



Toowoomba Second Range Crossing Project Deed – Deed of Variation (Fourth Close-Out Extension)

The State of Queensland

and

Nexus Infrastructure Pty Ltd

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

2021

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THIS DEED is made on 22 January 2021

BETWEEN:

- (1) **The State of Queensland** (the **State**); and
- (2) **Nexus Infrastructure Pty Ltd** ACN 600 535 180 in its own right and as trustee for the Nexus Infrastructure Unit Trust (the **Project Co**).

RECITALS:

- (A) The State and Project Co are parties to the Project Deed.
- (B) On 30 April 2020, the parties entered into the Deed of Variation (First Close-Out Extension) under which they agreed to extend the Date for Close-Out to 31 July 2020.
- (C) On 31 July 2020, the parties entered into the Deed of Variation (Second Close-Out Extension) under which they agreed to extend the Date for Close-Out to 30 November 2020.
- (D) On 30 November 2020, the parties entered into the Deed of Variation (Third Close-Out Extension) under which they agreed to extend the Date for Close-Out to 25 January 2021.
- (E) The parties desire to further extend the Date for Close-Out by amending the definition of the Date for Close-Out in accordance with this deed.

THE PARTIES AGREE AS FOLLOWS:

1. 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; and
- (b) each term set out below has the meaning given to it in this deed:

Deed of Variation (First Close-Out Extension) means the Deed of Variation between the State and Project Co dated 30 April 2020.

Deed of Variation (Second Close-Out Extension) means the Deed of Variation between the State and Project Co dated 31 July 2020.

Deed of Variation (Third Close-Out Extension) means the Deed of Variation between the State and Project Co dated 30 November 2020.

Effective Date means the date of this deed.

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 **Amendments to Project Deed**

On and from the Effective Date, the definition of Date for Close-Out in clause 1.1 of the Project Deed is deleted in its entirety and replaced with the following:

"Date for Close Out means 23 April 2021."

2.2 **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.

2.2A **Effect of this deed on the Deed of Variation (Third Close-Out Extension)**

- (a) The parties acknowledge that, subject to clause 2.2A(b), the Deed of Variation (Third Close-Out Extension) has been entered into and continues to apply according to its terms.
- (b) The parties agree that on and from the Effective Date, clause 2.1 of the Deed of Variation (Third Close-Out Extension):
 - (i) is superseded by clause 2.1 of this deed; and
 - (ii) will be of no further force and effect.

2.3 **No admission in respect of any Claim**

Project Co acknowledges and agrees that:

- (a) the State has, without having any compulsion to do so and at the request of Project Co, agreed to amend the Date for Close-Out as contemplated by this deed to

allow Project Co more time to achieve Close-Out on or before the Date for Close-Out;

- (b) Project Co may not rely on the fact that the State has agreed to amend the Date for Close-Out in accordance with this deed as evidence that the State has in any way expressly or impliedly agreed or admitted that Project Co is entitled to any extensions of time or any other remedy under the Project Deed;
- (c) Project Co releases the State from any Liability the State has, or but for this deed, would have had, for a Compensable Extension Event affecting the achievement of Close-Out occurring on or before the date of this deed (no Compensable Extension Event or Liability being admitted by the State); and
- (d) the State has no Liability to Project Co, and Project Co will not bring any Claim against the State, arising out of, relating to, or in connection with the extension of the Date for Close Out effected by this deed.

2.4 Indemnity

- (a) Project Co indemnifies the State against any expenses, costs (including legal costs) or losses arising out of, relating to or in connection with:
 - (i) Project Co acting contrary to clause 2.3(b), 2.3(c) or 2.3(d); or
 - (ii) claims made against the State by third parties arising out of, relating to or in connection with the extension of the Date for Close-Out effected by this deed.
- (b) The indemnity provided by Project Co in clause 2.4(a) is a continuing obligation, separate and independent from the other obligations of this deed and survives termination, completion or expiration of this deed.
- (c) It is not necessary for the State to incur expense or to make any payment before enforcing the right of indemnity conferred by this deed.
- (d) Project Co shall pay to the State on demand by the State the amount of any indemnity under this clause.

2.5 Bar to further proceedings

This deed may be pleaded as a full and complete defence by either party to any action, suit, or proceedings commenced, continued or taken by the other party or on its behalf in relation to any of the matters referred to in this deed.

3. 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.

4. 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.

5. MISCELLANEOUS

5.1 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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:

Leslie Stuart Dunn, State Representative,
Department of Transport and Main Roads in the
presence of:


Signature of witness


Signature

MICHELLE LILLIAN AMBACHTSHEER
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

Signature of company secretary/director

Full name of 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:

Leslie Stuart Dunn, State Representative,
Department of Transport and Main Roads in the
presence of:

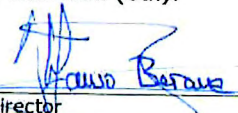
Signature of witness

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

ALFONSO BARRIOS NIGUEZ

Full name of director



Signature of company secretary/director

SIMON JOHN HATCHER

Full name of company secretary/director