

Toowoomba Second Range Crossing

Project Deed - Deed of Variation

The State of Queensland
State

Nexus Infrastructure Pty Ltd ACN 600 535 180 in its own right and as trustee for the
Nexus Infrastructure Unit Trust

Project Co

Contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	2
2.	Amendments to Project Deed	3
2.1	Relevant Events not Unavailability Events	3
2.2	No effect on future Unavailability Events	4
2.3	Ratification and confirmation of the Project Deed	4
3.	Current Claim Documents	4
4.	Disputes	4
5.	Notices.....	5
6.	Miscellaneous	5
6.1	Governing law	5
6.2	Further acts	5
6.3	Expenses	5
6.4	Counterparts	5
6.5	No Representation or reliance	5

Deed of variation

Date 22 May 2020

Parties The State of Queensland (State)

Nexus Infrastructure Pty Ltd ACN 600 535 180 in its own right and as trustee for the Nexus Infrastructure Unit Trust (Project Co)

Background

- A. The State and Project Co are parties to the Project Deed.
- B. The parties have agreed that for the purposes of the definition of Unavailability Event in the Project Deed, the Excluded Events will not be Unavailability Events.
- C. The parties have agreed to withdraw the Current QSP Documents and that a new Payment Claim will be submitted by Project Co reflecting the amendments contemplated by this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

- (a) any word, expression, reference or term used in this deed which is defined in the Project Deed and is not specifically defined in this deed shall, unless the context otherwise indicates, have in this deed the same meaning as in the Project Deed;
- (b) each term set out below has the meaning given to it in this deed:

Current QSP Documents means each of the:

- (a) Payment Claim issued by Project Co to the State on 16 April 2020,
- (b) Payment Statement issued by the State to Project Co on 30 April 2020; and
- (c) Tax Invoice issued by Project Co to the State on 30 April 2020.

Effective Date means the date of this deed.

Excluded Events means:

- (a) the Unavailability Event that occurred on 11 to 16 February 2020 as a result of Project Co closing a lane next to Cut 24 when it sustained damage during heavy rainfall in February 2020 to enable a geotechnical assessment to be undertaken safely noted in the Current QSP Documents as having a total Abatement value of \$152,474.47;
- (b) the Unavailability Event that occurred on 17-18 February, 19-20 February, 23-29 February, 10-14 March, 16-20 March, 27-28 March and 30-31 March 2020 as a result of a lane closure to undertake repair works between Cut 24 and Cut 21 noted

in the Current QSP Documents as having a total Abatement value of \$124,806.40;
and

- (c) the Unavailability Event that occurred on 24 February, 27-28 February, 12 -13 March and 19-20 March 2020 as a result of the closure of lanes at Six Mile Creek to provide for a protected U-turn facility for trucks noted in the Current QSP Documents as having a total Abatement value of \$136,651.72.

Project Deed means the document titled "Project Deed - Toowoomba Second Range Crossing" between the State and Project Co dated 21 August 2015.

1.2 Interpretation

In this deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to a party, clause or Schedule is a reference to a party, clause or Schedule of or to this deed;
- (d) **(Deed as amended)**: a reference to this deed or to any other deed, agreement, document or instrument includes a reference to this deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("include")**: "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Brisbane, Australia;

- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by two or more persons binds or benefits them jointly and severally;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another Entity, this deed is deemed to refer to that other Entity; or
 - (ii) ceases to exist, this deed is deemed to refer to that new Entity which serves substantially the same purpose or object as the former Entity;
- (r) **(remedy)**: the use of the words "remedy", "cured" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Amendments to Project Deed

2.1 Relevant Events not Unavailability Events

The parties agree that on and from the Effective Date, the Project Deed is amended as follows:

- (a) the definition of Unavailability Event in section 1 of the Payment Schedule is deleted and replaced with:

"Unavailability Event means any Unavailability:

 - (a) caused or contributed to by an act or omission of Project Co or any of its Associates; or
 - (b) not caused or contributed to by an act or omission of Project Co or any of its Associates but which has not been rectified by Project Co within the relevant Rectification Period,

other than an Excluded Event."
- (b) inserting into section 1 of the Payment Schedule (in alphabetical order) the following definition:

"Excluded Events means:

 - (a) the Unavailability Event that occurred on 11 to 16 February 2020 as a result of Project Co closing a lane next to Cut 24 when it sustained damage during heavy rainfall in February 2020 to enable a geotechnical assessment to be undertaken safely;

- (b) the Unavailability Event that occurred on 17-18 February, 19-20 February, 23-29 February, 10-14 March, 16-20 March, 27-28 March and 30-31 March 2020 as a result of a lane closure to undertake repair works between Cut 24 and Cut 21; and
- (c) the Unavailability Event that occurred on 24 February, 27-28 February, 12 -13 March and 19-20 March 2020 as a result of the closure of lanes at Six Mile Creek to provide for a protected U-turn facility for trucks."

2.2 No effect on future Unavailability Events

Project Co acknowledges and agrees that the State has, without having any compulsion to do so and at the request of Project Co, agreed to the amendment in clause 2.1 as a one-time concession and nothing in this deed will have the effect of creating a precedent for the calculation of any future Unavailability Abatements that might apply to the calculation of future Quarterly Service Payments.

2.3 Ratification and confirmation of the Project Deed

The State and Project Co acknowledge and agree that:

- (a) as from the date of execution of this deed, the Project Deed will be read and construed subject to the terms and conditions of this deed;
- (b) if there is any conflict, apparent conflict, discrepancy, ambiguity or inconsistency (**Inconsistency**) between the terms and conditions of the Project Deed and those of this deed then this deed will, to the extent of the Inconsistency, prevail;
- (c) this deed is supplemental to the Project Deed and, except as otherwise expressly provided to the contrary, the Project Deed is expressly ratified and confirmed; and
- (d) this deed does not have the effect of terminating the Project Deed.

3. Current Claim Documents

- (a) On and from the Effective Date, each party:
 - (i) withdraws the Current QSP Document issued by it; and
 - (ii) confirms that it has no objection to any other party withdrawing any Current QSP Document.
- (b) Project Co agrees to issue a new Payment Claim in respect of the Quarterly Service Payment the subject of the Current QSP Documents (**Reissued Payment Claim**).
- (c) The State agrees to consider the Reissued Payment Claim and respond to Project Co in accordance with clause 28.4 of the Project Deed, taking into account the amendments made by this deed.

4. Disputes

Any disputes arising between the State and Project Co concerning the subject of matter of this deed will be dealt with in accordance with clause 41 of the Project Deed.

5. Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this deed will be provided in accordance with clause 57 (Notices and bar to Claims) of the Project Deed.

6. Miscellaneous

6.1 Governing law

- (a) **(Governing Law):** This deed is governed by, and must be construed according to, the Laws of Queensland, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 41 to 42 of the Project Deed, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from the courts of Queensland, with respect to any proceedings which may be brought in connection with this deed.

6.2 Further acts

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to both parties) required by Law or reasonably requested by any other party to give effect to this deed.

6.3 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed.

6.4 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

6.5 No Representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

Executed as a deed.

State

Signed, sealed and delivered for and on behalf of the **State of Queensland** by **Neil Scales**, chief executive, Department of Transport and Main Roads in the presence of:



Signature of witness



Full name of witness



Signature

Project Co

Executed by Nexus Infrastructure Pty Ltd ACN 600 535 180 in its own right and as trustee for the Nexus Infrastructure Unit Trust in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed as a deed.

State

Signed, sealed and delivered for and on behalf of the **State of Queensland** by **Neil Scales**, chief executive, Department of Transport and Main Roads in the presence of:

Signature of witness

Signature

Full name of witness

Project Co


Executed by **Nexus Infrastructure Pty Ltd ACN 600 535 180** in its own right and as trustee for the **Nexus Infrastructure Unit Trust** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

SIMON HATCHER

Full name of director



Signature of company secretary/director

ALFONSO BORRONI

Full name of company secretary/director