West Baulkham Hills (2 August 2002)
- Interfaces between the M2 and works in North Ryde associated with the Lane Cove Tunnel (14 November 2003)
- Access to worksites in Epping and North Ryde for the Epping–Chatswood section of the Parramatta Rail Link (30 October 2002, 28 February 2003 and 2 July 2004)
- A further refinancing of the project's debts in 2004 (18 June 2004)
- A change in the ownership of the then responsible entity (i.e. manager and trustee) of the trust established by the Hills Motorway group (29 July 2004)
- The acquisition of the two principal Hills Motorway entities, a special purpose company and the trust established by the Hills Motorway group, by Transurban entities on 10 June 2005, and the subsequent introduction of "ring-fencing" arrangements concerning the provision of services to the Hills Motorway entities by Transurban entities (retrospectively introduced, from 10 June 2005, on 25 October 2010)
- The conversion of a westbound portion of the motorway between Lane Cove Road and Beecroft Road from two to three road lanes, through the removal of the westbound cycling and emergency breakdown lane from this section (11 January 2007)
- A further refinancing of the project's debts in 2009 (1 May 2009)
- A consolidation of most of these amendments and additions and introduction of several further amendments in "amended and restated" forms of the principal project contracts, in order to establish an agreed "baseline" for the M2 motorway project's contracts prior to a new round of additions and amendments, in October and November 2010, associated with the upgrading of the motorway, as discussed in section 1.2.4 below
- Upgrading of the motorway, as described in section 1.2.4 below
- Subsequent changes to the motorway's tolling systems and charges associated with the introduction of cashless tolling and the disruptive effects of the works to upgrade the motorway, as described in section 1.2.5 below, and

- Further upgrading of the motorway through the addition of a new eastbound on-ramp from Lane Cove Road to the motorway in Macquarie Park, as described in section 1.2.6 below.

1.2.4 2010–2015 upgrading of the motorway

In December 2007 the Hills Motorway group submitted an unsolicited, preliminary proposal for upgrading of the M2 motorway to the RTA.

In July 2008 the NSW Government approved the RTA's entry into negotiations with the Hills Motorway group to develop this proposal into a form acceptable to the Government. In September 2008 the RTA and the Hills Motorway group signed a **Letter of Intent** under which Hills Motorway undertook to carry out specified preliminary activities, including the development of a concept design for the upgrade and the preparation of environmental documents, and the RTA agreed to underwrite 50% of the development costs to a target date of 31 December 2008, up to a limit of \$3 million, if the upgrade proposal did not proceed because of a change in the Government's commitment. This letter of intent was subsequently amended to extend this date to April 2009 and increase the limit on the RTA's underwriting to \$5.5 million.

On 24 February 2009 the then Minister for Planning, Ms Kristina Keneally, declared the M2 motorway upgrade project to be a "critical infrastructure project" under section 75C of the Environmental Planning and Assessment Act 1979 and a "major project" under section 75B(1)(b) of that Act, making the project subject to Part 3A of the Act. The RTA followed by lodging an application for planning approval for the upgrade project under these provisions on 19 March 2009. The "critical infrastructure project" and "major project" declarations were subsequently amended, to incorporate changed descriptions of the upgrade project, on 7 July 2010.

On 12 October 2009 the RTA and Hills Motorway entered into an **M2 Upgrade "In Principle" Agreement** that recorded the matters on which they had agreed "in principle" and the processes by which other, specified matters were to be resolved. This agreement was originally to expire on 31 August 2010, but on 13 August 2010 its expiry date was extended to 31 October 2010 and the agreement ultimately expired on 25 October 2010, when it was superseded by the execution of an M2 Motorway Upgrade Project Deed, which is summarised in detail later in this report.

The matters agreed to "in principle" in the "In Principle" Agreement, and publicly announced by the then Minister for Transport, Mr David Campbell, the following day, included:

- An additional (third) eastbound lane from Windsor Road to just west of Pennant Hills Road and from just east of Pennant Hills Road to Lane Cove Road, with associated works including bridge widening, the widening of the eastbound tunnel under Norfolk Road in Epping and the permanent removal of the existing eastbound bus ramp at Beecroft Road from the motorway's eastbound bus lane to Epping railway station (**Figures 1.3 and 1.4**)

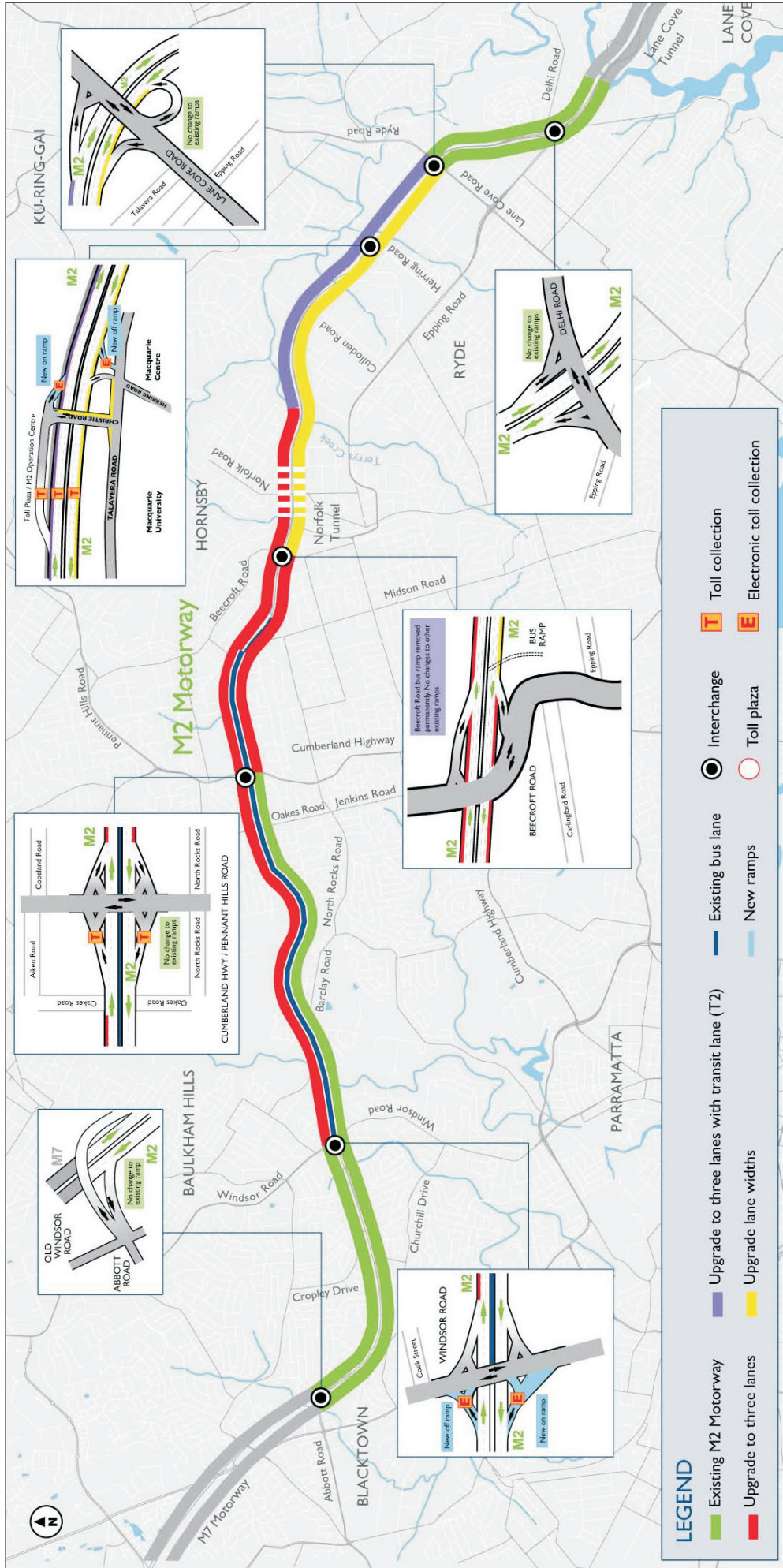


Figure 1.3. Overview of the M2 upgrade project's road widening and ramp works as originally specified in the 2010 upgrade contracts, prior to the addition of the Lane Cove Road on-ramp works in 2013.

- Widening of the three post-2007 westbound lanes from Lane Cove Road to Beecroft Road and reinstatement of a westbound cycling and emergency breakdown lane along this section, with associated works including the widening of the westbound tunnel under Norfolk Road in Epping and the permanent removal of the existing westbound bus ramp at Beecroft Road from Epping railway station to the motorway's westbound bus lane
- An additional (third) westbound lane from Beecroft Road to Pennant Hills Road
- New west-facing on and off ramps at Windsor Road in Baulkham Hills, improving access (via the M2) between the Westlink M7 motorway and Windsor Road
- A new eastbound on ramp at Christie Road and a new westbound off ramp at Herring Road in Macquarie Park, improving access between the Sydney Orbital and the rapidly developing employment centre of Macquarie Park
- Funding sources for the upgrade, including a 7.7% increase in permissible tolls at the motorway's existing toll plazas, a four-year extension of the motorway's maximum concession term from 45 to 49 years and the collection of new tolls at the new ramps to be constructed at Herring Road and Christie Road in Macquarie Park and Windsor Road in Baulkham Hills
- Risk allocations for the delivery of the upgrade project, and
- Processes for further developing the upgrade project's scope of works and technical criteria, adjusting its capital cost estimate, which at that time was \$546 million, and completing and agreeing on "key deliverables" that would allow the RTA to seek the Government's approval for the project.

An *Environmental Assessment* of the upgrade proposals, prepared for the RTA by AECOM Australia, was placed on public display from 19 May 2010 to 21 June 2010, with submissions on this *Environmental Assessment* being accepted until 5 July 2010.

This *Environmental Assessment* included a *Road User Cost Benefit Analysis* prepared by Transurban Limited, taking account of the upgrade project's forecast initial capital costs and incremental ongoing capital and operating costs, estimates of direct benefits to road users (travel time savings and reductions in vehicle operating costs, with the upgrade project's increases in motorway users' toll charges not being counted in the analysis because this cost to motorists would be transferred as a benefit to the motorway operator) and estimates of a selection of community benefits (reduced accident costs and a range of environmental benefits). The *Road User Cost Benefit Analysis* suggested that the upgrade project would have a net present value (at a 7% pa discount rate) of around \$1.2 billion and a benefit:cost ratio of 3.4, with almost 95% of the benefits arising from the forecast travel time savings.

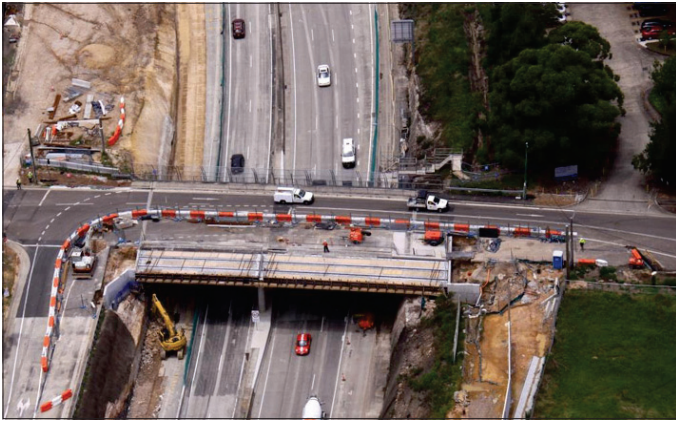
Because the existing contracts for the M2 motorway rendered public sector delivery of the proposed upgrade works

impracticable, no "public sector comparator" for these works was prepared, as would otherwise have been required under the December 2006 *Working with Government Guidelines for Privately Financed Projects*.

An *M2 Upgrade Submissions and Preferred Project Report*, responding to 910 submissions concerning the RTA's *Environmental Assessment*, was released by the RTA on 23 August 2010.

A *Public Interest Evaluation* of the upgrade proposals, conducted for the RTA in accordance with the specifications and criteria of Appendix 2 of the December 2006 *Working with Government Guidelines for Privately Financed Projects*, concluded in September 2010 that:

- The proposals would respond to numerous relevant NSW Government objectives, including budget, service, delivery, policy, project synergy, economic growth and regional development objectives. They would comply with both RTA and central Government policies, provide synergies with concurrent Government initiatives, and be consistent with the budget, to the extent that the project itself would essentially be funded by the concessionaire and the RTA's development costs would be funded from the RTA's budget.
- The proposals would provide "reasonable" value for money. The existing contractual entitlements of the concessionaire during its concession term meant there was no practical alternative to delivery of the upgrade project by the concessionaire and there was thus no "public sector comparator". However, the financial components of the proposals were evaluated as reasonable and the user charges "appropriate".
- Community consultation strategies for the proposals, as documented in the *Environmental Assessment* and a *Community Involvement Plan*, complied with community consultation requirements. They had identified the impacts of the upgrade proposals and the parties that would be affected, they had been implemented throughout the environmental assessment process and the concessionaire would be contractually obliged to continue them throughout the delivery of the upgrade project.
- The proposals complied with consumer rights requirements, to the extent that existing consumer rights would not be affected.
- "Appropriate" accountability and transparency strategies had been implemented by the RTA. These had included the communication of appropriate information to the community, the commitment of an appropriately structured management team with clear responsibilities and accountabilities and the implementation of a *Governance and Probity Plan*.
- Adequate public access arrangements would be incorporated in the proposed upgrade project, including increased access for motor vehicles, reinstated and improved access for pedal cyclists and the retention of pedestrian access across the motorway.



Christie Road overpass and ramp works in December 2011.



Widening of the Terrys Creek bridge in February 2012.



Demolition of the busway from the M2 motorway to Epping station.



Beecroft Road overpass works in December 2011.



Widening of the M2 tunnels under Norfolk Road, Epping, early in 2012.



Excavations east of the Barclay Road overpass in December 2011.



Works for the new west-facing ramps at Windsor Road in June 2011.



The Windsor Road interchange, looking west, in July 2012.

- The proposals adequately responded to health and safety requirements and complied with legal requirements and relevant standards. The concessionaire would be required to ensure public health and safety standards would be met, and the Government would have numerous civil rights, including a right to “step in”, if they were not.
- The proposals would comply with Government privacy requirements, with privacy protection mechanisms identical to those applying for the existing motorway.
- The proposals would reasonably comply with the *Working with Government Guidelines*’ public interest evaluation criteria and would be in the public interest.

Planning approval for the upgrade project, subject to 73 conditions, was granted by the then acting Minister for Planning, Mr Phillip Costa, on 21 October 2010.

As discussed in sections 2.2 and 2.3 of this contracts summary, most of the contracts for the M2 upgrade project involving public sector parties were executed on 25 October 2010 and these arrangements became fully effective on 18 November 2010.

The upgrading works originally specified in the 2010 contracts are to be carried out in four defined stages, as described later in this report. The Hills Motorway parties to the contracts were originally obliged to use their best endeavours to achieve the final completion of all these works by 18 May 2013 and are now obliged to do likewise to achieve final completion by 18 January 2015. These works have subsequently been supplemented by the Lane Cove Road on-ramp works described in section 1.2.6, which are targeted for final completion by 30 September 2014.

1.2.5 2011–12 amendments for cashless tolling and the freezing of car tolls during the upgrade works

In April 2011 the Hills Motorway group submitted an unsolicited proposal to the RTA for the conversion of the M2 motorway to cashless (i.e. fully electronic) tolling.

In response, on 18 July 2011 the acting Premier, Mr Andrew Stoner, and the Minister for Roads and Ports, Mr Duncan Gay, announced that fully cashless tolling would be introduced and in September 2011 the Government and the RTA formally accepted Hills Motorway’s proposal.

A contract amending aspects of two of the motorway’s contracts—including the motorway’s toll calculation schedule, which is described later in this report—so as to permit and facilitate the conversion of the motorway to cashless tolling was executed on 28 October 2011, and fully cashless tolling commenced on 30 January 2012.

On 29 March 2012 the Hills Motorway group submitted a further unsolicited proposal to RMS, which had replaced the RTA on 1 November 2011, for further amendments to the motorway’s toll calculation schedule, effectively freezing the tolls charged for cars at the existing toll plazas on the motorway until the completion of specified components of the upgrading works on

relevant portions of the motorway, as set out in the 2010 upgrading contracts (section 1.2.4). These freezes were to be offset by a higher subsequent real increase in all of the motorway’s maximum permitted tolls.

This proposal was accepted by the NSW Government and RMS on 19 April 2012, and a contract amending the toll calculation schedule as proposed was executed on 13 August 2012.

The toll calculation schedule has subsequently been amended again under the arrangements for the new Lane Cove Road on-ramp described below.

1.2.6 2013 contracts for a new Lane Cove Road on-ramp

In November 2009 the Hills Motorway group submitted an unsolicited proposal to the RTA for the construction of a new tolled on-ramp from the southbound carriageway of Lane Cove Road to the eastbound carriageway of the M2 motorway in Macquarie Park, along with associated works, including a widening of about 600 m of the eastbound motorway carriageway from two to three lanes between this new on-ramp and the existing off-ramp to Delhi Road (**Figures 1.5 and 1.6**).

These proposed works were in addition to the motorway upgrade works announced on 13 October 2009 and subsequently contracted for on 25 October 2010 (see section 1.2.4).

On 17 May 2012 RMS submitted an application for a modification of the 21 October 2010 planning approval for the upgrade project so as to permit the additional Lane Cove Road on-ramp and associated works. (This application was submitted under section 75W of the Environmental Planning and Assessment Act, which continued to apply, despite the repeal of Part 3A of that Act, because the M2 upgrade project was a “transitional Part 3A project” under Schedule 6A of the Act.)

A *Modified Environmental Assessment* of the on-ramp proposal, prepared for RMS by AECOM Australia, was placed on public display from 22 August 2012 to 7 September 2012.

Because the existing contracts for the M2 motorway rendered public sector delivery of the proposed additional on-ramp works impracticable, no “public sector comparator” for these works was prepared, as would otherwise have been required under the August 2012 *NSW Public Private Partnership Guidelines*. Further, although the *Modified Environmental Assessment* set out forecasts of traffic impacts, travel time savings and other likely benefits and costs of the on-ramp project, no overall economic cost-benefit analysis was undertaken to revise the estimates made in Transurban Limited’s 2010 *Road User Cost Benefit Analysis* for the motorway upgrade project as a whole (see section 1.2.4).

The requested modification of the planning approval, including the replacement of seven of its conditions and the addition of one new condition, was granted by the NSW Department of Planning and Infrastructure’s Executive Director, Development Assessment Systems and Approvals, Mr Chris Wilson, as the



Figure 1.5. The new eastbound on-ramp from Lane Cove Road to the M2 motorway in Macquarie Park.



Figure 1.6. The new eastbound on-ramp from Lane Cove Road to the M2 motorway in Macquarie Park.

delegate of the Minister for Planning and Infrastructure, Mr Brad Hazzard, on 28 February 2013.

New contracts and amending contracts for the Lane Cove Road on-ramp and its associated works were executed on 21 May 2013 and became fully effective on 28 May 2013.

As already indicated in section 1.2.4, the ramp works are targeted for completion by 30 September 2014.

1.3 The structure of this report

Section 2 of this report summarises the structuring of the M2 motorway project and outlines the inter-relationships of the various agreements between the public and private sector parties.

Sections 3 to 14 summarise the main features of the key agreements affecting public sector rights and liabilities and the sharing of the project’s benefits and risks.

Unless otherwise expressly indicated, these summaries are “snapshots” of the contracts as they stood at 28 May 2013,

without reporting of the history of amendments to individual contract provisions since 26 August 1994.

In a few situations, however, earlier contract provisions, now deleted or amended, are referred to in order to help explain the significance of the current contract provisions.

Contract provisions which are now largely or wholly “spent”, such as provisions governing the original design, construction- phase interfaces with the Westlink M7 and Lane Cove Tunnel motorways and the Epping–Chatswood rail link and the widening of part of the motorway in 2007, are reported in the past tense, with references to the contract parties at the time these provisions were of greatest relevance (see section 2.1 below).

Contract provisions which continue to apply as at 28 May 2013 are reported in the present tense, with references to the relevant contract parties as at 28 May 2013, even though many of these provisions have applied for many years and have involved different contract parties in the past.

2 Overview of the project's contracts

2.1 The participants in the project

2.1.1 The public sector parties

The public sector parties to the M2 motorway contracts have been, and in the first two cases still are,

- The **Minister for Roads**, for and on behalf of the State of New South Wales
- **Roads and Maritime Services** (ABN 76 236 371 088) (“**RMS**”) a NSW Government agency constituted under Part 6 of the Transport Administration Act 1988 (NSW), and
- The former **Transport Infrastructure Development Corporation** (ABN 28 458 799 157) (“**TIDC**”), which took over contractual rights and obligations related to the construction of the Epping–Chatswood rail link which were originally assumed, prior to its formation on 1 January 2004, by the **Director-General of the NSW Department of Transport**.*

As already indicated in section 1.1, RMS replaced the former **Roads and Traffic Authority** (“**RTA**”) on 1 November 2011. In doing so it inherited all of the RTA’s assets, rights and liabilities, including those arising under the M2 motorway contracts executed by the RTA.

RMS’s powers in relation to the M2 motorway project arise from the Transport Administration Act 1988 (NSW), which empowers RMS to conduct any business and enter into contracts or arrangements for the carrying out of works and the performance of services, and the Roads Act 1993 (NSW).

Under the Roads Act the Minister for Roads may declare tollways, RMS and its agents and contractors may carry out road works and RMS may lease land it owns. Under the Transport Administration Act, RMS may do any of these things, and exercise any of its other functions, either in its own right or in a partnership, joint venture or other association with others.

2.1.2 The private sector parties

The private sector parties to the contracts to which the Minister for Roads, RMS and/or TIDC are or were also parties (**Figures 2.1, 2.2, 2.3, 2.4 and 2.5**) are:

- **The Hills Motorway Limited** (ABN 28 062 329 828) (“**the Company**”), a special purpose company originally formed by Abigroup Limited (ABN 63 000 358 467) and Obayashi Corporation (ABN 86 002 932 756) and floated in 1994.

Since 10 June 2005 the Company has been wholly owned by Transurban Holdings Limited (ABN 86 098 143 429).

- **Perpetual Trustees Australia Limited** (ACN 000 431 827),
 - ♦ Initially, until 22 March 2000, as the trustee of the Hills Motorway Trust (ABN 51 058 183 515, ARSN 091 882 101), which was established by The Hills Motorway Trust Deed, dated 18 August 1994, between the Trustee and Hills Motorway Management Limited (ABN 89 064 687 645), and
 - ♦ Subsequently, from 22 March 2000 until 31 May 2006, as the custodian of the assets of the Hills Motorway Trust under a Custody Agreement between Perpetual Trustees Australia Limited and Hills Motorway Management Limited dated 24 February 2000.

Perpetual Trustees Australia Limited was referred to in early (1994 to 1999) M2 motorway project contracts as “the Trustee” and in post-2000 contracts as “the Trust Custodian” or simply as “Perpetual”. To avoid confusion with references to “the Trustee” in later (post-2005) contracts and recently “amended and restated” forms of the original contracts, in this summary report Perpetual Trustees Australia Limited is referred to as “**the Original Trustee**” for the period prior to 22 March 2000 and “**the Trust Custodian**” for the period between 22 March 2000 and 31 May 2006.

Initially the unitholders in the Hills Motorway Trust were the shareholders in the Company, with each of their units in the trust being “stapled” to one of their shares in the Company. Since 10 June 2005 all the units in the Hills Motorway Trust have been owned by Transurban Infrastructure Management Limited (ABN 27 098 147 678), as the responsible entity of the Transurban Holding Trust (ARSN 098 807 419) formed on 15 November 2001.

The Hills Motorway Trust Deed of 1994 was replaced by a new Hills Motorway Trust constitution in 2000, when the trust was registered as a managed investment scheme under the then Corporations Law, and this constitution was amended in 2005, as part of the acquisition of all the shares in the Company by Transurban Holdings Limited and all the units in the trust by Transurban Infrastructure Management Limited.

* The contracts to which TIDC was a party, described in sections 2.2.5 and 5.3 of this report, concerned access rights for the construction of the Epping–Chatswood rail link and no longer have any practical effect. TIDC was later replaced by the Transport Construction Authority and its assets, rights and liabilities have now been transferred to Transport for NSW.

- **Hills Motorway Management Limited** (ABN 89 064 687 645),
 - ♦ Initially as the manager of the Hills Motorway Trust (“**the Original Trust Manager**”)
 - ♦ From 22 March 2000 to 23 October 2005, during which time the Hills Motorway Trust was registered as a managed investment scheme under the then Corporations Law, as the responsible entity (i.e. manager and trustee) of the trust (“**the Responsible Entity**”), taking over all of the rights and obligations of the Original Trustee under its contracts with the Minister for Roads and/or the RTA, and
 - ♦ Since 23 October 2005, as the trustee of the Hills Motorway Trust (“**the Trustee**”), still with all of the rights and obligations of the Original Trustee/Responsible Entity under the project’s contracts with the Minister for Roads and/or the RTA/RMS.
- Since 30 July 2004 Hills Motorway Management Limited has been wholly owned by the Company. It was previously owned by Macquarie Bank Limited (ABN 46 008 583 542).
- The Company, the Original Trustee, the Responsible Entity, **Macquarie Corporate Finance Limited** (ABN 71 008 595 426), **Hills Motorway Construction Company Pty Limited** (ABN 53 066 036 495), **National Australia Bank Limited** (ABN 12 004 044 937), **Commonwealth Bank of Australia** (ABN 48 123 123 124), **Macquarie Bank Limited** (ABN 46 008 583 542), **Macquarie Acceptances Limited** (ABN 30 008 594 885), **Hills Motorway Underwriting No 1 Pty Limited** (ABN 42 074 615 982) and **Hills Motorway Underwriting No 2 Pty Limited** (ABN 69 074 616 023) concerning the appointment of the Responsible Entity in 2000 and its assumption of the Original Trustee’s rights and obligations.
 - **Hills Motorway Construction Company Pty Limited** (ABN 53 066 036 495) (“**Hills Construction**”), which in 1994–95 procured and managed the design and construction of preliminary works for the project which were funded by the RTA.
 - **Westpac Securities Administration Limited** (ABN 77 000 049 472), the original security trustee for securities granted by the Company and the Initial Trustee in 1994 to secure the performance of their obligations under a series of debt financing documents, and **National Australia Bank Limited** (ABN 12 004 044 937), which took over this role in September 1999, as part of a restructuring of the project’s debts, and which is now the security trustee for securities granted by the Company and the Responsible Entity (“**the Security Trustee**”).
 - **Westpac Banking Corporation** (ABN 33 007 457 141), as the agent for the project’s original debt financiers, and **National Australia Bank Limited** (ABN 12 004 044 937), which took over this role as part of the refinancing of the project’s debts in September 1999 (“**the Agent**”).
 - **Transurban Limited** (ABN 96 098 143 410), which is providing management and other services to the Company and the Trustee under an M2 Motorway Management Agreement dated 25 October 2010, subject to conditions agreed with the RTA/RMS on or around 25 October 2010.
 - **Tollaust Pty Limited** (ABN 37 050 538 693) (“**Tollaust**”), a company established by Abigroup Limited and Transroute International SA (ABN 11 398 796 727, now trading as Egis Projects SA) and owned by Transurban since 14 February 2006, which is operating and maintaining the completed motorway for the Company, under an Operating and Maintenance Agreement with the Company dated 26 August 1994.
 - The Company and other tollroad operators — **SWR Operations Pty Limited** (ABN 33 002 359 864) (the M4 motorway, prior to 16 February 2010), **Interlink Roads Pty Limited** (ABN 53 003 845 430) (the M5 motorway), **Airport Motorway Limited** (ABN 26 057 283 093) (the Eastern Distributor), **Queensland Motorways Limited** (ABN 50 067 242 513) (the Gateway Bridge and Logan Motorway in Brisbane), **CrossCity Motorway Pty Limited** (ABN 45 098 445 839) (the Cross City Tunnel), **WSO Co Pty Limited** (ABN 73 102 757 924) (the Westlink M7 motorway), **Connector Motorways Pty Limited** (ABN 70 103 411 052) (previously known as Lane Cove Tunnel Company Pty Limited) (the Lane Cove Tunnel, until its sale on 9 August 2010), **LCT–MRE Pty Limited** (ABN 34 143 401 870) (the Lane Cove Tunnel, since 10 August 2010), **CityLink Melbourne Limited** (ABN 65 070 810 678) (the CityLink tollroads in Melbourne), **ConnectEast Pty Limited** (ABN 99 101 213 263) (the EastLink tollroad in Melbourne), **RiverCity Motorway Pty Limited** (ABN 99 116 665 304) (the CLEM7 motorway in Brisbane), **Brisbane City Council** (ABN 72 002 765 795) (the Go Between Bridge in Brisbane) and **BrisConnections Operations Pty Limited** (ABN 69 128 615 547) (the Airport Link motorway in Brisbane) — concerning the interoperability of tolling systems on the M2 motorway and other Sydney, Brisbane and Melbourne tollroads.
 - **Leighton Contractors Pty Limited** (ABN 98 000 893 667) and its parent company and guarantor, **Leighton Holdings Limited** (ABN 57 004 482 982), concerning arrangements for the RTA/RMS to “step in” and cure defaults under the 2010 contracts for the design and construction of the motorway’s original (2010) upgrade works.
 - **Fulton Hogan Construction Pty Limited** (ABN 46 010 240 758) (“**the On-Ramp D&C Contractor**”) and its parent company and guarantor, **Fulton Hogan Australia Pty Limited** (ABN 42 135 849 115) (“**the On-Ramp D&C Contractor Guarantor**”), concerning arrangements for RMS to “step in” and cure defaults under the 2013 contracts for the design and construction of the Lane Cove Road eastbound on-ramp and associated new (2013) components of the motorway’s upgrade works.
 - **Sinclair Knight Merz Pty Limited** (ABN 37 001 024 095), which has been appointed by the RTA/RMS and the

Company as an independent verifier for the design and construction of the motorway's upgrade works ("the **Independent Verifier**").

- **Tebcon Pty Limited** (ABN 23 084 906 963, trading as Trevor Brown & Associates), which has been appointed by the RTA/RMS, the Company and the Trustee as their "environmental representative" for the design and construction of the motorway's upgrade works ("the **Environmental Representative**").
- The Company, the Trustee, **Transurban Holdings Limited**, **Transurban Infrastructure Management Limited** (as the responsible entity of the Transurban Holding Trust) and the Security Trustee, concerning an equity contribution to be made to the RTA/RMS if it "steps in" to cure defaults under the 2010 contracts for the design and construction of the motorway's originally specified upgrade works.

To help meet their contractual obligations to the Minister for Roads and the RTA/RMS,

- The Company, the Original Trustee and Hills Construction contracted with **Abigroup Limited** (ABN 63 000 358 467) and **Obayashi Corporation** (ABN 86 002 932 756) for the design and construction of the original motorway in 1994–97, including the works funded by the RTA
- The Company has contracted with **Tollaust** for the operation and maintenance of the completed motorway under the Operating and Maintenance Agreement of 26 August 1994
- The Company and the Trustee have contracted with **Transurban Limited** for the provision of management and other services for the motorway under the M2 Motorway Management Agreement of 25 October 2010
- The Company and the Trustee have contracted with **Leighton Contractors** and its parent company guarantor, **Leighton Holdings**, for the design and construction of the original 2010–15 upgrade works, and
- The Company and the Trustee have contracted with the **On-Ramp D&C Contractor** and its parent company guarantor, the **On-Ramp D&C Contractor Guarantor**, for the design and construction of the Lane Cove Road eastbound on-ramp and associated new (2013) components of the motorway's upgrade works.

If any authority, institution, association or body referred to in the main contract for the project, the M2 Motorway Project Deed, is reconstituted, renamed or replaced, or if its powers or functions are transferred to another organisation, or if it ceases to exist and a new organisation serves the same purpose or objective, the Project Deed refers to the new organisation.

2.2 Contractual structures

The original (1994) contractual structure of the M2 motorway project—inasmuch as the original contracts affected or potentially affected public sector rights and obligations—is summarised in **Figure 2.1**.

The contractual structure that applied ten years later, in October 2004, is summarised in **Figure 2.2**, the structure that applied immediately before the October/November 2010 agreements to upgrade the motorway as described in section 1.2.4 is summarised in **Figure 2.3**, the 18 November 2010 structure, reflecting these original upgrade agreements, is summarised in **Figure 2.4**, and the current structure, reflecting the tolling and Lane Cove Road on-ramp changes described in sections 1.2.5 and 1.2.6, is summarised in **Figure 2.5**.

2.2.1 The Project Deed of 26 August 1994

The core contract is the **M2 Motorway Project Deed** of 26 August 1994, between the Minister for Roads, the RTA, the Company and the trustee of the Hills Motorway Trust (prior to 22 March 2000, the Original Trustee, between 22 March 2000 and 23 October 2005, the Responsible Entity and, since 23 October 2005, the Trustee).

The original form of this agreement set out the terms under which the Company and the Original Trustee/Responsible Entity/Trustee were and/or are obliged, severally rather than jointly, to:

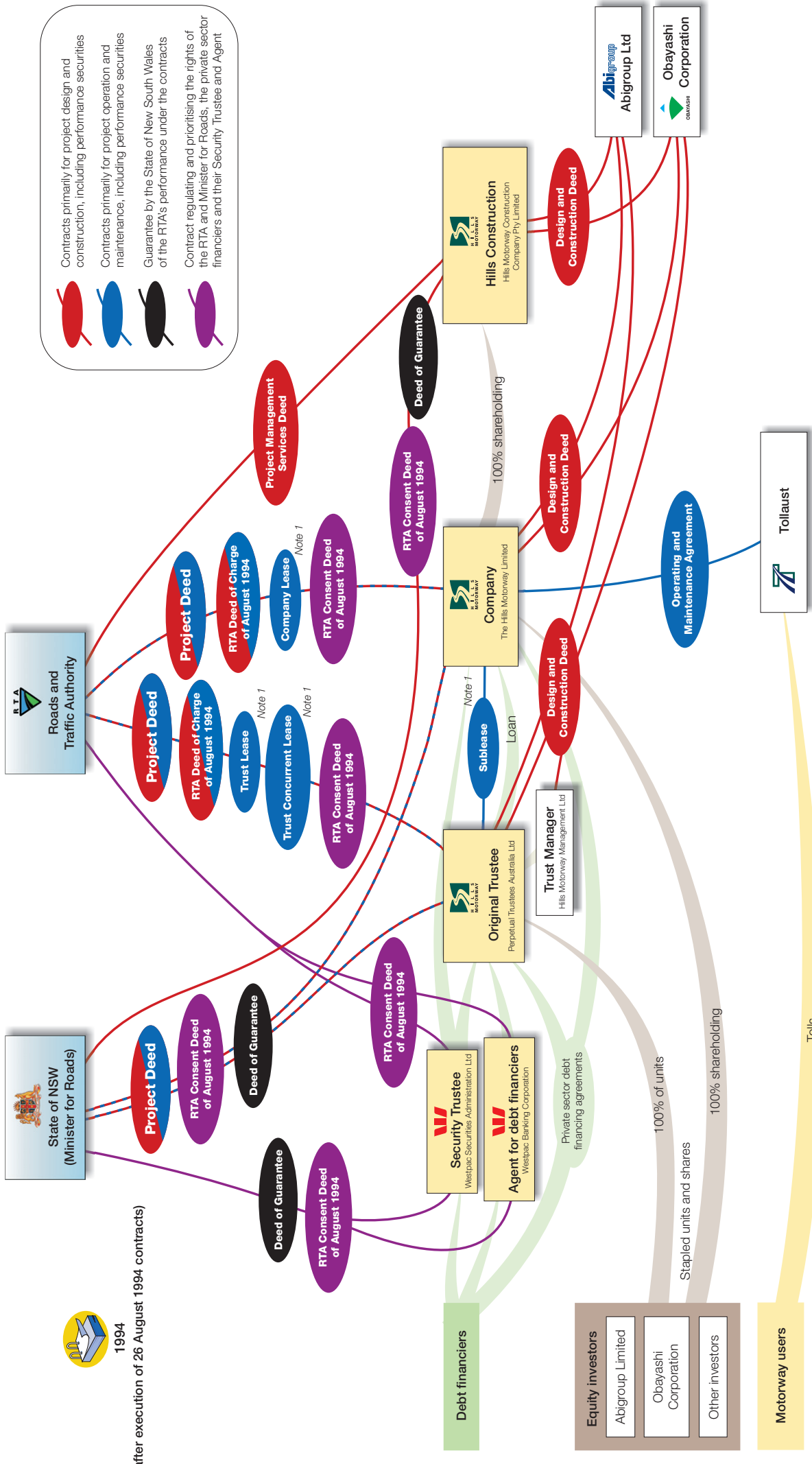
- (a) Finance, design and construct the original form of the M2 motorway, using their best endeavours to ensure the entire motorway was open to the public by 1 December 1997.

The Company and the Original Trustee were assisted in satisfying their design and construction obligations under the Project Deed by the performance by Abigroup and Obayashi of their obligations to the Company, the Original Trustee and the Original Trust Manager under a **Design and Construction Deed** dated 23 August 1994.

- (b) Operate, maintain and repair the M2 motorway for up to 45 years from the date on which the motorway was opened for traffic, 26 May 1997, enter into leases with the RTA/RMS and pay rent to the RTA/RMS. (Under the M2 upgrade arrangements this will be extended, once all the upgrade works specified in 2010 are completed, to a term of up to 49 years from 26 May 1997.)

The Company and the Original Trustee/Responsible Entity/ Trustee have been and are being assisted in satisfying their operation, maintenance and repair obligations under the Project Deed through:

- The performance by Tollaust of its obligations to the Company under an **Operating and Maintenance Agreement** dated 26 August 1994, as amended on several occasions since then, and
- The performance by Transurban Limited of its obligations to the Company and the Trustee under an **M2 Motorway Management Agreement**, dated 25 October 2010, which formalised arrangements previously not subjected to overview by the RTA/RMS. This agreement is subject to conditions agreed with the RTA under an undated **M2 Motorway Management Agreement Side Letter**



1. Forms of the Company Lease, Trust Lease, Trust Concurrent Lease and Sublease exhibited to the Project Deed, but not yet executed.

Figure 2.1. Overview of the original (1994) structure of the M2 motorway contracts, from a public sector perspective.

executed by the RTA, the Company, the Trustee and Transurban Limited on 25 October 2010 (see section 2.2.15 below).

- (c) Give up possession of the M2 to RMS at the end of this concession term, or upon any earlier termination of the Project Deed.

The rights and obligations of the Original Trustee under the Project Deed and other project contracts were transferred to the Responsible Entity when the Hills Motorway Trust was registered as a managed investment scheme under Chapter 5C of the Corporations Law on 22 March 2000, following an approval of this by the Minister for Roads, the RTA and other parties under a **Deed of Consent to Appointment of Responsible Entity**, between the Minister for Roads, the RTA, the Original Trustee, Hills Motorway Management Limited (in its previous role as manager of the Hills Motorway Trust), the Company, Hills Construction, Macquarie Corporate Finance Limited, National Australia Bank Limited (as the Security Trustee, as the Agent and as a swap counterparty), Commonwealth Bank of Australia, Macquarie Bank Limited, Macquarie Acceptances Limited, Hills Motorway Underwriting No 1 Pty Limited and Hills Motorway Underwriting No 2 Pty Limited, dated 24 February 2000.

As already indicated in section 2.1.2, the registration of the Hills Motorway Trust as a managed investment scheme ended on 23 October 2005. In all the project contracts executed since then, Hills Motorway Management Limited, in its role as the trustee of the Hills Motorway Trust, has been referred to simply as “the Trustee”, and this convention has also been adopted in this summary report.

2.2.2 1997–2010 amendments to the Project Deed, prior to the 2010 amendments concerning the 2010–15 upgrading of the motorway

Minor amendments to the Project Deed, reflecting a refinancing of the project’s infrastructure borrowings on 28 June 1996, were made by an **M2 Motorway Project Deed Deed of Amendment**, between the Minister for Roads, the RTA, the Company and the Trustee, on 29 October 1997 (“**the 1997 Amendment Deed**”).

Further minor amendments to the Project Deed, reflecting refinancings of the project’s debts in September 1999, June 2004 and May 2009 and the conversion of a westbound section of the motorway between Lane Cove Road and Beecroft Road from two to three lanes in 2007, were made in:

- An **M2 Motorway RTA Consent Deed** between the Minister for Roads, the RTA, the Company, the Original Trustee, Hills Construction, Westpac Securities Administration Limited, Westpac Banking Corporation and National Australia Bank Limited, dated 27 September 1999. This contract is referred to in several later contracts as “the 1999 Consent Deed”, but

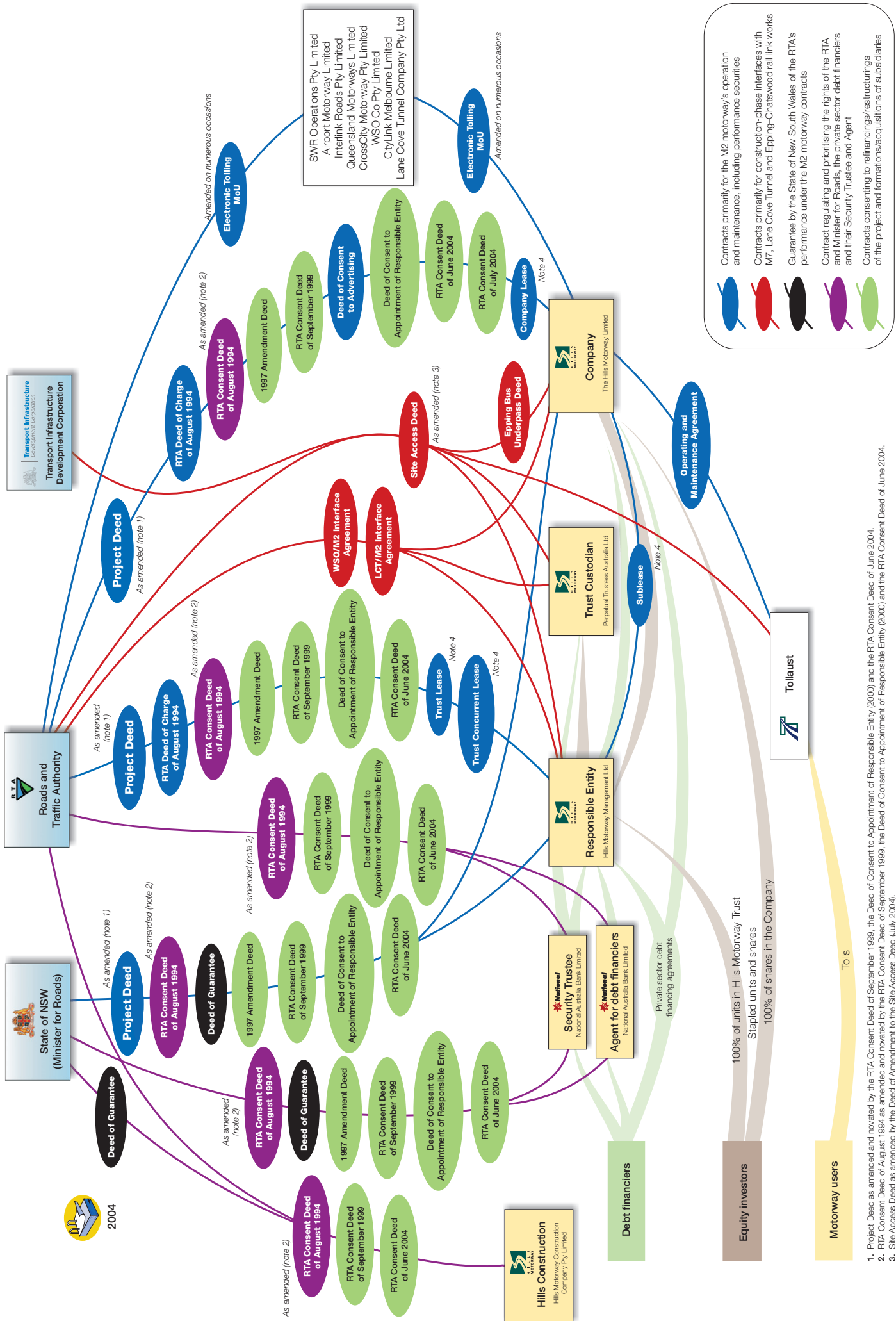
for greater clarity it is referred to in this summary report as “**the RTA Consent Deed of September 1999**”.

- An **M2 Motorway — 2004 Consent Deed** between the Minister for Roads, the RTA, the Company, the Responsible Entity, Hills Construction, the Security Trustee and the Agent, dated 18 June 2004. (The date of execution of this contract was clarified in a letter of understanding between the lawyers acting for the various parties dated 18 June 2004.) This contract is referred to in several later contracts as “the 2004 Consent Deed”, but for greater clarity it is referred to in this summary report as “**the RTA Consent Deed of June 2004**” (as discussed in section 2.2.15 below, the RTA executed another consent deed later that year).
- An **M2 Motorway Westbound Third Lane Conversion Project Agreement** between the Minister for Roads, the RTA, the Company and the Trustee, executed on 11 January 2007, which set out terms for the Company and the Trustee to convert a westbound portion of the motorway, between Lane Cove Road and Beecroft Road, from two to three road lanes, through the removal of the westbound cycling and emergency breakdown lane from this section, and made associated changes to the motorway’s *Scope of Works and Technical Criteria* and design drawings annexed to the Project Deed. This contract is referred to in this summary report as “**the Conversion Project Agreement of January 2007**”.
- An **M2 Motorway — 2009 Consent Deed** between the Minister for Roads, the RTA, the Company, the Trustee, Hills Construction, the Security Trustee and the Agent, dated 1 May 2009. This contract is referred to in several later contracts as “the 2009 Consent Deed”, but for greater clarity it is referred to in this summary report as “**the RTA Consent Deed of May 2009**”.

These amendments were reflected in a consolidated (“amended and restated”) form of the Project Deed, prepared for reference purposes only, agreed to by the RTA, the Company and the Trustee and annexed to a **Reference Letter Agreement** executed by them on 25 October 2010. This “**M2 Motorway Consolidated Project Deed as at 25 October 2010**” was legally unenforceable and was intended simply to confirm the terms of the Project Deed, as amended, immediately prior to the commencement of the amending and new contracts concerning the 2010–15 upgrading of the motorway, which are discussed in section 2.2.7 below.*

In addition to incorporating the 1997 to 2009 amendments described above, the M2 Motorway Consolidated Project Deed as at 25 October 2010 incorporated further additions and amendments to the Project Deed as set out in an **M2 Motorway — 2010 Amending Deed** between the Minister for Roads, the RTA, the Company and the Trustee dated 25 October 2010 (“**the 2010 Amending Deed**”).

* Since 18 November 2010 this consolidated reference form of the Project Deed has been superseded by the legally enforceable **M2 Motorway Consolidated Project Deed (as at the Satisfaction Date as defined in the M2 Upgrade Project Deed)** annexed to the Upgrade Project Deed, as described in section 2.2.7, and the latter has itself subsequently been amended as described in sections 2.2.8 and 2.2.9.



Contracts primarily for the M2 motorway's operation and maintenance, including performance securities

Contracts primarily for construction-phase interfaces with M7, Lane Cove Tunnel and Epping-Chatswood rail link works

Guarantee by the State of New South Wales of the RTA's performance under the M2 motorway contracts

Contract regulating and prioritising the rights of the RTA and Minister for Roads, the private sector debt financiers and their Security Trustee and Agent

Contracts consenting to refinancings/restructurings of the project and formations/acquisitions of subsidiaries

Figure 2.2: Overview of the October 2004 structure of the M2 motorway contracts, from a public sector perspective.

1. Project Deed as amended and novated by the RTA Consent Deed of September 1999, the Deed of Consent to Appointment of Responsible Entity (2000) and the RTA Consent Deed of June 2004.
 2. RTA Consent Deed of August 1994 as amended and novated by the RTA Consent Deed of September 1999, the Deed of Consent to Appointment of Responsible Entity (2000) and the RTA Consent Deed of June 2004.
 3. Site Access Deed as amended by the Deed of Amendment to the Site Access Deed (July 2004).
 4. Forms of the Company Lease, Trust Concurrent Lease and Sublease are exhibited to the Project Deed, as amended, but these leases have not yet been executed.

These new additions and amendments, again preceding the motorway upgrading additions and amendments discussed in section 2.2.7, concerned:

- “Ring-fencing” restrictions on related party transactions involving Transurban entities, in response to arrangements adopted by the Company and the Trustee following the acquisition of the Company and the Hills Motorway Trust by Transurban entities on 10 June 2005.

When the 2010 Amending Deed became effective on 18 November 2010 (see section 2.3.3 below), these restrictions took effect retrospectively from 10 June 2005. On 25 October 2010 the Company and the Trustee issued a **Disclosure Letter** to the Minister for Roads and the RTA setting out details of related party transactions between themselves and other Transurban entities between 10 June 2005 and 25 October 2010, seeking waivers for any resultant breaches of the new restrictions. The Minister for Roads and the RTA responded on 25 October 2010 by issuing a **Waiver Letter** to the Company and the Trustee, irrevocably waiving their rights against the Company, the Trustee and Hills Construction concerning any defaults arising from the disclosed matters under the new restrictions.

- The aggregation of the equity returns of the Company and the Trustee for the purposes of a number of provisions in the Project Deed and in the forms of three of the leases described in section 2.2.11 below. When the 2010 Amending Deed became effective on 18 November 2010 (see section 2.3.3), these amendments took effect retrospectively from 26 August 1994.
- Miscellaneous other changes to the Project Deed and the forms of these three leases, generally of a minor nature and including new definitions to reflect the previous amendments described above and a previously agreed change to the permissible tolls for vehicles other than cars, discussed later in this report (see section 8.6). When the 2010 Amending Deed became effective on 18 November 2010 (see section 2.3.3), these amendments took effect retrospectively from 25 October 2010.

2.2.3 Initial construction for the RTA

A **Project Management Services Deed** between the RTA and Hills Construction, dated 26 August 1994, set out Hills Construction’s obligations to the RTA to procure and manage the design and construction of specified earthworks and stormwater drainage pipe and culvert works for the motorway which were to be funded by the RTA.

These obligations were satisfied through the performance by Abigroup and Obayashi of their obligations to Hills Construction under the **1994 Design and Construction Deed**.

2.2.4 Advertising on the motorway

On 8 December 1999 the RTA and the Company executed a **Deed of Consent to Advertising on the M2 Motorway** under which, among other things,

- The RTA agreed that the Company could erect advertising structures along the motorway, subject to specified conditions, and
- The Company agreed to pay 14% of its gross advertising revenue into an “additional M2 improvement fund”, to be spent on M2 motorway safety improvements beyond those the Company would otherwise be obliged to perform.

Over the following ten years three advertising signs were erected, all at the Pennant Hills Road intersection. Since then, planning approval under section 80 of the Environmental Planning and Assessment Act 1979 and clause 12(d) of *State Environmental Planning Policy 64—Advertising and Signage* has been granted:

- On 22 October 2010, for eleven additional illuminated advertising signs along the motorway
- On 8 November 2011, for a further five illuminated advertising signs along the motorway, with a modification of this approval, under section 96(2) of the Environmental Planning and Assessment Act, to permit the relocation and resizing of two of these signs, being approved on 17 January 2013, and
- On 2 October 2012, for one further illuminated advertising sign, with faces towards traffic in both directions, on the motorway at North Rocks.

To date (i.e. between 8 December 1999 and 28 May 2013) the “additional M2 improvement fund” has been used to finance, among other things, signs and other measures to reduce and deter unsafe pedestrian activities at bus stops, other interchanges and ramps, temporary refurbishments of bridge joints, flood prevention and mitigation measures, flood warning signs at the motorway’s water detention basins and a road safety audit and design works for safety improvements at bus stops on the motorway west of Windsor Road, permitting an increase in the speed limit from 80 to 90 km/h on this section of the motorway.

2.2.5 2002–04 construction interfaces with other motorways and the Epping–Chatswood rail link

A **WSO/M2 Interface Agreement** dated 2 August 2002, between the RTA, the Company, the Responsible Entity and the Trust Custodian, set out arrangements for the construction of connections between the M2 and the new Westlink M7 motorway (formerly known as the Western Sydney Orbital) in West Baulkham Hills.

These arrangements were subsequently mirrored in the **Western Sydney Orbital Project Deed** dated 13 February

2003, between the RTA, WestLink Motorway Limited and WSO Co Pty Limited.

Following the completion and opening of the Westlink M7 motorway, these contracts' construction interface arrangements no longer have any practical effect but their land boundary, maintenance and repair and dispute resolution arrangements continue to apply.

An **LCT/M2 Interface Agreement** dated 14 November 2003, between the RTA, the Company, the Responsible Entity and the Trust Custodian, set out analogous arrangements for the construction of new connections between the M2, Epping Road and the new Lane Cove Tunnel motorway in North Ryde.

These arrangements were subsequently mirrored in the **Lane Cove Tunnel Project Deed** dated 4 December 2003, between the RTA, Lane Cove Tunnel Nominee Company Pty Limited (as trustee of the Lane Cove Tunnel Trust) and Lane Cove Tunnel Company Pty Limited (which was later renamed Connector Motorways Pty Limited).

Again, following the completion and opening of the Lane Cove Tunnel, these contracts' construction interface arrangements no longer have any practical effect but their maintenance and repair and dispute resolution arrangements continue to apply. Since the sale of the Lane Cove Tunnel in August 2010 the two private sector parties to the Lane Cove Tunnel Project Deed have been replaced by, respectively, LCT-MRE Nominees Pty Limited (as trustee of the LCT-MRE Trust) and LCT-MRE Pty Limited.

A **Site Access Deed** dated 30 October 2002, between the RTA, the Director-General of the NSW Department of Transport, the Company, the Responsible Entity, the Trust Custodian and Tollaustr, set out arrangements for truck access between the M2 motorway and a works site for the construction of the Epping-Chatswood rail link, south of the motorway and immediately west of Delhi Road in North Ryde. An **Epping Bus Underpass Deed** dated 28 February 2003, between the RTA, the Director-General of the NSW Department of Transport and the Company, did likewise for another Epping-Chatswood rail link worksite at Epping station. The rights and obligations of the Director-General of the Department of Transport under these two agreements were transferred to TIDC upon its formation on 1 January 2004, and the Site Access Deed was amended by a **Deed of Amendment to the Site Access Deed** dated 2 July 2004, between the RTA, TIDC, the Company, the Responsible Entity, the Trust Custodian and Tollaustr.

Following the completion and opening of the Epping-Chatswood rail link, the Site Access Deed and the Epping Bus Underpass Deed no longer have any practical effect.

2.2.6 2007 westbound third lane

As already indicated in section 1.2.3, on 11 January 2007 the Minister for Roads, the RTA, the Company and the Trustee executed the **Conversion Project Agreement of January 2007**, which set out terms for the Company and the Trustee, at their own cost, to convert a westbound portion of the motorway, between Lane Cove Road and Beecroft Road, from two to three

road lanes, through the removal of the westbound cycling and emergency breakdown lane from this section.

This followed the execution on 10 January 2007, by the Treasurer, Mr Michael Costa, of a formal confirmation that:

- The joint financing arrangements for the M2 motorway project, including these conversion works, continued to be approved under section 20(1) of the Public Authorities (Financial Arrangements) Act 1987, and
- The Deed of Guarantee of 26 August 1994 described in section 2.2.13 below, executed under section 22B of the Public Authorities (Financial Arrangements) Act, continued to apply to the M2 motorway project, including the conversion works.

These 2007 conversion works are now being replaced by much more substantial widening works under the contracts for the 2010–15 upgrading project, described below.

2.2.7 2010–15 upgrading of the M2 motorway and associated refinancing of the project

As already discussed in section 1.2.4, on 12 October 2009 the RTA, the Company and the Trustee entered into an **M2 Upgrade "In Principle" Agreement** that recorded:

- The matters concerning the then-proposed upgrading of the motorway on which they had already agreed "in principle", and
- The processes by which other, specified matters were to be resolved.

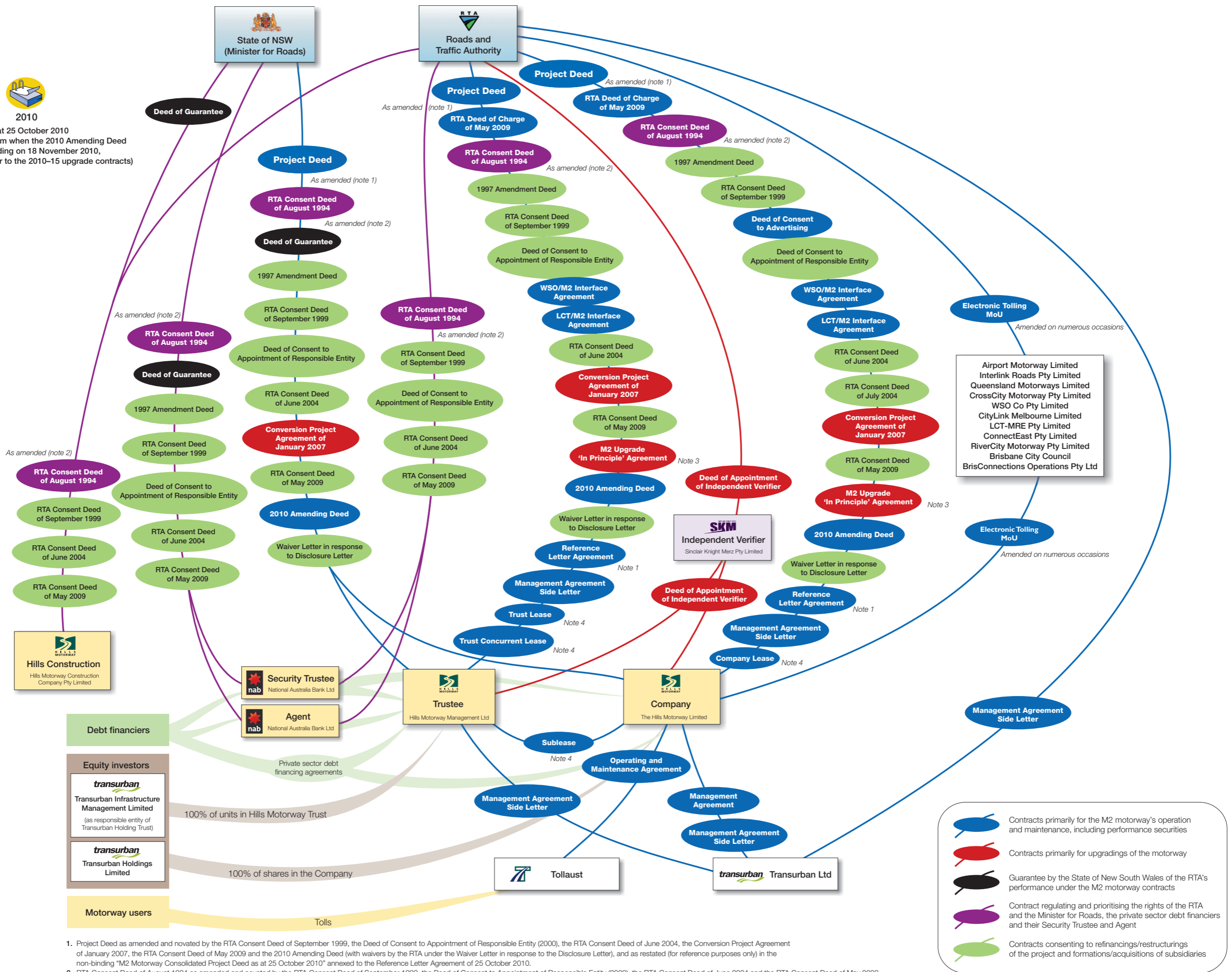
On 28 May 2010 the RTA, the Company, the Trustee and the Independent Verifier executed a **Deed of Appointment of Independent Verifier**, setting out arrangements for the Independent Verifier to provide specified verification services for upgrade design and construction activities under the "In Principle" Agreement and then-envisaged future agreements for the M2 motorway upgrade project.

The "In Principle" Agreement expired on 25 October 2010, when it was superseded by the execution of an **M2 Motorway Upgrade Project Deed**, between the Minister for Roads, the RTA, the Company and the Trustee, dated 25 October 2010 ("**the Upgrade Project Deed**").

Among other things, this original (2010) form of the Upgrade Project Deed set out:

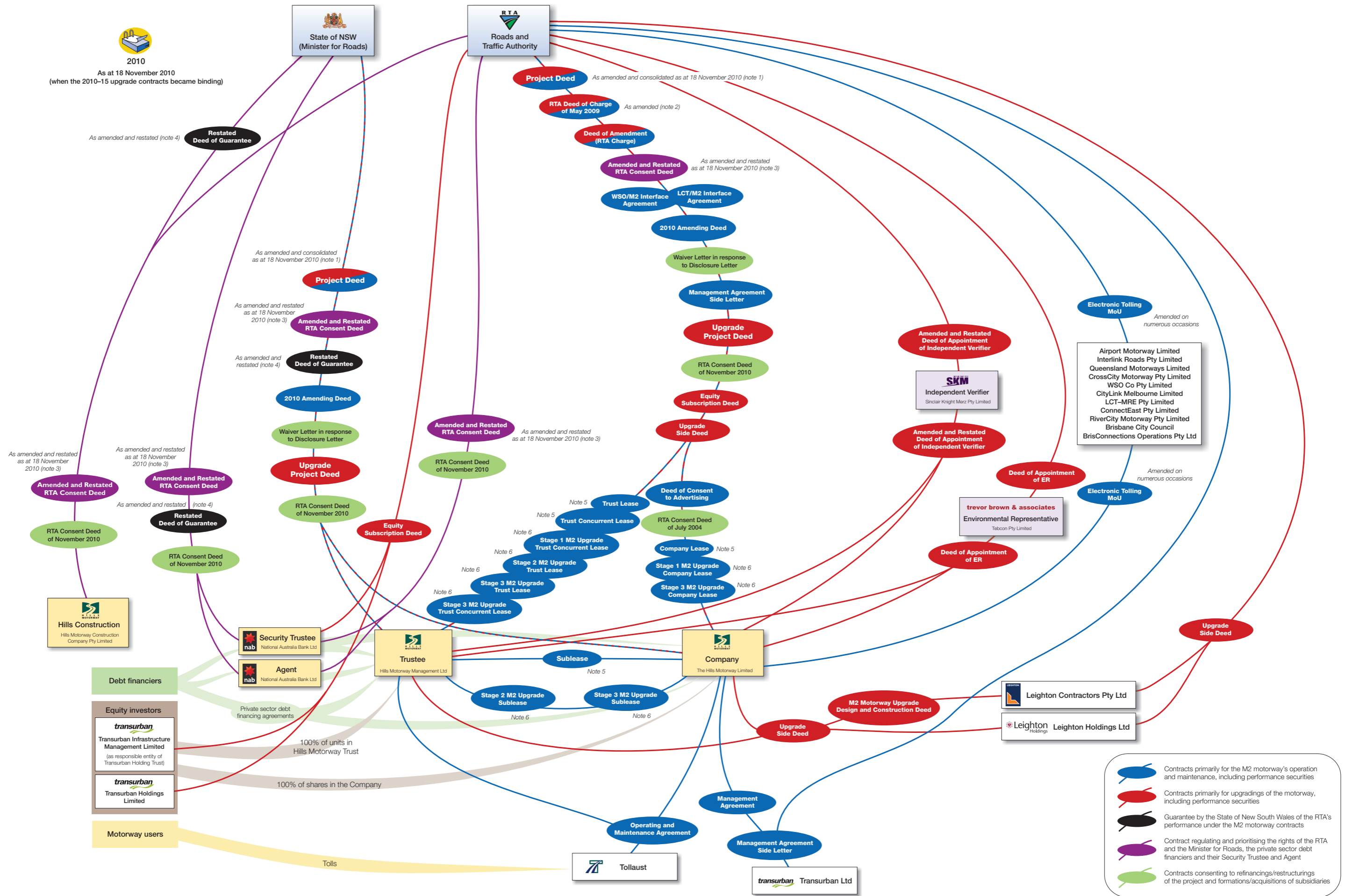
- (a) Detailed requirements for the Company and the Trustee, severally rather than jointly, to design, construct, complete and commission the M2 upgrade works, which at that time comprised four specified "stages", with Stage 1 (works associated with the new west-facing Windsor Road ramps) then being expected to be completed by 18 March 2012, Stage 2 (the new Herring Road and Christie Road ramps and specified related works) by 18 August 2012, Stage 3 (most of the main motorway widening works) by 18 January 2013 and Stage 4 (including specified surveys, documentation, reports and reinstatement and clean-up works) by 18 May 2013.

2010
As at 25 October 2010
(retrospectively, from when the 2010 Amending Deed became binding on 18 November 2010, and immediately prior to the 2010-15 upgrade contracts)



1. Project Deed as amended and novated by the RTA Consent Deed of September 1999, the Deed of Consent to Appointment of Responsible Entity (2000), the RTA Consent Deed of June 2004, the Conversion Project Agreement of January 2007, the RTA Consent Deed of May 2009 and the 2010 Amending Deed (with waivers by the RTA under the Waiver Letter in response to the Disclosure Letter), and as restated (for reference purposes only) in the non-binding "M2 Motorway Consolidated Project Deed as at 25 October 2010" annexed to the Reference Letter Agreement of 25 October 2010.
 2. RTA Consent Deed of August 1994 as amended and novated by the RTA Consent Deed of September 1999, the Deed of Consent to Appointment of Responsible Entity (2000), the RTA Consent Deed of June 2004 and the RTA Consent Deed of May 2009.
 3. The M2 Upgrade 'In Principle' Agreement automatically expired, on 25 October 2010, upon the execution of the Upgrade Project Deed.
 4. Amended forms of the Company Lease, Trust Lease, Trust Concurrent Lease and Sublease were exhibited to the Project Deed, as amended, but these leases had not yet been executed.

Figure 2.3. Overview of the 25 October 2010 structure of the M2 motorway contracts, immediately before the original (2010) M2 motorway upgrade contracts were executed, from a public sector perspective.



1. The Project Deed was amended and novated by the RTA Consent Deed of September 1999, the Deed of Consent to Appointment of Responsible Entity (2000), the RTA Consent Deed of June 2004, the Conversion Project Agreement of January 2007, the RTA Consent Deed of May 2009, the 2010 Amending Deed (with waivers by the RTA under the Waiver Letter in response to the Disclosure Letter), the Upgrade Project Deed and the RTA Consent Deed of November 2010, and was then consolidated, with these amendments, in the binding "M2 Motorway Consolidated Project Deed (as at the Satisfaction Date as defined in the M2 Upgrade Project Deed)" annexed to the Upgrade Project Deed. This "satisfaction date" was 18 November 2010.

2. The RTA Deed of Charge of May 2009 was amended by the Deed of Amendment (RTA Charge) dated 25 October 2010.

3. The RTA Consent Deed of August 1994 was amended and novated by the RTA Consent Deed of September 1999, the Deed of Consent to Appointment of Responsible Entity (2000), the RTA Consent Deed of June 2004, the RTA Consent Deed of May 2009 and the RTA Consent Deed of November 2010, and was then restated, with these amendments, in the Amended and Restated RTA Deed of Consent attached to the RTA Consent Deed of November 2010.

4. The Public Authorities (Financial Arrangements) Act Deed of Guarantee of 26 August 1994 was amended and restated in the Restated Deed of Guarantee, dated 18 November 2010.

5. Amended forms of the Company Lease, Trust Lease, Trust Concurrent Lease and Sublease were exhibited to the consolidated Project Deed (see note 1), but as at 18 November 2010 these leases had not yet been executed.

6. Forms of the Stage 1 M2 Upgrade Company Lease, the M2 Stage 1 Trust Concurrent Lease, the Stage 2 M2 Upgrade Trust Lease, the Stage 2 M2 Upgrade Sublease, the Stage 3 M2 Upgrade Company Lease, the Stage 3 M2 Upgrade Trust Lease, the M2 Stage 3 Trust Concurrent Lease and the Stage 3 M2 Upgrade Sublease were exhibited to the consolidated Project Deed (see note 1) and annexed to the Upgrade Project Deed, and were to be executed following the completion of the relevant stages of the M2 motorway upgrade works.

Figure 2.4. Overview of the 18 November 2010 structure of the M2 motorway contracts, immediately after the original (2010) M2 motorway upgrade contracts took effect, from a public sector perspective.

As described in sections 2.2.9 and 2.2.10 below, these Upgrade Project Deed requirements have since been amended to:

- ♦ Defer the satisfaction of specified stability-related risk assessment and other standards for the M2 motorway's northern embankment near Vimiera Road in Marsfield and specified associated works from Stage 3 of the upgrade project to Stage 4, with an associated extension of the expected date for the completion of Stage 4 to 18 January 2015, and
 - ♦ Incorporate the design, construction, completion and commissioning of two further "stages" of upgrade works (Stages 3A and 4A) associated with the Lane Cove Road on-ramp and associated works.
- (b) Detailed "step in" provisions and arrangements for the termination of the Upgrade Project Deed in the event of defaults associated with the upgrade works.

Again, these provisions have since been amended to incorporate different and simpler arrangements for the Lane Cove Road on-ramp and associated works.

- (c) Amendments to the Project Deed that took effect on 18 November 2010, when (as described in section 2.3.4 below) all of the Upgrade Project Deed's conditions precedent had been satisfied or waived.

These 18 November 2010 amendments to the Project Deed were incorporated within a legally binding "amended and restated" form of the Project Deed, the **M2 Motorway Consolidated Project Deed (as at the Satisfaction Date as defined in the M2 Upgrade Project Deed)**, that was annexed to the Upgrade Project Deed. They included:

- ♦ The deletion of provisions requiring the Minister for Roads to consult with the Company if any proposed public transport infrastructure or freight train services serving defined "northwest regions of Sydney" might reasonably have a material adverse effect on the revenues or outgoings of the M2 motorway
- ♦ A clear statement that the North West Rail Link from Epping to Rouse Hill, as then proposed by the former NSW Government in its February 2010 *Metropolitan Transport Plan: Connecting the City of Cities*, could not trigger the Project Deed's "material adverse effect" renegotiation provisions, which are described in section 10.1 of this report
- ♦ Amendments to the tolls able to be charged, including new tolls at the new Windsor Road, Christie Road and Herring Road ramps' toll plazas and provisions for a future real 7.7% increase in all of the motorway's maximum permitted tolls following the completion of the upgrade works (see section 8.6)
- ♦ Amendments to the existing forms of the four originally specified motorway leases (a Company

Lease, a Trust Lease, a Trust Concurrent Lease and a Sublease) described in section 2.2.11 below, and

- ♦ The insertion of requirements for the execution of eight additional "upgrade" leases as listed in section 2.2.11 below, in forms set out in four new exhibits to the Project Deed and for land specified in a fifth new exhibit to the Project Deed.
- (d) Amendments to and a restatement of the *Scope of Works and Technical Criteria* for the motorway as a whole, as exhibited to the Project Deed, upon the completion of construction of the defined "Stage 1" of the upgrade works. (In practice, Stage 1 was completed and these changes took effect on 23 July 2012.)
- (e) Further amendments to the Project Deed that were to take effect upon the final completion of Stages 1 to 4 of the upgrade works, including:
- ♦ An extension of the concession term and the maximum terms specified in the forms of the originally specified leases from 45 to 49 years from the date of opening of the M2 motorway, 26 May 1997, and
 - ♦ Minor amendments to the grounds on which the Company and the Trustee may terminate the Project Deed, to reflect the conclusion of the design and construction of these stages of the upgrade.

As described in sections 2.2.8 to 2.2.10 below, the Project Deed (as amended and consolidated on 18 November 2010) has subsequently been further amended in 2011, 2012 and 2013, through three sets of amendments to its current and future tolling provisions, the addition of a requirement for two further "upgrade" leases, further future amendments to the Project Deed's *Scope of Works and Technical Criteria* and a change to the date on which the minor amendments to the grounds on which the Company and the Trustee may terminate the Project Deed, as referred to in (e) above, will take effect, so as to reflect the conclusion of the design and construction of all of the upgrade works, now including the Lane Cove Road on-ramp and associated works.

To assist the Company and the Trustee to satisfy their design and construction obligations under the Upgrade Project Deed the Company and the Trustee have entered into:

- An **M2 Motorway Upgrade Design and Construction Deed** with Leighton Contractors, dated 25 October 2010, for the design and construction of the originally specified upgrade works, and
- For the Lane Cove Road on-ramp and associated works, as described in section 2.2.10 below, a **Lane Cove Road On-Ramp Design and Construction Deed** with the On-Ramp D&C Contractor, dated 21 May 2013.

The Upgrade Project Deed of 25 October 2010 was accompanied by:

- An **Equity Subscription Deed** between the RTA, the Company, the Trustee, Transurban Holdings, Transurban Infrastructure Management (as the responsible entity of the

Transurban Holding Trust) and the Security Trustee, dated 17 November 2010, concerning equity contributions to be made by Transurban Holdings and Transurban Infrastructure Management and (among other things) a contribution to be made by the Transurban parties to the RTA (and now RMS), in specified circumstances, if RMS “steps in” to cure defaults under the 2010 contracts for the design and construction of the motorway’s originally specified upgrade works.

- A **2010 Consent Deed** between the Minister for Roads, the RTA, the Company, the Trustee, Hills Construction and the Security Trustee and Agent, dated 17 November 2010, under which the Minister and the RTA consented to a refinancing of the motorway associated with the originally specified upgrade works and minor amendments were made to the Project Deed and to the RTA Consent Deed of August 1994 described in section 2.2.15 below (an agreed “amended and restated” form of the latter, incorporating these and all other amendments made to this RTA Consent Deed between August 1994 and 17 November 2010, was attached to the 2010 Consent Deed).

The 2010 Consent Deed is referred to in other contracts as “the M2 Motorway — RTA 2010 Consent Deed” or simply as “the 2010 Consent Deed”, but for greater clarity it is referred to in this summary report as “**the RTA Consent Deed of November 2010**”.

- A **Side Deed** between the RTA, the Company, the Trustee, Leighton Contractors and its parent company guarantor, Leighton Holdings, dated 25 October 2010, concerning a possible novation of the M2 Motorway Upgrade Design and Construction Deed to the RTA following a termination of the Upgrade Project Deed (“**the Upgrade Side Deed**”).
- A **Deed of Amendment and Restatement (Independent Verifier Deed)** between the RTA, the Company, the Trustee and the Independent Verifier, dated 25 October 2010, which amended the 28 May 2010 Deed of Appointment of Independent Verifier by adding the Trustee as a party and amending its specifications of the Independent Verifier’s services. (The amended contract is referred to in this report as “**the Amended and Restated Deed of Appointment of Independent Verifier**”).
- A **Deed of Appointment of ER** between the RTA, the Company, the Trustee and the Environmental Representative, dated 17 November 2010, setting out arrangements for the Environmental Representative to provide specified environmental management services for the upgrade project.
- A **Deed of Amendment (RTA Charge)** between the RTA, the Company and the Trustee, dated 25 October 2010, amending a 1 May 2009 Deed of Charge between the same parties, described in section 2.2.14 below, primarily to ensure this Deed of Charge secures the performance of the Company and the Trustee under the Upgrade Project Deed as well as the other major project contracts.
- A **Restated Deed of Guarantee** between the Minister for Roads, the Company, the Trustee, Hills Construction and the

Security Trustee and Agent, expanding the operation of guarantees provided by the State of NSW under the Deed of Guarantee executed on 26 August 1994 under section 22B of the Public Authorities (Financial Arrangements) Act 1987 and described in section 2.2.13 below.

2.2.8 2011 and 2012 tolling amendments, prior to the 2013 amendments concerning the Lane Cove Road on-ramp

As already indicated in section 1.2.5,

- Under an **M2 Motorway: Cashless Tolling Amending Deed** between the Minister for Roads, the RTA, the Company and the Trustee, dated 28 October 2011 (“**the Cashless Tolling Amending Deed**”), amendments were made to the Project Deed’s toll calculation schedule, which specifies the maximum tolls which may be charged on the M2 motorway, and the specifications in the Project Deed and the Upgrade Project Deed for the motorway’s tolling collection systems and locations, so as to permit and facilitate the conversion of the motorway to cashless (i.e. fully electronic) tolling, and
- Under an **M2 Motorway: Toll Calculation Amending Deed** between the Minister for Roads, RMS, the Company and the Trustee, dated 13 August 2012 (“**the Toll Calculation Amending Deed**”), the Project Deed’s toll calculation schedule was further amended and restated, effectively freezing the tolls charged for cars at the existing toll plazas on the motorway until the completion of specified components of the upgrading works on relevant portions of the motorway, as set out in the 2010 upgrading contracts (section 1.2.4). These freezes are to be offset by a higher subsequent real increase in all of the motorway’s maximum permitted tolls, from the 7.7% increase specified in 2010 to 8.0%.

The Project Deed’s toll calculation schedule has subsequently been amended again, as described in section 2.2.10 below.

2.2.9 2013 amendments and contract concerning M2 embankment stability remediation works near Vimiera Road, Marsfield

During the course of the upgrade works it has been established that significant remedial works will be required to ensure the long-term stability of the M2 motorway’s existing northern embankment near Vimiera Road in Marsfield. A temporary sheet pile retaining wall has been constructed to improve the embankment’s stability, and this will permit the safe operation of the motorway, with ongoing monitoring, while the necessary permanent remedial works are carried out by the Company and the Trustee (for details, see section 8.9 of this report).

Accordingly,

- On 17 May 2013 RMS issued a “change order”, under Upgrade Project Deed provisions described in section 7.2 of this report, deferring the satisfaction of specified stability-related risk assessment and other standards for this

embankment and specified associated works from Stage 3 of the upgrade project to Stage 4, with an associated extension of the targetted date for the completion of Stage 4 from 18 May 2013 to 18 January 2015, and

- On 16 May 2013 RMS and the Company entered into an agreement (“**the VRE Remediation Works Agreement**”), reaffirmed by the Company on 17 May 2013, under which the Company has undertaken to carry out specified “VRE remediation works” for the permanent remediation of the northern embankment near Vimiera Road, using its best endeavours to complete these works within 20 months of the date on which Stage 3 of the upgrade works is completed or by any later date agreed to by RMS and the Company in writing.

At present it is expected that, in practice, Stage 3 of the upgrade will be completed in August 2013, so this targetted completion date for the “VRE remediation works” is currently expected to be in April 2015.* This is later than the amended target “date for construction completion of Stage 4” of the upgrade works, 18 January 2015, because the “VRE remediation works” extend beyond the scope of the works required to satisfy the standards and other requirements for the completion of the amended Stage 4 of the upgrade works, as specified in the 17 May 2013 “change order” issued by RMS, and also encompass other works required for the ongoing operation, maintenance and repair of the motorway (see section 8.9).

2.2.10 2013 Lane Cove Road on-ramp contracts

As already indicated in section 1.2.6, an **M2 Motorway: Lane Cove Road On-Ramp Amending Deed** between the Minister for Roads, RMS, the Company and the Trustee, dated 21 May 2013 (“**the Lane Cove Road On-Ramp Amending Deed**”), has amended the Project Deed and the Upgrade Project Deed so as to:

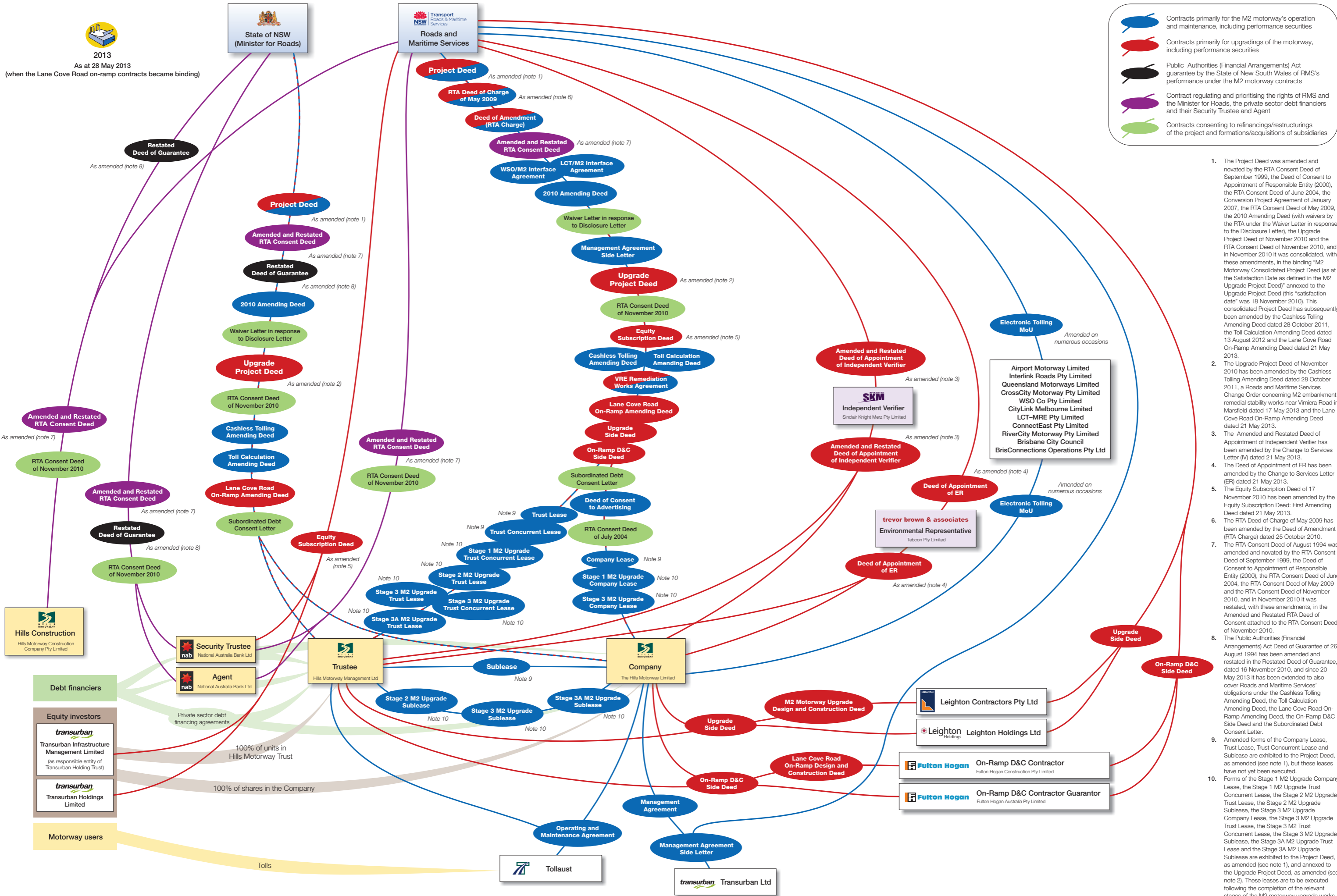
- Incorporate the eastbound on-ramp from Lane Cove Road to the motorway and associated works within:
 - ♦ Two additional “stages” of the Upgrade Project Deed’s upgrade works, generally subject to the same requirements as the rest of the upgrade works but with different detailed specifications, different timeframes (including a target of final completion of the added works by 30 September 2014) and different arrangements concerning “stepping in” by RMS in the event of defaults, and
 - ♦ The Project Deed’s operational and maintenance requirements for the motorway as a whole
- Add a requirement in the Project Deed for an additional “upgrade” lease, for land associated with the new on-ramp (see section 2.2.11 below)

- Adjust the timing of some of the Project Deed’s provisions to reflect the inclusion of the new on-ramp as part of the motorway, and
- Further amend the Project Deed’s toll calculation schedule, permitting the future collection of specified tolls on the new on-ramp.

The Lane Cove Road On-Ramp Amending Deed, which became fully effective on 28 May 2013, has been accompanied by:

- The **Lane Cove Road On-Ramp Design and Construction Deed** between the Company, the Trustee and the On-Ramp D&C Contractor, dated 21 May 2013
- An **On-Ramp D&C Side Deed** between RMS, the Company, the Trustee, the On-Ramp D&C Contractor and the On-Ramp D&C Contractor Guarantor, dated 21 May 2013, concerning arrangements for RMS to “step in” and cure defaults under the contracts for the design and construction of the Lane Cove Road on-ramp and its associated works
- An extension of the RMS obligations guaranteed by the State under the Public Authorities (Financial Arrangements) Act 1987 (NSW), as set out in the **Restated Deed of Guarantee** described in section 2.2.13 below, to include RMS’s obligations under the Lane Cove Road On-Ramp Amending Deed and the On-Ramp D&C Side Deed
- Amendments to the Equity Subscription Deed of 17 November 2010, under an **Amendment and Restatement Deed** between RMS, the Company, the Trustee, Transurban Holdings, Transurban Infrastructure Management (as the responsible entity of the Transurban Holding Trust) and the Security Trustee, concerning additional equity contributions and subordinated loans by the equity investors to help fund the Lane Cove Road on-ramp project, dated 21 May 2013 (“**the Equity Subscription Deed: First Amending Deed**”)
- A “**Subordinated Debt Consent Letter**”, dated 21 May 2013 and headed *M2 Motorway Funding—Refinancing Consent*, from the Company and the Trustee to RMS and countersigned by RMS, which sets out changes to the private sector parties’ subordinated debt financing arrangements and records RMS’s consent to the future use of debt finance to repay the subordinated loans made by the equity investors to help fund the Lane Cove Road on-ramp project
- A “**Change to Services Letter (IV)**”, dated 21 May 2013 and headed *Lane Cove On-Ramp—Change to Services Request*, from the Company and the Trustee to the Independent Verifier, countersigned by RMS and the Independent Verifier, which sets out amendments to the Amended and Restated Deed of Appointment of Independent Verifier that reflect the changes made to the Upgrade Project Deed to encompass the Lane Cove Road on-ramp works, and
- A “**Change to Services Letter (ER)**”, dated 21 May 2013 and headed *Lane Cove On-Ramp—Change to Services*

* In practice, “construction completion” of Stage 3 was achieved (after the date of this *Summary of Contracts*) on 31 July 2013, so this targetted “date for VRE completion” is now 31 March 2015.



2013
As at 28 May 2013
(when the Lane Cove Road on-ramp contracts became binding)

- Contracts primarily for the M2 motorway's operation and maintenance, including performance securities
- Contracts primarily for upgrades of the motorway, including performance securities
- Public Authorities (Financial Arrangements) Act guarantee by the State of New South Wales of RMS's performance under the M2 motorway contracts
- Contract regulating and prioritising the rights of RMS and the Minister for Roads, the private sector debt financiers and their Security Trustee and Agent
- Contracts consenting to refinancings/restructurings of the project and formations/acquisitions of subsidiaries

1. The Project Deed was amended and novated by the RTA Consent Deed of September 1999, the Deed of Consent to Appointment of Responsible Entity (2000), the RTA Consent Deed of June 2004, the Conversion Project Agreement of January 2007, the RTA Consent Deed of May 2009, the 2010 Amending Deed (with waivers by the RTA under the Waiver Letter in response to the Disclosure Letter), the Upgrade Project Deed of November 2010 and the RTA Consent Deed of November 2010, and in November 2010 it was consolidated, with these amendments, in the binding "M2 Motorway Consolidated Project Deed (as at the Satisfaction Date as defined in the M2 Upgrade Project Deed)" annexed to the Upgrade Project Deed (this "satisfaction date" was 18 November 2010). This consolidated Project Deed has subsequently been amended by the Cashless Tolling Amending Deed dated 28 October 2011, the Toll Calculation Amending Deed dated 13 August 2012 and the Lane Cove Road On-Ramp Amending Deed dated 21 May 2013.
2. The Upgrade Project Deed of November 2010 has been amended by the Cashless Tolling Amending Deed dated 28 October 2011, a Roads and Maritime Services Change Order concerning M2 embankment remedial stability works near Vimbiera Road in Marsfield dated 17 May 2013 and the Lane Cove Road On-Ramp Amending Deed dated 21 May 2013.
3. The Amended and Restated Deed of Appointment of Independent Verifier has been amended by the Change to Services Letter (IV) dated 21 May 2013.
4. The Deed of Appointment of ER has been amended by the Change to Services Letter (ER) dated 21 May 2013.
5. The Equity Subscription Deed of 17 November 2010 has been amended by the Equity Subscription Deed: First Amending Deed dated 21 May 2013.
6. The RTA Deed of Charge of May 2009 has been amended by the Deed of Amendment (RTA Charge) dated 25 October 2010.
7. The RTA Consent Deed of August 1994 was amended and novated by the RTA Consent Deed of September 1999, the Deed of Consent to Appointment of Responsible Entity (2000), the RTA Consent Deed of June 2004, the RTA Consent Deed of May 2009 and the RTA Consent Deed of November 2010, and in November 2010 it was restated, with these amendments, in the Amended and Restated RTA Deed of Consent attached to the RTA Consent Deed of November 2010.
8. The Public Authorities (Financial Arrangements) Act Deed of Guarantee of 26 August 1994 has been amended and restated in the Restated Deed of Guarantee, dated 16 November 2010, and since 20 May 2013 it has been extended to also cover Roads and Maritime Services' obligations under the Cashless Tolling Amending Deed, the Toll Calculation Amending Deed, the Lane Cove Road On-Ramp Amending Deed, the On-Ramp D&C Side Deed and the Subordinated Debt Consent Letter.
9. Amended forms of the Company Lease, Trust Lease, Trust Concurrent Lease and Sublease are exhibited to the Project Deed, as amended (see note 1), but these leases have not yet been executed.
10. Forms of the Stage 1 M2 Upgrade Company Lease, the Stage 1 M2 Upgrade Trust Concurrent Lease, the Stage 2 M2 Upgrade Trust Lease, the Stage 2 M2 Upgrade Sublease, the Stage 3 M2 Upgrade Company Lease, the Stage 3 M2 Upgrade Trust Lease, the Stage 3 M2 Trust Concurrent Lease, the Stage 3 M2 Upgrade Sublease, the Stage 3A M2 Upgrade Trust Lease and the Stage 3A M2 Upgrade Sublease are exhibited to the Project Deed, as amended (see note 1), and annexed to the Upgrade Project Deed, as amended (see note 2). These leases are to be executed following the completion of the relevant stages of the M2 motorway upgrade works.

Figure 2.5. Overview of the current (28 May 2013) structure of the M2 motorway contracts, immediately after the Lane Cove Road on-ramp contracts took effect, from a public sector perspective.

Request, from the Company and the Trustee to the Environmental Representative, countersigned by RMS and the Environmental Representative, which sets out amendments to the Deed of Appointment of ER that reflect the changes made to the Upgrade Project Deed to encompass the Lane Cove Road on-ramp works.

2.2.11 Leases

A **Company Lease** over part of the land occupied by the originally constructed motorway, in a form which must be the same as that of a draft lease exhibited to the Project Deed, as amended by the 2010 Amending Deed and the Upgrade Project Deed, is to be granted to the Company by RMS for the concession term. As already indicated in section 2.2.7 above, the form of this lease is to be amended again, to extend its maximum term from 45 to 49 years from the date of opening of the M2 motorway, 26 May 1997, upon the final completion of all of the originally specified 2010–15 upgrade works.

Similarly, a **Trust Lease** of the rest of the original motorway land, in a form which must be substantially the same as that of another draft lease exhibited to the Project Deed, again as amended by the 2010 Amending Deed and the Upgrade Project Deed, is to be granted to the Trustee by RMS for the concession term, together with a **Trust Concurrent Lease**, in a form exhibited to the Project Deed, once more as amended by the 2010 Amending Deed and the Upgrade Project Deed, under which the land leased by RMS to the Company will be concurrently leased to the Trustee. Again, the forms of these leases are to be amended again, to extend their maximum terms from 45 to 49 years from the date of opening of the M2 motorway, 26 May 1997, upon the final completion of all of the originally specified 2010–15 upgrade works.

The RTA/RMS has been obliged to grant these three leases “as soon as practicable” since the motorway opened on 26 May 1997, but none of the leases has yet been executed.

After the Trust Lease is executed the Trustee must sublease the motorway land it leases from RMS under that lease to the Company under a **Sublease**, in a form which must be substantially the same as a draft sublease exhibited to the original Project Deed, which was subsequently accepted and agreed to by the RTA in a letter to the Original Trustee and the Company dated 27 February 1998, and which has subsequently been amended under the Upgrade Project Deed from 18 November 2010.

These four originally specified requirements for leases have been supplemented, since 18 November 2010, by requirements for eight “upgrade leases”, as described below, and, since 28 May 2013, by requirements for two further “upgrade leases”, also described below, *or* consolidated forms of these and/or the original leases:

- (a) As soon as practicable after the completion of Stage 1 of the upgrade works (the new west-facing Windsor Road ramps)—in practice, “construction completion” of this

Stage 1 was achieved on 23 July 2012—RMS has had to and must:

- Grant the Company a **Stage 1 M2 Upgrade Company Lease** over land associated with Stage 1 of the upgrade works, as specified in an exhibit to the Project Deed inserted by the Upgrade Project Deed, in a form which has had to and must be substantially the same as that of a draft M2 Upgrade Company Lease set out in another exhibit to the Project Deed inserted by the Upgrade Project Deed, with a maximum term ending on 26 May 2046 (i.e. 49 years from the date of opening of the M2 motorway, 26 May 1997), and
 - Grant the Trustee a **Stage 1 M2 Upgrade Trust Concurrent Lease** over the same land, again as specified in an exhibit to the Project Deed inserted by the Upgrade Project Deed, in a form which has had to and must be substantially the same as that of a draft M2 Upgrade Trust Concurrent Lease set out in another exhibit to the Project Deed inserted by the Upgrade Project Deed, with a maximum term ending on 26 May 2046.
- (b) As soon as practicable after the completion of Stage 2 of the upgrade works—in practice, “construction completion” of the Stage 2 works was achieved on 18 January 2013—RMS has had to and must grant the Trustee a **Stage 2 M2 Upgrade Trust Lease** over land associated with Stage 2 of the upgrade works, again as specified in an exhibit to the Project Deed inserted by the Upgrade Project Deed, in a form which has had to and must be substantially the same as that of a draft M2 Upgrade Trust Lease set out in another exhibit to the Project Deed inserted by the Upgrade Project Deed, with a maximum term ending on 26 May 2046.
- (c) As soon as practicable after the completion of Stage 3 of the upgrade works,* RMS must:
- Grant the Company a **Stage 3 M2 Upgrade Company Lease** over land associated with Stage 3 of the upgrade works, once more as specified in an exhibit to the Project Deed inserted by the Upgrade Project Deed, in a form which must be substantially the same as that of the draft M2 Upgrade Company Lease set out in another exhibit to the Project Deed inserted by the Upgrade Project Deed, with a maximum term ending on 26 May 2046, and
 - Grant the Trustee:
 - A **Stage 3 M2 Upgrade Trust Lease** over other land associated with Stage 3 of the upgrade works, again as specified in an exhibit to the Project Deed inserted by the Upgrade Project Deed, in a form which must be substantially the same as that of a draft M2 Upgrade Trust Lease

* In practice, as already indicated in section 2.2.9, “construction completion” of Stage 3 was achieved (after the date of this *Summary of Contracts*) on 31 July 2013.

set out in another exhibit to the Project Deed inserted by the Upgrade Project Deed, with a maximum term ending on 26 May 2046, and

- **A Stage 3 M2 Upgrade Trust Concurrent Lease** over the Stage 3 land subject to the Stage 3 M2 Upgrade Company Lease, in a form which must be substantially the same as that of the draft M2 Upgrade Trust Concurrent Lease set out in an exhibit to the Project Deed inserted by the Upgrade Project Deed, with a maximum term ending on 26 May 2046.

- (d) As soon as practicable after the completion of Stage 3A of the upgrade works (the Lane Cove Road on-ramp and associated works), RMS must grant the Trustee a **Stage 3A M2 Upgrade Trust Lease** over land associated with Stage 3A of the upgrade works, as specified in an exhibit to the Project Deed inserted by the Upgrade Project Deed and amended by the Lane Cove Road On-Ramp Amending Deed, in a form which must be substantially the same as that of a draft M2 Upgrade Trust Lease set out in an exhibit to the Project Deed inserted by the Upgrade Project Deed, with a maximum term ending on 26 May 2046.

After each of the Stage 2, Stage 3 and Stage 3A M2 Upgrade Trust Leases is executed the Trustee must sublease the land it leases from RMS under the relevant M2 Upgrade Trust Lease to the Company under (respectively) a **Stage 2 M2 Upgrade Sublease**, a **Stage 3 M2 Upgrade Sublease** and a **Stage 3A M2 Upgrade Sublease**. The forms of these subleases must be substantially the same as those of a draft M2 Upgrade Sublease set out in another exhibit to the Project Deed inserted by the Upgrade Project Deed, with a maximum term ending on 25 May 2046, or otherwise as reasonably accepted by RMS.

The various leases listed above may be consolidated, if RMS, the Company and the Trustee agree to do so, in combinations specified in the Project Deed.

2.2.12 Electronic tolling interoperability arrangements

A **Memorandum of Understanding: Management of Electronic Tolling on Tollroads (“the Electronic Tolling MoU”)**, originally executed in June 2001 or thereabouts and amended on several occasions since then, sets out arrangements for the interoperability of tolling systems on Sydney, Brisbane and Melbourne tollroads.

The parties to the original form of this agreement were the RTA, the Company, SWR Operations Pty Limited (the M4 motorway), Airport Motorway Limited (the Eastern Distributor), Interlink Roads Pty Limited (the M5 motorway) and Queensland Motorways Limited (the Gateway Bridge and Logan Motorway in Brisbane).

Other parties joining these cooperative arrangements since then have been CrossCity Motorway Pty Limited (the Cross City Tunnel), WSO Co Pty Limited (the Westlink M7 motorway),

Connector Motorways Pty Limited (previously known as Lane Cove Tunnel Company Pty Limited) (the Lane Cove Tunnel, until its sale on 9 August 2010), LCT–MRE Pty Limited (the Lane Cove Tunnel, since 10 August 2010), CityLink Melbourne Limited (the CityLink tollroads in Melbourne), ConnectEast Pty Limited (the EastLink tollroad in Melbourne), RiverCity Motorway Pty Limited (the CLEM7 motorway in Brisbane), Brisbane City Council (the Go Between Bridge in Brisbane) and BrisConnections Operations Pty Limited (the Airport Link motorway in Brisbane). SWR Operations is no longer a participant, following the ending of its M4 motorway concession at midnight on 15 February 2010 and the absence of tolling on the M4 since 16 February 2010.

2.2.13 PAFA Act guarantees and approvals

A **Deed of Guarantee** dated 26 August 1994, which has now been amended and restated as a **Restated Deed of Guarantee** between the Minister for Roads, the Company, the Trustee, Hills Construction and the Security Trustee and Agent dated 16 November 2010, has provided and continues to provide a guarantee by the State of NSW, in accordance with section 22B(1) of the Public Authorities (Financial Arrangements) Act 1987, to the Company, the Original Trustee/Responsible Entity/Trustee, Hills Construction and the private sector debt financiers’ Security Trustee and Agent, of the RTA’s/RMS’s performance of its obligations under specified project contracts.

The guaranteed obligations were originally those set out in the Project Deed, the Project Management Services Deed, the forms of the Company Lease, Trust Lease and Trust Concurrent Lease and the RTA Consent Deed of August 1994 (see section 2.2.15 below).

As already indicated in section 2.2.6 above, on 10 January 2007 the then Treasurer, Mr Michael Costa, formally confirmed that the original Deed of Guarantee continued to apply to the M2 motorway project, including the 2007 westbound conversion works.

Under the Restated Deed of Guarantee, the execution of which was formally approved by the then Treasurer, Mr Eric Roozendaal, on 25 October 2010, the RTA/RMS obligations guaranteed by the State were extended to cover those in the Project Deed (as amended), the Project Management Services Deed, the 2010 Amending Deed, the Upgrade Project Deed, the Upgrade Side Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, each M2 Upgrade Company Lease, each M2 Upgrade Trust Lease, each M2 Upgrade Trust Concurrent Lease, an RTA Consent Deed of August 1994 (as amended and restated) (see section 2.2.15), an RTA Consent Deed of November 2010 (see section 2.2.15) and any other documents approved in writing by the Treasurer from time to time.

On 25 October 2010 the then Treasurer also confirmed his approval, under section 20(1) of the Public Authorities (Financial Arrangements) Act, of the joint financing arrangement agreed to under this expanded list of documents.

On 20 May 2013 the current Treasurer, Mr Michael Baird, further extended the RMS obligations guaranteed by the State under the Restated Deed of Guarantee to include its obligations under the Cashless Tolling Amending Deed, the Toll Calculation Amending Deed, the Lane Cove Road On-Ramp Amending Deed, the On-Ramp D&C Side Deed and the Subordinated Debt Consent Letter, and confirmed his approval, under section 20(1) of the Public Authorities (Financial Arrangements) Act, of the joint financing arrangement agreed to under this expanded list of documents.

2.2.14 RTA/RMS securities

Under an **RTA Deed of Charge** dated 26 August 1994, referred to in this summary report as “**the RTA Deed of Charge of August 1994**”, the Company and the Original Trustee granted the RTA fixed and floating charges over their undertakings, assets and rights, ranking second only to securities held by their debt financiers, so as to secure their obligations to the RTA under the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the RTA Deed of Charge of August 1994 and an RTA Deed of Consent, also dated 26 August 1994, which is described in section 2.2.15 below (“**the RTA Consent Deed of August 1994**”).

On 1 May 2009, as part of arrangements for a refinancing of the M2 motorway project at that time, the RTA, the Company and the Trustee entered into a new **RTA Deed of Charge**, referred to in this summary report as “**the RTA Deed of Charge of May 2009**”, under which the Company and the Trustee granted the RTA fixed and floating charges over their undertakings, assets and rights, ranking second only to securities held by their debt financiers, so as to secure their obligations to the RTA under listed M2 motorway “project documents”.

This RTA Deed of Charge of May 2009 was subsequently amended, as part of arrangements for the 2010–15 upgrade project, by a **Deed of Amendment (RTA Charge)** executed by the RTA, the Company and the Trustee on 25 October 2010. These amendments primarily extended the RTA’s securities to cover the performance of the Company and the Trustee of their obligations to the RTA under the Upgrade Project Deed and other upgrade contracts. Their secured obligations to the RTA (and now RMS) now expressly include those under the following expanded list of “project documents” as defined in the RTA Deed of Charge of May 2009: the Project Deed, the Project Management Services Deed, the Upgrade Project Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the RTA Deed of Charge of May 2009 (as amended by the Deed of Amendment (RTA Charge)), the RTA Consent Deed of August 1994 (as amended and novated under the RTA Consent Deeds of September 1999, June 2004, May 2009 and November 2010), the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases, the Upgrade Side Deed, the Deed of Appointment of Independent Verifier (as amended and restated in the Deed of Amendment and Restatement (Independent Verifier Deed)), the Deed of

Appointment of ER and “any other document which the parties agree is a project document”.

2.2.15 The RTA Consent Deeds and other RTA/RMS consents

The **RTA Deed of Consent of 26 August 1994** between the Minister for Roads, the RTA, the Company, the Original Trustee, Hills Construction, the original Security Trustee (Westpac Securities Administration Limited) and the original Agent (Westpac Banking Corporation) (“**the RTA Consent Deed of August 1994**”) recorded the RTA’s consent to the securities held by the Security Trustee on behalf of the private sector debt financiers, set out the relative priorities of these securities and the RTA’s securities under the RTA Deed of Charge of August 1994, and regulated some of the rights of the RTA and Minister for Roads under the Project Deed and other project contracts, including their rights to enforce securities they held under these contracts.

Under the Project Deed the overall contractual pattern for the project, which is set out in a schedule to that deed, could not and may not be changed by the Company and the Trustee without the RTA’s/RMS’s prior written consent. The RTA’s/RMS’s consent to any such change could not and may not be unreasonably withheld or delayed.

Under the RTA Consent Deed of August 1994, however, the Minister for Roads and the RTA promised they would not make any changes to the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the RTA Deed of Charge of August 1994, the RTA Consent Deed of August 1994 or the Deed of Guarantee without the prior written consent of the debt financiers’ Agent.

Similarly, under the RTA Consent Deed of August 1994 the Security Trustee and the Agent promised the RTA they would not change any of the terms of the debt financing arrangements, in a way affecting the amount of project debt, its payback period or amortisation schedule or the amount of interest and fees on this debt, without the prior written consent of the RTA/RMS. The RTA’s/RMS’s prior written consent is also required before the project’s debts may be refinanced.

Between 26 August 1994 and 18 November 2010 the RTA consented to:

- The refinancing of the project’s infrastructure borrowings in June 1996. This consent was provided, after the event, in the **M2 Motorway Project Deed Deed of Amendment** dated 29 October 1997, between the Minister for Roads, the RTA, the Company and the Original Trustee (“**the 1997 Amendment Deed**”).
- The refinancing of the projects debts in September 1999. This consent was provided in the **M2 Motorway RTA Consent Deed** between the Minister for Roads, the RTA, the Company, the Original Trustee, Hills Construction, Westpac Securities Administration Limited, Westpac Banking Corporation and National Australia Bank Limited, dated 27

September 1999 (“**the RTA Consent Deed of September 1999**”).

This deed also recorded the consent of the Minister for Roads and the RTA to associated transfers of the contractual rights and obligations of the debt financiers’ Security Trustee and Agent from Westpac Securities Administration Limited and Westpac Banking Corporation (respectively) to National Australia Bank Limited, and made minor, associated amendments to the Project Deed (as already indicated in section 2.2.2 above) and the RTA Consent Deed of August 1994.

- A further refinancing of part of the project’s debts in June 2004. This consent was provided in the **M2 Motorway—2004 Consent Deed** between the Minister for Roads, the RTA, the Company, the Responsible Entity, Hills Construction, the Security Trustee and the Agent, dated 18 June 2004 (“**the RTA Consent Deed of June 2004**”). (As indicated above, the RTA Consent Deed of June 2004 also made minor, associated amendments to the Project Deed.)
- A further refinancing of the project’s debts in May 2009. This consent was provided in the **M2 Motorway—2009 Consent Deed** between the Minister for Roads, the RTA, the Company, the Trustee, Hills Construction, the Security Trustee and the Agent, dated 1 May 2009 (“**the RTA Consent Deed of May 2009**”).
- A further refinancing of the project’s debts in November 2010, as part of arrangements for the upgrading of the motorway in accordance with the Upgrade Project Deed. This consent was provided in the **2010 Consent Deed** between the Minister for Roads, the RTA, the Company, the Trustee, Hills Construction, the Security Trustee and the Agent, dated 17 November 2010 (“**the RTA Consent Deed of November 2010**”).

The changes made to the RTA Consent Deed of August 1994 under these various later consents were all incorporated into an **Amended and Restated RTA Deed of Consent** agreed to by the Minister for Roads, the RTA, the Company, the Trustee, Hills Construction and the Security Trustee and Agent on 17 November 2010, which took effect on 18 November 2010 (“**the Amended and Restated RTA Consent Deed**”).

As already indicated in section 2.2.10, the **Subordinated Debt Consent Letter** dated 21 May 2013, from the Company and the Trustee to RMS and countersigned by RMS, sets out subsequent changes to the private sector parties’ subordinated debt financing arrangements and records RMS’s consent to the future repayment of subordinated debt associated with the Lane Cove Road on-ramp project using debt finance.

Under the Project Deed the prior written consent of the RTA/RMS is also required before:

- The Company may incorporate or acquire any subsidiary, other than Hills Construction.

Since 1994 the RTA/RMS has consented to:

- The Company’s formation of Hills Motorway Underwriting No 1 Pty Limited (ABN 42 074 615 982) and Hills Motorway Underwriting No 2 Pty Limited (ABN 69 074 616 023), as part of an infrastructure bond refinancing in June 1996. This consent was provided, after the event, in the 1997 Amendment Deed.
- The Company’s acquisition of the Responsible Entity from Macquarie Bank Limited on 30 July 2004. This consent was provided in a **Deed of Consent Relating to Acquisition of Hills Motorway Management Limited** between the RTA and the Company, dated 29 July 2004 (“**the RTA Consent Deed of July 2004**”).
- The Company and the Trustee may enter into any transaction or arrangement with Transurban International Limited, Transurban Holdings Limited, Transurban Infrastructure Management Limited (as the responsible entity of the Transurban Holding Trust) or any of their related bodies corporate, other than the Company, the Trustee and Hills Construction, if this transaction or arrangement is not on an “arms length and commercial” basis, is not necessary for the Company or the Trustee to efficiently and effectively carry out their obligations under the project’s contracts or is beyond the scale and nature of what is necessary for them to do this.

As already indicated in section 2.2.2, on 18 November 2010 these restrictions took effect retrospectively from 10 June 2005, and in their **Waiver Letter** dated 25 October 2010 the Minister for Roads and the RTA irrevocably waived their rights against the Company, the Trustee and Hills Construction concerning any breaches of the new restrictions, between 10 June 2005 and 25 October 2010, arising from any of the matters disclosed in the Company’s and Trustee’s **Disclosure Letter** of 25 October 2010.

In addition, on 25 October 2010 the RTA, the Company, the Trustee and Transurban Limited entered into an undated **M2 Motorway Management Agreement Side Letter** under which the RTA consented to the M2 Motorway Management Agreement of 25 October 2010, subject to a series of restrictions on the Company, the Trustee and Transurban Limited, including requirements to notify the RTA/RMS before they may add to or terminate any services under that agreement and obtain the consent of the RTA/RMS before amending or transferring any of their rights and obligations under that agreement.

- The Company may erect or display advertising signs on the motorway.

As already indicated in section 2.2.4, on 8 December 1999 the RTA and the Company executed a **Deed of Consent to Advertising on the M2 Motorway**, the main terms of which are summarised in section 9.6 of this report.

2.3 Conditions precedent

2.3.1 Project Deed

Under its terms, the Project Deed, which was executed on 26 August 1994, was not to become binding until:

- The RTA Deed of Charge and the Project Management Services Deed were executed. These conditions precedent were satisfied on 26 August 1994.
- The RTA recommended to the Minister for Roads that in accordance with section 63 of the Roads Act he should direct the RTA to assume responsibility for the M2 motorway. This condition precedent was satisfied on 26 August 1994.
- The Minister for Roads issued this direction. This condition precedent was satisfied on 26 August 1994. (In accordance with another requirement of the Project Deed, the Minister for Roads and the RTA/RMS must ensure this declaration applies for the entire operating term of the motorway, until it reverts to the public sector.)
- The RTA received satisfactory evidence that a Project Facilities Agreement for the provision of private sector debt finance had been executed and was binding. This condition precedent was satisfied on 26 August 1994, by which time all the conditions precedent to that agreement had been satisfied.
- The Minister for Roads recommended and the Treasurer approved the RTA's entering into the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the RTA Deed of Charge and the RTA Consent Deed of August 1994, in accordance with section 20(1) of the Public Authorities (Financial Arrangements) Act 1987. This condition precedent was satisfied on 22 August 1994.
- The Minister for Roads executed a guarantee under section 22B of the Public Authorities (Financial Arrangements) Act on terms satisfactory to the Company and the Trustee. This condition precedent was satisfied, through the Minister's execution of the Deed of Guarantee, on 26 August 1994.

Accordingly, the Project Deed became fully binding on 26 August 1994.

2.3.2 Project Management Services Deed

Similarly, under its terms the Project Management Services Deed dated 26 August 1994 did not become binding until the Design and Construction Deed had been executed by and had become binding on the Company, the Trustee, Hills Construction, Abigroup, Obayashi and Hills Motorway Management Limited, in its role at that time as the manager of the Hills Motorway Trust. This condition precedent was satisfied on 26 August 1994.

2.3.3 2010 Amending Deed

Under its terms, the amendments to the Project Deed made by the 2010 Amending Deed, which was executed on 25 October 2010, were not to become binding until:

- The Agent had consented to these amendments. This condition precedent was satisfied on 18 November 2010.
- The Company, the Trustee and the RTA had exchanged the Disclosure Letter and Waiver Letter described in sections 2.2.2 and 2.2.15. These conditions precedent were satisfied on 25 October 2010.
- The NSW Treasurer had confirmed his approval of the M2 motorway project's joint financing arrangement under section 20(1) of the Public Authorities (Financial Arrangements) Act, had either confirmed the continued application of the Deed of Guarantee of August 1994 to the Project Deed or issued a replacement deed of guarantee under section 22B of the Public Authorities (Financial Arrangements) Act, and authorised the execution of the 2010 Amending Deed by the Minister for Roads. This condition precedent was satisfied on 16 November 2010.

Accordingly, the 2010 Amending Deed became fully binding on 18 November 2010.

2.3.4 Upgrade Project Deed

Under its terms the Upgrade Project Deed was not to become fully binding until:

- The Company, the Trustee and the RTA had exchanged the Disclosure Letter and Waiver Letter described in sections 2.2.2 and 2.2.15
- All the other conditions precedent to the 2010 Amending Deed had been satisfied or waived
- The Amended and Restated Deed of Appointment of Independent Verifier (under the Deed of Amendment and Restatement (Independent Verifier Deed)), the Deed of Appointment of ER, the Upgrade Side Deed, the RTA Deed of Charge of May 2009 (as amended by the Deed of Amendment (RTA Charge)), the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010 and any other contracts which the Minister for Roads, the RTA, the Company and the Trustee had agreed are "project documents" for the purposes of the Upgrade Project Deed or the upgrade project had been executed in a form satisfactory to the RTA, and all of their conditions precedent, other than those requiring the satisfaction or waiver of the Upgrade Project Deed's own conditions precedent, had been satisfied or waived
- All necessary ministerial consents had been obtained, including an approval under section 20 of the Public Authorities (Financial Arrangements) Act 1987 (see section 2.2.13)
- The Restated Deed of Guarantee under section 22B of the Public Authorities (Financial Arrangements) Act had been executed (see section 2.2.13)

- The Company or the Trustee had given the RTA satisfactory evidence that they had obtained Foreign Investment Review Board approval before entering the Upgrade Project Deed or that the FIRB's approval was not required
- Specified insurance policies had been effected and copies of these policies had been provided to the RTA
- An "M2 Upgrade base case financial model" had been agreed and had been audited by an independent auditor acceptable to the RTA
- The RTA, the Company and the Trustee had received evidence that the Agent had consented to the Upgrade Project Deed
- The new debt financing documents (other than new mortgages) associated with the upgrade had been executed in a form satisfactory to the RTA, and all of their conditions precedent, other than those requiring the satisfaction or waiver of the Upgrade Project Deed's own conditions precedent, had been satisfied or waived
- The Equity Subscription Deed had been executed by all its parties in a form satisfactory to the RTA, and all of its conditions precedent, other than those requiring the satisfaction or waiver of the Upgrade Project Deed's own conditions precedent, had been satisfied or waived, and
- The RTA, the Company and the Trustee had agreed in writing on the size of the "advance contribution" under the Equity Subscription Deed (i.e. the costs incurred by the Company and the Trustee in connection with the upgrade project up to the date of satisfaction or waiver of all of the Upgrade Project Deed's conditions precedent) (see section 2.2.7).

These conditions precedent were all satisfied or waived on or before 18 November 2010. Accordingly, the Upgrade Project Deed became fully binding on that date.

2.3.5 The Cashless Tolling Amending Deed and the Toll Calculation Amending Deed

Under their terms the Cashless Tolling Amending Deed dated 28 October 2011 and the Toll Calculation Amending Deed dated 13 August 2012 were not to become binding until the debt financiers' Agent had consented to these contracts' amendments to (in both cases) the Project Deed and (in the former case) the Upgrade Project Deed as well.

In practice, these conditions precedent were satisfied before the date of execution of the relevant contract.

In addition, the contract amendments introduced by the Cashless Tolling Amending Deed took effect only when other, specified events occurred, as specified in this deed and described in section 8.6 of this report.

2.3.6 The Lane Cove Road On-Ramp Amending Deed

Under its terms the Lane Cove Road On-Ramp Amending Deed dated 21 May 2013 was not to become binding until:

- The debt financiers' Agent had consented to its amendments to the Project Deed and the Upgrade Project Deed
- A "base case" financial model for the Lane Cove Road on-ramp works had been agreed and audited by an independent auditor acceptable to RMS
- The NSW Treasurer had approved an extension of the RMS obligations guaranteed by the State under the Restated Deed of Guarantee (section 2.2.13) to include RMS's obligations under the Lane Cove Road On-Ramp Amending Deed and the On-Ramp D&C Side Deed
- The Lane Cove Road On-Ramp Design and Construction Contract, the On-Ramp D&C Side Deed, the Subordinated Debt Consent Letter and the Equity Subscription Deed: First Amending Deed had been executed by all the parties to these documents, and
- All of the conditions precedent to the Equity Subscription Deed: First Amending Deed's becoming fully effective, other than those requiring the satisfaction or waiver of the Lane Cove Road On-Ramp Amending Deed's own conditions precedent, had been satisfied or waived.

All of these conditions precedent were satisfied on or before 28 May 2013, the last of them on that date. Accordingly, the Lane Cove Road On-Ramp Amending Deed became fully binding on 28 May 2013.

However, some of the contract amendments introduced by the Lane Cove Road On-Ramp Amending Deed will take effect only if and when other, specified events occur, as specified in this deed and described later in this report.

2.4 Limits on the liabilities of the Original Trustee/Responsible Entity/Trustee and the Trust Custodian

Most of the major contracts for the M2 motorway have contained, and contain, standard provisions limiting the scope of the liabilities of the Original Trustee/Responsible Entity/Trustee.

In essence, these provisions stipulated or stipulate (as applicable) that the Original Trustee/Responsible Entity/Trustee entered into the contracts solely in its capacity as trustee or responsible entity of the Hills Motorway Trust (as applicable), and that if it breaches any of these agreements it will be liable only to the extent of its right to be indemnified out of the assets of that trust, except in the case of fraud, negligence, breach of trust or breach of duty by the Original Trustee/Responsible Entity/Trustee.

The WSO/M2 Interface Agreement, the LCT/M2 Interface Agreement and the Site Access Deed also specified that the Trust Custodian entered into those contracts only as an agent of

the Responsible Entity and had no liabilities under those contracts.

3 Objectives and general allocations of risks

3.1 Policy objectives

The policy of the NSW Government in entering into the Project Deed, as stated in that deed, was to “increase private sector participation in the provision of essential infrastructure, including the NSW roads system”.

The objectives of this policy are described in the Project Deed as being to:

- Enhance and modernise NSW public infrastructure for the benefit of the people of NSW
- Safeguard the public interest in infrastructure projects in which the private sector participates
- Procure infrastructure at the least cost to the Government
- Increase infrastructure operational efficiencies, and
- Provide sound opportunities for private sector investment.

The explicitly stated intention of the parties in entering into the M2 motorway contracts was to meet these policy objectives more quickly than would otherwise be economically feasible for the Government, through a combination of debt, equity, toll and other funding, as set out in the Project Deed, aimed at providing equity investors with a return on their investments and assisting repayment of the project debt.

3.2 General obligations on and acceptance of risks by the Company and the Original Trustee/Responsible Entity/Trustee

The main contractual obligations of the Company and the Original Trustee/Responsible Entity/Trustee were, and in most cases still are,

- For both the Company and the Original Trustee, to finance, design and construct the M2 motorway, plus ancillary drainage basins and related watercourse works on land outside the M2 motorway land, in accordance with the Project Deed, using their best endeavours to ensure the entire motorway was open to the public by 1 December 1997 (as summarised in **section 4** of this summary report).
- For the Company and the Responsible Entity/Trustee, with the Trust Custodian, to cooperate in managing the construction, operational and maintenance interfaces between the completed M2 motorway and the Westlink M7 motorway, the Lane Cove Tunnel motorway and the

Epping–Chatswood rail link, as required under the WSO/M2 Interface Agreement, the LCT/M2 Interface Agreement, the Site Access Deed and the Epping Bus Underpass Deed (**section 5** of this report).

- For the Company and the Trustee, to undertake specified works to convert the westbound section of the M2 motorway between Lane Cove Road and Beecroft Road from two to three lanes, as required under the Conversion Project Agreement of January 2007 (**section 6** of this report).
- For the Company and the Trustee, to design, construct, commission and complete the 2010–15 M2 motorway upgrade works as specified in the Upgrade Project Deed, as now amended by the RMS Change Order of 17 May 2013 concerning the M2 embankment remediation works near Vimiera Road in Marsfield and by the Lane Cove Road On-Ramp Amending Deed of 21 May 2013 (**section 7** of this report).
- For the Company, to operate, maintain and repair the M2 motorway for the terms of the Company Lease, the Trust Lease, the Trust Concurrent Lease and the series of upgrade-related leases, in accordance with the Project Deed, the WSO/M2 Interface Agreement and the LCT/M2 Interface Agreement (**section 8** of this report).
- For the Original Trustee/Responsible Entity/Trustee and the Company, to grant and accept a Sublease to the Company of all the motorway land leased by the RTA to the Original Trustee/Responsible Entity/Trustee under the Trust Lease (**section 8** of this report).
- For the Trustee and the Company, to accept the Stage 1 M2 Upgrade Company Lease, the Stage 1 M2 Upgrade Trust Concurrent Lease, the Stage 2 M2 Upgrade Trust Lease, the Stage 3 M2 Upgrade Company Lease, the Stage 3 M2 Upgrade Trust Lease, the Stage 3 M2 Upgrade Trust Concurrent Lease and the Stage 3A M2 Upgrade Trust Lease, as applicable, upon the completion of the relevant stages of the upgrade works, and to grant and accept a Stage 2 M2 Upgrade Sublease, a Stage 3 M2 Upgrade Sublease and a Stage 3A M2 Upgrade Sublease to the Company of all the motorway land leased by RMS to the Trustee under the Stage 2, Stage 3 and Stage 3A M2 Upgrade Trust Leases, subject to permissible consolidations of these upgrade leases with each other and/or the Company Lease, the Trust Lease, the Trust Concurrent Lease and/or the Sublease (**section 8** of this report)

- For the Trustee and the Company, to surrender the motorway, its equipment and fittings and its ancillary works to RMS at the end of the leases or upon any earlier termination of the Project Deed.

Subject to specific terms in the Project Deed, the Project Management Services Deed, the Upgrade Project Deed and other M2 motorway contracts, discussed later in this report, the Company and the Trustee have accepted all the risks associated with the M2 motorway project and the M2 motorway upgrade project, including the risks that:

- The costs of the projects might be higher than estimated
- The Company's revenue from the M2, including its revenue from advertising and service centres, might be less than estimated
- Traffic volumes might be less than estimated
- Tax liabilities connected with the upgrade works might be greater than estimated
- They might incur costs of damages, expenses, losses, liabilities or delays in performing their obligations under the Upgrade Project Deed, and
- Any other assumptions made in their "base case" financial models for the motorway might have been incorrect or inaccurate, provided this is not caused by a breach of the Project Deed or the Upgrade Project Deed by the RTA/RMS.

Similarly, under the Project Management Services Deed Hills Construction accepted all the risks associated with the design and construction of the RTA works for the original motorway covered by that deed, including the risks that:

- The actual cost of those works might be more than the \$66.5 million the RTA was obliged to pay for the RTA works, and
- The design and construction of the RTA works might be defective, delayed or otherwise not in accordance with the Project Management Services Deed and the Design and Construction Deed.

The Project Deed and the Upgrade Project Deed make it clear, however, that the Company and the Trustee are not required to assume all the risks relevant to the costs of the non-RTA/RMS components of the project and the revenue it generates in all possible future circumstances. Some specific risks were and are allocated to the RTA/RMS, as discussed in sections 4 to 14 below, and if certain specified circumstances arise the parties may be obliged to renegotiate aspects of the project, potentially including its contracts, with the aim of achieving a series of specified objectives, as described in **section 10** below.

The Project Deed expressly acknowledges that the RTA/RMS and the Minister for Roads have made no representations or promises about traffic volumes on the M2 motorway.

4 1994–97 design and construction of the motorway

As already indicated in section 2.2, the design and construction of the original motorway in 1994–97 were governed primarily by the requirements of the Project Deed, whereas the current (2010–15) design and construction of the upgrade works are governed primarily by the Upgrade Project Deed, as amended by the Lane Cove Road On-Ramp Amending Deed and described in section 7 below.

Accordingly, most (but not all) of the Project Deed requirements summarised in this section 4 do not apply to the current design and construction of the upgrade works, even though many of them continue to be of relevance to the motorway project as a whole, as discussed in sections 6 and 8 to 11 of this report.

As already indicated, most of the original motorway contract provisions have deliberately been retained in the latest forms of these contracts, because the new contracts executed in 2010–13 have numerous, and sometimes complex, interactions with the parties' rights and obligations under the earlier contracts.

However,

- The earlier contract provisions which are largely (but often not wholly) “spent” are generally summarised (in this section 4 and in sections 5 and 6) in much less detail than the more “active” provisions summarised later in this report, and
- Some entirely “spent” design and construction phase contract provisions which (as things turned out) were never utilised in practice are not discussed at all.

4.1 Scope of the Company and Trustee works

The works to be designed and constructed by the Company and the Original Trustee in 1994–97 comprised:

- The motorway itself, in the case of the Company on land identified in a plan exhibited to the Project Deed as “Company land” and in the case of the Original Trustee on land identified in this plan as “Trust land”, and
- Ancillary works on drainage basins and related watercourses on other land.

These works had to be designed and constructed in accordance with a *Scope of Works and Technical Criteria* exhibited to the Project Deed and the Project Management Services Deed.

The Project Deed's *Scope of Works and Technical Criteria* set out a series of standards to be met in designing and

constructing the motorway, including compliance with RTA and Austroads guidelines and Australian and international standards.

The Company and the Original Trustee also undertook to design the motorway with “the appropriate level of professional care” and to construct it “with good workmanship and materials” and in accordance with their design documentation.

The RTA expressly acknowledged in the Project Deed that the Company and the Original Trustee would be subcontracting their design and construction obligations to Abigroup and Obayashi, and granted its permission for this and other subcontracting consistent with the agreed overall contractual pattern for the project, as set out in a schedule to the Project Deed and illustrated in *Figure 2.1*.

4.2 Scope of the RTA works

Under the Project Deed the RTA was obliged to design and construct earthworks and stormwater drainage pipe and culvert works as set out in a schedule to the *Scope of Works and Technical Criteria* exhibited to the Project Deed and the Project Management Services Deed.

The RTA fulfilled this obligation by entering into the Project Management Services Deed with Hills Construction, under which Hills Construction was obliged to procure and manage the design and construction of these RTA works, exercising a standard of care and skill appropriate for a project manager experienced in projects similar to the M2.

The Project Deed expressly recognised that the RTA would be doing this, and made it clear that the RTA's only liabilities concerning the RTA works would be those it assumed under the Project Management Services Deed. In particular, the RTA had and RMS has no liability to the Company and the Original Trustee in relation to any defective or late completion of the RTA works or any non-compliance of these works with environmental requirements.

Further, the Company and the Original Trustee indemnified the RTA for any damage, expense, loss or liability it suffered in relation to the Project Management Services Deed, other than the payments it was expressly required to make under that deed (see section 4.5 below).

In turn, and in accordance with an express obligation in the Project Management Services Deed, Hills Construction entered into the Design and Construction Deed, in its own right and not as the RTA's agent, for Abigroup and Obayashi to carry out the design and construction of the RTA works.

Under the Project Management Services Deed, Hills Construction was expressly obliged to the RTA to ensure Abigroup and Obayashi carried out their obligations under the Design and Construction Deed, and could not waive any breach or approve any amendment of that deed without the RTA's prior written consent, which could not be unreasonably withheld or delayed.

The Project Deed made it clear that the Company and the Trustee were not excused from any breach of their own obligations under the project contracts which resulted from the performance (or otherwise) of Hills Construction under the Project Management Services Deed or Abigroup, Obayashi or any of the other parties under the Design and Construction Deed.

4.3 Changes in the scope of works

The RTA, the Company and the Original Trustee (and, in later years, the Responsible Entity and now the Trustee) could (and may) agree to change the Project Deed's *Scope of Works and Technical Criteria*.

If the scope of the works to be carried out were increased, the cost of the change was to be met (or must be met) by an extension of the M2 motorway's operating term, and/or a payment by the RTA to the Company and/or the Original Trustee, and/or an adjustment of the rights and obligations of the RTA, the Company and the Original Trustee under the Project Deed.

More specifically,

- If the RTA required the Company and the Original Trustee to comply with any recommendations made to the RTA as a result of the community liaison process implemented in accordance with the motorway's planning approval, and this added to the requirements of the original *Scope of Works and Technical Criteria*, the RTA was obliged to indemnify the Company and the Original Trustee for their additional costs, and
- If the RTA/RMS, the Minister for Roads, the Company and (now) the Trustee agree to convert the Beecroft Road–Windsor Road busway to a light railway or another transport mode, their agreement must take account of access arrangements, including traffic adjustments, service arrangements, alignment changes, station locations, tolling arrangements and other financial issues.

If the scope of works were decreased, the RTA/RMS, the Company and the Original Trustee (and now the Trustee) were and are obliged to negotiate in good faith to equitably share any cost savings in a way that benefited both the project and the parties.

The Project Deed expressly acknowledged that the development of detailed designs for the project could present opportunities for enhancing the project's economic, technical or social aspects, and that the Company and the Original Trustee might request a change to the *Scope of Works and Technical Criteria* in the light of these opportunities. Any resultant agreement to change the *Scope of Works and Technical Criteria* had to take account of any "reasonable and necessary" requirements for a public participation process, as well as the need to comply with all relevant laws affecting the change.

Under the RTA Consent Deed of August 1994, and now the Amended and Restated RTA Consent Deed, the RTA/RMS and the Minister for Roads could not and may not amend the Project Deed's *Scope of Works and Technical Criteria* or any other part of any of the project contracts to which they were and are parties without the prior written consent of the project debt financiers' Agent.*

4.4 Coordination on the Pennant Hills Road interchange

The Company and the Original Trustee expressly acknowledged in the Project Deed that their design of the M2 motorway at the Pennant Hills Road interchange would have to be completed before the RTA could design and construct planned RTA works on Pennant Hills Road itself.

The RTA, the Company and the Original Trustee undertook to cooperate to ensure the greatest possible integration of the M2 and Pennant Hills Road works—for example, by balancing earthworks requirements—and facilitate the timely completion of both projects. The Company and the Original Trustee promised to give the RTA sufficient access to the motorway construction areas to allow it to carry out the Pennant Hills Road works.

4.5 Intellectual property

The Company and the Original Trustee warranted to the RTA that they owned or were entitled to use the motorway's 1994–97 design documentation and anything else they used for the design, construction, operation, maintenance or repair of the original motorway subject to intellectual property rights.

* During the course of the motorway's design and construction between 1994 and 1997, 36 variations were made to the Project Deed's *Scope of Works and Technical Criteria*, adding about \$33.5 million to the RTA's capital contributions to the project. These variations involved:

- The reinstatement of a number of features originally proposed by the Hills Motorway consortium but not included in the *Scope of Works and Technical Criteria* at the time the contracts were executed on 26 August 1994
- New features requested as a result of community consultations and the requirements of other authorities, such as a \$3.6 million incident management system and a \$1.9 million deluge system to improve fire safety in the tunnels under Norfolk Road in Epping, and
- Other changes to the design of the project, including a major vertical realignment near the Pennant Hills Road interchange which was the subject of a March 1995 *Review of Environmental Factors* (after the contracts were executed).

In several instances the costs to the RTA of these changes to the Project Deed's *Scope of Works and Technical Criteria* were offset by savings on other RTA roadworks and/or RTA land acquisitions.

They granted the RTA an irrevocable, non-exclusive licence to use these materials for the M2 motorway project and for conferences on similar projects. The RTA indemnified the Company and the Original Trustee for any damage, expense, loss or liability they suffered if the RTA used these materials in any other way.

4.6 RTA payments for the RTA works

Under the Project Management Services Deed the RTA was obliged to pay Hills Construction, its project manager for the earthworks and stormwater drainage pipe and culvert works as set out in a Schedule to the *Scope of Works and Technical Criteria*,

- \$10.0 million on 15 September 1994
- \$20.0 million on 15 September 1995
- \$20.0 million on 15 September 1996, and
- \$16.5 million on 15 September 1997,

provided the Original Trustee had notified the RTA that it had received \$155 million from initial institutional investors in the Hills Motorway Trust.

The RTA was entitled to make these payments before the due dates. If it did so, the early payment(s) were to be reduced by the relevant bank term deposit interest rate(s), less 0.35 percentage points.

4.7 Construction access

The RTA had to give the Company, the Original Trustee, Hills Construction, Abigroup, Obayashi and any other contractors of the Company and the Original Trustee access to specified parcels of land according to a land acquisition schedule exhibited to the Project Deed.

The RTA also had to give the Company, the Original Trustee, Hills Construction, Abigroup, Obayashi and any other contractors of the Company and the Original Trustee access to other land required for the construction works—whether other parts of the “Company land” and “Trust land” as shown in an Exhibit J to the Project Deed, other areas known as “licensed areas” shown in an Exhibit H to the Project deed or any additional temporary access “licensed areas” agreed between the RTA, the Company and the Original Trustee under arrangements described below—as soon as reasonably possible.

The Company and the Original Trustee had to notify the RTA as soon as practicable of any additional land for which temporary access was required for the motorway’s construction. Within 14 days of receiving such a notice, the RTA, the Company and the Original Trustee had to negotiate in good faith to agree on a schedule detailing the additional land required and the time access was to be provided. In these negotiations the RTA was obliged to use reasonable endeavours to give the Company and the Original Trustee temporary access to the requested areas, and once the schedule was agreed it was obliged to provide the agreed access.

The Company and the Original Trustee were required to ensure that drainage basins and alterations to related watercourses were constructed as much as possible on the “Company land” and “Trust land”. If it were not possible to confine these works to this motorway land, they had to use their best efforts to obtain easements for these works, and their subsequent maintenance and repair, on land adjacent to the motorway land or on land owned by the NSW Government or a NSW Government authority, and the RTA had to provide reasonable assistance in this. If it were not possible for the Company and the Original Trustee to obtain these easements, they had to give the RTA a schedule listing the land to which they reasonably required access for drainage basins and related watercourses and when this access was required, and the RTA had to use reasonable endeavours to give the Company and the Original Trustee access to the requested areas. If the RTA could not provide this access, it had to ensure the Company and the Original Trustee had access to other land, to construct drainage basins and related watercourses, “on a basis which represents a reasonable and cost-effective engineering solution”.

The Company and the Original Trustee expressly acknowledged in the Project Deed that the RTA had no other liabilities to provide them with access to land. Provided the RTA complied with the obligations described above,

- The RTA was not liable for any delays, additional costs or other effects on the project associated with the ability of the Company or the Original Trustee to obtain access to any land, and
- The Company and the Original Trustee accepted all the risks associated with the integration of access to land—other than the land described in the land acquisition schedule exhibited to the Project Deed—into the project’s design and construction requirements.

4.8 Latent conditions and land contamination

The Company, the Original Trustee and Hills Construction accepted:

- The “Company land” and “Trust land” identified in Exhibit J to the Project Deed, the “licensed areas” shown in Exhibit H or any additional temporary access “licensed areas” agreed between the RTA, the Company and the Original Trustee, and
- All structures on this land

in their present condition (as at 26 August 1994), subject to all defects, including subsurface soil conditions.

The Project Deed and Project Management Services Deed acknowledged that the RTA had made no representations or promises concerning the condition of the land or its structures.

However, the RTA was obliged to indemnify the Company and the Original Trustee against any damage, expense, loss or liability they suffered because of any land contamination, including any contamination on additional land accessed for drainage basins and related watercourses, if this had caused the

motorway to be opened to the public after 30 December 1997, despite all reasonable measures, including acceleration measures, having been taken by the Company, the Original Trustee and their contractors to meet this deadline.

Further, and more generally, if the opening of the motorway had been delayed beyond 30 December 1997 because of latent conditions in circumstances beyond the control of the Company, the Original Trustee and their contractors, the RTA and the Minister for Roads could have been obliged to renegotiate aspects of the project, potentially including its contracts, under arrangements described in section 10.1 below.

4.9 Services

The Company and the Original Trustee were responsible for the provision of services necessary for the motorway project, at their own cost, and for the relocation or adjustment of water, electricity, gas, telephone, drainage, sewerage, electronic communications or similar services in accordance with the *Scope of Works and Technical Criteria*.

The RTA had to use reasonable endeavours to facilitate the relocation and adjustment of services, and was liable to pay for any work carried out on the motorway land by any government authority, at the request of the RTA or any person other than the Company and the Original Trustee, before the Project Deed was signed.

The Project Deed expressly acknowledged that the RTA had made no representations or promises concerning the location or availability of services on the land.

4.10 Environmental requirements

The RTA's responsibilities for compliance with the conditions of the motorway's original planning approval of 20 May 1993 (as confirmed on 2 August 1994) were listed in a Schedule 1 to the *Scope of Works and Technical Criteria* exhibited to the Project Deed and the Project Management Services Deed.

Subject to these RTA responsibilities, the Company and the Original Trustee/Responsible Entity/Trustee were and are obliged to comply with all the conditions of the original planning approval, regardless of the party named as responsible, and had to and must indemnify the RTA for any damage, expense, loss or liability it suffers if they do not do so.

In particular, the Company and the Original Trustee/Responsible Entity/Trustee had to and still must comply with:

- Requirements, set out in clause 13.6(c) of Part 8 of the *Environmental Impact Assessment Report* issued by the RTA on 19 May 1993 (Exhibits F and L to the Project Deed), for the construction of noise mitigation structures as shown in the *Environmental Impact Statements*, so as to comply with the RTA's *Interim Traffic Noise Policy*
- The community liaison requirements of the planning approval (in the Project Deed the RTA, the Company and the Original Trustee/Responsible Entity/Trustee expressly acknowledged

and acknowledge the importance of "effective, proactive and timely community consultation"), and

- Any RTA requirement to comply with a recommendation made to the RTA under the community liaison process established under the planning approval. (As already indicated in section 4.3, if this requirement were in addition to the requirements of the *Scope of Works and Technical Criteria*, as amended, the RTA had to indemnify the Company and the Original Trustee for their costs in complying with the recommendation.)

The Company and the Original Trustee/Responsible Entity/Trustee had to and must also comply with the RTA's *Interim Traffic Noise Policy*.

If this policy or a requirement by any government or council authority had forced the Company and the Original Trustee to construct noise mitigation structures beyond those contemplated in the project's *Environmental Impact Assessment Report*, including the use of absorptive barriers where indicated in background papers to the project's *Environmental Impact Statements*, the RTA would have been obliged to indemnify the Company and/or the Original Trustee, as applicable, for their increased costs. This did not apply, however, to the extent that the additional noise mitigation structures were caused by design choices by the Company and the Original Trustee, such as changes in the motorway's grade or alignment.

Finally, prior to the opening of the motorway the Company and the Original Trustee were obliged under the Project Deed—having regard to their construction obligations, and subject to their maintenance and repair obligations—to maintain the motorway land in a condition complying with all other relevant requirements by government authorities, including those of local councils.

4.11 Heritage and endangered fauna

The RTA would have had to indemnify the Company and the Original Trustee for any damage, expense, loss or liability arising from:

- The occurrence or discovery of Aboriginal or European heritage or endangered fauna on the "Company land" and "Trust land" identified in Exhibit J to the Project Deed, the "licensed areas" shown in Exhibit H, any additional temporary access areas agreed between the RTA, the Company and the Original Trustee and any additional land accessed for drainage basins and related watercourses, or
- A failure by a determining authority to assess a project activity under Part V of the Environmental Planning and Assessment Act

if this had caused the motorway to be opened to the public after 30 December 1997, despite all reasonable measures, including acceleration measures, having been taken by the Company, the Original Trustee and their contractors to meet this deadline.

4.12 Traffic diversions during construction

If the Company or the Original Trustee reasonably believed it had to interfere with traffic flows on existing roads in order to perform its motorway design and construction work, it had to propose traffic diversion and control arrangements to the RTA, obtain the RTA's approval, give the public sufficient notice of the arrangements and (as the RTA's agent) implement the approved arrangements.

The RTA was obliged to use its best endeavours to assist the Company or the Original Trustee in this, including liaison with relevant authorities.

4.13 Legal challenges

If there had been or is a legal challenge to:

- The project's original planning approval
- Any work carried out by the Company or the Original Trustee (or, in the case of the later 2007 conversion works, but not the 2010–15 upgrade works, the Trustee) in accordance with the *Scope of Works and Technical Criteria*, as amended, the basis for the challenge being that the work did not or does not comply with the planning approval, or
- The rezoning of certain areas—county open space, two areas zoned for special uses (schools) and recreation under the Hornsby Planning Scheme Ordinance, and road reservation areas no longer required for this purpose, including an area north of the motorway between Alma and Lane Cove Roads which was intended by the RTA for medium-density housing—described in clauses 4.5, 4.7 and 4.8 of Part 8 of the motorway's *Environmental Impact Assessment Report* (Exhibits F and L to the Project Deed),

the Company and the Original Trustee/Responsible Entity/Trustee had to and must continue to comply with their obligations under the Project Deed, the Project Management Services Deed, the RTA Deed of Charge, the RTA Consent Deed of August 1994 (now the Amended and Restated RTA Consent Deed), the Company Lease, the Trust Lease, the Trust Concurrent Lease, the Stage 1 and Stage 3 M2 Upgrade Company Leases, the Stage 2, Stage 3 and Stage 3A M2 Upgrade Trust Leases and the Stage 1 and Stage 3 M2 Upgrade Trust Concurrent Leases (once these leases are executed) unless ordered not to by a court or the RTA/RMS.

The RTA/RMS would have had to and must indemnify the Company and the Original Trustee/Responsible Entity/Trustee for any damage, expense, losses or liability resulting from any such court or RTA/RMS order, but would not have been liable, and will not be liable, under this indemnity if the legal challenge were upheld because of a breach of the project contracts by the Company or the Original Trustee/Responsible Entity/Trustee.

4.14 Design and construction program, reports, quality assurance, coordination, inspections, surveys and certificates

The Company and the Original Trustee were obliged to provide the RTA with a “reasonably detailed” design and construction program for the original motorway works by 26 November 1994, and were then obliged to give the RTA any amendments to this program.

The Minister for Roads and the RTA were obliged to use their best endeavours, consistent with the obligations of the Company and the Original Trustee to comply with all relevant laws, to expedite any public authority consents and approvals required by the Company and the Original Trustee in accordance with the design and construction program.

During the 1994–97 design and construction phase the Company and the Original Trustee had to report to the RTA, at least every month, on their progress against the design and construction program and on the progress of any works being undertaken by any government authority to relocate services for the project.

They also had to:

- Provide the RTA with at least monthly quality assurance reports, in accordance with a quality assurance system complying with the *Scope of Works and Technical Criteria*
- Promptly give the RTA's M2 motorway project manager or another RTA-nominated person all technical data on the design and construction of the motorway, including design reports, calculations and design documentation as it was progressively prepared, so this RTA representative could monitor the progress of the design and construction
- Notify the RTA's representative of any proposed or executed project contract for more than \$50,000, and
- If asked to do so, give the RTA's representative a copy of any proposed or executed contract for more than \$10 million, and give him or her access to any contract for more than \$50,000, including in both cases all related plans, specifications and drawings.

Under the Project Management Services Deed, Hills Construction had to give the RTA a copy of any notice or other information it received from Abigroup and/or Obayashi under the Design and Construction Deed.

The RTA was not obliged to comment on any documentation or information given to it by the Company or the Original Trustee. Under the Project Deed, the only persons authorised to approve any of this documentation or information during the 1994–97 design and construction phase were the Chief Executive Officer of the RTA, the Director of the Sydney Region of the RTA and their delegates (authorised in writing), and no other representations or “approvals” by RTA officers or employees

could affect the obligations of the Company or the Original Trustee under the project's contracts. (Since 25 October 2010, the only persons authorised to approve any documentation or information given to the RTA/RMS by the Company or the Trustee have been the Chief Executive of the RTA/RMS and his or her delegates, authorised in writing.)

The Company and the Original Trustee were expressly responsible for the integration, interfaces and coordination of the design and construction of their own works with the design and construction activities of Hills Construction for the RTA works under the Project Management Services Deed. An analogous obligation was imposed on Hills Construction under the Project Management Services Deed.

The RTA was entitled to enter and inspect the works at any time, provided it did not unnecessarily inconvenience the Company or the Original Trustee.

Explosives and blasting materials could be used only with the prior approval of all relevant authorities and the RTA.

A complete set of "as constructed" drawings had to be provided to the RTA within six months of the opening of all of the motorway to traffic on 26 May 1997 (i.e. by 26 November 1997), and a detailed survey and an engineer's certificate of compliance with the relevant laws was required within 180 days of that date (i.e. by 23 November 1997). If the survey had shown any works were not located as required by the *Scope of Works and Technical Criteria*, as amended, and these works did not comply with a government authority's requirements, or the RTA reasonably considered they needed to be relocated for safety reasons, or the parties agreed in good faith that relocation was otherwise desirable, the Company or the Original Trustee, as relevant, would have been obliged to make any alteration to the works reasonably required by the RTA, so that they were located as set out in the *Scope of Works and Technical Criteria* or in another agreed location.

4.15 Loss or damage and insurance

Under the Project Deed the Company and the Original Trustee accepted responsibility for the care of the M2 motorway land, the motorway and its ancillary works. Until 26 November 1997, six months after the "motorway commencement date", the Company and the Original Trustee were also responsible for the care of the "licensed areas" required for the motorway's construction.

Subject to the Project Deed's renegotiation provisions discussed in section 10 of this report, the Company and the Original

Trustee had to promptly make good any loss or damage at their own cost, except in the case of loss or damage directly caused by a negligent act or omission by the RTA, without any fault or omission by the Company, the Original Trustee or their contractors.

Before commencing construction, the Company and the Original Trustee had to effect specified insurance policies, including contract works insurance for at least \$442 million, public liability insurance for at least \$50 million, workers' compensation insurance, professional indemnity insurance for at least \$25 million for any one claim and in aggregate (continuing until three years after the "motorway commencement date"), third party property insurance for all plant and vehicles for at least \$5 million, and any other commonly effected insurance reasonably required by the RTA and able to be obtained at a reasonable premium.

All these insurance policies had to be with insurers approved by the RTA and on terms approved by the RTA. Except for the workers' compensation, professional indemnity and third party property policies, they had to be in the joint names of the RTA, the Company and the Original Trustee. Prior to repayment of the project debt, the debt financiers' Security Trustee was to be the loss payee. After that date, the RTA, the Company and the Original Trustee were to be joint loss payees.

4.16 Completion of construction

The Company and the Original Trustee had to use their best endeavours to have the full length of the motorway open for public traffic by 30 December 1997. As already indicated in section 1.2.2, in practice the motorway opened on 26 May 1997.

The Company was entitled to open the motorway in stages, provided the relevant sections had been completed, it had given the RTA sufficient notice to allow the RTA to notify the public and it had obtained the RTA's prior written approval, including its approval of any tolls to be charged and insurance arrangements by the Company and the Original Trustee.

In deciding whether to give its consent, the RTA could have taken any relevant factors into account, including traffic management, community relations and public safety issues. It could not have unreasonably withheld or delayed its consent.

These "staged opening" contract provisions for the original motorway were and are quite separate from the arrangements for staged opening of the 2010–15 upgrade works described in section 7 below, and were not utilised in practice.

5 Construction and operational interfaces with the Westlink M7 motorway, the Lane Cove Tunnel and the Epping–Chatswood rail link

5.1 The WSO/M2 Interface Agreement and the Western Sydney Orbital Project Deed

The WSO/M2 Interface Agreement of 2 August 2002, between the RTA, the Company, the Responsible Entity and the Trust Custodian, and the Western Sydney Orbital Project Deed of 13 February 2003, between the RTA, WestLink Motorway Limited and WSO Co Pty Limited, set out reciprocal arrangements for the connection of the Westlink M7 motorway, formerly known as the Western Sydney Orbital, to the western end of the M2 motorway in West Baulkham Hills.

These arrangements included (and, in the case of operational, maintenance and repair matters, still include):

- Changes to the boundaries of the “Trust land” to be leased to the Responsible Entity/Trustee under the Trust Lease (see section 8.2.1)
- An agreement between the RTA and the Company on a design brief for the M2–M7 interface works
- During the period before the Western Sydney Orbital Project Deed took effect, arrangements for the RTA and the Company to share information, consult on any design proposals for the M7 which significantly differed from the design concepts for the M2–M7 connection developed by the RTA and consult and cooperate with the consortia which the RTA had invited to submit proposals for the M7
- Opportunities for an independent engineer engaged by the Company to provide comments on the final design documentation developed by WestLink Motorway Limited and WSO Co Pty Limited, with the M7 project’s independent verifier, Sinclair Knight Merz Pty Limited, being obliged to address these comments
- Opportunities for the Company’s independent engineer to comment on relevant aspects of WestLink’s and WSO Co’s *Construction Plan* and *Traffic Management and Safety Plan*, with WestLink and WSO Co being obliged to rectify these plans if they do not comply with or would produce breaches of the agreed design brief for the interface works
- Special dispute resolution procedures for any disagreements between the RTA and the Company and/or WestLink and WSO Co about these comments by the Company’s independent engineer
- Requirements for WestLink and WSO Co to construct the interface systems and structures in accordance with the interface design brief and in a manner which would minimise damage to the M2 and interference with the operation of the M2
- Requirements for WestLink and WSO Co to obtain the prior consent of the RTA and the Company before carrying out any works on the M2 “Company land” to be leased to the Company or the revised M2 “Trust land”, with the RTA and the Company being entitled to attach reasonable safety and technical conditions to their consent but not being entitled to unreasonably delay or withhold their consent
- Requirements for WestLink and WSO Co to give the RTA and the Company at least 20 business days’ notice of the expected commencement of any works affecting any part of the M2, and at least three business days’ notice of the actual commencement of this work
- Requirements for the Company, the Responsible Entity/Trustee and the Trust Custodian to give WestLink and WSO Co access to the M2 for these works and for WestLink and WSO Co subsequently to reinstate the affected areas
- Procedures for the closure of traffic lanes, the reduction of speed limits and other traffic measures on the M2 while these works were being carried out
- Pre-determined payments by WestLink and WSO Co to the RTA when these lane closures and other traffic measures occurred, with the RTA, in turn, making the same payments to the Company
- Payments by WestLink and WSO Co to the RTA to cover the Company’s other “third party” costs associated with the arrangements listed above, with the RTA making the same payments to the Company
- Mutual rights of access for maintenance and repair of the M2 and the M7, as discussed in section 8.1
- Requirements for WSO Co to maintain and repair the M7 interface works carried out by WestLink and WSO Co, and for the RTA/RMS to take over this task if the Western Sydney Orbital Project Deed were terminated, and
- General dispute resolution procedures, leading to expert determination, for disputes between the RTA/RMS and the Company, the Responsible Entity/Trustee or the Trust Custodian under the WSO/M2 Interface Agreement, other

than disputes about comments by the Company's independent engineer, which as indicated above were subject to separate procedures.

5.2 The LCT/M2 Interface Agreement and the Lane Cove Tunnel Project Deed

The LCT/M2 Interface Agreement of 14 November, between the RTA, the Company, the Responsible Entity and the Trust Custodian, and the Lane Cove Tunnel Project Deed of 4 December 2003, between the RTA, Lane Cove Tunnel Company Pty Limited (later renamed as Connector Motorways Pty Limited, and replaced by LCT-MRE Pty Limited since 10 August 2010) and Lane Cove Tunnel Nominee Company Pty Limited (as trustee of the Lane Cove Tunnel Trust, and replaced by LCT-MRE Nominees Pty Limited, as trustee of the LCT-MRE Trust, since 10 August 2010), set out analogous, but not identical, reciprocal arrangements for the connection of the Lane Cove Tunnel and associated works on Epping Road to the eastern end of the M2 motorway in North Ryde. (The connection of the Lane Cove Tunnel to Epping Road was treated as a connection to the M2 motorway for the purposes of the M2 Motorway Project Deed.)

These arrangements included (and, in the case of operational, maintenance and repair matters, still include):

- An agreement between the RTA and the Company on a design brief for the M2-Lane Cove Tunnel interface works, with provisions in the LCT/M2 Interface Agreement for the Company to amend or update this brief if the RTA subsequently adopted a design for the Lane Cove Tunnel which differed from the design concepts for the M2-Lane Cove Tunnel connection developed by the RTA
- Special dispute resolution procedures for any disagreements between the RTA and the Company about any such amendments to or updating of the interface design brief
- During the period before the Lane Cove Tunnel Project Deed took effect, arrangements for the RTA and the Company to share information, consult on any design proposals for the Lane Cove Tunnel which significantly differed from the design concepts for the M2-Lane Cove Tunnel connection developed by the RTA, and consult and cooperate with the consortia which the RTA had invited to submit proposals for the Lane Cove Tunnel
- Opportunities for an independent engineer engaged by the Company to provide comments on the final design documentation developed by Lane Cove Tunnel Nominee Company with the Lane Cove Tunnel project's independent verifier, URS Australia Pty Limited, being obliged to address these comments
- Opportunities for the Company's independent engineer to comment on relevant aspects of the Lane Cove Tunnel project's *Construction Plan* and *Traffic Management and Safety Plan*, with Lane Cove Tunnel Nominee Company being obliged to rectify these plans if they did not comply with or would produce breaches of the agreed design brief for the interface works
- Special dispute resolution procedures for any disagreements between the RTA and the Company and/or Lane Cove Tunnel Nominee Company about these comments by the Company's independent engineer
- Requirements for Lane Cove Tunnel Nominee Company to construct any Lane Cove Tunnel project works within the M2 "Company land" or "Trust land" in accordance with the interface design brief and in a manner which would minimise damage to the M2 and interference with the operation of the M2, or instead to arrange for the Company to construct these works for Lane Cove Tunnel Nominee Company
- Requirements for Lane Cove Tunnel Nominee Company to give the RTA and the Company at least 20 business days' notice of the expected commencement of any Lane Cove Tunnel project works on the M2 "Company land" or "Trust land", and at least three business days' notice of the actual commencement of this work
- Requirements for the Company, the Responsible Entity/Trustee and the Trust Custodian to give Lane Cove Tunnel Nominee Company access to the M2 for these works (unless the Company was carrying out the works itself) and for Lane Cove Tunnel Nominee Company subsequently to reinstate the affected areas
- Procedures for the closure of traffic lanes on the M2 and/or on Epping Road between Mowbray Road West and the M2, the reduction of speed limits and other traffic measures on the M2 and Epping Road while these works were being carried out
- Pre-determined payments by Lane Cove Tunnel Nominee Company to the RTA when these lane closures and other traffic measures occurred, with the RTA, in turn, making the same payments to the Company
- Payments by Lane Cove Tunnel Nominee Company to the RTA to cover the Company's other "third party" costs associated with the arrangements listed above, with the RTA making the same payments to the Company
- Requirements for Lane Cove Tunnel Company/Connector Motorways/LCT-MRE to maintain and repair the Lane Cove Tunnel project works located on the M2 "Company land" or "Trust land", or instead to arrange for the Company to maintain and repair these works for Lane Cove Tunnel Company/Connector Motorways/LCT-MRE and for the RTA/RMS to take over this task if the Lane Cove Tunnel Project Deed were terminated (see section 8.1), and
- General dispute resolution procedures, leading to expert determination, for disputes between the RTA/RMS and the Company, the Responsible Entity/Trustee or the Trust Custodian under the LCT/M2 Interface Agreement, other than disputes about changes to the interface design brief or

comments by the Company's independent engineer, which as indicated above were subject to separate procedures.

5.3 The Site Access Deed and the Epping Bus Underpass Deed

As indicated in section 2.2.5, the Site Access Deed of 30 October 2002, between the RTA, the Director-General of the NSW Department of Transport, the Company, the Responsible Entity, the Trust Custodian and Tollaust, set out arrangements for truck access between the M2 motorway and a works site for the construction of the Epping–Chatswood rail link, south of the motorway and immediately west of Delhi Road in North Ryde.

The Epping Bus Underpass Deed of 28 February 2003, between the RTA, the Director-General of the NSW Department of Transport and the Company, did likewise for another Epping–Chatswood rail link worksite at Epping station.

The rights and obligations of the Director-General of the Department of Transport under these two agreements were transferred to TIDC upon its formation on 1 January 2004, and the Site Access Deed was amended by the Deed of Amendment to the Site Access Deed of 2 July 2004, between the RTA, TIDC, the Company, the Responsible Entity, the Trust Custodian and Tollaust.

5.3.1 The Site Access Deed

Under the Site Access Deed, as amended,

- The Company granted TIDC a non-exclusive licence to use a defined "M2 access area" adjacent to the westbound on-ramp from Delhi Road to the M2 motorway, for access to and from the Delhi Road works site, including the removal of tunnel spoil on trucks using the M2, until 30 June 2006 (with three options to extend this period by six months, or by up to 18 months in total), or until any earlier termination of the Site Access Deed
- TIDC had to pay the Company an "access charge" of \$80,000 per quarter, payable in advance (prior to 1 July 2003, this charge was \$67,500 per quarter)
- TIDC also had to pay Tollaust pre-determined "operation and maintenance charges" for any traffic control services which TIDC asked Tollaust to perform, or for any additional services which TIDC and Tollaust agreed upon or which were specified by the RTA if they could not agree
- TIDC had to construct and maintain site access works within the "M2 access area", entirely at its own cost, in accordance with designs, specifications and a *Site Management Plan* approved by the RTA, the Company, the Responsible Entity/Trustee and the Trust Custodian
- Vehicles could not use the "M2 access area" to leave the work site during any peak periods notified by the RTA from time to time
- In addition, if there were a traffic incident or traffic congestion the Company could control the use of the "M2 access area"

by vehicles leaving the work site between 3:30 pm and 7:30 pm on weekdays

- TIDC had to comply with specified requirements for truck cleaning, dust control, other environmental controls, signage, a traffic management study, occupational health and safety and insurance
- TIDC had to indemnify the RTA, the Company, the Responsible Entity/Trustee and the Trust Custodian and their employees, contractors and agents against all damage, losses or liabilities arising from TIDC's activities under the deed
- Disputes had to be dealt with under dispute resolution procedures, including binding expert determinations, set out in the deed, and
- The RTA could terminate the deed at common law or if TIDC had breached specified essential provisions of the deed and failed to remedy its breach within a reasonable period notified by the RTA.

5.3.2 The Epping Bus Underpass Deed

Under the Epping Bus Underpass Deed,

- The RTA granted TIDC a non-exclusive licence to use the existing bus underpass north of Epping railway station, on RTA-owned land between the station, the M2, Cambridge Street and Beecroft Road, for access to and from the Epping–Chatswood rail link project's Epping works site, including the removal of tunnel spoil on trucks using the M2, until 31 January 2006 or any earlier termination of the Epping Bus Underpass Deed, in return for the payment of a \$1 licence fee
- The Company consented to this licence (the underpass includes Company-owned fixtures and fittings)
- The licence could be extended on a month-by-month basis
- The use of the underpass by buses, including buses using the M2 motorway's busway, had priority at all times
- TIDC had to prepare a *Site Management Plan* for its use of the underpass and have it approved by the RTA and the Company
- TIDC had to clean, maintain and repair the road surfaces in and on either side of the underpass and resurface this area on or before 31 January 2006, while the Company continued to be responsible for all of its other underpass maintenance and repair obligations under the Project Deed
- TIDC had to comply with specified requirements for truck cleaning, dust control, other environmental controls, signage, a traffic management study, occupational health and safety and insurance
- TIDC had to indemnify the RTA, the Company and their employees, contractors and agents against all damage, losses or liabilities arising from TIDC's activities under the Epping Bus Underpass Deed

- Disputes had to be dealt with under dispute resolution procedures, including binding expert determinations, set out in the deed, and
- TIDC could terminate the deed at any time by giving the RTA four weeks' notice, and the RTA could terminate the deed at

common law or if TIDC had breached the deed and failed to remedy its breach within a reasonable period notified by the RTA.

6 The January 2007 westbound third lane works

As already indicated in section 2.2.6, the Conversion Project Agreement of January 2007, executed in the form of a letter agreement by the Minister for Roads, the RTA, the Company and the Trustee on 11 January 2007, set out terms for the Company and the Trustee, at their own cost, to convert a westbound portion of the motorway, between Lane Cove Road and Beecroft Road, from two to three road lanes, through the removal of the westbound cycling and emergency breakdown lane from this section.

This followed the execution on 10 January 2007, by the then Treasurer, Mr Michael Costa, of a formal confirmation that:

- The joint financing arrangements for the M2 motorway project, including these conversion works, continued to be approved under section 20(1) of the Public Authorities (Financial Arrangements) Act 1987, and
- The Deed of Guarantee of 26 August 1994, executed under section 22B of the Public Authorities (Financial Arrangements) Act, continued to apply to the M2 motorway project, including the conversion works.

Under the Conversion Project Agreement of January 2007, the Company and the Trustee were obliged to carry out the “conversion project” in accordance with:

- Specified amendments to the Project Deed’s *Scope of Works and Technical Criteria* and design drawings for the conversion project, both of which were annexed to the Conversion Project Agreement, and
- The motorway’s original planning approval and an RTA *Decision Report* approving the conversion project, *M2 Motorway Westbound Third Lane Conversion Project: Review of Environmental Factors Decision Report, 10 January 2007*, annexed to the agreement,

using reasonable endeavours to complete the project within 21 days of the agreement (i.e. by 1 February 2007).

The Company was responsible for funding the design and construction of the “conversion project”, other than the costs incurred by the RTA in preparing and executing the Conversion Project Agreement and meeting the RTA’s obligations under the agreement, and there was to be no extension of the motorway’s concession term as a result of the project. The RTA acknowledged that the funding of the works from the operating cashflows of the Company and the Trustee would reduce the returns of the motorway’s equity investors.

The Trustee and the Company acknowledged that the RTA had relied on the *Review of Environmental Factors* they had prepared for the conversion project, and released the RTA from any claim

for losses or liabilities arising from any failure by this *Review of Environmental Factors* to fully examine any environmental impact of the project, apart from any exclusions requested by the RTA or matters known to the RTA but not able to be examined by the Trustee or the Company.

In other respects, however, the RTA was liable—just as it was under equivalent Project Deed provisions for the motorway’s original construction, as summarised in sections 4.7, 4.9 and 4.10 above—to indemnify the Company and the Trustee against any losses or liabilities they incurred as a result of land contamination, Aboriginal or European heritage, endangered fauna, planning approval delays or a legal challenge to the RTA’s planning approval for the conversion project. The Company and the Trustee were entitled to terminate the Conversion Project Agreement if consents they needed to obtain from any government or council authority materially increased the estimated costs of the conversion project.

Upon the completion of the conversion project’s works these works became part of the M2 motorway for the purposes of the Project Deed. The Trustee and the Company were obliged to supply “as constructed” drawings of the works to the RTA within 90 days of their completion.

The RTA was entitled to direct the Company and the Trustee to remove the “conversion project” works and restore the previous lane markings and other traffic arrangements, in which case the RTA would have had to and must meet the reasonable costs of both the conversion project works and their removal, *less* any additional net revenue received by the Company as a result of the conversion project works.

The Company and the Trustee could and may elect themselves to remove the “conversion project” works at their own cost, subject to the RTA’s consent, which could not and may not be unreasonably withheld or delayed.

If the conversion project works had or have to be removed because of a legal requirement *and* the Company and the Trustee have released the RTA from any claim for losses or liabilities arising from a deficiency in their *Review of Environmental Factors* for the conversion project, under the provisions for this described above,

- The Company and the Trustee would have had to and must meet the removal costs, *but*
- If any additional environmental or planning approvals required for the removal imposed or impose conditions or standards that are more costly than those set out in the M2 motorway contract documents prior to 11 January 2007 and that would

not otherwise have been required, any reasonable increase in compliance costs, less any additional net revenue received by the Company as a result of the conversion project works, had to be and must be met by an extension of the M2 motorway's operating term, and/or a payment by the RTA to the Company and/or the Trustee, and/or an adjustment of the rights and obligations of the RTA, the Company and the Trustee under the Project Deed.

In practice, as already indicated in section 2.2.6, the January 2007 conversion project works are now to be replaced by much more substantial motorway widening works, including the restoration of the deleted westbound bicycle and emergency breakdown lane, under the contracts for the 2010–15 upgrading project, described in section 7 below.

7 The 2010–2015 upgrade works

Under the Upgrade Project Deed between the Minister for Roads, the RTA/RMS, the Company and the Trustee, which was executed on 25 October 2010, became fully effective on 18 November 2010 and has since been amended by the Cashless Tolling Amending Deed of 28 October 2011, the Toll Calculation Amending Deed of 13 August 2012, RMS's "change order" of 17 May 2013 concerning remediation works on the M2's embankment near Vimiera Road in Marsfield and the Lane Cove Road On-Ramp Amending Deed of 21 May 2013, the Company and the Trustee have been and are permitted and obliged to design, construct, commission and complete defined "M2 upgrade" works in accordance with the requirements of a detailed Annexure A to the Upgrade Project Deed. (As already indicated in section 4, most of the *Project Deed's* original design and construction requirements, summarised in section 4, do not apply to the design and construction of the 2010–15 upgrade works, even though many of them continue to be of relevance to the motorway project as a whole, as discussed in sections 6 and 8 to 11 of this report.)

The Company and the Trustee must indemnify RMS against any claims or losses it suffers as a result of, or in connection with, any breach by them of the Upgrade Project Deed, *other than*:

- Any losses arising from an "event of default", as defined in the Upgrade Project Deed (see section 12.3), for which RMS may exercise or has exercised specified "default step-in rights", as described in sections 12.5 and 12.6 of this report, and
- Any "special, indirect or consequential" losses of income, revenue, profits, financial opportunities, business, business opportunities, contracts, goodwill, use, production or value of the M2 motorway, or failures to realise anticipated savings, cost reductions or other benefits, which are suffered by the Minister for Roads or RMS as a result of or in connection with any failure by the Company and the Trustee to complete all of the upgrade works (sections 7.1 and 7.15) or remedy an "event of default" or overcome its effects in compliance with relevant procedures set out in the Upgrade Project Deed (sections 12.2 to 12.7), to the extent that the aggregate total of these indirect losses exceeds \$20 million or the indirect losses arise out of a termination of the Upgrade Project Deed by the Company and/or the Trustee (sections 12.8 and 12.9).

7.1 Scope of the upgrade works

The upgrade works to be designed and constructed by the Company and the Trustee, including defined "property", "local road", "services" and "temporary" works as well as works to

upgrade the M2 motorway and its systems, are specified in a **Scope of Works and Technical Criteria** document exhibited to the Upgrade Project Deed. (This document is separate from the *Scope of Works and Technical Criteria* for the motorway as a whole, exhibited to the Project Deed and the Project Management Services Deed.)

The upgrade *Scope of Works and Technical Criteria* document sets out a detailed series of standards and other requirements to be met by the Company and the Trustee in designing and constructing these works, including basic requirements for each element of the works, quality and verification requirements, requirements for site investigations, condition surveys and other surveys, performance requirements for the various components of the works, property, local road and service works requirements, detailed design requirements, construction method requirements and community involvement requirements.

The upgrade and associated works have been divided into six "stages", defined in Annexure A to the Upgrade Project Deed:

- "**Stage 1**", comprising works associated with the new west-facing Windsor Road ramps, with a "**date for construction completion**" of 18 March 2012 (as already indicated in sections 2.2.7 and 2.2.11, in practice these Stage 1 works were completed on 23 July 2012)
- "**Stage 2**", comprising works associated with the new east-facing Herring Road and Christie Road ramps, the widening of a 700 m long section of the motorway carriageway between Christie Road and Khartoum Road and the widening of Talavera and Christie Roads, with a "date for construction completion" of 18 August 2012 (again as already indicated in section 2.2.11, in practice these Stage 2 works were completed on 18 January 2013)
- "**Stage 3**", which:
 - ♦ Originally comprised works associated with the other motorway upgrading works specified in 2010 and shown indicatively in *Figures 1.3 and 1.4*, with a "date for construction completion" of 18 January 2013, but
 - ♦ As a result of a "change order" issued by RMS on 17 May 2013, under arrangements described in section 7.2 below, now excludes the satisfaction of specified stability-related risk assessment and other standards for the M2 motorway's northern embankment near Vimiera Road in Marsfield and specified associated works, with the satisfaction of these standards and the completion of the associated works now being

deferred from “Stage 3” to “Stage 4” of the upgrade works, as already described in section 2.2.9, and

- ◆ In practice, is now expected to be completed in August 2013*
- **“Stage 3A”**, comprising the Lane Cove Road eastbound on-ramp and associated works as specified in 2013 (see *Figure 1.5*), with a “date for construction completion” of 8 July 2014
- **“Stage 4A”**, comprising surveys, documentation, reports and reinstatement and clean-up works associated with the Lane Cove Road on-ramp as specified in 2013, with a “date for construction completion” of 30 September 2014, and
- **“Stage 4”**, comprising surveys, documentation, reports and reinstatement and clean-up works as originally specified in 2010 plus the satisfaction of specified risk assessment and other standards associated with the stability of the M2 motorway’s northern embankment near Vimiera Road and the completion of specified associated works (see sections 2.2.9 and 8.9), originally with a “date for construction completion” of 18 May 2013 but now with a “date for construction completion” of 18 January 2015.

The Company and the Trustee have had to and must use their best endeavours to:

- Complete the construction of Stage 3, apart from minor defects, by its “date for construction completion”, 18 January 2013
- Complete the construction of Stage 3A, apart from minor defects, by 8 July 2014
- Complete the construction of Stage 4A, apart from minor defects, by 30 September 2014 (for more details, see section 7.15 below), and
- Achieve **“final completion”**—*meaning* the completion of Stage 4, apart from minor defects—by the specified “date for construction completion” for Stage 4, originally 18 May 2013 but now 18 January 2015.

As already indicated in section 2.2.7, to assist the Company and the Trustee in satisfying their design and construction obligations under the Upgrade Project Deed the Company and the Trustee have entered into:

- The M2 Motorway Upgrade Design and Construction Deed with Leighton Contractors, dated 25 October 2010, for the design and construction of the 2010-specified “Stage 1”, “Stage 2”, “Stage 3” and “Stage 4” upgrade works, and
- The Lane Cove Road On-Ramp Design and Construction Deed with the On-Ramp D&C Contractor, dated 21 May 2013, for the design and construction of the 2013-specified “Stage 3A” and “Stage 4A” upgrade works.

The terms of the M2 Motorway Upgrade Design and Construction Deed, and a supporting parent company guarantee by Leighton Holdings of Leighton Contractors’

performance, may be amended or waived only with RMS’s prior written consent, and Leighton Contractors may transfer, encumber or otherwise deal with its interest in the M2 Motorway Upgrade Design and Construction Deed only with RMS’s prior written consent and only if the transferee or encumbrancee enters into a deed equivalent to the Upgrade Side Deed.

Similarly, the terms of the Lane Cove Road On-Ramp Design and Construction Deed, and a supporting parent company guarantee by the On-Ramp D&C Contractor Guarantor of the On-Ramp D&C Contractor’s performance, may be amended or waived only with RMS’s prior written consent, and the On-Ramp D&C Contractor may transfer, encumber or otherwise deal with its interest in the Lane Cove Road On-Ramp Design and Construction Deed only with RMS’s prior written consent and only if the transferee or encumbrancee enters into a deed equivalent to the On-Ramp D&C Side Deed.

7.2 Changes in the scope of the upgrade works

RMS may require changes to be made to the upgrade works to be carried out by the Company and/or the Trustee, other than defined “temporary works”, using procedures set out in Annexure A to the Upgrade Project Deed. These changes may include additions to, deletions from and the demolition or removal of upgrade works, but unless the Minister for Roads, RMS, the Company and the Trustee otherwise agree any changes directed by RMS may not adversely affect the use, patronage or capacity of the existing or upgraded motorway or the Company’s ability to levy and collect tolls, and they could and may not prevent the Company and the Trustee from completing the construction of Stage 3 of the upgrade works by 18 January 2013 or Stage 3A by 8 July 2014.

Within 15 business days of receiving a **“change order”** from RMS, the Company and/or the Trustee, as relevant, must give RMS detailed estimates of the likely costs or savings, details on the implications of the proposed change for the functional integrity of the works, performance standards, quality standards, the dates of completion of the works, any other obligations adversely affected by the change (including their obligations under the Project Deed) and any other information requested in the “change order”.

RMS will then have 15 business days to advise the Company and/or the Trustee, as relevant, whether it wishes to proceed with the proposed change.

If it decides to proceed, and RMS agrees with the costings and advice provided by the Company and/or the Trustee, RMS may notify them of this within this period and the change will take effect in accordance with the costings and advice they have provided (i.e. with the notified amended standards etc).

If RMS disagrees with the costings and/or advice provided by the Company and/or the Trustee, RMS may refer the matter for determination under dispute resolution procedures set out in the

* As already indicated in sections 2.2.9 and 2.2.11, “construction completion” of Stage 3 was achieved (after the date of this *Summary of Contracts*) on 31 July 2013.

Upgrade Project Deed, discussed in section 9.16 below. In the meantime, it may require the Company and/or the Trustee to implement the change, with RMS paying them on the basis of their cost estimates during this period.

Changes to the scope of the upgrade works may also be proposed by the Company and/or the Trustee, which may be required by RMS to certify that their proposed changes will not adversely affect the functional integrity of the motorway, the upgrade works, performance standards, quality standards, the date of completion of the works, the operation, maintenance and repair of the motorway or any of their other obligations to RMS.

RMS has an absolute discretion whether to approve or reject any proposal by the Company and/or the Trustee for a change in the scope of works. If RMS approves the proposed change, the Company Trustee and/or the Company (as relevant) must pay all the costs associated with proposing, assessing and implementing the change, including those incurred by RMS, unless RMS agrees otherwise in writing, and RMS will not be liable to the Company or the Trustee for any costs, losses, damages, liabilities or claims associated with the change.

If a change in the scope of works initiated and directed by RMS:

- Increases the scope or costs of the upgrade works
- Increases the motorway's operating and maintenance costs under the Project Deed, or
- Prevents the Company and the Trustee from achieving "construction completion" of Stage 4A of the upgrade works by 30 September 2014 or "final completion" of Stage 4 of the upgrade works (now as amended by the RMS change order of 17 May 2013 described in section 2.2.9 and detailed below) by 18 January 2015 (prior to the change order of 17 May 2013, this date was 18 May 2013), except to the extent that they and their subcontractors have not taken all reasonable steps to mitigate the delay, and the Company and/or the Trustee incur delay costs in carrying out the change,

RMS must pay the Company and/or the Trustee the costs they reasonably incur as a result of the change, including any increased financing, construction, operating and maintenance costs associated with the motorway and the upgrade works, *plus*

- A reasonable amount on account of the overheads and profit margins of the motorway's operator, Tollaust, and
- 27% on account of the overheads and profit margins of the relevant design and construction contractor(s), Leighton Contractors and/or the On-Ramp D&C Contractor.

Unless otherwise agreed, any such payments by RMS to the Company and/or the Trustee must be made progressively, within ten business days of the end of each month during which the relevant work has been undertaken.

If a change in the scope of works initiated and directed by RMS decreases the scope or costs of the upgrade works, RMS is entitled to receive all of the cost savings resulting from the

change, including any acceleration savings and reductions in financing, construction, operating and/or maintenance costs associated with the motorway and the upgrade works. In calculating the amount to be paid to RMS for any construction cost savings, 10% is to be added to the reasonable costs of the construction work as the total margin for overheads and profits.

On the other hand, if the scope or costs of the upgrade works are decreased (or are expected to be decreased) as a result of a change in the scope of works suggested by the Company and/or the Trustee and agreed to by RMS, RMS is entitled to receive 50% of the actual cost savings, calculated in the same way, or 50% of the cost savings as originally estimated by the Company and/or the Trustee when they proposed the change (whichever is the higher amount).

Any such payments by the Company and/or the Trustee to RMS of some or all of any savings on the design and construction of the upgrade must either be made progressively, within ten business days of the end of each month during which the omitted work would otherwise have been undertaken, or set off against any change costs payable by RMS.

Any payments by the Company and/or the Trustee to RMS of some or all of any operational, maintenance and repair cost savings for the motorway or the upgrade works must be made in a manner and at a time to be agreed between RMS and the Company and/or the Trustee, as applicable. If they cannot agree, the manner and timing of these payments must be determined by an expert, under the Upgrade Project Deed's dispute resolution procedures described in section 9.16, who must ensure that the timing of the payments will not adversely affect:

- The ability the Trustee had, prior to the change, to make payments under the project's debt financing agreements and payments to the equity investors under a subordinated loan agreement associated with the Lane Cove Road on-ramp project
- The ability the Company and the Trustee had, prior to the change, to give the motorway's equity investors—all notionally treated as if they were among the upgrade project's initial equity investors—real after-tax returns equal to the lower of the returns they would have received but for the change and a real after-tax "M2 upgrade base case" equity return of 9.2% per annum, or
- The ability the Company and the Trustee had, prior to the change, to give the motorway's Lane Cove Road on-ramp equity investors—all notionally treated as if they were among the on-ramp project's initial equity investors—real after-tax returns equal to the lower of the returns they would have received but for the change and a specified (but commercially confidential) "LCR base case" equity return.

To date (as at 28 May 2013) there have been 16 sets of changes to the scope of the upgrade works under the arrangements described above, not counting the changes made by the Cashless Tolling Amending Deed and the Lane Cove Road On-Ramp Amending Deed. Nine of these change orders have

been initiated by the RTA/RMS, with eight of them involving RMS payments for resultant increased costs, for about \$2.49 million in total, and one involving no additional costs or savings. (The largest changes initiated by RMS have been for additional works to provide foundations for a new railway bridge over the motorway as part of the Epping–Thornleigh third track project, at a cost of about \$930,000, and higher noise walls, at a cost of about \$481,000.) The other seven change orders have been initiated by the Company and the Trustee, with two of them involving payments to RMS of its share of the resultant cost savings, for about \$273,000 in total, and the others involving no additional costs or savings.

The most significant of the change orders initiated by the Company and the Trustee arose from the establishment during the course of the upgrade works that significant remedial works will be required to ensure the long-term stability of the M2 motorway’s existing northern embankment near Vimiera Road in Marsfield. As already described in section 2.2.9, a temporary sheet pile retaining wall has been constructed to improve the embankment’s stability, and this will permit the safe operation of the motorway, with ongoing monitoring, while the necessary permanent remedial works are carried out by the Company and the Trustee in accordance with the VRE Remedial Works Agreement (see sections 2.2.9 and 8.9). In response to this situation, on 17 May 2013 RMS issued a change order which:

- Deferred the satisfaction of specified stability-related risk assessment and other standards for this embankment and specified associated works from Stage 3 of the upgrade project to Stage 4, and
- Extended the “date for construction completion” for Stage 4 from 18 May 2013 to 18 January 2015 (see section 7.15 below).

7.3 Compliance with and amendments and challenges to the upgrade’s planning approval

The respective responsibilities of RMS, on the one hand, and the Company and the Trustee, on the other, for complying with the conditions of the upgrade project’s planning approval of 21 October 2010, as modified on 28 February 2013, are detailed in Annexure A to the Upgrade Project Deed and a schedule to Annexure A.

RMS could and may change the way it complies with the planning approval conditions for which it is responsible under this schedule without any limitation under the Upgrade Project Deed and without the consent of the Company and the Trustee, provided this change is consistent with the project approval, does not necessitate any further approval under the Environmental Planning and Assessment Act and did not and will not prevent the Company and the Trustee from completing the construction of Stage 3 of the upgrade by 18 January 2013 or Stage 3A of the upgrade by 8 July 2014. RMS had to and

must notify the Company and the Trustee of any such change, providing details, as soon as reasonably practicable.

The Company and the Trustee have warranted to RMS that the upgrade *Scope of Works and Technical Criteria* exhibited to the Upgrade Project Deed and their concept designs for the upgrade, which are set out in two appendices to the upgrade *Scope of Works and Technical Criteria*, comply with the upgrade’s planning approval, as modified on 28 February 2013.

If the upgrade’s planning approval is modified in any way or a new planning approval is issued—other than as a result of a breach of the planning approval by the Company, the Trustee, Leighton Contractors or the On-Ramp D&C Contractor, or in response to an application by the Company, the Trustee, Leighton Contractors and/or the On-Ramp D&C Contractor—and this necessitates a change to the upgrade works (other than the defined “temporary works” or design and construction processes),

- The change must be addressed as if RMS had directed the change by issuing a “change order” under the arrangements described in section 7.2
- The Company and the Trustee must take all reasonable steps to mitigate the costs of the change, comply with all reasonable RMS directions concerning the change and its consequences and ensure Leighton Contractors, the On-Ramp D&C Contractor and their subcontractors do likewise, and
- In some circumstances the renegotiation provisions described in section 10 may apply.

If there is a legal challenge to the upgrade project’s environmental assessment or planning approval, the Company and the Trustee must continue to perform their obligations under the Upgrade Project Deed unless they are ordered not to, or are ordered to change the way they do so, by a court.

If a court does issue such an order to the Company, the Trustee, Leighton Contractors and/or the On-Ramp D&C Contractor,

- The Company and the Trustee must take all reasonable steps to mitigate the resultant costs, comply with all reasonable RMS directions concerning the legal challenge and its consequences, and ensure Leighton Contractors and the On-Ramp D&C Contractor do likewise.
- RMS must pay the Company and/or the Trustee for any reasonable costs directly incurred as a result of the court order—including any reasonable interest, fees or other amounts payable under the project’s debt financing arrangements during the delay—by:
 - The Company and/or the Trustee (other than any amounts payable to a related entity, Leighton Contractors, the On-Ramp D&C Contractor or a related entity of Leighton Contractors or the On-Ramp D&C Contractor) and, without double-counting,
 - Leighton Contractors and/or the On-Ramp D&C Contractor (other than any amounts payable, except on

an arms-length, commercial basis, to the Company, the Trustee, their related corporate entities or a related entity of Leighton Contractors or the On-Ramp D&C Contractor),

but *not* for:

- ♦ Any delay costs if the court order did not or will not prevent the completion of the Stage 3 upgrade works by 18 January 2013 or the Stage 3A works by 8 July 2014
 - ♦ Any costs incurred by the Company, the Trustee, Leighton Contractors or the On-Ramp D&C Contractor as a result of a failure by the Company and/or the Trustee to mitigate the costs or comply with RMS directions, or
 - ♦ Any costs resulting from the initiation or upholding of the legal challenge or issuing of the court order because of a breach of the Upgrade Project Deed by the Company or the Trustee.
- In some circumstances the renegotiation provisions described in section 10.2 may apply.

7.4 Design obligations, intellectual property and moral rights

The principal design obligations of the Company and the Trustee are to satisfy the requirements of the upgrade *Scope of Works and Technical Criteria* and ensure that on the date of their completion (see section 7.15) the upgrade works will be fit for their intended purposes.

More specifically, the Company and the Trustee have warranted and acknowledged to RMS that:

- The upgrade *Scope of Works and Technical Criteria* and their concept designs for the upgrade works (appended to the upgrade *Scope of Works and Technical Criteria*) are consistent with the upgrade's planning approval and each other and will be fit for their intended purposes
- They bear all the risks arising from their use of the concept designs, except as otherwise expressly provided in the Upgrade Project Deed
- The design documentation they prepare for the upgrade works will satisfy the requirements of the upgrade *Scope of Works and Technical Criteria* and other requirements of the Upgrade Project Deed, and will be fit for its intended purposes
- Construction in accordance with their design documentation will also satisfy the requirements of the upgrade *Scope of Works and Technical Criteria* and other requirements of the Upgrade Project Deed, and
- The completed "Stage 1", "Stage 2" and "Stage 3" upgrade works will satisfy the requirements of the Upgrade Project Deed and, on the date of "final completion" (i.e. the completion of "Stage 4"), will be fit for their intended purposes, and

- The completed 2013-specified "Stage 3A" upgrade works will satisfy the requirements of the Upgrade Project Deed and, on the date of the completion of "Stage 4A", will be fit for their intended purposes.

These warranties are not and will not be affected by any RMS reviews, consultations or comments on the Company's and Trustee's design documentation.

The Company and the Trustee must give RMS and the Independent Verifier the opportunity to comment on and monitor their design development and documentation, which must comply with timeframes set out in a documentation schedule appended to the upgrade *Scope of Works and Technical Criteria*.

The design documentation for each discrete design element must be certified by the Company and/or the Trustee (as relevant) and verified by the Independent Verifier as being appropriate for construction and in compliance with the Upgrade Project Deed and the upgrade *Scope of Works and Technical Criteria*, including, in particular, the latter's durability and design life requirements.

The Company and the Trustee must hold regular design development meetings with the Independent Verifier, with RMS attending if it chooses to do so.

The Company and the Trustee have warranted to RMS that on 18 November 2010 they owned or were otherwise entitled to use and sub-license all the upgrade project's then-existing design documentation and everything else used by them for the upgrade project which is subject to any intellectual property rights. On that date ownership of and copyright in the existing design documentation owned by the Company and the Trustee passed to the RTA (and hence now RMS), and RMS also automatically owns and has copyright in all the design documentation subsequently created by the Company and the Trustee for the upgrade project.

In the case of design documentation owned by others, the Company and the Trustee must reasonably attempt to obtain ownership and must otherwise grant RMS an irrevocable, perpetual, royalty-free licence to use the documentation for all purposes associated with the M2 motorway and the upgrade project. In the case of other proprietary upgrade project documentation owned by others, the Company and the Trustee must reasonably attempt to obtain a right to use this documentation and must again grant RMS an irrevocable, perpetual, royalty-free licence to use the documentation for all purposes associated with the motorway and the upgrade project.

The Company and the Trustee must obtain the irrevocable written consent of all authors of the upgrade project's "artistic works", as defined in the Copyright Act 1968 (Cth), to any non-attribution or false attribution of these works by RMS, the Company or the Trustee and any RMS, Company or Trustee repairs, maintenance, additions, refurbishments, alterations, relocations, destruction or replacements affecting these works.

7.5 Construction access

Since 18 November 2010 the RTA/RMS has had to and must give the Company, the Trustee and their contractors, agents, employees and invitees access, at no cost but at the Company's and the Trustee's risk, to motorway and local road construction sites and temporary works areas defined in a "site access schedule" exhibited to the Upgrade Project Deed, for purposes associated with the operation and maintenance of the motorway and the upgrade and temporary works.

The "site access schedule" sets out times, protocols and other restrictions on this access to individual sites. RMS could and may add other conditions of access, through specified processes starting with a simple notification of the Company and the Trustee, *provided* these additional conditions:

- Do not adversely affect the use, patronage or capacity of the motorway or the upgrade or the Company's ability to levy or collect tolls, and
- Did not prevent the Company and the Trustee from completing the construction of Stage 3 of the upgrade works by 18 January 2013.

If the Company and/or the Trustee believe any such notified additional conditions of access could not reasonably have been foreseen by them on 25 October 2010 and are non-trivial additions to their obligations under the Project Deed or the Upgrade Project Deed, they must notify RMS of this within ten business days, providing specified full details and reasons and requesting RMS to implement the additional conditions of access by directing a change to the upgrade works to be carried out by the Company and/or the Trustee, under the arrangements described in section 7.2 above.

If RMS agrees that the additional conditions of access could not reasonably have been foreseen and are non-trivial additions to the Company's and/or Trustee's obligations, RMS will then have 15 business days to advise the Company and/or the Trustee, as relevant, either that:

- It agrees with the costings and other advice provided by the Company and/or the Trustee, in which case the change will take effect in accordance with the costings and advice they have provided, or
- It disagrees with the costings and/or advice provided by the Company and/or the Trustee, in which case RMS must refer the matter for determination under the dispute resolution procedures set out in the Upgrade Project Deed, as discussed in section 7.2 above and described in section 9.16 below.

If RMS believes the additional conditions of access could reasonably have been foreseen and/or are trivial additions to the Company's and/or Trustee's obligations, RMS may, but need not, notify the Company and/or the Trustee of this and once again refer the matter for determination under the dispute resolution procedures set out in the Upgrade Project Deed, in which case the new conditions of access will apply in the meantime, until the dispute has been determined.

If the Company and/or the Trustee require additional land in order to construct the upgrade project's works, beyond the land parcels listed in the "site access schedule", they must procure this "extra land" (or the use of this land) themselves, at their own cost and at their sole risk. However, if the Company and/or the Trustee reasonably believe they are unable to carry out their upgrade works without access to "extra land" and reasonably satisfy RMS that they have reasonably tried to obtain this access, RMS must in good faith consider any written request to provide them with this access.

The Company and the Trustee must ensure their use and rehabilitation of any "extra land" is satisfactory to the relevant land owners and lessees, RMS and all relevant government and local government authorities, but are not required to rehabilitate the land to a standard better than before their access.

Until the later of the date of completion of the 2013-specified upgrade works (i.e. the date of completion of "Stage 4A") and the date of "final completion" of the upgrade works (i.e. the date of completion of "Stage 4"), RMS may access the construction sites and all other areas relevant to the works during business hours or on reasonable notice (or immediately during emergencies), subject to normal safety and security constraints, in order to observe the progress of the works, monitor compliance by the Company and the Trustee with their obligations under the Upgrade Project Deed and exercise its other rights and obligations under the motorway and upgrade contracts.

7.6 Latent conditions and land contamination

The Company and the Trustee have accepted all the risks of losses or delay associated with the physical conditions and characteristics of the land used for the upgrade project, its surroundings and structures on the land, including water and sub-surface conditions and any hazardous contamination.

They have also confirmed that the RTA/RMS has made no representations or promises about the condition of this land.

If a latent defect on any upgrade construction site, "temporary area" or "extra land" leads the Company and the Trustee to propose alternative design solutions to achieve the functionality, durability and quality requirements of the upgrade *Scope of Works and Technical Criteria*, and RMS reasonably believes it is not feasible for them to carry out the upgrade works as originally envisaged, taking account of any additional capital and operating costs, RMS must consider the change proposed by the Company and the Trustee in good faith under the change provisions described in section 7.2 above, and cooperate with them in assessing their alternative design solutions.

The Company and the Trustee must remove and/or treat any contamination, remediate the land at their own expense—in the case of the "temporary areas" and any "extra land", not to a standard better than was originally the case or better than the standard required to complete construction, unless they are

legally obliged to do more—and indemnify RMS against any claims or losses arising from the contamination.

7.7 Artefacts and native title claims

Before the Company and the Trustee start any works at any particular location they must give RMS a detailed heritage report, prepared by a nominated heritage consultant or another agreed consultant, on measures taken to identify any “artefacts” (including fossils, bones, coins, antique articles, artefacts, structures or other remains or things of scientific, geological, historical, archaeological or aboriginal interest or otherwise of value) at the location, any artefacts that have been identified, and recommendations on design, construction and/or operational responses to the existence of these artefacts.

The Company and the Trustee must:

- “Substantially” comply with these heritage reports
- Notify RMS, within 30 business days of receiving each report, whether any identified artefacts will necessitate design, construction or operational changes, with estimates of the associated costs and any construction delays and proposals to mitigate these costs and delays
- At their own expense, take every precaution to prevent the removal or damaging of any artefacts
- Allow RMS and others authorised by RMS to watch and examine their excavations at any times
- Immediately notify RMS of any discovery of any artefact, and
- At their own expense, comply with any directions concerning a discovered artefact imposed on RMS, the Company and/or the Trustee by any relevant authority.

If an artefact is discovered on or under the surface of any upgrade construction site or temporary works area, or if there is a native title claim over any part of any upgrade construction site or temporary works area, the Company and the Trustee must continue to perform their upgrade design and construction obligations unless they are ordered not to by RMS, a court or tribunal or any other legal requirement, in which case:

- The Company and the Trustee must take all reasonable steps to mitigate the resultant costs, comply with all reasonable RMS directions concerning the artefact or the native title claim and its consequences, and ensure Leighton Contractors and the On-Ramp D&C Contractor do likewise.
- RMS must pay the Company and/or the Trustee, as relevant, for any reasonable costs directly incurred as a result of the order or requirement—including any reasonable interest, fees or other amounts payable under the project’s debt financing arrangements and the subordinated debt arrangements associated with the Lane Cove Road on-ramp works, during the delay—by:
 - ♦ The Company and/or the Trustee (other than any amounts payable to Leighton Contractors, the On-Ramp D&C Contractor or a related entity of

Leighton Contractors or the On-Ramp D&C Contractor) and, without double-counting,

- ♦ Leighton Contractors and/or the On-Ramp D&C Contractor (other than any amounts payable, except on an arms-length, commercial basis, to the Company, the Trustee, their related corporate entities or a related entity of Leighton Contractors or the On-Ramp D&C Contractor),

but *not* for:

- ♦ Any delay costs if the court order did not prevent the completion of the Stage 3 upgrade works by 18 January 2013 and will not prevent the completion of the Stage 3A works by 8 July 2014, or
- ♦ Any costs incurred by the Company, the Trustee, Leighton Contractors or the On-Ramp D&C Contractor as a result of a failure by the Company and/or the Trustee to comply with their heritage report obligations concerning artefacts or their obligations to mitigate the costs or comply with RMS directions.
- In some circumstances the Upgrade Project Deed renegotiation provisions described in section 10.2 may apply.

If the Company and/or the Trustee are prevented from carrying out their upgrade works for more than six months as a result of the order or other legal requirement, RMS may terminate the Upgrade Project Deed, in its absolute discretion, by giving the Company and the Trustee a notice to this effect, subject to provisos in the Amended and Restated RTA Consent Deed (see section 12.8).

7.8 Other environmental requirements

As already indicated in section 7.3, the Company and the Trustee must comply with the conditions of the upgrade project’s planning approval—many of which were and are intended to reduce construction-phase environmental impacts—in accordance with an allocation of responsibilities detailed in a schedule to the Upgrade Project Deed, and take specified actions to prevent the removal of or damage to artefacts.

They must also:

- Obtain all other government and local government approvals required for the upgrade project
- Comply with the requirements of these approvals and all other legal requirements
- Except in the case of the conditions of the upgrade’s planning approval for which RMS has accepted responsibility, pay all fees, effect all insurances, provide all bonds and execute any agreements required by any authority concerning any approval for the upgrade project
- Carry out their works in an environmentally responsible manner, so as to protect the environment

- More specifically,
 - ♦ Take all measures necessary to protect people and property, avoid unnecessary interference with the passage of people and vehicles, prevent avoidable nuisances and minimise noise and disturbance, and
 - ♦ Prepare and comply with *Environmental Management Plans*, as detailed in the Upgrade Project Deed's *Scope of Works and Technical Criteria*
- Notify RMS immediately of any breach or potential breach of their obligations under the upgrade project's planning approval or any other environment-related legal requirement
- Indemnify RMS from and against any claim or loss if the Company and/or the Trustee fail to meet their environmental obligations
- Notify RMS immediately of any complaints or threatened or actual legal proceedings concerning land contamination, any non-compliance by the Company and/or the Trustee with the planning approval or other environmental requirements, the Company's or Trustee's use or occupation of any land for the upgrade project or any damage by the Company or the Trustee to third parties' property, and
- Resolve any such matters as soon as possible and keep detailed records of all such complaints, proceedings, letters of demand, orders and directions and its responses.

The Company and the Trustee must give the Environmental Representative all the information, documents and access it needs (or the Environmental Representative or RMS reasonably requires) to perform its obligations as contemplated by the upgrade's planning approval. Although the Environmental Representative's appointment under the Deed of Appointment of ER is being funded by the Company and the Trustee, the Environmental Representative must act independently of the Company, the Trustee, RMS, Leighton Contractors, the On-Ramp D&C Contractor and any of their subcontractors, and nothing it does or fails to do will entitle the Company or the Trustee to make any claim against RMS.

7.9 Third party claims

The Company and the Trustee must indemnify RMS against any claim or loss arising from physical damage and/or injury to others, including any consequential economic losses, caused by or connected in any way with:

- Their work on the upgrade project
- A breach of their obligations under the Upgrade Project Deed
- The upgrade project's works other than the temporary works (but only while they are still carrying out work on the relevant "stage" of the upgrade project, after which the general Project Deed indemnities described in section 9.3 will apply), or
- RMS's ownership of the part or all of the upgrade construction sites or temporary areas (but again only while the Company and/or the Trustee are still carrying out work on

the relevant "stage" of the upgrade project, after which the Project Deed indemnities described in section 9.3 will apply).

They must also indemnify RMS against pure economic losses to third parties caused by or connected in any way with any of these four factors. However, with the exception of any pure economic losses arising from Company and/or Trustee breaches of their obligations not to close or materially reduce the M2 motorway's connections with the Lane Cove Tunnel or the Westlink M7 motorway (see section 7.10 below), this indemnity will not apply:

- To any pure economic losses arising from the Government's decision to proceed with the M2 upgrade project, the existence or location of the upgrade project or the existence or location of local area traffic management measures in accordance with the upgrade project's planning approval, or
- To the extent that the aggregate of all claims for pure economic losses, not counting any Lane Cove Tunnel/ Westlink M7 connection claims, has exceeded a cap of \$5 million.

The Company and the Trustee must, at their own cost, promptly repair any third party property damage caused by or connected in any way with their work on the upgrade project, the "project works" or a breach of their obligations under the Upgrade Project Deed or for which they are otherwise legally liable, or pay reasonable compensation to the affected person if they agree to this instead. If they fail to do so, RMS may carry out these repairs or pay the compensation and recover its costs from the Company and/or the Trustee as a debt.

7.10 Traffic management during construction

The Company and the Trustee are responsible for controlling, directing and protecting all traffic affected by the upgrade project, in accordance with detailed requirements set out in the Upgrade Project Deed's *Scope of Works and Technical Criteria*, including a periodically updated *Traffic Management and Safety Plan*, *Traffic Management Plans* as specified in upgrade *Scope of Works and Technical Criteria*, *Road Occupancy Licences* issued by RMS in accordance with the upgrade *Scope of Works and Technical Criteria* and any other directions by RMS or other relevant authorities.

RMS has acknowledged that the Company and the Trustee may appoint Leighton Contractors and/or the On-Ramp D&C Contractor as their agent for these tasks.

RMS and any other relevant authority may, at any time and after giving reasonable notice (except in an emergency), direct the Company and/or the Trustee to temporarily cease their upgrade works and re-open a road lane or shoulder that has been closed, even if the closure is in accordance with a *Road Occupancy Licence*.

In carrying out their work on the upgrade project the Company and the Trustee must ensure the M2 motorway's connections with the Lane Cove Tunnel and the Westlink M7 motorway are

not closed or materially reduced at any time. As already indicated in section 7.9, there is no cap on their liability to indemnify RMS against any claims or losses, including pure economic losses, resulting from any breaches of these obligations.

7.11 Design and construction programs, plans, reports, reviews, inspections and administration

Initial *Overall D&C Programs* setting out timeframes for the upgrade project's design and construction activities are exhibited to the Upgrade Project Deed. These programs must be progressively updated by the Company and the Trustee and supplemented by a series of *Subsidiary D&C Programs* and *Subsidiary D&C (On-Ramp) Programs* as set out in Annexure A to the Upgrade Project Deed and a documentation schedule appended to the Upgrade Project Deed's *Scope of Works and Technical Criteria*. These updates must be submitted to RMS and the Independent Verifier.

The Company and the Trustee may choose to accelerate their upgrade works, but if they do so RMS will not be obliged to assist them to complete any of the six "stages" of the upgrade works prior to its "date for construction completion" as listed in section 7.1 above, and the times for RMS to carry out its own obligations will not be affected.

Similarly, an initial *Project Management Plan*, *Construction Plan*, *Community Involvement Plan*, *Traffic Management and Safety Plan*, *Occupational Health, Safety and Rehabilitation Management Plan*, *Work Health and Safety Management Plan* (for the Lane Cove Road on-ramp works), *Project Training Plan* and *Environmental Management Plan* are appended to the upgrade *Scope of Works and Technical Criteria*, and these "**project plans**", along with a *Quality Plan* and a *Design Plan*, must be developed, amended and updated by the Company and the Trustee throughout the design and construction of the upgrade works, again in accordance with detailed requirements specified in Annexure A to the Upgrade Project Deed and the upgrade *Scope of Works and Technical Criteria*, and submitted to RMS and the Independent Verifier.

RMS may, but need not, review any of these D&C programs and project plans.

The Company and the Trustee must promptly submit an amended "project plan" if RMS notifies them within 15 business days that any of these plans does not comply with the Upgrade Project Deed. RMS may also order amendments or updating of a project plan if it has not been adequately updated as required or if it otherwise does not comply with the Upgrade Project Deed.

The Company and the Trustee have warranted that each of their "project plans" will be fit for its intended purpose and have undertaken to comply with each updated plan that has not been rejected by RMS.

The Company's and Trustee's compliance with their *Quality Plan*, *Environmental Management Plans*, *Occupational Health, Safety and Rehabilitation Plan* and *Work Health and Safety Management Plan* must be independently audited, by an auditor acceptable to RMS, at least every six months during the design and construction of the upgrade project.

The Trustee and the Company had to give the RTA a *Project Industrial Relations Plan* before commencing any of their works, and must resubmit this plan on a monthly basis for RMS implementation reviews, making all relevant industrial relations management records held by the Company and the Trustee, including those of Leighton Contractors, the On-Ramp D&C Contractor and their subcontractors, available to RMS on request.

RMS may, but need not, inspect, review and monitor the works being carried out by the Company and the Trustee, and monitoring and testing of any aspect of their work may be carried out by RMS or the Independent Verifier at any time.

If RMS notifies the Company and/or the Trustee that the works are not being constructed in accordance with the Upgrade Project Deed, they must correct this non-compliance unless they notify RMS within five business days that they disagree with RMS's notice, in which case RMS and the Company and/or the Trustee must attempt to resolve the matter. If they cannot do so within five business days, either party may refer the matter for determination by the Independent Verifier within the following five business days.

Annexure A to the Upgrade Project Deed also specifies arrangements for:

- Fortnightly site meetings between representatives of RMS, the Company and the Trustee and representatives of others, including Leighton Contractors, the On-Ramp D&C Contractor and their subcontractors, as required by RMS
- Regular reporting by the Company and the Trustee to RMS, as specified in the documentation schedule appended to the upgrade *Scope of Works and Technical Criteria*
- At least monthly meetings of a Project Review Group, and monthly or otherwise agreed meetings of a smaller, higher-level Project Control Group, to review the progress of the upgrade and, in the latter case, assist in resolving any special matters referred by any of the parties, and
- The Company and the Trustee to notify RMS of any claims against RMS and the bases for any such claims.

It also sets out obligations on the Company and the Trustee to obtain and pay for all the water, sewerage, drainage, power, communications and similar services required for the upgrade, provide security measures to protect their sites and works, implement specified occupational health and safety measures (in the Company's case, as the principal contractor under the Occupational Health and Safety Regulation 2000 (NSW), the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW), give preference to Australian and New Zealand goods and services, comply with specified

training guidelines and requirements, implement specified construction industry codes and other employee relations requirements, carry out specified community liaison programs and activities, provide written reports on all accidents on or near their worksites, carry out their “property works” and obtain certification of these works and erect only specified types of signs.

7.12 Quality assurance and verification

The Company and the Trustee have assumed all responsibility for the quality and durability of their upgrade designs and works.

They must implement a quality system for all of their upgrade design and construction activities and works as specified in the Upgrade Project Deed’s *Scope of Works and Technical Criteria*, including the development and implementation of a *Quality Plan*, and have had to appoint a Quality Manager to independently certify and report on the integrity and effectiveness of this quality system. As already indicated, their compliance with their *Quality Plan* must be independently audited, by an auditor acceptable to RMS, at least every six months during the design and construction of the upgrade project. Procedures for the correction of non-conformances are set out in the *Scope of Works and Technical Criteria* and must be included in the *Quality Plan*.

The Independent Verifier—which has been engaged under the Deed of Appointment of Independent Verifier, as amended and restated by the Deed of Amendment and Restatement (Independent Verifier Deed), at the cost of the Company and the Trustee, but is obliged to act independently of RMS, the Company, the Trustee, Leighton Contractors, the On-Ramp D&C Contractor and any other subcontractors—must:

- Verify that the upgrade works comply with the requirements of the Upgrade Project Deed
- Make a series of binding determinations, as set out in the Upgrade Project Deed and listed in a schedule to the Amended and Restated Deed of Appointment of Independent Verifier, and
- Undertake other design and construction review, certification and reporting responsibilities as set out in the Upgrade Project Deed and listed in the schedule to the Amended and Restated Deed of Appointment of Independent Verifier.

The Independent Verifier has acknowledged that RMS, the Company and the Trustee will be relying on its skills and expertise, and warranted that it will perform its services honestly, diligently, reasonably and with the professional care and skills expected of an expert providing these types of services within the construction industry generally and the construction of major engineering works in particular.

Any failure by the Independent Verifier, RMS or anyone engaged by RMS to detect any defect in the works, including any failures resulting from negligence, will not relieve the Company or the

Trustee of any of their obligations or liabilities under the Upgrade Project Deed.

7.13 Subcontracting

As already indicated in sections 2.2.7 and 2.2.10, to assist the Company and the Trustee in satisfying their design and construction obligations under Annexure A to the Upgrade Project Deed the Company and the Trustee have entered into:

- The M2 Motorway Upgrade Design and Construction Deed with Leighton Contractors, dated 25 October 2010, for the design and construction of the 2010-specified “Stage 1”, “Stage 2”, “Stage 3” and “Stage 4” upgrade works, and
- The Lane Cove Road On-Ramp Design and Construction Deed with the On-Ramp D&C Contractor, dated 21 May 2013, for the design and construction of the 2013-specified “Stage 3A” and “Stage 4A” upgrade works.

These engagements of Leighton Contractors and the On-Ramp D&C Contractor do not limit or otherwise affect the obligations and liabilities of the Company and the Trustee to the Minister for Roads and RMS under the Upgrade Project Deed, and the Company and the Trustee are liable to RMS for the acts and omissions of Leighton Contractors, the On-Ramp D&C Contractor, their subcontractors and their employees and agents as if these were acts or omissions by the Company and the Trustee.

The Company and the Trustee must:

- Notify RMS of any proposed or executed contract concerning their work on the upgrade project with a contract sum of more than \$500,000
- If requested, give RMS a copy of any such contract with a contract sum of more than \$20 million and access to any other such contract for a lesser sum, including all of the contract’s plans, specifications and drawings but without having to include any commercially sensitive information
- Ensure any subcontractors of Leighton Contractors and the On-Ramp D&C Contractor for specified types of work are pre-qualified or registered with RMS, and
- Ensure that all subcontracts by Leighton Contractors or the On-Ramp D&C Contractor for other specified types of work, plus all subcontracts by them for any types of work with a contract sum exceeding or expected to exceed \$2.5 million, include provisions for the novation of these subcontracts to RMS or the termination of these subcontracts by Leighton Contractors or the On-Ramp D&C Contractor, as applicable, if the Upgrade Project Deed is terminated for an extended delay resulting from the discovery of an artefact or a native title claim (see section 7.7 above and section 12.8 below) or for an “event of default” as defined in the Upgrade Project Deed (see sections 12.3 and 12.8).

7.14 Loss or damage and insurance of the upgrade works

The Company and the Trustee bear the risk of loss or damage to the upgrade project's works at all times, except in the case of loss or damage resulting from an "uninsurable event".*

The Company and the Trustee have had to effect and must maintain the following insurance policies:

- Contract works or construction risks insurance for Stages 1, 2, 3 and 3A of the upgrade works, for risks described in an exhibit to the Upgrade Project Deed, with \$435 million of cover, plus additional cover for specified purposes, continuing until "final completion" of the upgrade works (i.e. until the completion of "Stage 4") and then, if "Stage 4A" has not yet been completed, \$20 million of cover, plus additional cover for specified purposes, for Stage 3A only, until the date of completion of the Lane Cove Road on-ramp upgrade works (i.e. until the completion of "Stage 4A")
- Transit insurance, until the later of the date of completion of "Stage 4A" and the date of "final completion" of the upgrade works (i.e. the completion of "Stage 4")
- Third party liability insurance, for at least \$200 million for each occurrence and with no aggregate limit, until the end of the last defects correction period (see section 7.16 below)
- Professional indemnity insurance for at least \$50 million per claim for Stages 1, 2, 3 and 4 of the upgrade works, until six years after the end of the last defects correction period for these stages of the works (see section 7.16), and at least \$20 million per claim for Stages 3A and 4A of the upgrade

works, until six years after the end of the last defects correction period for these stages

- Workers' compensation insurance, until the later of the date of completion of "Stage 4A" and the date of "final completion" of the upgrade works (i.e. the completion of "Stage 4")
- Motor vehicle third party property damage insurance, for at least \$20 million per claim and with no aggregate limit, until the later of the date of completion of "Stage 4A" and the date of "final completion"
- Advance business interruption insurance covering all debt servicing obligations, other standing charges and losses of anticipated net revenue for 24 months, until the later of the date of completion of "Stage 4A" and the date of "final completion"), and
- Directors' and officers' liability insurance for at least \$10 million per occurrence and \$10 million per year in total, until the later of the date of completion of "Stage 4A" and the date of "final completion" of the upgrade works.

However, the Company and the Trustee were and are not required to insure against an "uninsurable" risk.†

All of the required insurance policies had to and must be with insurers approved by RMS and comply with terms set out in the Upgrade Project Deed or otherwise approved by RMS. Procedural requirements are also set out in the Upgrade Project Deed.

If the Company and/or the Trustee fails to effect or maintain any of the required policies or pay any premium, RMS may do so

* "Uninsurable events", as defined in Annexure A to the Upgrade Project Deed, include any war, invasion, act of a foreign enemy, hostility between nations, civil insurrection, military coup, radioactive contamination (from nuclear waste or the combustion of nuclear fuel) or confiscation, nationalisation, requisition or property damage under the order of any government which is beyond the reasonable control of the Company, the Trustee, Leighton Contractors, the On-Ramp D&C Contractor and any of their subcontractors, causes the Company and/or the Trustee to be unable to perform their obligations under the Upgrade Project Deed, and could not have been prevented or avoided by the Company, the Trustee, Leighton Contractors, the On-Ramp D&C Contractor or their subcontractors by their taking the steps a prudent, experienced and competent concessionaire, designer or constructor would have taken.

"Uninsurable events" also include any other unanticipated physical event which:

- Is beyond the reasonable control of the Company or the Trustee and their contractors and which could not have been prevented or avoided by their taking the steps a prudent, experienced and competent concessionaire, designer or constructor of tollroads would have taken, including the exercise of reasonable care
- Is not an exercise by RMS of any of its statutory functions or powers, and
- Directly results in a loss connected with a physical loss of or damage to the upgrade's "project works" (i.e. the M2 motorway upgrade works and the service, local road and property works, but not the temporary works)

and for which:

- Insurance is not available from insurers in the Australian and London insurance markets at that time with a claim paying ability rating of at least "A" rating by AM Bet or another recognised insurance rating agency, or
- Insurance is available from such insurers, but only on terms which, in the opinion of an independent insurance broker acceptable to the Minister for Roads, RMS, the Company and the Trustee, mean prudent, experienced and competent concessionaires, designers and constructors of tollroads are generally not insuring against the event, and the Company and the Trustee have not insured against the event, or
- The loss suffered by the Company or the Trustee exceeds the amount recoverable (after deductibles) under any of the Company's insurance policies

provided:

- The event is not caused by a breach of the Upgrade Project Deed or any other contract by the Company, the Trustee or their contractors
- The event is not caused by any negligence by the Company, the Trustee, their contractors or their agents or employees, and
- If there is any insurance,
 - ♦ The event is not caused by an act or omission (including a breach of the insurance policy or negligence) by the Company, the Trustee or their contractors
 - ♦ The insurer has not failed to pay because it was insolvent, and
 - ♦ The Company or the Trustee did not under-insure (regardless of whether they complied with the insurance liability limit requirements of Annexure A to the Upgrade Project Deed).

instead and recover its costs from the Company and/or the Trustee, as applicable, as a debt.

The contract works/construction risks, transit, third party liability, motor vehicle (for Stages 1, 2, 3 and 4 only) and business interruption policies must be in the joint names of RMS, the Company, the Trustee and others with insurable interests under the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier (under the Deed of Amendment and Restatement (Independent Verifier Deed), as now amended by the Change to Services Letter (IV) of 21 May 2013), the Deed of Appointment of ER (as now amended by the Change to Services Letter (ER) of 21 May 2013), the Upgrade Side Deed, the On-Ramp D&C Side Deed, the RTA Deed of Charge of May 2009 (as amended by the Deed of Amendment (RTA Charge)), the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010 and any other contracts which the Minister for Roads, RMS, the Company and the Trustee agree are “project documents” for the purposes of the Upgrade Project Deed or the upgrade project.

If there is any loss or damage to the upgrade works, other than as a result of an “uninsurable event”, the Company and/or the Trustee, as applicable, must promptly make good the loss or damage. In doing so they must:

- After a reasonable time for inspections by the insurers, immediately start clearing any debris and carrying out initial repairs
- Promptly consult with RMS and take all steps necessary to promptly repair or replace the loss or damage in order to minimise disruption to the upgrade project and, as much as possible, continue to comply with their obligations under the upgrade project’s contracts
- Minimise the impacts of these activities on the upgrade works
- Coordinate the repair and reinstatement of the upgrade works with the repair and reinstatement of any lost or damaged sections of the existing motorway (see section 8.10 below), and
- Keep RMS fully informed of progress.

If the insurance proceeds received under the Company’s upgrade contract works or construction risk policy and its upgrade professional indemnity policy, or any insurance proceeds from the Company’s and Trustee’s policy insuring the existing motorway against loss or damage (see section 8.10),

are less than or equal to \$50 million, indexed in line with the weighted average capital cities CPI from 1 July 1994 (i.e. about \$82.71 million as at 31 March 2013) they must be applied to the repair and reinstatement of the upgrade works and the motorway. If either of these sets of insurance proceeds exceeds this amount, the proceeds must again to be applied to the repair and reinstatement of the upgrade works or the motorway, *provided*:

- The insurance proceeds and other sources of funds are sufficient to repair or reinstate the upgrade works and the motorway within a reasonable time
- The Trustee is able to meet its obligations to repay the debt financiers substantially in accordance with its debt financing arrangements, and
- It is economically viable to repair or reinstate the works and the motorway.

However, if these three requirements have not been satisfied within six months of the receipt of the insurance proceeds, or after any renegotiations under the Project Deed’s renegotiation arrangements described in section 10.1 below, or after any expert determination under the Project Deed’s dispute resolution procedures described in section 9.15 below, the debt financiers’ Agent may direct the debt financiers’ Security Trustee to apply part or all of the insurance proceeds to repay the debt financiers, with the balance, if any, being paid into a trust account established by RMS, the Company and the Trustee. This balance, if any, must then be applied to the repair and reinstatement of the upgrade works and the motorway.

All of the insurance proceeds received under the other insurance policies must be applied to the repair and reinstatement of the upgrade works and the motorway.

7.15 Completion of the upgrade works

The Company and the Trustee have had to and must expeditiously and diligently progress their upgrade design and construction work and, as already indicated in section 7.1, use their best endeavours to achieve:

- “**Construction completion**” of Stage 3 of the upgrade works—*meaning* the certified completion of this Stage apart from minor defects—by its “date for construction completion”, 18 January 2013*
- “Construction completion” of Stage 3A by 8 July 2014

‡ (previous page) “**Uninsurable risks**” are defined in the Upgrade Project Deed as risks for which:

- Insurance is not available from insurers in the Australian and London insurance markets with a claim paying ability rating of at least “A” rating by AM Bet or another recognised insurance rating agency, or
- Insurance is available from such insurers, but only on terms which, in the opinion of an independent insurance broker acceptable to the Minister for Roads, RMS, the Company and the Trustee, mean prudent, experienced and competent concessionaires, designers, contractors and operators of tollroads are generally not insuring against the risk, and the Company and the Trustee have not insured against the risk, or
- The loss suffered by the Company or the Trustee as a result of the occurrence of the risk would exceed the amount recoverable (after deductibles) under any of the Company’s insurance policies.

* As already indicated in sections 2.2.9, 2.2.11 and 7.1, in practice “construction completion” of Stage 3 was achieved (after the date of this *Summary of Contracts*) on 31 July 2013.

- “Construction completion” of Stage 4A by 30 September 2014, and
- **“Final completion”**—*meaning* “construction completion” of Stage 4—by 18 January 2015.

If the Company and/or the Trustee become aware of any matter which will or might delay the completion any stage of the works by its “date for construction completion”—for Stage 1 this date was 18 March 2012 and for Stage 2 it was 18 August 2012, and in practice Stage 1 was completed on 23 July 2012 and Stage 2 on 18 January 2013—they must immediately notify RMS of this in writing, providing details and a proposed corrective action plan involving, for example, changes to construction sequencing or methodologies. The Company and/or the Trustee must also give RMS a proposed corrective action plan if RMS notifies them that RMS believes they will not achieve completion of any stage of the works by its “date for construction completion”.

RMS then has five business days to notify the Company and/or the Trustee, as applicable, if it is not satisfied this plan will mitigate the effects of the delay. If it does so, an amended plan must be submitted. If it does not, the Company and/or the Trustee must implement the plan.

The Company and the Trustee must prepare and give RMS and the Independent Verifier “as constructed” documentation, construction completion reports and pavement reports as specified in the documentation schedule appended to the Upgrade Project Deed’s *Scope of Works and Technical Criteria*.

The Project Deed sets out procedures for the advance notification of estimated completion dates for each stage of the upgrade project and the formal certification of construction completion by the Independent Verifier. The completion of each stage has been and will be subject to a series of pre-conditions and associated requirements, detailed in the Upgrade Project Deed, including:

- The provision of certificates required for the upgrade’s property works, copies of independent road safety audits, drainage design approvals and any approvals required for the opening, use and operation of the upgrade stage, and evidence that the insurance policies required under the Upgrade Project Deed (see section 7.14) and the Project Deed have been effected
- A formal notification by the Company and/or the Trustee to RMS of their intention to open traffic lane(s) for public use
- In the case of Stage 1, a declaration of the M2 upgrade as a “tollway” by the Minister for Roads under section 52 of the Roads Act 1993, and a direction by the Minister that the functions of any road authority concerning the M2 upgrade are to be the responsibility of RMS (in practice, this declaration was made on 17 December 2010 and the direction was issued, after the 23 July 2012 certification of the “construction completion” of Stage 1, on 7 December 2012)

- In the case of Stage 3, the NSW Fire Brigade’s satisfaction with the structure, materials and fire protection system of the twin tunnels under Norfolk Road
- In the case of Stage 4 (“final completion”), and again in the case of Stage 4A, the updating, submission, review, amendment and finalisation of the motorway’s existing *Maintenance Manual* (see section 8.1) to incorporate maintenance tasks and procedures associated with the upgrade works
- In the case of Stage 4 (“final completion”), the provision by the Company and the Trustee to RMS of an unconditional \$2 million bank guarantee in favour of RMS, in a form specified in a schedule to Annexure A to the Upgrade Project Deed, as a security for their performance of obligations to correct defects in the completed upgrade works, as described in section 7.16 below, and
- In the case of Stage 4A, the provision by the Company and the Trustee to RMS of a further unconditional \$200,000 bank guarantee in favour of RMS, again in a form specified in a schedule to Annexure A to the Upgrade Project Deed, as a security for their performance of obligations to correct defects in the completed upgrade works, again as described in section 7.16 below.

RMS may use the proceeds of these two bank guarantees only to reimburse RMS for any costs, expenses, losses, damage or liabilities for which the Company and/or Trustee is liable in connection with (respectively) Stages 1 to 4 and Stages 3A and 4A of the upgrade works.

7.16 Correction of defects

The Company and the Trustee must correct all defects existing at the time of certification of completion of each stage of the upgrade works as soon as practicable.

In addition, during “defects correction periods” which are specified in the Upgrade Project Deed the Company and the Trustee must correct all defects in their motorway upgrade works, local road works, service works and property works notified by RMS, within reasonable times specified by RMS.

These “defects correction periods” are:

- For each of Stages 1, 2 and 3 of the motorway upgrade works, the period *from* the completion of the relevant stage *until* 12 months after “final completion” (and also, for each new defect notified by RMS and corrected, the period ending 12 months after the completion of the correction)
- For Stage 3A of the motorway upgrade works, the period *from* the completion of Stage 3A *until* 12 months after the completion of Stage 4A (and also, for each new defect notified by RMS and corrected, the period ending 12 months after the completion of the correction)
- For each discrete part of the local road works, the period *from* the date on which RMS and the Independent Verifier are given a copy of a notice by the relevant local authority that the work has been completed *until* two years after the

completion of the stage of the upgrade project of which the local road works component is part (and also, for each new defect notified by RMS and corrected, the period ending two years after the completion of the correction)

- For each discrete part of the service works, the period *from* the date on which RMS and the Independent Verifier are given a copy of a notice by the relevant authority that the work has been completed *until* 12 months after the completion of the stage of the upgrade project of which the service works component is part (and also, for each new defect notified by RMS and corrected, the period ending 12 months after the completion of the correction)
- For each discrete part of property works associated with Stages 1, 2 and 3, the period *from* the later of (a) the date on which this part of the works was completed and (b) the date on which the relevant certification is submitted to RMS and the Independent Verifier *until* 12 months after “final completion” (and also, for each new defect notified by RMS and corrected, the period ending 12 months after the completion of the correction), and
- For each discrete part of property works associated with Stage 3A, the period *from* the later of (a) the date on which this part of the works was completed and (b) the date on which the relevant certification is submitted to RMS and the Independent Verifier *until* 12 months after the completion of Stage 4A (and also, for each new defect notified by RMS and corrected, the period ending 12 months after the completion of the correction).

If the Company and/or the Trustee disagree with an RMS direction to carry out corrective works, they must notify RMS of this, in writing, within ten business days, and RMS and the Company and/or the Trustee must reasonably attempt to resolve their differences. If they cannot do so within ten business days

of the notification, either may refer the matter for final, binding determination by the Independent Verifier, which must make its determination within ten business days of this referral.

If the Company and/or the Trustee fail to comply with an RMS direction to carry out corrective works, RMS may employ others to carry out these works and recover its costs and other losses from the Company and/or the Trustee, as applicable, as a debt.

RMS may, but need not, inspect the Company’s and Trustee’s progress with their defects correction obligations.

Subject to RMS’s right to have recourse to the unconditional bank guarantees provided to RMS as securities for the Company’s and Trustee’s performance of their defects correction obligations, RMS must release these undertakings within 20 business days of the later of:

- The date of expiry of the last of the defect correction periods associated with Stages 1, 2, 3 and 4 (in the case of the \$2 million bank guarantee) and Stages 3A and 4A (in the case of the \$200,000 bank guarantee), and
- The date on which RMS has received releases signed by the owners and occupiers of all “extra land” parcels (see section 7.5) used by the Company and the Trustee for Stages 1, 2, 3 and 4 (in the case of the \$2 million bank guarantee) and Stages 3A and 4A (in the case of the \$200,000 bank guarantee) and by others with an interest in this “extra land”, releasing RMS from all claims and demands against RMS (or, in the case of all failures or refusals by the owners, occupiers or others to sign such a release, written statements confirming this from the Company and the Trustee).

As described in section 8.1 below, the Company has ongoing obligations throughout the operating term of the motorway to correct all defects as soon as possible.

8 Operation, maintenance and repair of the motorway

8.1 The Company's general obligations

The Company must operate, maintain and repair the M2 motorway, including each completed stage of the 2010–15 upgrade from its date of “construction completion” (section 7.15), plus the motorway's ancillary drainage basins and related watercourses on non-motorway land, in accordance with:

- The Project Deed's *Scope of Works and Technical Criteria*, which:
 - Was automatically amended and restated upon the completion of Stage 1 of the upgrade works on 23 July 2012 so as to extend to the operation, maintenance and repair of the 2010-specified upgrade works (i.e. Stages 1, 2, 3 and 4, as then specified)
 - Will be automatically amended again, upon the completion of Stage 3A of the upgrade works, so as to extend to the operation, maintenance and repair of the 2013-specified Lane Cove Road on-ramp works, and
 - More generally, may be amended by agreement between the Company, the Trustee and RMS and with the consent of the debt financiers' Agent, as already discussed in section 4.3 above
- An operation, maintenance and repair manual, which:
 - Had to be prepared by the Company, in accordance with the Project Deed's *Scope of Works and Technical Criteria* and otherwise as reasonably acceptable to the RTA, and given to the RTA three months before all of the original M2 motorway was opened to traffic (in practice, before 26 February 1997)
 - Had to be updated and resubmitted to the RTA by the Company and the Trustee in response to the January 2007 westbound third lane conversion project works described in section 6, and
 - Must be updated twice again, to cover the maintenance of the 2010–15 upgrade works, prior to “final completion” of the upgrade works (i.e. prior to the completion of Stage 4) and prior to the completion of Stage 4A of the upgrade works (see section 7.15)
- The Project Deed's requirements for compliance by the Company and the Trustee with the conditions of the motorway's original planning approval of 20 May 1993 (as confirmed on 2 August 1994), other than those for which

RMS has expressly assumed responsibility, as already summarised in section 4.10

- Additional Project Deed requirements, which took effect on 18 November 2010, for compliance by the Company, following the completion of each stage of the upgrade works, with all of the conditions of the upgrade project's planning approval of 21 October 2010, as modified on 28 February 2013, that are relevant to the operation, maintenance and repair of that stage as part of the motorway, other than those conditions for which RMS has expressly assumed responsibility (see section 7.3), and
- In the case of the permanent remediation works that are required to improve the stability of the motorway's northern embankment near Vimiera Road in Marsfield, as broadly described in sections 2.2.9 and 7.2, the VRE Remediation Works Agreement of 16 May 2013 (for details, see section 8.9 below).

The Company's obligations to operate, maintain and repair the motorway and its ancillary works commenced on the “motorway commencement date”, 26 May 1997, and will apply throughout the terms of the Company Lease, Trust Lease and Trust Concurrent Lease (and, from the date of “final completion” of the upgrade works, the terms of any M2 Upgrade Company Leases, M2 Upgrade Trust Leases and M2 Upgrade Trust Concurrent Leases) (see sections 8.2 and 8.3 below).

The Company must keep the motorway open to traffic unless RMS otherwise agrees, or unless:

- It is necessary to close the motorway because of:
 - The requirements of a government authority
 - A “*force majeure* event” of a type defined in the Project Deed, as discussed in section 10.1 below, or
 - A material threat to motorway users' health or safety
- Prior to the later of the date of “construction completion” of Stage 4A of the upgrade works and the date of “final completion” of the upgrade works, it is necessary to close any part or all of the motorway for the design and construction of the upgrade works, to remedy an “event of default” under the Upgrade Project Deed (see section 12.3), to comply with an RMS direction or other obligation under the Upgrade Project Deed, to allow RMS to exercise its “default step-in rights” under the Upgrade Project Deed (see section 12.6) or for the reinstatement of the motorway in accordance with the Upgrade Project Deed, or

- From the later of the date of “construction completion” of Stage 4A of the upgrade works and the date of “final completion” of the upgrade works, it is necessary to close any part or all of the motorway to carry out works required to rectify a defect under the arrangements described in section 7.16.

The Company has had to and must open the traffic lanes forming part of each stage of the upgrade works to traffic as soon as practicable after the completion of the relevant stage, or earlier if RMS notifies the Company and/or the Trustee that RMS reasonably believes the lanes can be opened for traffic and the Company and/or the Trustee have satisfied RMS that they have effected all the insurance policies required under the Project Deed (see section 8.10) and the Upgrade Project Deed (see section 7.14).

However, the Company must not allow members of the public to access the motorway, its land or its ancillary works if it is aware of any material threat to their health or safety.

The Company’s maintenance and repair obligations under the Project Deed include:

- At least monthly inspections.
- The written notification of any material damage, defects or disrepair and proposed corrective actions.
- The written notification of all accidents involving material damage or injury.
- Six-monthly reports to RMS on all maintenance and repairs.
- Compliance, within a reasonable time, with reasonable RMS directions for corrective works, with written reports to the RMS on the steps taken by the Company.
- The submission of annual maintenance and repair budgets, including estimates of periodic maintenance and capital works expenditures, at the start of each financial year (at the Company’s cost) and at any other time reasonably requested by RMS (at RMS’s cost).
- The operation of a maintenance and repairs accrual account, which originally had to be with Westpac and another financial institution approved by the RTA but which, since the execution of the RTA Consent Deed of September 1999, may now also be with the Commonwealth Bank, the National Australia Bank or any other financial institution approved by RMS. This account must always have sufficient funds for the periodic maintenance and capital works budgeted for the following 12 months, so that maintenance does not fall below the standards specified in the Project Deed’s *Scope of Works and Technical Criteria*.
- Periodic maintenance and capital works complying with the standards specified in the Project Deed’s *Scope of Works and Technical Criteria* and the operation, maintenance and repair manual.

RMS may enter and inspect the motorway, its land and its ancillary works at any time, without causing unnecessary inconvenience to the Company, the Trustee or motorway users.

If RMS considers there is a threat to the safety of motorway users or other members of the public, it may take any action it considers appropriate, after notifying the Company in writing and giving it a reasonable time to deal with the threat. The Company must indemnify RMS against any damage, expense, loss or liability it incurs in exercising this right, apart from any caused by negligence or wilful default by RMS or its contractors.

In addition to these arrangements under the Project Deed,

- The WSO/M2 Interface Agreement and the Western Sydney Orbital Project Deed, already discussed in section 5.1, set out:
 - ♦ Mutual rights of access to each other’s land by the Company and WSO Co Pty Limited for the maintenance and repair of, respectively, the M2 motorway and the Westlink M7 motorway
 - ♦ Requirements for WSO Co to maintain and repair M7 interface works carried out by WestLink Motorway Limited and WSO Co on the M2 or affecting any part of the M2 or M2–M7 interface systems and structures, and for RMS to take over this task if the Western Sydney Orbital Project Deed were terminated, and
 - ♦ General dispute resolution procedures, leading to expert determination, for disputes between RMS and the Company and/or the Trustee under the WSO/M2 Interface Agreement.
- The LCT/M2 Interface Agreement and the Lane Cove Tunnel Project Deed, discussed in section 5.2, set out:
 - ♦ Requirements for Lane Cove Tunnel Company Pty Limited, later renamed as Connector Motorways Pty Limited and now replaced by LCT–MRE Pty Limited, to maintain and repair the Lane Cove Tunnel project works located on the M2 motorway’s “Company land” or “Trust land”, or instead to arrange for the Company to maintain and repair these works for Connector Motorways/LCT–MRE and for RMS to take over this task if the Lane Cove Tunnel Project Deed were terminated
 - ♦ More specifically, requirements for:
 - Connector Motorways/LCT–MRE to operate any parts of the Lane Cove Tunnel works which are located within the areas leased or to be leased under the M2 motorway’s contracts
 - Connector Motorways/LCT–MRE also to maintain and repair any Lane Cove Tunnel works in these M2 lease areas, or fulfil this obligation by arranging for the Company to undertake these tasks
 - RMS to procure irrevocable licences from the Company so Connector Motorways/LCT–MRE may access the M2 lease areas for inspections, maintenance and repairs or during emergencies
 - Connector Motorways/LCT–MRE, Lane Cove Tunnel Nominee Company Pty Limited (now replaced by

- LCT–MRE Nominees Pty Limited) and the Company to discuss and develop procedures for joint Lane Cove Tunnel motorway/M2 motorway management of emergencies, incidents and maintenance, and
- Connector Motorways/LCT–MRE and the Company to make live video feeds from their surveillance cameras available to each other, and
- General dispute resolution procedures, leading to expert determination, for disputes between RMS and the Company and/or the Trustee under the LCT/M2 Interface Agreement.

At the end of the terms of the leases, the Company and the Trustee must surrender the motorway, its ancillary drainage basins and watercourse works and its plant, equipment, fixtures, furniture, fittings and other improvements to RMS in a condition consistent with the Company’s maintenance and repair obligations under the Project Deed, and must give RMS all manuals for the motorway’s plant, equipment, fixtures, furniture, fittings and other improvements.

8.2 The granting of the leases

8.2.1 The Company Lease, the Trust Lease, the Trust Concurrent Lease and the Sublease

The RTA was obliged to be the registered proprietor of all the “Company land” and “Trust land” shown in an exhibit to the Project Deed, free of all encumbrances, easements (other than for services or existing roads) or rights of way which would materially prejudice the ability of the Company or the Original Trustee/Responsible Entity/Trustee to perform their contractual obligations, before the “motorway commencement date” of 26 May 1997.

Under the Project Deed the RTA, the Company and the Original Trustee/Responsible Entity/Trustee agreed to do everything reasonably necessary to permit the completion and registration of the Company Lease, the Trust Lease and the Trust Concurrent Lease as expeditiously as possible.

More specifically, the Company and the Original Trustee were obliged to notify the RTA of the final boundaries of the “Company land” (the land to be leased under the Company Lease and the Trust Concurrent Lease) and the “Trust land” (the land to be leased under the Trust Lease), for the purposes of these three leases, as soon as practicable.

The RTA was (and RMS now is) then obliged, within 18 months of this notification, to:

- Survey the motorway, in consultation with the Company and the Original Trustee/Responsible Entity/Trustee to identify the land and strata to be leased
- In consultation with the Company and the Original Trustee/Responsible Entity/Trustee prepare, arrange and expedite the registration of plans of consolidation or subdivision, so as to reduce the number of titles as much as practically possible

- Give the Company and the Original Trustee/Responsible Entity/Trustee a copy of each registered plan of consolidation or subdivision as soon as practicable after its registration
- Ensure that the Company Lease and the Trust Concurrent Lease—which must be in the forms of an “annexed Company Lease” and an “annexed Trust Concurrent Lease” set out in two exhibits to the Project Deed, as amended in 2010 by the Upgrade Project Deed, and must be completed by RMS—are in a registrable form, and
- Ensure that the Trust Lease—which must be *substantially* in the form of an “annexed Trust Lease” set out in another exhibit to the Project Deed, again as amended in 2010 by the Upgrade Project Deed, and must again be completed by RMS—is in a registrable form.

If the Company and the Original Trustee/Responsible Entity/Trustee agreed or agree that the RTA/RMS was or is diligently performing these obligations, they were and are obliged to grant the RTA/RMS any extension of the 18-month deadline reasonably required by the RTA/RMS.

Under the RTA Consent Deed of August 1994 (and since 2010 the Amended and Restated RTA Consent Deed), the RTA/RMS has promised the debt financiers’ Security Trustee that it would and will perform all of these obligations within the required timeframe, as extended, and has expressly acknowledged the importance to the Security Trustee of the leases’ being granted and registered as soon as practicable. If RMS fails to perform these obligations, the Security Trustee may seek an order for specific performance.

In practice,

- The final boundaries separating the “Company land” and “Trust land” were notified to the RTA on 27 June 1997
- The other boundaries of the “Company land” and “Trust land” were negotiated between the RTA, the Company and the Original Trustee between January 1998 and mid-1999, with instructions for a “final” survey of the motorway, based on these negotiations, being issued on 4 August 1999
- This survey of the motorway was completed by the RTA by September 1999, and the associated plans of subdivision were lodged by the RTA and registered by 10 May 2001
- Further surveys were subsequently conducted and survey plans prepared for revised boundaries to accommodate the railway tunnels of the Epping–Chatswood rail link near Delhi Road in North Ryde, permit access to a residual RTA lot near Crimea Road in Marsfield and accommodate the interface between the M2 motorway and the Westlink M7 motorway in West Baulkham Hills
- During 2005 and 2006 the lease registration process was delayed while negotiations were conducted for further boundary changes and additions to accommodate and facilitate proposed future upgrades to the motorway, including bridge widenings, as a result of which further surveys were carried out, new survey plans were prepared

and 23 RTA-owned lots were added to the “Company land” and “Trust land”

- Plans of consolidation were subsequently completed by the RTA and registered, the last of them on 20 October 2010, and
- RMS expects the Company Lease, the Trust Lease and the Trust Concurrent Lease will be executed in the near future.

In accordance with the WSO/M2 Interface Agreement of 2 August 2002 and the Western Sydney Orbital Project Deed of 13 February 2003, some of the “Trust land” in the West Baulkham Hills M2–M7 motorway interface area, originally envisaged as being leased by the RTA to the Original Trustee/Responsible Entity/Trustee under the Trust Lease and then subleased to the Company under the Sublease, will instead be leased by RMS to WestLink Motorway Limited. The WSO/M2 Interface Agreement records agreements by the RTA/RMS, the Company, the Responsible Entity/Trustee and the Trust Custodian to:

- Vary the boundaries of the “Trust land” accordingly, with RMS preparing and registering the necessary documentation at its own cost, and
- Do everything necessary to enable this variation to the Trust Lease and the Sublease to be completed and registered as expeditiously as possible.

The final M7 motorway works in the interface area differed from those anticipated by the RTA in 2002 and shown in a schedule to the WSO/M2 Interface Agreement. As a result, under the WSO/M2 Interface Agreement the final boundaries of the “Trust land” in this area had to be determined by the RTA, in consultation with the Company and the Trustee, after the M7 works were completed and by reference to the actual locations of the structures. If the Company and/or the Trustee had disagreed with this determination by the RTA, they could have referred the dispute for final, binding expert determination in accordance with procedures set out in the WSO/M2 Interface Agreement.

Once all the plans of subdivision and consolidation required for the Company Lease, the Trust Lease and the Trust Concurrent Lease had been registered (on 20 October 2010), the RTA (and now RMS) became obliged to give the Company the Company Lease, and the Trustee the Trust Lease and the Trust Concurrent Lease, as soon as practicable, and these leases will then have to be executed by the Company and the Trustee within 15 days. RMS must produce certificates of title, on request, to permit the registration of the leases, must execute each lease itself within five days of receiving it from the Company or the Trustee (as applicable) and must then return it to the Security Trustee. The Company and the Trustee are responsible for having the leases stamped and registered, at their own cost, and must give RMS a certified copy of each lease within 14 days of its registration.

Within 30 days of the execution of the Trust Lease the Company and the Trustee must enter into the Sublease, which must be substantially in the form of an “annexed Sublease” set out in an exhibit to the Project Deed, as amended by the Upgrade Project

Deed from 18 November 2010, and otherwise as reasonably acceptable to RMS.

On 27 February 1998 the Original Trustee made a formal offer to the Company to enter into this sublease in a slightly different form, and the RTA advised the Original Trustee and the Company, in a letter on the same date, that it accepted and agreed to this amended form. This offer by the Original Trustee has not yet been formally accepted by the Company.

RMS must produce certificates of title, on request, to permit the registration of the Sublease, and the Trustee must give RMS a certified copy once it has been registered.

Under the Project Deed, once all the plans of subdivision and consolidation for the motorway land had been registered (on 20 October 2010), making the RTA/RMS liable to give the Company and the Trustee the Company Lease, the Trust Lease and the Trust Concurrent Lease under the arrangements described above, the RTA/RMS, the Company and the Trustee became bound, prior to the execution of the Company Lease and the Trust Lease, as if these leases had been executed on the “motorway commencement date”, 26 May 1997. Similarly, prior to the execution of the Trust Concurrent Lease the RTA/RMS and the Trustee became bound as if this lease had been executed on the day after the “motorway commencement date”, or 27 May 1997.

8.2.2 The M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases and the M2 Upgrade Subleases

The Project Deed sets out processes for the preparation and execution of the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases and the M2 Upgrade Subleases which are precisely analogous to those described above for the Company Lease, the Trust Lease, the Trust Concurrent Lease and the Sublease, except that:

- The Company and the Trustee must notify RMS of the final boundaries of:
 - ♦ The “M2 upgrade Company land” and “M2 upgrade Trust land” to be leased to them under the Stage 1 M2 Upgrade Company Lease, the Stage 1 M2 Upgrade Trust Concurrent Lease, the Stage 2 M2 Upgrade Trust Lease, the Stage 2 M2 Upgrade Sublease, the Stage 3 Upgrade Company Lease, the Stage 3 Upgrade Trust Lease, the Stage 3 Upgrade Trust Concurrent Lease and the Stage 3 M2 Upgrade Sublease, by no later than the date of “final completion” of the upgrade works (i.e. the date of “construction completion” of Stage 4 of the upgrade works), and
 - ♦ The “M2 upgrade Trust land” to be leased to them under the Stage 3A M2 Upgrade Trust Lease and the Stage 3A M2 Upgrade Sublease by no later than the

date of “construction completion” of Stage 4A of the upgrade works

after which, in each case, RMS will have 18 months to:

- ♦ Carry out specified surveys and prepare and register the necessary plans of consolidation or subdivision, and
 - ♦ Ensure the relevant leases are in registrable forms, with the Company and the Trustee being obliged to grant an extension of the deadline for this if RMS is diligently carrying out its obligations concerning the relevant surveys and plans of consolidation or subdivision.
- RMS must then:
 - ♦ Grant the Company the Stage 1 M2 Upgrade Company Lease, over “M2 upgrade Company land” associated with Stage 1 of the upgrade works, as soon as practicable after the completion of Stage 1 (in practice, as soon as practicable after 23 July 2012)
 - ♦ Grant the Trustee the Stage 1 M2 Upgrade Trust Concurrent Lease, over the “M2 upgrade Company land” associated with Stage 1 of the upgrade works, as soon as practicable after the completion of Stage 1 of the upgrade works (in practice, as soon as practicable after 23 July 2012)
 - ♦ Grant the Trustee the Stage 2 M2 Upgrade Trust Lease, over “M2 upgrade Trust land” associated with Stage 2 of the upgrade works, as soon as practicable after the completion of Stage 2 (in practice, as soon as practicable after 18 January 2013)
 - ♦ Grant the Company the Stage 3 M2 Upgrade Company Lease, over “M2 upgrade Company land” associated with Stage 3 of the upgrade works, as soon as practicable after the completion of Stage 3*
 - ♦ Grant the Trustee the Stage 3 M2 Upgrade Trust Lease, over “M2 upgrade Trust land” associated with Stage 3 of the upgrade works, and the Stage 3 M2 Upgrade Trust Concurrent Lease, over the “M2 upgrade Company land” associated with Stage 3 of the upgrade works, as soon as practicable after the completion of Stage 3 of the upgrade works, and
 - ♦ Grant the Trustee the Stage 3A M2 Upgrade Trust Lease, over “M2 upgrade Trust land” associated with Stage 3A of the upgrade works as soon as practicable after the completion of Stage 3A of the upgrade works.
 - Within 30 days of the execution of each of the Stage 2, Stage 3 and Stage 3A M2 Upgrade Trust Leases, the Trustee must sublease the land it leases from RMS under the relevant M2 Upgrade Trust Lease to the Company under (respectively) the Stage 2 M2 Upgrade Sublease, the Stage 3 M2 Upgrade Sublease and the Stage 3A M2 Upgrade Sublease.

- Instead of executing all these separate M2 Upgrade Company Leases, M2 Upgrade Trust Leases, M2 Upgrade Trust Concurrent Leases and M2 Upgrade Subleases, RMS, the Company and the Trustee may agree to consolidate:

- ♦ The two M2 Upgrade Company Leases into a single lease of all of the “M2 upgrade Company land”
- ♦ The three M2 Upgrade Trust Leases into a single lease of all of the “M2 upgrade Trust land”
- ♦ The two M2 Upgrade Trust Concurrent Leases into a single concurrent lease of all of the “M2 upgrade Company land”
- ♦ The three M2 Upgrade Subleases into a single sublease of all of the “M2 upgrade Trust land”
- ♦ The Company Lease and the two M2 Upgrade Company Leases into a single lease of all of the “Company land” and “M2 upgrade Company land”
- ♦ The Trust Lease and the three M2 Upgrade Trust Leases into a single lease of all of the “Trust land” and “M2 upgrade Trust land”
- ♦ The Trust Concurrent Lease and the two M2 Upgrade Trust Concurrent Leases into a single concurrent lease of all of the “Company land” and “M2 upgrade Company land”, and/or
- ♦ The Sublease and the three M2 Upgrade Subleases into a single sublease of all of the “Trust land” and “M2 upgrade Trust land”.

8.3 Operating term

8.3.1 Current arrangements

Under the current Project Deed and the current draft “annexed Company Lease”, “annexed Trust Lease” and “annexed Trust Concurrent Lease” exhibited to the Project Deed, in all cases as amended and restated under the Upgrade Project Deed from 18 November 2010, the terms of the final Company Lease, Trust Lease and Trust Concurrent Lease, and hence the period of operation, maintenance and repair of the motorway by the Company, will end 45 years after the “motorway commencement date” of 26 May 1997 (i.e. on 26 May 2042), *unless*:

- The Project Deed is terminated earlier, in which case the leases will automatically and immediately terminate as well (see section 11 below), *or*
- In aggregate the Company and the Trustee derive an amount sufficient to give investors in the Hills Motorway Trust and the Company a real after-tax return over the 36-year period ending on 26 May 2033—treating these investors as “**notional initial investors**” as defined[†] in the Project Deed—of more than 16.5% per annum, in which case RMS may choose to end the leases on 26 May 2033, *or*

* As already indicated in sections 2.2.9, 2.2.11, 7.1 and 7.15, in practice “construction completion” of Stage 3 was achieved (after the date of this *Summary of Contracts*) on 31 July 2013.

- In aggregate the Company and the Trustee derive an amount sufficient to give investors in the Hills Motorway Trust and the Company a real after-tax return over the 39-year period ending on 26 May 2036—again treating them as “notional initial investors”—of more than 16.0% per annum, in which case RMS may choose to end the leases on 26 May 2036, or
- In aggregate the Company and the Trustee derive an amount sufficient to give investors in the Hills Motorway Trust and the Company a real after-tax return over the 42-year period ending on 26 May 2039—once again treating them as “notional initial investors” as defined in the Project Deed—of more than 16.0% per annum, in which case RMS may choose to end the leases on 26 May 2039.
- In aggregate the Company and the Trustee derive an amount sufficient to give investors in the Hills Motorway Trust and the Company a real after-tax return over the 43-year period ending on 26 May 2040—again treating them as “notional initial investors”—of more than 16.0% per annum, in which case RMS may choose to end the leases on 26 May 2040, or
- In aggregate the Company and the Trustee derive an amount sufficient to give investors in the Hills Motorway Trust and the Company a real after-tax return over the 46-year period ending on 26 May 2043—once again treating them as “notional initial investors”—of more than 16.0% per annum, in which case RMS may choose to end the leases on 26 May 2043.

8.3.2 Arrangements after the completion of Stages 1 to 4 of the upgrade works

From the date of “final completion” of the upgrade works—i.e. from the date of “construction completion” of Stage 4 (section 7.15)—the definitions of “term” in the Project Deed and the draft “annexed Company Lease”, “annexed Trust Lease” and “annexed Trust Concurrent Lease” exhibited to the Project Deed will be amended, in accordance with a schedule to the Upgrade Project Deed, so as to extend all of these terms by four years and thus align them with the current definitions of “term” in the draft “annexed M2 Upgrade Company Lease”, “annexed M2 Upgrade Trust Lease” and “annexed M2 Upgrade Trust Concurrent Lease” exhibited to the Project Deed.

Under these arrangements, if the final Company Lease, Trust Lease and Trust Concurrent Lease are executed on or after the date of “final completion” of the upgrade works, the terms of these leases, and hence the period of operation, maintenance and repair of the motorway by the Company, will end 49 years after the “motorway commencement date” of 26 May 1997 (i.e. on 26 May 2046), *unless*:

- The Project Deed is terminated earlier, in which case the leases will all automatically and immediately terminate as well (see section 11 below), or
- In aggregate the Company and the Trustee derive an amount sufficient to give investors in the Hills Motorway Trust and the Company a real after-tax return over the 40-year period ending on 26 May 2037—treating these investors as “notional initial investors”—of more than 16.5% per annum, in which case RMS may choose to end the leases on 26 May 2037, or

The Company and the Trustee must tell RMS, six months before each of these 40th, 43rd and 46th anniversaries of the 26 May 1997 “motorway commencement date”,

- The returns for “notional initial investors”, to the notification date, and
- Whether they expect the 16.5% or 16.0% thresholds to be exceeded on or before the relevant anniversary date.

8.4 Rents

Under the draft “annexed Company Lease”, “annexed M2 Upgrade Company Lease”, “annexed M2 Upgrade Trust Lease” and “annexed M2 Upgrade Trust Concurrent Lease” exhibited to the Project Deed, the rent payable to RMS by the Company or the Trustee (as applicable) under the Company Lease and under each M2 Upgrade Company Lease, each M2 Upgrade Trust Lease and each M2 Upgrade Trust Concurrent Lease will be \$1 per year, payable in arrears on 25 May each year during the terms of these leases.

Under the draft “annexed Trust Lease” and draft “annexed Trust Concurrent Lease” exhibited to the Project Deed, the rents payable by the Trustee to RMS under the Trust Lease and the Trust Concurrent Lease will comprise:

- Annual “**base rents**” on 26 May each year, starting at a total of \$7.0 million (\$5.6 million under the Trust Lease and \$1.4 million under the Trust Concurrent Lease) on the “motorway commencement date” of 26 May 1997.

Each year’s “base rent” will be adjusted, on 26 May, in line with any increase in the weighted average capital cities Consumer Price Index. (If the CPI is unchanged or

‡ (previous page) “**Notional initial investors**” are defined in the Project Deed as notional corporate taxpayers who:

- Were issued with initial units in the Hills Motorway Trust and stapled initial shares in the Company pursuant to an *Equity Information Memorandum* on the motorway prepared by the Company and dated 29 March 1994 and an *Addendum* dated 9 August 1994 (i.e. as part of the first allotment to institutional investors), *plus* additional stapled units in the Hills Motorway Trust and shares in the Company under the Equity Subscription Deed, as part of the refinancing associated with the 2010-specified upgrade project, in the ratio 155:185, *plus* additional stapled units in the Hills Motorway Trust and shares in the Company under the Equity Subscription Deed as amended by and restated in the Equity Subscription Deed: First Amending Deed, as part of financing arrangements associated with the 2013-specified Lane Cove Road on-ramp project, again in the ratio 155:185, on the bases that (a) the aggregate investment in units in the Hills Motorway Trust and shares in the Company under the Equity Subscription Deed arrangements originally established in 2010 cannot exceed \$235,872,895 (i.e. \$275 million less an “advance contribution”, as defined in the Equity Subscription Deed, of \$39,127,105), and (b) the aggregate investment in units in the Hills Motorway Trust and shares in the Company under the Equity Subscription Deed’s 2013 arrangements for the Lane Cove Road on-ramp works cannot exceed \$11 million, and
- Have held these stapled units and shares ever since they were issued.

has decreased, the “base rent” for the year will remain unchanged.)

Prior to what is termed the “equity return date”—the date on which the Company and the Trustee have, in aggregate, received an amount sufficient for them to give investors in the Hills Motorway Trust and the Company a real after-tax return, treating them as “notional initial investors”, of at least 12.25% per annum—each of these “base rent” payments may, at the Trustee’s discretion, take the form of a non-interest-bearing promissory note. (The Company and the Trustee must immediately notify RMS when, in aggregate, they have received an amount sufficient to give “notional initial investors” this 12.25% pa return.)

After the “equity return date”, if it ever arrives, all “base rent” payments must be made in cash.

If the Trustee elects to make any of its “base rent” payments by promissory note—as the Original Trustee/Responsible Entity/Trustee have ever since 1997*—RMS may start presenting these note(s) for payment only after the “equity return date” or, if this date never arrives, at the end of the term of the leases.

In order to satisfy (or partly to satisfy) any obligations the Trustee has under the promissory note(s), between the “equity return date” (if it arrives) and the following 30 June, and then during each of the following 1 July–30 June financial years and a final period from 1 July to the date on which all of the promissory notes have been paid in full, the Trustee must make cash payments to RMS equal to:

- 30% (24% under the Trust Lease and 6% under the Trust Concurrent Lease) of the Company’s and the Trustee’s “**surplus cash**” for the year or part-year, *meaning* their combined cash surplus generated from all sources, after their payments of their operating, maintenance and administrative expenses, their payments of all principal, interest and fees due under the project’s debt financing arrangements and their payments to maintenance, debt and similar reserves but before the Trustee’s “base rent” payment and before any distributions to their investors, *less* an amount equal to the income tax payable by the Company and the notional income tax liability of the Trustee as a resident corporate taxpayer
- *minus* the Trustee’s “base rent” payment during the year or part-year.

If the Trustee’s obligation under any presented promissory note is only partly satisfied by such a payment, this note must be replaced by a new promissory note for the outstanding balance.

(b) Once all of the Trustee’s promissory notes have been paid in full to RMS, annual cash payments of an “**incentive rent**” equal to:

- 20% (16% under the Trust Lease and 4% under the Trust Concurrent Lease) of the Company’s and Trustee’s “surplus cash” for the year, as described in (a) above
- *minus* the Trustee’s “base rent” payment.

This “incentive rent” is to be calculated and paid for the period from the date all the promissory notes are paid in full to the following 30 June, and then for each of the following 1 July–30 June financial years and the final period from 1 July to the end of the term.

The first of the “incentive rent” payments will need to be made by the first 14 August after all the promissory notes have been paid, and subsequent payments will need to be paid by the anniversary of this date, with the last payment being due no more than 45 days after the end of the terms of the leases.

The rents payable by the Company and the Trustee under the Company Lease, the Trust Lease and the Trust Concurrent Lease will not abate if any part of the M2 motorway is damaged or destroyed.

8.5 Access to the leased land

Under the draft “annexed Company Lease”, “annexed Trust Lease”, “annexed M2 Upgrade Company Lease” and “annexed M2 Upgrade Trust Lease” exhibited to the Project Deed, RMS will grant the Company and the Trustee (as applicable) exclusive possession of the finally defined M2 motorway land, including the upgrade land, subject to the Project Deed and the Upgrade Project Deed. In the case of the “Company land” that will be subject to both the Company Lease and the Trust Concurrent Lease and the “Stage 3 M2 upgrade Company land” that will be subject to both the Stage 3 M2 Upgrade Company Lease and the Stage 3 M2 Upgrade Trust Concurrent Lease, the immediate lessor will be the Trustee.

Unless RMS agrees otherwise in writing, the leased land may be used by the Company and the Trustee, as applicable, only for tollway purposes and in accordance with the Project Deed and the Upgrade Project Deed.

RMS is and will be entitled to enter the leased land to determine whether the Company and the Trustee are complying with the terms of the Project Deed, the Upgrade Project Deed and the leases and to inspect the land, the motorway and its ancillary drainage basins and watercourses, but may not cause unnecessary inconvenience to the Company, the Trustee or motorway users in doing so.

* These “base rent” payments in the form of promissory notes have been made to the RTA/RMS notwithstanding the facts that (a) the Trust Lease and the Trust Concurrent Lease have not yet been executed and (b) until 20 October 2010 the forms of these leases annexed to the Project Deed had not taken effect, as a matter of contract law, under the contractual arrangements described in the last paragraph of section 8.2.1, because all of the plans of subdivision and consolidation for the motorway land were not registered until that date.

RMS will also be entitled under the leases to grant easements over the land, and/or make similar arrangements, with the consent of the Company and the Trustee, which may not be unreasonably withheld or delayed.

In addition, as already indicated in section 8.1, under the WSO/M2 Interface Agreement of 2 August 2002, the Western Sydney Orbital Project Deed of 13 February 2003, the LCT/M2 Interface Agreement of 14 November 2004 and the Lane Cove Tunnel Project Deed of 4 December 2003,

- The Company and the Trustee must give WestLink Motorway Limited and WSO Co Pty Limited, and anyone acting with their authority, a continuing and irrevocable licence to access the Trust land in order to maintain and repair the M7 motorway (after giving three days' notice) or deal with an emergency
- WestLink and WSO Co must give the Company, and anyone acting with its authority, a continuing and irrevocable licence to access the land which was originally to have been part of the "Trust land" but which will instead be leased to WestLink under the transfer arrangements described in section 8.2.1, in order to maintain and repair the M2 motorway (after giving three days' notice) or deal with an emergency, and
- The Company and the Trustee must give Lane Cove Tunnel Company Pty Limited/Connector Motorways Pty Limited (and now LCT-MRE Pty Limited), RMS and anyone acting with their authority a continuing and irrevocable licence to access the "Company land" and the "Trust land" in order to inspect, maintain and repair Lane Cove Tunnel works located within these areas (after giving three days' notice, or less if agreed) or deal with an emergency.

(These ongoing access arrangements are in addition to the access arrangements that applied during the construction of the M7 and Lane Cove Tunnel motorways, discussed in section 5 above.)

If RMS decides to connect another road to the M2 motorway, the Company and the Trustee must give RMS sufficient access to the motorway land, the motorway and its ancillary works for the connection to be made.

8.6 Tolls

As already indicated in section 1.2.1, the then acting Minister for Roads, Ms Anne Cohen, declared the then-proposed M2 motorway as a "toll work" under section 46 of the Roads Act 1986 on 28 June 1993. When the Roads Act 1993 was enacted, the M2 motorway automatically became a "tollway" under section 52 of the new Act, in accordance with clause 18 of Schedule 2 to the Roads Act 1993.

In addition, as already indicated in section 7.15, under the Upgrade Project Deed a declaration of the M2 upgrade as a "tollway" was required prior to the certification of "construction completion" of Stage 1 of the upgrade works.

Under the Project Deed, the Minister for Roads and RMS must ensure both of these tollway declarations continue to be effective for the entire operating term of the motorway.

The Company has been entitled to levy tolls on motorway users since the "motorway commencement date" of 26 May 1997, and has been declared as a "toll operator" for the purposes of the definition of this term in the Roads Act 1993.

As already indicated in section 4.16, the Company was entitled to open the motorway in stages, provided that, among other things, it had obtained the RTA's prior written approval of any tolls to be charged. In practice, the opening of the motorway was not staged in this way.

Except in emergencies, tolls may be collected only at the toll plazas specified in the Project Deed's *Scope of Works and Technical Criteria* and at any other place agreed to in writing by RMS and the Company. The Project Deed's *Scope of Works and Technical Criteria* originally permitted toll collections only at the motorway's main toll plaza in Macquarie Park and on its west-facing ramps at Pennant Hills Road. However, later forms of a **Toll Calculation Schedule** to the Project Deed, described below, now also permit toll collections on the new west-facing ramps at Windsor Road, the new eastbound on-ramp at Christie Road and the new westbound off-ramp at Herring Road and, in the future, the new eastbound on-ramp at Lane Cove Road.

All tolls levied by the Company must comply with this *Toll Calculation Schedule* to the Project Deed.

Under this *Toll Calculation Schedule*, which has been amended on several occasions, different tolls may be applied for "cars", as defined in the *Toll Calculation Schedule*, and other vehicles.

Until 18 November 2010, "cars" were defined as vehicles which had one or two axles and were less than 2.8 metres long and vehicles which had three axles and were less than 2 metres long. (In practice, it was recognised that these references to the lengths of vehicles had been intended to be references to the heights of vehicles.) On 18 November 2010 "cars" were redefined as vehicles which had one or two axles and were less than 2.8 metres high and vehicles which had three axles and were less than 2 metres high, and on 30 January 2012 "cars" were again redefined, in a simplification designed to assist the transition to "cashless" (fully electronic) tolling, as all vehicles no more than 2.8 metres high and no more than 12.5 metres long. The last two of these definitions of "cars" encompassed and encompass most cars, motorcycles, light trucks and cars with low trailers.

Between 26 May 1997 and 31 December 2000, under the original form of the *Toll Calculation Schedule* and all subsequent forms of the *Toll Calculation Schedule* that applied prior to 13 August 2012,

- The tolls applying at the motorway's main toll plaza in Macquarie Park could be no higher than "**maximum charge tolls**" (excluding GST*) calculated by:
 - ♦ Adjusting specified "base tolls" of \$2.00 for "cars" (as then defined) and \$5.00 for other motor vehicles

(excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was greater

- ♦ Rounding the results to the nearest two decimal places to calculate so-called “theoretical tolls” for each quarter for “cars” and other vehicles, and then
- ♦ Rounding each of these “theoretical tolls” to the nearest 50 cents.

For example, at the start of the motorway’s operations there could be no toll increase for “cars” until the “theoretical toll” for “cars” had reached \$2.25 (excluding GST), at which time the “maximum charge toll” for “cars” increased to \$2.50 (excluding GST), meaning the Company became entitled to levy an actual toll for “cars” of up to \$2.50 plus GST. (It could levy less if it wished.) The actual toll could then be no higher than this \$2.50 plus GST until the “theoretical toll” reached \$2.75 (excluding GST), at which time the “maximum charge toll” increased to \$3.00 (excluding GST), and so on.

- Notwithstanding these formulae for toll increases, there was, quite separately, an absolute cap on the tolls able to be charged for “cars” at the main toll plaza of \$2.50 (excluding GST).
- The equivalent “base tolls” for the Pennant Hills Road toll plazas were \$1.00 for “cars” and \$2.50 for other vehicles (excluding GST), with the same indexation and rounding methods and formulae applying for calculating the “maximum charge tolls” at these plazas but without any separate, additional cap on the tolls able to be charged for “cars” at these plazas.

Between 1 January 2001 and 31 March 2009, under the forms of the *Toll Calculation Schedule* that applied prior to 13 August 2012,

- The “base tolls” at the main toll plaza were \$2.20 for “cars” (as then defined) and \$5.50 for other motor vehicles.

- The “base tolls” at the Pennant Hills Road toll plazas were \$1.10 for “cars” and \$2.75 for other vehicles.
- The same indexation and rounding methods and formulae applied for calculating the “maximum charge tolls” (i.e. the highest tolls actually able to be charged) at all of these plazas.
- The original fixed \$2.50 cap on actual “car” tolls at the main toll plaza no longer applied.

Between 1 April 2009 and 13 August 2012, under the forms of the *Toll Calculation Schedule* that applied prior to 13 August 2012,

- The “base tolls” at the main toll plaza were \$2.20 for “cars” (as then defined, with this definition changing on 18 November 2010 and again on 30 January 2012 as described above) and \$6.60 for other motor vehicles.
- The “base tolls” at the Pennant Hills Road toll plazas were \$1.10 for “cars” and \$3.30 for other vehicles.
- The same indexation and rounding methods and formulae applied for calculating the “maximum charge tolls” (i.e. the highest tolls actually able to be charged) at all three of these existing toll plazas.
- Notwithstanding these formulae for toll increases, the Company had to implement any toll increases associated with the 1 April 2009 increase in the “base tolls” for vehicles other than “cars” at these three toll plazas in a progressive manner, as agreed with the RTA in negotiations carried out in accordance with the *Toll Calculation Schedule* between 18 August 2008 and 5 March 2009.
- From midnight on the date of “construction completion” of Stage 1 of the upgrade works (see section 7.15, and in practice 23 July 2012), or from any earlier time agreed to by RMS having regard to the extent to which the revised Windsor Road interchange complied with the Upgrade Project Deed’s safety and functionality requirements, the Company could levy tolls at the new toll plazas built on the

* (previous page) The use of a private tollway constitutes a taxable supply under the terms of the Commonwealth legislation for the Goods and Services Tax (GST), which took effect from 1 July 2000. In contrast to the contractual arrangements for later motorways, until 18 November 2010 there were no provisions in the *Toll Calculation Schedule*, or elsewhere in the Project Deed, for the permissible tolls to be increased as a result of the introduction of a GST or equivalent tax. However, in a letter to the Company headed *Toll Increases for GST* and dated 26 May 2000, the RTA:

- ♦ “Noted” that the RTA had “no role in determining or approving” increases in the Company’s toll charges from 1 July 2000 to account for the GST
- ♦ “Noted” proposals which had been made by the Company to increase tolls as a result of the introduction of the GST
- ♦ Stressed the need for the Company to comply with the relevant provisions of the Trade Practices Act and guidelines issued by the Australian Competition and Consumer Commission, and
- ♦ Advised that if a toll increase as a result of the GST required amendments to the M2 motorway’s project documentation, or other written confirmation from the RTA, the RTA would be prepared to “review any terms that the Company issued”.

The Company has incorporated the GST in the M2 motorway tolls it has charged motorway users since 1 July 2000.

The *Toll Calculation Schedule* was later amended, under the Upgrade Project Deed and with effect from 18 November 2010, to make it clear that its specified “base tolls” —and thus the calculated “theoretical tolls” and, unless otherwise indicated, the “maximum charge tolls” —all exclude GST (and so, by implication, unless otherwise indicated GST was to be added to the last of these figures). This change has been retained in all subsequent versions of the *Toll Calculation Schedule*.

Under the two latest forms of the *Toll Calculation Schedule*, as amended and restated in the Toll Calculation Amending Deed of 13 August 2012 and the Lane Cove Road On-Ramp Amending Deed of 21 May 2013, GST is expressly to be included in calculating the maximum permitted tolls for the motorway’s main toll plaza in Macquarie Park and its west-facing ramps at Pennant Hills Road. The addition of GST in calculating the maximum permitted tolls for the upgrade project’s four new ramps under these two latest forms of the *Toll Calculation Schedule* has subsequently been expressly confirmed in an exchange of letters between RMS and the Company on 18 July 2013 and 19 August 2013.

new west-facing ramps at Windsor Road, with these tolls being no higher than “maximum charge tolls” calculated by:

- ♦ Adjusting specified “base tolls” of \$1.36 for “cars” and \$4.08 for other motor vehicles (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was greater
- ♦ Rounding the results to the nearest two decimal places to calculate the “theoretical tolls” for “cars” and other vehicles at these toll plazas for each quarter
- ♦ Further rounding each of these “theoretical tolls” to the nearest cent, and then
- ♦ Adding GST.

Between 13 August 2012 and midnight on 15 April 2013, the date on which all upgrade carriageway works west of Pennant Hills Road were completed and open to traffic,

under the form of the *Toll Calculation Schedule* applying between 13 August 2012 and the date of “construction completion” of Stage 3A of the upgrade works (section 7.15),

- For “cars” (as redefined since 30 January 2012, as described above), the “maximum charge tolls” (i.e. the highest tolls actually able to charged, including GST) were:
 - ♦ Fixed at \$4.95, including GST, for the main toll plaza in Macquarie Park
 - ♦ Fixed at \$2.75, including GST, for the Pennant Hills Road toll plazas
 - ♦ For the new toll plazas on the new west-facing ramps at Windsor Road, calculated by:
 - Adjusting a specified “base toll” of \$1.36 (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was greater
 - Rounding the results to the nearest two decimal places to calculate the “theoretical toll” for “cars” at these toll plazas for each quarter
 - Further rounding this “theoretical toll” to the nearest cent, and then
 - Adding GST, and
 - ♦ For the new toll plazas on the new westbound off-ramp at Herring Road and the new eastbound on-ramp at Christie Road—at which tolls have been able to be collected from midnight on the date of “construction completion” of Stage 2 of the upgrade works, 18 January 2013 (section 7.15)—calculated by:
 - Adjusting a specified “base toll” of \$1.92 (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was greater

- Rounding the results to the nearest two decimal places to calculate the “theoretical toll” for “cars” at these toll plazas for each quarter
- Further rounding this “theoretical toll” to the nearest cent, and then
- Adding GST, and

- For other vehicles, the “maximum charge tolls” (including GST) were:

- ♦ Calculated, for the main toll plaza in Macquarie Park, by:
 - Adjusting a specified “base toll” for these vehicles of \$6.60 (excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at this toll plaza for each quarter
 - Further rounding this “theoretical toll” to the nearest 50 cents, and then
 - Adding GST
- ♦ Calculated, for the Pennant Hills Road toll plazas, by:
 - Adjusting a specified “base toll” for these vehicles of \$3.30 (excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at these toll plazas for each quarter
 - Further rounding this “theoretical toll” to the nearest 50 cents, and then
 - Adding GST
- ♦ For the new toll plazas on the new west-facing ramps at Windsor Road, calculated by:
 - Adjusting a specified “base toll” of \$4.08 (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was greater
 - Rounding the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at these toll plazas for each quarter
 - Further rounding this “theoretical toll” to the nearest cent, and then
 - Adding GST, and

- ♦ For the new toll plazas on the new westbound off-ramp at Herring Road and the new eastbound on-ramp at Christie Road—at which tolls have been able to be collected from midnight on the date of “construction completion” of Stage 2 of the upgrade works, 18 January 2013 (section 7.15)—calculated by:
 - Adjusting a specified “base toll” of \$5.76 (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was greater
 - Rounding the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at these toll plazas for each quarter
 - Further rounding this “theoretical toll” to the nearest cent, and then
 - Adding GST.
- For other vehicles, the “maximum charge tolls” (including GST) have been, are and will be:
 - ♦ Calculated, for the main toll plaza in Macquarie Park, by:
 - Adjusting a specified “base toll” for these vehicles of \$6.60 (excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at this toll plaza for each quarter
 - Further rounding this “theoretical toll” to the nearest 50 cents, and then
 - Adding GST
 - ♦ For the Pennant Hills toll plazas, the higher of \$9.45, including GST, and the amount calculated by:
 - Adjusting a specified “base toll” for these vehicles of \$3.30 (excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at these toll plazas for each quarter, and then, *without* any further rounding to the nearest 50 cents,
 - Adding GST, and
 - ♦ Calculated in the same way as they were between 13 August 2012 and midnight on 15 April 2013 for the new toll plazas on the new west-facing ramps at Windsor Road, the new westbound off-ramp at Herring Road and the new eastbound on-ramp at Christie Road.

Between (a) midnight on 15 April 2013, the date on which all upgrade carriageway works west of Pennant Hills Road were completed and open to traffic, and (b) midnight on the date of “construction completion” of Stage 3 of the upgrade works,* under the form of the *Toll Calculation Schedule* applying between 13 August 2012 and the date of “construction completion” of Stage 3A of the upgrade works (section 7.15),

- For “cars” (as redefined since 30 January 2012), the “maximum charge tolls” (including GST) have been, are and will be:
 - ♦ Fixed at \$4.95, including GST, for the main toll plaza in Macquarie Park
 - ♦ For the Pennant Hills toll plazas, the higher of \$3.15, including GST, and the amount calculated by:
 - Adjusting a specified “base toll” for “cars” of \$1.10 (excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for “cars” at these toll plazas for each quarter, and then, *without* any further rounding to the nearest 50 cents,
 - Adding GST, and
 - ♦ Calculated in the same way as they were between 13 August 2012 and midnight on 15 April 2013 for the new toll plazas on the new west-facing ramps at Windsor Road, the new westbound off-ramp at Herring Road and the new eastbound on-ramp at Christie Road, and

Between (a) midnight on the date of “construction completion” of Stage 3 of the upgrade works[‡] and (b) the date of “construction completion” of Stage 3A of the upgrade works (section 7.15), all of the “base tolls” (and thus all of the “theoretical tolls”) used in these calculations will increase by 8.0%, and under the form of the *Toll Calculation Schedule* applying between 13 August 2012 and the date of “construction completion” of Stage 3A of the upgrade works,

- For “cars” (as redefined since 30 January 2012), the “maximum charge tolls” (including GST) will be:
 - ♦ For the main toll plaza in Macquarie Park, the higher of \$6.05, including GST, and the amount calculated by:
 - Adjusting an increased “base toll” for “cars” of \$2.376 (excluding GST) in line with quarterly

* As already indicated, in practice “construction completion” of Stage 3 was achieved (after the date of this *Summary of Contracts*) on 31 July 2013.

‡ As already indicated, in practice “construction completion” of Stage 3 was achieved (after the date of this *Summary of Contracts*) on 31 July 2013, and increased tolls, calculated in accordance with the the *Toll Calculation Schedule* provisions described immediately below, took effect on 1 August 2013.

- movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for “cars” at this toll plaza for each quarter, and then, *without* any further rounding to the nearest 50 cents,
 - Adding GST
- ◆ For the Pennant Hills toll plazas, the higher of \$3.15, including GST, and the amount calculated by:
 - Adjusting an increased “base toll” for “cars” of \$1.188 (excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for “cars” at these toll plazas for each quarter, and then, *without* any further rounding to the nearest 50 cents,
 - Adding GST
- ◆ For the new toll plazas on the new west-facing ramps at Windsor Road, calculated by:
 - Adjusting an increased “base toll” for “cars” of \$1.4688 (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounding the results to the nearest two decimal places to calculate the “theoretical toll” for “cars” at these toll plazas for each quarter
 - Further rounding this “theoretical toll” to the nearest cent, and then
 - Adding GST, and
- ◆ For the new toll plazas on the new westbound off-ramp at Herring Road and the new eastbound on-ramp at Christie Road—at which tolls have been able to be collected from midnight on the date of “construction completion” of Stage 2 of the upgrade works, 18 January 2013 (section 7.15)—calculated by:
 - Adjusting an increased “base toll” for “cars” of \$2.0736 (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounding the results to the nearest two decimal places to calculate the “theoretical toll” for “cars” at these toll plazas for each quarter
 - Further rounding this “theoretical toll” to the nearest cent, and then
- Adding GST, and
- For other vehicles, the “maximum charge tolls” (including GST) will be:
 - ◆ For the main toll plaza in Macquarie Park, the higher of \$18.15, including GST, and the amount calculated by:
 - Adjusting an increased “base toll” for these vehicles of \$7.128 (excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at this toll plaza for each quarter, and then, *without* any further rounding to the nearest 50 cents,
 - Adding GST
 - ◆ For the Pennant Hills Road toll plazas, the higher of \$9.45, including GST, and the amount calculated by:
 - Adjusting an increased “base toll” for these vehicles of \$3.564 (excluding GST) in line with quarterly movements since 31 December 1993 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounded the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at these toll plazas for each quarter, and then, *without* any further rounding to the nearest 50 cents,
 - Adding GST, and
 - ◆ For the new toll plazas on the new west-facing ramps at Windsor Road, calculated by:
 - Adjusting an increased “base toll” for these vehicles of \$4.4064 (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - Rounding the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at these toll plazas for each quarter
 - Further rounding this “theoretical toll” to the nearest cent, and then
 - Adding GST
 - ◆ For the new toll plazas on the new westbound off-ramp at Herring Road and the new eastbound on-ramp at Christie Road—at which tolls have been able to be collected from midnight on the date of “construction

completion” of Stage 2 of the upgrade works, 18 January 2013 (section 7.15)—calculated by:

- Adjusting an increased “base toll” for these vehicles of \$6.2208 (excluding GST) in line with quarterly movements since 30 June 2007 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
- Rounding the results to the nearest two decimal places to calculate the “theoretical toll” for these vehicles at these toll plazas for each quarter
- Further rounding this “theoretical toll” to the nearest cent, and then
- Adding GST.

Finally, from the date of “construction completion” of Stage 3A of the upgrade works (section 7.15), under the amended and restated form of the *Toll Calculation Schedule* applying from that date,

- The “maximum charge tolls” for “cars” (as redefined since 30 January 2012) and other vehicles at the main toll plaza, the Pennant Hills Road toll plazas and the new toll plazas on the new west-facing ramps at Windsor Road, the new westbound off-ramp at Herring Road and the new eastbound on-ramp at Christie Road will be determined in the same ways as for the period between the dates of “construction completion” of Stages 3 and 3A of the upgrade works, as just described above, and
- At the new toll plaza on the new Lane Cove Road eastbound on-ramp, the “maximum charge tolls” will be calculated by:
 - ♦ Adjusting specified “base tolls” of \$1.3716 for “cars” and \$4.1148 for other vehicles (excluding GST) in line with quarterly movements since 31 December 2009 in the weighted average capital cities Consumer Price Index or for a 1% increase per quarter, whichever was/is greater
 - ♦ Rounded the results to the nearest two decimal places to calculate the “theoretical tolls” for “cars” and other vehicles at these toll plazas for each quarter
 - ♦ Further rounding each of these “theoretical tolls” to the nearest cent, and then
 - ♦ Adding GST.

If the Company wishes to change any of the tolls it actually charges, *other than* (a) any increases applying at the Pennant Hills Road toll plazas from midnight on 15 April 2013, the date on which all upgrade carriageway works west of Pennant Hills Road were completed and open to traffic, (b) any increases applying at the main toll plaza and the new toll plazas on the new west-facing ramps at Windsor Road, the new westbound off-ramp at Herring Road and the new eastbound on-ramp at Christie Road from midnight on the date of “construction completion” of Stage 3 of the upgrade works, and (c) any toll increases forming part of the tolls charged at the new Lane

Cove Road eastbound on-ramp from midnight on the date of “construction completion” of Stage 3A of the upgrade works,

- The Company must give RMS at least four weeks’ written notice of the proposed changes, and
- The changes must take effect from midnight on the first day of the relevant quarter (i.e. from midnight on 1 April, 1 July, 1 October or 1 January).

If RMS connects other roads to the M2 motorway, RMS must ensure this will not result in any untolled use of the M2 motorway and the Company may levy tolls on vehicles from these roads. These tolls may be calculated to yield an economic rate of return to the Company, rather than merely to recover its costs, but may not exceed the tolls charged at the main toll plaza.

8.7 ‘Administrative charges’

Under provisions in the Project Deed’s *Toll Calculation Schedule* introduced by the Cashless Tolling Amending Deed of 28 October 2011, subsequently amended and restated by the Toll Calculation Amending Deed of 13 August 2012 and continuing to apply under the amended form of the *Toll Calculation Schedule* that will take effect from the date of “construction completion” of Stage 3A of the upgrade works, the Company must give “casual users” of the motorway—*meaning* users who fail to pay using an electronic tolling “tag”—an opportunity or opportunities to make deferred toll payments, consistently with procedures adopted by other private tollway operators, and may levy an “administrative charge” on these users for allowing them to do so, provided it gives them prior notice of these charges. The Company may also impose this “administrative charge” for providing temporary “tags”.

This charge must be reasonably determined by the Company in consultation with RMS, having regard to different “casual user products” the Company may wish to implement, actual and anticipated numbers of “casual users” and toll and charge recovery rates and “the objective of encouraging vehicles to have a tag”, so as to enable the recovery of the Company’s direct and indirect costs in operating and maintaining its systems and equipment for processing and collecting revenue from “casual users”, including any video enforcement system agreed between RMS and the Company.

If the Company wishes to change its “administrative charge” it must give RMS at least 30 business days’ written notice of the proposed change, providing reasonably detailed supporting information.

8.8 Electronic tolling

Electronic tolling systems on the M2 motorway must comply not only with requirements set out in the Project Deed’s and Upgrade Project Deed’s *Scopes of Work and Technical Criteria*, as amended by the Cashless Tolling Amending Deed and the Lane Cove Road On-Ramp Amending Deed, but also with detailed interoperability, privacy and administrative requirements set out in the Electronic Tolling MoU between RMS, the

Company, Interlink Roads Pty Limited (the M5 motorway), Airport Motorway Limited (the Eastern Distributor), Queensland Motorways Limited (the Gateway Bridge and Logan Motorway in Brisbane), CrossCity Motorway Pty Limited (the Cross City Tunnel), WSO Co Pty Limited (the Westlink M7 motorway), LCT-MRE Pty Limited (the Lane Cove Tunnel, since 10 August 2010), CityLink Melbourne Limited (the CityLink tollroads in Melbourne), ConnectEast Pty Limited (the EastLink tollroad in Melbourne), RiverCity Motorway Pty Limited (the CLEM7 motorway in Brisbane), Brisbane City Council (the Go Between Bridge in Brisbane) and BrisConnections Operations Pty Limited (the Airport Link motorway in Brisbane).

The Electronic Tolling MoU has been amended on numerous occasions since it was first executed (as "version 14") in June 2001 or thereabouts.

The Electronic Tolling MoU is supported by a series of "roaming agreements" between the individual parties to the Electronic Tolling MoU and between these parties and Tollaustr, as one of the four organisations issuing electronic transponder "tags" in Sydney (the others are RMS, Interlink Roads and Roam Tolling).

The terms of the Electronic Tolling MoU and the roaming agreements are subject to contractual confidentiality provisions.

8.9 Vimiera Road embankment permanent remedial works

As described in sections 2.2.9 and 7.2, during the course of the motorway's recent upgrade works it has been established that significant remedial works will be required to ensure the long-term stability of the M2 motorway's existing northern embankment near Vimiera Road in Marsfield. A temporary sheet pile retaining wall has been constructed to improve the embankment's stability, and this will permit the safe operation of the motorway, with ongoing monitoring, while the necessary permanent remedial works are carried out by the Company and the Trustee.

Accordingly, as already indicated in sections 2.2.9 and 7.2,

- On 17 May 2013 RMS issued a "change order", under the Upgrade Project Deed provisions described in section 7.2, deferring the satisfaction of specified stability-related risk assessment and other standards for this embankment and specified associated works from Stage 3 of the upgrade project to Stage 4, with an associated extension of the targetted date for the completion of Stage 4 from 18 May 2013 to 18 January 2015, and
- On 16 May 2013 RMS and the Company entered into the VRE Remediation Works Agreement, reaffirmed by the Company on 17 May 2013, under which the Company has undertaken to carry out specified "VRE remediation works" for the permanent remediation of the northern embankment near Vimiera Road, using its best endeavours to complete these works by a "**date for VRE completion**" 20 months of the date on which Stage 3 of the upgrade works is completed or by any later date agreed to by RMS and the Company in writing.

At present it is expected that, in practice, Stage 3 of the upgrade will be completed in August 2013, so this targetted completion date for the "VRE remediation works" is currently expected to be in April 2015. As already indicated in section 2.2.9, this is later than the amended "date for construction completion of Stage 4" of the upgrade works, 18 January 2015, because the "VRE remediation works" extend beyond the scope of the works required to satisfy the standards and other requirements for the completion of the amended Stage 4 of the upgrade works, as specified in the 17 May 2013 "change order" issued by RMS, and also encompass other works required for the ongoing operation, maintenance and repair of the motorway.

The VRE Remediation Works Agreement sets out:

- A draft scope of works and works program for the "VRE remediation works", with undertakings by RMS and the Company to work together to finalise the scope of works and associated drawings.
- Requirements for the Company to effect and maintain specified insurance policies for the "VRE remediation works", including contract works insurance for at least \$25 million, transit insurance, third party liability insurance for at least \$200 million per occurrence and an unlimited number of occurrences, professional indemnity insurance for at least \$20 million per claim, workers' compensation insurance and motor vehicle third party property insurance for at least \$20 million per occurrence and an unlimited number of occurrences. The professional indemnity insurance must be maintained until six years after the completion of the works, and the other policies until the completion of the works.
- Procedures for notifications and inspections associated with the completion of the "VRE remediation works" and the certification of completion by RMS.
- A requirement for RMS to pay the Company an "early completion bonus" of \$33,333.00 (excluding GST) per calendar day if the "VRE remediation works" are completed before the "date for VRE completion", up to a maximum of \$2 million in total. Any such bonus must be paid within 30 days of RMS's receipt of an invoice for this bonus.
- Requirements for the Company to:
 - ♦ Pay RMS a "late completion payment" of \$33,333.00 (excluding GST) per calendar day if the "VRE remediation works" are completed after the "date for VRE completion", up to a maximum of \$2 million in total. Any such payment must be made within 30 days of the Company's receipt of an invoice for this payment.
 - ♦ Give RMS two unconditional bank guarantees prior to the completion of Stage 3 of the motorway's upgrade works, each for \$1 million, as securities for this "late completion payment". These guarantees must be released by RMS once the Company makes this "late completion payment".

8.10 Loss or damage and operational phase insurance

Under the Project Deed the Company and the Trustee are responsible for the care of the M2 motorway land, the motorway and its ancillary works. Until 26 November 1997, six months after the “motorway commencement date”, the Company and the Original Trustee were also responsible for the care of the “licensed areas” required for the motorway’s original construction.

Subject to the Project Deed’s renegotiation provisions discussed in section 10 below, the Company and the Trustee must promptly make good any loss or damage at their own cost, except in the case of loss or damage directly caused by a negligent act or omission by RMS, without any fault or omission by the Company, the Trustee or their contractors.

Since before the “motorway commencement date” of 26 May 1997 the Company and the Original Trustee (and now the Trustee) have had to and must insure the motorway (soon including the upgrade) and its ancillary drainage works for their reinstatement cost and effect public liability insurance for at least \$100 million, workers’ compensation insurance, third party property insurance for all plant and vehicles for at least \$5 million, and any other commonly effected insurance reasonably required by the RTA/RMS and able to be obtained at a reasonable premium.

All these insurance policies had to be and must be with insurers approved by the RTA/RMS and on terms approved by the RTA/RMS. Except for the workers’ compensation and motor vehicle policies, they had to and must be in the joint names of the RTA/RMS, the Company and the Original Trustee/Responsible Entity/Trustee. Prior to repayment of the project debt, the debt financiers’ Security Trustee must be the loss payee. After that date, RMS, the Company and the Trustee will be joint loss payees.

If the motorway (including its upgrade) is damaged or destroyed, the Company and the Trustee must:

- Take immediate steps to clear debris and begin initial repairs
- Promptly consult with RMS on prompt repair and replacement works, to ensure compliance with the Project Deed’s *Scope of Works and Technical Criteria*, minimise disruption to the motorway and ensure they continue to comply with their contractual obligations to RMS to the greatest extent possible, and
- Manage all repair and replacement activities so as to minimise impacts on the free flow of traffic on the motorway.

These obligations will apply even if RMS, the Minister for Roads, the Company, the Trustee and their financiers are renegotiating aspects of the project, potentially including its contracts, under the Project Deed renegotiation provisions summarised in section 10.1 below, because of the events that have damaged or destroyed the motorway.

If the insurance proceeds from the Company’s and Trustee’s policy insuring the existing motorway against loss or damage, or any insurance proceeds received under the Company’s upgrade contract works or construction risk policy and its upgrade professional indemnity policy (section 7.14), are less than or equal to \$50 million, indexed in line with the weighted average capital cities CPI from 1 July 1994 (i.e. about \$82.71 million as at 31 March 2013), they must be applied to the repair and reinstatement of the motorway and the upgrade works. If either of these sets of insurance proceeds exceeds this amount, the proceeds must again to be applied to the repair and reinstatement of the motorway or the upgrade works, *provided*:

- The insurance proceeds and other sources of funds are sufficient to repair or reinstate the motorway and the upgrade works within a reasonable time
- The Trustee is able to meet its obligations to repay the debt financiers substantially in accordance with its debt financing arrangements, and
- It is economically viable to repair or reinstate the motorway and the upgrade works.

However, if these three requirements have not been satisfied within six months of the receipt of the insurance proceeds, or after any renegotiations under the Project Deed’s renegotiation arrangements described in section 10.1 below or after any expert determination under the Project Deed’s dispute resolution procedures described in section 9.15 below, the debt financiers’ Agent may direct the debt financiers’ Security Trustee to apply part or all of the insurance proceeds to repay the debt financiers, with the balance, if any, being paid into a trust account established by RMS, the Company and the Trustee. This balance, if any, must then be applied to the repair and reinstatement of the motorway and the upgrade works.

All of the insurance proceeds received under the other operational phase insurance policies must be applied to the repair and reinstatement of the motorway. Any surplus insurance proceeds must then be used to repay the motorway’s debt financiers, and if any surplus proceeds then remain RMS, the Company and the Trustee must negotiate in good faith on an equitable distribution of the balance.

9 Miscellaneous general provisions of the Project Deed and the Upgrade Project Deed

9.1 RMS and NSW Government traffic management and transport infrastructure development obligations and restrictions

The original form of the Project Deed imposed a series of constraints on actions by the NSW Government and the RTA (and now RMS) which might affect the M2 motorway, many of which still remain in force.

In some cases, described in section 10.1 below, the actions of the NSW Government or any of its authorities or agencies concerning road and rail alternatives to the M2, other transport developments near the M2 or extensions of the M2 may trigger a requirement to renegotiate aspects of the M2 motorway project, potentially including its contracts.

In addition, the Minister for Roads and RMS have agreed that:

- RMS must manage the Sydney metropolitan traffic system so as to “recognise” —
 - ♦ The position of the M2 motorway as “the principal arterial road servicing the ‘northwest regions of Sydney’ ”
 - ♦ The importance of the Epping Road/Gore Hill freeway link in the traffic system and the importance of ensuring a free traffic flow along this link, and
 - ♦ The importance of other roads connecting to the M2 motorway, timely maintenance of these roads and ensuring free traffic flows along these roads.
- While RMS may maintain and repair the NSW roads system, including Epping Road west of its intersection with the M2 motorway and any other “alternative” road giving access to a defined area termed “the northwest regions of Sydney” (**Figure 9.1**), if this maintenance or repair involves an upgrading of these “alternative” roads RMS must again “have regard to the fact that the M2 motorway is the principal arterial road servicing the ‘northwest regions of Sydney’.”
- If there is any proposal for an extension of the M2 motorway, either as a tollroad or as a toll-free road, RMS must consult with the Company on this extension, in good faith, and must

“have regard to” the effect of the extension on the M2, including its effect on traffic on the M2.

This requirement does not, however, affect RMS’s ability to engage in a competitive tendering process, or any other process, for any future extension of the M2.

- While RMS may connect other roads to the M2 motorway, at RMS’s cost, it must (as already indicated) ensure that no untolled use of the M2 motorway will result, give the Company reasonable notice of any such proposal and co-operate with the Company to minimise the impact of the connection on the operation and use of the M2.

RMS must also coordinate all activities associated with the connection and must not unreasonably interfere with the operation and use of the motorway.

In the cases of the connection of the Westlink M7 motorway and the Lane Cove Tunnel* to the M2 motorway, the Company has expressly acknowledged the RTA’s compliance with these obligations in the periods leading up to the execution of the WSO/M2 Interface Agreement on 2 August 2002 and the LCT/M2 Interface Agreement on 14 November 2003.

Notwithstanding these requirements, the Company and the Trustee have acknowledged that the Project Deed, the Upgrade Project Deed and the other major M2 motorway contracts do not and cannot unlawfully restrict RMS’s unfettered discretion to exercise any of its statutory functions and powers, and that they cannot make any claim against RMS under these contracts concerning anything RMS does or does not do in exercising these functions and powers.

Prior to 18 November 2010, under Project Deed arrangements that were struck out by the Upgrade Project Deed, if there were any proposal to develop or to grant a concession for the financing, design, construction or operation of any public transport infrastructure (including public or private train services) or any public or private freight train services servicing the “northwest regions of Sydney”, as defined in the Project Deed (**Figure 9.1**), and the proposal could reasonably have been expected to have a “material adverse effect” on —

- The ability of the Company or the Trustee to carry out the M2 motorway project in accordance with the Project Deed, the

* Under the LCT/M2 Interface Agreement the connection of the Lane Cove Tunnel to Epping Road is treated as a connection to the M2 motorway for the purposes of the Project Deed.



Figure 9.1. The “northwest regions of Sydney”, as defined in the Project Deed.

Project Management Services Deed, the leases, the RTA Deed of Charge or the RTA Consent Deed (as amended)

- The ability of the Trustee to repay its debts within the timeframes set out in the debt financing contracts for the project, and substantially in accordance with these contracts, or
- The level or timings of the M2 motorway project’s revenues or outgoings, and consequently the expected real after-tax returns of “notional initial investors” (see section 8.3.1) over the full term of the project,

the NSW Government was obliged to consult with the Company, in good faith, and “have regard to” –

- The effect of the proposal on the M2 motorway, including traffic on the M2, and
- “The fact that the M2 motorway is the principal passenger and freight arterial servicing the ‘northwest regions of Sydney’.”

9.2 Rates, levies and taxes

The Company must pay all rates, charges and land taxes levied by any government authority on the M2 motorway project.

However, if the total liability of the Company and the Trustee for local government rates and Sydney Water rates and charges associated with the motorway land, the motorway and its ancillary drainage basins and watercourses exceeds \$224,069

per year, annually indexed for increases in the weighted average capital cities CPI since 1 July 1994 (i.e. about \$370,673 as at 31 March 2013), RMS must reimburse the excess to the Company and/or the Trustee as applicable.

RMS must also indemnify the Company and/or the Trustee for any land tax they are required to pay under the Land Tax Act 1956, the Land Tax Management Act 1956 or any legislation replacing these laws.

The Company and the Original Trustee were liable for stamp duties and other fees associated with the execution of the Project Deed, and also for all sales tax, excise duty and similar imposts associated with the construction of the original motorway, including taxes and duties on equipment, materials and supplies. Hills Construction had the same liabilities under the Project Management Services Deed, and the Company has very similar liabilities under the Upgrade Project Deed.

As already indicated in sections 1.2.3 and 8.6, the project’s original contracts preceded and did not expressly contemplate the introduction of the Goods and Services Tax or any similar tax. Apart from recent amendments to the Project Deed’s *Toll Calculation Schedule* (see section 8.6), they have generally not been amended to cater for the GST or similar taxes. The more recent contracts include standard GST provisions.

If the NSW Government imposes a rate, tax, levy, charge or other requirement on the Company, the Trustee, Tollaust (the motorway operator), the motorway, its land or tolls or any other

amounts payable under the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 or the Amended and Restated RTA Consent Deed, and this discriminates against the Company, the Trustee or Tollaust in the design, construction, operation, maintenance or repair of the M2 motorway, or more generally against private tollroad operators, RMS must reimburse the Company or the Trustee, as applicable, for their increased costs in paying the rate, tax, levy or charge or in meeting the cost of the requirement.

9.3 General responsibilities for others

Under the Project Deed and the Upgrade Project Deed the Company and the Trustee have the same responsibilities for persons, property and all other aspects of the M2 motorway project as they would have if they were the freehold owners in possession of the motorway land.

More particularly, and as already indicated in section 8.1, the Company is expressly prohibited from allowing members of the public to have access to the motorway, its land or its ancillary drainage basin and watercourse works if it is aware of any material threat to their health or safety.

Indemnities and other undertakings by the Company and the Trustee to RMS specifically concerning third party claims associated with the upgrade works have already been summarised in section 7.9 of this report.

In addition, and more generally, under the Project Deed the Company and the Trustee have:

- Released RMS from all claims and demands resulting from any accident, damage or injury on the motorway, its land or its drainage basins and related watercourses that is not caused or contributed to by RMS negligence, a wilful default by RMS or an RMS breach of its obligations under the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 or the Amended and Restated RTA Deed of Consent, and
- Undertaken to indemnify RMS against all damages, expenses, losses or liabilities it incurs concerning:
 - ♦ Any negligent or wasteful use of services by them on the motorway, its land or its drainage basins and related watercourses
 - ♦ Any failure to control any overflows or leakages of water onto or from the motorway, its land or its drainage basins and related watercourses, if they could have been prevented or remedied had they or their contractors exercised the standard of care and diligence of a prudent and competent motorway owner, operator or maintainer, including the expenditure of all reasonable sums of money
 - ♦ Any loss, damage or injury to persons or property of any nature on the motorway, its land or its drainage

basins and related watercourses that is not caused by RMS negligence or a wilful default by RMS, and

- ♦ Any RMS breach of the Company Lease caused by a Trustee breach of the Trust Concurrent Lease,

except for any upgrade-related matters on which they are required to indemnify RMS under the more specific Upgrade Project Deed arrangements described at the start of section 7 in this report and in section 7.9.

9.4 Interest on overdue payments

If RMS, the Company or the Trustee fails to pay any amount due under the Project Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, an M2 Upgrade Company Lease or an M2 Upgrade Trust Lease by the due date, it must pay interest of 2% per annum plus the Westpac's reference rate for A\$ loans to prime commercial customers (or, if there is no such reference rate, Westpac's rate for overdrafts of more than A\$100,000 to prime commercial customers).

If the Minister for Roads, RMS, the Company or the Trustee fails to pay any amount due under the Upgrade Project Deed by the due date, it must pay interest of 2% per annum plus the BBSY reference rate (or, if this reference rate is unavailable, the average of the buying rates for 30-day bills of three banks selected by RMS).

9.5 Service centres

The Company may construct service centres, serving eastbound and/or westbound motorway users, on the motorway land or adjacent land, provided it obtains RMS's prior written consent, which may not be unreasonably withheld or delayed.

Any such RMS consent may be subject to conditions. In deciding whether to give its consent, RMS may take any relevant factor into account, specifically including:

- The policies of the NSW Government, RMS and other government authorities in relation to service centres
- Any concessions proposed by the Company, including the type and range of services to be offered and the accessibility of the development from the motorway
- The effects of the development on the Company's ability to comply with its motorway and motorway upgrade contractual commitments to the Minister for Roads and RMS
- The proposed contractual arrangements, including the extent to which they are arms-length commercial transactions and the consideration involved
- The identity and nature of any proposed sub-lessees, lessees of adjacent land and/or operators of the service centre, including their financial and commercial standing, reputation and expertise
- The design and aesthetics of the proposed service centre
- The proposed construction, including its standards of workmanship and materials

- Proposed reporting and accounting obligations, and
- The Company's compliance with legal requirements in relation to the service centre.

9.6 Advertising and promotional signs and other media

In addition to the signs it was required to erect or display in accordance with the Project Deed's *Scope of Works and Technical Criteria*, the Company may erect or display signs or other media, for advertising or display purposes, on the motorway land, the motorway or its ancillary works with RMS's prior written consent, which may not be unreasonably withheld or delayed.

In deciding whether to approve an advertising or display sign or other medium, RMS may specifically consider:

- Its safety and aesthetic features, and
- Any policies of the NSW Government, RMS and other government authorities on such signs and media, including the July 1992 RTA Draft Policy and Guidelines *Advertising in the Road Reserve*.

Subject to the requirement for RMS approval, the Company was and is specifically entitled to display signs and other media concerning the motorway's design, construction and operation at and near the motorway's toll plazas.

If the Minister for Roads, RMS, the Company and the Trustee agree that other signs should be displayed at locations off the motorway land, RMS must erect and display these signs.

More specifically, and as already indicated in section 2.2.4, under the Deed of Consent to Advertising on the M2 Motorway executed on 8 December 1999:

- RMS has agreed that the Company may:
 - ♦ Erect advertising structures along the motorway, provided RMS consents to each structure and subject to terms and conditions specified by RMS
 - ♦ Display advertisements on these structures, other than advertisements associated with alcohol or tobacco products, and
 - ♦ Enter into advertising contracts, and
- The Company has agreed to:
 - ♦ Make one of its display advertising structures available to RMS, for 12 months from the completion of construction of the first advertising signs under its first advertising contract, at 50% of the "going market rate", and
 - ♦ Pay 14% of its gross advertising revenue into an "additional M2 improvement fund" to be spent on M2 motorway safety improvements beyond those the Company would otherwise be obliged to perform.

Before the end of the terms of the leases the Company must remove all signs and other media on the motorway land, the motorway and its ancillary works as reasonably directed by

RMS, and make good any damage caused by these signs or other media.

9.7 Civil disobedience and unlawful conduct

The Minister for Roads and RMS have promised to take action, or procure relevant authorities to take action, to remove any road blockade or other form of civil disobedience that hinders or prevents unfettered access to or along the M2 motorway or its land by the public, the Company, the Trustee or their contractors.

The Company must promptly notify all relevant government authorities, including the police, fire, ambulance and other emergency services, if it becomes aware of any "riotous, disorderly, offensive or improper" conduct or any unlawful act on the motorway, its land or its ancillary works of a type which would usually be reported to these authorities.

9.8 Miscellaneous reporting obligations

The Project Deed sets out requirements for:

- The Company and/or the Trustee to provide RMS with copies of the project's private sector financing agreements and security documents, as amended under any refinancings, and a private sector completion undertaking, as soon as practicable after their execution
- The Company and the Trustee to maintain accounts and other records relating to the operation, maintenance and repair of the motorway and make them available to RMS, at all reasonable times, for inspection and auditing purposes
- The Company to give RMS quarterly Company-certified cash flow and profit and loss statements (at the end of each quarter), an independently audited annual profit and loss statement (as soon as practicable, and by no later than 28 October each year) and monthly traffic reports (before the tenth business day of the following month)
- The Company and the Trustee to notify RMS when the project debt has been repaid in full and when the Company and the Trustee, in aggregate, derive amounts sufficient to give investors in the Company and the Hills Motorway Trust, treated as "notional initial investors" as described in section 8.3.1,
 - ♦ A real after-tax return equal to a forecast "base case" return of 11.65% pa over the term of the leases, and
 - ♦ A real after-tax return of 12.25% pa (as already described in section 8.4, if this notional return is achieved it will trigger changes in the permitted method of payment of the Trustee's "base rent" under the Trust Lease and the Trust Concurrent Lease and permit RMS to start presenting "base rent" promissory notes for payment).

In addition, under the Upgrade Project Deed, the Company and the Trustee must:

- Keep accounts and all other records relating to the performance of their Upgrade Project Deed obligations at specified locations, including details on a reserve account they must establish for the funding of possible reimbursements to RMS if it “steps in” to continue the upgrade works after an Upgrade Project Deed default related to Stages 1 to 4 of the upgrade works under arrangements described in section 12.6 below, and
- Give RMS certified copies of audited annual financial statements, for the Company, the Trustee and the consolidated “Hills Motorway group” (the Company, the Trustee, the Hills Motorway Trust and Hills Construction) as soon as practicable, and by no later than 28 October each year.

9.9 Publicity and confidentiality

Under the Upgrade Project Deed the Company and the Trustee must:

- Obtain RMS’s prior written approval before announcing, holding or permitting any event or party on the upgrade works’ worksites or issuing any information or publication concerning the upgrade project, and
- Promptly give RMS details of any “direct” media requests to the Company, the Trustee, Leighton Contractors, the On-Ramp D&C Contractor or any of their subcontractors concerning the upgrade project.

There are no equivalent or more broadly applicable restrictions on such publicity in the Project Deed.

The Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier (as set out in the Deed of Amendment and Restatement (Independent Verifier Deed) and as amended by the Change to Services Letter (IV)), the Deed of Appointment of ER (as amended by the Change to Services Letter (ER)), the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010, the Upgrade Side Deed and the On-Ramp D&C Side Deed are subject to confidentiality restrictions imposed by the Upgrade Project Deed, as amended by the Lane Cove Road On-Ramp Amending Deed from 28 May 2013. These restrictions also govern the release of information concerning the negotiations leading to the Upgrade Project Deed or disclosed to the participants in these negotiations.

Specified exemptions to these restrictions include:

- The release of information already in the public domain or obtainable with no more than reasonable diligence from other sources
- The release by RMS of any information that does not fall within any of a series of “commercially sensitive information” categories listed in a schedule to the Upgrade Project Deed (these categories cover specified construction timing, cost and payment details for the upgrade project, personal

information on key personnel, insurance premiums and the private sector parties’ “base case” models and forecast equity returns concerning the Lane Cove Road on-ramp project)

- The release of information as required by the law, expressly including the Government Information (Public Access) Act 2009 (NSW), or for legitimate government purposes
- The release of information to aid investors, financiers and insurers, and
- The publication of this *Summary of Contracts* (as tabled in Parliament after auditing by the Auditor-General) in accordance with the NSW Government’s December 2006 *Working with Government Guidelines for Privately Financed Projects*, the predecessor of the August 2012 *NSW Public Private Partnerships Guidelines* (see section 1.1).

The Upgrade Project Deed’s confidentiality restrictions do not diminish the NSW Auditor-General’s ability to carry out audit functions under the Public Finance and Audit Act 1983.

If RMS proposes to disclose any “commercially sensitive information”, as defined in the schedule to the Upgrade Project Deed, in accordance with the Government Information (Public Access) Act, it must give the Company and the Trustee at least 20 business days’ notice of the proposed disclosure and take reasonable steps to consult with them before disclosing the information. If the Company and/or the Trustee object to the proposed disclosure, they must provide details of this objection within five business days of the later of the date of notification and the conclusion of consultations. RMS may, but need not, take any such objection into account, and will not be limited by these arrangements in discharging its obligations under the Government Information (Public Access) Act.

There are no equivalent or other broadly applicable confidentiality requirements in the Project Deed. However, the Project Deed has confidentiality requirements applying specifically to information and documents disclosed during expert determinations under its dispute resolution procedures, which are described in section 9.15 below.

The terms of the 8 December 1999 Deed of Consent to Advertising on the M2 Motorway are subject to confidentiality restrictions, again with specified (but different) exceptions. These exceptions again include legal requirements but do not include the publication of a summary under the NSW Government’s *Working with Government Guidelines for Privately Financed Projects*, the first form of which were released in November 2001.

9.10 Restrictions on the businesses of the Trustee and the Company

Under the Project Deed the Trustee may not:

- Carry on any business other than the financing, design, construction, operation, maintenance and repair of the M2 motorway (including the upgrade) and its ancillary works, or

- Acquire or hold any property or incur any liabilities other than for these purposes or as part of the administration of the Hills Motorway Trust.

The Company requires RMS's prior written consent, which may not be unreasonably withheld or delayed, before it may:

- Carry on any business other than the financing, design, construction, operation, maintenance and repair of the M2 motorway (including the upgrade) and its ancillary works or one or more service centres as approved by RMS
- Acquire or hold any property or incur any liabilities other than for these purposes, or
- Incorporate or acquire any subsidiary other than Hills Construction.

In accordance with these arrangements, the RTA/RMS has consented to:

- The Company's formation of Hills Motorway Underwriting No 1 Pty Limited and Hills Motorway Underwriting No 2 Pty Limited as part of the infrastructure bond refinancing in June 1996 (this consent was provided, after the event, in the M2 Motorway Project Deed Deed of Amendment of 29 October 1997), and
- The Company's acquisition of the Responsible Entity from Macquarie Bank Limited on 30 July 2004 (this consent was provided in the RTA Consent Deed of July 2004).

9.11 'Ring fencing' restrictions

Under Project Deed "ring fencing" provisions introduced by the 2010 Amending Deed and which (since 18 November 2010) have applied retrospectively since 10 June 2005, the date on which the Company and the Hills Motorway Trust were acquired by Transurban entities,

- The Company and the Trustee must obtain RMS's consent, except in narrowly specified emergency situations, before entering into any transaction or arrangement with Transurban International Limited, Transurban Holdings Limited, Transurban Infrastructure Management Limited (as the responsible entity of the Transurban Holding Trust) or any of their related bodies corporate, other than the Company, the Trustee and Hills Construction, if this transaction or arrangement is not on an "arms length and commercial" basis, is not necessary for the Company or the Trustee to efficiently and effectively carry out their obligations under the project's contracts or is beyond the scale and nature of what is necessary for them to do this.
- The Hills Motorway Trust may become a member of a tax consolidated group—as contemplated by Part 3–90 of the Income Tax Assessment Act 1997, and including any such group headed by Transurban Holdings—only with RMS's consent.
- If the Company is a member of a tax consolidated group, it:
 - ♦ Must enter into a tax sharing agreement and a tax funding agreement for the consolidated group, as

defined in Part 3–90 of the Income Tax Assessment Act 1997, on terms reasonably acceptable to RMS, and

- ♦ May amend or terminate these agreements, in any way that might directly or indirectly affect the Company, only with RMS's consent. (Two acceptable types of changes are specified in the Project Deed.)

As already indicated, on 25 October 2010 the Company and the Trustee issued a Disclosure Letter to the Minister for Roads and the RTA setting out details of related party transactions between themselves and other Transurban entities between 10 June 2005 and 25 October 2010, seeking waivers for any resultant breaches of these new "ring fencing" restrictions. The Minister for Roads and the RTA responded on 25 October 2010 by issuing a Waiver Letter to the Company and the Trustee, irrevocably waiving their rights against the Company, the Trustee and Hills Construction concerning any defaults arising from the disclosed matters under the new restrictions.

In addition, under the M2 Motorway Management Agreement Side Letter executed on 25 October 2010 the RTA consented to the M2 Motorway Management Agreement of 25 October 2010, subject to a series of restrictions on the Company, the Trustee and Transurban Limited, including requirements to notify the RTA (and now RMS) before they may add to or terminate any services under that agreement and obtain the consent of the RTA/RMS before amending or transferring any of their rights and obligations under that agreement.

9.12 Restrictions on ownership of the Company and the Hills Motorway Trust

The Company and the Trustee must ensure that:

- The shares in the Company and the units in the Hills Motorway Trust are all held and beneficially owned either by a single entity (which may be a joint venture) or by a "stapled entity" (i.e. two or more entities whose shares or units are "stapled", *meaning* they must always be transferred, sold, disposed of or otherwise dealt with in the same manner), unless RMS has granted its prior written approval.

(As already indicated in section 2.1, since 10 June 2005 the Company's shares and the Hills Motorway Trust's units have all been held by a "stapled entity" which includes Transurban Holdings Limited and the Transurban Holding Trust.)

- If the shares in the Company and the units in the Hills Motorway Trust are held by a "stapled entity", this entity may be "unstapled" only with RMS's prior written consent, *unless* all of the shares and units in its constituent entities are themselves held either by a single entity or by another "stapled entity".

9.13 Other restrictions on assignments and mortgages

RMS, the Company and the Trustee have agreed that they will not deal separately with their interests under the Project Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the Sublease, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases and the M2 Upgrade Subleases, and that any dealings with their interests under the Project Deed and the leases will occur at the same time, on substantially the same terms and with the same parties.

The Company and the Trustee may grant security interests over their interests in the Project Deed and the leases in order to secure project debt financing arrangements, provided the person taking these securities enters into a deed of consent with RMS on substantially the same terms as the original RTA Consent Deed of August 1994 as it was on 26 August 1994 (see section 2.2.15).

The Company and the Trustee may assign, novate or otherwise deal with their interests in and obligations under the Project Deed and the leases, or sub-lease or license the motorway (including the upgrade), its ancillary works or its land, only with RMS's prior written consent.

In deciding whether to enter into a new deed of consent or give its consent to a proposed transfer of the Company's and/or Trustee's interests in and obligations under the Project Deed and the leases, RMS must consider whether the Company and the Trustee have complied with their obligations not to deal separately with the Project Deed and the leases.

The Company and the Trustee must give RMS certified copies of any agreements under which they assign or otherwise deal with their rights or obligations under the Project Deed and the leases.

Additional requirements apply, under the Amended and Restated RTA Consent Deed, if the Company or the Trustee proposes to dispose of its rights or obligations under the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed and the Restated Deed of Guarantee in order to remedy a default under any of these contracts (see section 11.1 below).

Before any such disposal, the Company and the Trustee must provide RMS with details of the proposed purchaser(s) and the terms and conditions of the proposed disposal, and obtain RMS's written consent. RMS must tell the Company, the Trustee and the debt financiers' Security Trustee and Agent whether it consents as soon as reasonably practicable, and may not withhold its consent if:

- The proposed purchaser is a reputable corporation with sufficient expertise and ability and a sufficiently high financial and commercial standing to properly carry out the obligations of the Company and the Trustee under the Project Deed, the Project Management Services Deed, the leases, the RTA

Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed

- The proposed purchaser agrees to be bound by the terms of these contracts, and
- The Company and the Trustee give RMS details on the proposed disposal.

The Amended and Restated RTA Consent Deed sets out requirements for novations of the project contracts to accompany such a sale.

Other restrictions in the Amended and Restated RTA Consent Deed on refinancings and other amendments to the M2 motorway contracts are set out in section 13.2.6 below.

9.14 Force majeure under the Upgrade Project Deed

Under the Project Deed some *force majeure* circumstances may trigger the Project Deed's renegotiation provisions, which for convenience are summarised later in this report, in section 10 below.

In contrast, the Upgrade Project Deed does not treat *force majeure*, as defined in that deed, as a trigger for its own renegotiation provisions, and instead sets out a series of other requirements in the event of *force majeure*. (The definition of *force majeure* in the Upgrade Project Deed differs from that in the Project Deed.)

In the Upgrade Project Deed, *force majeure* is defined as any earthquake, cyclone, fire, explosion, flood, malicious damage, sabotage, act of a public enemy, terrorism, civil unrest, war, invasion, act of a foreign enemy, hostility between nations, civil insurrection, military coup, radioactive contamination (from nuclear waste or the combustion of nuclear fuel) or confiscation, nationalisation, requisition or property damage under the order of any government which:

- Is beyond the reasonable control of the Company, the Trustee, Leighton Contractors, the On-Ramp D&C Contractor and any of their subcontractors
- Causes the Company and/or the Trustee to be unable to perform their obligations under the Upgrade Project Deed, and
- Could not have been prevented or avoided by the Company, the Trustee, Leighton Contractors, the On-Ramp D&C Contractor or their subcontractors by their taking the steps a prudent, experienced and competent concessionaire, designer or constructor would have taken.

If the Company and/or the Trustee allege *force majeure* as defined in the Upgrade Project Deed has occurred, they must promptly notify RMS in writing, providing details of the *force majeure*, its effects on their obligations, the actions they have taken or propose to take to remedy the situation, the time they are likely to be unable to carry out their affected obligations, the estimated cost of remediation and the insurance proceeds on which they expect to be able to rely.

The Minister for Roads, RMS, the Company and the Trustee must then meet within five business days to determine how long the *force majeure* is likely to continue.

The Company and/or the Trustee must remedy the effects of the *force majeure* promptly, in accordance with the arrangement for reinstating damaged upgrade works described in section 7.14 above and including any reasonable expenditures which may mitigate or avoid the effects of the *force majeure*.

Their Upgrade Project Deed obligations affected by the *force majeure* will be suspended, but only to the extent and for so long as the *force majeure* continues to affect these obligations.

9.15 Dispute resolution under the Project Deed

Disputes concerning any of the following issues could and/or may be referred by RMS, the Company, the Original Trustee/Responsible Entity/Trustee and/or Hills Construction, as applicable, to a mutually agreed, mutually appointed independent expert for final, binding determination under procedures specified in the Project Deed:

- Whether design documentation for the original motorway and the January 2007 third lane conversion works satisfied the Project Deed's *Scope of Works and Technical Criteria*. (Disputes about the design documentation for the upgrade works are subject to separate procedures under the Upgrade Project Deed, as summarised in section 9.16 below.)
- Whether the Company and the Original Trustee/Trustee were constructing the original motorway or the January 2007 third lane conversion works in a proper and workmanlike manner, using good quality materials, plant and equipment and in accordance with the design documentation.
- Any disputed issues under the Project Management Services Deed.
- Whether the time specified in a "remedy notice" issued by RMS following a Company or Trustee default (other than a default concerning the design and construction of the upgrade works), as discussed in section 11.1 below, is reasonable.
- Whether a "material adverse effect" event giving rise to a right under the Project Deed to renegotiate aspects of the project, potentially including the Project Deed, the leases, the RTA Deed of Charge of May 2009 and/or the Amended and Restated RTA Consent Deed, as discussed in section 10.1 below, has occurred (if this dispute is not resolved within 30 days of the parties' entering these negotiations).
- The "renegotiation" action that should be taken under the Project Deed's renegotiation provisions (again if this dispute is not resolved within 30 days of the parties' entering these negotiations).

- The calculation of —
 - Company and Hills Motorway Trust investors' real after-tax internal rates of return (treating them as "notional initial investors")
 - "Early termination" payments to be made to the Company and the Trustee by the Minister for Roads following a termination of the Project Deed for an RMS default, as discussed in section 11.4 below
 - Damages payable to the Company and the Trustee by RMS and the Minister for Roads following a termination of the Project Deed for an RMS default, again as discussed in section 11.4 below, or
 - The tolls able to be charged by the Company under the Project Deed's *Toll Calculation Schedule*, as discussed in section 8.6 above.

Any other disputes under the Project Deed, the leases, the RTA Deed of Charge of May 2009 or the Amended and Restated RTA Consent Deed may be referred by RMS, the Company and/or the Trustee for mediation by the Australian Commercial Disputes Centre Limited in Sydney.

Disputes under the Upgrade Project Deed are subject to separate dispute resolution procedures, as described in section 9.16 below.

Disputes under the WSO/M2 Interface Agreement, the LCT/M2 Interface Agreement, the Site Access Deed or the Epping Bus Underpass Deed were and/or are subject to separate dispute resolution procedures, as already indicated in sections 5.1, 5.2 and 5.3.

The Project Deed's dispute resolution procedures cover processes, requirements and criteria for the selection of an independent expert, directions to the expert on matters to be considered, the rules applying for expert determinations, confidentiality requirements and costs.

RMS, the Company and the Trustee must notify the Agent of the project's debt financiers if any of them intends to refer a dispute to expert determination under these Project Deed provisions.

Representatives of the project's debt financiers, including their Security Trustee and Agent, must be given copies of all information provided to the expert, may make submissions to the expert and may attend and participate in meetings held by the expert with all the parties to the dispute. Prior to making a determination, the expert must consult with these representatives to ascertain their views about the proposed resolution of the dispute.

If an "independent officer" nominated by the President of the NSW Law Society at the request of an expert, the Minister for Roads, RMS, the Company, the Trustee or Hills Construction—such as the most recently retired Chief Justice of NSW or a person of similar experience and stature—decides that a party involved in a dispute of a type subject to expert determination is not acting *bona fide* to achieve a settlement of the dispute, has failed to comply with the expert's directions or has otherwise not cooperated in the Project Deed's dispute

resolution procedures, the expert may proceed to make a determination without any further participation by or discussions with the defaulting party.

If an expert's determination requires any amendments to the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 or the Amended and Restated RTA Consent Deed, these changes must be promptly prepared and executed.

9.16 Dispute resolution under the Upgrade Project Deed

All disputes between RMS and the Company and/or Trustee related to the Upgrade Project Deed or the design and construction work of the Company and/or the Trustee on the upgrade must be addressed in accordance with dispute resolution procedures set out in the Upgrade Project Deed.

These Upgrade Project Deed dispute resolution procedures follow the following sequence:

- (i) First, at the request of any of the parties, negotiation of the dispute in good faith between the chief executive officers of RMS, the Company and/or the Trustee or their nominees.

If RMS agrees, acting reasonably, the debt financiers' Security Trustee may attend and make submissions to any negotiation meetings.

If these negotiations resolve the dispute, the decision of the CEOs or other representatives of the parties will be binding.

- (ii) If these negotiations fail to resolve the dispute within five business days, *and* the dispute concerns:

- A determination by the Independent Verifier, *or*
- The costing estimates and/or other advice provided by the Company and/or the Trustee to RMS in response to an RMS "change order" for a change in the Upgrade Project Deed's *Scope of Works and Technical Criteria*, under the arrangements described in section 7.2 above, *or*
- If RMS has "stepped in" following an "event of default" related to Stages 1 to 4 of the upgrade works under the Upgrade Project Deed provisions described in sections 12.5 and 12.6 below, the costing estimates and/or other advice provided by the Company and/or the Trustee to RMS in response to an RMS "additional works proposal" for a change in the Upgrade Project Deed's *Scope of Works and Technical Criteria*,

the dispute may be referred by the Minister for Roads, RMS, the Trustee or the Company, within ten business days, for determination by an independent expert, selected as specified in the Upgrade Project Deed, in accordance with rules set out in the Upgrade Project Deed.

RMS, the Company and the Trustee must notify the debt financiers' Agent if they intend to refer an upgrade works dispute for expert determination under these provisions.

The Company and the Trustee may give the debt financiers' Security Trustee copies of all documents and other information and materials given to the expert, and if RMS agrees, acting reasonably, the Security Trustee may attend and make submissions to any hearings by the expert and any other meetings between the expert and any of the disputing parties.

RMS, on the one hand, and the Company and/or the Trustee, on the other, must equally share the costs of the expert, and each party must bear its own costs.

The decision of the expert will be final and binding, unless one of the parties involved notifies the other(s), within ten business days, that it is not satisfied and intends to refer the matter to arbitration.

- (iii) If a dispute is not of the types able to be referred to expert determination, as listed in (ii) above, and has not been resolved by the negotiations described in (i) within five business days, *or* if the dispute has been referred to expert determination but this has not resulted in its resolution to the satisfaction of all the parties, RMS, the Company and/or the Trustee may refer the matter for final and binding arbitration, again in accordance with procedures and rules set out in the Upgrade Project Deed (for disputes already considered by an expert, expedited arbitration rules will apply).

The Company and the Trustee may give the Security Trustee copies of all documents and other information and materials given to the arbitrator, and if RMS agrees, acting reasonably, the Security Trustee may attend and make submissions at any arbitration hearings.

Notwithstanding the existence of any dispute, RMS, the Trustee and the Company must continue to perform their obligations under the Upgrade Project Deed.

The procedures outlined above do not prevent any party from seeking urgent relief from a court. If RMS agrees, acting reasonably, the Security Trustee may have the proceedings described above consolidated or heard together with any similar proceedings between the Company and/or the Trustee and the Security Trustee.

10 Renegotiation provisions

10.1 ‘Material adverse effect’ renegotiations under the Project Deed

In addition to the Project Deed’s provisions for amendment of its *Scope of Works and Technical Criteria*, as discussed in sections 4.3 and 8.1 above, and the possible amendment of the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and/or the Amended and Restated RTA Consent Deed as a result of an expert determination or arbitration of a dispute under the Project Deed’s dispute resolution procedures, as discussed in section 9.15 above, the Project Deed expressly envisages a range of other circumstances under which aspects of the project, potentially including its contracts, might need to be renegotiated.

These Project Deed renegotiation provisions specify renegotiations with three different sets of aims in mind in three different sets of circumstances (not counting *another* combination governed by both the Project Deed and the Upgrade Project Deed, which for convenience is described later, in section 10.2 below).

First, if:

- The M2 motorway is extended, either as a tollroad or as a toll-free road, *or*
- The NSW Government or any of its authorities or agencies develops or substantially upgrades Epping Road (west of its intersection with the M2 motorway) or any other road giving vehicle access to the “northwest regions of Sydney” (*Figure 9.1*), or permits, grants a concession for or permits the granting of a concession for such a development or upgrading,* *or*
- A court issues an injunction preventing the Company from operating, maintaining or repairing the motorway (including the upgrade), or from levying or keeping tolls, in the manner contemplated by the Project Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed, and this injunction is not issued as a result of:
 - ♦ Any wrongful act or default by the Company, the Trustee or their contractors under these contracts, or

- ♦ A legal challenge to the motorway’s original planning approval or a legal challenge claiming work by the Company or the Trustee in accordance with the Project Deed’s *Scope of Works and Technical Criteria* does not comply with this planning approval,

and the Company and the Trustee notify RMS, giving full details, that they reasonably consider this event has had a material adverse effect on:

- Their ability to carry out the project (other than the upgrade design and construction works) in accordance with the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed, or
- The ability of the Trustee to repay its debt financiers, substantially in accordance with the project’s debt financing arrangements (including its upgrade debt financing arrangements), within the period(s) required under these arrangements plus three months, or
- The ability of the Trustee to repay the equity investors’ subordinated loans associated with the Lane Cove Road on-ramp project substantially in accordance with a specified subordinated loan agreement, or
- The level or timing of the project’s revenues or outgoings (excluding any revenues or outgoings of any uncompleted stage of the upgrade works), and hence the real after-tax returns of investors in the Company and the Hills Motorway Trust over the operating term (which for the purposes of these provisions is taken to be 49 years from the opening of the motorway on 26 May 1997, even prior to the four-year extensions of the terms of the Company Lease, the Trust Lease and the Trust Concurrent Lease upon the “final completion” of Stages 1 to 4 of the upgrade works, as described in section 8.3.2 above),

the Minister for Roads or RMS must then, as soon as practicable and in any event within 14 days of receiving the notification, enter into co-operative and good faith negotiations with the Company, the Trustee and their financiers, so as to enable them to:

- Repay their debt financiers, substantially in accordance with their debt financing arrangements, within the period(s) required under these arrangements plus three months, and

* The “northwest regions of Sydney”, as defined in the Project Deed, include areas adjacent to both sides of the Pacific Highway and the North Shore railway line (*Figure 9.1*). The Company advised the RTA on 24 August 1994, just before the Project Deed was executed, that any upgrade of the Pacific Highway between Chatswood and Hornsby would not constitute grounds for renegotiation of the Project Deed. However, the Project Deed does not expressly exclude such upgrades—or others, such as the proposed future M2 motorway–F3 freeway link along the Pennant Hills Road corridor or a possible motorway connection between the eastern end of the M2 and the proposed WestConnex motorway (*Figure 1.2*)—as potential triggers for renegotiations under the Project Deed.

- Give Company and Hills Motorway Trust investors—treated as “notional initial investors” as defined in the Project Deed (see section 8.3.1)—the lesser of:
 - ♦ The real after-tax rate of return they would have received had the event not occurred, and
 - ♦ A real after-tax return of 14.65% per annum.

Second, if:

- The cost of performing the obligations of the Company and the Trustee under the Project Deed, the Company Lease, the Trust Lease and the Trust Concurrent Lease increases beyond the cost reasonably anticipated when the Project Deed was executed on 26 August 1994, *or*
- The cost of performing the obligations of the Company and the Trustee under the Stage 1 M2 Upgrade Company Lease, the Stage 1 M2 Upgrade Trust Concurrent Lease, the Stage 2 M2 Upgrade Trust Lease, the Stage 3 M2 Upgrade Company Lease, the Stage 3 M2 Upgrade Trust Lease and/or the Stage 3 M2 Upgrade Trust Concurrent Lease increases beyond the cost reasonably anticipated when the Upgrade Project Deed was executed on 25 October 2010, *or*
- The cost of performing the Trustee’s obligations under the Stage 3A M2 Upgrade Trust Lease increases beyond the cost reasonably anticipated when the Lane Cove Road On-Ramp Amending Deed was executed on 21 May 2013,

because of—

- A change in NSW or local government legislation (including regulations or by-laws), NSW public authority requirements or legally binding NSW Government, local government or NSW public authority guidelines, *or*
- A change in the application of existing NSW public authority requirements, *or*
- A change in the courts’ interpretation of existing NSW legislation, not subject to appeal,

and the Company and the Trustee notify RMS, giving full details, that they reasonably consider this event has had a material adverse effect on:

- Their ability to carry out the project (other than the upgrade design and construction works) in accordance with the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed, *or*

- The ability of the Trustee to repay its debt financiers, substantially in accordance with the project’s debt financing arrangements (including its upgrade debt financing arrangements), within the period(s) required under these arrangements plus three months, *or*
- The ability of the Trustee to repay the equity investors’ subordinated loans associated with the Lane Cove Road on-ramp project substantially in accordance with a specified subordinated loan agreement, *or*
- The level or timing of the project’s revenues or outgoings (excluding any revenues or outgoings of any uncompleted stage of the upgrade works), and hence the real after-tax returns of investors in the Company and the Hills Motorway Trust over the operating term (which for the purposes of these provisions is again taken to be 49 years from the opening of the motorway on 26 May 1997),

the Minister for Roads or RMS must then, as soon as practicable and in any event within 14 days of receiving the notification, enter into co-operative and good faith negotiations with the Company, the Trustee and their financiers, so as to enable them to:

- Repay their debt financiers, substantially in accordance with their debt financing arrangements, within the period(s) required under these arrangements plus three months, and
- Give Company and Hills Motorway Trust investors—treated as “notional initial investors” as defined in the Project Deed (see section 8.3.1)—the real after-tax rate of return they would have received had the event not occurred.

Third, and finally, if:

- A “*force majeure* event”, as defined in the Project Deed,* *occurs, or*
- The NSW Government or any of its authorities or agencies takes any action relating to “the servicing of the transport requirements of the ‘northwest regions of Sydney’ ” (*Figure 9.1*)—other than the development or upgrading of Epping Road or other “northwest regions” access roads, as described above, or the introduction of a North West Rail Link between Epping and Rouse Hill, in the form described in the then NSW Government’s *Metropolitan Transport Plan*:

* “**Force majeure events**” are defined for the purposes of the Project Deed (but, as indicated in section 9.14, not the Upgrade Project Deed) as one or more or a series of the following:

- Fire, lightning, explosions, floods, earthquakes, hurricanes, malicious damage, natural disasters, sabotage, the acts of a public enemy, war, revolution, radioactive contamination, toxic or dangerous chemical contamination
- Strikes and other industrial disputes and actions, other than those solely between the Company, the Trustee, their contractors and their respective employees, and
- Any other event or circumstance beyond the control of the Company, the Trustee and their contractors for which the risk is not otherwise specifically allocated in the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed,

if this event or series of events has caused the Company or the Trustee to default on its obligations under these contracts (i.e. *excluding* their design and construction obligations concerning the upgrade works) or the project’s debt financing arrangements, *and* this default could not have been prevented, overcome or remedied by the Company, the Trustee or their contractors exercising the standard of care and diligence of a prudent and competent owner, operator or maintainer of such a motorway, including the expenditure of all reasonable sums of money.

Connecting the City of Cities of February 2010[‡]—and this action either:

- ♦ Discriminates against the Company in the operation or maintenance of the M2 motorway (other than through a discriminatory rate, tax, levy or charge as described in section 9.2 above), or
- ♦ Prejudices the motorway's operational results, or
- **(a)** The cost of performing the obligations of the Company and the Trustee under the Project Deed, the Company Lease, the Trust Lease and the Trust Concurrent Lease increases beyond the cost reasonably anticipated when the Project Deed was executed on 26 August 1994, or **(b)** the cost of performing the obligations of the Company and the Trustee under the Stage 1 M2 Upgrade Company Lease, the Stage 1 M2 Upgrade Trust Concurrent Lease, the Stage 2 M2 Upgrade Trust Lease, the Stage 3 M2 Upgrade Company Lease, the Stage 3 M2 Upgrade Trust Lease and/or the Stage 3 M2 Upgrade Trust Concurrent Lease increases beyond the cost reasonably anticipated when the Upgrade Project Deed was executed on 25 October 2010, or **(c)** the cost of performing the Trustee's obligations under the Stage 3A M2 Upgrade Trust Lease increases beyond the cost reasonably anticipated when the Lane Cove Road On-Ramp Amending Deed was executed on 21 May 2013, in any of these cases because of—
 - ♦ A change in Commonwealth Government legislation (including regulations or by-laws), Commonwealth authority requirements or legally binding Commonwealth Government or Commonwealth authority guidelines, or
 - ♦ A change in the application of existing Commonwealth authority requirements, or
 - ♦ A change in the courts' interpretation of existing Commonwealth legislation, not subject to appeal,except in relation to income tax

and

- The Company and the Trustee notify RMS, giving full details, that they reasonably consider this event has had a material adverse effect on:
 - ♦ Their ability to carry out the project (other than the upgrade design and construction works) in accordance with the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed, or
 - ♦ The ability of the Trustee to repay its debt financiers, within the period(s) required under the project's debt financing arrangements (including its upgrade debt financing arrangements) plus three months, or
 - ♦ The ability of the Trustee to repay the equity investors' subordinated loans associated with the Lane Cove Road on-ramp project within the period required under a specified subordinated loan agreement, or
 - ♦ The level or timing of the project's revenues or outgoings (excluding any revenues or outgoings of any uncompleted stage of the upgrade works), and hence the real after-tax returns of investors in the Company and the Hills Motorway Trust over the operating term (which for the purposes of these provisions is again taken to be 49 years from the opening of the motorway on 26 May 1997), and
- The real after-tax rate of return for Company and Hills Motorway Trust investors (treated as "notional initial investors") after the event occurred has been no higher than 11.65% per annum,

the Minister for Roads or RMS must then, as soon as practicable and in any event within 14 days of receiving the notification, enter into co-operative and good faith negotiations with the Company, the Trustee and their financiers, so as to

‡ As described in section 2.2.7, the Epping–Rouse Hill North West Rail Link, in the form proposed by the former NSW Government in its February 2010 *Metropolitan Transport Plan—Connecting the City of Cities*, was expressly excluded from being a potential "material adverse effect" trigger for renegotiations under the Project Deed in these circumstances, under amendments introduced by the Upgrade Project Deed which took effect on 18 November 2010. The currently proposed form of the North West Rail Link project, as at 28 May 2013, differs significantly from the form proposed in February 2010, but the Project Deed's definition of this project has not been amended.

Similarly, in a letter from the Company to the RTA dated 22 August 1994, just prior to the execution of the Project Deed, the Company acknowledged a proposal by the NSW Government at that time for a mass public transport route connecting Parramatta to Hornsby via Epping, with part of this route being along the Carlingford railway line, and advised that the development of such a public transport route between Parramatta and Hornsby "would not constitute grounds for negotiation under the M2 Motorway Project Deed". The Parramatta–Epping section of this proposal later led to the development of concepts for the western portion of a "Parramatta Rail Link" between Parramatta and Chatswood, along the route shown in *Figure 9.1*, the eastern section of which, between Epping and Chatswood, has now been constructed and is currently operating as part of the CityRail suburban and interurban rail network (it is proposed that in the future it will become part of the North West Rail Link and be partly reconstructed and then operated by the operator of that project). Construction of the western (Parramatta–Epping) section was indefinitely deferred, several years ago, and the current NSW Government does not propose to proceed with this project, at least within the next 20 years. The Project Deed's renegotiation provisions do not expressly exclude any form of a Parramatta–Epping rail link as a potential trigger for renegotiation of the M2 motorway project (potentially including renegotiation of its contracts).

Again, and once more as already indicated, although the Company advised the RTA on 24 August 1994, again just before the Project Deed was executed, that any upgrades of the Pacific Highway or the North Shore railway line between Chatswood and Hornsby would not constitute grounds for renegotiation of the Project Deed, the Project Deed does not expressly exclude these projects—or any other major road and rail projects within the "northwest regions of Sydney", such as the proposed upgrading of the Blacktown–Richmond railway line, a planned longer-term Rouse Hill to Richmond Line rail link, the proposed future M2 motorway–F3 freeway link along the Pennant Hills Road corridor or a possible motorway connection between the eastern end of the M2 and the proposed WestConnex motorway (*Figure 1.2*)—as potential triggers for renegotiations under the Project Deed.

enable them to have a substantially similar, but not materially lessened, ability to:

- Repay their debt financiers within the period(s) required under their debt financing arrangements plus three months, and
- Give Company and Hills Motorway Trust investors—treated as “notional initial investors” as defined in the Project Deed (see section 8.3.1)—the lesser of:
 - ♦ The real after-tax rate of return they would have received had the event not occurred, and
 - ♦ A real after-tax return of 11.65% per annum.

Notwithstanding the provisions summarised above, the Company and the Trustee have expressly agreed that the January 2007 third lane conversion works (see section 6) and any subsequent removal of these works could not and cannot act as triggers for renegotiations under the Project Deed.

The Minister for Roads, RMS, the Company and the Trustee have agreed that in any of the negotiations described above they should each have the maximum flexibility to achieve the prescribed results, and that possible actions include:

- Amendments to the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and/or the Amended and Restated RTA Consent Deed, including changes to the *Toll Calculation Schedule* to the Project Deed, the motorway’s operating term and/or the risk allocations between the parties
- The waiver or releasing of existing rights under these contracts, including rights to receive payments
- Changing the parties’ financial contributions to the project, other than the financial contributions related to the design and construction of the upgrade works
- Requests to the project’s debt financiers for restructuring of the debt financing arrangements, and
- Any other action agreed by the parties.

More generally, the Minister for Roads and RMS would be obliged to exercise their rights and discretions under the Project Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed in a manner promoting the mutual interests of the parties, having regard to the Project Deed’s renegotiation arrangements.

RMS, the Company and the Trustee must notify the project debt financiers’ Agent before any negotiations occur, giving it reasonable notice. The Agent or its representative may attend and participate in the negotiations, and copies of any written communications forming part of the negotiations must be sent to the Agent.

As already indicated in section 2.2.15, the Minister for Roads and RMS may not agree to amend the terms of the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed—or the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Consent Deed

of November 2010, the Upgrade Side Deed or the Restated Deed of Guarantee—without the Agent’s prior consent, which may not be unreasonably withheld or delayed.

If the parties cannot agree on the action to be taken within 30 days of entering negotiations, the matter may be referred by any of them for resolution under the Project Deed’s dispute resolution procedures, as described in section 9.15 above.

If an event potentially triggering “material adverse effect” renegotiations under the Project Deed provisions described above is also a potential trigger for “material adverse effect” renegotiations under the Upgrade Project Deed’s renegotiation provisions described in section 10.2 below, both sets of renegotiation provisions must be applied so as to:

- Avoid any double counting of the effects of the event in determining any compensation to be provided by RMS, and
- Ensure the entitlements of the Company and the Trustee under the Project Deed’s renegotiation provisions are no less than those applying under these provisions immediately before the Upgrade Project Deed was executed on 25 October 2010.

10.2 ‘Material adverse effect’ renegotiations under the Upgrade Project Deed

The Upgrade Project Deed expressly envisages a different range of circumstances under which aspects of the M2 motorway project (including the *upgrade* project, and potentially including the upgrade project’s contracts) might need to be renegotiated.

In addition, the Minister for Roads, RMS, the Company and the Trustee have acknowledged, in the Project Deed, that in some circumstances, even following the completion of one or more of the stages of the upgrade works, the renegotiation provisions of *both* the Upgrade Project Deed and the Project Deed might apply.

The Project Deed adopts some aspects of the Upgrade Project Deed’s renegotiation provisions, in a varied form, in one particular set of circumstances. As a result, the Upgrade Project Deed’s renegotiation provisions, as supplemented and adjusted by the Project Deed in this particular case, cater for renegotiations with two different sets of aims in mind in two different sets of circumstances, as described below.

First, if:

- *After* the completion of construction of any Stage of the upgrade works (see section 7.15), the planning approval for the upgrade project is modified in any way or a new planning approval is issued—other than as a result of a breach of the planning approval by the Company, the Trustee, Leighton Contractors or the On-Ramp D&C Contractor, or in response to an application by the Company, the Trustee, Leighton Contractors and/or the On-Ramp D&C Contractor—and this necessitates a change to the upgrade or the upgrade works, other than a change to the upgrade project’s “temporary

works” and/or the Company’s and/or Trustee’s upgrade design and construction processes (see section 7.3), *and*

- Notwithstanding any payments received under the arrangements described in section 7.3, this has had or has started to have a material adverse effect on:
 - ♦ The ability of the Company and/or the Trustee to carry out the project (other than the upgrade design and construction works) in accordance with the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed, or
 - ♦ The ability of the Trustee to repay its debt financiers, substantially in accordance with the project’s debt financing arrangements (including its upgrade debt financing arrangements), within the period(s) required under these arrangements plus three months, or
 - ♦ The ability of the Trustee to repay the equity investors’ subordinated loans associated with the Lane Cove Road on-ramp project substantially in accordance with a specified subordinated loan agreement, or
 - ♦ The level or timing of the project’s revenues or outgoings (excluding any revenues or outgoings of any uncompleted stage of the upgrade works), and hence the real after-tax returns of investors in the Company and the Hills Motorway Trust over the operating term (which for the purposes of these provisions is again taken to be 49 years from the opening of the motorway on 26 May 1997)

the Company and/or the Trustee must use all reasonable endeavours to mitigate the adverse consequences, and may notify RMS of the situation, providing full details.

If they do choose to notify RMS, the Minister for Roads, RMS, the Company and the Trustee must enter into negotiations in good faith, as soon as practicable but definitely by no later than 20 business days after RMS is notified, with the aims of enabling the Company and the Trustee to have substantially similar, but not materially lessened, abilities to:

- Repay their debt financiers within the period(s) required under their debt financing arrangements plus three months, and
- Give Company and Hills Motorway Trust investors—treated as “notional initial investors” as defined in the Project Deed (see section 8.3.1)—the lesser of:
 - ♦ The real after-tax rate of return they would have received had the event not occurred, and
 - ♦ A real after-tax return of 11.65% per annum.

Second, and more generally, if:

- In any other circumstances the planning approval for the upgrade project is modified in any way or a new planning approval is issued—other than as a result of a breach of the planning approval by the Company, the Trustee, Leighton Contractors or the On-Ramp D&C Contractor, or in response to an application by the Company, the Trustee, Leighton

Contractors and/or the On-Ramp D&C Contractor—and this necessitates a change to the upgrade or the upgrade works, other than a change to the upgrade project’s “temporary works” and/or the Company’s and/or Trustee’s upgrade design and construction processes (see section 7.3), *or*

- There is a legal challenge to the upgrade project’s environmental assessment or planning approval, and as a result a court orders the Company and/or the Trustee, or Leighton Contractors or the On-Ramp D&C Contractor, not to perform their obligations under the Upgrade Project Deed or to change the way they perform these obligations, *and* the initiation and upholding of the legal challenge and issuing of the court order were not caused by a breach of the Upgrade Project Deed by the Company and/or the Trustee (see section 7.3), *or*
- An “uninsurable event”, as defined in the Upgrade Project Deed, occurs (see section 7.14), *or*
- The costs of performing the obligations of the Company and the Trustee under the Upgrade Project Deed increase, in the case of Stages 1, 2, 3 and 4 of the upgrade works, beyond the costs reasonably anticipated when the Upgrade Project Deed was executed on 25 October 2010, and/or, in the case of Stages 3A and 4A, beyond the costs reasonably anticipated when the Lane Cove Road On-Ramp Amending Deed was executed on 21 May 2013, because of—
 - ♦ A change in NSW or local government legislation (including regulations or by-laws), NSW public authority requirements or legally binding NSW Government, local government or NSW public authority guidelines, *or*
 - ♦ A change in the application of existing NSW public authority requirements, *or*
 - ♦ A change in the courts’ interpretation of existing NSW legislation, not subject to appeal, *or*
- The costs of performing the obligations of the Company and the Trustee under the Upgrade Project Deed increase, in the case of Stages 1, 2, 3 and 4 of the upgrade works, beyond the costs reasonably anticipated when the Upgrade Project Deed was executed on 25 October 2010, and/or, in the case of Stages 3A and 4A, beyond the costs reasonably anticipated when the Lane Cove Road On-Ramp Amending Deed was executed on 21 May 2013, because of—
 - ♦ A change in Commonwealth Government legislation (including regulations or by-laws), Commonwealth authority requirements or legally binding Commonwealth Government or Commonwealth authority guidelines, *or*
 - ♦ A change in the application of existing Commonwealth authority requirements, *or*
 - ♦ A change in the courts’ interpretation of existing Commonwealth legislation, not subject to appeal,

except in relation to income tax, *or*

- A court makes a final determination, not subject to appeal, preventing the Company and/or the Trustee from undertaking the upgrade project substantially in accordance with the Upgrade Project Deed, and this determination is not made as a result of a default by the Company, the Trustee or their contractors under the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010, the Upgrade Side Deed or the On-Ramp D&C Side Deed, or as a result of any other wrongful act or omission by the Company, the Trustee or their contractors

and this has had or has started to have a material adverse effect on:

- The Trustee's ability to pay its debt financiers substantially in accordance with the upgrade's debt financing documents, or
- The expected real after-tax returns of Company and Hills Motorway Trust upgrade and Lane Cove Road on-ramp investors (treated as "**notional initial M2 upgrade equity investors**" and "**notional initial LCR equity investors**" as defined in the Upgrade Project Deed*) over the term of their upgrade equity investments, which for the purposes of these provisions is taken to be 49 years from the opening of the motorway on 26 May 1997, having regard to past, present and projected circumstances,

the Company and/or the Trustee must use all reasonable endeavours to mitigate the adverse consequences, and may notify RMS of the situation, providing full details.

If they do choose to notify RMS, the Minister for Roads, RMS, the Company and the Trustee must enter into negotiations in good faith, as soon as practicable but definitely by no later than 20 business days after RMS is notified, with the aims of:

- Enabling the Trustee to repay the upgrade and Lane Cove Road on-ramp debt financiers the interest, amortisation and interest rate management agreement amounts that are or would have been payable but for the "material adverse effect" circumstances, on the dates these repayments are or would have been due, but with the amortisation payments being no more than those set out in the private sector parties' 2010 and 2013 "base case" financial models for the upgrade project and the Lane Cove Road on-ramp project, or

- If the Trustee had been unable to make these repayments before the "material adverse effect" circumstances occurred, giving it an ability to make repayments similar to the ability it had had before these circumstances arose,

and

- Enabling the Company and the Trustee to give Company and Hills Motorway Trust investors (treated as "notional initial M2 upgrade equity investors") the lesser of:
 - ♦ The real after-tax rate of return from their upgrade project securities they would have received had the "material adverse effect" circumstances not occurred, and
 - ♦ A real after-tax return of 9.2% per annum, or

- If the Company and the Trustee had been unable to give these 2010 upgrade project investors a real after-tax return of 9.2% per annum before the "material adverse effect" circumstances occurred, giving them an ability to provide returns similar to those they could provide before these circumstances arose,

and

- Enabling the Company and the Trustee to give Company and Hills Motorway Trust investors (treated as "notional initial LCR equity investors") the lesser of:
 - ♦ The real after-tax rate of return they would have received from their Lane Cove Road on-ramp project securities had the "material adverse effect" circumstances not occurred, and
 - ♦ A specified (but commercially confidential) "base case" rate of return for these securities, or

- If the Company and the Trustee had been unable to give these 2013 Lane Cove Road on-ramp project investors this "base case" after-tax rate of return before the "material adverse effect" circumstances occurred, giving them an ability to provide returns similar to those they could provide before these circumstances arose.

The Minister for Roads, RMS, the Company and the Trustee have agreed that in any of their renegotiations of the upgrade project's arrangements (under either of the two sets of

* "**Notional initial M2 upgrade equity investors**" are defined in the Upgrade Project Deed as notional corporate taxpayers who:

- Were issued with stapled units in the Hills Motorway Trust and shares in the Company under the Equity Subscription Deed, as part of the 2010 refinancing associated with the upgrade project, in the ratio 155:185, on the basis that the aggregate investment in units in the trust and shares in the Company under the Equity Subscription Deed arrangements originally established in 2010 cannot exceed \$235,872,895 (i.e. \$275 million less an "advance contribution", as defined in the Equity Subscription Deed, of \$39,127,105), and
- Have held these stapled units and shares ever since they were issued.

Similarly, "**notional initial LCR equity investors**" are defined in the Upgrade Project Deed as notional corporate taxpayers who:

- Were issued with stapled units in the Hills Motorway Trust and shares in the Company under the Equity Subscription Deed, as part of the 2013 arrangements associated with the Lane Cove Road on-ramp project, in the ratio 155:185, on the basis that the aggregate investment in units in the trust and shares in the Company under the Equity Subscription Deed's 2013 arrangements for the Lane Cove Road on-ramp works cannot exceed \$11 million, and
- Have held these stapled units and shares ever since they were issued.

circumstances described above) they should take a flexible approach and consider:

- Amendments to the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010, the Upgrade Side Deed and/or the On-Ramp D&C Side Deed
- Changes to the motorway's operating term and/or the Project Deed's *Toll Calculation Schedule*
- Changing their financial and other contributions, and
- Any other action that might be appropriate,

having regard to any payments RMS has already made under the Upgrade Project Deed.

If the "material adverse effect" circumstances have arisen because of an "uninsurable event", a change to RMS's financial contribution could be considered only if the other approaches being negotiated would not achieve the negotiation objectives listed above.

The Company and the Trustee would be obliged to use all reasonable endeavours to ensure the negotiated responses are efficiently applied and structured, so as to (among other things) minimise tax liabilities.

RMS, the Company and the Trustee must notify the project debt financiers' Agent before any negotiations occur, giving it reasonable notice. The Agent or its representative may attend

and participate in the negotiations, and copies of any written communications forming part of the negotiations must be sent to the Agent.

Once more, as already indicated in sections 2.2.15 and 10.1, the Minister for Roads and RMS may not agree to amend the terms of the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Consent Deed of November 2010, the Upgrade Side Deed—or the Project Deed (including its *Toll Calculation Schedule*), the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed or the Restated Deed of Guarantee—without the Agent's prior consent, which may not be unreasonably withheld or delayed.

Finally, and again as already indicated in section 10.1, if an event potentially triggering "material adverse effect" renegotiations under the Upgrade Project Deed provisions described above is also a potential trigger for "material adverse effect" renegotiations under the Project Deed's renegotiation provisions described in section 10.1, both sets of renegotiation provisions must be applied so as to:

- Avoid any double counting of the effects of the event in determining any compensation to be provided by RMS, and
- Ensure the entitlements of the Company and the Trustee under the Project Deed's renegotiation provisions are no less than those applying under those provisions immediately before the Upgrade Project Deed was executed on 25 October 2010.

11 Defaults under and termination of the Project Deed

There are quite separate, and different, default and contract termination provisions in the Project Deed and the Upgrade Project Deed. The former, which do not apply to 2010–15 upgrade design and construction defaults, are summarised in this section 11, and the latter, applying almost entirely to the 2010–15 upgrade project, including its Lane Cove Road on-ramp components, are summarised in section 12.

The Project Deed may be terminated by RMS, in the circumstances described below, for a default by the Company or the Trustee under the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, any of the M2 Upgrade Company Leases, any of the M2 Upgrade Trust Leases, any of the M2 Upgrade Trust Concurrent Leases, the RTA Deed of Charge of May 2009 and/or the Amended and Restated RTA Consent Deed.

The Company and the Trustee may also terminate the Project Deed in other specified circumstances.

If the Project Deed is terminated for any reason,

- The Upgrade Project Deed (see sections 12.8.1 and 12.10.1), the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases and the M2 Upgrade Trust Concurrent Leases will terminate immediately and automatically (the leases may not be terminated by RMS in any other circumstances), and
- The Company and the Trustee must transfer the motorway (including the upgrade), its ancillary drainage works and its plant and equipment to RMS, in accordance with the Project Deed and its *Scope of Works and Technical Criteria*.

The other consequences of any termination of the Project Deed vary, depending on the reasons for the termination and the party at fault.

The notes below summarise, in turn,

- Arrangements under the Project Deed and the Amended and Restated RTA Consent Deed for the Company and the Trustee (and if necessary RMS) to remedy defaults by the Company or the Trustee under the Project Deed and other specified project contracts, not including the Upgrade Project Deed (**section 11.1**)
- Arrangements under the Amended and Restated RTA Consent Deed for the project debt financiers' Security Trustee and Agent to remedy these defaults by the Company or the Trustee (**section 11.2**)

- The grounds on which RMS may terminate the Project Deed for a default by the Company or the Trustee under the specified contracts, and the procedures and timeframes to be followed (**section 11.3**), and
- The grounds on which the Company and the Trustee may terminate the Project Deed, the procedures and timeframes to be followed, and the payments to be made to the Company and the Trustee by the Minister for Roads or RMS following a termination in these circumstances (**section 11.4**).

11.1 Remediation of defaults by the Company, the Trustee and RMS

If the Company or the Trustee defaults under the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, any of the M2 Upgrade Company Leases, any of the M2 Upgrade Trust Leases, any of the M2 Upgrade Trust Concurrent Leases, the RTA Deed of Charge of May 2009 or the Amended and Restated RTA Consent Deed, or breaches a warranty to RMS under the Project Deed, RMS may give the Company and the Trustee a “remedy notice” requiring them to remedy the default, or overcome its effects, within a reasonable time specified in the notice.

A copy of this notice must also be provided to the motorway debt financiers' Security Trustee and Agent. (RMS is also obliged, more generally and quite separately, to notify the Security Trustee and Agent of *any* material default by the Company, the Trustee or Hills Construction under the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, any of the M2 Upgrade Company Leases, any of the M2 Upgrade Trust Leases, any of the M2 Upgrade Trust Concurrent Leases, the RTA Deed of Charge of May 2009 or the Amended and Restated RTA Consent Deed.)

If the default by the Company or Trustee is a failure to pay money, the parties have agreed in the Project Deed that the “reasonable time” to remedy the default will be 14 days.

Unless urgent action is necessary, or the default is a failure to pay money, the Company and the Trustee must give RMS a program to remedy the default in accordance with RMS's notice, and RMS must consult with them in good faith to develop and settle this program.

The Company and the Trustee must comply with RMS's “remedy notice” unless they consider, in good faith, that the

time specified in RMS's notice is not reasonable, in which case they must immediately notify RMS, giving details of their reasons, and RMS must then, as soon as practicable, review the time allowed for the default to be remedied and notify the Company and the Trustee of its decision, providing a copy of this notice to the Security Trustee and Agent. RMS is obliged to grant a reasonable extension of time if the Company and the Trustee are diligently pursuing the agreed remedial program. If the Company and the Trustee still consider that the time allowed, as varied, is not reasonable, they may either repeat this process or refer the matter for binding expert determination under the Project Deed's dispute resolution procedures, as discussed in section 9.15.

RMS must give the Security Trustee and Agent copies of all material correspondence and documents RMS issues to the Company or the Trustee concerning the default while they are attempting to remedy the default.

If the Company and the Trustee propose to remedy the default by disposing of their rights and obligations under the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed and the Restated Deed of Guarantee, the Amended and Restated RTA Consent Deed arrangements described in section 9.13 will apply.

If the Company and the Trustee fail to remedy the default, or if urgent action is necessary, RMS may take any remedial action it considers appropriate, entering and remaining on the motorway's land (including the upgrade land) to do so, and the Company and the Trustee must indemnify RMS against any damage, expense, loss or liability it reasonably incurs as a result, unless it arises from the negligence or wilful default of RMS or its contractors. If RMS is owed any money under such an indemnity in relation to RMS's reasonable costs in the operation and routine maintenance of the motorway, the debt financiers' Agent must pay this amount out of any M2 toll receipts over which it has control.

11.2 Remediation of Company/Trustee defaults by the Security Trustee and Agent

In addition to the rights and obligations of the Company and the Trustee under the Project Deed to remedy their default, under the Amended and Restated RTA Consent Deed the project debt financiers' Security Trustee and Agent have rights to remedy the default, or procure its remedy, by "stepping in" and exercising the rights of the Company and the Trustee under the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed and the Restated Deed of Guarantee (and also, in the

circumstances described in section 12.6, the rights of the Company and the Trustee under the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Consent Deed of November 2010 and the Upgrade Side Deed).

If requested and able to do so, RMS must give the Security Trustee, the Agent and their agents, consultants and contractors access to the motorway (including the upgrade), the motorway's ancillary drainage works and its land (including the upgrade works land), as reasonably necessary, to permit or facilitate their rights under the debt financiers' securities.

While the default remains, the Minister for Roads, RMS, the Company, the Trustee, Hills Construction, the Security Trustee and the Agent must hold discussions in good faith, when this is reasonably requested by any of them, concerning any matters reasonably requested by any of them with a view to remedying the default.

More specifically, and subject to the debt financiers' securities, under the Amended and Restated RTA Consent Deed the Security Trustee may:

- Appoint a receiver or agent to exercise any or all of the rights and perform any or all of the obligations of the Company, the Trustee or Hills Construction under the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed and/or the Restated Deed of Guarantee.
- Engage others reasonably acceptable to RMS to perform some or all of these obligations, or permit them to be engaged by a receiver or agent appointed by the Security Trustee.
- With RMS's prior consent, dispose of any or all of the rights and obligations of the Company, the Trustee or Hills Construction under the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed and the Restated Deed of Guarantee to purchaser(s) approved by RMS.

Before any such disposal, the Security Trustee must provide RMS with details of the proposed purchaser(s) and the terms and conditions of the proposed disposal, and obtain RMS's written consent. RMS must tell the Security Trustee, the Agent, the Company and the Trustee whether it consents as soon as reasonably practicable, and may not withhold its consent if:

- ♦ The proposed purchaser is a reputable corporation with sufficient expertise and ability and a sufficiently high financial and commercial standing to properly carry out the obligations of the Company and the Trustee
- ♦ The proposed purchaser agrees to be bound by the terms of the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of

May 2009 and the Amended and Restated RTA Consent Deed, and

- The Company and the Trustee give RMS details of the proposed disposal.

The Amended and Restated RTA Consent Deed sets out requirements for novations of the project contracts to accompany such a disposal.

11.3 Termination by RMS for defaults by the Company or the Trustee

RMS may terminate the Project Deed, by giving the Company and the Trustee 30 days' notice, if:

- It is entitled to do so at general law, after a failure by the Company and the Trustee to comply with a "remedy notice" issued by RMS
- The Company or the Trustee commits a substantial breach of the Company Lease, the Trust Lease, the Trust Concurrent Lease, an M2 Upgrade Company Lease, an M2 Upgrade Trust Lease or an M2 Upgrade Trust Concurrent Lease and fails to comply with a "remedy notice" issued by RMS
- A new or additional trustee of the Hills Motorway Trust is appointed without RMS's consent, unless the effect of this is overcome to RMS's satisfaction within the 30-day notice period, or
- The Hills Motorway Trust is terminated, unless the effect of this is overcome to RMS's satisfaction within the 30-day notice period.

A copy of the termination notice must also be provided to the project debt financiers' Security Trustee and Agent, and the Project Deed may not be terminated if this is not done.

If the termination notice is based on either of the first two grounds listed above, the Company and the Trustee may suspend RMS's right to terminate the Project Deed for 12 months, from the date of RMS's termination notice, if all of the debts under the motorway's debt financing arrangements have not been repaid.

They may do so by giving a written notice to RMS within 14 days of receiving RMS's notice of termination. The debt financiers' Agent may do this on their behalf.

Under the Project Deed, if the Company and the Trustee remedy the default within the 12 months, the Project Deed will remain in force. The same will also apply if, within the 12 month period, the default ceases to exist, or RMS is compensated, in a manner reasonably acceptable to RMS, for any damage or cost it has incurred, or RMS, the Company and the Trustee agree on amendments to the Project Deed, the Project Management Services Deed, the leases, the RTA Deed of Charge of May 2009 and/or the Amended and Restated RTA Consent Deed to remedy the default in a manner reasonably satisfactory to RMS. If none of these occurs, the Project Deed will automatically terminate 12 months after the date of RMS's termination notice.

Notwithstanding these Project Deed provisions, under the Amended and Restated RTA Consent Deed RMS must extend the 12-month suspension period, to a total of up to 24 months, if the debt financiers' Security Trustee or Agent are using reasonable endeavours to remedy the default.

Further, and again notwithstanding the Project Deed's provisions, under the Amended and Restated RTA Consent Deed RMS may not terminate the Project Deed if:

- The Minister for Roads or RMS are in breach of any of their obligations under the Project Deed, the Upgrade Project Deed or any of the leases, *other than* a breach of the Company Lease caused by a breach by the Trustee of the Trust Concurrent Lease or a breach of an M2 Upgrade Company Lease caused by a breach of any M2 Upgrade Trust Concurrent Lease, or
- Any or all of the leases have not yet been registered and the Agent notifies RMS that a proposed purchaser of the rights and obligations of the Company and the Trustee under the Project Deed, the leases, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed and the Restated Deed of Guarantee, under the arrangements described in section 11.1 and 11.2, requires the lease(s) to be registered before completing this acquisition.

No compensation is payable by RMS if it lawfully terminates the Project Deed for a Company or Trustee default in accordance with the provisions described above.

As already indicated, the Project Deed's termination will automatically terminate the Upgrade Project Deed, along with the Project Management Services Deed and the leases. The Upgrade Project Deed's provisions governing the consequences of its termination in these circumstances are described in section 12.8.1 below.

11.4 Termination of the Project Deed by the Company and the Trustee

The Project Deed currently provides that the Company and the Trustee may terminate the Project Deed, by giving RMS 30 days' notice, if:

- The Minister for Roads or RMS have breached a series of warranties and undertakings they have made in the Project Deed concerning the powers of RMS, the Company, the Trustee and their contractors, the validity of the project's contracts and its planning approval, the compliance of works under the Project Deed's *Scope of Works and Technical Criteria* with the project's planning approval, and non-interference with the performance by the Company and the Trustee of their obligations under the contracts, *and*, because of this breach, a court has made a final determination (i.e. not subject to appeal) that the Company or the Trustee may not construct the motorway (other than its 2010–15 upgrade), or maintain, operate or repair the motorway or levy or keep its tolls, in accordance with the Project Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed

(but *not*, prior to the later of the date of “construction completion” of Stage 4A and the date of “final completion” of the upgrade works (i.e. the date of “construction completion” of Stage 4), if the court’s determination only prevents the Company and/or the Trustee from undertaking their upgrade design and construction work substantially in accordance with the Upgrade Project Deed).

- More generally, a court has made a final determination preventing the Company or the Trustee from constructing the motorway (other than its 2010–15 upgrade), or maintaining, operating or repairing the motorway or levying or keeping its tolls, in the manner contemplated by the Project Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed, *and* this court determination did not result from a wrongful act or default by the Company, the Trustee or their contractors and (prior to the later of the date of “construction completion” of Stage 4A of the upgrade works and the date of “final completion” of the upgrade works) does not solely prevent the Company from undertaking its upgrade design and construction work substantially in accordance with the Upgrade Project Deed.
- New NSW legislation (including rules, regulations and by-laws) prohibits or effectively prohibits the Company or the Trustee from constructing the motorway (other than its 2010–15 upgrade), or maintaining, operating or repairing the motorway or levying or keeping its tolls, in accordance with the Project Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed (but *not*, prior to the later of the date of “construction completion” of Stage 4A of the upgrade works and the date of “final completion” of the upgrade works, if this legislation solely prevents the Company from undertaking its upgrade design and construction work substantially in accordance with the Upgrade Project Deed).
- A government authority resumes any part of the motorway (including the upgrade), its ancillary drainage works or its land, and this has a material adverse effect on the ability of the Company or the Trustee to construct the motorway (other than its 2010–15 upgrade), or maintain, operate or repair the motorway or levy or keep its tolls, in accordance with the Project Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed (but *not*, prior to the later of the date of “construction completion” of Stage 4A of the upgrade works and the date of “final completion” of the upgrade works, if this resumption is solely a resumption of land on which the Company is carry out its upgrade design and construction work and solely prevents the Company from undertaking this upgrade design and construction work substantially in accordance with the Upgrade Project Deed, without preventing the operation, repair or tolling of any part of the M2 motorway on the resumed land).
- The Minister for Roads or RMS breaches any of their obligations under the Project Deed or the leases (excluding a breach of the Company Lease caused by a breach by the

Trustee of the Trust Concurrent Lease), *and* as a result the Company or the Trustee is prevented from constructing the motorway (other than its 2010–15 upgrade), or maintaining, operating or repairing the motorway or levying or keeping its tolls, in accordance with the Project Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed (but again, prior to the later of the date of “construction completion” of Stage 4A of the upgrade works and the date of “final completion” of the upgrade works, *not* if the breach solely prevents the Company and/or the Trustee from undertaking their upgrade design and construction work substantially in accordance with the Upgrade Project Deed).

From the later of the date of “construction completion” of Stage 4A of the upgrade works and the date of “final completion” of the upgrade works (section 7.15), the Project Deed’s drafting of these grounds for termination will be simplified to remove the references to the upgrade design and construction works and land.

If the Company and the Trustee issue a notice that they intend to terminate the Project Deed in 30 days, RMS may suspend their rights to terminate the Project Deed for 12 months, from the date they issued their termination notice, by giving them a notice to this effect within 14 days of receiving the termination notice.

During this suspension period,

- The Company and the Trustee must continue to perform their obligations under the Project Deed, the leases, the RTA Deed of Charge of May 2009 and the Amended and Restated RTA Consent Deed, if this is lawful and it is practicable for them to do so, and
- RMS must pay the Company and the Trustee, monthly in arrears, the amount the Company satisfies RMS it would have received from toll collections (taking account of any delay or loss of toll revenue from the upgrade resulting from the event triggering the termination notice, but without double counting if the Company and the Trustee are also entitled to a separate remedy for the delayed or lost upgrade toll revenue under the Upgrade Project Deed provisions summarised in section 12.10 below).

If the relevant event is remedied by RMS within the 12 months, or if it ceases to exist, the Project Deed will remain in force. Otherwise, the Project Deed will automatically terminate 12 months after the date of the Company’s and Trustee’s termination notice.

If the Project Deed is terminated by the Company and the Trustee on any of the bases summarised above,

- The Minister for Roads must pay the Company and the Trustee, within 30 days of the termination, an “**early termination amount**” (as defined in the Project Deed) equal to the sum of —
 - Their debts to the motorway’s debt financiers on the termination date, excluding any penalty rates of interest

and also excluding, prior to the “final completion” of Stages 1 to 4 of the upgrade but not after then, any upgrade project debt (but not any interest on this debt calculated at a penalty rate)

- ♦ An amount sufficient to give them the ability to give Company and Hills Motorway Trust investors—treating them as “notional initial investors” as defined in the Project Deed (see section 8.3.1), but ignoring, prior to the “final completion” of the upgrade works, any investments in the upgrade project securities issued in 2010, and also ignoring, prior to the “construction completion” of Stage 4A, any investments in the Lane Cove Road on-ramp project securities issued in 2013—the real after-tax rate of return they would otherwise have been expected to receive over the motorway’s operating term (which for these purposes is taken to be 49 years from the opening of the motorway on 26 May 1997, even prior to the four-year extensions of the terms of the Company Lease, the Trust Lease and the Trust Concurrent Lease upon the “final completion” of the upgrade works as described in section 8.3.2 above), after taking account of amounts already received by the Company and the Trustee and after applying a discount, at a rate to be agreed, to take account of the investors’ earlier receipt of these returns, and
- ♦ If the termination occurs after “construction completion” of Stage 4A but before 18 November 2014, the subordinated debt contributed by the equity investors to help fund the Lane Cove Road on-ramp works (but not any interest on this debt calculated at a penalty rate),

without any double counting if the Company and the Trustee are also entitled to a separate “early termination amount”, as (differently) defined in the Upgrade Project Deed, under the Upgrade Project Deed provisions summarised in section 12.10 below.

Any dispute about the calculation of this “early termination amount” may be referred for binding expert determination, under the Project Deed dispute resolution procedures summarised in section 9.15.

- More generally, the Minister for Roads and RMS must also compensate the Company and the Trustee for any damage, expense, loss or liability they incur because of the termination, having regard to:
 - ♦ Any losses during the suspension period (if any)
 - ♦ The payment of the “early termination amount” described above, and
 - ♦ Any amounts payable by a resuming government authority, if the Project Deed has been terminated because of a land resumption.

The amount able to be claimed by the Company and the Trustee under this compensation provision is capped at an amount sufficient to allow them to give Company and Hills Motorway Trust investors—treated as “notional initial investors” as defined in the Project Deed (section 8.3.1)—the real after-tax rate of return they would otherwise have been expected to receive over the motorway’s operating term (which for these purposes is again taken to be 49 years from the opening of the motorway on 26 May 1997), after taking account of amounts already received by the Company and the Trustee and after applying a discount, at a rate to be agreed, to take account of the investors’ earlier receipt of these returns and the returns available on similar investments.

Again, any dispute about the compensation payable to the Company or the Trustee may be referred for binding expert determination, under the Project Deed dispute resolution procedures summarised in section 9.15.

- The Upgrade Project Deed, the Project Management Services Deed and the leases. will all be automatically terminated. The Upgrade Project Deed’s provisions governing the consequences of its termination in these circumstances are described in section 12.10.1 below.

12 Defaults under and termination of the Upgrade Project Deed

As already indicated, there are quite separate, and different, default and contract termination provisions in the Project Deed and the Upgrade Project Deed.

The former have been summarised in section 11. The latter are summarised below.

The notes below address, in turn,

- RMS's general rights to remedy unremedied failures by the Company and/or the Trustee to perform their obligations under the Upgrade Project Deed (**section 12.1**)
- Arrangements under the Upgrade Project Deed for the Company and the Trustee to reinstate the motorway if they fail to perform any of their obligations relating to Stages 3A and 4A of the upgrade works under the Upgrade Project Deed (**section 12.2**)
- Arrangements under the Upgrade Project Deed and the Amended and Restated RTA Consent Deed for the Company and the Trustee to remedy “events of default” of types specified in the Upgrade Project Deed or overcome their effects (**section 12.3**)
- Arrangements under the Amended and Restated RTA Consent Deed for the project debt financiers' Security Trustee and Agent to remedy any such “events of default” or overcome their effects (**section 12.4**)
- Arrangements under the Upgrade Project Deed for RMS to “step in” to remedy any such “events of default” or overcome their effects and to be paid part or all of the costs it incurs in doing so (**sections 12.5 and 12.6**)
- Other arrangements under the Upgrade Project Deed for reinstatement of the motorway following an “event of default” (**section 12.7**)
- The grounds on which RMS may terminate the Upgrade Project Deed, the procedures and timeframes to be followed and the consequences of such a termination (**section 12.8**)
- The grounds on which RMS may terminate the rights and obligations of the Company and the Trustee under the Upgrade Project Deed concerning Stages 3A and 4A of the upgrade works, the procedures and timeframes to be followed and the consequences of such a termination (**section 12.9**), and
- The grounds on which the Company and the Trustee may terminate the Upgrade Project Deed, the procedures and timeframes to be followed, and the payments to be made to

the Company and the Trustee by the Minister for Roads or RMS following a termination in these circumstances (**section 12.10**).

12.1 General RMS powers to remedy any unremedied Company and/or Trustee failures to perform their Upgrade Project Deed obligations

12.1.1 RMS remedies for failures to perform Stage 1, 2, 3 and/or 4 obligations

If the Company and/or the Trustee fail to perform any of their obligations to the Minister for Roads and RMS under the Upgrade Project Deed in relation to Stages 1, 2, 3 and/or 4 of the upgrade works, and do not remedy this failure within a reasonable period of time after receiving a written notice from RMS requiring them to do so, RMS may take any action necessary to remedy the default and may, for this purpose, enter the upgrade project's worksites, “temporary areas”, “extra land” and any other land on which the Company and/or the Trustee are carrying out their upgrade tasks.

This general RMS power is *in addition to* RMS's more specific rights to “step in” under the Upgrade Project Deed “event of default” provisions summarised in sections 12.3 to 12.9 below.

If it does take remedial action, RMS must cease taking this action as soon as the failure has been remedied, giving the Company and/or the Trustee reasonable notice of the intended cessation.

Any direct or indirect costs, expenses and losses incurred by RMS in taking action under this general remedial power—*other than* losses incurred if the Company/Trustee failure to perform also entitles RMS to “step in” and take remedial action under the more specific “event of default” provisions described in sections 12.3 to 12.9 below, *even if* RMS has chosen to exercise its general remedial power rather than its “event of default” step-in powers—will be a debt due and payable by the Company and/or the Trustee, as applicable, to RMS. (If RMS chooses to exercise its “event of default” remedial powers, its rights to be paid for the costs it incurs will be governed by the arrangements described in section 12.6.4.)

12.1.2 RMS remedies for failures to perform Stage 3A and/or 4A obligations

If the Company and/or the Trustee fail to perform any of their obligations to the Minister for Roads and RMS under the Upgrade Project Deed in relation to Stages 3A and/or 4A of the upgrade works, and do not remedy this failure within a reasonable period of time after receiving a written notice from RMS requiring them to do so, RMS may take any action necessary to remedy the failure, *provided*:

- It is reasonably necessary for RMS to take this action in order to minimise health, safety or environmental risks or risks to the upgrade works, any property or the safe and secure performance of the Company's and Trustee's upgrade obligations (the Upgrade Project Deed terms this "**emergency action**"), *or*
- The action by RMS aims to achieve "construction completion" of Stage 3A or Stage 4A (the Upgrade Project Deed terms this "**completion action**"), and:
 - ♦ The Company and/or the Trustee are not diligently pursuing a program to remedy their failure or overcome its effects, and/or
 - ♦ The M2 motorway is not open to the public to the extent that it is safe for it to be open, and this is not permitted under the traffic management arrangements described in sections 7.10 and 8.1, *or*
- The action by RMS is action to carry out works set out in a *Stage 3A Reinstatement Plan* under the motorway reinstatement arrangements described in section 12.2 below (the Upgrade Project Deed terms this "**reinstatement action**"), and
 - ♦ The Company and/or the Trustee are not diligently pursuing the implementation of this *Stage 3A Reinstatement Plan*, and/or
 - ♦ The M2 motorway is not open to the public to the extent that it is safe for it to be open, and this is not permitted under the traffic management arrangements described in sections 7.10 and 8.1.

Before taking any of these three permitted types of remedial action, RMS must give the Company and the Trustee written notice of its intention to do so, providing reasonable details of the proposed action, and must act in good faith in identifying the category of action proposed.

If "emergency action" is taken, the permitted action extends to associated ancillary works by RMS, expressly including rectification, repair and landscaping works.

In taking any of the permitted types of remedial actions RMS:

- May enter the upgrade project's worksites, "temporary areas", "extra land" and any other land on which the Company and/or the Trustee are carrying out their upgrade tasks
- May (but need not) require the novation of the Lane Cove Road On-Ramp Design and Construction Deed, and the

associated parent company guarantee of the performance of the On-Ramp D&C Contractor, from the Company and the Trustee to RMS, under On-Ramp D&C Side Deed arrangements described in section 12.1.3 below

- Must comply with the Upgrade Project Deed's *Scope of Works and Technical Criteria* and obtain the same verifications, determinations and certifications from the Independent Verifier as the Company and the Trustee would have been obliged to obtain, and
- Cease taking its remedial action as soon as the failure has been remedied, giving the Company and/or the Trustee reasonable notice of the intended cessation. If the On-Ramp Design and Construction Deed and the associated parent company guarantee have been novated to RMS, the Company and the Trustee may require their novation back to the Company and the Trustee, under further On-Ramp D&C Side Deed arrangements described in section 12.1.3 below.

Under the On-Ramp D&C Side Deed, if RMS takes action under these arrangements to remedy a failure by the Company and/or the Trustee to perform any of their obligations in relation to Stage 3A or 4A, but chooses *not* to require the novation of the Lane Cove Road On-Ramp Design and Construction Deed,

- During its remedial action RMS will be entitled to exercise the rights of the Company and the Trustee under this contract
- The On-Ramp D&C Contractor must promptly provide all the assistance required by RMS, and as much as reasonably practicable, procure that its own subcontractors do likewise
- The On-Ramp D&C Contractor must deal with RMS throughout RMS's remedial action
- The Lane Cove Road On-Ramp Design and Construction Deed must remain in full force, and the On-Ramp D&C Contractor must continue to diligently perform all of its obligations, including the completion of the construction of the upgrade works, and
- Without double counting, RMS must pay the On-Ramp D&C Contractor any portion of the contract sum payable to it by the Company under this contract during the period of RMS's remedial action.

If RMS achieves "construction completion" of Stage 3A and/or Stage 4A of the upgrade works in the course of exercising any of its remedial rights as described above, this will be deemed to have remedied the default by the Company and/or the Trustee, the relevant stage(s) of the works will then form part of the motorway as if they had been completed by the Company and the Trustee, and the Company and the Trustee must comply with the rest of their obligations under the Upgrade Project Deed and the Project Deed concerning these stage(s), expressly including their obligations to remedy defects as described in section 7.16.

Any direct or indirect costs, expenses and losses incurred by RMS in taking "emergency action" will be a debt due and payable by the Company and/or the Trustee, as applicable, to RMS. RMS must give the Company and the Trustee copies of all

the documentation on which RMS relies for this purpose, plus any other information reasonably required by the Company and the Trustee in order to substantiate these costs and losses.

Any direct or indirect costs, expenses and losses reasonably incurred by RMS in taking “completion action” or “reinstatement action”—as notified by RMS in writing, along with any supportive information and documentation reasonably required by the Company and the Trustee, and subject to a cap of \$28 million in total—will also be a debt due and payable by the Company and/or the Trustee, as applicable, to RMS, with the repayments to be made from specified funds, obtained by the Company and the Trustee over a two-year period starting on the date that RMS notifies them of its losses etc, that would otherwise be available for distributions to the Company’s shareholders and the unitholders of The Hills Motorway Trust. However, RMS will not be entitled to be repaid for any losses etc it incurs in taking “completion action” unless and until “construction completion” of Stage 3A is achieved by RMS.

These provisions provide RMS’s sole remedy for recovering any costs, expenses and losses it incurs in taking “completion action” or “reinstatement action” from the Company and/or the Trustee.

12.1.3 Novations of the Lane Cove Road On-Ramp Design and Construction Deed to and from RMS

Under the On-Ramp D&C Side Deed, if RMS is exercising its rights to remedy a failure by the Company and/or the Trustee to perform any of their Upgrade Project Deed obligations in relation to Stages 3A and/or 4A of the upgrade works under the arrangements described in section 12.1.2, and RMS gives the On-Ramp D&C Contractor and the On-Ramp D&C Contractor Guarantor a notice that it requires the novation of the Lane Cove Road On-Ramp Design and Deed to RMS,

- The Lane Cove Road On-Ramp Design and Construction Deed will end and will be deemed to have been replaced by a new contract, on the same terms apart from:
 - ♦ Having RMS as a party in the place of the Company and the Trustee, and
 - ♦ Any amendments that are required to reflect the fact that RMS is taking its remedial action and to permit the new contract between RMS and the On-Ramp D&C Contractor to act independently of the Upgrade Project Deed, on the basis that:
 - The rights and obligations of RMS and the On-Ramp D&C Contractor must be equivalent to those the Company/Trustee and the On-Ramp D&C Contractor would have had had the remedial action not been taken by RMS, and
 - The rights and obligations which were previously conditional on the Company and/or the Trustee having an entitlement against RMS or an obligation

to RMS must now apply regardless of any such right or obligation

provided RMS’s liability may be no greater than it would have been under the Upgrade Project Deed had RMS not exercised its rights to take remedial action under the arrangements described in section 12.1.2.

If there is a dispute between RMS and the On-Ramp D&C Contractor about these deemed amendments, either party may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

- The guarantee of the On-Ramp D&C Contractors’ performance under the Lane Cove Road On-Ramp Design and Construction Deed provided to the Company and the Trustee by the On-Ramp D&C Contractor Guarantor will similarly end and be deemed to have been replaced by a new guarantee, on the same terms apart from:
 - ♦ Having RMS as the beneficiary of the On-Ramp D&C Contractor Guarantor’s guarantee, in the place of the Company and the Trustee, and
 - ♦ Any amendments that are required to reflect the fact that RMS is taking its remedial action and the Lane Cove Road On-Ramp Design and Construction Deed has been replaced as described above.

Again, if there is a dispute between RMS and the On-Ramp D&C Contractor Guarantor about these deemed amendments, either party may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

Nothing in these arrangements may require RMS to assume any of the obligations of the Company and/or the Trustee under the Lane Cove Road On-Ramp Design and Construction Deed relating to the period before the date RMS issued its novation notice, or otherwise have any liability to the On-Ramp D&C Contractor or the On-Ramp D&C Contractor Guarantor arising from any circumstances before that date.

If RMS subsequently notifies its intent to cease its remedial action under the arrangements described in section 12.1.2, the Company and the Trustee may issue a “further novation notice” to the On-Ramp D&C Contractor and the On-Ramp D&C Contractor Guarantor as described in the On-Ramp D&C Side Deed. If they do so,

- The novated and amended contract between RMS and the On-Ramp D&C Contractor which replaced the Lane Cove Road On-Ramp Design and Construction Deed during RMS’s remedial action will end and will be deemed to be replaced by another new contract, on the same terms apart from:
 - ♦ Having the Company and the Trustee as parties in the place of RMS, and

- ♦ Any amendments that are required under an application of specified “pass through” provisions originally set out in the original Lane Cove Road On-Ramp Design and Construction Deed of 21 May 2013, on the basis that the rights and obligations of the Company/Trustee and the On-Ramp D&C Contractor must otherwise be equivalent to those RMS and the On-Ramp D&C Contractor would have had under the previous contract had the further novation not occurred.
- Any novated and amended guarantee of the On-Ramp D&C Contractors’ performance provided to RMS by the On-Ramp D&C Contractor Guarantor will similarly end and be deemed to have been replaced by a new guarantee, on the same terms apart from:
 - ♦ Having the Company and the Trustee as the beneficiaries of the On-Ramp D&C Contractor’s’ guarantee, in the place of RMS, and
 - ♦ Any amendments that are required to reflect the fact that the contract that replaced the original Lane Cove Road On-Ramp Design and Construction Deed has itself been replaced as described above, *provided* the On-Ramp D&C Contractor Guarantors’ liability under the new guarantee may be no greater than it would have been under the guarantee it had provided to RMS had RMS not ceased its remedial action.

Nothing in these arrangements may:

- Require the Company and/or the Trustee to assume any of RMS’s obligations, under the contract which replaced the Lane Cove Road On-Ramp Design and Construction Deed during RMS’s remedial action, relating to the period before the Company and the Trustee issued their “further novation notice“
- Affect the rights of RMS or the On-Ramp D&C Contractor under that contract prior to the “further novation notice“, or
- Affect the rights of RMS and the On-Ramp D&C Contractor Guarantor under the guarantee provided to RMS by the On-Ramp D&C Contractor Guarantor prior to the “further novation notice“.

The Company, the Trustee and the debt financiers’ Security Trustee and Agent have expressly acknowledged RMS’s rights under all of these On-Ramp D&C Side Deed provisions, and the Company and the Trustee have undertaken to cooperate with RMS in its exercising of these rights.

12.2 Motorway reinstatement works by the Company and the Trustee following a failure by them to perform their Stage 3A and/or Stage 4A obligations

If the Company and/or the Trustee fail to perform any of their obligations to the Minister for Roads and RMS under the Upgrade Project Deed in relation to Stages 3A and/or 4A of the upgrade works, and do not remedy this failure within a reasonable period of time after receiving a written notice from RMS requiring them to do so, and

- RMS becomes entitled to take “completion action” to remedy the failure, under the arrangements described in section 12.1.2 above, but has not notified the Company and the Trustee of its intention to do so within 60 business days of its becoming entitled to take this action, *or*
- RMS takes “completion action” but ceases this action before achieving “construction completion” of Stage 3A,

and:

- The Company and the Trustee cannot comply with their obligations under the Project Deed or the Upgrade Project Deed, *or*
- RMS, the Company and the Trustee, acting reasonably, agree that the motorway should be reinstated in order to minimise any material adverse effects of the Stage 3A or 4A breach on the motorway’s capacity or patronage,

RMS, the Company and/or the Trustee may propose a *Stage 3A Reinstatement Plan* for reinstating the parts of the motorway affected by the Stage 3A works.

This *Reinstatement Plan* must include detailed descriptions of the works that are necessary for prompt repair or replacement of the relevant parts of the motorway so that the Company and the Trustee may comply with their Project Deed and Upgrade Project Deed obligations, the material adverse effects of the breach on the motorway’s capacity and patronage will be minimised and, as much as reasonably practicable, the flexibility of the parties to the Upgrade Project Deed in carrying out the upgrade project will be preserved.

If the Company and the Trustee propose a *Stage 3A Reinstatement Plan*, RMS must, within 20 business days, direct them to implement either this plan or an alternative plan proposed by RMS.

If RMS proposes such an alternative, the Company and the Trustee must, again within 20 business days, either accept this plan or, if they believe in good faith that RMS plan will not achieve the desired objectives, refer the matter for determination

under the Upgrade Project Deed's dispute resolution procedures, as described in section 9.16.

The Company and the Trustee must then diligently implement the ultimately accepted or determined *Stage 3A Reinstatement Plan* as soon as reasonably practicable. If they fail to do so, RMS may become entitled to take "reinstatement action" itself under the arrangements described in section 12.1.2.

12.3 Remediation of 'events of default' by the Company and the Trustee

"Events of default" are defined in the Upgrade Project Deed as:

- Any failure by the Company or the Trustee to commence or expeditiously and diligently progress the design, construction, completion and commissioning of the upgrade works (see section 7)
- Any display by the Company or the Trustee of an intention to permanently abandon the upgrade project
- Any material failure by the Company to insure the upgrade works as required under the Upgrade Project Deed and the Project Deed (see sections 7.14 and 8.10)
- Any other material breach by the Company or the Trustee of their obligations under the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010, the Upgrade Side Deed or the On-Ramp D&C Side Deed
- Any of a defined series of "events of insolvency" concerning the Company or the Trustee, even if it is not in breach of the Upgrade Project Deed, and
- Any material breach of a representation or warranty given by the Company or the Trustee under the Upgrade Project Deed.

If any of these "events of default" occurs, RMS must promptly notify the debt financiers' Security Trustee and Agent and may give the Company and/or the Trustee a written notice, copied to the Security Trustee and Agent, requiring the Company and/or the Trustee, as applicable, to remedy the "event of default", or overcome its effects, within a time regarded by RMS as reasonable and specified in the notice.

If the "event of default" is a failure to pay money, the parties have agreed in the Project Deed that the "reasonable time" to remedy the default will be 10 business days.

If the "event of default" is not a failure to pay money, the Company and the Trustee must give RMS a program to remedy the "event of default" or overcome its effects in accordance with RMS's notice, and RMS must consult with them in good faith to develop and settle this program. If the "event of default" is either of the first two types listed above, the proposed program must be given to RMS within ten business days of RMS's notice.

The Company and the Trustee must comply with both RMS's notice and the settled program.

If they consider, in good faith, that the time specified in RMS's notice is not reasonable, in which case they must immediately notify RMS, giving details of their reasons, and RMS must then, as soon as practicable, review the time allowed for the "event of default" to be remedied or its effects overcome.

RMS is obliged to grant a reasonable extension of time if the Company and the Trustee are diligently pursuing the agreed remedial program and the motorway is open to the public to the extent that it is safe to do so (subject to their traffic management rights and obligations under the Upgrade Project Deed, as described in section 7.10, and the relevant Project Deed requirements described in section 8.1). If the Company and the Trustee still consider that the time allowed, as varied, is not reasonable, they may either repeat this process or refer the matter for determination under the Project Deed's dispute resolution procedures, as discussed in section 9.16.

Under the Upgrade Project Deed itself the total extension of time granted by RMS and/or an expert or arbitrator under the original and all subsequent applications may not exceed 21 months or, if the "event of default" is either of the first two types listed above, six months.

However, under the Amended and Restated RTA Consent Deed RMS is obliged to grant a *further* reasonable extension of time, still with a cap on the aggregate extension of 21 months but in this case for *all* types of "events of default", if the Company and the Trustee are diligently pursuing a remedial program and the motorway is open to the public (subject to the Upgrade Project Deed's traffic management provisions described in section 7.10, and the relevant Project Deed requirements described in section 8.1).

RMS must give the Security Trustee and Agent copies of all material correspondence and documents RMS issues to the Company or the Trustee concerning the default while they are attempting to remedy the default.

If the Company and/or the Trustee fail to promptly remedy an "event of default" or the consequences of any negligence or wilful misconduct on their part, and RMS believes urgent action is required to minimise any resultant health, safety, environmental or property risks or risks to the upgrade works, RMS may immediately take any steps it considers necessary to minimise these risks or, if they materialise, their effects.

12.4 Remediation of 'events of default' by the Security Trustee and Agent

In addition to the rights and obligations of the Company and the Trustee under the Upgrade Project Deed to remedy an "event of default", the Minister for Roads and RMS have acknowledged, in the Amended and Restated RTA Consent Deed, that the Security Trustee and Agent have rights, under the debt financiers' securities, to remedy the "event of default" or overcome its effects, or procure its remedy or the overcoming of

its effects, by “stepping in” and exercising the rights of the Company and the Trustee under the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010, the Upgrade Side Deed and the Restated Deed of Guarantee (and also, as already described in section 11.2, the rights of the Company and the Trustee under the Project Deed, the Project Management Services Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases and the M2 Upgrade Trust Concurrent Leases).

More specifically, and subject to the debt financiers’ securities, under the Amended and Restated RTA Consent Deed the Security Trustee may:

- Appoint a receiver, trustee, administrator, controller, agent or attorney to (among other things) exercise any or all of the rights and perform any or all of the obligations of the Company, the Trustee or Hills Construction under these contracts
- Engage others reasonably acceptable to RMS to perform some or all of these obligations, or permit them to be engaged by a receiver or agent appointed by the Security Trustee, and
- With RMS’s prior written consent, dispose of any or all of the rights and obligations of the Company, the Trustee or Hills Construction under these contracts.

These actions and any other enforcement of the debt financiers’ securities by the Security Trustee will not constitute an “event of default” under the Project Deed, and they will not, by themselves, give RMS the right to terminate the Upgrade Project Deed.

If the “event of default” is an “event of insolvency”, any enforcement of the debt financiers’ securities in relation to the Company and/or the Trustee by the Security Trustee, including any appointment of a receiver, trustee, administrator, controller, agent or attorney to exercise their rights and perform their obligations (or procure others to do so), will of itself be taken to remedy the “event of default”.

If the Security Trustee or a receiver, trustee, administrator, controller, agent or attorney appointed by the Security Trustee does “step in” and remedy an “event of default” or overcome its effects, RMS must treat this as having the same effects as a remedying of the “event of default” or overcoming of its effects by the Company and/or the Trustee (as applicable).

If the Security Trustee or a receiver, trustee, administrator, controller, agent or attorney appointed by the Security Trustee fails to promptly remedy an “event of default” or the consequences of any negligence or wilful misconduct on their part, and RMS believes urgent action is required to minimise any resultant health, safety, environmental or property risks or risks to the upgrade works, RMS may immediately take any steps it

considers necessary to minimise these risks or, if they materialise, their effects.

12.5 Notifications of ‘stepping in’ by RMS or termination of the Upgrade Project Deed for an unremedied ‘event of default’

lf:

- The Company and/or the Trustee (or the Security Trustee in their shoes) fail to remedy the “event of default” or overcome its effects within the “cure” period specified by RMS, as extended, under the arrangements described in section 12.3, or
- At any time during this period, the Company and/or the Trustee (or the Security Trustee in their shoes) are not diligently pursuing a program to remedy the “event of default” or overcome its effects, or the motorway is not open to the public to the extent that it is safe to do so (again subject to the Upgrade Project Deed’s traffic management provisions described in section 7.10, and the relevant Project Deed requirements described in section 8.1),

RMS may, but need not,

- If the “event of default” is *not* related to Stages 3A and/or 4A of the upgrade works, either:
 - Give the Company and the Trustee a “**default step-in notice**”, giving them 20 business days’ notice that RMS intends to exercise “**default step-in rights**” to remedy the “event of default” or overcome its effects itself, as specified in the Upgrade Project Deed and described in section 12.6 and 12.7 below (it should be noted that for “event of default” that *are* related to Stages 3A and/or 4A, the procedures already described in sections 12.1.2 and 12.2 may instead apply), or
 - Give the Company and the Trustee a “**termination notice**”, giving them 20 business days’ notice that RMS intends to initiate procedures to terminate the Upgrade Project Deed, as described in section 12.8 but subject to restrictions in the Amended and Restated RTA Consent Deed which are also described in section 12.8.
- If the “event of default” *is* related to Stages 3A and/or 4A of the upgrade works, give the Company and the Trustee a “**termination notice (Stage 3A and Stage 4A)**”, giving them 20 business days’ notice that RMS intends to initiate procedures to terminate their rights and obligations concerning Stages 3A and 4A, as described in section 12.9.

RMS must give the Security and Trustee a copy of any such “default step-in notice”, “termination notice” or “termination notice (Stage 3A and Stage 4A)”. In any of these circumstances the Company and the Trustee (or the Security Trustee in their

shoes) may continue to remedy the “event of default” or overcome its effects during the 20-day notice period.

If RMS is entitled to issue a “default step-in notice” or a “termination notice” concerning an “event of default” not related to Stages 3A or 4A of the upgrade works, but has not done so within 60 business days of the date on which it became entitled, and:

- The Company and/or the Trustee cannot comply with all their obligations under the Project Deed, or
- RMS, the Company and the Trustee, acting reasonably, agree that the motorway should be reinstated so as to minimise any material adverse effects the “event of default” will have on its capacity or patronage,

any of the Minister for Roads, RMS, the Company and the Trustee may propose a “*Reinstatement Plan*” for the motorway, in which case the arrangements described in section 12.7 below will apply. (As already indicated, if the “event of default” is related to Stages 3A and/or 4A the analogous procedures in section 12.2 may instead apply.)

12.6 ‘Stepping in’ by RMS to remedy an ‘event of default’ not related to Stages 3A or 4A

Sections 12.6 and 12.7 of this report, concerning “stepping in” by RMS and other motorway reinstatement arrangements, apply only to “events of default” that are not related to Stage 3A and/or Stage 4 of the upgrade works, for which in some cases the simpler arrangements already described in sections 12.1.2 and 12.2 may apply.

12.6.1 General ‘step in’ and ‘step out’ arrangements

If RMS issues a “default step-in notice” concerning an “event of default” not related to Stages 3A or 4A of the upgrade works, as described in section 12.5 above, but the “event of default” has not been remedied or its effects overcome by the end of the 20-day notice period, RMS may, but again need not, in its absolute discretion,

- Assume either total or partial possession, management and control of the upgrade project and works in connection with the remedying of the “event of default” or overcoming its effects, or
- Take any other steps which RMS considers necessary or desirable to continue the design and construction of the upgrade and which are connected with the remedying of the “event of default” or overcoming its effects, expressly including any steps to minimise risks to health and safety, the environment, the upgrade works, any property or the safe and secure performance of work on the upgrade.

Whichever of these “default step-in” approaches is adopted, RMS must:

- Give the Company and the Trustee a written notice, copied to the Security Trustee and Agent, of the date it intends to “step

in” and the upgrade works and design and construction tasks for which it will be “stepping in”

- Promptly consult with the Company and the Trustee on the actions it proposes to take and the time period RMS believes might be necessary for these actions
- In performing the upgrade design and construction obligations of the Company and/or the Trustee, comply with the Upgrade Project Deed’s *Scope of Works and Technical Criteria* and obtain the same verifications and certifications from the Independent Verifier as the Company and the Trustee were obliged to obtain
- Keep the Company and the Trustee informed about all of its relevant communications with the Independent Verifier, and
- More generally, diligently pursue the tasks for which it has “stepped in” if any failure to do so would adversely affect the use, patronage or capacity of the motorway or the Company’s ability to levy tolls, and in order to permit the Company and the Trustee to resume all their obligations under the Project Deed as soon as reasonably practicable.

When RMS “steps in” the Company’s and/or Trustee’s Upgrade Project Deed obligations concerning the upgrade works and design and construction tasks for which RMS has “stepped in” will be suspended and the Company and the Trustee must promptly comply with any reasonable directions RMS may make to them to:

- Immediately suspend all or part of their work on the upgrade
- Co-operate on the “step in” with RMS, or its nominees, as and when required by RMS in its absolute discretion, and
- Take any other steps RMS considers reasonably necessary or desirable in order to permit the Company and the Trustee to resume all their obligations under the Project Deed as soon as reasonably practicable, minimise health, safety, environmental and property risks and achieve efficiency in its “step in” tasks.

The Company and the Trustee must give RMS and its nominees all reasonable assistance required by RMS in exercising its “step in” rights, and must also, as much as reasonably practicable, procure that their main design and construction subcontractors, Leighton Contractors and the On-Ramp D&C Contractor, and all of their other subcontractors, suppliers and consultants do likewise.

More specifically, they must:

- Make all relevant upgrade design documentation and other upgrade documentation available to RMS and/or its nominees
- Give RMS and/or its nominees access to the relevant upgrade worksites, “temporary areas” and “extra land” (see section 7.5)
- As much as practicable, having regard to their other M2 motorway obligations, give RMS and/or its nominees possession of all relevant plant, equipment and materials

- Make all relevant Company and Trustee staff available to RMS and/or its nominees
- If RMS has assumed only partial possession, management and control of the upgrade project and works, in what is termed a “**partial step-in**”,
 - Make all relevant staff of (as relevant) Leighton Contractors, the On-Ramp D&C Contractor and other Company and/or Trustee upgrade subcontractors, suppliers and consultants available to RMS and/or its nominees
 - Permit RMS to “step in” under any relevant Company and Trustee upgrade subcontracts, including their M2 Motorway Upgrade Design and Construction Deed with Leighton Contractors, and
 - Cooperate openly and constructively with RMS, subject to reasonable protection of their commercial and legal positions, in managing the respective rights of RMS, the Company and the Trustee under the subcontracts during the step-in period, so as to minimise, as much as reasonably practicable, any adverse effects on the ability of the Company and the Trustee to carry out their other upgrade project tasks and continue to meet their Project Deed obligations
- If RMS has assumed possession, management and control of *all* of the upgrade project and works following an “event of default”, in what is termed a “**total step-in**”, procure the novation to RMS and/or its nominees of any relevant Company, Trustee, Leighton Contractors and/or On-Ramp D&C Contractor upgrade subcontracts connected with works which have not yet been completed, if these procurement(s) of novation(s) are required by RMS
- Facilitate a smooth transfer of their relevant work to RMS and/or its nominees, and do nothing that is intended, directly or indirectly, to prejudice or frustrate this transfer or make it difficult, and
- Do everything else reasonably required by RMS to enable RMS and/or its nominees to remedy the “event of default” or overcome its effects,

and must also, as much as reasonably practicable, procure that Leighton Contractors, the On-Ramp D&C Contractor and all of their other subcontractors, suppliers and consultants do likewise.

The Minister for Roads, RMS, the Company and the Trustee must cooperate openly and constructively, subject to reasonable protection of their commercial and legal positions, in investigating, managing and responding to any incidents on the motorway during RMS’s “step in” which have or might have resulted in serious injury or death to any person, and the Company and the Trustee must immediately inform RMS, in writing, about any motorway safety actions they are taking, or propose, in response to such an incident.

Throughout its “step in” RMS will, if necessary, have an irrevocable power of attorney to execute any documents which

are reasonably necessary for the “step in” on the Company’s and the Trustee’s behalf, should they fail to do this within five business days of a written request by RMS.

RMS must give the Security Trustee and Agent copies of any notices it issues during the “step in”.

If RMS engages a contractor to perform any works or services connected with its “default step-in” rights, RMS must reasonably endeavour to obtain the rights and warranties that a “reasonable and prudent principal” would obtain—including specified warranties and indemnities similar to those provided by the Company and the Trustee in the Upgrade Project Deed and a defects liability period of 12 months (plus 12 months more for any rectification of defects)—plus a collateral warranty by the contractor indemnifying the Company and the Trustee against any losses they suffer as a result of any damage to the motorway arising from the contractor’s works or services.

The Upgrade Project Deed makes it clear that while RMS is exercising its “default step-in” rights, the rights and obligations of the Minister for Roads, RMS, the Company and the Trustee under the Upgrade Project Deed will be affected only in the way expressly set out in the Upgrade Project Deed and summarised above and below.

Leighton Contractors and the debt financiers’ Security Trustee and Agent have expressly acknowledged RMS’s “default step-in” rights under the Upgrade Project Deed, and the Security Trustee and Agent have promised not to knowingly interfere with RMS’s exercising of these rights.

RMS will not have to pay the Company and/or the Trustee any compensation for exercising its “default step-in” rights, and will not be liable for any losses or claims the Company and/or the Trustee suffer as a result of its “stepping in”, apart from:

- A requirement to reimburse them for any contract sums they must pay during the step-in period under any subcontract subjected to “stepping in” by RMS and/or its nominees under the arrangements for a “partial step-in” described above
- Any losses or claims resulting from RMS negligence or a wilful RMS default in exercising its “step-in” rights, and
- A requirement to pay the Company for any increase in the motorway’s operating and maintenance costs caused by any “additional works” undertaken by RMS, under arrangements described in section 12.6.2 below.

If RMS formally completes any of Stages 1, 2, 3 and 4 of the upgrade works (sections 7.1 and 7.15) in the course of exercising its “step-in” rights, the Company and the Trustee will be deemed to have remedied the “event of default”, the completed stage’s works will become part of the motorway as if they had been completed by the Company and/or the Trustee, as applicable, and the Company and the Trustee must comply with all their relevant obligations under the Upgrade Project Deed (expressly including the defects correction obligations summarised in section 7.16) and the Project Deed (section 8) as if they had completed the stage. In these circumstances RMS must assign to the Company and the Trustee the benefits of any

of the warranties and indemnities it was obliged to reasonably endeavour to obtain from any contractors it engaged to perform “step in” works or services.

RMS may, at any time, issue a “**step-out notice**” to the Company and the Trustee, copied to the debt financiers’ Security Trustee and Agent, notifying them that it intends to cease exercising its “step in” rights on a specified reasonable date no later than 60 business days after the date of the notice.

If it does so, RMS must “step out” and the Company and the Trustee must recommence their performance of the relevant upgrade tasks on the notified date. Again, in these circumstances RMS must assign to the Company and the Trustee the benefits of any of the warranties and indemnities it was obliged to reasonably endeavour to obtain from any contractors it engaged to perform “step in” works or services.

If RMS “steps out” and an “event of default” of the same type or a substantially similar “event of default” subsequently occurs, the notification processes described in sections 12.3 and (if applicable) 12.5 may be repeated, and if RMS chooses to “step in” again the provisions summarised in this section 12.6 will once again apply. However, in these circumstances the total period available to the Company and/or the Trustee (or the Security Trustee in their shoes) to remedy the repeated “event of default”, under the Upgrade Project Deed provisions described in sections 12.3 and 12.4, may not exceed three months.

If RMS has “stepped out” before all of Stages 1, 2 and 3 of the upgrade works are completed, and:

- The Company and/or the Trustee cannot comply with all their obligations under the Project Deed, or
- RMS, the Company and the Trustee, acting reasonably, agree that the motorway should be reinstated so as to minimise any material adverse effects the “event of default” will have on its capacity or patronage,

any of the Minister for Roads, RMS, the Company and the Trustee may propose a “*Reinstatement Plan*” for the motorway, in which case the arrangements described in section 12.7 below will apply.

12.6.2 Changes to the upgrade works during a ‘default step-in’ by RMS

At any time an RMS “default step-in” RMS may propose changes to the upgrade works by issuing an “**additional works proposal**”, a copy of which must also be sent to the debt financiers’ Security Trustee and Agent.

If RMS does so, the Company and/or the Trustee, as relevant, must, within 15 business days, give RMS detailed estimates by the Company of the motorway operating and maintenance costs or savings the Company would incur if the proposed changes were made, details on any adverse effects on the functional integrity of the upgrade works, performance standards, quality standards, any other Upgrade Project Deed obligations, the motorway’s patronage or capacity, the Company’s ability to levy or collect tolls or the ability of the Company and the Trustee to

comply with their Project Deed obligations, plus any other information requested in the “additional works proposal”.

RMS will then have 15 business days to advise the Company and/or the Trustee, as relevant, whether it wishes to proceed with the proposed changes.

If it decides to proceed, and RMS agrees with the costings and advice provided by the Company and/or the Trustee, RMS may notify them of this within this period, again providing a copy of its notice to the Security Trustee and Agent, in which case:

- The changes will take effect in accordance with the costings and advice they have provided (i.e. with the notified amended standards etc), and
- The “additional works” may be carried out by RMS, *provided* (unless the Minister for Roads, RMS, the Company and the Trustee otherwise agree) these “additional works”:
 - ♦ Will not reduce the motorway’s capacity or patronage prior to “final completion” of the upgrade works (i.e. “construction completion” of Stage 4) by more than the reductions forecast for this period, as a result of the Company’s and Trustee’s upgrade works, in the private sector parties’ “base case” financial model for the upgrade project as at 25 October 2010, and
 - ♦ Will not adversely affect the use, patronage and capacity of the upgrade works or the motorway after “final completion”, or the Company’s ability to levy and collect tolls.

If RMS wishes to proceed but disagrees with the costings and/or advice provided by the Company and/or the Trustee, RMS may refer the matter for determination under the Upgrade Project Deed’s dispute resolution procedures (section 9.16), in which case:

- RMS may carry out the “additional works” before the dispute is determined if the above criteria are satisfied (even though RMS has not yet agreed with the Company’s and Trustee’s costings and advice) or if the Minister for Roads, RMS, the Company and the Trustee have otherwise agreed the “additional works” may be carried out, and
- The obligations of the Company and the Trustee under the Upgrade Project Deed and the Project Deed will be amended in accordance with the costings and advice the Company and the Trustee have provided or, in the case of those aspects with which RMS disagrees, the determination made under the dispute resolution procedures.

RMS must pay the Company for any increase in the motorway’s operating and maintenance costs caused by the “additional works” undertaken by RMS, either as agreed between RMS, the Company and the Trustee under the processes described above or as determined under the dispute resolution procedures. Unless otherwise agreed, this payment must be made through a set-off against any amounts then due and payable to RMS under quarterly “step in” cost payment arrangements which will apply (subject to a number of provisos) after the completion of Stage 3 of the upgrade works, as summarised in section 12.6.4

below, or otherwise within ten business days of RMS's completion of the "additional works".

Changes to the upgrade works may also be made if RMS, while exercising its "step in" rights, discovers any latent defect in the condition of a structure on, above, under or adjacent to any upgrade worksite, "temporary area" or "extra land".

If RMS makes such a discovery it must promptly notify the Company and the Trustee, and within the next 20 business days the Company and the Trustee may (but need not) propose alternative design solutions for the upgrade works.

If they do propose alternative design solutions, and RMS reasonably believes, taking account of any additional capital and operating cost consequences of the latent defect, that it would not have been feasible for them to carry out the upgrade works in accordance with the Upgrade Project Deed's existing *Scope of Works and Technical Criteria*, RMS must consider the proposed changes and any supporting information and documentation, consult with the Company and the Trustee in assessing the changes and the resultant total capital and operating costs, and either approve or reject the proposed changes in good faith but otherwise in its absolute discretion.

All disputes concerning any latent defect detected by RMS and any alternative design solutions or other changes proposed in response by the Company and the Trustee must be addressed through the Upgrade Project Deed dispute resolution procedures described in section 9.16.

12.6.3 Upgrade Side Deed provisions concerning 'stepping in' by RMS

As already indicated in section 12.6.1,

- If RMS assumes only partial possession, management and control of the upgrade project and works following an "event of default" not related to Stage 3A or Stage 4A of the upgrade works, in a "partial step-in", the Company and the Trustee must make all relevant staff of (as relevant) Leighton Contractors, the On-Ramp D&C Contractor and other Company/Trustee upgrade subcontractors, suppliers and consultants available to RMS and/or its nominees, permit RMS to "step in" under any relevant Company and Trustee upgrade subcontracts, including their M2 Motorway Upgrade Design and Construction Deed with Leighton Contractors, and cooperate openly and constructively with RMS, subject to reasonable protection of their commercial and legal positions, in managing the respective rights of RMS, the Company and the Trustee under the subcontracts during the step-in period, so as to minimise, as much as reasonably practicable, any adverse effects on the ability of the Company and the Trustee to carry out their other upgrade project tasks and continue to meet their Project Deed obligations, and
- If RMS assumes possession, management and control of all of the upgrade project and works following an "event of default", in a "total step-in", the Company and the Trustee must procure the novation to RMS and/or its nominees of

any relevant Company, Trustee, Leighton Contractors and/or On-Ramp D&C Contractor upgrade subcontracts connected with works which have not yet been completed, including the M2 Motorway Upgrade Design and Construction Deed, if these procurement(s) of novation(s) are required by RMS.

Under the Upgrade Side Deed between RMS, Leighton Contractors, the Company, the Trustee and Leighton Contractors' parent company guarantor, Leighton Holdings, if RMS elects to "step in" to the M2 Motorway Upgrade Design and Construction Deed but not to require its novation,

- During its "step in" RMS will be entitled to exercise the rights of the Company and the Trustee under this contract
- Leighton Contractors must promptly provide all the assistance required by RMS, and as much as reasonably practicable, procure that its own subcontractors do likewise
- Leighton Contractors must deal with RMS throughout the "step in"
- The M2 Motorway Upgrade Design and Construction Deed must remain in full force, and Leighton Contractors must continue to diligently perform all of its obligations, including the completion of the construction of the upgrade works, and
- Without double counting, RMS must pay Leighton Contractors any portion of the contract sum payable to it by the Company under this contract during the "step in" period.

If RMS elects *not* to "step in" to the M2 Motorway Upgrade Design and Construction Deed and not to require its novation, Leighton Contractors must nonetheless cooperate with and provide all reasonable assistance to RMS, the Company and the Trustee as required by them, so as to enable them to exercise their rights and fulfill their obligations following RMS's "partial step in", as summarised in section 12.6.1.

If there is a "total step in" by RMS and RMS gives Leighton Contractors and Leighton Holdings a notice that it requires the novation of the M2 Motorway Upgrade Design and Construction Deed (with a copy of this "**novation notice**" also being sent to the Security Trustee and Agent),

- The M2 Motorway Upgrade Design and Construction Deed will end and will be deemed to have been replaced by a new contract, on the same terms apart from:
 - Having RMS as a party in the place of the Company and the Trustee, and
 - Any amendments that are required to reflect the fact that RMS's "step in" has occurred and to permit the new contract between RMS and Leighton Contractors to act independently of the Upgrade Project Deed, on the basis that:
 - The rights and obligations of RMS and Leighton Contractors must be equivalent to those the Company/Trustee and Leighton Contractors would have had had the "step in" not occurred, and
 - The rights and obligations which were previously conditional on the Company and/or the Trustee

having an entitlement against RMS or an obligation to RMS must now apply regardless of any such right or obligation,

provided RMS's liability may be no greater than it would have been under the Upgrade Project Deed had it not exercised its "default step-in" rights.

If there is a dispute between RMS and Leighton Contractors about these deemed amendments, either party may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

- The guarantee of Leighton Contractors' performance under the M2 Motorway Upgrade Design and Construction Deed provided to the Company and the Trustee by Leighton Holdings will similarly end and be deemed to have been replaced by a new guarantee, on the same terms apart from:
 - ♦ Having RMS as the beneficiary of Leighton Holdings' guarantee, in the place of the Company and the Trustee, and
 - ♦ Any amendments that are required to reflect the fact that RMS's "step in" has occurred and the M2 Motorway Upgrade Design and Construction Deed has been replaced as described above, *provided* Leighton Holdings' liability under the new guarantee may be no greater than it would have been under the original guarantee had RMS not issued its novation notice.

Again, if there is a dispute between RMS and Leighton Holdings about these deemed amendments, either party may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

Nothing in these arrangements may require RMS to assume any of the obligations of the Company and/or the Trustee under the M2 Motorway Upgrade Design and Construction Deed relating to the period before the date RMS issued its novation notice, or otherwise have any liability to Leighton Contractors or Leighton Holdings arising from any circumstances before that date.

If RMS subsequently issues a "step-out notice" to the Company and the Trustee, under the "stepping out" arrangements described in section 12.6.1, and the Company and the Trustee issue a "further novation notice" to Leighton Contractors and Leighton Holdings as described in the Upgrade Side Deed, from the date on which RMS "steps out":

- Any novated and amended contract between RMS and Leighton Contractors which replaced the M2 Motorway Upgrade Design and Construction Deed during RMS's "step in" will end and will be deemed to be replaced by another new contract, on the same terms apart from:
 - ♦ Having the Company and the Trustee as parties in the place of RMS, and

- ♦ Any amendments that are required under an application of specified "pass through" provisions originally set out in the original M2 Motorway Upgrade Design and Construction Deed (as at 25 October 2010), on the basis that the rights and obligations of the Company/Trustee and Leighton Contractors must otherwise be equivalent to those RMS and Leighton Contractors would have had under the previous contract had the further novation not occurred.

If there is a dispute between RMS and the Company and/or the Trustee about these deemed amendments, any of these parties may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

- Any novated and amended guarantee of Leighton Contractors' performance provided to RMS by Leighton Holdings will similarly end and be deemed to have been replaced by a new guarantee, on the same terms apart from:
 - ♦ Having the Company and the Trustee as the beneficiaries of Leighton Holdings' guarantee, in the place of RMS, and
 - ♦ Any amendments that are required to reflect the fact that the contract that replaced the original M2 Motorway Upgrade Design and Construction Deed has itself been replaced as described above, *provided* Leighton Holdings' liability under the new guarantee may be no greater than it would have been under the guarantee it had provided to RMS had the "step out" not occurred.

Once more, if there is a dispute between RMS and Leighton Holdings about these deemed amendments, either party may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

Nothing in these arrangements may:

- Require the Company and/or the Trustee to assume any of RMS's obligations, under the contract which replaced the M2 Motorway Upgrade Design and Construction Deed during the "step in", relating to the period before the "step out" date
- Affect the rights of RMS or Leighton Contractors under that contract prior to the "step out" date, or
- Affect the rights of RMS and Leighton Holdings under the guarantee provided to RMS by Leighton Holdings prior to the "step out" date.

The Company, the Trustee and the debt financiers' Security Trustee and Agent have expressly acknowledged RMS's rights under all of these Upgrade Side Deed provisions, and the Company and the Trustee have undertaken to cooperate with RMS in its exercising of these rights.

12.6.4 Payments to RMS for its ‘step-in’ costs

Under the upgrade project’s contracts there are two potential sources of payments to RMS for part or all of the costs it incurs in any exercising of its “default step-in” rights following an “event of default” not related to Stages 3A or 4A of the upgrade works:

- Payments by Transurban Holdings Limited, which holds all of the shares in the Company, and Transurban Infrastructure Management Limited, which (as the responsible entity of the Transurban Holding Trust) holds all of the units in the Hills Motorway Trust, under arrangements set out in the Equity Subscription Deed, and
- The Company and the Trustee, under arrangements set out in the Upgrade Project Deed.

Under the Equity Subscription Deed’s payment provisions, if the aggregate total of all Transurban Holdings and Transurban Infrastructure Management equity contributions to the Company and the Trustee in accordance with their original 2010 equity contribution obligations under the Equity Subscription Deed—i.e. not counting any additional equity contributions or subordinated loans by Transurban Holdings and Transurban Infrastructure Management to help fund the Lane Cove Road on-ramp works, in accordance with the amended and restated 2013 form of the Equity Subscription Deed—has not yet reached or exceeded \$60,872,895, RMS may issue a “demand notice” to Transurban Holdings and Transurban Infrastructure Management, at any time after RMS “steps in”, requiring them to pay RMS (or cause RMS to be paid) an amount specified in the notice to reimburse RMS for its “step in” costs, up to a limit of \$60,872,895 less the aggregate total of all of their equity contributions in accordance with their original 2010 equity contribution obligations under the Equity Subscription Deed prior to the date of the payment (including any previous payments to RMS under these arrangements).

Any such RMS “demand notice” must be accompanied by invoices, or other evidence reasonably acceptable to Transurban Holdings and Transurban Infrastructure Management, for the amount specified in the notice, together with details on the “step in” costs RMS has incurred. Transurban Holdings and Transurban Infrastructure Management must then (subject to the payment limit described above) promptly pay RMS the specified amount, or cause it to be paid to RMS by others, with the payment being made in any event within ten business days.

Under the Upgrade Project Deed’s payment provisions, from the date of “construction completion” of Stage 3 of the upgrade works (section 7.15)—if it occurs, and subject to several other provisos discussed below—the reasonable costs incurred by RMS in any exercising of its “default step-in” rights will become a debt due to be paid by the Company and the Trustee to RMS in quarterly instalments, subject to upper limits on these quarterly payments specified in a *Cost Payment Schedule* set out in a schedule to the Upgrade Project Deed.

For the purposes of these Upgrade Project Deed arrangements, and also the Equity Subscription Deed’s arrangements, the

reasonable costs incurred by RMS for which reimbursements may be made expressly include:

- Its reasonable contracting, procurement and financing costs and its costs under any novated subcontract in connection with the remedying of “event(s) of default” or overcoming their effects
- Its reasonable costs in obtaining rights and warranties (as discussed in section 12.6.1) from any contractors it engages to perform any works or services connected with its “default step-in” rights
- Any amounts paid to the Company and/or the Trustee to reimburse them for any contract sums they must pay during the “step-in” period under any subcontract subjected to “stepping in” by RMS and/or its nominees under the arrangements for a “partial step-in” described in section 12.6.1
- Its reasonable costs in connection with safety and other required responses to any latent defects detected during its “step in” (section 12.6.2), and
- Without any double counting, interest on these costs and RMS’s other reasonable “step in” costs, from the dates on which they are incurred, of 10.81% per annum,

but do *not* include any costs incurred by RMS in carrying out any “additional works” (section 12.6.2). RMS must give the Company and the Trustee all the documentation relied upon by RMS, plus any other information they reasonably require, to substantiate its costs.

If RMS has not yet paid the Company for any increase in the motorway’s operating and maintenance costs caused by any “additional works” undertaken by RMS under the arrangements for this described in section 12.6.2, this payment must be set off against any amounts then due and payable to RMS under the quarterly “step in” cost payment arrangements.

If RMS has received any payments under the Equity Subscription Deed arrangements described above, the amounts to be paid to RMS under the Upgrade Project Deed’s arrangements must be reduced by the amount(s) paid to RMS under the Equity Subscription Deed.

The Upgrade Project Deed’s payment regime provides RMS’s sole remedy for recovering any of its reasonable “default step-in” costs from the Company and/or the Trustee.

If Stage 3 of the upgrade works is never completed, the Company and the Trustee will have no obligations to repay any of RMS’s “default step-in” costs. However, if RMS has “stepped in” it will be *deemed* to have completed Stage 3 if the Independent Verifier issues a notice, in accordance with the Upgrade Project Deed’s construction completion arrangements described in section 7.15, stating that the only Stage 3 work remaining to be completed is:

- Work set out in a specified schedule to the M2 Motorway Upgrade Design and Construction Deed
- Updating of the *Maintenance Manual* (see section 8.1)

- The provision to RMS of “off the shelf” software or specified electronic tolling software, *and/or*
- Any work RMS has been prevented from performing because:
 - ♦ It has not had this software
 - ♦ It has been complying with its obligations to permit the Company and the Trustee to resume all their obligations under the Project Deed as soon as reasonably practicable
 - ♦ The Company and/or the Trustee have failed to give RMS access to the relevant upgrade worksites, “temporary areas”, “extra land” or the motorway, *and/or*
 - ♦ The Company and/or the Trustee have breached any of their other their obligations.

Notwithstanding the provisions described above, the Upgrade Project Deed’s arrangements for reimbursing RMS for its reasonable “default step-in” costs:

- Are subject to a cap on the aggregate reimbursement payment of \$469.9 million in 31 December 2009 dollars, with a discount rate of 10.81% per annum to be applied, and
- Require the quarterly payments to be made only to the extent that the Trustee has sufficient “available funds”, *meaning* sufficient funds sourced from the additional revenues generated by the upgrade which it is entitled to distribute for the relevant quarter in accordance with the motorway’s debt financing documents.

Any shortfall will accrue capitalised interest at 10.81% per annum until it is ultimately paid to RMS, through future quarterly payment(s) if (but only if) sufficient funds are available, under arrangements set out in the Upgrade Project Deed.

The Upgrade Project Deed and the RTA Consent Deed of November 2010 specify requirements and consents for the establishment and operation by the Company and the Trustee of a “step-in costs reserve account” for the purpose of funding their reimbursements to RMS for its “step in” costs.

12.7 Other upgrade motorway reinstatement arrangements

As already indicated in section 12.5, if there is an “event of default” not related to Stage 3A or Stage 4A of the upgrade works and:

- RMS is entitled to issue a “default step-in notice” or a “termination notice” as described in section 12.5 but has not done so within 60 business days of the date on which it became entitled, *or*
- RMS has “stepped in” but has then “stepped out”, as described in section 12.6.1, before all of Stages 1, 2 and 3 of the upgrade works are completed

and:

- The Company and/or the Trustee cannot comply with all their obligations under the Project Deed, *or*
- RMS, the Company and the Trustee, acting reasonably, agree that the motorway should be reinstated so as to minimise any material adverse effects the “event of default” will have on its capacity or patronage,

the Minister for Roads, RMS, the Company and/or the Trustee may propose a “*Reinstatement Plan*” for the motorway.

This *Reinstatement Plan* must include detailed descriptions of the works that are necessary for prompt repair or replacement of the motorway so that the Company and the Trustee may comply with their Project Deed obligations, the material adverse effects of the “event of default” on the motorway’s capacity and patronage will be minimised and, as much as reasonably practicable, the flexibility of the parties to the Upgrade Project Deed in carrying out the upgrade project will be preserved.

If the Company and the Trustee propose a *Reinstatement Plan*, RMS must, within 20 business days, direct them to implement either this plan or an alternative plan proposed by RMS.

If RMS proposes such an alternative, the Company and the Trustee must, again within 20 business days, either accept this plan or, if they believe in good faith that RMS plan will not achieve the desired objectives, refer the matter for determination under the Upgrade Project Deed’s dispute resolution procedures, as described in section 9.16.

The Company and the Trustee must then diligently implement the ultimately accepted or determined *Reinstatement Plan* as soon as reasonably practicable.

Analogous procedures may apply for some types of “events of default” related to Stages 3A and/or 4A of the upgrade works under the separate Upgrade Project Deed provisions described in section 12.2.

12.8 Termination of the Upgrade Project Deed by RMS

RMS may terminate the Upgrade Project Deed by:

- Terminating the Project Deed for an Company/Trustee default, if it is entitled to do so on any of the bases described in section 11.3, under the arrangements described in that section, including restrictions imposed by the Amended and Restated RTA Consent Deed, in which case the Upgrade Project Deed will automatically terminate and the consequences described in **section 12.8.1** below will apply
- Subject to other restrictions under the Amended and Restated RTA Consent Deed, discussed below, issuing a notice to the Company and the Trustee, in RMS’s absolute discretion, if the Company and/or the Trustee are prevented from carrying out their upgrade works for more than six months as a result of an RMS, court or tribunal order or other legal requirement responding to the discovery of an artefact

or a native title claim, in which case the consequences described in **section 12.8.2** below will apply, or

- Subject to the restrictions under the Amended and Restated RTA Consent Deed discussed below, issuing a notice to the Company and the Trustee, copied to the Security Trustee and Agent, if they (or the Security Trustee in their shoes) have failed to remedy an “event of default” that is *not* related to Stages 3A and/or 4A of the upgrade works, or overcome its effects, within 20 business days of a “termination notice” having been issued by RMS under the arrangements described in section 12.5, in which case the consequences described in **section 12.8.3** below will apply.

In the last two cases, under the Amended and Restated RTA Consent Deed RMS may not terminate the Upgrade Project Deed if:

- The Minister for Roads or RMS are in breach of any of their obligations under the Project Deed, the Upgrade Project Deed or any of the leases, *other than* a breach of an M2 Upgrade Company Lease caused by a breach of any M2 Upgrade Trust Concurrent Lease, or
- At any time after “final completion” of the upgrade works, any or all of the leases have not yet been registered and the Agent notifies RMS that a proposed purchaser of the rights and obligations of the Company and the Trustee under the Project Deed, the leases, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed and the Restated Deed of Guarantee, under the arrangements for remedying Company/Trustee *Project Deed* defaults described in section 11.1 and 11.2, requires the lease(s) to be registered before completing this acquisition,

and in the last (unremedied “event of default”) case RMS is also prohibited from terminating the Upgrade Project Deed if it has not given the Security Trustee and Agent a copy of its notice.

12.8.1 Consequences of an automatic termination of the Upgrade Project Deed upon a termination of the Project Deed for a Company/Trustee default

Upon the automatic termination of the Upgrade Project Deed resulting from any termination of the Project Deed for a Company or Trustee default (see section 11.3),

- RMS will be entitled to damages for any expenses, losses or liabilities it incurs which are connected in any way with the termination of the Upgrade Project Deed, *other than* any “special, indirect or consequential” losses of income, revenue, profits, financial opportunities, business, business opportunities, contracts, goodwill, use, production or value of the M2 motorway, or failures to realise anticipated savings, cost reductions or other benefits
- RMS will not be liable to pay any compensation to the Company or the Trustee as a result of the termination

- The Minister for Roads, RMS, the Company and the Trustee will retain their rights to claim damages for any breaches of contract by another party to the Upgrade Project Deed
- The Company and the Trustee must carry out any rectification or remediation work reasonably required by RMS in order to minimise any adverse effects on the motorway’s capacity or patronage
- If they fail to do so to RMS’s reasonable satisfaction and within a period specified by RMS, RMS may carry out the rectification or remediation work itself, or procure others to carry it out, and any costs or losses incurred by RMS in taking this action, other than losses arising from any negligence or wilful default by RMS or its contractors, will be a debt due and payable by the Company and the Trustee to RMS
- To the extent necessary for RMS to be able to take this action,
 - RMS may (but need not) require the novation of any subcontract or other contract entered into by the Company and/or the Trustee concerning the upgrade project, including the M2 Motorway Upgrade Design and Construction Deed and/or the Lane Cove Road On-Ramp Design and Construction Deed and, in these cases, associated parent company guarantees of the performance of Leighton Contractors and/or the On-Ramp D&C Contractor (see sections 12.8.4 and 12.8.5 below)
 - RMS may (but need not) require the novation of any of subcontracts by Leighton Contractors or the On-Ramp D&C Contractor for specified types of work, and/or any subcontracts by Leighton Contractors or the On-Ramp D&C Contractor with a contract sum exceeding or expected to exceed \$2.5 million (see section 7.13)
 - The Company and the Trustee must execute documents to transfer their interests in the upgrade project’s physical, contractual, intellectual property and residual insurance assets to RMS (and must irrevocably appoint RMS as their attorney for this purpose)
 - The Company and the Trustee must give RMS or its nominee the originals or copies of all their accounts, records and proprietary documentation concerning the upgrade project and all other documentation relating to the upgrade project which is in their custody or control or the custody or control of their subcontractors, and
 - The Company and the Trustee must procure the assignment of the Company’s rights under its upgrade project insurance policies
- The upgrade project’s worksites, “temporary areas” and any other land on which the Company’s or the Trustee’s work on the upgrade project was being carried out will revert to RMS, and
- The Company and the Trustee must give RMS access to their accounts and all other records relating to the performance of

their Upgrade Project Deed obligations for the next seven years.

12.8.2 Consequences of a termination of the Upgrade Project Deed for an extended artefact or native title delay

If the Upgrade Project Deed is terminated by RMS because the Company and/or the Trustee have been prevented from carrying out their upgrade works for more than six months as a result of an order or other legal requirement responding to the discovery of an artefact or a native title claim,

- RMS must, within 30 days, release any upgrade project security bonds held by RMS (see section 7.15) and pay the Company and the Trustee an “**early termination amount**”, as specified by the Upgrade Project Deed, equal to the sum of—
 - ♦ Their debts to the upgrade debt financiers on the termination date, excluding any interest on this debt calculated at a penalty rate
 - ♦ If the termination occurs before 18 November 2014, the subordinated debt contributed by the equity investors to help fund the Lane Cove Road on-ramp works, again excluding any interest on this debt calculated at a penalty rate, and
 - ♦ Amounts sufficient to give them the ability to give Company and Hills Motorway Trust investors, treating them as “notional initial upgrade equity investors” and “notional initial LCR equity investors” as defined in the Upgrade Project Deed (see section 10.2), the real after-tax rate of returns they would otherwise have been expected to receive from (respectively) their upgrade project securities and their Lane Cove Road on-ramp project securities over the motorway’s term (which for these purposes is taken to be 49 years from the opening of the motorway on 26 May 1997), after taking account of amounts already paid and received by the Company and the Trustee and the amounts they must pay as a result of the termination, including payments they must make to their contractors (subject to the “novation to RMS” provisions which they were required to ensure were present in all “significant subcontracts” by Leighton Contractors and the On-Ramp D&C Contractor, as described in section 7.13) but ignoring any amounts payable to Leighton Contractors or the On-Ramp D&C Contractor that are related to any amounts either of them must pay to a related corporate entity that has not been engaged by it on an arms-length basis and on commercial terms
- The Minister for Roads, RMS, the Company and the Trustee will retain their rights to claim damages for any breaches of contract by another party to the Upgrade Project Deed
- The Project Deed will continue to apply, as amended by the Upgrade Project Deed and the Lane Cove Road On-Ramp

Amending Deed up to the date of termination of the Upgrade Project Deed

- RMS may (but need not) require the novation of the M2 Motorway Upgrade Design and Construction Deed and/or the Lane Cove Road On-Ramp Design and Construction Deed and, if it does so, associated parent company guarantees of the performance of Leighton Contractors and/or the On-Ramp D&C Contractor (see sections 12.8.4 and 12.8.5 below)
- RMS may (but need not) require the novation of any of subcontracts by Leighton Contractors or the On-Ramp D&C Contractor for specified types of work, and/or any subcontracts by Leighton Contractors or the On-Ramp D&C Contractor with a contract sum exceeding or expected to exceed \$2.5 million (see section 7.13), and
- The Company and the Trustee must give RMS access to their accounts and all other records relating to the performance of their Upgrade Project Deed obligations for the next seven years.

12.8.3 Consequences of a termination of the Upgrade Project Deed for an unremedied ‘event of default’ not related to Stage 3A or Stage 4A

Upon the termination of the Upgrade Project Deed for a failure by the Company and the Trustee (or the Security Trustee in their shoes) to remedy an “event of default” not related to Stages 3A or 4A, or overcome its effects,

- The Company must continue to operate, maintain and repair the motorway in accordance with the Project Deed
- RMS will be entitled to damages for any expenses, losses or liabilities it incurs which are connected in any way with the termination of the Upgrade Project Deed, *other than* any “special, indirect or consequential” losses of income, revenue, profits, financial opportunities, business, business opportunities, contracts, goodwill, use, production or value of the M2 motorway, or failures to realise anticipated savings, cost reductions or other benefits
- RMS will not be liable to pay any compensation to the Company or the Trustee as a result of the termination
- The Minister for Roads, RMS, the Company and the Trustee will retain their rights to claim damages for any breaches of contract by another party to the Upgrade Project Deed
- The Company and the Trustee must carry out any rectification or remediation work reasonably required by RMS so that the Company and the Trustee may comply with their Project Deed obligations and the material adverse effects of the “event of default” on the motorway’s capacity and patronage will be minimised
- If they fail to do so to RMS’s reasonable satisfaction and within a period specified by RMS, RMS may carry out the rectification or remediation work itself, or procure others to carry it out, and any costs or losses incurred by RMS in

taking this action, other than losses arising from any negligence or wilful default by RMS or its contractors, will be a debt due and payable by the Company and the Trustee to RMS

- To the extent necessary for RMS to be able to take this action,
 - ♦ RMS may (but need not) require the novation of any subcontract or other contract entered into by the Company and/or the Trustee concerning the upgrade project, including the M2 Motorway Upgrade Design and Construction Deed and/or the Lane Cove Road On-Ramp Design and Construction Deed and, in these cases, associated parent company guarantees of the performance of Leighton Contractors and/or the On-Ramp D&C Contractor (see sections 12.8.4 and 12.8.5 below)
 - ♦ RMS may (but need not) require the novation of any of subcontracts by Leighton Contractors or the On-Ramp D&C Contractor for specified types of work, and/or any subcontracts by Leighton Contractors or the On-Ramp D&C Contractor with a contract sum exceeding or expected to exceed \$2.5 million (see section 7.13)
 - ♦ The Company and the Trustee must execute documents to transfer their interests in the upgrade project's physical, contractual, intellectual property and residual insurance assets to RMS (and must irrevocably appoint RMS as their attorney for this purpose)
 - ♦ The Company and the Trustee must give RMS or its nominee the originals or copies of all their accounts, records and proprietary documentation concerning the upgrade project and all other documentation relating to the upgrade project which is in their custody or control or the custody or control of their subcontractors, and
 - ♦ The Company and the Trustee must procure the assignment of the Company's rights under its upgrade project insurance policies
- The Project Deed will continue to apply, but all of the amendments to the Project Deed introduced by the Upgrade Project Deed (as itself amended by the Lane Cove Road On-Ramp Amending Deed), either when the Upgrade Project Deed took effect on 18 November 2010, on the date of "construction completion" of Stage 1 of the upgrade, on the date of "final completion" of the upgrade or (if it is later) on the date of "construction completion" of Stage 4A, will have no further effect
- The upgrade project's worksites, "temporary areas" and any other land on which the Company's or the Trustee's work on the upgrade project was being carried out will revert to RMS, and
- The Company and the Trustee must give RMS access to their accounts and all other records relating to the performance of their Upgrade Project Deed obligations for the next seven years.

12.8.4 Novation of the M2 Motorway Upgrade Design and Construction Deed to RMS

Under the Upgrade Side Deed, if the Upgrade Project Deed is terminated and RMS gives Leighton Contractors and Leighton Holdings a notice that it requires the novation of the M2 Motorway Upgrade Design and Construction Deed,

- The M2 Motorway Upgrade Design and Construction Deed will end and will be deemed to have been replaced by a new contract, on the same terms apart from:
 - ♦ Having RMS as a party in the place of the Company and the Trustee, and
 - ♦ Any amendments that are required to reflect the fact that the Upgrade Project Deed has been terminated and to permit the new contract between RMS and Leighton Contractors to act independently of the Upgrade Project Deed, on the basis that:
 - The rights and obligations of RMS and Leighton Contractors must be equivalent to those the Company/Trustee and Leighton Contractors would have had had the termination not occurred, and
 - The rights and obligations which were previously conditional on the Company and/or the Trustee having an entitlement against RMS or an obligation to RMS must now apply regardless of any such right or obligation,

provided RMS's liability may be no greater than it would have been under the Upgrade Project Deed had it not been terminated.

If there is a dispute between RMS and Leighton Contractors about these deemed amendments, either party may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

- The guarantee of Leighton Contractors' performance under the M2 Motorway Upgrade Design and Construction Deed provided to the Company and the Trustee by Leighton Holdings will similarly end and be deemed to have been replaced by a new guarantee, on the same terms apart from:
 - ♦ Having RMS as the beneficiary of Leighton Holdings' guarantee, in the place of the Company and the Trustee, and
 - ♦ Any amendments that are required to reflect the fact that the Upgrade Project Deed has been terminated and the M2 Motorway Upgrade Design and Construction Deed has been replaced as described above, *provided* Leighton Holdings' liability under the new guarantee may be no greater than it would have been under the original guarantee had RMS not issued its novation notice.

Again, if there is a dispute between RMS and Leighton Holdings about these deemed amendments, either party may

serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

Nothing in these arrangements may require RMS to assume any of the obligations of the Company and/or the Trustee under the M2 Motorway Upgrade Design and Construction Deed relating to the period before the date RMS issued its novation notice, or otherwise have any liability to Leighton Contractors or Leighton Holdings arising from any circumstances before that date.

12.8.5 Novation of the Lane Cove Road On-Ramp Design and Construction Deed to RMS

Under the On-Ramp D&C Side Deed, if the Upgrade Project Deed is terminated and RMS gives the On-Ramp D&C Contractor and the On-Ramp D&C Contractor Guarantor a notice that it requires the novation of the Lane Cove Road On-Ramp Design and Deed,

- The Lane Cove Road On-Ramp Design and Construction Deed will end and will be deemed to have been replaced by a new contract, on the same terms apart from:
 - ♦ Having RMS as a party in the place of the Company and the Trustee, and
 - ♦ Any amendments that are required to reflect the fact that the Upgrade Project Deed has been terminated and to permit the new contract between RMS and the On-Ramp D&C Contractor to act independently of the Upgrade Project Deed, on the basis that
 - The rights and obligations of RMS and the On-Ramp D&C Contractor must be equivalent to those the Company/Trustee and the On-Ramp D&C Contractor would have had had the termination not occurred, and
 - The rights and obligations which were previously conditional on the Company and/or the Trustee having an entitlement against RMS or an obligation to RMS must now apply regardless of any such right or obligation,

provided RMS's liability may be no greater than it would have been under the Upgrade Project Deed had it not been terminated.

If there is a dispute between RMS and the On-Ramp D&C Contractor about these deemed amendments, either party may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

- The guarantee of the On-Ramp D&C Contractors' performance under the Lane Cove Road On-Ramp Design and Construction Deed provided to the Company and the Trustee by the On-Ramp D&C Contractor Guarantor will

similarly end and be deemed to have been replaced by a new guarantee, on the same terms apart from:

- ♦ Having RMS as the beneficiary of the On-Ramp D&C Contractor Guarantor's guarantee, in the place of the Company and the Trustee, and
- ♦ Any amendments that are required to reflect the fact that the Upgrade Project Deed has been terminated and the Lane Cove Road On-Ramp Design and Construction Deed has been replaced as described above.

Again, if there is a dispute between RMS and the On-Ramp D&C Contractor Guarantor about these deemed amendments, either party may serve a written notice to this effect and the dispute must then be determined by an expert under dispute resolution procedures directly equivalent to those under the Upgrade Project Deed (see section 9.16).

Nothing in these arrangements may require RMS to assume any of the obligations of the Company and/or the Trustee under the Lane Cove Road On-Ramp Design and Construction Deed relating to the period before the date RMS issued its novation notice, or otherwise have any liability to the On-Ramp D&C Contractor or the On-Ramp D&C Contractor Guarantor arising from any circumstances before that date.

12.9 Termination by RMS of the Company's and Trustee's Stage 3A and Stage 4A rights and obligations

If the Company and/or the Trustee (or the Security Trustee in their shoes) fail to remedy an "event of default" related to Stages 3A and/or 4A of the upgrade works, or overcome its effects, within 20 business days of a "termination notice (Stage 3A and Stage 4A)" having been issued by RMS under the arrangements described in section 12.5, RMS may terminate the rights and obligations of the Company and the Trustee concerning Stages 3A and 4A under both the Upgrade Project Deed and the Project Deed, other than any such provisions expressly stated to survive the termination of all or part of these contracts, simply by issuing a notice to this effect to the Company and the Trustee, copied to the debt financiers' Security Trustee and Agent.

If RMS does so,

- The rights and obligations of the Company and the Trustee concerning Stages 1, 2, 3 and 4 of the upgrade project under the Upgrade Project Deed and the Project Deed will continue, and the Company and the Trustee must continue to operate and maintain the motorway in accordance with the Project Deed.
- Any Stage 3A and 4A land that does not form part of the motorway will revert to RMS.
- RMS will not be liable to pay any compensation to the Company or the Trustee as a result of the termination.

- The Company and the Trustee must carry out any rectification or remedial work reasonably required by RMS to reinstate the relevant parts of the motorway, so that the Company and the Trustee may comply with their Project Deed obligations and their remaining Upgrade Project Deed obligations and the material adverse effects of their default on the motorway's capacity and patronage will be minimised.
- If they fail to do so to RMS's reasonable satisfaction and within a period specified by RMS in its notice of termination, RMS may carry out the rectification or remediation work itself, or procure others to carry it out.

Subject to a cap of \$28 million in total, any costs or losses incurred by RMS in taking this action, other than losses arising from any negligence or wilful default by RMS or its contractors, will be a debt due and payable by the Company and/or the Trustee, as applicable, to RMS. RMS must give the Company and the Trustee copies of all the documentation on which RMS relies, plus any other information reasonably required by the Company and the Trustee in order to substantiate these costs and losses, and their payments to RMS must be made from specified funds, obtained by the Company and the Trustee over a two-year period starting on the date of RMS's notice of termination, that would otherwise be available for distributions to the Company's shareholders and the unitholders of The Hills Motorway Trust.

To the extent necessary for RMS to be able to take this action,

- RMS may (but need not) require the novation of any subcontract or other contract entered into by the Company and/or the Trustee concerning the Stage 3A or Stage 4A upgrade works, including the On-Ramp Design and Construction Deed and the associated parent company guarantee of the performance of the On-Ramp D&C Contractor (the novation provisions of the On-Ramp D&C Side Deed concerning the On-Ramp Design and Construction Deed and the parent company guarantee, described in section 12.8.5, would apply in these circumstances)
- The Company and the Trustee must execute documents to transfer their interests in the upgrade project's physical, contractual, intellectual property and residual insurance assets relating solely to Stages 3A and/or 4A to RMS (and must irrevocably appoint RMS as their attorney for this purpose)
- The Company and the Trustee must give RMS or its nominee the originals or copies of all their accounts, records and proprietary documentation concerning Stages 3A and 4A and all other documentation relating to Stages 3A and 4A which is in their custody or control or the custody or control of their subcontractors, and
- The Company and the Trustee must procure the assignment of the Company's rights concerning

Stages 3A and 4A under its upgrade project insurance policies.

12.10 Termination of the Upgrade Project Deed by the Company and the Trustee

The Company and the Trustee may terminate the Upgrade Project Deed by:

- Terminating the Project Deed, if they are entitled to do so on any of the bases described in section 11.4, under the arrangements described in that section, in which case the Upgrade Project Deed will automatically terminate and the consequences described in **section 12.10.1** below will apply, or
- Giving RMS 30 business days' notice that they intend to terminate the Upgrade Project Deed directly, which they may do if:
 - RMS fails to provide construction access as required for the upgrade project under the Upgrade Project Deed (see section 7.5), *and* this prevents the Company and the Trustee from undertaking their upgrade works substantially in accordance with the Upgrade Project Deed and this breach is not remedied (or its effects overcome) within 12 months of RMS's being notified by the Company and/or the Trustee.
 - A court makes a final determination, not subject to appeal, which prevents the Company and/or the Trustee from undertaking the upgrade project substantially in accordance with the Upgrade Project Deed, *and* this court determination did not result from a default by the Company and/or the Trustee or their contractors under the Upgrade Project Deed, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010 or the Upgrade Side Deed or from any other wrongful act or omission by the Company, the Trustee or their contractors, *and* RMS fails to overcome the effect of the court order within 12 months of being notified of the court order by the Company and/or the Trustee
 - New NSW legislation (including rules, regulations and by-laws) prohibits or effectively prohibits the Company and the Trustee from undertaking their upgrade works substantially in accordance with the Upgrade Project Deed, or
 - A government authority resumes any part of the land on which upgrade works are to be carried out *and* this prevents the Company and the Trustee from undertaking their upgrade works substantially in accordance with the Upgrade Project Deed.

If this course is followed the processes and consequences described in **section 12.10.2** below will apply.

(If an event referred to in either of the first two of these four bases on which the Company and the Trustee may directly terminate the Upgrade Project Deed arises, RMS must, during the 12-month periods referred to in these provisions and regardless of whether the Company and the Trustee subsequently notify RMS that they intend to terminate the Upgrade Project Deed, pay the Company and the Trustee, monthly in arrears, amounts sufficient for them to place themselves in the same net after-tax position they would have been in had the event not occurred.)

12.10.1 Consequences of an automatic termination of the Upgrade Project Deed upon a termination of the Project Deed by the Company and the Trustee

Upon the automatic termination of the Upgrade Project Deed resulting from any termination of the Project Deed by the Company and the Trustee under the arrangements described in section 11.4, in addition to the consequences under the Project Deed described in section 11.4:

- RMS must, within 30 days, release any upgrade project security bonds held by RMS (see section 7.15) and pay the Company and the Trustee an “early termination amount”, as defined in the Upgrade Project Deed, calculated on the basis already described in section 12.8.2 but without any double counting if the Company and the Trustee are also entitled to a separate “early termination amount”, as (differently) defined in the Project Deed, under the Project Deed provisions summarised in section 11.4 above
- The Minister for Roads, RMS, the Company and the Trustee will retain their rights to claim damages for any breaches of contract by another party to the Upgrade Project Deed
- RMS will not otherwise be liable to pay any compensation to the Company or the Trustee as a result of the termination
- RMS will be entitled to damages for any expenses, losses or liabilities it incurs which are connected in any way with the termination of the Upgrade Project Deed, *other than* any “special, indirect or consequential” losses of income, revenue, profits, financial opportunities, business, business opportunities, contracts, goodwill, use, production or value of the M2 motorway, or failures to realise anticipated savings, cost reductions or other benefits
- The Company and the Trustee must carry out any rectification or remediation work reasonably required by RMS in order to minimise any adverse effects on the motorway’s capacity or patronage
- If they fail to do so to RMS’s reasonable satisfaction and within a period specified by RMS, RMS may carry out the rectification or remediation work itself, or procure others to carry it out, and any costs or losses incurred by RMS in taking this action, other than losses arising from any negligence or wilful default by RMS or its contractors, will be

a debt due and payable by the Company and the Trustee to RMS

- To the extent necessary for RMS to be able to take this action,
 - ♦ RMS may (but need not) require the novation of any subcontract or other contract entered into by the Company and/or the Trustee concerning the upgrade project
 - ♦ The Company and the Trustee must execute documents to transfer their interests in the upgrade project’s physical, contractual, intellectual property and residual insurance assets to RMS (and must irrevocably appoint RMS as their attorney for this purpose)
 - ♦ The Company and the Trustee must give RMS or its nominee the originals or copies of all their accounts, records and proprietary documentation concerning the upgrade project and all other documentation relating to the upgrade project which is in their custody or control or the custody or control of their subcontractors, and
 - ♦ The Company and the Trustee must procure the assignment of the Company’s rights under its upgrade project insurance policies
- The upgrade project’s worksites, “temporary areas” and any other land on which the Company’s or the Trustee’s work on the upgrade project was being carried out will revert to RMS, and
- The Company and the Trustee must give RMS access to their accounts and all other records relating to the performance of their Upgrade Project Deed obligations for the next seven years.

12.10.2 Processes and consequences of a direct termination of the Upgrade Project Deed by the Company and the Trustee

If the Company and the Trustee issue a notice to RMS that they intend to terminate the Upgrade Project Deed in 30 days, RMS may suspend their rights to terminate the Upgrade Project Deed for 12 months, from the date they issued their termination notice, by giving them a notice to this effect within 30 business days of receiving the termination notice.

During this suspension period, RMS must pay the Company and the Trustee, monthly in arrears, amounts sufficient to place themselves in the same net after-tax position they would have been in had the event giving rise the the Company/Trustee termination notice not occurred.

If the relevant event is remedied by RMS within the 12 months, or if it ceases to exist, the Upgrade Project Deed will remain in force. Otherwise, the Upgrade Project Deed will automatically terminate 12 months after the date of the Company’s and Trustee’s termination notice.

If the Upgrade Project Deed is terminated by the Company and the Trustee on any of the bases summarised above,

- RMS must, within 30 days, release any upgrade project security bonds held by RMS (see section 7.15) and pay the Company and the Trustee an “early termination amount”, again calculated on the basis described in section 12.8.2
- The Minister for Roads, RMS, the Company and the Trustee will retain their rights to claim damages for any breaches of contract by another party to the Upgrade Project Deed
- RMS will not otherwise be liable to pay any compensation to the Company or the Trustee as a result of the termination
- The Company and the Trustee must, at RMS’s cost, carry out any rectification or remediation work reasonably required by RMS so that the Company and the Trustee may comply with their Project Deed obligations and the material adverse effects of the “event of default” on the motorway’s capacity and patronage will be minimised
- If they fail to do so to RMS’s reasonable satisfaction and within a period specified by RMS, RMS may, at its own cost, carry out the rectification or remediation work itself, or procure others to carry it out
- To the extent necessary for RMS to be able to take this action, and at RMS’s cost,
 - ♦ RMS may (but need not) require the novation of any subcontract or other contract entered into by the Company and/or the Trustee concerning the upgrade project (including the M2 Motorway Upgrade Design and Construction Deed and/or the Lane Cove Road On-Ramp Design and Construction Deed, subject to the Upgrade Side Deed and On-Ramp D&C Side Deed requirements and procedures described in sections 12.8.4 and 12.8.5)
- ♦ The Company and the Trustee must execute documents to transfer their interests in the upgrade project’s physical, contractual, intellectual property and residual insurance assets to RMS (and must irrevocably appoint RMS as their attorney for this purpose)
- ♦ The Company and the Trustee must give RMS or its nominee the originals or copies of all their accounts, records and proprietary documentation concerning the upgrade project and all other documentation relating to the upgrade project which is in their custody or control or the custody or control of their subcontractors, and
- ♦ The Company and the Trustee must procure the assignment of the Company’s rights under its upgrade project insurance policies
- The Project Deed will continue to apply, but all of the amendments to the Project Deed introduced by the Upgrade Project Deed (as itself amended by the Lane Cove Road On-Ramp Amending Deed), either when the Upgrade Project Deed took effect on 18 November 2010, on the date of “construction completion” of Stage 1 of the upgrade, on the date of “final completion” of the upgrade or (if it is later) on the date of “construction completion” of Stage 4A, will have no further effect
- The upgrade project’s worksites, “temporary areas” and any other land on which the Company’s or the Trustee’s work on the upgrade project was being carried out will revert to RMS, and
- The Company and the Trustee must give RMS access to their accounts and all other records relating to the performance of their Upgrade Project Deed obligations for the next seven years.

13 The RTA Deed of Charge of May 2009 and related provisions of the Amended and Restated RTA Consent Deed

13.1 The RTA Deed of Charge of May 2009 (as amended in 2010)

Under the RTA Deed of Charge of May 2009, as amended by the the Deed of Amendment (RTA Charge) dated 25 October 2010, each of the Company and the Trustee has granted RMS a fixed and floating charge over all its present and future undertakings, assets and rights—in the Trustee’s case, in its capacity as trustee of the Hills Motorway Trust—as security for the due and punctual performance of all its obligations to RMS, including, in particular, its obligations under or in relation to defined “project documents”, *meaning*, in this deed but not in others, the Project Deed, the Project Management Services Deed, the Upgrade Project Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the RTA Deed of Charge of May 2009 (as amended by the Deed of Amendment (RTA Charge)), the Amended and Restated RTA Consent Deed, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases, the Upgrade Side Deed, the Deed of Appointment of Independent Verifier (as amended and restated in the Deed of Amendment and Restatement (Independent Verifier Deed)), the Deed of Appointment of ER and “any other document which the parties agree is a project document”.

The Company and the Trustee have warranted that there are no encumbrances over their charged property other than the encumbrances created or permitted by the “project documents” and other specified encumbrances arising in the course of their carrying out their obligations under these contracts.

They have also pledged not to deal, sell or part with possession of their charged property, or create any interest or encumbrance over their property other than to their debt financiers or otherwise as permitted by RMS, and have pledged that their subsidiary companies will do likewise.

The relative priorities of the charges created by the RTA Deed of Charge of May 2009 and the debt financiers’ securities are governed by the Amended and Restated RTA Consent Deed, as discussed in section 13.2 below. Once all the debt financiers have been fully repaid, the RTA Deed of Charge of May 2009 will rank ahead of all other securities affecting the property of the Company and the Trustee.

Otherwise, and *solely* for the purpose of fixing priorities between RMS’s charge and any subsequently registered charges, RMS’s charge is to be treated as securing a prospective liability of up to \$500 million prior to the completion of Stage 3 of the upgrade works (section 7.15) and \$100 million thereafter. (The RMS charge may in fact secure larger prospective liabilities.)

Subject to restrictions under the Amended and Restated RTA Consent Deed described in section 13.2.2 below, the charges created by the RTA Deed of Charge of May 2009 may be immediately enforced by RMS, without the need for any demand or notice, if:

- RMS becomes and continues to be entitled to terminate the Project Deed, at general law, after a failure by the Company and the Trustee to comply with a “remedy notice” issued by RMS under the arrangements described in section 11
- The Company or the Trustee has committed a substantial breach of the Company Lease, the Trust Lease, the Trust Concurrent Lease, an M2 Upgrade Company Lease, an M2 Upgrade Trust Lease or an M2 Upgrade Trust Concurrent Lease and has failed to comply with a “remedy notice” issued by RMS
- A new or additional trustee of the Hills Motorway Trust has been appointed without RMS’s consent, and the effect of this has not been overcome to RMS’s satisfaction, or
- The Hills Motorway Trust has been terminated, and the effect of this has not been overcome to RMS’s satisfaction,

and (in either of the first two situations) RMS’s right to terminate the Project Deed because of these situations has not been suspended (see section 11.3).

In these circumstances, and again subject to the Amended and Restated RTA Consent Deed, RMS may appoint a receiver or a receiver and manager of the charged property, exercising powers set out in the RTA Deed of Charge of May 2009, and this receiver and any RMS officer may exercise specified powers of attorney.

In addition to the specific powers granted to RMS under the RTA Deed of Charge, the deed authorises RMS, in the event of any default by the Company or the Trustee in fully and punctually performing any of their express or implied obligations

under the Project Deed, the Upgrade Project Deed and the other “project documents”, to do all things RMS believes necessary or desirable to make good the default in accordance with these contracts.

13.2 The Amended and Restated RTA Consent Deed

The provisions of the Amended and Restated RTA Consent Deed concerning the application of certain insurance proceeds, assignments and novations, dispute resolution, renegotiations and defaults by the Company and the Trustee, including the “step in and cure” rights of the Security Trustee and Agent, have already been summarised earlier in this report.

The Amended and Restated RTA Consent Deed also:

- Records RMS’s consent to the securities held by the Security Trustee on behalf of the private sector debt financiers
- Records the consent of the Security Trustee and the Agent to the RTA Deed of Charge of May 2009
- Sets out the relative priorities of the debt financiers’ and RMS securities, as described in section 13.2.1 below
- Regulates enforcement of RMS’s charge under the RTA Deed of Charge of May 2009 (section 13.2.2)
- Imposes some additional obligations on both the Security Trustee and RMS concerning finance defaults and any enforcements of the debt financiers’ securities (sections 13.2.3 and 13.2.4)
- Imposes consent requirements for RMS’s dealings with its interests concerning the motorway (section 13.2.5), and
- Imposes consent requirements for amendments to the project’s contracts, including refinancings of the project (section 13.2.6).

13.2.1 Ranking of securities

With the exception of what are termed “**RTA priority moneys**”, each of the debt financiers’ securities has priority over any RMS security over the same property, including RMS’s charge under the Deed of Charge of May 2009.

“RTA priority moneys” are:

- Any amounts the Company or the Trustee owe to RMS under indemnities provided by them because RMS has taken action to remedy a default by the Company or the Trustee, of a type specified in the Project Deed, under the provisions of the Project Deed discussed in section 11.1, but only in relation to RMS’s reasonable costs in the operation and routine maintenance of the motorway, and
- Any credit balances in the “step-in costs reserve account” that must be established and operated by the Company and the Trustee for the purposes of their reimbursing RMS for its costs if RMS “steps in” following an “event of default” under the Upgrade Project Deed, under the arrangements described in sections 12.5 and 12.6.

Accordingly, any money received by the Security Trustee, RMS or any receiver, receiver and manager or attorney on enforcement of a debt financiers’ security or the RTA Deed of Charge of May 2009, as the case may be, is to be applied:

- First, to pay any “RTA priority moneys”
- Second, to pay all sums of money secured from time to time by the debt financiers’ securities, and
- Third, to pay all other sums of money secured from time to time by the RTA Deed of Charge of May 2009.

Similarly, if a receiver or controller takes possession of any property under any of the debt financiers’ securities, that person may immediately, upon notice to RMS, assume control from any receiver or controller of the same property appointed under the RTA Deed of Charge of May 2009.

13.2.2 Restrictions on enforcement actions by RMS

Subject to RMS’s rights to issue “remedy notices” and terminate the Project Deed for a Company or Trustee default, as discussed in section 11 above, until all the project’s debt financiers have been fully repaid RMS may not, without the prior consent of the Security Trustee,

- Accelerate the payment of any amounts owing to RMS by the Company, the Trustee or Hills Construction, including any rent promissory notes issued by the Trustee under the Trust Lease and the Trust Concurrent Lease, unless the project’s debt financiers have declared that the amounts they are owed are prematurely due and payable under the project’s debt financing arrangements
- Demand payment, or present any promissory note issued by the Trustee under the Trust Lease or the Trust Concurrent Lease, other than in accordance with these leases
- Enforce any debt owed to RMS by the Company, the Trustee or Hills Construction, by execution or otherwise
- Crystallise any floating charge in the RTA Deed of Charge of May 2009
- Enforce any RTA Deed of Charge of May 2009 security by sale, possession, the appointment of a receiver or otherwise, or
- Take any insolvency or similar action against the Company, the Trustee or Hills Construction.

13.2.3 Notification of finance defaults and enforcement actions by the Security Trustee

The Security Trustee must notify RMS in writing if:

- There is any material default under the debt financing agreements
- An application is made to wind up the Company or the Trustee, except for the purposes of reconstruction, amalgamation, merger or consolidation on terms previously approved by RMS

- A receiver, provisional liquidator, trustee for creditors or trustee in bankruptcy is appointed, or the holder of a security interest (or its agent) takes possession of any property of the Company or the Trustee
- Any step is taken by any person to appoint an administrator to the Company or the Trustee
- The Company or the Trustee suspends its debt payments or states it cannot pay its debts, ceases or threatens to cease business or otherwise takes insolvency-related actions as listed in the Deed of Consent, or
- The Security Trustee takes any action to enforce the debt financiers' securities or recover any secured money.

13.2.4 Access to motorway land and other rights following a finance default

If there is a default under the private sector debt financing arrangements and the Security Trustee advises RMS of its desire to exercise its resultant rights under the debt financiers' securities, RMS must ensure that the Security Trustee, the Agent and their agents, receivers or receivers and managers, or any of their contractors, subcontractors or employee workers,

- Are granted the same access as the Company, the Trustee and their contractors were granted to the motorway and upgrade land under the Project Deed and the Upgrade Project Deed, and
- Have rights (but not obligations) equivalent to those of the Company and the Trustee under the Project Deed and the Upgrade Project Deed, with the Security Trustee effectively stepping into the shoes of the Company and the Trustee for the purpose of receiving the benefit of undertakings by the Minister for Roads and RMS in the Project Deed and the Upgrade Project Deed. (The obligations of the Company and the Trustee under the Project Deed and the Upgrade Project Deed will continue.)

13.2.5 Restrictions on RMS dealings

RMS may not transfer or otherwise dispose of its interest in the M2 motorway, its ancillary drainage works and land, the upgrade project's land, the Project Deed, the Project Management Services Deed, the Upgrade Project Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010 or the Upgrade Side Deed without the Agent's prior written consent.

The Agent may not unreasonably withhold or delay its consent if the obligations of the transferee or assignee to the Company, the Trustee and Hills Construction under these contracts will continue to be guaranteed by the State of NSW under the Restated Deed of Guarantee.

Similarly, RMS may not assign, transfer or dispose of any debt owed to it by the Company, the Trustee or Hills Construction, or part with possession of any rent promissory notes issued by the Trustee under the Trust Lease or the Trust Concurrent Lease, without the prior written approval of the Trustee, the Agent and the Security Trustee. In the case of any rent promissory note, this approval may be withheld unless each party is satisfied that:

- The new holder of the promissory note will be bound by the restrictions in the Trust Lease, the Trust Concurrent Lease and the Amended and Restated RTA Consent Deed on making demands on these notes, and will be bound to ensure that any subsequent holder of the note will be similarly bound
- The new holder of the promissory note is of acceptable credit standing, and
- There are satisfactory arrangements governing the order in which the various promissory notes may be presented for payment.

13.2.6 Restrictions on amendment of the project contracts and refinancing of the project's debts

The Minister for Roads and RMS may not amend the terms of the Project Deed, the Project Management Services Deed, the Upgrade Project Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases, the M2 Upgrade Trust Concurrent Leases, the Amended and Restated Deed of Appointment of Independent Verifier, the Deed of Appointment of ER, the RTA Deed of Charge of May 2009, the Amended and Restated RTA Consent Deed, the RTA Consent Deed of November 2010, the Upgrade Side Deed or the Restated Deed of Guarantee without the Agent's prior written consent.

Similarly,

- The Security Trustee and the Agent may not amend the terms of the project's debt financing arrangements, so as to affect the project debt, the payback period, the amortisation requirements or the interest, fees and margins, without RMS's prior written consent, and
- The Company and the Trustee may not refinance the project's debts under specified private sector financing documents without RMS's prior written consent.

14 The State's guarantee of RMS's performance

Under the Restated Deed of Guarantee between the Minister for Roads (on behalf of the State of NSW), the Company, the Trustee, Hills Construction and the debt financiers' Security Trustee and Agent, the State of NSW unconditionally and irrevocably guarantees, to the Company, the Trustee, Hills Construction, the Security Trustee and the Agent, RMS's performance of all its obligations under the Project Deed (as amended), the Project Management Services Deed, the 2010 Amending Deed, the Upgrade Project Deed, the Upgrade Side Deed, the Lane Cove Road On-Ramp Amending Deed, the On-Ramp D&C Side Deed, the Cashless Tolling Amending Deed, the Toll Calculation Amending Deed, the Company Lease, the Trust Lease, the Trust Concurrent Lease, each M2 Upgrade Company Lease, each M2 Upgrade Trust Lease, each M2 Upgrade Trust Concurrent Lease, the RTA Consent Deed of August 1994 (as amended, and now the Amended and Restated RTA Consent Deed), the RTA Consent Deed of November 2010, the Subordinated Debt Consent Letter and any

other documents approved in writing by the Treasurer from time to time (the Cashless Tolling Amending Deed, the Toll Calculation Amending Deed, the Lane Cove Road On-Ramp Amending Deed, the On-Ramp D&C Side Deed and the Subordinated Debt Consent Letter were added in this way on 20 May 2013).

This guarantee, made in accordance with section 22B of the Public Authorities (Financial Arrangements) Act 1987, is a continuing obligation, remaining in force until all RMS's obligations under these contracts have been performed.

It will continue in force if RMS's obligations under the contracts are assumed by another entity.

The State must perform the obligations it has guaranteed within 21 days of a demand being made by any of the beneficiaries of the guarantee. Such a demand may be made only if a demand has previously been made on RMS and RMS has failed to perform within 21 days.