

M7-M12 Integration Project Summary



Artist's impression



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Acknowledgement of Country

Transport for NSW and each of its operating agencies, recognises Aboriginal and Torres Strait Islander peoples, as the First Peoples of Australia. Acknowledging their continuing spiritual, cultural, social and economic connection to our lands and many waterways.

We recognise the Aboriginal cultural landscape values of waterways, the survival of freshwater and saltwater culture in NSW and the importance of waterways to the health and wellbeing of Aboriginal people.



Glossary

Unless otherwise defined in this Glossary or elsewhere in this Project Summary, capitalised terms used in this document have the meaning given to those terms in the applicable Project Documents, which are available for download on the Transport for NSW website.

Table 1: Glossary

Term / Acronym	Definition
Annexure A	Means the Annexure to the Integration Project Deed titled "Annexure A", which includes the terms applicable to the design and construction of the Project.
Borrower	WSO Finance Pty Limited (ABN 60 102 757 871).
Company / Companies	Means each of WSO Co Pty Ltd (ACN 102 757 924) and Westlink Motorway Limited (ACN 096 512 300) (or either of them, if the context requires) and "Companies" means each of them severally for their respective obligations under the Project Documents.
Company's Activities	Means, in respect of each Company severally, all things and tasks which a Company does, is, or may be, required to carry out or do to comply with its obligations under the Transport Project Documents with respect to the Company's Works and the Temporary Works, but does not include the SWC Activities.
Completion	Used generically in this Project Summary to refer to the completion of the Project Works (being each of the M7 Widening Works, EDC Works and M7-M12 Interchange Works) and to reflect all conditions precedent to completion set out in the applicable Project Document have been satisfied.
D&C	Means design and construction.
D&C Contractor	John Holland Pty Limited
EDC Bonus Payment	Means an amount which the Companies are entitled to if the Companies achieve Returned Works Construction Completion of the EDC Works by the EDC Target Date.
Elizabeth Drive Connection or EDC	Means the upgrade to the existing Elizabeth Drive to facilitate a new connection between the eastern end of the new M12 Motorway (under construction), the M7 Motorway and local road network.
Independent Certifier or IC	Means the Independent Certifier appointed under the Independent Certifier Deed, being Aurecon Australasia Pty Ltd.
Independent Certifier Deed or IC Deed	Means the deed entitled "Independent Certifier Deed" entered into between TfNSW, the Companies, the State Works Contractor and the Independent Certifier on 21 February 2023.

Term / Acronym	Definition
Integration Project Deed or IPD	Means the deed entitled “M7-M12 Integration Project Deed” entered into between TfNSW and the Companies on 21 February 2023.
John Holland or JHG	John Holland Pty Limited
Liquidated Damages	Means a daily amount payable (up to a specified cap) by the Companies to TfNSW if the Companies do not achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works.
M7 Motorway or M7	Means the permanent works designed and constructed in accordance with the M7 Project Deed and, following Retained Works Completion includes the M7 Widening.
M7 Project Deed	Means the current M7 Motorway Project Deed dated 13 February 2003 as amended on 31 January 2015.
M7 Widening	Means the widening of the M7 Motorway by constructing an additional northbound and southbound lane in the M7 median, resulting in an increase from two to three lanes in each direction from the M5 Motorway to Richmond Road.
M7-M12 Interchange	Means the direct motorway-to-motorway connection between the M7 and M12 Motorway.
M12 Motorway or M12	Means the east-west 16 kilometre motorway between the M7 Motorway, Cecil Hills and The Northern Road, Luddenham.
NSW PPP Guidelines	Means the NSW Public Private Partnership Policy & Guidelines (2022)
O&M	Means Operations and Maintenance.
Project Documents	Used generically in this Project Summary to refer to all contractual documents executed for M7-M12 Integration Project, including, for example, the M7-M12 Integration Project Deed and the M7-M12 State Works Deed.
Project Works	Means the M7 Widening, M7-M12 Interchange and the Elizabeth Drive Connection.
PSC	Means a Public Sector Comparator.
Retained Works	Means the works which will form part of the amended M7 concession upon the Date of Integration Completion. This is comprised of the M7 Widening Works and majority of the M7-M12 Interchange Works.
Returned Works	Means the works which will be handed over to TfNSW upon construction completion of the relevant Returned Works. This is comprised of: <ul style="list-style-type: none"> • the EDC Works; and • parts of the M7-M12 Interchange Works including:

Term / Acronym	Definition
	<ul style="list-style-type: none"> – a short section (~425m) of the M12 main carriageway; and – Elizabeth Drive to M12 westbound onload ramp (~400m).
RFT	Means a request for tender.
Six Cities Region	The Six Cities Region comprises the Lower Hunter and Greater Newcastle City, Central Coast City, Illawarra-Shoalhaven City, Western Parkland City, Central River City and Eastern Harbour City
Sponsors	Transurban Limited (Transurban), QIC Private Capital Pty Ltd (QIC) and Canadian Pension Plan Investment Board (CPPIB).
State Works Deed or SWD	Means the deed entitled “M7-M12 State Works Deed” entered into between Transport and the State Works Contractor.
SWC or State Works Contractor	Means the M7 State Works Contractor Pty Ltd (ABN 17 664 603 249).
SWC Activities	Means all things and tasks which the State Works Contractor does, is, or may be, required to carry out or do to comply with its obligations under the State Works Deed with respect to the State Works, but does not include the Company's Activities.
SWTC	Means the Scope of Work and Technical Criteria
Uninsurable Force Majeure Event	<p>Means a Force Majeure event referred to in 13 (b), (c) and (d) of this Project Summary Report or a Force Majeure event which:</p> <ol style="list-style-type: none"> 1. causes physical loss or damage to the Project Works, the Temporary Works or the Motorway; or 2. prevents the Motorway from being open to the public for safe, continuous and efficient passage of vehicles, <p>in respect of which no Company nor SWC is insured and which is Uninsurable.</p>
USP	Means an Unsolicited Proposal.
USP Guide	Means the Unsolicited Proposals Guide for Submission and Assessment (2022).

Part I: Project Overview



Part I: Project Overview

1. Introduction and purpose

1.1 Introduction

This M7-M12 Integration Project Summary (**Project Summary**) provides an overview of the M7-M12 Integration Project (the **Project**), including its history and key participants. It also provides a high-level summary of key commercial and contractual terms for the Project.

This Project Summary is structured as set out below:

- **Part I:** Project Overview;
- **Part II:** Contracts Overview; and
- **Part III:** Key Commercial and Contractual Features.

1.2 Purpose and scope of the M7-M12 Integration Project Summary

This Project Summary has been prepared by Transport for NSW (**TfNSW**) in consultation with NSW Treasury and in accordance with the public disclosure requirements of the *NSW Public Private Partnership Policy & Guidelines (2022)* (**NSW PPP Guidelines**).

This Project Summary provides a high level, plain English summary of the Project and the key commercial terms underpinning the Project Documents. **This summary should not be relied upon for legal advice and is not intended for use as a substitute for the actual Project Documents.**

The M7-M12 Integration Project Deed (**IPD**), the M7-M12 Integration Project State Works Deed (**SWD**) and M7-M12 Integration Project Independent Certifier Deed (**IC Deed**), excluding any commercial-in-confidence material, have been published on the TfNSW website in accordance with NSW Government policy and the *Government Information (Public Access) Act 2009 (NSW)*.

It is noted that an existing published document titled, *Westlink M7: Summary of Contracts*, dated August 2003 publishes the majority of project and contract detail for the M7 Project Deed. Any updates since this information was published have been updated on the NSW Treasury website.

The Project Summary is based upon the contracts for the Project that were executed on 21 February 2023. Subsequent amendments or additions to these contracts, if any, are not reflected in this document.

Unless otherwise defined in the Glossary or elsewhere in this Project Summary, capitalised terms used in this summary have the same meaning given to those terms in the Project Documents.

2. Project description

2.1 Project infrastructure, scope, and site

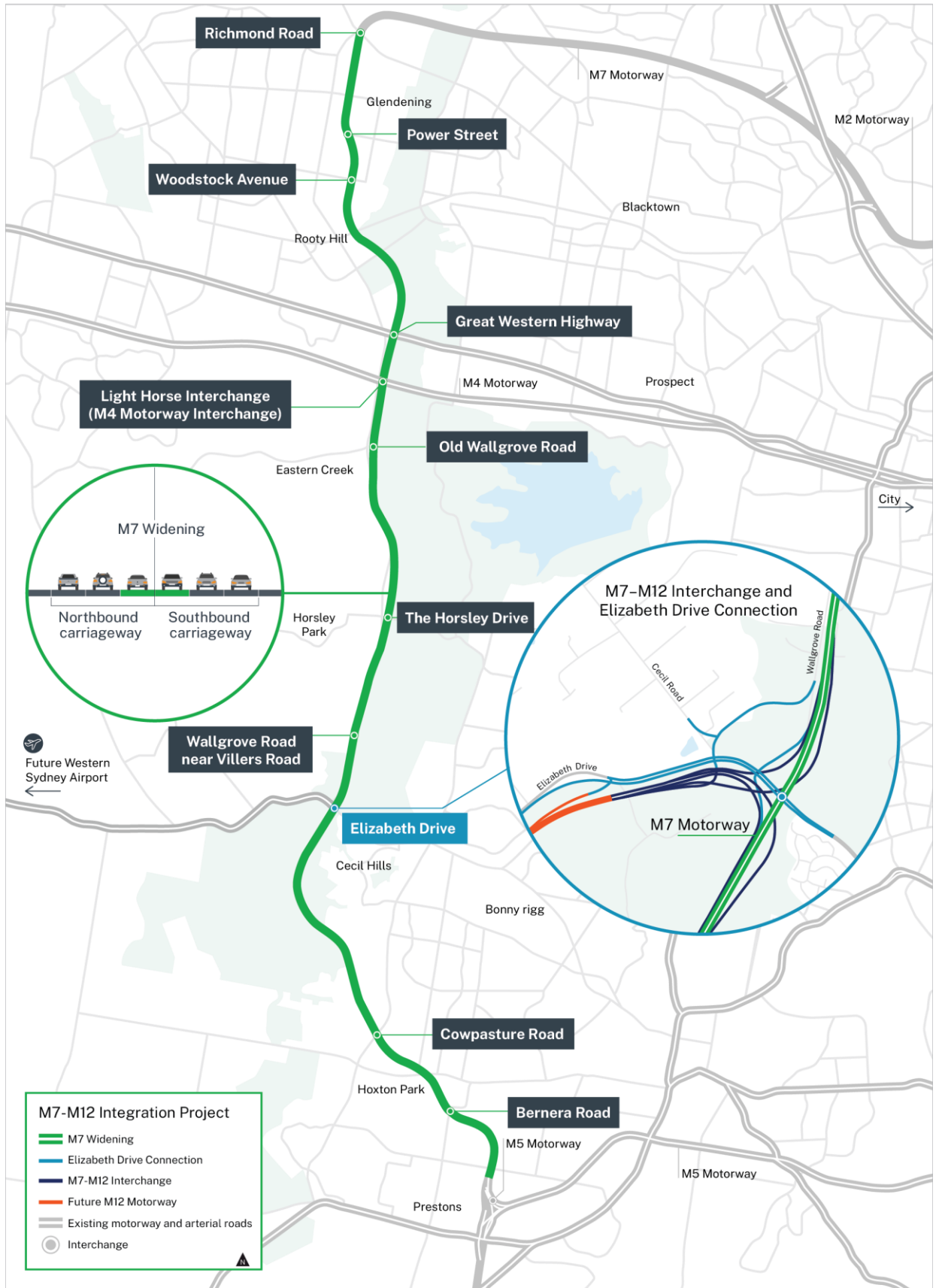
The Project includes undertaking the following three (3) critical infrastructure projects in Western Sydney:

- a) **M7 Widening** – widening of the M7 Motorway (**M7**) by constructing an additional northbound and southbound lane in the M7 median, resulting in an increase from two to three lanes in each direction from the M5 Motorway (**M5**) to Richmond Road;
- b) **M7-M12 Interchange** – construction of a direct motorway-to-motorway connection between the M7 and M12 Motorway (**M12**); and
- c) **Elizabeth Drive Connection (EDC)** – upgrading the existing Elizabeth Drive to facilitate a new connection between the eastern end of the new M12, the M7 and local road network.

The Project integrates with the M12, a new 16km east-west motorway currently being delivered directly by TfNSW to service the Western Sydney International Airport and Western Parkland City growth area. The M12 is jointly funded by the Australian and NSW Governments and is scheduled to open in 2026.

Figure 1 below illustrates the geographical area of the various sub-projects which make up the Project.

Figure 1: M7-M12 Integration Project Overview

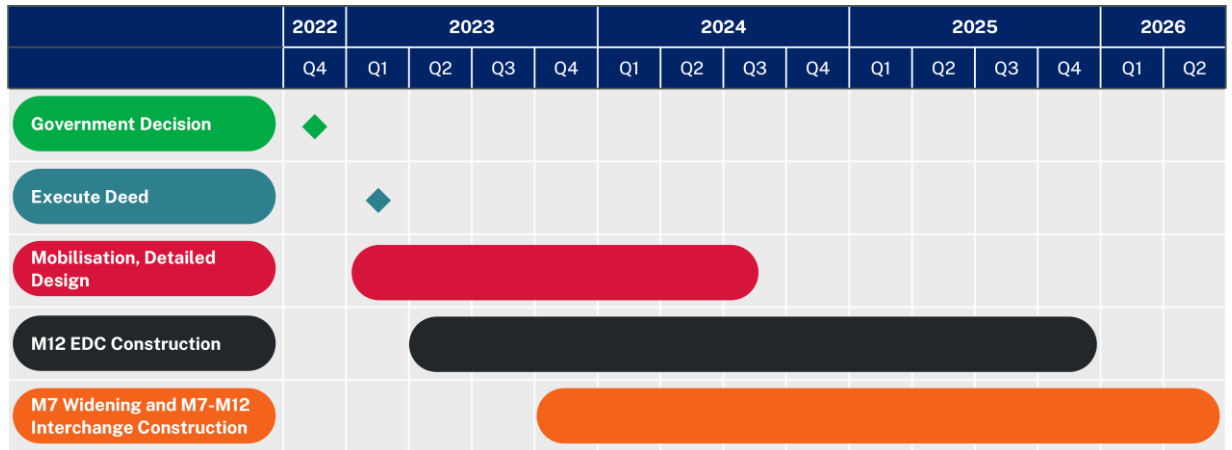


The Project is expected to take around three years and be completed in 2026, which will align with construction of the toll-free M12 and the opening of the new Western Sydney international Airport.

The diagram below sets out the Project timetable until expected Completion, subject to any extensions of time under the Project Documents, with:

- A target Date for Returned Works Construction Completion of the EDC Works; and
- A target date for Completion of the remainder of the Project Works.

Figure 2: Project timeline



3. History of the Project and strategic need

3.1 NSW Government Transport Strategy and Project benefits

The Project's need for investment is driven by the following:

Catering to the expected growth in Western Sydney's traffic

The demand for travel to/from and within the Western Parkland City and Western Sydney is expected to grow significantly over the next 20 years. This growth will put substantial pressure on the existing transport network and is driven by transformational changes in land uses including but not limited to the Western Sydney International Airport (WSIA), South-West Growth Area, Western Sydney Employment Area, and Western Sydney Aerotropolis.

The M7 is a pivotal part of Sydney's orbital motorway network and serves as a key north-south route connecting Sydney's Western Parkland City. It is also a significant freight route in Western Sydney connecting with Greater Sydney and key regional NSW freight destinations. Widening the M7 addresses the future capacity requirements of the strategically important private motorway asset in an efficient manner and will optimise the use of the M7 and the strategic road network.

The M7 Widening is required to safely and efficiently meet the growth in demand for motorway travel as a result of the NSW Government's planned strategic growth in population, employment and industry in the Western Parkland City and Western Sydney generally.

The M7-M12 Interchange is a key component of the Project and will cater for demand from the WSIA. Without the M7-M12 Interchange, road users would not have a motorway-to-motorway connection and would need to continue to rely solely on Elizabeth Drive to connect with the M7.

The need to improve road safety

Currently, road access to the WSIA is via Elizabeth Drive, with connections at the M7 and the Northern Road. Elizabeth Drive is prone to vehicle crashes and incidents, resulting from non-separated carriageways, uncontrolled property access, a significant level of heavy vehicle usage, and poor intersection layouts. The crash rate on Elizabeth Drive has been approximately 28% higher than the crash rate on comparable roads¹. Strong forecast growth in traffic volumes along Elizabeth Drive, stimulated by the WSIA and developments in the area, is likely to contribute to further crashes and incidents if left unaddressed.

Future Transport Strategy

The Project will provide sufficient road capacity to safely and efficiently meet traffic demand generated by the planned Western Sydney urban development. It will help to deliver three TfNSW outcomes outlined in the *Future Transport Strategy*. These are:

- **Connecting our customers' whole lives** (including improving connectivity across NSW, enhancing 30-minute metropolitan cities, connecting regional cities, centres, and towns, and facilitating efficient freight connectivity and access);
- **Enabling economic activity** (including improving freight efficiency, access and reliability on roads, optimising capacity and performance of ports and airports, managing, and protecting employment lands, key freight and logistics lands and corridors, optimising existing infrastructure, use of motorways and strategic road network, and stabilising Greater Sydney's traffic); and
- **Successful places for communities** (including supporting thriving and healthy 15-minute neighbourhoods and building well-designed transport infrastructure that makes places more liveable and successful).

¹ M12 Motorway – M7 Motorway to the Northern Road, Final Business Case, Evaluation Summary, INSW, July 2022.

3.2 M7-M12 Integration Project benefits

The M7 and a short section of the M2 Motorway (**M2**) are the last remaining four-lane sections of the Sydney orbital network. The M7 already experiences significant congestion and widening the M7 by 2026 will provide major congestion relief with significant travel time savings for motorists in Western Sydney. For example, there is queuing and high volumes of traffic for approximately 13 hours per day and an increase in traffic volumes at night, primarily due to the proximity of the M7 to the WSIA once it is open. The performance of the M7 is forecast to deteriorate if the M7 is not widened to six lanes.

Widening the M7 will:

- support the growth of Western Sydney by meeting demand for road travel;
- improve productivity by reducing journey time on a key freight route;
- reduce stop-start traffic that would improve the safe flow of traffic; and
- reduce traffic in the local road network, enabling liveable and safe urban communities.

The M7-M12 Interchange will form a key link between the M12 and the M7 at Cecil Hills through a motorway-to-motorway interchange. This provides full connectivity between the M7 and M12 through dual lane ramps with minimum 3.5m lanes and wide shoulders to effectively manage vehicle breakdowns and incidents.

The Project will provide sufficient road capacity to meet traffic demand generated by the planned Western Sydney urban development. Improved connectivity between the Six Cities Region will enable increased economic and freight activity and serve employment and residential growth areas.

The Project will also better enable movement of growing freight demand by integrating the road network with airports, intermodal terminals, and logistics precincts, including WSIA.

3.3 The Unsolicited Proposal

The procurement process for the Project was via an Unsolicited Proposal (**USP**) from the existing concessionaire of the M7, being WSO Co Pty Ltd (ACN 102 757 924) (**WSO Co**) and Westlink Motorway Limited (ACN 096 512 300) (**Westlink**) (together the **Companies**).

The Companies are ultimately owned by a consortium comprised of Transurban Limited (**Transurban**), clients managed by QIC Private Capital Pty Ltd (**QIC**) and Canada Pension Plan Investment Board (**CPPIB**) (together, the **Sponsors**).

The USP for the Project was submitted and assessed in accordance with the USP Guide. Key phases and dates are outlined in Table 2 below.

Table 2: Key phases of the USP process

Key Milestone	Assessment Outcome
Progress to Stage 2	In June 2020, the NSW Government determined that the USP should progress to Stage 2 of the USP process.
Progress to Stage 3	In April 2022, the NSW Government determined that the USP should progress to Stage 3 noting that a competitive D&C tender process would be conducted.
Acceptance of Stage 3 Final Binding Offer	In December 2022, the NSW Government determined that the Final Binding Offer should be accepted, subject to planning approval and final transaction documentation being completed.

In February 2023, the contract was executed following the receipt of planning consent for the Project and the finalisation of all transaction documents.

Project cost and funding

The total cost of the Project is approximately \$1.7 billion (nominal).

The funding sources for the Project are as follows:

- increased toll revenue from expected additional traffic flows due to the increased capacity of the widened M7, the construction of the M7-M12 Interchange, and EDC;
- increased toll revenue due to an extension of the existing concession by 3.2 years from 30 June 2048 to 12 September 2051; and
- a NSW Government commitment.

The Companies will finance the Project via private debt and equity contributions.

Companies' role, including operations and maintenance

Under the contracts, the Companies will:

- fund, finance, design, deliver, operate, and maintain the M7 Widening (from 2 lanes each way to 3 lanes each way) between the M5 and Richmond Road;
- fund, finance, complete design, deliver the M7-M12 Interchange and operate, and maintain most of the M7-M12 Interchange, excluding:
 - a short section of the M12 main carriageway (~425m) and
 - the Elizabeth Drive to M12 westbound onload ramp (~400m long); and
- complete design and deliver the EDC, with handover to TfNSW at the end of construction.

3.4 Economic Analysis

In accordance with the Unsolicited Proposals Guide for Submission and Assessment (**USP Guide**), an economic appraisal for the M7 Widening was undertaken for the Stage 2 assessment and updated during Stage 3. This appraisal was consistent with the NSW Government Guide to Cost-Benefit Analysis (TPP17-03), which was the applicable guidance at the time of the assessment process. The results of the economic appraisal is presented in Table 3 below.

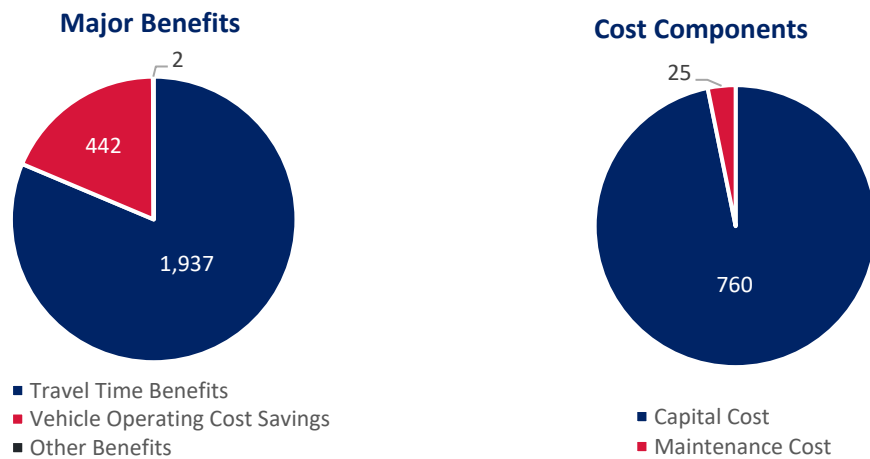
Table 3: Results of the economic appraisal

Economic Measure	Result (P90)
Present Value (\$m*)	
• capital / recurrent costs	784.9
• benefits	2,381.0
Net Present Value (NPV)	1,596.0
Benefit Cost Ratio (BCR)	3.0

*Estimated at a 7% discount rate.

The main economic benefits included travel time savings and vehicle operating cost savings. A summary of the major benefit categories identified in the submitted economic model is presented in Figure 3.

Figure 3: Major benefits and cost categories of the M7 Widening (\$m, NPV)



Prior to this USP, and separate to the results presented above, the economic benefit of the M7-M12 Interchange and EDC was previously assessed within the M12 business case. This business case was reviewed under the NSW Government’s Infrastructure Investor Assurance Framework and accepted as demonstrating net economic benefit with a BCR of 1.8.

3.5 Procurement of D&C Contractor

As part of the USP process, the Companies carried out a competitive tender process to procure a D&C contractor to design and construct the Project.

The tender process was developed based on the Companies' objective of identifying a D&C contractor who could provide the best value for money offer with special consideration for the tenderer's approach to the program, delivery team and approach, commercial and technical solution and the tenderer's commitment to the community, environment, and sustainability.

The D&C procurement was led by the Companies and took place over a period of nine months, including a market engagement process and a Request for Tender (**RFT**) phase. There was a high degree of engagement with the tenderers throughout the RFT process, including knowledge transfer sessions, technical guidance sessions and request for clarifications sessions which helped facilitate a competitive tender process.

Following the close of the interactive RFT phase on 29 September 2022, the Companies received submissions from two (2) tenderers, John Holland and Acciona Construction Australia Pty Ltd (**Acciona**).

The evaluation criteria for assessing the D&C Tenders are provided below in section 4.2.

John Holland Pty Limited (**John Holland, JHG** or the **D&C Contractor**) was selected as the preferred D&C tenderer in November 2022 and after a period of negotiations was awarded the D&C Contract on 21 February 2023.

3.6 Planning Approval

The planning consent for the M7 Widening (known as the Modification to the State Significant Infrastructure Approval) was received on 17 February 2023.

Planning consent for the M7-M12 Interchange and Elizabeth Drive Connection was received from the State on 23 April 2021 and the Commonwealth on 3 June 2021.

4. Evaluation Criteria and Assessment Aspects

This section considers the evaluation of both the USP and D&C submissions, as follows:

- Section 4.1 outlines the process and criteria used to assess the USP;
- Section 4.2 details the D&C evaluation criteria which was used to assess both John Holland and Acciona's submissions;
- Section 4.3 details how the Project achieves public interest attributes; and
- Section 4.4. discusses how the Project achieves value for money for TfNSW.

4.1 USP Assessment Process and Assessment Criteria

The USP for the Project (**Proposal**) was assessed in accordance with the USP Guide. In Stage 2 and Stage 3, a cross agency Assessment Panel (**Assessment Panel**) assessed the Proposal. The Assessment Panel was supported by a range of commercial, technical and legal advisors, and reported to the Proposal Steering Committee who in turn made recommendations to the NSW Government. In addition, a probity advisor was engaged to provide probity services in relation to the USP.

At the end of Stage 3, the Assessment Panel and the Proposal Steering Committee determined that the Proposal satisfied the assessment criteria set out in the USP Guide. In summary, the Assessment Panel concluded that:

- As concessionaire of the existing M7 Motorway, the Companies were uniquely placed to deliver the Proposal and was the only party that could widen the M7 Motorway and provide project delivery efficiencies for the new connections to the M12 Motorway.
- The Proposal represented value for money to New South Wales.
- The Proposal offered timely outcomes aligned with NSW Government's policies and strategies, including infrastructure plans and the "Future Transport Strategy".
- WSO Co had the capability and capacity to deliver the Proposal.

The criteria used to assess the USP are set out in the USP Guide and summarised in Table 4 below.

Table 4: USP assessment criteria summary

Criterion	Description
Uniqueness	Demonstration of unique benefits of the proposal and the unique ability of the proponent to deliver the proposal.
Value for Money	Assessment of the value for money provided by the proposal to the NSW Government including assessment of net economic benefits
Whole of Government Impact	Assessment of the overall strategic merit of the proposal – including alignment with NSW Government strategies, plans and priorities. Assessment of the opportunity cost for NSW Government if it were to proceed with the proposal.
Return on Investment	Assessment of whether the proposed return on investment to the proponent is proportionate to the proponent's risk and industry standards

Criterion	Description
Capacity and Capability	Assessment of the proponent’s experience, capability, and capacity to carry out the proposal
Affordability	Assessment of the affordability of the proposal including the requirement for and extent of NSW Government funding
Risk Allocation	Assessment of the appropriateness of the risk allocation between the proponent and the NSW Government

4.2 D&C Evaluation Criteria

The evaluation of D&C tenders included an assessment of the comparative price of each tender and an evaluation against the non-price criteria. The non-price criteria are summarised in Table 5 below.

Table 5: D&C Non-Price Evaluation Criteria

Criterion	Description
Program	The extent to which the proposed program to ensure that Project Works are completed on-time, the program is detailed, logical, realistic and of high quality and the program risks have been minimised.
Delivery Approach	The extent to which the delivery approach demonstrates effective and efficient methodologies, processes and approaches when undertaking the Project Works.
Delivery Team	The extent to which the proposed team includes key personnel with the capability, experience, and capacity to deliver high quality outcomes for the Project and ability to commit for the duration of the Project.
Commercial Outcomes	The extent to which the submission complies with the commercial principles proposed by the Companies and minimises departures to the Project Documents and SWTC.
Technical Solution	The extent to which the submission proposes an effective design solution of the Project.
Community, Environment and Sustainability	The extent to which the submission minimises impacts on the community, stakeholders, and environment. The extent to which the submission optimises sustainability outcomes for the Project.

4.3 Public Interest Evaluation

A stand-alone Public Interest Evaluation, as defined in the NSW PPP Guidelines, was not required for this Project given its status as an existing PPP contract.

4.4 NSW PPP Guidelines - Public Sector Comparator

Under the NSW PPP Guidelines, a formal Public Sector Comparator (**PSC**) may be used as a benchmark tool to assist in assessing quantifiable aspects of value for money. For most Public Private Partnerships (**PPP**), the PSC is a useful quantitative indicator of value for money when there is a bona fide alternative to a PPP, via traditional Government procurement and funding.

In the case of this Project, a PSC was not prepared as there was no alternative for the Government to deliver the full scope of works unilaterally given the Companies' rights and obligations under the M7 Project Deed.

Instead, the State, with support of expert advisors, prepared and analysed a number of reference scenarios and interrogated the Project's financial model in detail over Stages 2 and 3 of the USP process. The process included stress testing key assumptions, including by sourcing independent benchmarks and alternative estimates for key inputs such as traffic and forecast capital cost, to assess the reasonableness of the estimates and assumptions underpinning the Project financial model. Additionally, the State assessed satisfaction with the value for money offered in accordance with the criterion of the USP Guide. This included assessment of the public benefits, costs and value to government over the life of the Project.

Part II: Contract Overview



Part II: Contract Overview

5. Key contracts and parties

5.1 Parties to the Project

The public sector party to the Project Documents is TfNSW (ABN 18 804 239 602), a New South Wales Government agency constituted by the *Transport Administration Act 1988 (NSW)*.

Each of the Companies (as defined in Table 1) is a counterparty to the Project Documents.

In relation to Westlink, it is the nominee and agent of a partnership formed by the Sponsors, trading as the Westlink Motorway Partnership (the **Partnership**), and acts under the Project Documents both in its own capacity and as the agent for the Partnership.

The existing Joint Financing Arrangement for the M7 under the Government Sector Finance Act 2018 (NSW) was amended by the NSW Treasurer to incorporate the certain obligations arising from the Project.

Other relevant parties to the remaining Project Documents include those listed in Table 6.

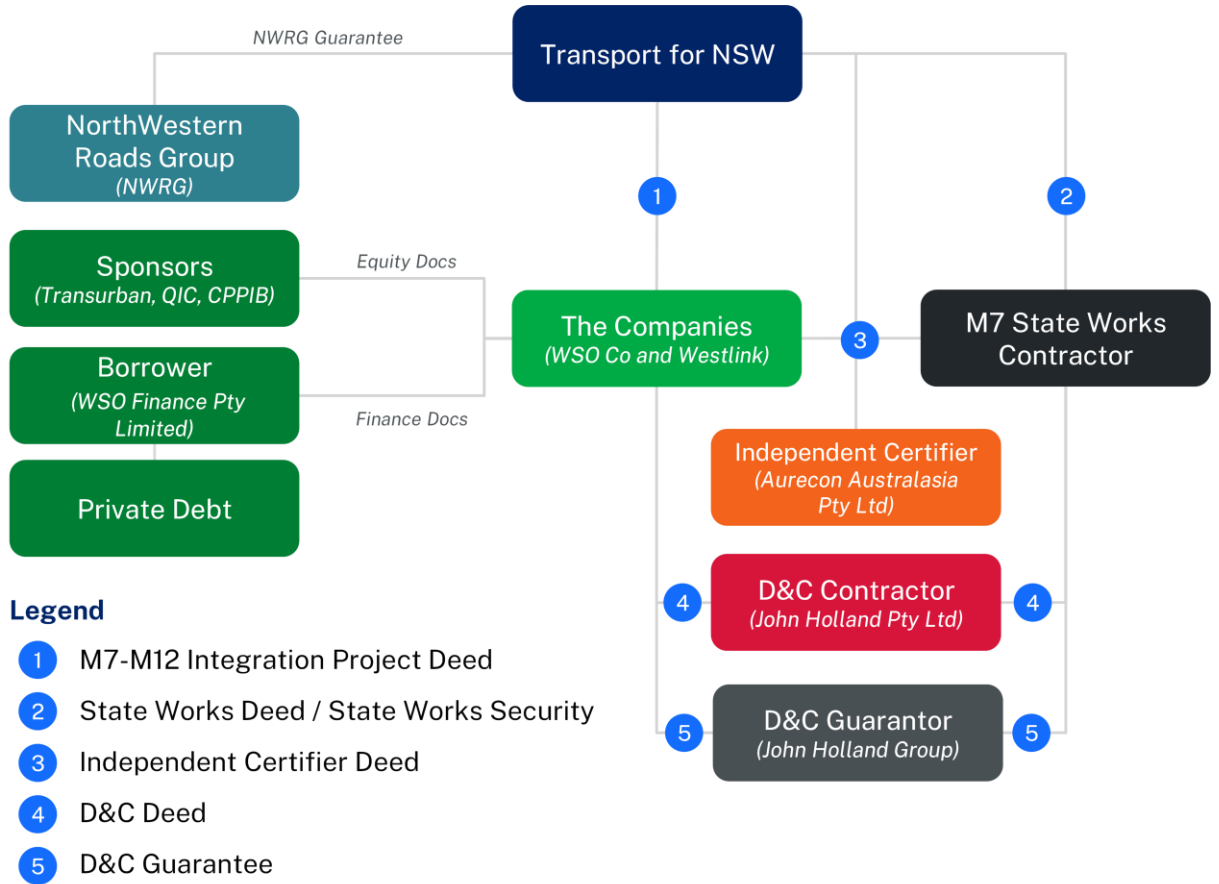
Table 6: Additional parties to Project Documents / other Project Documents

Party	Details
State Works Contractor	M7 State Works Contractor Pty Ltd (ACN: 664 603 249), M7 State Works Contractor Pty Ltd as trustee for the M7 State Works Contractor Trust
D&C Contractor	John Holland Pty Ltd (ACN: 004 282 268)
Independent Certifier / Sub-IC	Aurecon Australasia Pty Ltd (ABN: 54 005 139 873)
Environmental Representative	Healthy Buildings International Pty Ltd (ABN: 39 003 270 693)
D&C Guarantor	John Holland Group
Companies Guarantor	NorthWestern Roads Group Pty Ltd (ABN: 21 169 328 330)

5.2 Contract structure

Figure 4 below illustrates a simplified version of the contractual structure of the Project:

Figure 4: M7-M12 Integration Project Contract Structure



5.3 M7-M12 Integration Project Deed

The IPD sets out the terms on which the Companies are engaged by TfNSW to undertake the Project.

The IPD is structured so that the detailed design and construction obligations are documented separately to the amendments to the M7 Project Deed, Motorway Stratum Agreement to Lease, Gantry Land Agreement to Lease and associated M7 leases.

Table 7 outlines the key sections of the IPD, being Schedules 4, 5, 6 and 7, and Annexure A.

Table 7: Key sections of the IPD

Section	Description
Schedule 4	<p>Sets out amendments to the M7 Project Deed which take effect on Financial Close and cease on Integration Completion to permit the design and construction of the Project. Schedule 4 inserts a new clause 39 into the M7 Project Deed which:</p> <ul style="list-style-type: none"> • documents the consents that the Companies need from TfNSW to undertake the Project; • provides relief from a range of existing obligations under the M7 Project Deed to ensure that the Companies are not in default under the M7 Project Deed as a result of undertaking the Project in accordance with the Project Documents; • confirms that the Companies will not be in breach of their obligations to keep all traffic lanes of the M7 open to the public for safe, efficient, and continuous passage of vehicles to the extent necessary to close all or any part of the M7 as a result or in connection to the Project; and • confirms that there is no “cross-default” from the Project to the M7 Project Deed. <p>Schedule 4 also inserts a new clause 40 into the M7 Project Deed which requires the Companies to operate, maintain and repair the EDC Ramps from the date of Returned Works Construction Completion (of the EDC Works) until Integration Completion.</p>
Schedule 5	<p>Sets out amendments to and restates the M7 Project Deed with effect from the Date of Integration Completion to incorporate the M7 Widening, parts of the M7-M12 Interchange, and EDC Ramps into the existing M7 concession. In particular, the Companies will be obliged to operate and maintain the Retained Works and EDC Ramps in accordance with the same operation and maintenance obligations applicable to the existing Motorway.</p>
Schedule 6	<p>Sets out amendments to the Gantry Land Agreement to Lease and provides for:</p> <ul style="list-style-type: none"> • a new lease covering the real property for the gantries associated with the M7 Widening and M7-M12 Interchange; and • a new lease covering the extended M7 concession term.
Schedule 7	<p>Sets out amendments to the Motorway Stratum Agreement to Lease and provides for:</p> <ul style="list-style-type: none"> • a new lease covering the real property associated with the M7 Widening and M7-M12 Interchange; and • provide for a new lease covering the extended M7 concession term.
Annexure A	<p>Sets out the terms applicable to the design and construction of the Integration Project.</p>

The key financial and performance obligations of the Companies under the IPD are separately guaranteed by the Companies Guarantor.

5.4 M7-M12 State Works Deed

Under the SWD, the SWC is required to design and construct the State Works in accordance with the requirements of the IPD as if the State Works were Project Works.

The key obligations of TfNSW under the SWD are to pay the SWC:

- the State Works Payment in Monthly Payments in accordance with the payment regime set out in the SWD, subject to the IC certifying that the Companies have made the Initial Works Contribution;
- the Project Management Fee within 20 Business Days of the Date of Integration Completion; and
- a termination amount if the SWD terminates because of the IPD being terminated (other than for default by the Companies or the SWC).

The State Works Payment will be used to fund specified elements of the Project, primarily being the State Works.

5.5 Other related contracts

Design & Construct Deed

The Companies and SWC have executed the Design & Construct Deed with the D&C Contractor, under which the D&C Contractor will be responsible for the design and construction of the Project. The Design & Construct Deed sets out the risk allocation between Companies / SWC and the D&C Contractor. The IPD and SWD then allocates certain risks between the Companies / SWC and TfNSW.

TfNSW is not a party to the Design & Construct Deed and will monitor delivery of the Project through the IPD and SWD.

Independent Certifier Deed

The IC Deed sets out the terms on which the Independent Certifier (IC) is appointed by TfNSW, the Companies and the SWC. The IC carries out independent certification services primarily in relation to Project Activities.

Other Contracts

A high-level summary of other related contracts is provided in Table 8 below.

Table 8: Other related contracts

Other Contracts / documents	Parties / Purpose
State Works Security	Secures the performance of the SWC's obligations under the SWD.
Contractor's Side Deed	Creates a direct contractual relationship between TfNSW and the D&C Contractor and the Contract Guarantor, detailing the rights and obligations of TfNSW, the Companies, the D&C Contractor and Contractor Guarantor in the event of a default step-in under the IPD
NWRG (Parent Company) Guarantee	Parent company guarantee, which sets out the terms on which NorthWestern Roads Group guarantee performance of certain financial obligations of the Companies in favour of TfNSW.
Deed of Appointment of Environmental Representative	Manages the appointment of the Environmental Representative by TfNSW, the Companies, the SWC and the D&C Contractor.

Other Contracts / documents	Parties / Purpose
Principal Contractor Deed	Sets out the terms on which the D&C Contractor is appointed by TfNSW as the Principal Contractor (as per WHS legislation), for the Project Works.
Amending Deed: Motorway Site Lease (NorthConnex)	Sets out amendments which make amendments to the NorthConnex revenue, agreed as a consequence of entering into the Integration Project Deed.
Project Management Deed	Sets out project management terms and conditions between TfNSW, the Companies and SWC governing certain financial management matters of the Project.

6. Risk allocation

The risk sharing arrangements under the Project Documents are consistent with the principles underpinning NSW procurement guidance, the USP Guide, and the NSW PPP Guidelines, where risks are allocated to the party best able to manage them to ensure a value for money outcome. In determining the risk allocation under the Project Documents, consideration was given to the unique risks and circumstances applying to the Project and Project Site, and various applicable contract precedents. Generally, risks are:

- retained by TfNSW;
- transferred to the private sector; or
- shared between the parties,

under the Project Documents.

Table 9 provides a very high-level indication of the key risk allocation under the Project Documents. Please note that the responsibility for certain risks under the Project Documents are more complex than indicated below, partly because the Project Site includes both Transport Land and WSO Co Land.

Table 9 has been prepared in conjunction with the publishing of 'Class 3' Project Documents in accordance with the GIPA Act. If information relating to certain risks was not disclosed in the publicly available versions of the Class 3 Project Documents, in accordance with the GIPA Act, specific details in relation to that risk have been excluded from the risk allocation table.

Table 9: Risk Allocation Table

		Risk allocation	
Type of risk	Description and risk allocation notes	TfNSW	The Companies
Land and site			
Land acquisition and access	TfNSW is responsible for acquiring the agreed site (i.e., Transport Land) and making it available to the Companies, SWC and D&C Contractor (except WSO Co Land).	✓	
	The Companies are responsible for making WSO Co Land available.		✓
Site Conditions	<p>Subject to the express entitlements and specific exceptions under the Project Documents, the Companies accept the risk of physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Project Site and any Extra Land or their surroundings.</p> <p>The Companies may receive compensation for Unknown Site Conditions, including Unknown Contamination.</p>	✓	✓
Utilities	<p>Subject to their express entitlements under the IPD, the Companies bear the risk of Utility Services.</p> <p>The Companies may receive compensation for an Unknown Site Condition, including Unknown Utilities.</p>	✓	✓
Artefacts	TfNSW has absolute ownership of Artefacts that are discovered on or under the surface of the Project Site.	✓	
	<p>The Companies are obligated, at their own cost, to take precautions to ensure the Artefact is protected and not disturbed any further.</p> <p>Unless otherwise directed by TfNSW's Representative, a court or tribunal, or required by Law, the Companies are obliged to continue to perform the Project Activities.</p>	✓	✓
Native Title	If there is a Native Title Claim the Companies and the SWC must continue with the Project Activities unless prevented by a court order, Law or TfNSW directive.	✓	✓

Type of risk	Description and risk allocation notes	TfNSW	The Companies
Approvals			
Planning Approval	<p>Both TfNSW and the Companies are subject to Legal Challenge to planning / environmental approvals.</p> <p>The Companies may only receive relief and/or compensation if the M7 or M12 Planning Approval is modified or changed, in accordance with a Planning Approval Change Event which requires a change or modification to the Project Works, reduction in the Permitted Working Hours or change to the M7 Widening, M7-M12 Interchange or EDC, prior to the Date of Integration Completion.</p> <p>The Companies will receive relief and/or compensation if the Companies or the SWC are ordered by a court or TfNSW to suspend performance obligations due to a Legal Challenge to the M7 or M12 Planning Approval.</p>	✓	✓
RailCorp / Sydney Trains and other approvals	<p>TfNSW was responsible for obtaining the M7 and M12 Planning Approval.</p> <p>The Companies are responsible for obtaining all other approvals.</p> <p>If requested by the Companies, TfNSW must provide reasonable assistance to the Companies to obtain approvals from TAHE, Sydney Trains, a Utility Service provider or in respect of services.</p>	✓	✓
Community Consultation	Both TfNSW and the Companies must ensure that community consultation is conducted in accordance with TfNSW requirements.	✓	✓
Design and construction			
Design	<p>The Companies must ensure that the Project Works and the Temporary Works are designed and constructed in accordance with the Concept Design and SWTC.</p> <p>The Companies accept risks of relying on the Concept Design other than in respect of specified non-conformances relating to the design of the EDC Works.</p>		✓
Quality	<p>The Companies are responsible for the development of a Quality Management Plan and the implementation of a Quality Management System for design and construction of the Project Works. The Companies are responsible for the quality and durability of the design and Project Works.</p>		✓
	TfNSW, the Companies and the SWC are responsible for the appointment of an IC who will verify that the Project Works and the Temporary Works comply with the requirements of	✓	✓

Type of risk	Description and risk allocation notes	TfNSW	The Companies
	<p>the IPD and SWD, and undertake specified design and construction review, certification, and reporting responsibilities.</p>		
Fit for purpose	<p>The Companies must ensure that the Project Works are fit for purpose on the relevant Completion Date and capable of remaining fit for their intended purposes at all relevant times. The Companies will not be regarded as being in breach of any obligation under the IPD, and the SWC will not be regarded as being in breach of any obligation under the SWD, in respect of or relating to any requirement that the Project Works and any related Design Documentation be fit for its purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the Companies and the SWC have relied on certain information set out in the SWTC.</p>		✓
Traffic management	<p>The Companies must not undertake, and ensure that the SWC does not undertake, any Project Works or Temporary Works which have the effect of restricting, closing, interfering with, or obstructing the free flow of traffic on any local road:</p> <ul style="list-style-type: none"> • without a road occupancy licence issued by TfNSW in accordance with the requirements of the SWTC; • outside of the permitted times stated in the road occupancy licence; or • otherwise than in accordance with the terms and conditions of the road occupancy licence. <p>The Companies are responsible for the control, direction and protection of all traffic in any way affected by the carrying out of the Project Activities.</p> <p>The Companies must manage all such traffic to ensure:</p> <ul style="list-style-type: none"> • its continuous, safe and efficient movement; • that the traffic carrying capacity of Local Areas is maintained (subject to the relevant traffic management plan); and • that any delays and disruptions to such traffic and the movement of such traffic are kept to an absolute minimum. <p>The Companies must coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or the operations of Authorities.</p> <p>The Companies must at all times comply with the relevant traffic management plan prepared in accordance with the Planning Approval (where applicable) and the requirements of</p>		✓

Type of risk	Description and risk allocation notes	TfNSW	The Companies
	<p>the SWTC and any Third-Party Agreement in respect of road traffic management and safety.</p> <p>The Companies must comply with the directions of any relevant Authority and TfNSW (in its capacity as an Authority) with respect to such management.</p>		
Capital costs	<p>Except as provided for in the Project Documents, the Companies are liable if project costs exceed expectations. The Companies must accept the risks associated with the cost of the Project, including the cost of all Subcontractors and increases in the cost of materials, construction plant, utility services and labour required to undertake the Project, unless specifically provided for under the Project Documents.</p>	✓	✓
Delay	<p>The Companies are liable if Returned Works Construction Completion of the EDC Works are not achieved by the Date for Returned Works Construction Completion and Integration Completion is not achieved by the Sunset Date, unless the delay relates to certain specified events that are otherwise provided for under the Project Documents, including, for example, 'Excusable Cause of Delay' as outlined in section 12.1.</p> <p>In relation to the delivery of the EDC, the Companies will pay Liquidated Damages if the Companies do not achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works.</p>	<p>✓ (Excusable Cause of Delays)</p>	✓
Interfaces and Early Works	<p>The Companies have responsibility for interfacing with other works/contractors/existing utilities (other than Sydney Trains) and developing an interface plan. The Companies may receive relief and/or compensation in the case of delays in the construction of the M12 Critical Interface Works.</p>	✓	✓
Environmental impacts	<p>In relation to the Environment, the Companies are liable for any negative environmental impacts associated with the Project, except as specifically provided for under the Project Documents. The Companies must hold an Environmental Protection Licence, comply with, and ensure the SWC complies with all Laws and Environmental Standards, carry out and ensure the SWC carries out Project Activities in accordance with good industry practice and comply with the Construction Environmental Management Plan.</p>		✓
Testing and commissioning	<p>The Companies are responsible for satisfying commissioning tests and requirements.</p>		✓

Type of risk	Description and risk allocation notes	TfNSW	The Companies
Defects	<p>Subject to their express entitlements under the IPD, the Companies are responsible for all Defects, including non-conformances and Defects in Project Works, Defects in Returned Works, Defects in Retained Works and Defects in the Property Works, Local Area Works and Utility Service Works.</p> <p>The Companies are responsible for the rectification of Defects during the various Defects Correction Periods for Returned Works, the Property Works, Local Area Works, and Utility Service Works.</p> <p>There is no Defect Correction Period for the Retained Works as ongoing O&M obligations apply under the M7 Project Deed.</p>	✓	✓
Operating and Maintaining	<p>The Companies are responsible for operating and maintaining the Retained Works.</p> <p>TfNSW is responsible for operating and maintaining the Returned Works. The Companies must provide a Returned Works O&M Plan to TfNSW.</p>	✓ (Returned Works)	✓ (Retained Works)
Revenue and costs			
Patronage risk	<p>Subject to their express entitlements under the IPD, the Companies bear risks associated with traffic volumes, including the risk that revenue from the Project or traffic volumes may be less than expected by the Companies or its advisers.</p> <p>The Companies acknowledge that TfNSW has not made any representation or given any warranty in respect of the traffic usage of the EDC, the M7-M12 Interchange, the M7 Widening, the M7 Motorway or any other road.</p> <p>(If revenues exceed a certain threshold, then the excess revenues may be shared with TfNSW, subject to certain conditions.)</p>		✓
Inflation risk	<p>The Companies take the risk if inflation is more or less than forecast and this impacts on toll escalation or operational costs.</p>		✓
Rates and taxes	<p>The Companies accept liability for taxes other than stamp duty including the risk that liability for taxes (other than stamp duty) is greater than estimated.</p>	✓ (Stamp Duty)	✓
Financing and refinancing			
Financing	<p>The Companies are responsible for securing financing of the required financing amount for the works.</p>		✓

Type of risk	Description and risk allocation notes	TfNSW	The Companies
Events of change			
Change in Law	<p>The Companies generally bear the risks associated with Change in Law.</p> <p>The Companies may receive relief and / or compensation for a:</p> <ul style="list-style-type: none"> • Project specific change in State Law; • change, amendment, repeal or enactment of a new Environmental Law or State Law or Commonwealth legislation existing at the date of the IPD, which impose requirements in respect of work, health and safety or road safety; or • change in Federal Environmental Law relating to air filtration or Contamination control measures. 	✓	✓
Codes and Standards	<p>The Companies must comply with all Codes and Standard as referred to in the SWTC and Environmental Standards.</p> <p>Where there is change in Codes and Standards prior to the Date of Integration Completion, the Companies must give a written notice to TfNSW.</p> <p>TfNSW may then:</p> <ul style="list-style-type: none"> • direct the Companies to disregard the Change in Codes or Standards where doing so will not place the Companies in breach of Law; or • direct a change in respect of the Change in Codes and Standards. <p>The Companies may be entitled to relief and/or compensation if TfNSW direct a change in respect of the Change in Codes and Standards. The Companies will not have any claim:</p> <ul style="list-style-type: none"> • except to the extent that any relevant Design Documentation did comply, or would have complied, with the requirements of the IPD or SWD at the time of the change; and • to the extent that notwithstanding the Change in Codes and Standards, either Company or the SWC would have had to make a change to the Project Works or a change to the methods of construction used in carrying out the Project Works, in order for the Project Works or Temporary to be fit for their intended purposes at the relevant time. 	✓	✓
Force Majeure	<p>TfNSW must provide relief to the Companies if a Force Majeure event arises.</p> <p>Certain Uninsurable Force Majeure Event may trigger the 'Material Adverse Effect' regime and give the Companies a termination right in certain circumstances.</p>	✓	✓

Part III: Commercial and Contractual Features



Part III: Commercial and Contractual Features

This Part III has been prepared in conjunction with the publishing of 'Class 3' Project Documents in accordance with the GIPA Act. If information was not disclosed in the publicly available versions of the Class 3 Project Documents, in accordance with the GIPA Act, then specific details in relation to that matter have not been described in the below summary of the commercial and contractual features.

7. Obligations of the Companies

This section details the Companies' obligations under the Project Documents. Key obligations discussed in this section include laws and approvals, access onto the WSO Co Land, construction and completion process, operations and maintenance obligations, Contamination, and intellectual property.

7.1 Fundamental obligations

The fundamental obligations of the Companies under the Project Documents (and other associated documents) are to:

- a) finance, plan, design, construct and commission the Returned Works, the M7 Widening and the M7-M12 Interchange;
- b) integrate, interface and coordinate the Company's Activities with the SWC Activities;
- c) procure all materials, construction plant and utility services required to fulfil its obligation under the Project Documents;
- d) handover the Returned Works to TfNSW upon Returned Works Construction Completion; and
- e) operate, maintain and repair the Retained Works and the EDC Ramps.

The Companies must effect and maintain delivery and operations insurances for amounts and deductibles, and for the duration set out in the Project Documents. The Companies must arrange insurances for Transit, Workers Compensation, Motor Vehicle and Construction Plant and Equipment.

7.2 Laws and approvals

In performing their activities, the Companies and SWC must:

- a) comply with applicable Laws, including any Change in Law after the date of the IPD and before the relevant Completion Date; and
- b) apply for and obtain from each relevant Authority all approvals (other than the Planning Approval);
- c) comply with each Authority's lawful requirements to permit proper consideration of the applications for Approvals;
- d) comply with, carry out and fulfill all conditions and requirements of all Approvals;
- e) comply with NSW Government Policies;
- f) pay all fees, effect all insurances, provide any bonds and execute undertakings required by an Authority in respect of any Approvals; and
- g) must not engage in, and must ensure that the SWC and their respective Related Parties, in carrying out the Project Activities, do not engage in, any fraud, bribery or corruption.

7.3 Access

The Companies are responsible for obtaining access to all areas other than the Transport Land, Transport Access Land and Transport Access Land (Stratum). The Companies must provide the SWC, the D&C Contractor and Related Parties access to WSO Co Land (other than Transport Access Land and Transport Access Land (Stratum)) to execute the Project Works. The Companies must also provide access to TfNSW (including any party or persons nominated by TfNSW), the Environmental Representative, and IC to observe progress and monitor compliance by the Companies with their obligations under the Project Documents.

7.4 Initial Works Contribution

The Initial Works Contribution is a fixed amount of the total Project costs that the Companies or the SWC (or both) must contribute to the Project Activities prior to TfNSW making funding contributions to the Project. The IC must issue a Certificate of Initial Works Contribution to TfNSW once the IC is satisfied that the Initial Works Contribution has been made.

7.5 Returned Works Construction Completion

Returned Works Construction Completion means the stage when the EDC Works or the Returned Works (excluding EDC Works) are complete in accordance with the Project Documents, except with minor Defects which:

- a) do not prevent the EDC Works or Returned Works (excluding the EDC Works) from being reasonably capable of being used for their intended purpose;
- b) can be corrected without prejudicing the use of the EDC Works or Returned Works (excluding the EDC Works); and
- c) the Companies have reasonable grounds for not promptly rectifying.

In addition, the EDC Works or the Returned Works (excluding the EDC Works) should be:

- a) capable of being opened to the public for the continuous safe passage of vehicles; and
- b) complete in accordance with the design documentation, all approvals and applicable Laws, and all relevant Australian Standards and other applicable codes.

The Companies should have carried out and passed all tests which are required to be carried out passed before the EDC Works or the Returned Works (excluding the EDC Works) are opened to the public for safe, efficient, and continuous passage of vehicles.

The Companies must also:

- a) obtain all approvals required under the IPD;
- b) comply with all performance requirements;
- c) provide TfNSW with all documents and other information in respect of the design, construction, use, occupation, operation, maintenance and repair of the EDC Works or Returned Works (excluding the EDC Works), including "as-built" documentation, the final Returned Works Operations and Maintenance Plan and the Asset Handover Information;
- d) execute the relevant certification and provide the certification to TfNSW;
- e) complete any works required to be completed under the Third Party Agreements or handed over to Third Parties;
- f) provide TfNSW with any Site Audit Statements required by the Planning Approval; and

- g) ensure the EDC Works or Returned Works (excluding the EDC Works) comply with the requirements of any Third Party Agreements.

The IC and Quality Manager must also execute and provide the relevant certification to TfNSW.

Returned Works Opening Completion means the stage when:

- a) the EDC Works or the Returned Works (excluding the EDC Works) are complete in accordance with the IPD expect for minor Defects which:
- i. do not prevent the EDC Works or Returned Works (excluding the EDC Works) from being reasonably capable of being used for their intended purpose;
 - ii. can be corrected without prejudicing the convenient or intended use of the EDC Works or Returned Works (excluding the EDC Works);
 - iii. the Companies have reasonable grounds for not promptly rectifying.
- b) Without limiting paragraph (a), the EDC Works or the Returned Works (excluding the EDC Works) should be capable of being opened to the public for the safe, efficient and continuous passage of vehicles; and
- c) the Companies should have carried out and passed all tests which must necessarily be carried out and passed before the EDC Works or the Returned Works (excluding the EDC Works) are opened to the public for the safe, efficient and continuous passage of vehicles.

Returned Works Final Completion means the stage when the last Defects Correction Period has expired and the Companies have:

- a) carried out and passed all tests as required;
- b) obtained all approvals as required under the Project Documents;
- c) complied with all performance requirements under the Project Documents which must be certified, verified or otherwise achieved before Returned Works Final Completion;
- d) given TfNSW all documents in respect of design, construction, use, occupation, maintenance and repair of the Returned Works and warranties as required under the Project Documents;
- e) executed a Notice of Returned Works Final Completion in the required form and provided it to TfNSW; and
- f) provided TfNSW with warranties required under the IPD.

Additionally, Returned Works Final Completion and Returned Works Construction Completion are subject to:

- the IC and Quality Manager executing certificates, in the required forms, and providing them to TfNSW;
- the Companies providing TfNSW with copies of the: “as-built” documentation, the final Returned Works Operations and Maintenance Plan and all Asset Handover Information to TfNSW; and
- the Companies doing everything else which they are required to do under the IPD, including (but not limited to) everything else in the SWTC.

7.6 Retained Works Completion

Retained Works Completion means the stage at which the following conditions precedent have been satisfied:

- a) the Retained Works have been completed in accordance with the IPD, except for minor Defects which:
 - i. do not prevent the Retained Works from being reasonably capable of being used for their intended purpose;
 - ii. can be corrected without prejudicing the convenient or intended use of the Retained Works; and
 - iii. the Companies or the SWC have reasonable grounds for not promptly rectifying;
- b) The Companies and SWC have:
 - i. carried out and passed all tests as required;
 - ii. obtained all approvals as required under the IPD and the SWD (as applicable) and provided such approvals to TfNSW;
 - iii. given TfNSW all documents in respect of design, construction, testing, commissioning, Completion, use, occupation and maintenance of the Retained Works which must be handed over before the Retained Works can be used for their intended purpose;
 - iv. provided TfNSW with an executed notice certifying the date on which the Companies achieved Retained Works Completion;
 - v. removed all rubbish, surplus materials, construction plant and Temporary Works from the Project Site;
 - vi. removed all signs and made good any damage caused by the removal of the signs;
 - vii. rehabilitated any Extra Land occupied or used in connection to the Project;
 - viii. issued TfNSW with executed releases from all claims or demands from the owners or occupiers of the Extra Land; and
 - ix. reinstated the Temporary Areas and any other land affected by or used for the purposes of the Temporary Works to a condition equivalent to the condition existing before that occupation or use;
- c) The Quality Manager has executed the relevant certificate and provided it to TfNSW;
- d) Key documents TfNSW must be provided with include:
 - i. all other certificates required by the IPD and the SWD;
 - ii. a copy of the O&M manuals and the revised O&M plan;
 - iii. copies of all approvals required to open, use and operate the Retained Works;
 - iv. a copy of the "as-built" drawings of the Project Works;
 - v. a copy of all signed independent road safety audits;
 - vi. a summary prepared by the Quality Manager on all quality issues;
 - vii. all documents relating to non-conformances; and
 - viii. copies of all site investigation reports and property conditions surveys.

7.7 Time

The Companies must start to perform the Company's Works and Temporary Works, and ensure that the SWC starts to perform the State Works, from the Satisfaction Date. The Satisfaction Date is the date on which all Conditions Precedent were achieved, being 28 February 2023.

The Companies must achieve, and must ensure that the SWC achieves:

- Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion; and
- Integration Completion by the Sunset Date.

The Companies must use best endeavours to achieve, and ensure that the SWC uses best endeavours to achieve, Integration Completion by the Date for Integration Completion.

If the Companies become aware of any occurrence which will, or is likely to, delay the carrying out of the Project Activities the Companies must notify TfNSW in writing within 7 Business Days. The Companies must give a further notice within 15 Business Days of the initial notice which contains details of the cause of the delay and how the dates for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and the Sunset Date are likely to be affected (if at all). The Companies may also be required to provide a 'Completion Remedy Plan' if the Companies fail to achieve Returned Works Construction Completion of the EDC Works by the relevant date.

The Companies must pay liquidated damages if the Companies do not achieve Returned Works Construction Completion of the EDC Works.

Please also refer to section 12 for relief available to the Companies and section 14.10 to for remedies available if specific EDC milestones are not met by the Companies.

7.8 Operation and maintenance obligations

From the Date of Integration Completion, the Companies will be obliged to operate and maintain the Retained Works and the EDC Ramps in accordance with the O&M Manuals.

As a condition precedent to Retained Works Completion, WSO Co must update the O&M Manuals prepared in accordance with the M7 Project Deed and develop and amend the O&M Manuals to incorporate the O&M Work associated with the Retained Works, within the required timeframe.

The Companies must also develop a Returned Works Operations and Maintenance Plan, consistent with the SWTC and the IPD as a condition precedent to Returned Works Construction Completion of the EDC Works. An initial draft and a final draft of the Returned Works Operations and Maintenance Plan must be submitted to TfNSW and the IC for review within the specified timeframe.

7.9 Contamination

The Companies are generally responsible if their activities disturb or interfere with Contamination on, in, over under or about (but in each case within) the Project Site or Extra Land. The Companies bear the risk of all:

- a) Contamination within the Project Site or any Extra Land which is distributed by or interfered with in the carrying out of the Project Activities; or
- b) Contamination which otherwise is caused or contributed to by the Project Activities.

The Companies must ensure:

- a) that the Contamination does not migrate to or from the Project Site or Extra Land;

- b) that the Contamination is disposed of, or otherwise dealt with in accordance with the Law and the Environmental Documents; and
- c) the remediation of the Project Site and Extra Land to the standard required by Law and the Environmental Documents to the extent to which:
 - i. it is in any way degraded by such Contamination; and
 - ii. the Contamination is of a nature that an Authority could issue a statutory notice requiring it to be remediated.

7.10 Reporting

In addition to their existing reporting obligations under the M7 Project Deed, the Companies must in their annual and half yearly reports declare details of all transactions or arrangements entered into by the Companies or the SWC. This should include:

- a) a statement as to whether or not the Companies consider the transactions or arrangements required TfNSW's consent;
- b) information as to the procurement process (if any) followed in respect of the relevant transaction or arrangement;
- c) the nature of the work or services to be provided under each relevant transaction or arrangement and the fees paid or other consideration provided in respect of each transaction or arrangement in the reporting period; and
- d) such other details and information regarding the relevant transactions or arrangements as may reasonably be requested by TfNSW.

7.11 Intellectual Property

The Companies must grant TfNSW (for all time and despite termination of the Project Documents) an irrevocable, non-exclusive, royalty free, perpetual, and fully assignable licence to use (and sub-licence others to use) all Intellectual Property Rights relating to:

- a) the Design Documentation; and
- b) the materials, documents, images, photographs, software, processes, and methods relevant to the Project Works, the Temporary Works and the Project Activities (including processes and method of working),
in each case excluding the software source code, for:
 - c) the purposes of completing the construction, commissioning, and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the Project Activities, Project Works and Temporary Works;
 - d) any purpose associated with the further development of the Project Site; and
 - e) except in relation to the Third-Party Software, any other purpose connected with TfNSW projects in New South Wales.

This includes, post termination or expiry of the deed, licences for:

- f) commercially available off-the-shelf third-party software, to the extent to which the Companies are permitted to license the software to TfNSW pursuant to the terms of the licence granted to the Companies by the third party licensor; and
- g) customised third party software relating to tolling, customer management, operation, or maintenance, as required at the time and extent by TfNSW to operate, maintain and toll the M7 unless the licence cannot be obtained for a reasonable cost.

8. Government contributions and obligations

This section details TfNSW obligations under the Project Documents. Key obligations discussed in this section include Early Works, access to Transport Land, and Planning Approval. Note, TfNSW obligations under the SWD can be found in section 5.4

8.1 Key TfNSW obligations

In general, the key obligations for TfNSW under each of the Project Documents include:

- a) obtaining Planning Approvals, and where applicable, satisfying certain conditions of the Planning Approval;
- b) granting the Companies, SWC, D&C Contractor and Related Parties access to Transport Land, Transport Access Land and Transport Access Land (Stratum);
- c) recommending and ensuring that the Minister for Roads declares the Relevant Areas to be a tollway under section 52 of the *Roads Act 1993* (NSW) prior to Integration Completion;
- d) paying the SWC the State Works Payment in accordance with the payment regime set out in the SWD (refer also to section 5.4);
- e) granting extensions of time if the Companies or the SWC are delayed in achieving Date for Returned Works Construction Completion of the EDC Works or Integration Completion by an 'Excusable Cause of Delay';
- f) compensating the Companies if the Date for Returned Works Construction Completion of the EDC Works or the Sunset Date is extended due to a 'Compensation Event';
- g) paying Direct Costs to the Companies if a Direct Costs entitlement arises;
- h) directing a Change which may entitle the Companies to claim Change Costs and an extension of time if certain events arise;
- i) completing the M12 Critical Interface by an agreed date and in accordance with an agreed design (or directing a Change);
- j) granting relief to the Companies if Uninsurable Force Majeure event has a Material Adverse Effect; and
- k) paying a termination amount to the Companies and SWC in the event that the IPD or SWD is terminated (other than for the Companies default).

TfNSW must also procure and maintain certain Principal Arranged Insurances, including Contract Works, Delay in Start-Up, Third-Party Liability, Environmental Impairment Liability, Professional Indemnity insurance, Workers Compensation insurance, Early Works Public Liability insurance and Early Works Contract Works insurance.

8.2 Early Works

TfNSW is undertaking pipe wrapping works to protect the Jemena high pressure gas mains as Early Works prior to the main contract to de-risk the Project Works. The pipe wrapping works are part of the protection works for the two high pressure mains which is required in areas where the M7-M12 Interchange ramps and EDC works restrict access to the main by Jemena personnel. The pipe wrapping works are part of the protection works will ensure that the mains achieve a 100-year maintenance free life.

8.3 Access

TfNSW must give, or ensure that the Companies, SWC, and other Related Parties have access to each area of Transport Land, Transport Access Land and Transport Access Land (Stratum) for the relevant dates specified in the Site Access Schedule.

8.4 Planning Approval

TfNSW is responsible for:

- a) obtaining Planning Approvals, with reasonable assistance provided by the Companies;
- b) complying with the conditions of the Planning Approvals which TfNSW has specifically agreed to comply with under the Project Documents;
- c) dealing with a Legal Challenge in relation to the Planning Approval as it sees fit. Noting that the Companies will be entitled to claim for an extension of time, Delay Costs and Direct Costs if required to suspend or cease works by TfNSW or a court due to a Legal Challenge; and
- d) directing a Change Order and paying the Companies Change Costs if a Planning Approval Change Event occurs, which includes modifications to the Planning Approval which are made prior to the Date of Integration Completion and do not result from the Companies breach, wrongful act, or omission. TfNSW's liability for Change Costs are limited to circumstances where the modification requires a Change to the Project Works, reduction in Permitted Working Hours or a Change to the M7 Widening, EDC or M7-M12 Interchange (or the operation thereof).

8.5 Roads Act declaration

Prior to the Date of Integration Completion, TfNSW must procure that the Minister:

- a) declares the Relevant Areas to be a tollway under section 52 of the *Roads Act 1993* (NSW); and
- b) directs that the functions of any road authority in respect of the Relevant Areas are the responsibility of TfNSW.

9. Tolls, fees, and revenue upside sharing

9.1 Tolls and fees

The level of tolls and escalation regime will not change as a result of the Project, noting that the current regime is based on distance-based tolling, in both directions. The M7 Project Deed specifies the maximum rate that the Companies may charge. The existing concession will extend by 3.2 years from 30 June 2048 to 12 September 2051.

9.2 Revenue upside sharing

The M7 leases contain arrangements for the Companies to share with TfNSW the benefit of any upside in actual revenues compared with forecasts as specified in the Integration Project Base Case Financial Model.

The current revenue sharing regime, which has applied since the 2015 NorthConnex transaction, will apply until Integration Completion. Following Integration Completion, the same regime will apply however the upside will be measured against forecast revenues set out in the Integration Project Base Case Financial Model.

Table 10 illustrates the current regime. The regime requires the Companies to pay TfNSW a specified percentage share of revenue upside, where the 'upside' is the difference between actual revenues and forecast revenue levels as specified in the Base Case Financial Model subject to a reduction mechanism related to the financial performance of NorthConnex.

Table 10: Revenue upside sharing

Actual Revenue as a percentage of forecast revenue	TfNSW share of this portion of the upside ¹
> 100% and ≤ 110%	0%
> 110% and ≤ 115%	30%
> 115%	50%

¹Subject to the financial performance of NorthConnex .

10. Payment incentives and key performance indicators

10.1 Companies' incentives

The Companies are required to pay an Initial Works Contribution prior to TfNSW making contributions to the Project Works (see section 7.4).

10.2 EDC Early Completion Incentive

If the D&C Contractor achieves Returned Works Construction Completion of the EDC Works by the EDC Target Date, the D&C Contractor will be entitled to receive the EDC Bonus Payment, which is funded within the Project.

11. Change and project modification procedures

11.1 TfNSW initiated changes

TfNSW may direct a Change to the scope of work by issuing to the Companies a notice titled "Change Proposal" setting out the details of a proposed Change which TfNSW is considering, including TfNSW's proposed requirements for the implementation of the proposed Change. If TfNSW directs a Change, it may entitle the Companies to claim Change Costs and an extension of time (if a change entitlement occurs).

TfNSW must pay Change Costs to the Companies (to the extent the Change increases the costs of the Project Works). TfNSW is entitled to the Change Savings if a Change results in cost savings.

11.2 Project company-initiated changes

The Companies must not and must procure that the SWC, and their Related Parties do not, undertake any Change without TfNSW's prior consent.

The Companies may propose a Change to the Project Works, the Temporary Works or the Project Activities which must be undertaken under the Integration Project Deed in accordance with the procedure set out in the Integration Project Deed. TfNSW has absolute discretion to approve or reject the proposed change (other than in respect of Temporary Works).

The Companies bear all risks and costs associated with a Change proposed by the Companies (unless otherwise agreed by TfNSW). TfNSW is entitled to a share of the Change Savings if the proposed Change results in cost savings.

11.3 Pre-agreed changes

TfNSW may, in its absolute discretion, direct the Companies to carry out a pre-agreed change on or before agreed dates. Such pre-agreed changes include implementation of operational ramp metering at specific locations and additional urban design enhancements.

12. Compensation and relief

12.1 Excusable Cause of Delay

If the Companies or the SWC are, or will be, delayed in achieving Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works or Integration Completion by the Date for Integration Completion, and the delay is the result of an Excusable Cause of Delay, the Companies may claim an extension of time to the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion or Sunset Date in accordance with the relevant Project Document.

An Excusable Cause of Delay includes, but is not limited to:

- a) an 'Act of Prevention' being:
 - i. a breach of the IPD or the SWD by TfNSW;
 - ii. an act or omission by TfNSW, or its Related Parties, which is not expressly permitted or allowed by the IPD (including any Direction given by TfNSW or TfNSW's Representative), carried out within the timeframes expressly permitted by the IPD.
This excludes acts caused by the Companies' breach or unlawful act, and acts where TfNSW exercises its legal functions and powers; and
 - iii. a Change directed by TfNSW (other than a Company proposed Change).
- b) a Legal Challenge which results in the Companies receiving a court order or TfNSW directive to suspend or cease to perform any or all its obligations under the Project Documents, excluding a breach by the Companies or SWC under the IPD or M7 Project Deed, a breach of the Company's warranties, a wrongful or negligent act or omission by either the Companies or the SWC (or their respective Related Parties);
- c) a Native Title Claim being made, which results in the Companies or the SWC ceasing work due to a court order or TfNSW direction to suspend or cease work;
- d) the occurrence of a Force Majeure event; or
- e) a court making a Final Determination.

12.2 Compensation Events

If the Companies are delayed in achieving Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works due to a 'Compensation Event', TfNSW may be required to pay Company Delay Costs. Where TfNSW is required to pay such Company Delay Costs, the amount is subject to specified caps.

The Companies and the SWC must take all reasonable steps to Mitigate the effects of any Compensation Event. The Companies must continue to perform their obligations despite the Compensation Event to the extent that the Companies are not prevented from performing those obligations.

Project 'Compensation Events' include, but are not limited to:

- a) an 'Act of Prevention', as detailed above at section 12.1a), but excluding section 12.1a)iii being any Change directed by TfNSW;
- b) a Legal Challenge, as detailed above at section 12.1b);
- c) Native Title Claim, as detailed above at section 12.1c); and
- d) A Qualifying Change in Law which requires a Change to be made prior to the Date of Integration Completion.

12.3 Other relief and compensation available to the Companies

TfNSW may also provide extensions of time and / or compensation to the Companies for some select specific events. In these specific circumstances for the specific events, the Companies may be entitled to Direct Costs, Company Delay Costs or Change Costs as compensation, depending on the type of event.

12.4 Material Adverse Effect

The Companies may be entitled to claim relief from TfNSW if an Uninsurable Force Majeure Event occurs and the Companies believe that this has a 'Material Adverse Effect'.

If, at any time prior to the Integration Completion, an Uninsurable Force Majeure Event occurs, which either Company reasonably believes may have a Material Adverse Effect (a **Possible MAE Event**) the relevant Company must give TfNSW notice of the Possible MAE Event.

If it has been agreed that the Possible MAE Event has had or started to have a Material Adverse Effect, the Companies and TfNSW must enter into negotiations in good faith to agree on a method of redress. The parties must take a flexible approach in conducting their negotiations, including by considering:

- a) amendments to the Project Documents;
- b) variations to the financial or other contributions of the parties;
- c) adjustments to the toll calculation provisions in the Project Documents; and/or
- d) any other appropriate actions.

TfNSW will not be required to consider or provide any method of redress that would require TfNSW to make an upfront payment to the Companies.

Methods of redress involving payments of money by TfNSW to the Companies will be considered as a measure of last resort.

13. Force Majeure

A 'Force Majeure' event will arise if it is beyond the reasonable control of the parties, prevents or delays the Companies in performing their obligations and could not be mitigated or remedied, and is one of the following events:

- a) earthquake, cyclone, fire, explosion, flood, malicious damage, sabotage, act of a public enemy, terrorism, or civil unrest;
- b) war, invasion, hostility between nations, civil insurrection, military coup, or act of a foreign enemy;
- c) ionising radiation or radioactive contamination from nuclear waste or the combustion of nuclear fuel; or
- d) confiscation, nationalisation, requisition, or property damage under the order of any government.

Once the Companies become aware of the Force Majeure event, the Companies must give notice with full particulars of the Force Majeure event (e.g. details of the Force Majeure, obligations affected, an estimate of time during which the Companies or SWC will be unable to carry out their obligations). The parties must meet within five (5) Business Days of the Companies serving the notice to determine the estimated length of time for which the Force Majeure will continue.

If a Force Majeure event occurs, the Company and SWC's obligations which are affected by the event will be suspended to the extent, and for so long as, such obligations are affected by the event.

The Companies and /or the SWC (as applicable) must recommence performing the suspended obligations upon becoming able to do so.

Uninsurable Force Majeure Events may trigger the 'Material Adverse Effect' regime, and in certain circumstances, will give the Companies a termination right.

14. Default and termination arrangements

This Project does not terminate, discharge, rescind or replace the M7 Project Deed. As such, if an Event of Default or termination event arises in relation to this Project, the M7 Project Deed will remain in full force except to the extent expressly varied by the Project.

Under the Contractor Side Deed, in the case that the IPD and SWD are terminated, the D&C Deed and D&C Guarantee will be novated to TfNSW and the Companies and SWC will not be parties to the Novated D&C Deed and Novated D&C Guarantee.

14.1 Events of Default

If an 'Event of Default' occurs, TfNSW may notify the Companies in writing, requiring the Companies to Remedy the Event of Default within a Remedy Period specified by TfNSW (which may be extended in certain circumstances).

Each of the following is an 'Event of Default':

- a) failure to commence or progress: the Companies fail to commence, or ensure that the SWC commences, or progress, or ensure that the SWC progresses the Project Works and the State Works;
- b) intention to abandon: the Companies, or the SWC displays an intention to permanently abandon the Project;
- c) inadequate insurance: the Companies do not have insurance to meet the minimum requirements of the IPD or fail to maintain the insurance policies as required by the IPD;

- d) material default: default of the Companies (or of a Company Group Member) or SWC in a material respect due to any project document to which TfNSW is a party;
- e) insolvency of a Company Group Member: insolvency in relation to a Company Group Member, including the Companies, Borrower or certain entities that form the Partnership (whether or not the Company is then in breach of the IPD);
- f) insolvency of Contractor or Guarantor: insolvency in relation to the applicable D&C Contractor or Contractor Guarantor and such party is not replaced in accordance with the relevant Project Document (whether or not the Company is then in breach of the IPD); and
- g) material breach: the Companies or the SWC materially breach a representation or warranty given under the Integration Project Deed or a Project Document to which TfNSW is party.

14.2 Termination for Events of Default

If an Event of Default is not Remedied within the relevant Remedy Period or if at any time during that period the Companies are not diligently pursuing a program to Remedy the Event of Default, TfNSW may give the Companies 20 Business Days' written notice of its intention to terminate the IPD (noting that the existing M7 Project Deed does not terminate on this basis). During the 20 Business Day period the Companies have a right to Remedy the Event of Default.

If at the expiration of the 20 Business Day period the Event of Default has not been Remedied, TfNSW may (but is not obliged to) thereafter either:

- a) terminate the IPD by written notice to the Companies; or
- b) issue a Default Step-In Notice.

14.3 Termination for Final Determination

If a court makes a Final Determination, TfNSW may in its absolute discretion, terminate the IPD at any time after that Final Determination by giving a notice to this effect to the Companies.

TfNSW acknowledges and agrees that the Companies will not be in breach of the IPD, and the SWC will not be in breach of the SWD, to the extent that the Companies or the SWC (as applicable) is prevented from undertaking the Project in accordance with the IPD or the SWD (as applicable) as a consequence of a Final Determination.

14.4 Termination for Uninsurable Force Majeure Event

If an Uninsurable Force Majeure Event exists, or the consequences of the Uninsurable Force Majeure Event exist, for a continuous period of more than 12 months, then at any time after the 12 month period:

- a) TfNSW may, in its absolute discretion, terminate the IPD by giving a notice to that effect to the Companies after which the IPD will terminate; or
- b) the Companies may terminate this deed by giving TfNSW 30 Business Days' prior written notice, after which, the IPD will terminate.

14.5 Termination by the Companies

The Companies may terminate the IPD by giving TfNSW 30 Business Day's written notice if:

- a) a court makes a Final Determination and TfNSW fails to procure that the effect of the Final Determination is overcome within 18 months of the Companies giving written notification to TfNSW of the Final Determination;
- b) the NSW Government enacts legislation (including any rules, regulations, or by-laws under that legislation) which prohibits or has the effect of prohibiting the Companies from undertaking the Project substantially in accordance with the Project Documents;
- c) an Authority resumes any part of the Motorway Stratum and as a result the Companies are prevented from undertaking the Project substantially in accordance with the Project Documents;
- d) TfNSW breaches clause 7.1(a) of Annexure A (i.e., does not give the Companies, SWC or their respective Related Parties and invitees access to the Transport Land, Transport Access Land and Transport Access Land (Stratum) by the relevant dates) and such breach prevents the Companies from undertaking the Project substantially in accordance with the TfNSW Project Documents and such breach is not remedied within 12 months after written notice from a Company to TfNSW specifying the breach;
- e) the Companies or the SWC are prevented from carrying out the Project Activities for a continuous period of more than 6 months because of a direction, order or requirement in relation to a Native Title Claim; or
- f) TfNSW fails to comply with TfNSW's payment obligations under the SWD.

14.6 TfNSW suspension of the Companies right to terminate

If the Companies, or any of them, issue a notice of termination, TfNSW may suspend the Companies' right to terminate by giving written notice within 30 Business Days of receiving the Companies notice.

If TfNSW suspends the Companies' right to terminate:

- a) the Companies must continue to perform their obligations under the IPD during the suspension period, to the extent it is lawful and practicable to do so; and
- b) TfNSW must pay the Companies monthly in arrears an amount sufficient to place the Companies in the position they would have been in had the event the subject of the relevant notice not issued for the period of suspension.

The suspension of the Companies right to terminate the Project Documents will continue until (whichever is earlier):

- a) TfNSW notifies the Companies in writing that it is ending the suspension period;
- b) 12 months after the Companies' termination notice; or
- c) the relevant event is remedied by TfNSW or no longer exists,

whichever is earlier.

14.7 Consequences of termination or expiry

If the IPD is terminated under 14.3 – a Final determination made by a court or 14.5 – Termination by Companies, TfNSW must within 30 days of that termination:

- a) pay the Companies the Early Termination Amount (M7-M12); and
- b) release and return any Security Bond and / or Letters of Credit provided to TfNSW.

If the IPD is terminated under 14.4 – Uninsurable Force Majeure, TfNSW must within 30 days of that termination:

- a) pay the Uninsurable FM Termination Amount (M7-M12); and
- b) release and return any Security Bond and/or Letters of Credit provided to TfNSW.

The IPD will automatically terminate upon termination of the M7 Project Deed.

14.8 Default Step-In by TfNSW

If TfNSW issues a Default Step-In Notice, TfNSW is entitled to (but not obliged to):

- a) assume total possession, management, and control of the Project, the Project Works (including the State Works), the Temporary Works and the performance of the Project Activities (**Default Step-In Rights**); or
- b) take other action as specified in the Project Documents.

If TfNSW exercises its Default Step-In Rights, TfNSW must keep the Companies informed of all communications with the IC in relation to the performance of the work and pursue the exercise of the Default Step-In Rights where there will be no adverse effect on the M7 and existing M7 operations can resume as soon as practicable.

Additionally, under the Contractor Side Deed, the D&C Contractor must deal with TfNSW as if TfNSW were the Companies and SWC under the D&C Deed, and promptly provide all assistance required to TfNSW. The D&C Contractor must continue to perform its obligations under the D&C Deed.

TfNSW may take any urgent action reasonably necessary, including entering and remaining on any land upon where the Companies activities are being carried out, to minimise the risk of harm to:

- the health or safety of persons;
- the Environment;
- any property; or
- the safe operation of the M7.

Any loss suffered or incurred by TfNSW in taking action for a failure by the Companies, or in taking urgent action required because of the wrongful act or omission of the Companies, the SWC, or their Related Parties, will be a debt due and payable by the Companies to TfNSW, up to a capped amount.

14.9 Interim EDC Connection

If the Companies and SWC fail to achieve the required degree of construction progress of the EDC by a specified target date, TfNSW may direct a Change to the Companies requiring the Companies to design and construct the Interim M12 Motorway and Elizabeth Drive Connection. The Change Order will entitle the Companies to claim for Change Costs and an extension of time.

15. Change of control and assignment

The IPD places certain restrictions on TfNSW and the Companies in the event of an assignment or a change of control as outlined below.

15.1 Entitlement to assign

Except as provided for in other Project Documents, TfNSW's prior written consent is required for the Companies (or any Company Group Member or any Partner) to sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with, or encumber its interest in the Project or in any of the Project Documents prior to the date of Integration Completion.

TfNSW may sell, transfer, or assign or otherwise dispose of its interest in the Project to a government entity without the prior written consent of the Companies provided that the transferee is the then-current holder, or simultaneous transferee, of TfNSW interest in the Project Documents.

15.2 Change of Control prior to Integration Completion

The Companies have undertaken that WSO Co's legal and beneficial ownership will not change until the Date of Integration Completion. In addition, prior to the Date of Integration Completion, the Companies must not permit:

- a) any Change of Control of either Company, Partner, the SWC, the Borrower, or
- b) any person who is not an Ultimate Shareholder (or who is an Ultimate Shareholder but managed by an Ultimate Shareholder who does not have an economic interest in the shares to acquire shares, units or an economic interest in any Holding Company, either Company, any Partner, the SWC or the Borrower,

without TfNSW's prior written consent (such consent not to be unreasonably withheld).

A Change of Control includes acquiring any shares, units or economic interests in any project entity (other than an Ultimate Shareholder) but excludes specified "Permitted Dealings".

TfNSW will be deemed to be acting reasonably in withholding consent if:

- c) the Companies have not provided full details of the proposed change and any further information reasonably requested by TfNSW; or
- d) the new entity does not comply with anti-money laundering laws or anti-terrorism laws, or does not demonstrate that it is a fit and proper person, and is of sufficient financial standing to meet its funding obligations for the project.

16. Handover Obligations

The Final Handover obligations in the M7 Project Deed were not amended as part of the Project. As such, the Final Handover obligations applicable to the M7 Motorway under the M7 Project Deed will apply to the Retained Works and EDC Ramps as these works will comprise part of the M7 Motorway on Integration Completion and get handed over to TfNSW at the end of the M7 concession term.

17. Guarantees and security arrangements

17.1 State Works security

TfNSW has entered into the 'State Works Security' with the SWC to secure the performance of SWC's obligations to TfNSW under the SWD and other Project Documents.

17.2 Guarantees given by the Crown

The pre-existing *Government Sector Finance Act 2018* (NSW) Guarantee (originally granted under the *Public Authorities (Financial Arrangements) Act 1987* (NSW)) for the M7 remains on foot. This Guarantee was not amended for the Project, consistent with the NSW PPP Guidelines.

17.3 Companies' security

The Companies must provide to TfNSW three unconditional undertakings in the required form and issued by a bank licenced in Australia with the required credit rating.

TfNSW may have recourse to any security bonds provided (or the proceeds of any security bond, if it has been converted into cash) at any time TfNSW has a bona fide claim against the Companies.

18. Other key elements of the contractual arrangements

The Companies must effect and maintain delivery and operations insurances for amounts and deductibles, and for the duration, as set out in the Project Documents. The Companies must arrange insurances for Transit, Workers Compensation, Motor Vehicle and Construction Plant and Equipment.

18.1 Dispute Resolution

The IPD requires that all Disputes that arise between TfNSW and the Companies be resolved in line with the Dispute Resolution Procedure which includes three tiers of escalation, Executive Steering Group, expert determination and arbitration / litigation.

Key objectives of the Dispute Resolution Procedure and the establishment of the Executive Steering Group are to:

- enable the parties to identify issues early; and
- provide opportunities for the parties to resolve the issues through discussions.

Throughout the Dispute Resolution Procedure, and despite the existence of any Dispute, the parties must continue to perform all of their obligations under the Project Documents.

18.2 Modification of the Planning Approval

If an amendment or modification to the M7 Planning Approval or M12 Planning Approval is required for the execution of a Change, the Companies must:

- d) carry out and provide to TfNSW all surveys, investigations, reports and studies reasonably requested by TfNSW's Representative, to the standard reasonably directed by TfNSW's Representative, and within the time reasonably directed by TfNSW's Representative; and
- e) provide whatever other assistance and information TfNSW reasonably requests to allow it to obtain the necessary amendments or modifications to the relevant Planning Approval. If the modification is proposed by TfNSW, the Companies will only be obligated to prepare modification application documents where Transport directs a Change, entitling the Companies to claim Change Costs and an extension of time.



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