

Deed of Extension and Variation

CN 1218 and CN 2328

Mornington Peninsula Shire Council (ACN 159 890 143) (**Council**)

Downer EDI Works Pty Ltd ACN 008 709 608 (**Downer**)

This Deed of Extension and Variation is dated **4th May 2023**

Parties:

Council

Mornington Peninsula Shire Council (ACN 159 890 143)
of 90 Besgrove Street, Rosebud VIC 3939

Downer

Downer EDI Works Pty Ltd ACN 008 709 608
Of 10 Pound Road, Hastings, VIC, 3915

Introduction:

- A** The Council and Downer are parties to CN 1218 and CN 2328 (each **Contract**, and together **Contracts**).
- B** CN 1218 commenced on 1 July 2006 and had an original expiry date of 30 June 2021. On or around July 2021, the term of CN 1218 was extended by 24 months from 1 July 2021 to 30 June 2023;
- C** CN 2328 commenced on 1 December 2018 and will expire 30 June 2023.
- D** The Council and Downer have agreed to respectively confirm the extension and variation of the Contracts in accordance with the terms and conditions of this deed.

Operative Provisions:

1. Definitions

In this deed, unless the context requires otherwise:

- (a) **Annual Review** means the requirement under each Contract to undertake a formal annual review of Downer's performance;
- (b) **CN 1218** means the contract no.1218 (Safer Local Roads Services) between the Council and Downer;
- (c) **CN 2328** means the contract no. 2328 (Cleansing and Drainage Cleaning Services) between the Council and Downer; and
- (d) **Revised Expiry Date** means 30 June 2024.

2. Interpretation

In this deed, unless the context requires otherwise:

- (a) the introduction forms part of this deed;
- (b) clause headings are for convenience only and do not affect interpretation;
- (c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for and any subordinate legislation issued under that legislation or legislative provision;
- (d) a reference to a corporation includes its successors and permitted assigns;
- (e) related or subsidiary in respect of a corporation has the meaning given to that term in the *Corporations Act 2001* (Cth);
- (f) including and includes are not words of limitation;
- (g) a word that is derived from a defined word has a corresponding meaning;
- (h) the singular includes the plural and vice-versa;
- (i) an obligation on the part of 2 or more persons binds them jointly and severally; and
- (j) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

3. CN 1218

3.1 Acknowledgments by the Council and Downer

The Council and Downer acknowledge and agree that:

- (a) since the acquisition of Emoleum ABN 14 374 315 641 (**Emoleum**) by Downer and the novation of CN1218 from Emoleum to Downer, each of the Council and Downer have been complying with their rights and obligations under CN 1218;
- (b) CN 1218 has continued in full force and effect since 1 July 2006 (the Commencement Date of that contract) to the date of this deed;
- (c) pursuant to clause 89.1 of CN 1218, Council awarded Downer an option to extend the term of that contract by 12 months from 1 July 2023 to 30 June 2024 (**Extension Option**);
- (d) on or around 18 January 2023, and in accordance with clause 89.4 of CN 1218, Downer gave the Council its "notice of intention" to exercise the Extension Option;
- (e) Downer's "notice of intention" was followed by a fully priced and detailed offer dated 17 February 2023 to Council. That offer was accepted by Council;

- (f) on 4 April 2023, a decision was made by the Councillors of Council (**Council Decision**) agreeing to extend the term of CN 1218 by 12 months with a lump sum value of up to **I&S** per annum (excluding GST and indexation);
- (g) Downer has exercised the Extension Option in accordance with the contract;
- (h) the term of CN 1218 be extended by 12 months for the period 1 July 2023 to 30 June 2024 in accordance with this deed; and
- (i) CN 1218 will remain in full force and effect from 1 July 2006 (the Commencement Date of that contract) to the Revised Expiry Date, save as otherwise agreed by the parties.

3.2 Amendment to CN 1218

In order give effect to the agreement in clause 3.1, the Council and Downer agree to amend CN 1218 as follows:

- (a) the requirement of Annual Review under clause 36 be waived;
- (b) for the purpose of Annexure 2 Price, clause A2-3.2, of the CN 1218, the Monthly Service Charges payable by the Council to Downer for the period 1 July 2023 to 30 June 2024 (Year 18) is set out in Schedule 2 to this deed (see Appendix A of Downer's offer dated 17 February 2023);
- (c) Annexure 6A (conditions monitoring), clause A6-3.1 is amended to insert the following sentence at the end of that clause:

"The Contractor will coordinate and pay for all costs associated with PCI Data Collection for the Extended Contract Term (as defined in the Contract) commencing 1 July 2023 and expiring on 30 June 2024."
- (d) for the purpose of Annexure 6A (Conditions monitoring), clauses A6-7 and A6-8, it is agreed that Downer will meet the PCI targets set for 2020/2021, namely:

A Roads – 77.82;
B Roads – 74.31;
C1 Roads – 75.21;
D Roads – 87.64 (sealing of D Roads to be finalised at the service management team meeting of the parties); and
- (e) Schedule 1 – Contract Details be deleted and replaced with Schedule 1 to this deed.

4. CN 2328

4.1 Acknowledgments by the Council and Downer

The Council and Downer acknowledge and agree that:



- (a) CN 2328 has continued in full force and effect since the Commencement Date of that contract to the date of this deed;
- (b) on or around 2 September 2022, Council conveyed its intention to Downer to extend the term of CN 2328 by 12 months. To that effect a letter of proposal was issued to Downer;
- (c) Downer provided Council a fully priced and detailed offer dated 17 February 2023 for the period 1 July 2023 to 30 June 2024;
- (d) on 4 April 2023, a decision was made by the Councillors of Council agreeing to accept Downer's offer of 17 February 2023 and extend the term of CN 2328 by 12 months with a lump sum value of up to **I&S** per annum (excluding GST and indexation); and
- (e) CN 2328 will remain in full force and effect from the Commencement Date of that contract to the Revised Expiry Date, save as otherwise agreed by the parties.

4.2 Amendment to CN 2328

In order to record the acknowledgement and agreement in clause 4.1, the Council and Downer agree to amend CN 2328 as follows:

- (a) clause 2 (Contract Term) of the Operative provisions be amended to replace "30 June 2023" with "30 June 2024";
- (b) the requirement of Annual Review under clause 39 be waived;
- (c) for the purpose of Annexure 2 Price, clause PS12, of CN 2328, the Monthly Service Charges payable by the Council to Downer for the period 1 July 2023 to 30 June 2024 (Year 6) is set out in Schedule 2 to this deed (see Appendix B of Downer's offer dated 17 February 2023); and
- (d) Schedule 1 – Contract Details be deleted and replaced with Schedule 1 to this deed;

5. Costs

Each party must pay its own costs in relation to the preparation, negotiation and execution of this deed.

6. Goods and services tax

- 7.1 If GST is imposed or levied in respect of any supply by a party under or in accordance with this deed, then the party making the supply may recover the GST Amount from the party receiving the supply in addition to the Consideration. The party making the supply must provide such invoices to the party receiving the supply as are required pursuant to the GST Legislation.
- 7.2 In this clause 7:
 - (a) **Consideration** means any amount or consideration payable or to be provided pursuant to any provision of this deed other than this clause;

- (b) **GST** means any form of goods and services tax or similar value added tax;
- (c) **GST Amount** means the Consideration (after deducting the GST Exempt Component) multiplied by the Rate;
- (d) **GST Exempt Component** means any part of the Consideration which solely relates to a supply that is free or exempt from the imposition of GST;
- (e) **GST Legislation** means any legislation or regulation which imposes, levies, implements or varies a GST;
- (f) **Rate** means the rate at which GST Legislation from time to time imposes or levies GST on the relevant supply; and
- (g) **Supply** includes supply as defined under GST Legislation.

7. Co-operation

Each party must do anything (including execute any document) to give effect to this deed and to the transactions contemplated by it, and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this deed.

8. Commercial effect

In the event of any error or discrepancy in this deed or between the deed and any of the Contracts, the deed and each of the Contracts will be read and interpreted so as to one commercial and legal effect to the purpose and intent of this deed.

9. Successors and assigns

This deed will be binding on and continue for the benefit of each party, its successors and permitted assigns.

10. Applicable law

This deed is governed by and construed in accordance with the laws of the State of Victoria and the Commonwealth of Australia and the parties irrevocably submit to the jurisdiction of the courts of that State and the Commonwealth of Australia.

11. Inconsistency

If this deed is inconsistent with the Services Contracts or with any other document or agreement between the parties, this deed prevails to the extent of the inconsistency.

12. Severance

If any part of this deed is invalid, unenforceable, illegal, void or voidable for any reason, this deed will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from this deed, or read down to the extent necessary to overcome the difficulty.

13. Counterparts

This deed may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.

Schedule 1 – Contract Details (CN 1218 and CN 2328)

CN1218 Schedule 1 – Contract Details

Item	Details
Item 1	<p>The initial Senior Representatives are:</p> <p>For the Shire – Mike McIntosh, Director Planning & Infrastructure</p> <p>For the Contractor – Ritchie Taylor, General Manager DM Roads</p>
Item 1A	<p>The initial members of the Service Management Team are:</p> <p>Shire representatives</p> <ul style="list-style-type: none"> Nicole Young, Manager Infrastructure Services Lynne Peterswald, Contracts Administrator <p>Contractor representatives</p> <ul style="list-style-type: none"> Ashley Oates, Contract Manager Kyri Mathiesen, Delivery Manager
Item 2	<p>The initial members of the Contractor Operations Team are:</p> <ul style="list-style-type: none"> Robert Semaganda, National Manager- Operations DM Roads David Norton, Operations Manager DM Roads
Item 3	<p>The initial members of the Shire Operations Team are:</p> <ul style="list-style-type: none"> Luke Jackson, - Team Leader, Roads, Drainage & Cleansing Robert Stevenson, Contract Manager
Item 4	<p>The initial Superintendent is: Nicole Young, Manager Infrastructure Services</p>
Item 5	<p>The initial Contract Managers is: Ashley Oates, Contract Manager</p>
Item 6	<p>Relevant addresses for service of notices are as follows:</p>

	Shire	By mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn: Superintendent)
		By fax:	03 5950 1268
Item	Details		
Item 6 (contd)	Superintendent	By mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn Manager Infrastructure Services)
		By fax:	03 5950 1268
	Service Management Team	All notices to the Service Management Team must be addressed to the Service Management Team c/- the Contract Manager and must be sent to the Contract Manager's address	
	Contract Manager	By mail:	10 Pound Road, Hastings, Victoria, 3915
		By hand:	10 Pound Road, Hastings, Victoria, 3915
		By fax:	N/A
	Shire's Senior Representative	By mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn Director Planning Infrastructure)
		By fax:	03 5950 1268
	Contractor's Senior Representative	By mail:	50 eastern Creek Drive, Eastern Creek, NSW, 2766
		By hand:	50 eastern Creek Drive, Eastern Creek, NSW, 2766
		By fax:	N/A
	Contractor:	By mail:	10 Pound Road, Hastings, Victoria, 3915
		By fax:	N/A

CN2328 Schedule 1 – Contract Details

Item	Details
Item 1	<p>The initial Senior Representatives are:</p> <p>For the Shire – Mike McIntosh, Director Planning & Infrastructure</p> <p>For the Contractor – Ritchie Taylor, General Manager DM Roads</p>
Item 1A	<p>The initial members of the Service Management Team are:</p> <p>Shire representatives</p> <ul style="list-style-type: none"> Nicole Young, Manager Infrastructure Services Lynne Peterswald, Contracts Administrator <p>Contractor representatives</p> <ul style="list-style-type: none"> Ashley Oates, Contract Manager Kyri Mathiesen, Delivery Manager
Item 2	<p>The initial members of the Contractor Operations Team are:</p> <ul style="list-style-type: none"> Robert Semaganda, National Manager- Operations DM Roads David Norton, Operations Manager DM Roads
Item 3	<p>The initial members of the Shire Operations Team are:</p> <ul style="list-style-type: none"> Luke Jackson, - Team Leader, Roads, Drainage & Cleansing Krystal Millen, Cleansing & Drainage Facilitator
Item 4	The initial Superintendent is: Nicole Young, Manager Infrastructure Services
Item 5	The initial Contract Managers is: Ashley Oates, Contract Manager
Item 6	<p>Relevant addresses for service of notices are as follows:</p> <p>Shire By mail: 90 Besgrove Street, Rosebud, Victoria 3939 (attn: Superintendent)</p>

	By fax: 03 5950 1268
Item	Details
Item 6 (contd)	<p>Superintendent</p> <p>By mail: 90 Besgrove Street, Rosebud, Victoria 3939 (attn Manager Infrastructure Services)</p> <p>By fax: 03 5950 1268</p>
	<p>Service Management Team</p> <p>All notices to the Service Management Team must be addressed to the Service Management Team c/- the Contract Manager and must be sent to the Contract Manager's address</p>
	<p>Contract Manager</p> <p>By mail: 10 Pound Road, Hastings, Victoria, 3915</p> <p>By hand: 10 Pound Road, Hastings, Victoria, 3915</p> <p>By fax: N/A</p>
	<p>Shire's Senior Representative</p> <p>By mail: 90 Besgrove Street, Rosebud, Victoria 3939 (attn Director Planning Infrastructure)</p> <p>By fax: 03 5950 1268</p>
	<p>Contractor's Senior Representative</p> <p>By mail: 50 eastern Creek Drive, Eastern Creek, NSW, 2766</p> <p>By hand: 50 eastern Creek Drive, Eastern Creek, NSW, 2766</p> <p>By fax: N/A</p>
	<p>Contractor:</p> <p>By mail: 10 Pound Road, Hastings, Victoria, 3915</p> <p>By fax: N/A</p>

Schedule 2 – Downer’s offer dated 17 February 2023

Execution page

Executed as a deed

Council:

Executed by the **Mornington Peninsula
Shire Council** by authority of its duly
delegated officer:

Personal Information

Personal Information

Signature of Witness

Signature of Delegate

Fiona McGilton

Name of Witness

John Baker

Name of Delegate

Chief Executive Officer

Position of Delegate

Downer:

Executed by **Downer EDI Works Pty Ltd
ACN 008 709 608** by authority of its duly
delegated officer:

Personal Information

Personal Information

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Signature of Delegate

Kay Jackson

Name of Witness

Sergio Cinerari

Name of Delegate

Head of Road Services, Downer

Position of Delegate



Downer EDI Works Pty LTD
ABN 66 008 709 608

10 Pound Road
Hastings VIC 3915

www.dmroads.com.au

17 February 2023

Tom Haines-Sutherland
Mornington Peninsula Shire Council
90 Besgrove Street,
Rosebud VIC 3939

Re: 12-month extension period – Fully Priced and Detailed Offer

Dear Tom

In line with DM Roads Notice of Intention to exercise the Extension Option for Contract Number 1218 and Contract Number 2328 until 30 June 2024, DM Roads provides a fully priced and detailed offer for the 12-month extension.


Included within extension is:

1. A proposed monthly and annual service charge payable during the extension period for Contracts 1218 and 2328 (Appendix A and B respectively).
2. Existing indexation mechanisms to be applied in the 12-month extension period.
3. Existing depot lease agreements to continue until 30 June 2024.
4. DM Roads responsibility in regard to PCI performance and data collection.
5. Items to be finalised at the Senior Management Team meeting.
6. Reduction in annual service charge for Barbeque maintenance as costs reallocated to the waste service charge

Please don't hesitate to contact the undersigned should you have any questions or need any further information on this matter.

Yours sincerely,

Personal Information


Robert Semaganda
National Manager – Operations
DM Roads



Appendix A – CN 1218

Description of Work	Year 15	Year 15 ¹	Year 16 ^{2,3}	Year 17 ^{2,3}	Year 18 ^{2,3}
Commencing 01/07/2006					
MANAGEMENT FUNCTIONS					
Customer Service					
Preparation & Maintenance of Integrated					
Inspections & Asset Reporting					
Management & Supervision of Contract including					
Condition Monitoring during Core Investment Period					
Condition Monitoring during Core Investment Period					
Conditioning Monitoring					
Sub-total					
OPERATIONAL FUNCTIONS					
Resealing Program Year 1					
Maintenance Activities as per SIMS					
Budget allowance for Resealing/Rehabilitation Works					
Accelerated Upgrading of Project Network					
Sub-Total					
Total Annual Service Management Charge					
Monthly Service Management Charge					
Linemarking					
Monthly Service Management Charge					
Total Contract Service Charge					

I&S

ANCIALARY FUNCTIONS
Working Capital Fee
Crushed Rock ⁴
Sub-Total

I&S

Note 1: Rebaselined Indices against June 2005 benchmark for <i>Budget allowance for Resealing/Rehabilitation Works</i> using Labour 35% ABS 6345 T2 All sectors Vic; Bitumen 35% Vic Roads Average Bitumen Price Index; Materials 30% ABS 6427 T16 Road & Bridge Construction. For the purposes of applying annual indexation against in Years 16,17 and 18 only	
Note 2: Year 16, 17 and 18 total contract service charge subject to annual indexation against rebaselined Year 15 total contract service charge	
Note 3: Replacement of ABS 6427 T11 Petroleum & Coal Products Index with the Average Bitumen Price of Class 170 bitumen from BP, Mobil and Shell from April to June of the current financial year as published on the VicRoads website	
Note 4: The Crushed Rock budget is paid on volume placed and not as a monthly service charge. It is not subject to rise and fall, it is an indicative value only and is subject to change at Council's sole discretion.	
Note 5: DM Roads will coordinate and pay for costs associated with PCI Data Collection. Timing of this data collection will be finalised at SMT	
Note 6: DM Roads meet the PCI targets set for 20/21. A Roads – 77.82 B Roads – 74.31 C1 Roads – 75.21 D Roads – 87.64 (sealing of D Roads to be finalised at SMT, possible cost saving if not required)	
Note 7: Continue to lease 10A Pound Rd, Hastings depot in alignment to the existing lease terms and conditions	

Appendix B – CN 2328

Description of Work	Year 5	Year 6
Commencing December 2018	Lump Sum (Ex GST)	
MANAGEMENT AND OVERHEADS		
Contract Management		
Integrated Management Plan		
Data Collection and Transfer		
Provision of Depot		
SWEEPING SERVICES		
Beach Cleaning		
Street Sweeping		
Footpath Sweeping & Cleaning		
CLEANSING SERVICES		
Sanitary Cleaning		
Barbecue Facility Cleaning & Maintenance		
High-Visibility Street Presence		
LITTER SERVICES		
Street and Drain Litter Collection		
Dead Animal Collection		
FORESHORE CAMPING SERVICES		
Foreshore Camping – Sanitary Cleaning		
DRAINAGE SERVICES		
Maintenance of GPT's		
Clear Culverts, Pipes & Pits		
MISCELLANEOUS		
Customer Service		
After Hours Call Out		
Drainage Assessment Validation & Condition Report		
Total Lump Sum Amount		
Total Monthly Service Charge		

I&S

*Note 1: \$354,825 reduction in the annual service charge for BBC Barbeque Facility Cleaning & Maintenance to be reallocated to the Waste Service Charge to account for the costs associated to transport for the disposal of NFS Footpath Sweeping & Cleaning waste and DCP Clear Culverts, Pipes and Pits.

The monthly Growth & Variation Claim would continue to consist of the waste plus 6% and a monthly charge of

I&S

**Note 2: DCA Drainage Assessment Validation & Condition Report will be removed from the scope for the 12 month extension. Saving of

I&S

Note 3: Continue to lease 1 Brasser Av, Dromana depot in alignment with existing lease terms and conditions.

Note 4: Note 4: Existing annual indexation to be applied for the 12 month extension period.