

## Schedule 26 – Subsequent NCA Works Approval Process Schedule

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### 1. Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in or for the purposes of this Agreement and:

**Excluded Conditions** means those elements of design packages for which scope risk is allocated to Project Co in Appendix A to this Schedule.

**Final Preliminary Design** has the meaning given to it in SPR Appendix 1.

**Innovative Design Areas** has the meaning given to it in SPR Appendix 1.

**NCA Works Approval Delay** has the meaning given to it in section 3.

**WA Application Fee** means the fee payable to the NCA for assessing the application for a Subsequent NCA Works Approval.

**WA Application Requirement** has the meaning given to it in section 2(f).

**WA Application Requirement Register** has the meaning given to it in section 2(g).

**WA Modification** has the meaning given to it in section 4.

**WA Planning Design** means the design for the relevant Works included in an application for a Subsequent NCA Works Approval.

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### 2. Subsequent NCA Works Approvals application process

- (a) The parties acknowledge that:
  - (i) the NCA granted the NCA Works Approval 1.0 on or about 27 April 2016;
  - (ii) the NCA Works Approval 1.0 is for only a portion of the Works for which NCA approval is required;
  - (iii) the parties are yet to make the applications for the Subsequent NCA Works Approvals; and
  - (iv) this Schedule sets out the process that the parties have agreed to adopt in making the applications for the Subsequent NCA Works Approvals.
- (b) Project Co and the Territory must co-operate and co-ordinate and use all reasonable endeavours to ensure that the applications for Subsequent NCA Works Approvals are prepared and submitted in a timely manner.
- (c) Subject to section 2(b), Project Co must provide all reasonable assistance required by the Territory in relation to the applications for Subsequent NCA Works Approvals, including:
  - (i) preparing draft documents for the Territory to submit to the NCA in connection with each application for a Subsequent NCA Works Approval;

- (ii) preparing the application itself for each Subsequent NCA Works Approval; and
  - (iii) consulting with and attending meetings with the Territory and the NCA in respect of each application for a Subsequent NCA Works Approval.
- (d) Project Co must not consult directly with the NCA in relation to the applications for Subsequent NCA Works Approvals unless:
  - (i) subject to section 2(i)(i)B.1), the Territory has consented to the relevant consultation taking place (such consent not to be unreasonably withheld or delayed); and
  - (ii) Project Co has provided the Territory with at least 2 Business Days' notice of the date and time of the consultation.
- (e) The Territory may attend any consultation between Project Co and the NCA.
- (f) Project Co acknowledges and agrees that from time to time the NCA and the Territory may provide comments on or make conditions or requirements in relation to documents submitted to the NCA in connection with each application for Subsequent NCA Works Approvals prior to or after its submission to the NCA (a **WA Application Requirement**).
- (g) Project Co must prepare and keep updated separate registers of WA Application Requirements for each application for Subsequent NCA Works Approvals identifying:
  - (i) the party making the WA Application Requirement;
  - (ii) the subject matter of the WA Application Requirement;
  - (iii) whether Project Co considers that the WA Application Requirement is a WA Modification and, if so:
    - A. the reasons for this; and
    - B. an estimate of the time or cost impact (or both) of the WA Application Requirement provided in accordance with and at the time specified in section 2(h)(ii); and
  - (iv) the Territory's response (if any) in relation to the WA Application Requirement,

(each register a **WA Application Requirement Register**).
- (h) Project Co must provide an updated copy of the WA Application Requirement Register to the Territory:
  - (i) within 5 Business Days of receipt of a WA Application Requirement;
  - (ii) where Project Co considers the WA Application Requirement is a WA Modification, within 12 Business Days of Project Co providing an updated copy of the WA Application Requirement Register to the Territory under section 2(h)(i) containing an estimate of the time or cost impact (or both) that Project Co anticipates the WA Application Requirement will have; and
  - (iii) otherwise provide an updated copy of such WA Application Requirement Register every 5 Business Days (or such other

period agreed between the parties, acting reasonably) until the date of issue of the relevant Subsequent NCA Works Approval.

- (i) The Territory must, within 8 Business Days of receipt of the updated WA Application Requirement Register under section 2(h)(ii) including a relevant WA Application Requirement which Project Co has identified as a WA Modification, notify Project Co in writing that either:
  - (i) the Territory consents to Project Co incorporating the WA Application Requirement received into the application for the relevant Subsequent NCA Works Approval, and:
    - A. accepts that the WA Application Requirement is a WA Modification, in which case:
      - 1) the Territory must issue a Modification Order in accordance with the Change Compensation Principles in respect of that WA Modification; and
      - 2) Project Co must update its WA Planning Design to include the WA Application Requirement; or
    - B. does not accept that the WA Application Requirement is a WA Modification, in which case, Project Co must update its WA Planning Design to include the WA Application Requirement and may (but is not obliged to) take either or both of the following actions:
      - 1) engage further with NCA in relation to the WA Application Requirement and, to the extent the NCA withdraws its WA Application Requirement, Project Co may delete it from the relevant WA Application Requirement Register and WA Planning Design; or
      - 2) refer the matter to resolution by the Independent Certifier acting as Independent Expert in accordance with clause 44 of the Agreement; or
  - (ii) the Territory does not consent to the WA Application Requirement, in which case Project Co must not update its WA Planning Design to include the WA Application Requirement unless it is required to do so as a matter of Law.
- (j) If the Territory does not notify Project Co in accordance with section 2(i), the Territory will be deemed to have not consented to the WA Application Requirement, in which case Project Co must not update its WA Planning Design to include the WA Application Requirement unless it is required to do so as a matter of Law.
- (k) Project Co must:
  - (i) ensure that the applications provided to the Territory for submission to the NCA for each Subsequent NCA Works Approval are:

- A. complete, of sufficient quality and include sufficient detail to allow the NCA to issue an approval in respect of the relevant application; and
  - B. subject to the incorporation of any WA Application Requirement consented to by the Territory under section 2(i)(i):
    - 1) consistent with the Design Requirements and the other requirements of the Project Agreement; and
    - 2) in a form and of a quality such that the Subsequent Works Approval issued in accordance with the application will not prevent Project Co from meeting its obligations under the Project Agreement in respect of the Works the subject of the relevant Subsequent NCA Works Approval;
- (ii) include the design for the relevant Works in the application for a Subsequent NCA Works Approval (the **WA Planning Design**);
  - (iii) prepare the relevant WA Planning Design in accordance with Best Industry Practices;
  - (iv) update the WA Planning Design to reflect written comments from the Territory received prior to the date of this Agreement;
  - (v) update the application for the relevant Subsequent NCA Works Approval in accordance with section 2(i);
  - (vi) in respect of an application that relates to Works comprising Utility Infrastructure, include evidence that the relevant parts of the WA Planning Design comply with the requirements of the relevant Utility provider;
  - (vii) in respect of an application that relates to Works comprising an Innovative Design Area, include in that application a WA Planning Design reflecting the Final Preliminary Design that the Territory has notified Project Co meets, or that was determined to have met, the requirements of section 22.2(b)(i) of the Design Appendix; and
  - (viii) ensure that the application for Subsequent NCA Works Approval complies with the objective requirements of the National Capital Plan to the extent:
    - A. notified to Project Co or its Associates prior to the date of this Agreement; and
    - B. not inconsistent with written comments from the Territory or the NCA received prior to the date of this Agreement,

**(Completed Application).**

- (l) The parties acknowledge that Project Co may prepare one or more applications for Subsequent NCA Works Approval provided that the total number of applications is acceptable to the Territory (acting reasonably) having regard to the individual scope of each application.

- (m) Once Project Co is satisfied that an application for Subsequent NCA Works Approval meets the requirements of section 2(k), and subject to section 2(p), it must inform the Territory accordingly and provide the application to the Territory.
- (n) Subject to the Completed Application being in accordance with the requirements set out in section 2(k), the Territory will then submit the Completed Application to the NCA for the Subsequent NCA Works Approval and pay the WA Application Fee for that Subsequent NCA Works Approval.
- (o) Project Co may not proceed with Works the subject of an application for Subsequent NCA Works Approval until such time as the relevant Subsequent NCA Works Approval is received by the Territory.
- (p) Project Co must provide an application for a Subsequent NCA Works Approval in relation to Works comprising an Innovative Design Area within a reasonable period of the date on which the Territory notifies Project Co, or it is otherwise determined, that the Final Preliminary Design meets the requirements of section 22.2(b)(i) of the Design Appendix.

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### 3. Delay to WA Approval

If Project Co has provided the Territory with a Completed Application and the relevant Subsequent NCA Works Approval is not granted within **[Not disclosed]** of the submission of the relevant Completed Application by Project Co to the Territory (**NCA Works Approval Delay**), this will be a Compensable Extension Event.

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### 4. WA Modification

If Project Co is required to make a change to the Project Activities or the Works (including a change in cost or programme (or both)):

- (a) to accommodate a WA Application Requirement requested by the NCA where such WA Application Requirement has been consented to by the Territory;
- (b) to accommodate a WA Application Requirement requested by the Territory;
- (c) subject to paragraph (d), in order to comply with a Subsequent NCA Works Approval (including any conditions or requirements attached to that Subsequent NCA Works Approval); or
- (d) as a result of the refusal by the Territory to consent to a WA Application Requirement requested by the NCA (including a deemed failure to consent in accordance with section 2(j)) and including where, following such refusal or deemed refusal by the Territory, the NCA grants a Subsequent NCA Works Approval with such WA Application Requirement as a condition or requirement,

then, other than where:

- (e) in relation to paragraphs (a) and (c), such change is to an Excluded Condition;
- (f) in relation to paragraphs (a) and (c), the relevant WA Application Requirement or requirement or condition of the Subsequent NCA Works Approval:
  - (i) was expressly notified to Project Co in writing prior to the date of this Agreement (other than notification of conditions or requirements or potential conditions or requirements (including by the Territory or NCA) in connection solely with NCA Works

- Approval 1.0 whether prior to or after the grant of NCA Works Approval 1.0 or in notes issued with NCA Works Approval 1.0);
- (ii) was contained or referred to in any Project Document or Project Information as at the date of this Agreement (other than where contained or referred to any Project Document or Project Information solely in connection with NCA Works Approval 1.0);
  - (iii) a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Agreement (provided that the conditions, requirements and notes sought by the NCA will not automatically be deemed to have been reasonably foreseen or anticipated solely because of their inclusion in NCA Works Approval 1.0);
  - (iv) is substantially the same as a Standard in force prior to the date of this Agreement with which Project Co is required to comply under the Territory Project Documents (other than NCA Works Approval 1.0); or
  - (v) is contemplated by, and in substantially the same form as, an Assumed Legislative Amendment; or
- (g) in relation to paragraphs (a), (b) and (c), the relevant WA Application Requirement or requirement or condition of the Subsequent NCA Works Approval:
- (i) is substantially the same as any other requirement with which Project Co was required to comply with under the Territory Project Documents as at the date of this Agreement (other than a requirement set out solely in NCA Works Approval 1.0); or
  - (ii) is a consequence of the Design Development Process (other than where such design development is undertaken in response to the WA Application Requirement),

such change will constitute a **Modification (WA Modification)** and the Territory must issue a Modification Order in accordance with the Change Compensation Principles in respect of that WA Modification.

**Appendix A – Excluded Conditions**

***[Not disclosed]***