

Transport for NSW Response

15 March 2023

19 November 2021

Mr John Boyd
Director
John Boyd Properties
Level 3 Legion House
161 Castlereagh Street
Sydney NSW 2000

Dear Mr. Boyd

COOK COVE PLANNING PROPOSAL – F6 CORRIDOR AND FLOOD MITIGATION

Following the meeting between Boyd Properties and Transport for NSW on 17 November 2021, we provide confirmation on the following:

Transport for NSW's requirements for the F6 Corridor

Transport for NSW does not require the F6 corridor across the Kogarah Golf Course lands for a Transport purpose, beyond the use of the F6 corridor within the defined Project Construction Site for the M6 Project at Arncliffe (see the green hatched area on Attachment 1) (**Arncliffe Site**).

The M6 Stage 1 Project has acquired land, which formed part of KGC, from Bayside Council (see Attachment 1). Consequently there is a remote risk that the M6 Stage 1 Project surface works will encroach beyond the M6 Stage 1 Project Construction Site footprint.

In addition to the above land, the M6 Stage 1 Project will also acquire substratum in this area:

- from Bayside Council (see the yellow hatched area on Attachment 1); and
- within the KGC land (see the description and plan in Attachment 2).

The F6 Corridor, which is a surface land corridor, does not encroach upon these substratum areas.

M6 and Cook Cove Flood Mitigation

TfNSW commits to facilitating coordination between the M6 Stage 1 technical teams and the Cook Cove technical team to work together on flood mitigation and road access issues that deliver the requirements of the M6 Stage 1 and consider the proposed Cook Cove development. It is expected that this is likely to be undertaken during Q1 2022.

Any cost implications of this will be discussed and agreed between Boyd Properties and TfNSW.

Please contact the undersigned if you have any queries.

Yours faithfully



Camilla Drover

Deputy Secretary Infrastructure and Place
Transport for NSW



Megan Bourke O'Neil

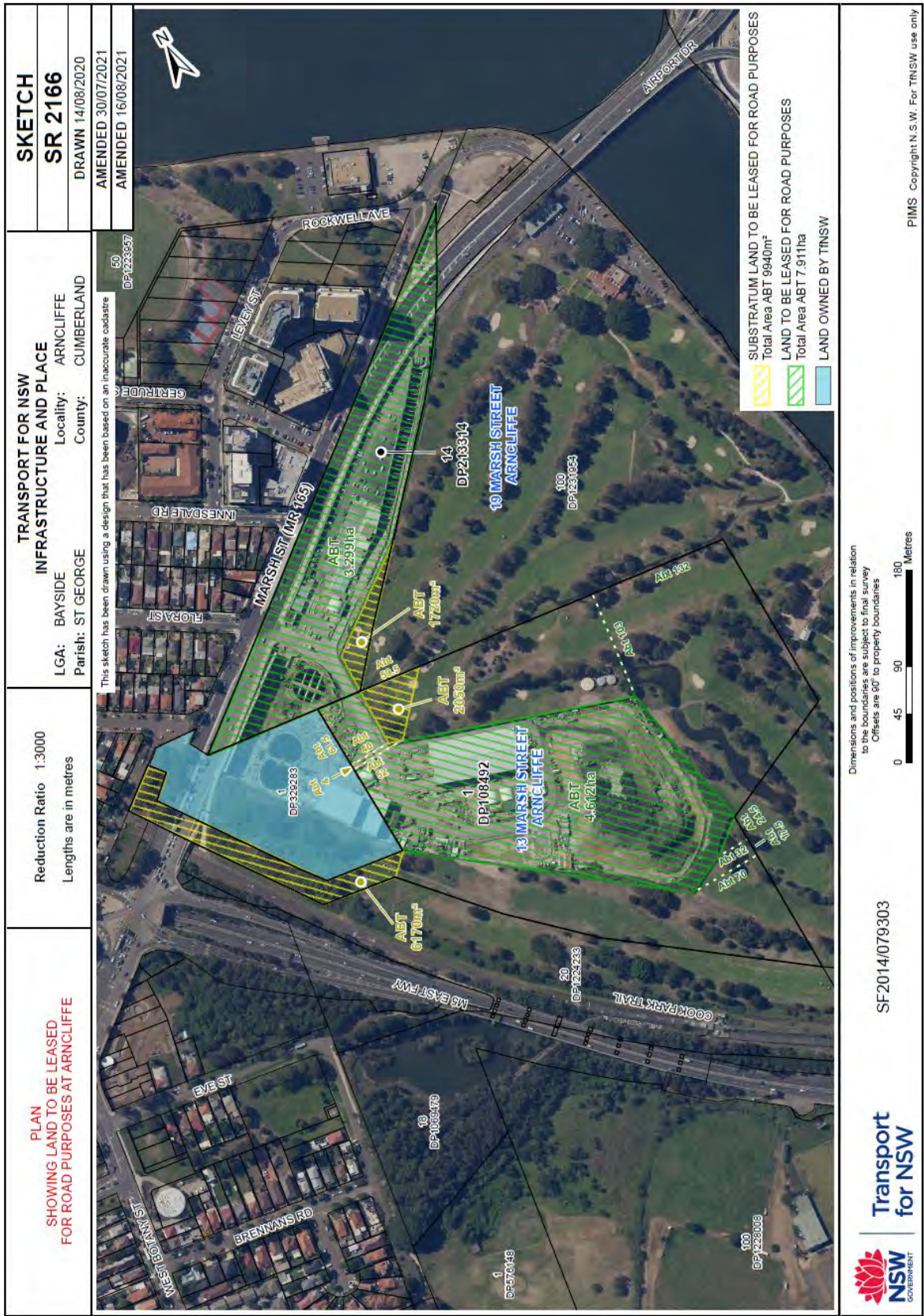
Deputy Secretary Greater Sydney
Transport for NSW

Cc: Eastern City Planning Panel

David Petrie, Planning Delivery Unit

Kris Walsh, Department of Planning, Industry and Environment

ATTACHMENT 1 – ARNCLIFFE SITE MAP



ATTACHMENT 2 – KOGARAH GOLF COURSE SUBSTRATUM LEASE MAP

The subsurface land comprising:
that part of Lot 100 Deposited Plan 1231954 lying to the north west of a line between point 1 (easting 329953.85, northing 6243617.80) and point 2 (easting 329626.31, northing 6243288.48), shown on the plan hereunder and lying below a horizontal plane at Reduced Level minus 8 (-8) AHD



15 March 2023

TfNSW Reference: SYD18/00243/33

Mr John Boyd
Cooks Cove Inlet Pty Ltd
Level 3 Legion House
161 Castlereagh Street
Sydney NSW 2000

COOKS COVE PLANNING PROPOSAL (PRE-EXHIBITION CONSULTATION)

Dear Mr Boyd,

Thank you for your letter dated 21 December 2022, requesting Transport for NSW (TfNSW) to provide comment on some of the supporting documentation for the subject Planning Proposal (**Proposal**) prior to proceeding to community consultation. Additionally, TfNSW appreciates the opportunity in reviewing the 'Cooks Cove Planning Proposal Scope Summary' dated 15 February 2023, along with the copy of the 'Planning Proposal Cooks Cove, Arncliffe' report dated 24 February 2023. TfNSW notes that:

- The Gateway Determination dated 5 August 2022, issued for the Planning Proposal, includes several consultation requirements, and requires the Planning Proposal being updated prior to formal community consultation to address several matters, including some which are transport matters.
- TfNSW is currently reviewing the revised draft Cooks Cove Planning Proposal Transport Impact Assessment (the revised TIA) dated 2 March 2023, prepared by JMT Consulting, revised intersection design plans dated 2 March 2023, prepared by Arup, the Urban Design and Landscape Report excerpt dated 22 December 2022, prepared by Hassell and the Planning Proposal Cooks Cove, Arncliffe report dated 24 February 2023 prepared by Ethos Urban. TfNSW has undertaken a preliminary review of the supporting technical information submitted and will provide detailed comments on these materials under separate correspondence.

As such, in relation to Gateway condition 1(a)(i) which requires TfNSW to effectively confirm that it is satisfied that "the Planning Proposal will not compromise future transport links...", the agency provides the following comments:

- TfNSW notes that the Planning Proposal seeks to reclassify the Trust lands, being Lot 1 DP108492 and Lot 14 DP213314. These lots are owned by Bayside Council and held in Charitable Trust, subject to two legally enforceable obligations (1) the Council has to use the land for the purposes of a public reserve unless TfNSW requires the land for a 'County road' purpose (such as the M6 and M8); and (2) the Council has to make the land available to TfNSW when required for a 'County road' purpose.
- TfNSW raises concerns with the reclassification of the Trust lands as proposed by 5 May 2024. TfNSW needs to retain the ability to access and use the Trust lands for the delivery of the M6 Stage 1 and associated infrastructure at no cost.
- The Charitable Trust conditions provide TfNSW with the rights and ability to use the land for a 'County Road' purpose for no cost. Without the Charitable Trust conditions, TfNSW would not have guaranteed ability to access and use the Trust lands at no cost and there is a risk that TfNSW could be left with no choice but to compulsorily acquire portions of this land and/or lease portions of this land to carry out the M6 works at significant additional cost to the state government to support the delivery of State Significant Infrastructure.
- Should the proposed reclassification of the Trust lands be pursued as part of this Planning Proposal, legally binding agreements must be made prior to rezoning of the land being finalised to ensure TfNSW retains the ability to access and use the Trust lands for the delivery of the M6 Stage 1 and associated infrastructure at no cost. This must include, but is not limited to, the ability to undertake necessary permanent acquisition/s for the M6 Stage 1 and/or M8 projects at no cost.
- TfNSW advises that the decision on whether the Planning Proposal should proceed to public exhibition rests with the Department of Planning and Environment (**DPE**) as the relevant planning authority.

TfNSW has also reviewed your draft Letter of Offer and appreciates your stated intent to enter into a legally binding agreement to deliver and provide monetary contributions towards certain transport infrastructure works to support the Planning Proposal. It is noted that the Gateway condition 1 (a) requires that prior to community consultation the developer must "(i) *obtain approval from TfNSW that the Planning Proposal will not compromise future transport links, deliver a safe road network and enhance walking and cycling connectivity and the use of public transport...*". Should DPE determine that the Planning Proposal can proceed to public exhibition, TfNSW would require the proponent to enter into a legally binding agreement with TfNSW (as is proposed in the Cooks Cove Inlet Letter of Offer - undated). The Planning Agreement must be executed prior to the finalisation of the Planning Proposal and gazettal of the amendments to the Bayside Local Environmental Plan (LEP) 2021.

TfNSW is of the view that the draft Planning Agreement should be exhibited with the Planning Proposal, however, should this not occur, at a minimum a revised Letter of Offer should be exhibited with the Planning Proposal addressing the preliminary feedback provided in **TAB A**. The scope of works for inclusion in the Planning Agreement would need to be confirmed upon completion of the review of revised TIA and in-principle agreement being issued by TfNSW on the proposed intersection layouts (subject to any outstanding matters being resolved, which will be detailed under separate correspondence).

In relation to Gateway condition 1c, "*address consistency with 9.1 Direction 4.1 Flooding by preparing an options analysis to clearly outline flood mitigation options available with clear reasoning for the preferred option*", while TfNSW will consider your preferred flood mitigation option

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(Option 4), as presented on 24 February 2023, it is highlighted that any flood mitigation option agreed to be implemented in the future must remain cost neutral to TfNSW.

In relation to Gateway condition 1d, "address consistency with 9.1 Direction 5.2 Reserving Land for a Public Purpose by seeking approval from TfNSW that the land currently zoned Special Uses is no longer needed for public purposes", TfNSW's position on this matter was advised in the letter dated 19 November 2021 (**Attachment A**) and remains unchanged. It should be noted that TfNSW's comments relate to a transport purpose, and do not include comment on whether the Special Uses zoned land may be required for a public purpose.

TfNSW would welcome an opportunity to meet with yourself and representatives from the DPE and Bayside Council to discuss your draft Letter of Offer and the proposed Planning Agreement in more detail prior to the public exhibition.

Please note that the comments provided above are of a preliminary nature based on the information provided to TfNSW in correspondence provided to date. Comments provided are not to be interpreted as binding upon TfNSW and may change following review of additional information available in the future. The above comments do not fetter TfNSW's discretions to make submissions in response to formal Planning Proposal/s and/or development application/s in the future.

Should you have any questions or further enquiries in relation to this matter, Rachel Davis, Senior Land Use Planner, would be pleased to take your call on 0408 689 720 or email: development.sydney@transport.nsw.gov.au.

Yours sincerely,



Brendan Pegg
A/Director Land Use
Planning and Programs, Greater Sydney Division

Cc Laura Locke, DPE Director Eastern and South Districts

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TAB A - TfNSW preliminary comments on the Cooks Cove Inlet Letter of Offer (undated, received 22 December 2022)

Preliminary comments on the Letter of Offer are provided below for discussion purposes, however it should be noted that the Infrastructure Schedule (therefore Scope of Works and Contributions) is yet to be agreed. It is requested that the Letter of Offer is updated prior to public exhibition of the Planning Proposal (and exhibited with the Planning Proposal):

- TfNSW appreciates the stated commitment by the proponent to deliver transport infrastructure items and provision of monetary contributions towards transport infrastructure. In principle, it appears the proposed arrangement could be approached through a planning agreement; a separate Transport Infrastructure Contribution (TIC) Deed may not be required, provided the Works in Kind and monetary contributions can satisfy the requirements for a planning agreement in division 7.1 of the *EPA Act 1979*.
- TfNSW would require that the developer covers the total of TfNSW's legal costs. The Planning Proposal and associated Planning Agreement gives rise to TfNSW's legal costs. Indicatively this could be somewhere in the range of \$50,000 to \$100,000, however this is subject to change and depends on the complexity, number of iterations and reviews of the draft Planning Agreement, length of time to agree on Scope of Works and other potential unforeseen components etc.
- The planning agreement with TfNSW may need to include requirements for interface agreements to be entered into in the future in relation to the M6 and M8/WestConnex.
- TfNSW notes the proposed Cooks Cove development is adjacent to the TfNSW M6 Stage 1 project site at Arncliffe and the proposed future Cooks Cove development works on Lot 1 DP108492 and Lot 14 DP213314 (shown in your Urban Design and Landscape Report excerpt dated 22 December 2022) rely on integration with land currently occupied by the approved M6 Stage 1 project. There is potential for additional costs to the M6 Stage 1 project to investigate and integrate the project with the proposed future Cooks Cove development. TfNSW requests that you include provisions in the planning agreement to compensate TfNSW for these potential additional costs. We request that you include in your Letter of Offer details of any proposal to address the potential conflicts of the future Cooks Cove development works with the M6 Stage 1 works on Lot 1 DP108492 and Lot 14 DP213314 (ensuring a cost-neutral outcome for TfNSW).
- In relation to Table A: Works-in-kind infrastructure contributions, preliminary comments are provided for discussion:
 - A1 Gertrude Street extension (section from Levey Street to Marsh Street): would likely only be managed by TfNSW, and require a Works Authorisation Deed (**WAD**), if traffic signals are approved at Levey Street/Marsh Street.
 - A2 Levey Street / Gertrude Street signalised intersection: would only be managed under a WAD by TfNSW if traffic signals are approved.
 - A3 Gertrude Street widening (Levey Street to Princes Highway): Would not be managed by TfNSW. TfNSW would only be involved in relation to any new signals (if approved) or if existing signals are proposed to be modified.
 - B1 Marsh Street / Gertrude Street signalised intersection: Design and works would be managed by TfNSW, and the developer will be required to enter WAD for the delivery of the works. Traffic signals at Innesdale Road will need to be removed.
 - B2 Marsh Street / Flora Street intersection enhancement: Developer will be required to enter a WAD for the delivery of the works. Design and works would be managed by TfNSW under the WAD.
 - B3 Gertrude Street East extension: (beyond the Marsh Street intersection) would need to be designed and constructed to Council requirements. The Gertrude Street East Extension to be described as a five-lane connector road instead of a four-lane connector road.
 - B4 Flora Street East extension: (beyond the Marsh Street intersection) would need to be designed and constructed to Council requirements, however TfNSW needs to review and approve the access intersection for M8/M6 MOC access.
 - E1 New Marsh Street bus stops: These would be managed under the WAD for intersection works on Marsh Street. Council would maintain these and need to be consulted.
- Key conditions that would need to be included in the planning agreement include (but would not be limited to):
 - Land is to be dedicated as public road for ongoing maintenance purposes of signals (indicatively a minimum of 30m from the stop lines on all legs).
 - 10-year maintenance contribution is required for each set of traffic signals. For existing traffic signal sites being upgraded, these will be charged a prorate cost based on the proposed modification to the signal.
 - The developer is responsible for the environmental approval of the works (including community consultation) and they should be clearly included in the future Part 4 DA.
- TfNSW appreciates the proposed monetary contributions towards potential future transport infrastructure (such as Forest Road intersections and Giovanni Brunetti Bridge). However, it is noted that the values proposed at Table B: Additional infrastructure monetary contributions, will fall significantly short of the funding required for the delivery of active transport works on the Giovanni Brunetti Bridge and road network upgrades along Forest Road. The monetary contributions would likely need to be made to DPE to be provided for future potential transport infrastructure works to support the Bayside West Precincts including Cooks Cove. DPE should be consulted in this regard.
- Section 4C indicates that Cook Cove Inlet will facilitate the implementation of the works-in-kind components. TfNSW considers that all works-in-kind components should be delivered by Cook Cove Inlet, being the developer, rather than by third parties to avoid unforeseen delays which may prevent issue of any Occupation Certificate for floorspace the subject of the planning proposal. TfNSW highlights that it would not be responsible for delivering any works-in-kind components and requests that the Letter of Offer be updated to specifically identify delivery responsibilities for each component.

- Section 4C indicates that the implementation of all works-in-kind components is proposed to occur prior to issue of any Occupation Certificate for floorspace the subject of the planning proposal within Lot 100 DP1231954. This is also stated in Section 6.3 of the Transport Impact Assessment (TIA). TfNSW highlights that circa 3,250sqm of GFA is also proposed within Block A (north of Marsh Street) on Lot 31 DP1231486. TfNSW considers that delivery of all works-in-kind components should occur prior to any Occupation Certificate being issued for floorspace the subject of the planning proposal within Lot 100 DP1231954 and Lot 31 DP1231486.