

## Term Sheet

<b>Part A – Parties, background and purpose</b>	
<b>1. Parties</b>	<p>Transport for NSW ABN 18 804 239 602 (<b>TfNSW</b>)</p> <p>Inner West Council ABN 19 488 017 987 13 (<b>Council</b>)</p>
<b>2. Background</b>	<p>The Western Harbour Tunnel project works (<b>WHT Project</b>) includes the project's early works (<b>Early Works</b>). The WHT Project will be delivered by TfNSW, in part, in the Council's local government area.</p> <p>To support the construction of the WHT Project, TfNSW proposes to carry out various works which will have both temporary and permanent impacts on certain assets owned or managed by the Council (<b>Interface Works</b>).</p> <p>The Council assets that will be the subject of the Interface Works will include but not be limited to:</p> <ul style="list-style-type: none"> <li>(a) open space areas;</li> <li>(b) local roads and parking;</li> <li>(c) pedestrian, cycle and shared paths or bridges; and</li> <li>(d) urban design and landscaping,</li> </ul> <p>(together the <b>Affected Assets</b>).</p> <p>Annexure 1 of this document contains an indicative list of Affected Assets. The indicative list of Affected Assets and impacts remains subject to further development and consideration as the design for the WHT Project is progressed.</p> <p>The parties agree that it will be beneficial to both parties to enter into an interface agreement for the purposes of the WHT Project, including to capture how the parties will consult and work together, to clarify issues affecting the Council and to manage the handover, maintenance, modification and hand-back of Council owned or managed assets affected by the project.</p> <p>In addition to an interface agreement, the parties anticipate entering into a separate agreement pursuant to which TfNSW will assist with funding internal Council resources needed to address increased workflow due to the WHT project.</p>
<b>3. Purpose of this Term Sheet</b>	<p>The parties have entered into this Term Sheet to set out proposed principles for developing an interface agreement in relation to the WHT Project.</p>

	<p>These include terms:</p> <ul style="list-style-type: none"> <li>(a) regarding the timeline to be followed by TfNSW and the Council;</li> <li>(b) on which communication and consultation between the parties will be managed;</li> <li>(c) on which temporary or permanent construction impacts will be managed on the local roads;</li> <li>(d) on which of the design of the Interface Works will be reviewed by Council;</li> <li>(e) on which the parties intend to enter into an Interface Agreement; and</li> <li>(f) which will address other relevant matters arising from the interface between the TfNSW and the Council.</li> </ul>
<b>4. Planning approval</b>	<p>TfNSW has been granted approval (<b>Planning Approval</b>) by the NSW Minister for Planning and Public Spaces under section 5.19 of the EP&amp;A Act dated 21 January 2021 in respect of the Western Harbour Tunnel (WHT) &amp; Warringah Freeway Upgrade (WFU) project (SSI #8863). A copy of the approval and supporting documents is located on the NSW Department of Planning, Industry and Environment's Major Project website <a href="https://www.planningportal.nsw.gov.au/major-projects">https://www.planningportal.nsw.gov.au/major-projects</a></p> <p>TfNSW will comply with its obligations under the Planning Approval.</p>
<b>5. Roads authority powers</b>	<p>In consultation with the Council, TfNSW intends to:</p> <ul style="list-style-type: none"> <li>(a) exercise its powers as roads authority under the <i>Roads Act 1993</i> (NSW) to undertake elements of the WHT Project; and</li> <li>(b) take into account the Council's interests in relation to the alteration of local roads and other road works by complying with the processes set out at item 16 when exercising such powers.</li> </ul>
<b>Part B – Temporary and permanent impacts to the Inner West Council</b>	
<b>6. Acquisition and Handback of Council managed or owned land</b>	<p>Access to Council owned or managed land for the purpose of carrying out Interface Works will be procured by either TfNSW exercising its rights under the <i>Roads Act 1993</i> (NSW) or by way of compulsory acquisition (temporary or permanent, as required) of land or property rights under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).</p> <p>The parties will work together to develop the handback conditions for Council owned or managed land that is required on a temporary basis for the WHT Project.</p>
<b>7. Management of construction support sites and construction impacts</b>	<ul style="list-style-type: none"> <li>(a) The WHT Project construction, along with the construction sites, will have impacts to the surrounding community and environment, and the Affected Assets.</li> </ul>

	<p>(b) Impacts to the surrounding community and environment, such as noise, dust, vibration and lighting will be managed in accordance with the Planning Approval.</p> <p>(c) Council acknowledges that construction impacts may include:</p> <ul style="list-style-type: none"> <li>(i) temporary or permanent removal of metered and unmetered parking on local roads;</li> <li>(ii) temporary local road closure including detours, adjustments and speed zoning during construction which will be detailed in Traffic Management Plans and Traffic Control Plans; and</li> <li>(iii) temporary active transport network (including pedestrian, cycle and shared paths) adjustments, closures and detours which will be detailed in the relevant Management Plans.</li> </ul> <p>(d) If any Affected Assets are not permanently adjusted in the final configuration, any temporary change will be reinstated on a like for like basis unless agreed otherwise.</p> <p>(e) It is intended that temporary adjustments to Affected Assets will provide for traffic, cyclist and pedestrian access and connectivity to be maintained unless agreed otherwise.</p> <p>(f) The Council will be a member of any relevant Traffic and Transport Liaison Group formed by the contractor or contractors engaged by TfNSW to carry out the WHT Project (<b>WHT Contractor</b>), where it will be able to discuss all traffic, transport (including cyclist and pedestrian access) and road safety matters associated with the WHT Contractor's activities. Matters for discussion may include temporary local road closures, reconfigurations, speed zone reductions and detours.</p> <p>(g) The Council will be invited to participate in other, project related forums.</p>
<p><b>8. Management of permanent adjustment to the Council managed or owned Assets</b></p>	<p>For all Affected Assets that require permanent adjustment in the final configuration and will be handed back to Council, the Interface Agreement will detail the design review process, including the review timeframes and approval mechanisms (see item 16).</p> <p>The parties acknowledge that:</p> <ul style="list-style-type: none"> <li>(a) the design for permanent adjustments to Affected Assets to be handed back to Council will be subject to the design review processes and/or forums set out in the Planning Approval;</li> <li>(b) under the Planning Approval, Council will participate in a number of such processes and/or forums; and</li> <li>(c) Council will identify its requirements prior to the commencement of the design development phase,</li> </ul>

	including in connection with urban design and landscape for open spaces through those processes and forums.
<b>9. Reinstatement of parks, roads and pedestrian or shared pathways.</b>	<p>To deliver the WHT Project, TfNSW will need to remove and reinstate portions of parks, roads and cycleways.</p> <p>The following adjustments are contemplated:</p> <ul style="list-style-type: none"> <li>(a) Yurulbin Park will be temporarily converted to a construction work area and staging post for workers and facilitate spoil removal by barge.</li> <li>(b) The car park at end of Louisa Road will be temporarily closed.</li> <li>(c) Birchgrove Wharf will be temporarily closed with a replacement public transport service of comparable service provided during construction.</li> <li>(d) TfNSW will construct cut and cover access to the tunnel on a part of the Rozelle Interchange Construction site. The site will be reconfigured into public parkland.</li> <li>(e) Victoria Road and Wellington Street Intersection, Rozelle will be a temporarily modified intersection with the addition of Victoria Road construction site access.</li> <li>(f) Victoria Road construction site will include a temporary tunnel access under Victoria Road.</li> <li>(g) The Crescent and City West Link intersection will be permanently upgraded.</li> </ul>
<b>10. Indicative timeframe</b>	<p>Subject to planning and procurement timeframes, the parties anticipate the following indicative project timelines:</p> <ul style="list-style-type: none"> <li>(a) Early Works construction commencement – Q4 2021</li> <li>(b) Main Works - Transport is managing the procurement of the contractors for the design and construction of the Western Harbour Tunnel. This process is now underway. The contract award is expected late 2022 and the project is expected to comprise around a five year construction program.</li> </ul>
<b>11. Site investigations and testing</b>	The Council will provide TfNSW with access to the Council managed and owned land to enable TfNSW to undertake site investigations and testing in connection with the WHT Project.
<b>12. Haulage routes</b>	<p>TfNSW will comply with all relevant conditions of the Planning Approval relating to spoil haulage routes, which may require TfNSW to:</p> <ul style="list-style-type: none"> <li>(a) prepare a road condition report prior to relevant roads being used as haulage routes;</li> <li>(b) notify the Council when the relevant roads are no longer required as haulage routes for the WHT Project and prepare a dilapidation report for the affected roads; and</li> <li>(c) rectify any damage identified in the dilapidation survey as a result of the use of the relevant roads as haulage routes or compensate the Council for the equivalent repair costs.</li> </ul>

	<p>Requirements for the condition reports, dilapidation survey and damage determination process will be in accordance with the requirements of the Planning Approval and specified in the Interface Agreement.</p> <p>Rectification of any damage identified in the dilapidation survey must be to the equivalent condition described in the initial road condition report, excluding normal wear and tear that could have occurred on the haulage route had the WHT Project not been delivered.</p> <p>The Interface Agreement will attach a plan to give an indication which roads TfNSW anticipates will be used as the main spoil haulage routes. This plan will be finalised based on proposals made by the WHT Contractor, with limits of maintenance responsibilities to be defined during the development of the Interface Agreement.</p>
<b>13. Council buildings and structures</b>	<p>To the extent any Council buildings and structures (other than the Affected Assets) are identified as being impacted by the WHT Project, the parties acknowledge that TfNSW will take any steps required by the Planning Approval (including to undertake condition surveys) to ensure any such impacts are properly mitigated.</p>
<b><i>Part C – Design and construction of the Interface Works</i></b>	
<b>14. Categories of Interface Works</b>	<p>For the purpose of the Interface Agreement, the Interface Works will fall within two main categories as follows:</p> <p>(a) <b>Road Works:</b> being temporary or permanent works that will impact upon the surface of any Council road including works impacting on any footpath, cycle path, shared path, bridges, pavement, nature strip, road surface works, kerb, gutter, drainage works and any other work or structure for the roadway or footway to the extent located in the road corridor; and</p> <p>(b) <b>Public Area Works:</b> being temporary or permanent works that will impact upon public areas owned or managed by the Council and which do not have a third party interest.</p> <p>More detailed descriptions of the anticipated scope of these works will be attached to the Interface Agreement. Council will be consulted and be given opportunities to input into the development of the scopes of work and design solutions in connection with Affected Assets to be handed back to the Council, in each case in accordance with the Planning Approval.</p>
<b>15. Independent Certifier</b>	<p>An Independent Certifier will be engaged to certify the design and completion of the WHT Project including Road Works and Public Area Works. The Independent Certifier is also responsible for the management of all design comments by all reviewers including the Council.</p> <p>The Independent Certifier will be the same person(s) appointed as the independent certifier under TfNSW's project</p>

	<p>contracts for the WHT Project. The Council acknowledges that there may be more than one Independent Certifier appointed in connection with the WHT Project, which may in turn result in different Independent Certifiers certifying various aspects of the Interface Works (providing that only one Independent Certifier will be responsible for certifying a particular part of the Interface Works).</p>
<p><b>16. Design review by Council</b></p>	<p>(a) TfNSW or the WHT Contractor will, prior to undertaking any part of Interface Works in connection with Affected Assets being handed back to the Council:</p> <ul style="list-style-type: none"> <li>(i) develop the design documentation for the relevant Interface Works (<b>Design Documentation</b>) in accordance with the requirements of the Planning Approval; and</li> <li>(ii) provide the Design Documentation to the Council for its review and comment at an appropriate stage of the development of such documentation,</li> </ul> <p>provided that TfNSW or the WHT Contractor must act reasonably with regard to the volume of the Design Documentation provided to the Council for review on a progressive basis.</p> <p>(b) Within 15 business days of receipt of the Design Documentation, the Council may:</p> <ul style="list-style-type: none"> <li>(i) issue a "notice of non-objection" to the Design Documentation; or</li> <li>(ii) comment on the Design Documentation to the extent that in the opinion of the Council, acting reasonably, the Design Documentation does not comply with Council's requirements as notified to TfNSW and/or the requirements of the Planning Approval.</li> </ul> <p>(c) If the Council does not comment on the Design Documentation within 15 business days of receipt of the Design Documentation, then Council will be deemed to have issued a "notice of non-objection" to the Design Documentation.</p> <p>(d) If the Council comments on the Design Documentation in accordance with paragraph (b)(ii), and those comments are accepted by the Independent Certifier, TfNSW or the WHT Contractor must address the Council's comments to the satisfaction of the Independent Certifier and amend the Design Documentation accordingly.</p> <p>(e) If the Independent Certifier does not accept the comments or part of the comments made by Council, the Independent Certifier must detail reasons why the Independent Certifier did not accept each such comment</p>

	<p>with reference to the relevant requirements of the Planning Approval.</p> <p>(f) The Design Documentation will be certified by the Independent Certifier.</p> <p>(g) TfNSW or the WHT Contractor will ensure that, unless otherwise agreed, TfNSW or the WHT Contractor does not use any Design Documentation for construction purposes unless it has been certified by the Independent Certifier.</p> <p>(h) TfNSW or the WHT Contractor will ensure if the Council has commented on the Design Documentation and those comments have been accepted by the Independent Certifier in accordance with paragraph (d), that the Independent Certifier does not certify the Design Documentation unless TfNSW or the WHT Contractor has addressed the Council's comments to the satisfaction of the Independent Certifier and amended the Design Documentation accordingly.</p> <p>(i) If, following the certification of any Design Documentation by the Independent Certifier, there is a material change to such Design Documentation, TfNSW or the WHT Contractor must submit the revised Design Documentation to the Council and the process described in this Item 16 will reapply to such revised Design Documentation.</p>
<b>17. Completion and handover</b>	<p>The Council will be entitled to participate in the pre-completion inspection regime for Interface Works in connection with Affected Assets being handed back to the Council. The Council will be entitled to provide comments to the Independent Certifier, which must take those comments into account when determining whether the works have achieved practical completion.</p> <p>Completion of those works will be certified by the Independent Certifier.</p> <p>Minor defects which do not prevent a package of Interface Works from being used by the Council for its intended purpose will not prevent Completion.</p> <p>Upon the achievement of Completion the relevant works will be handed over to the Council who will then become responsible for care, control and maintenance.</p>
<b>18. Defects correction periods</b>	<p>Any permanent adjustments to Affected Assets which are handed back to the Council will have a defects correction period of 12 months commencing on the date of completion of the relevant package of works.</p>
<b>19. Heritage requirements</b>	<p>In relation to any Affected Assets which are heritage listed, the Council will be required to:</p> <p>(a) cooperate with TfNSW in relation to any element of the WHT Project which may impact upon heritage assets within the Council area;</p>

	<p>(b) provide assistance to TfNSW (as reasonably required) in relation to any heritage listed Affected Assets; and</p> <p>(c) cooperate with TfNSW in connection with any dealings it may have with the NSW Office of Environment and Heritage.</p> <p>It is also acknowledged that, as the WHT Project is designated as State Significant Infrastructure, approval will not be required from the NSW Office of Environment in relation to Interface Works which impact upon Affected Assets listed on the State Heritage Register.</p>
<b>20. Other matters to be addressed in the Interface Agreement</b>	<p>The parties acknowledge the Interface Agreement is expected to contemplate other matters arising out of the interface between the Council and the WHT Project, including:</p> <ul style="list-style-type: none"> <li>• each party's roles and responsibilities;</li> <li>• establishment of a relevant governance forum;</li> <li>• workplace Health and Safety and other safety matters;</li> <li>• liability and insurance;</li> <li>• council's participation in consultation forums as contemplated by the Planning Approval; and</li> <li>• dispute resolution.</li> </ul>
<b>Part D – Costs</b>	
<b>21. Reimbursable costs</b>	<p>TfNSW will reimburse the Council for:</p> <p>(a) the third party costs reasonably incurred by Council in undertaking the design review and approvals of the Affected Assets in accordance with Part C of this Term Sheet; and</p> <p>(b) the reasonable legal costs incurred by Council in reviewing and executing the Interface Agreement.</p>
<b>22. Cost of undertaking works</b>	<p>TfNSW will bear the cost of any works which are reasonably required to be undertaken on the Affected Assets to enable the delivery of the WHT Project.</p>
<b>23. Consequential loss</b>	<p>TfNSW will not be liable to the Council for any "consequential loss" which arises out of, or in connection with, the Interface Works or any act or omission of TfNSW.</p> <p>"Consequential loss" will include loss of income, revenue, profit, financial opportunity, business, or loss of business opportunity, contract, goodwill, use or production (whether the loss is direct or indirect) or direct or indirect financing costs.</p>
<b>Part E - General</b>	
<b>24. No contract</b>	<p>The parties agree that:</p> <p>(a) the parties are not bound by this Term Sheet (other than by items 1, 21, 22, 23 and 24 of this Term Sheet); and</p> <p>(b) subject to paragraph (a) above, there will be no agreement between the parties in relation to the matters the subject of this Term Sheet until those matters are documented in a binding agreement between the parties.</p>



**Signed by Transport for NSW**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Date

**Signed by Inner West Council**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Date

## ANNEXURE 1

### Indicative list of Affected Assets

Affected Assets	
Road or Open Space	Locality
Yurulbin Park	Birchgrove
Victoria Road and Wellington Street intersection	Rozelle
Louisa Road	Birchgrove
The Crescent and City West Link	Rozelle & Lilyfield