

Annexure F

**Amended and restated Exhibit C to the M2 Motorway Project Deed - Annexed
Trust Concurrent Lease**



Annexure F - Amended and restated Exhibit C to the M2 Motorway Project Deed

M2 Motorway

**EXHIBIT C TO
PROJECT DEED
as at the date of the M2 Upgrade Project Deed**

**ANNEXED TRUST
CONCURRENT LEASE**

This is Exhibit C to the M2 Motorway Project Deed between the Roads and Traffic Authority of New South Wales, The Minister for Transport and Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the Second in right of the State of New South Wales, The Hills Motorway Limited and Hills Motorway Management Limited as trustee of the Trust.

M2 Motorway

TRUST
CONCURRENT
LEASE

as at the date of the M2 Upgrade Project Deed

between

ROADS AND TRAFFIC AUTHORITY
OF NEW SOUTH WALES

and

HILLS MOTORWAY MANAGEMENT LIMITED
as trustee of the Trust

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THIS DEED OF LEASE is made on [] between:

1. **ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES**, of Level 8, 101 Miller Street, North Sydney, NSW 2060 (the Lessor); and
2. **HILLS MOTORWAY MANAGEMENT LIMITED (ACN 064 687 645)**, of Level 3, 505 Little Collins Street, Melbourne, VIC 3000 (the Lessee).

RECITAL:

The Lessor agrees to grant the Lessee a concurrent lease over the Company Land in accordance with the terms and conditions contained in this Lease and the Project Deed.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Words and expressions not defined in this Lease shall have the same meaning as the words and expressions defined in the Project Deed except that:

Base Rent is the amount of \$1.4 million per annum as that amount is varied from time to time under this Lease.

Company Land is the land details of which are set out in Schedule A annexed to this Lease.

Concurrent Lease Term is the period beginning on the M2 Motorway Commencement Date and ending on the forty fifth anniversary of the M2 Motorway Commencement Date unless one of the following events occurs:

- (a) if the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16.5 per cent per annum during the period from the M2 Motorway Commencement Date to the thirty sixth anniversary of that date, the term of this Lease will end (at the option of the Lessor) on the thirty sixth anniversary of the M2 Motorway Commencement Date;
- (b) if paragraph (a) (does not apply and the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16 per cent per annum during the period from the M2 Motorway Commencement Date to the thirty ninth anniversary of that date, the term of this Lease will end (at the option of the Lessor) on the thirty ninth anniversary of the M2 Motorway Commencement Date;
or
- (c) if neither paragraph (a) nor (b) apply and the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16 per cent per annum during the period from the M2 Motorway Commencement Date to the forty second anniversary of that date, the term of this Lease will end (at the option of the Lessor) on the forty second anniversary of the M2 Motorway Commencement Date.

Equity Return Date is the date on or by which the Company and the Lessee in aggregate receive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return of a minimum of 12.25 percent per annum.

Equity Return Year is each of the periods commencing on the Equity Return Date and terminating on the next 30 June, each subsequent period of 12 months up to the last 30 June before the Note Payment Date and the period from the last 1 July before the Note Payment Date to the Note Payment Date.

Incentive Rent is an amount, if any, equal to:

(4% x Surplus Cash for an Incentive Rent Year) - Base Rent.

Incentive Rent Year is each of the periods commencing on the Note Payment Date and terminating on the next 30 June, each subsequent period of 12 months wholly within the Term and the period from the last 1 July during the Term to the date of termination of the Term.

Index Rent Review Date is each anniversary of 26 May 1997.

Lease is this deed.

Lease Year is each period of 12 months ending at midnight on the day - immediately prior to the anniversary of 26 May 1997.

Lessee is Hills Motorway Management Limited (ACN 064 687 645), its successors and permitted assigns and transferees, agents, employees and invitees.

Lessor is the Roads and Traffic Authority of New South Wales, its successors and its authorised officers and includes its agents, employees and invitees.

Note is a promissory note issued or to be issued under this lease.

Note Payment Date is the date on or by which all Notes are paid in full to the Lessor.

Project Deed is the M2 Motorway Project Deed dated 26 August 1994 between Roads and Traffic Authority of New South Wales, the Minister for Roads, The Hills Motorway Limited and Hills Motorway Management Limited in its capacity as trustee of the Hills Motorway Trust, as amended from time to time.

Promissory Note is a Promissory Note as defined in the Bills of Exchange Act 1909 of the Commonwealth of Australia.

Rent is the Base Rent and the Incentive Rent.

Rent Review is a review of the Base Rent in accordance with clause 3.2.

Surplus Cash in any year is the Company's and the Trustee's cash surplus (calculated before any distribution to the Investors for that year) generated from all sources after payment of:

- (a) operating, maintenance and administration expenses;
- (b) all principal, interest and fees due in respect of the Project Debt; and

(c) payments to maintenance, debt and similar reserves,

but before payment of any Base Rent payable in cash to the Lessor, less an amount equal to:

(d) for the Company, the income tax payable by the Company; and

(e) for the Trustee, the notional income tax that would have been payable on the Trustee's taxable income if the Trustee was taxed as a resident corporate tax payer.

1.2 Governing law

This Lease is governed by and must be construed in accordance with the laws of New South Wales.

1.3 Inconsistency

If there is any inconsistency between this Lease and the Project Deed, the Project Deed shall prevail.

1.4 References

(a) References to clauses and schedules refer to those in this Lease.

(b) A reference to including, includes, or include must be read as if it is followed by (without limitation).

(c) A reference herein to this Lease or to any other deed, agreement, document or instrument includes, respectively, this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time.

1.5 Exclusion of implied covenants and powers

The covenants and powers implied by section 84, section 84A, section 85, section 132, section 133, section 133A and section 133B of the Conveyancing Act, 1919 do not apply to this Lease.

1.6 Lessee's obligations

No representation or approval given by any officer or employee of the Lessor' in respect of the Lessee's obligations under this Lease lessens or otherwise affects the Lessee's obligations under this Lease and does not give rise to any waiver, variation or estoppel.

1.7 Lessor's position as an Authority

(a) Subject to clause 1.7(b), this Lease does not unlawfully restrict or otherwise affect the Lessor's unfettered discretion to use its statutory powers as a public authority.

(b) The Lessor acknowledges that clause 1.7(a) does not limit:

(i) the Lessor's obligations under this Lease; or

(ii) the Lessor's liability to compensate the Lessee for breach of this Lease by the Lessor.

1.8 Severability of provisions

Any provision of this Lease which is prohibited or unenforceable is ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Lease provided that if the effect of such lack of effectiveness would substantially alter the commercial efficacy and intent of the remaining provisions of this Lease such remaining provisions shall also be deemed to be ineffective.

1.9 Lessee's obligations

- (a) The Lessee acknowledges that:
- (i) subject to clause 1.10, it is liable to perform the obligations imposed on it under this deed; and
 - (ii) clause 1.9(b) does not lessen or otherwise affect the Lessee's obligations under this deed.
- (b) The RTA, the Minister and the Company acknowledge that:
- (i) the Lessee is a party to this deed as the trustee of the Trust;
 - (ii) the Lessee will perform or procure the performance of all of the obligations imposed on it under this deed;
 - (iii) the Lessee is responsible for the management and operations of the Trust ;
 - (iv) clause 1.10 applies to any action which the RTA, the Minister or the Company brings against the Lessee if the Lessee fails to perform any of its obligations under this deed, and which results in a breach of clause 1.9(a) by the Lessee.

1.10 Lessee's capacity

- (a) The Lessee enters into this deed in its capacity as trustee of the Trust and in no other capacity. Subject to clause 1.10(f), the RTA, the Minister, and the Company acknowledge that the Lessee's obligations under this deed are incurred by the Lessee solely in its capacity as trustee of the Trust.
- (b) Subject to clause 1.10(f), the Lessee will be liable to pay or satisfy any obligations under this deed only out of the assets of the Trust out of which the Lessee is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (c) Subject to clause 1.10(f), the RTA, the Minister and the Company may enforce their rights against the Lessee arising from non-performance of the Lessee's obligations under this deed only to the extent of the Lessee's right of indemnity out of the assets of the Trust.
- (d) Subject to clause 1.10(f), if the RTA, the Minister or the Company do not recover all money owing to them arising from non-performance of its obligations under this deed by enforcing the rights referred to in clause 1.10(c), they may not seek to recover the shortfall by:
- (i) bringing proceedings against the Lessee in its personal capacity; or

- (ii) applying to have the Lessee wound up or proving in the winding up of the Trustee unless another creditor has initiated proceedings to wind up the Trustee.
- (e) Subject to clause 1.10(f), the RTA, the Minister and the Company waive their rights, and release the Lessee from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - (A) breach by the Lessee of its duties under this deed; and
 - (B) non-performance by the Lessee of its obligations under the Project Documents;
 - (ii) which cannot be paid or satisfied out of the assets of the Trust out of which the Lessee is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (f) The limitations in clauses 1.10(a) to 1.10(e) will not apply in the case of fraud, negligence or breach of trust on the part of the Lessee or a failure on the part of the Lessee to perform its duties properly within the meaning of section 601GA(2) of the Corporations Law in each case, in its capacity as trustee of the Trust.
- (g) This clause does not limit or affect in any way the enforcement of the Securities against the charged property.

1.11 Lessee's capacity

Clause 1.8A of the Project Deed applies to this Lease as if set out in full.

2. CONCURRENT LEASE

2.1 Grant of Lease

Subject to the Company Lease, the Lessor leases the Company Land to the Lessee for the Concurrent Lease Term as a concurrent lease.

2.2 Lessee's covenants

The Lessee covenants with the Lessor to perform all obligations imposed upon the Lessor by the Company Lease and to use its best endeavours to enforce the performance by the Company under the Company Lease of its obligations thereunder.

2.3 Lessee's acknowledgment

The Lessee acknowledges that until the termination of this Lease it is the immediate lessor of the Company Land.

2.4 Lessor may direct

The Lessee agrees that the Lessor may direct the Lessee in writing to enforce all of the lessee's covenants contained in the Company Lease if the lessee under the Company Lease

has failed to observe any of them and the Lessee shall forthwith upon such direction being given by the Lessor enforce the lessee's covenants contained in the Company Lease as directed by the Lessor.

2.5 Amendments to the Company Lease

The Lessee must not agree to any amendments or variations to the Company Lease or waiver of any rights or obligations under the Company Lease without the prior written consent of the Lessor.

3. RENT

3.1 Base Rent

(a) The Lessee must pay in each Lease Year during the Term the Base Rent to the Lessor:

- (i) annually, commencing with the first payment on the 26 May 1997 and then on each anniversary of 26 May 1997;
- (ii) without demand from the Lessor; and
- (iii) without any deduction whatsoever.

(b) The Base Rent is payable:

- (i) until the Equity Return Date, at the Lessee's discretion:
 - (A) in cash; or
 - (B) by a Note issued by the Trustee to the Lessor;
- (ii) on and from the Equity Return Date, in cash.

3.2 Rent Review of Base Rent

On each Index Rent Review Date, the amount of the Base Rent payable under this Lease shall be adjusted to an amount calculated in accordance with the following formula:

$$\text{Amount of Base Rent} = R \times \frac{CM(2)}{CM(1)}$$

Where

- R = The amount which is the Base Rent payable in respect of the Lease Year immediately preceding the Index Rent Review Date.
- CM(2) = The CPI figure for the most recent completed quarter prior to the Index Rent Review Date.
- CM(1) = The CPI figure for the most recent completed quarter prior to the later of the 26 May 1997 and the date of the most recent Rent Review, if any, under this Lease,

but the Base Rent payable in respect of any Lease Year will not be less than the Base Rent payable in respect of the preceding Lease Year in any circumstances, and

- (a) on and from the relevant Index Rent Review Date and until next varied, that amount is the Base Rent payable under this Lease; and
- (b) any adjustment necessary in respect of any underpayment of any Base Rent previously paid by the Lessee must be paid immediately.

3.3 Requirements for Notes

- (a) Each Note must:
 - (i) be a non-interest bearing promissory note;
 - (ii) satisfy the requirements of the Bills of Exchange Act 1909 of the Commonwealth of Australia;
 - (iii) be made by the Trustee and issued to the Lessor;
 - (iv) be in the form or substantially in the form set out in Schedule B;
 - (v) have a face amount equal to the Base Rent for the Lease Year in respect of which the Note is issued.
- (b) The Lessor must not present any Note for payment until the earlier to occur of:
 - (i) the end of the Term; or
 - (ii) the Equity Return Date.
- (c) In each Equity Return Year, the Lessee must apply an amount equal to:

(6% x Surplus Cash) - Base Rent Payable in cash,

for that Equity Return Year in satisfaction or partial satisfaction of its obligations under any outstanding Notes.
- (d) If the obligations of the Lessee under a Note are partly satisfied following application of the amount referred to in clause 3.3(c), the Lessee must, upon request, deliver to the Lessor a new Note with a face value equal to the outstanding undischarged face amount of the original Note. The Lessor will return the original Note to the Lessee for cancellation upon receipt of the new Note. If the Lessee does not deliver a new Note it will remain liable under the original Note for any unpaid amount of the face value.
- (e) Upon payment in full under a Note, the Lessor must mark the Note to show that it has been paid and make it available for collection by the Lessee at the Lessor's offices for the time being.

3.4 Incentive Rent

- (a) In addition to the Base Rent, as from the Note Payment Date, the Lessee must pay the Incentive Rent to the Lessor in each Incentive Rent Year during the term:

- (i) annually, commencing with a first payment within 45 days of the end of the first Incentive Rent Year and then within 45 days of the end of each subsequent Incentive Rent Year;
 - (ii) without demand from the Lessor; and
 - (iii) without any deduction whatsoever.
- (b) The Incentive Rent is payable in cash to the Lessor.

3.5 No abatement

If any part of the M2 Motorway constructed on the Company Land is damaged or destroyed the Rent shall not abate and the Lessee will comply with its reinstatement obligations under clause 10.7 of the Project Deed.

4. EASEMENTS

The Lessor may grant easements in respect of the Company Land, or enter into arrangements with any other person or with any Authority in respect of the Company Land to provide:

- (a) access over the Company Land;
- (b) support to structures on the Company Land; or
- (c) Services,

with the Lessee's consent, which may not be unreasonably withheld or delayed.

5. ASSIGNMENT OR MORTGAGE

5.1 Assignment by the Lessee

The Lessee must not:

- (a) assign or otherwise deal with its interest in or obligations under this Lease; or
- (b) sub-lease or licence the Company Land,

except in accordance with clause 12.2 of the Project Deed.

5.2 Mortgages

The Lessee must not give Security Interests over its interest in this Lease to secure its obligations to any person in respect of the Project Debt except in accordance with clause 12.3 of the Project Deed.

5.3 Transfer of units

Clause 5 does not restrict the transfer of units in the Trust in accordance with Law.

6. TERMINATION

6.1 Termination events

If the Project Deed is terminated, this Lease simultaneously terminates

6.2 Essential terms

- (a) Each of the covenants by the Lessee which are specified in this paragraph are essential terms of this Lease:
 - (i) clauses 2.2, 2.4 and 2.5 -covenants dealing with the Company Lease;
 - (ii) the covenant to pay the Rent throughout the Term on the due date for the payment of the Rent (clauses 3.1 and 3.4); and
 - (iii) clause 5.1 - the covenant dealing with assignment.
- (b) In respect of the Lessee's obligations to pay Rent, the acceptance by the Lessor of arrears or of any late payment of Rent shall not constitute a waiver of the essentiality of the Lessee's obligation to pay Rent in respect of those arrears or of the late payments or in respect of the Lessee's continuing obligation to pay Rent during the Term.
- (c) The Lessee covenants to compensate the Lessor in respect of any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of such breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this Lease or to terminate the Project Deed under clause 14.2 of the Project Deed so effecting the simultaneous termination of this Lease).

6.3 Damages for breach

- (a) In the event that the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any lease covenants, the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.
- (b) The Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire term of this Lease.
- (c) The Lessor's entitlement to recover damages shall not be affected or limited by any ad the following:
 - (i) if the Lessee shall abandon or vacate the Company Land;
 - (ii) if the Lessor shall elect to re-enter or to terminate this Lease;
 - (iii) if this Lease simultaneously terminates on the termination of the Project Deed under clause 14.2 of the Project Deed;
 - (iv) if the Lessor shall accept the Lessee's repudiation;

- (v) if the parties conduct shall constitute a surrender by operation of law.
- (d) The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Term, including the periods before and after the Lessee has vacated the Company Land, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in clause 6.3(c), whether the proceedings are instituted either before or after such conduct.
- (e) In the event of the Lessee vacating the Company Land, whether with or without the Lessor's consent, the Lessor shall be obliged to take reasonable steps to mitigate its damages. The Lessor's entitlement to damages shall be assessed on the basis that the Lessor has observed its obligation to mitigate damages contained in this paragraph. The Lessor's conduct taken in pursuance of its duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

7. YIELDING UP

The Lessee must procure that on termination of this Lease and the Company Lease that the Company peaceably surrenders and yields up the Company Land to the Lessor at the end of the Term in the state of repair and in the operating condition required by the Project Deed.

8. DISPUTE RESOLUTION

The Lessor and the Lessee must deal with any dispute in respect of this Lease in accordance with clause 15 of the Project Deed.

9. GENERAL

9.1 Notices

- (a) Any notice in respect of this Lease must be:
 - (i) in writing; and
 - (ii) delivered to the address, or sent to the facsimile number shown below:

(A) to the Lessor:

Roads and Traffic Authority of New South Wales
Level 1, Pod C, Octagon Building
99 Philip Street
Parramatta NSW 2150
Attention: General Manager, Motorway Management
Facsimile: (02) 8837 0098

(B) to the Lessee:

The Hills Motorway Limited
Level 5, 50 Pitt Street
Sydney NSW 2000
Attention: General Manager - Major Projects



Facsimile: (02) 9254 4990

with a copy to (provided that a failure to serve the copy will not itself be failure to serve notice):

*Level 3, 505 Little Collins Street
Melbourne Victoria 3000
Attention: Company Secretary - Transurban Limited
Facsimile: (03) 9649 7380*

- (b) A notice is given on the day that:
 - (i) it is delivered to the addressee; or
 - (ii) it is received by the addressee's facsimile.

9.2 Costs

- (a) The Lessee must, within twenty eight (28) days from the date of notice from the Lessor requesting payment, pay all stamp duties, fees, fines, penalties for late payment and charges of or incidental to the stamping of this Lease.
- (b) All duties, fees, charges and expenses and legal costs (on a full indemnity basis) of or incidental to any and every breach or default by either party (the "Defaulting Party") under this Lease and in or incidental to the exercise of any remedy of the other party (the "Non-Defaulting Party") under or by virtue of this Lease and the fees of professional consultants properly incurred by the Non-Defaulting Party must be paid by the Defaulting Party to the Non-Defaulting Party.
- (c) Each party must bear its own costs, charges and expenses of or incidental to the negotiation, preparation, execution and completion of this Lease.

9.3 Interest

- (a) If the Lessor or the Lessee do not pay an amount under this Lease by the date that it is due, they must pay interest on that amount:
 - (i) at the rate provided in clause 9.3(b);
 - (ii) from the date the payment was due until the date the payment is made.
- (b) The Lessor and the Lessee must pay interest under clause 9.3(a) at the rate of 2 per cent (2%) per annum, plus:
 - (i) the Westpac Banking Corporation's reference rate for Australian Dollar denominated loans, available to prime commercial customers; or
 - (ii) if there is no reference rate referred to in clause 9.3(b)(i), the Westpac Banking Corporation's rate for Australian Dollar overdraft accommodation in excess of \$100,000, available to prime commercial customers.

9.4 Moratorium

Unless application is mandatory by law, no statute, ordinance, proclamation, order, regulation or moratorium present or future applies to this Lease so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Lessor or to the Lessee under this Lease.

9.5 Services

The Lessor is not responsible for any loss, injury or damage sustained by the Lessee or any other person at any time as a result of or arising in any way out of inability to obtain Services and the Lessee acknowledges that it is the responsibility of the Lessee to obtain all the Services.

9.6 No agency

The Lessee shall not (in connection with the Company Land or otherwise) directly or indirectly hold out nor permit to be held out to any person any statement, act, deed, matter or thing indicating that the Company Land or the business conducted or operated that the Company Land (or any part of them) are being carried on or managed or supervised by the Lessor, and the Lessee must not act as or represent itself to be the servant or agent of the Lessor.

9.7 No waiver

No failure or delay by the Lessor or the Lessee in exercising any rights under this Lease, and no course of dealing between the Lessee and the Lessor operates as a waiver of any breach or default by the other party. No single or partial exercise of any such right precludes any further or other exercise of that or of any other right.

9.8 Waiver in writing

No provision of this Lease may be varied or waived except in writing.

9.9 Time for determining rights and obligations

For the purpose of determining the rights and obligations of the parties, this Lease shall be construed as if it had been executed on the date from which the Term is expressed to run.

SCHEDULE A
COMPANY LAND



SCHEDULE B

PROMISSORY NOTE

[The Toll Plaza, off Culloden Road, North Ryde 2113]

*[the M2 Motorway Commencement Date
and then on each anniversary of the M2
Motorway Commencement Date]*

[\$1,400,000] *[the amount of base rent and subsequently as that amount is varied from time to time
under this lease, see clause 3.2 for formula to calculate amount due for each subsequent rent year.]*

On demand *[or 15 days after sight]* Hills Motorway Management Limited (ACN 064 687 645), in its capacity as Trustee of the Trust, promises to pay to the Roads and Traffic Authority of New South Wales the sum of *[the base rent as calculated above]*.

On behalf of

Hills Motorway Management Limited
in its capacity as trustee of the Trust

.....
[Signature of Company Representative]



EXECUTED by the parties as a deed.

**I, #[insert name]# THE CHIEF
EXECUTIVE OF THE ROADS AND
TRAFFIC AUTHORITY OF NEW
SOUTH WALES** affix the official Seal
of the Roads and Traffic Authority of
New South Wales:

SIGNED SEALED and DELIVERED
by **HILLS MOTORWAY
MANAGEMENT LIMITED** by its
attorney in the presence of:

Witness

Attorney

Name (please print)

Name (please print)