

Project Summary

New Grafton Correctional Centre

17 September 2017



Artist's Impression

Project Summary

New Grafton Correctional Centre

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Project Overview

1. Introduction

This summary of the New Grafton Correctional Centre (**NGCC**) Public Private Partnership (**PPP**) Project Documents has been prepared in accordance with the NSW PPP Guidelines 2017.

Copies of the Project Documents, with confidential information redacted, are available on the NSW Treasury website.

2. Overview of Project

The NGCC project relates to the procurement of a new 1,700 bed, multifunctional, correctional facility servicing the northern part of NSW. The NGCC has been structured and procured as a PPP with an Operating Phase term of 20 years post delivery.

On 14 June 2017, the State awarded the Northern Pathways consortium a contract to design, build, finance, operate (including all custodial and health services) and maintain the NGCC. The Northern Pathways consortium is made up of a consortium of private sector investors with significant experience in the delivery of critical infrastructure projects and the operations of correctional facilities.

The new facility will include:

- a maximum security facility with 1,000 male beds;
- a maximum security facility with 300 female beds; and
- a minimum security facility with 400 male beds.

The NGCC facility and programs the inmates will participate in are designed to prepare inmates for reintegration back into the community, reduce recidivism and make communities safer. The facility was designed to achieve flexibility in adapting to the changing demographics of the inmate population in the future.

3. Purpose of the Project Summary

This document has been prepared by the State in accordance with the public disclosure requirements of the NSW PPP Guidelines 2017.

This summary should not be relied upon for legal advice and is not intended for use as a substitute for the contracts.

The Project Summary is based upon the form of contracts as at 20 June 2017. Subsequent amendments or additions to these contracts, if any, are not reflected in this document.

The defined terms throughout this Project Summary are provided in a Glossary in Appendix 1.

Project Description

4. Consortium members and main parties to the core Project Contracts

4.1 State parties to the contracts

The State parties to the Project Deed are:

- (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;
- (b) Infrastructure New South Wales (ABN 85 031 302 516); and
- (c) the Commissioner of Corrective Services,

(together the **State**).

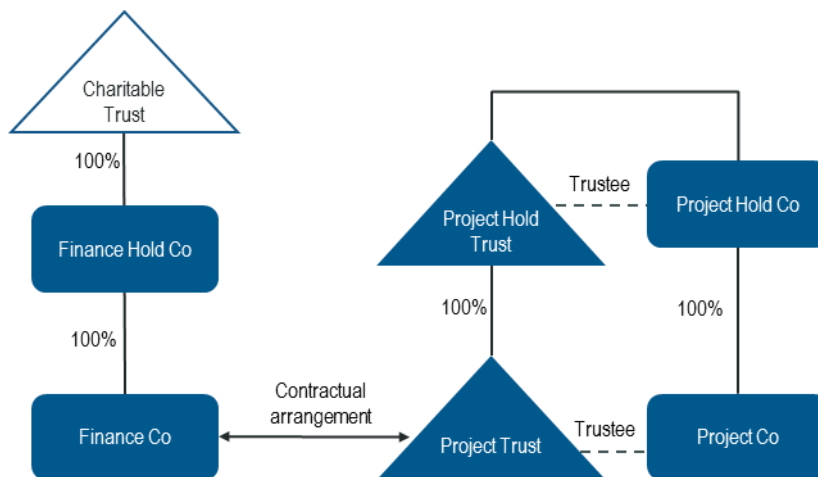
4.2 Private sector parties to the contracts

The State selected Northern Pathways consortium as the successful proponent for the NGCC project. Northern Pathways is a consortium comprising John Laing Investments, John Holland, Serco and Macquarie Capital. As is customary on projects such as these, the Northern Pathways consortium established special purpose entities with which to contract with the State under the principal Project Documents.

The private sector special purpose entity which is a party to the Project Deed is NorthernPathways Pty Limited (ACN 618 985 452) in its capacity as trustee for the NorthernPathways Project Trust (ABN 36 175 930 685) (**Project Co**).

Set out below is the group structure of Project Co. Further information on the main parties to the Project Documents including NorthernPathways Finance Pty Ltd (ACN 615 483 737) (**Finance Co**) is provided at section 19 below.

Figure 1 – Project Co Group Structure



5. Project objectives

Under the Project Deed, Project Co is under an obligation to deliver the correctional complex and provide the services so as to facilitate and not impair the achievement of the Project Objectives. The Project Objectives are that the NGCC will:

1. be a safe and secure correctional centre;
2. be a humane and ethically managed centre;
3. help reduce the risk of re-offending through (among other things) preparing inmates for reintegration into the community on release from the State's correctional centre network;
4. manage resources effectively and efficiently, enhancing value for money;

5. utilise effective governance arrangements;
6. produce strong economic and social benefits to the local Grafton region, the northern NSW region and the broader NSW community;
7. be a valuable physical asset for the duration of the operating phase and beyond;
8. be operated in such a way as to keep pace with best correctional practice over the term of its operational life; and
9. be operated so that it links with the broader management strategies and operational needs of the State's correctional centre network.

6. Description of infrastructure, scope and site

The NGCC will be located approximately 12.5 kilometres southeast of Grafton, NSW, on a 195 hectare greenfield site. The Site is adjacent to Lot 26 DP 751376, Lot 1 DP 1190399 and the new route for the Woolgoolga to Ballina (Pacific Highway upgrade project) as shown in the attached plan at Appendix 2.

The NGCC will service the northern part of NSW and will be the primary correctional facility for all corrections operations from the Queensland border in the north to Kempsey in the southeast, and Tamworth in the southwest. Upon completion, the facility will provide a 1700-bed correctional complex comprising:

- 1,000 maximum security male beds;
- 300 maximum security female beds; and
- 400 minimum security male beds.

The NGCC will provide a mix of accommodation and custodial services that cater towards a variety of placement options for sentenced and remand inmates, hospitality services, soft and hard facilities management, programs, education and industries, health services including primary and secondary mental health care and transport. The facility will also provide 40 beds for high needs male maximum inmates and 12 beds for high needs female maximum inmates.

Figure 2 below provides an artist's impression of the NGCC.

Figure 2 - Artist's impression of NGCC



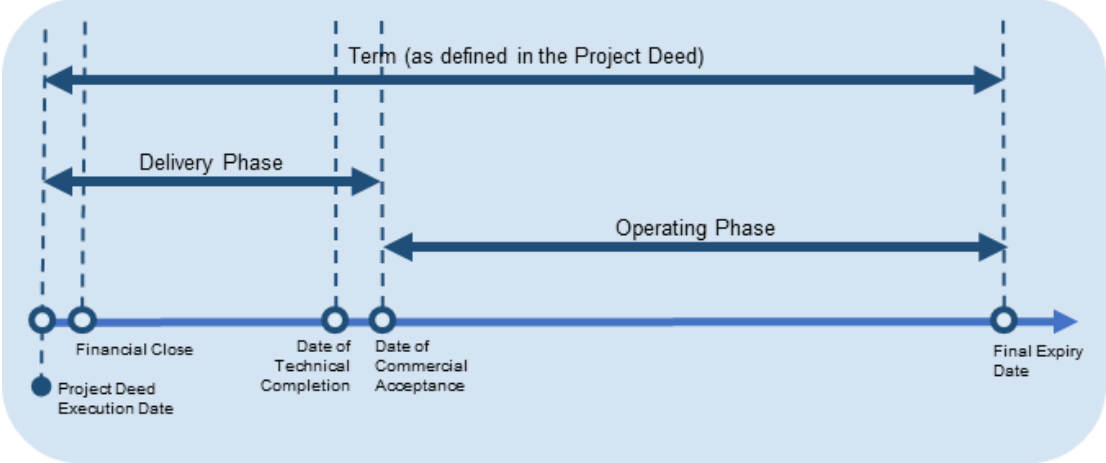
Project Co, as the successful proponent, is responsible for designing, constructing, financing, operating and maintaining the NGCC throughout the Term of the Project in accordance with the Project Deed.

7. Project timetable

The below diagram sets out the NGCC project timetable from the date of the Project Deed until the expiry of the Term. There are two main phases to the project:

- **Delivery Phase:** the period beginning on the date of the Project Deed and ending on the Date of Commercial Acceptance (when the correctional complex is ready to accept inmates); and
- **Operating Phase:** the period from the Date of Commercial Acceptance to the expiry of the Project Deed unless otherwise terminated earlier (see section 20 below).

Figure 3 - Project Timetable



Dates already occurred

Event	Relevant date
Project Deed execution close	14 June 2017
Financial Close	20 June 2017

Proposed dates to occur in the future

Event	Relevant date
Date for Technical Completion	31 March 2020
Date for Commercial Acceptance	30 June 2020

8. Main funding sources

The Northern Pathways consortium is responsible for the provision of debt and equity finance for the NGCC project. Northern Pathways consortium’s financing structure comprises a mix of senior debt and equity. See Section 19.5 for details regarding the debt financing parties.

As outlined in Section 32 below, the State has also agreed to an obligation to pay a lump sum 'conditional debt pay down', to partially repay the then outstanding debt of Project Co in relation to the NGCC project, on the relevant payment date if certain conditions are satisfied (or waived by the State).

History of the project and Strategic Need

At the time of the 'request for proposal' (**RFP**), the New South Wales correctional system currently comprised 34 correctional centres, of which 32 were men's correctional centres and two were women's correctional centres. Corrective Services NSW (**CSNSW**) operated 32 of these facilities, with two male correctional centres being privately operated.

Specialist facilities within New South Wales' 34 correctional centres include:

- Compulsory drug treatment centre at Parklea;
- Super maximum security centre at Goulburn;
- Correctional centre hospital at Long Bay;
- Forensic mental health centre at Long Bay; and
- Metropolitan remand & reception centre at Silverwater.

Each correctional centre in New South Wales performs a range of different functions, provides services to inmates with differing treatment and supervision needs, and is unique in terms of its size, location, security level and physical infrastructure (including accommodation).

9. Business Case

In November 2014, the final business case was submitted to Government for the 'Northern NSW Correction Centre Project'. This project was approved to proceed in May 2015. Between the times of final submission to approval, NSW experienced an unprecedented and unexpected rise in inmate numbers which saw the previous inmate population projections for 2030 reached in April 2015.

In response to this unexpected increase, an updated business case was developed in November 2015 to accommodate an additional 400 inmates in surge capacity. In May 2016, the Department of Justice prepared an expanded business case to consider increasing the capacity of the 'Northern NSW Correctional Centre Project' in line with the site's potential 1,700 inmate capacity.

The expanded business case highlighted that the increased 1,700 bed facility would deliver several benefits to the NSW Government, including the best value for money option in terms of achieving the overall operational and capital expenditure per inmate and addressing the unprecedented growth in inmates. Additionally, the facility avoids unnecessary and complex development of an extra facility, including supplementary costs such as land acquisition, procurement, infrastructure, and commissioning costs to be incurred by the State if an extra facility was required. This expanded business case outlined the benefits and costs if the investment was not forthcoming and the risks posed to the safety of CSNSW staff and inmates due to overcrowding.

10. Project drivers

The NSW Government committed to delivering the NGCC project as part of a program of infrastructure expansion designed to assist in meeting the overall needs of the CSNSW network system.

The key drivers for the NGCC project are:

- unprecedented increases and forecast growth in inmate populations;
- limited regional capacity to absorb any further increases;
- economies of scale and scope created by larger custodial precincts, servicing regions as hubs;
- meeting strategic requirements of quality outcomes and value for money; and
- the requirement for more effective and efficient service delivery measured through performance against key outcomes.

11. Better Prisons Program

The NSW Government is committed to improving standards in all NSW correctional centres. To achieve this, CSNSW has begun a major reform program, 'Better Prisons' program (**Better Prisons Program**), to lift performance, reduce reoffending and improve the efficiency of the correctional services system. The Better Prisons Program will deliver a correctional services system that accommodates more inmates, operates more efficiently and has a greater focus on rehabilitation, without compromising safety and security. Increased rehabilitation contributes to a reduction in reoffending and creates safer communities. To achieve this CSNSW will need to deliver improvements such as:

- improved productivity;
- increased out of cells hours; and
- greater access to employment, education and programs for inmates.

The NGCC is the one of the first projects to be part of the Better Prisons Program. The Better Prisons Program will introduce a number of activities to help correctional centres improve their operations. These include:

- performance reporting against set targets;
- additional beds;
- benchmarked budgets for all correctional centres;
- changes to correctional centre operations to increase productivity; and
- increased competition between the public and private sector for correctional centre management.

For further information about the Better Prisons Program, visit the CSNSW website: www.correctiveservices.justice.nsw.gov.au/Better-Prisons

12. New Grafton Correctional Centre

The NGCC will be the first all-purpose correctional complex in the Northern NSW Corrective Services Region and a part of the CSNSW Better Prisons Program. The NGCC will be the 'hub' of the Northern NSW region and provide accommodation and services for inmates who are best placed closer to their residential addresses. As the 'hub' of the region, the NGCC service delivery will be complimented by the surrounding centres in the region.

The significance of the NGCC as an all-purpose 'hub' facility will enable a material reduction in inmate movements, consolidate operational functions of several diverse centres, enable consistent work practices, procedures and effective performance measurement, and facilitate benchmarking across other NSW custodial facilities.

Procurement

13. Overview

The State conducted a competitive 3-stage PPP tender process to identify the private sector party best placed to deliver the NGCC. The procurement process was conducted to ensure that the State received the best value-for-money outcome. The procurement process involved three stages:

1. On 10 March 2016, INSW issued an invitation for 'expression of interest' (**EOI**) to the market for the NGCC project. Four consortia submitted EOIs with the following three respondents being shortlisted to progress to the RFP stage following evaluation by the State:
 - (a) GEO Consortium;
 - (b) Greater Futures Partnership; and
 - (c) Northern Pathways Consortium.
2. On 24 June 2016, INSW issued the RFP for the NGCC project to the shortlisted proponents. The RFP involved an intensive interactive tender process, submission of proposals and an evaluation phase including the State's requests for clarifications by proponents.
3. The negotiation and completion stage involved a negotiation period, the appointment of a preferred proponent and final negotiations. This was followed by the execution of Project Documents on 14 June 2017 and Financial Close on 20 June 2017.

The table below sets out the key dates / milestones in the procurement process.

Table 1 - Project procurement key dates / milestones

Procurement Process	Date
Stage 1 – Expression of Interest	
Invitation for EOI issued	10 March 2016
EOIs submitted	24 March 2016
Stage 2 – Request for Proposals	
RFP issued	24 June 2016
RFPs received	10 November 2016
Stage 3 – Negotiation and Completion	
Preferred proponent announced	16 March 2017
Contract Close	14 June 2017
Financial Close	20 June 2017

An independent probity adviser oversaw the EOI and RFP evaluation processes.

14. Public Interest Evaluation

The public interest evaluation was drafted during the final business case submission, reconfirmed in the expanded business case and updated at key milestones during the procurement process (see section 9 in relation to development of the business cases). The evaluation considered each of the eight public interest criteria as set out in the NSW Public Private Partnerships Guidelines 2012 (which are the same as those in the NSW PPP Guidelines 2017). These included:

- (a) effectiveness in meeting government objectives;
- (b) achieving better value for money;
- (c) community consultation;
- (d) consumer rights;
- (e) accountability and transparency;
- (f) public access;
- (g) health and safety; and
- (h) privacy.

The assessment consistently indicated that the PPP delivery model was the most suitable procurement option for the NGCC.

15. Evaluation criteria

The evaluation of proposals involved four separate evaluation sub-panels, multiple specialist advisors, relevant government departments, independent advisors and an independent transaction manager to assist in the evaluation of shortlisted proponents and selection of the preferred proponent, Northern Pathways. Each proposal was evaluated against the following six criteria:

- Evaluation Criterion 1: Design Excellence
- Evaluation Criterion 2: Project Delivery
- Evaluation Criterion 3: Operational Excellence
- Evaluation Criterion 4: Commercial Solution
- Evaluation Criterion 5: Financial Structure & Capacity
- Evaluation Criterion 6: Price

The tables below describe each of the six criteria evaluated by the State in more detail.

Table 2 – Evaluation criteria

Evaluation Criterion 1: Design Excellence
<p>The extent to which the proposal achieves design excellence and contributes towards the following Project Objectives:</p> <ol style="list-style-type: none">1. be a safe and secure correctional centre for inmates and staff;2. be a humane and ethically managed centre, as demonstrated in the design quality of facilities for:<ol style="list-style-type: none">(a) Inmate cells and communal spaces;(b) onsite health care;(c) education, recreational, industries and program;(d) hospitality; and(e) social, religious and special needs of inmates; and

3. be a valuable asset for CSNSW achieved through a holistic integration of design with operations, maintenance and life-cycle management. Factors contributing to this outcome will include:
 - (a) the quality of the architectural designs, with respect to aesthetics, quality and durability of building materials and internal finishes;
 - (b) the integration of functionality and flexibility in achieving efficient operational outcomes;
 - (c) fitness for purpose;
 - (d) the proposed impact post-completion on the environment and traffic arrangements; and
 - (e) the asset management strategy and arrangements for ensuring that the Project meets the State's requirements with respect to ongoing condition of the assets and remaining life at the Expiry Date.

Evaluation Criterion 2: Project Delivery

The extent to which the Proponent has developed appropriate project, planning, design and construction management for the Project, as demonstrated by the following:

1. capability, capacity and experience of the proposed Delivery Phase team including structure, entities and personnel;
2. the Proponent's approach to achieving planning approval;
3. the Proponent's approach to ensuring certainty of delivery in accordance with the proposed timeframes including planning approval, construction activities and commissioning;
4. best practice design, project and construction management including by reference to:
 - (a) the systems, strategies and methodologies for managing the design and delivery process;
 - (b) the robustness, completeness and risks of the proposed delivery to achieve a quality outcome at Technical Completion and Commercial Acceptance;
 - (c) environmental management;
 - (d) innovative measures;
 - (e) work health and safety management; and
 - (f) interface with the Facilitation Works; and
5. the benefits to the local Grafton region and the broader NSW community through its community involvement, local and indigenous employment, communication management and minimisation of disruption and inconvenience to the community.

Evaluation Criterion 3: Operational Excellence

The extent to which the proposal for custodial, health and facilities management services achieves operational excellence and contributes towards the following Project Objectives:

1. be a safe and secure correctional centre for Inmates and Staff, including the consideration of:
 - (a) movement and identification arrangements (including reception and induction procedures);
 - (b) security arrangements (including access, perimeter and use of force);
 - (c) contraband management (including search procedures);
 - (d) incident management;
 - (e) emergency management; and
 - (f) centre intelligence;

2. be a humane and ethically managed centre, as demonstrated by:
 - (a) health care and mental health services;
 - (b) inmate protection services;
 - (c) support of the social, religious and special needs of inmates;
 - (d) hospitality services;
 - (e) communication and information services; and
 - (f) the handling of inmate complaints;
3. reduce the risk of reoffending through (amongst other things) preparing inmates for reintegration into the community on release, as demonstrated by:
 - (a) inmate assessment;
 - (b) case management services;
 - (c) the provision of structured and purposeful activities including services, programs, as well as education and vocational training;
 - (d) appropriate external leave arrangements and community interactions; and
 - (e) restorative justice strategies;
4. utilise effective and efficient resource management, as demonstrated by:
 - (a) sustainability in all areas of operation;
 - (b) human resource management and staff preparation/training;
 - (c) asset management; and
 - (d) workplace, health, safety and risk management;
5. effective governance arrangements, as demonstrated by:
 - (a) the development of operating manuals and procedures (including records management, information management, official visits and child protection);
 - (b) systems for monitoring actions and decisions of staff;
 - (c) understanding relevant legislative, government and CSNSW policies;
 - (d) interacting with other agencies;
 - (e) business continuity planning; and
 - (f) continuous improvement;
6. produce strong economic and social benefits to the local Grafton region, the northern NSW region and the broader NSW community. This will be achieved by utilising innovative and best practice approaches to (among other things):
 - (a) community involvement;
 - (b) local and indigenous employment during operations;
 - (c) methodologies for communicating with stakeholders and the community and achieving a positive experience with a guiding principle of seeking to be a “good neighbour”;
 - (d) minimising disruption and inconvenience to the community;
 - (e) building long term ongoing and positive relationships with the local community, adjacent business operators and landowners; and
 - (f) ensuring timely responses to complaints and issues raised by the local community; and
7. be operated in such a way as to provide for the fluctuating needs of the corrective services network, including by being adaptable to changing inmate cohort and population profiles.

Evaluation Criterion 4: Commercial Solution

The Proponent's overall commercial solution for the Project including:

1. the proposed commercial structure to deliver the Project and the proposed contractual arrangements within the consortium, with due consideration to:
 - (a) overview of the consortium;
 - (b) the consortium's approach to active equity management;
 - (c) the proponent's support for the lodgement of the proposal;
 - (d) the management and organisational structure of Project Co and approach to managing key Stakeholder relationships;
 - (e) the appropriateness of the proposed commercial relationships, including the risk allocation between consortium members;
 - (f) the ownership and management intentions of the equity investors; and
 - (g) the appropriateness of the proposed contractual arrangements, including the completeness and level of certainty of the terms of the agreements between Project Co, the D&C Subcontractor, the Operator, other Key Subcontractors and any Significant Subcontractors.
2. the nature and extent of the proposed departures from the draft State Project Documents, with due consideration to:
 - (a) the risk allocation as between the State and Project Co in the context of any departures from the draft State Project Documents;
 - (b) the degree of contract execution risk including the risk of delay in achieving contract close and Financial Close;
 - (c) for the purposes of this sub-criterion, departures from the State Project Documents which the State determines (in its absolute discretion) are genuine corrections (e.g. cross references and typographical errors) will not be evaluated adversely; and
 - (d) submission of term sheets rather than fully drafted contracts will not, of itself, be evaluated less favourably by the State, but the State may consider the nature and extent of the issues (commercial, financial and technical) unresolved within those term sheets or contracts.

Evaluation Criterion 5: Financial Structure & Capacity

The Proponent's financial capacity, financing structure and certainty of finance for the Project including:

1. the financial capacity of the Proponent to deliver the Project in its entirety, as demonstrated by:
 - (a) the financial strength and capacity of each participant, provider, parent guarantor and financier to fulfil and bear the risk associated with its contractual obligations; and
 - (b) the level and appropriateness of financial support provided, including credit enhancements;
2. the appropriateness, competitiveness and flexibility of the financing structure, including the:
 - (a) nature and quantum of each form of finance;
 - (b) level of gearing;
 - (c) terms of the finance;
 - (d) competitiveness of the pricing and other terms of the finance structure;
 - (e) approach to 'conditional debt pay down';
 - (f) refinancing strategy; and
 - (g) hedging strategy; and

3. the certainty and robustness of financing, as demonstrated by the:
 - (a) degree to which the Proponent can provide certainty of delivering the proposed debt and equity solution (with limited conditionality or further due diligence); and
 - (b) appropriateness and completeness of the Financial Close adjustment protocols.

Evaluation Criterion 6: Price

The whole-of-life risk-adjusted cost to the State of the proposals, including:

1. all payments by the State taking into account adjustments for risks and departures to the State Project Documents as determined by the State;
2. assessment of the commercial offer under alternate scenarios and sensitivities;
3. the commercial and financial arrangements of any proposed options including value for money; and
4. the appropriateness of the assumptions underpinning the proposal.

16. Value for money rationale and SBM results

The NSW PPP Guidelines 2017 provide a framework that enables the value for money assessment with reference to a range of matters including the quality of the proposals and non-price evaluation criteria as well as a comparison to the whole-of-life, risk and opportunity adjusted cost of each proposal. As such, the proposals were compared against each other and the 'Affordability Estimate' as determined via the 'Shadow Bid Model' (**SBM**) to determine relative ranking.

17. Shadow Bid Model

The SBM was used to provide an affordability estimate for the NGCC project. The affordability estimate was developed to provide guidance to proponents as to the State's expectation of the total project cost under a PPP in accordance with the relevant requirements of the RFP. The affordability estimate was used to inform the evaluation of proposals.

Model	Submitted Price (\$m nominal)	Difference (\$m nominal)	Difference (%)
Affordability Estimate	4,280.6		
Northern Pathways proposal	4,141.2	(139.4)	(3.3%)

The comparison of the affordability estimate versus the Northern Pathways proposal shows a benefit of \$139.4m (nominal). Further risk adjustments were made to cost for each proponent as required and compared on a relative basis. The ranking of each proponent was unaffected by the evaluation adjustments.

18. Public Sector Comparator (PSC)

Under the NSW PPP Guidelines 2017 the development of a Public Sector Comparator (**PSC**) is mandatory. The PSC for the NGCC project was developed at the business case stage and updated, consistent with the terms of the RFP, draft contract and output specification.

The PSC is an estimate of the net present value of a project's whole of life costs and revenues using the most efficient and likely form of Government delivery. The PSC developed for the NGCC project provides an estimate of the risk-adjusted cost of the NGCC project if it were to be designed, built and operated by the State. To develop the estimate, the PSC was based on a Reference Project developed by the Department of Justice that was consistent with the output specification for the NGCC project.

In accordance with the National PPP Guidelines, the PSC was discounted using the risk free rate for the NGCC project of 4.78%. Proposals received by the State were discounted using this risk free rate plus an adjustment of 1.64% based on the level of systematic risk transferred to the private sector under the PPP model. Discounting at these rates provides the following 'Net Present Cost' (**NPC**) comparison:

Model	NPC (\$m)	Difference (\$m)	Difference (%)
PSC (NPC @ 4.78% discount rate)	2,560.2	-	-
Northern Pathways (NPC @ 6.42% discount rate)	1,980.9	(579.2)	(22.6%)

The comparison of the PSC versus the NPC of Northern Pathway's proposal shows a benefit of \$579.2m in NPC terms.

Key Commercial and Contractual Features

Contract Overview

19. Key contracts and parties

19.1 Project Deed

The principal contract for the NGCC project is the 'New Grafton Correctional Centre - Project Deed' dated 14 June 2017, between the State and Project Co (**Project Deed**). The Project Deed includes 33 schedules and 4 annexures. Additionally there are 5 attachments to the Project Deed however these do not form part of the Project Deed.

The Project Deed sets out the rights and obligations of the State and Project Co in respect of, amongst other things:

- (a) the financing, design, construction and commissioning of the correctional complex;
- (b) the Services to be delivered during the Operating Phase of the NGCC project; and
- (c) the other risks associated with the NGCC project.

19.2 Key Subcontractors and Parent Guarantors

Project Co has entered into subcontracts in relation to key aspects of the NGCC project, being the construction of the correctional complex and the ongoing operation of the correctional complex as follows:

- **D&C Subcontract:** John Holland Pty Limited (ACN 004 282 268) (**D&C Subcontractor**) has entered into a subcontract with Project Co to design and construct the Works;
- **Operator Subcontract:** Serco Australia Pty Ltd (ACN 003 677 352) (**Operator**) has entered into a subcontract with Project Co to operate the correctional complex including the provision of health services;
- **D&C Subcontractor Parent Guarantee:** the performance of the D&C Subcontractor under the D&C Subcontract is guaranteed through a performance guarantee granted by a parent company of the D&C Subcontractor in favour of Project Co (**D&C Subcontractor Parent Guarantor**); and
- **Operator Parent Guarantee:** the performance of the Operator under the Operator Subcontract is guaranteed through a performance guarantee granted by a parent company of the Operator in favour of Project Co (**Operator Parent Guarantee**).

Each of the D&C Subcontractor and Operator are referred to as Key Subcontractors throughout the Project Documents.

Additionally, the State has entered into side deeds as follows:

- **D&C Side Deed:** a 'D&C Side Deed' dated 19 June 2017 between the State, Project Co, the D&C Subcontractor and the D&C Subcontractor Parent Guarantor. In the event of default by Project Co under the D&C Subcontract or where the Project Deed is terminated, the D&C Side Deed allows the State to 'step-in' and effectively assume Project Co's rights and obligations under the D&C Subcontract and D&C Subcontractor Parent Guarantee; and
- **Operator Side Deed:** an 'Operator Side Deed' dated 14 June 2017 between the State, Project Co, the Operator and the Operator Parent Guarantor. In the event of default by Project Co under the Operator Subcontract or where the Project Deed is terminated, the Operator Side Deed allows the State to 'step-in' and effectively assume Project Co's rights and obligations under the Operator Subcontract.

19.3 Significant Subcontractors

The Key Subcontractors have entered into subcontracts in relation to key aspects of their obligations as follows:

- **Electronic Security Provider Subcontract:** Saab Australia Pty Ltd (ABN 88 008 643 212) (**Electronic Security Provider**) has entered into separate subcontracts with each of the D&C Subcontractor and Operator to provide certain electronic security services; and
- **Design Subcontract:** The D&C Subcontractor has entered into a subcontract with Perumal Pedavoli Pty Limited (ABN 39 000 971 924) (**Design Subcontractor**) in relation to certain design obligations under the D&C Subcontract.

Each of the Electronic Security Provider Subcontractor and Design Subcontractor are referred to as Significant Subcontractors throughout the Project Documents.

Additionally, the State has entered into side deeds as follows:

- **Electronic Security Provider Side Deed (Delivery Phase):** an 'Electronic Security Provider Side Deed' dated 28 June 2017 between the State, Project Co, the D&C Subcontractor and the Electronic Security Provider. In the event that the Project Deed is terminated, the Electronic Security Provider Side Deed allows the State to novate the Electronic Security Provider Subcontract with the D&C Subcontractor to the State or its approved nominee;
- **Electronic Security Provider Side Deed (Operating Phase):** the State, Project Co, the Operator and Electronic Security Provider have similarly entered into an 'Electronic Security Provider Side Deed' dated 28 June 2017; and
- **Design Subcontract Side Deed:** a 'Design Subcontract Side Deed' dated 28 June 2017 between the State, Project Co, the D&C Subcontractor and the Design Subcontractor. In the event that the Project Deed is terminated, the Design Subcontract Side Deed allows the State to novate the Design Subcontract with the D&C Subcontractor to the State or its approved nominee.

19.4 Independent Certifier

WTP Australia Pty Limited (ABN 69 605 212 182) (**Independent Certifier**) has been engaged by the State and Project Co under the 'Independent Certifier Deed of Appointment' dated 14 June 2017 (**Independent Certifier Deed**) to carry out independent certification services in relation to the Project Deed, such as reviewing design documentation and determining claims for relief events.

19.5 Debt Financing Parties

NorthernPathways Finance Pty Ltd (ACN 615 483 737) (**Finance Co**) is a special purpose company which was established to raise debt finance for the NGCC project and to securitise Project Co's licence payment obligations (see section 22). The debt raised by Finance Co is contributed to Project Co by way of a securitised licence payment structure governed by, amongst other documents, the 'receivables purchase deed' and 'payment directions deed'.

CBA Corporate Services (NSW) Pty Limited has been engaged by Project Co as the Security Trustee (**Security Trustee**) and Commonwealth Bank of Australia (ACN 123 123 124) has been engaged by Project Co as the Agent (**Agent**) and have entered into, amongst others, the 'syndicated facility agreement', the Financiers Tripartite Deed and the 'security trust deed'.

Further to the information set out in this section, the following diagram sets out the contractual structure of the NGCC project.

20. Term of the Project

Upon execution of the Project Deed on 14 June 2017, certain provisions of the contract (as identified in clause 3.1(a) of the Project Deed) took effect immediately (**Day 1 Clauses**). The remaining provisions came into effect on 20 June 2017, when all conditions precedent had been satisfied (or waived) (**Financial Close**).

The term of the Project Deed commenced on Financial Close (20 June 2017) and will expire 20 years after the earlier of Commercial Acceptance and the anticipated Date for Commercial Acceptance (currently scheduled for 30 June 2020) (unless terminated earlier) (**Expiry Date**).

Risk Allocation

The risk sharing arrangements for New Grafton Correctional Centre are summarised in Table 1 below.

Table 3 - Risk Allocation Summary

Type of risk	Description	Risk allocation	
		State	Project Co
Land, site and planning			
Approvals	Responsibility for obtaining the stage 1 Development Consent	✓	
	Responsibility for obtaining the stage 2 Development Consent		✓
	Responsibility to obtain any other Approvals and the risk of additional costs and delay associated with them		✓
	Delays or additional costs to Project Co arising from any modification to stage 2 Development Consent	✓	✓
	Responsibility for complying with stage 2 Development Consent conditions		✓
Site availability	Responsibility to acquire agreed site and make it available to Project Co during the Delivery Phase and Operating Phase for the Project	✓	
Additional land	Acquire rights to access and use land additional to that made available by the State		✓
Site conditions	Geotechnical and other site conditions in respect of the Project		✓
Project Information	Accuracy and completeness of Project Information		✓
Remediation of contamination	Contamination that is caused by the State or a State Associate	✓	
	All other Contamination		✓
Native title claims	Cessation or suspension of the Delivery Phase Activities or the Services (or material change in the way that the Delivery Phase Activities or the Services are carried out) that exceeds 10 Business Days as a result of a Native Title or Heritage Claim	✓	
Artefacts	Discovery of Artefacts delaying completion or causing additional costs		✓
Services / utilities	Investigation, protection, relocation, provision and modification of utilities (including both new and existing utilities) excluding Facilitation Works		✓
	Provision of services / utilities for construction by Project Co and for operations (excluding Facilitation Works)		✓

Type of risk	Description	Risk allocation	
		State	Project Co
Facilitation works	Performance of the Facilitation Works (power, water, telecommunications, roads) by specified dates and the risk of additional costs and delay associated with them	✓	
WH&S / principal contractor	Undertake role of being the principal contractor on the site for WH&S purposes		✓
Community risks	Exceedance of noise and vibration limits, unacceptable traffic impacts / delays and other disruptions to the community during construction		✓
Design and construction			
Design risk	Designing the Works in accordance with the Project Deed requirements		✓
Construction risk	Completing the Works in accordance with the Project Deed requirements		✓
Design and construction interfaces	Overall management of interfaces necessary to deliver the Works		✓
Testing, commissioning and completion			
Satisfying commissioning requirements	Risk that the testing and commissioning is not successfully completed		✓
Quality	Compliance of Works with the requirements set out in the Project Deed relating to quality assurance		✓
Fit for purpose	Risk that the Relevant Infrastructure is Fit For Purpose		✓
Operational risks			
Licences	Obtaining all necessary licences and accreditation to operate the correctional centre		✓
Meeting performance requirements and service levels	Service solution or service performance does not meet performance requirements and service levels specified by the State		✓
Adequacy of performance requirements and service levels	Specified performance requirements and service levels are not appropriate or sufficient to meet the State's requirements	✓	
Utility supply including interruption	Insufficient utility supply during the Operating Phase to meet Project Co's requirements (unless due to an upstream interruption)		✓
Safety and security	Safety and security of the facility and its customers and staff		✓
KPIs	Meeting required standards with respect to KPIs		✓

Type of risk	Description	Risk allocation	
		State	Project Co
Asset management			
Maintenance performance and cost	Cost of maintenance and performance of assets relative to the Project Documents requirements, including obsolescence of parts, material and service delivery methods		✓
Asset condition through Operating Phase	Required asset condition standards are not achieved through the Operating Phase		✓
Residual life and end of Operating Phase handover	Satisfying the State's requirements for asset condition and residual design life at the end of the Operating Phase		✓
Financing			
Financing	Private financing of the required financing amount for the Works		✓
Reference interest rate risk	Risk of reference interest rate increases:	✓	
	<ul style="list-style-type: none"> ▪ before Financial Close ▪ after Financial Close 		✓
Interest rate margin and refinancing costs (post Financial Close)	Changed interest margins post Financial Close and cost of refinancing		✓
Foreign exchange risk	Foreign exchange rate movements:		✓
	<ul style="list-style-type: none"> ▪ before Financial Close ▪ after Financial Close 		✓
Refinancing gains	Gains on refinancing of debt terms, exceeding those assumed in the Base Case Financial Model	✓	✓
Refinancing losses	Losses on debt refinancing		✓
Tax	Actual tax payable by Project Co differs from the Base Case Financial Model		✓

General obligations of Project Co

21. Primary obligations

The Project Deed sets out Project Co's primary obligations as being to:

- (a) finance or arrange for the financing of the correctional complex;
- (b) design and construct the correctional complex and associated works;
- (c) operate and maintain the correctional complex; and
- (d) hand the correctional complex and the site back to the State at the end of the contract Term.

22. Financing obligations

Project Co will satisfy its obligation to finance, or procure finance for, the NGCC through:

- **Equity Investments by the project's equity investors**

In line with the NSW PPP Guidelines 2017 and the express confidentiality provisions of the contracts, the details of the equity investors' obligations are generally beyond the scope of this summary.

- **Loans to Finance Co and the securitisation of Project Co's licence payment obligations**

Finance Co, Project Co and the State have entered into the 'receivables purchase deed' dated 14 June 2017 under which Finance Co will purchase the State's right to receive licence payments payable by Project Co under the Project Deed in respect of the Site during the Operating Phase.

In exchange for payment of the licence payments, Finance Co pays the State monthly 'receivables purchase payments'. The State uses the 'receivables purchase payments' to fund its obligation under the Project Deed to pay Project Co (see section 32).

Finance Co will borrow the funds which it needs to pay each 'receivables purchase payment' from a syndicate of lenders under the 'syndicated facility agreement' dated 14 June 2017. Finance Co uses the licence payments it receives from Project Co as a result of the assignment described above to service the debt it has borrowed under the syndicated facility agreement.

Finance Co, Project Co, the State and the Agent have entered into the 'payment directions deed' dated 14 June 2017. The 'payment directions deed' is an ancillary document to the receivables purchase deed which allows the various securitisation related payments to be made directly from the original party making the payment to the end recipient, without the need for separate intervening transfers between the parties.

In addition, there are intercompany loans in place between Project Co and Finance Co pursuant to which debt raised by Finance Co can be on-lent to Project Co outside of the securitised licence payment structure as required.

In line with the NSW PPP Guidelines 2017 and the express confidentiality provisions of the project's contracts, further details of the project's debt financing arrangements are generally beyond the scope of this summary.

23. Design and construct obligations

During the Delivery Phase, Project Co must:

- (a) prepare the 'Stage 2' development application planning approvals in respect of the Project and assist the State to obtain the Stage 2 development consent;
- (b) design the correctional complex and prepare all design documentation:
 - (i) in accordance with the Project Deed, best industry practices, the 'design proposal' annexed to the Project Deed as Annexure A, the Output Specification and the design development process set out in schedule 8 to the Project Deed;
 - (ii) in accordance with all legislative requirements, development approvals and all relevant standards including the Building Code of Australia and other Australian standards (to the extent they do not conflict with security requirements);
 - (iii) so as to satisfy the fit for purpose warranty in clause 5.4 of the Project Deed (**FFP Warranty**); and
 - (iv) so that the Services are able to be provided in accordance with the Services Requirements, and otherwise in accordance with the Project Documents;
- (c) construct the Works in accordance with the Project Deed (including the Output Specification) and the final design documentation; and
- (d) keep the Delivery Phase sites safe, clean and tidy at all times and secure and free from unauthorised access.

Project Co warrants that at all times on and from Commercial Acceptance, the correctional complex will be fit for purpose and comply with all applicable laws and policies.

24. Maintenance obligations

Project Co is under an obligation to carry out periodic maintenance, refurbishment or replacement of all elements comprising the correctional complex so that the correctional complex meets the FFP Warranty. In maintaining the correctional complex, Project Co must implement and comply with the 'asset management plan', which is a plan bid by Project Co and amended from time to time throughout the Term.

The materials, finishes and other items that Project Co uses to meet its maintenance obligations must have the same or higher levels of quality as that which would be used in accordance with best industry practice and not materially increase the operating or maintenance costs to the State.

Additionally, Project Co is required to maintain, replace and repair all items of equipment until the end of the Term in accordance with the 'asset management plan', Services Requirements and the Project Deed and continually upgrade, as appropriate, the software and systems used on Project Co's computer system.

25. Operational requirements

During the Operating Phase, Project Co is required to continuously perform the Services in accordance with the Services Requirements. The Services Requirements include the Services set out in the Output Specification, the Services Proposal set out in Annexure B of the Project Deed and the Project Deed.

26. Reporting obligations

26.1 Delivery Phase

Project Co was required to submit a number of plans described as 'initial delivery phase plans' to the State which were attached to the Project Deed as attachment 2. The 'initial delivery phase plans' must be updated in accordance with Schedule 11 of the Project Deed (**Delivery Phase Plans and Reports Schedule**). The 'delivery phase plans' include the:

- 'project management plan';
- 'site access and interface protocols'; and
- 'WHS management plan'.

Additionally, Project Co is required to submit 'delivery phase reports' to the State which provides a progressive update of Project Co's progress, compliance with the Project Documents and other relevant matters and include reports such as:

- 'monthly works report' which provides certain information in relation to Works completed and associated matters; and
- 'delivery phase program'.

26.2 Operating Phase

Similarly, Project Co is required to submit and update a number of 'operating phase plans' and 'operating phase reports' in accordance with the Project Deed and Schedule 15 of the Project Deed (**Operating Phase Plans and Reports Schedule**). 'Operating phase plans' and 'operating phase reports' include:

- 'performance reports';
- 'health services' updates;
- 'operating manuals'; and
- 'correctional complex access protocols'.

27. Benchmarking

27.1 Reviewable Services

The State has a discretion to benchmark the pricing of any 'reviewable services' against other correctional centres in New South Wales for any purpose. Reviewable services include all Services set out in the Services Requirements except for any building management services (**Reviewable Services**).

Reviewable Services	Timing for review
All Services (other than building management services)	On the 10th and 15th year during the Operating Phase
Operating Phase insurances	Every 5 years during the Operating Phase
Utilities (price risk)	Every 5 years during the Operating Phase

27.2 Insurance

Project Co is required to, at the anticipated operational commencement date and every 5 years thereafter, obtain separate quotes from three 'reputable insurers' (being insurance providers with at least a Standard and Poor credit rating of A- or Moody's Investor Service Inc. credit rating of A3 or an equivalent rating with another reputable rating agency) for annual premium costs of obtaining industrial special risks insurance and public and products liability insurance.

The State will select one quote for each relevant insurance which will be the basis for benchmarking the 'insurance component' of that relevant insurance. The 'insurance component' is the insurance component of the monthly service payment payable to Project Co in respect of that relevant insurance. The insurance component is adjusted to reflect the quote through an adjustment process set out in clause 46.12 of the Project Deed.

27.3 Utilities

Project Co is required to, at the anticipated operational commencement date and every 5 years thereafter, commence a tender process to obtain separate tenders for the utilities from no fewer than three retailers. Utilities include any utility service including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services.

Project Co must select a retailer acceptable to the State from the utility retailers who have provided tenders to Project Co. Project Co must, for each utility, demonstrate to the reasonable satisfaction of the State that the utility retailer it intends to select and engage is the best choice having regard to:

- the price quoted in the prevailing market conditions; and
- the experience, capability, financial and regulatory standing of the utility retailer in the context of the NGCC project.

28. Other obligations of Project Co

In performing its activities, Project Co must comply with all applicable laws including any relevant corrections legislation. The Project Deed is a management agreement under section 238 of the *Crimes (Administration of Sentences) Act 1999* (**Corrections Legislation**) and Project Co must comply with all relevant obligations under the Corrections Legislation in relation to the correctional complex.

Obligations of the State

The State's primary obligations under the Project Deed are to:

- (a) grant Project Co all necessary access to allow it to perform its obligations;
- (b) submit, as applicant, the Stage 2 Development Application;
- (c) carry out certain Facilitation Works at the Site; and
- (d) make payments to Project Co.

29. Project Site

The State has granted to Project Co a non-exclusive licence to enter upon and occupy the Delivery Phase sites during the Delivery Phase for the purpose of designing and constructing the correctional complex.

After Commercial Acceptance, the State will procure the grant to Project Co of a non-exclusive licence to enter upon and occupy the Operating Phase Site until the end of the Term for the purpose of providing the Services.

30. Development Application

Prior to entering into the Project Deed, the State obtained the 'Stage 1' development consent. The 'Stage 1' development consent was granted in respect of the 'Stage 1' development application for state significant development and sought concept approval for the correctional complex.

Under the Project Deed, the State is also responsible for submitting the 'Stage 2' development application for assessment, however Project Co retains the responsibility of preparing the 'Stage 2' development application and diligently progressing the 'Stage 2' development application (including completing responses to submissions and assisting the State as the applicant to progress the 'Stage 2' development application).

31. Facilitation Works

At the same time as Project Co is undertaking the Works, the State is required to undertake certain 'facilitation works' on the site and on land adjacent to the Site. 'Facilitation Works' comprise:

- (a) delivery of a permanent electricity supply to the boundary of the Site;
- (b) upgrade of certain roads surrounding the Site;
- (c) delivery of telecommunications to the Site; and
- (d) delivery of potable water supply to the Site,

(Facilitation Works).

If the State fails to deliver the Facilitation Works by certain dates, Project Co may be entitled to relief (see section 36).

Project Co retains all other obligations with respect to utilities (including delivery of utilities within the Site and the risk of existing utilities).

32. Payment

In addition to the State's payment obligations set out in section 33, the State also has an obligation to pay a lump sum 'conditional debt pay down' amount equal to the lesser of a proportion of debt forecast to be outstanding and the same proportion of debt actually outstanding, on the relevant payment date to Finance Co if certain conditions are satisfied (or waived by the State).

Project Co must use the CDPD amount paid to them, or procure that it is used, to partially repay the then outstanding debt of Project Co in relation to the NGCC project.

Payment obligations

33. Payment obligations

The State must make the following payments to Project Co:

- (a) 'monthly service payments' during the Operating Phase (**MSP**); and
- (b) in certain circumstances, the CDPD amount (see section 32 above).

34. Payment mechanism - Monthly Service Payments

The formula for calculating the MSP is detailed in Schedule 16 of the Project Deed. The MSP comprises payments to Project Co by the State for the capital cost of delivering the correctional complex, including finance costs, and the cost of delivering the Services.

Payments are primarily linked to the availability of inmate accommodation and the provision of associated services to inmates. The payment mechanism also provides additional payments that are linked to service delivery and performance (as outlined in performance standards section below). The components of the payment mechanism include:

- an 'availability payment' (based on available inmate accommodation), a 'non-reviewable services payment', a 'reviewable services payment', a utilities fee and an insurance fee. These will be indexed annually in line with specified indexation factors, including CPI;
- a fixed and variable fee adjustment to be applied to reflect fluctuations in inmate numbers as applied to inmate population bandings over an agreed minimum population;
- a cohort adjustment if the percentage of inmates in custody under remand is greater than a specific 'remand threshold';
- a lifecycle component paid in line with the profile bid by Project Co adjusted by CPI.
- pass through costs reimbursed as incurred and including pharmacy costs and NSW Ambulance charges;
- 'escort payments' in line with the hourly rates bid back by Project Co depending on the number of inmates transported as part of that escort and the relevant security classification of those inmates;
- incentive payments payable by the State on an annual basis to the extent that Project Co achieves specified outcomes in respect of re-incarceration rates of four particular cohorts, being indigenous male inmates, non-indigenous male inmates, indigenous female inmates and non-indigenous female inmates; and
- deductions in relation to abatements for failures to achieve minimum availability and quality (service) related standards (**Key Performance Indicators**) as outlined in the performance standards section below.

Performance standards and Key Performance Indicators

Performance standards for the NGCC project have been developed with the intention of promoting the objectives of the Better Prisons Program by lifting performance, reducing reoffending, and improving the efficiency of the correctional services system (see section 11). Better Prisons will deliver a correctional services system that accommodates more inmates, operates more efficiently and has a greater focus on rehabilitation, without compromising safety and security.

The performance standards for the NGCC project are comprised of a mixture of Charge Events and Key Performance Indicators (**KPIs**), together forming the Performance Regime (as set out in Schedule 17 of the Project Deed). Project Co is required to report its performance against each of these components on a monthly basis.

The KPIs and Charge Events are listed below.

Table 4 - KPIs and Charge Events

KPI or Charge Event	How performance is measured
Charge Event 1 – Unnatural deaths	Number of unnatural deaths.
Charge Event 2 – Escapes	Number of escapes from secure custody and number of escapes from open custody.
Charge Event 3 – Major disruption to the operation of the correctional complex	Number of major disruptions to the operation of the correctional complex.
Charge Event 4 – Compliance with release dates	Number of erroneous releases and number of erroneous detentions.
KPI 1 – Current case plans	Number of eligible inmates with a current case plan as a percentage of the total number of eligible inmates.
KPI 2 – Outstanding case plan interventions	Number of outstanding case plan interventions for high/medium and low risk inmates as a percentage of the number of case plan interventions scheduled to be completed for high/medium and low risk inmates.
KPI 3 – Specified serious incidents	Number of deliberately lit fires, security breaches and non-fatal drug overdoses and number of contraband breaches identified by the State.
KPI 4 – Assaults on non-inmates	Number of non-inmate victims of substantiated serious assault and number of non-inmate victims of substantiated assault by inmates.
KPI 5 – Assaults on inmates by inmates	Number of inmate victims of substantiated serious assault and number of inmate victims of substantiated assault by inmates as a percentage of the daily average inmate population.
KPI 6 – Illicit drug use	Number of positive random drug tests as a percentage of the number of random drug tests.
KPI 7 – Serious self-harm	Number of incidents of serious self-harm.
KPI 8 – Temporary leave programs and compliance with temporary leave orders	Number of inmates participating in temporary leave programs as a percentage of the number of inmates eligible for temporary leave programs and the number of temporary leave orders breached.

KPI or Charge Event	How performance is measured
KPI 9 – Time out of cells	The number of out of cell hour failure periods, where failure periods are calculated as the sum of the variance in out of cell hours per day per inmate over the course of the month.
KPI 10 – Purposeful activity	Total sentenced inmate hours in purposeful activity and total remand inmate hours in purposeful activity.
KPI 11 – Staff misconduct	Number of incidents of staff misconduct, the number of staff misconduct incidents not known to Project Co or its associates and number of staff misconduct incidents not reported or misreported.
KPI 12 – Escapes from temporary leave	Number of escapes from temporary leave programs.
KPI 13 – Accuracy of reporting	Number of non-compliant incident reports and the number of critical reporting failures.
KPI 14 – Adherence to performance improvement notice cure plans	Number of failures to comply with a performance improvement notice cure plan.
KPI 15 – Carrying out scheduled FM service tasks	Number of FM failures (based on specified types).
KPI 16 – Rectifying FM service failures	Number of incidents of failure to rectify a FM service failure within the given rectification period.
KPI 17 – Chronic healthcare plans	Number of eligible custodial patients with an up to date chronic healthcare plan as a percentage of the total number of eligible custodial patients.
KPI 18 – Provision of timely primary health services	Number of failure periods for custodial patients (based on specified types).
KPI 19 – Health discharge plans	Number of in-scope sentenced and remand custodial patients provided with a health discharge plan as a percentage of the number of in-scope sentenced and remand custodial patients.
KPI 20 – Early detection programs and immunisation services	Number of eligible custodial patients and high risk custodial patients provided with immunisations as a percentage of the number of eligible custodial patients and high risk custodial patients.
KPI 21 – Health related incident reporting	Number of failure periods for submitting root cause analysis incident reports to the State within the required timeframe, the number of failure periods for resolving custodial patient complaints within the required timeframe and the number of incorrect incidents in the month.
KPI 22 – Drug and alcohol referrals for pregnancies	Number of pregnant custodial patients with a history of drug and or alcohol use received into custody at the correctional complex and not referred within 12 hours in accordance with the Services Specification.
KPI 23 – Health screening	Number of custodial patients received into custody at the correctional complex in the period who undergo a health assessment within 24 hours as a percentage of the number of custodial patients received into custody at the correctional complex in the period.

Change and project modification procedures

35. Modifications

Either party may propose a Modification. A Modification includes:

- a change to the Works or the design requirements during the Delivery Phase;
- a change to the correctional complex during the Operating Phase;
- the State requiring Project Co to accommodate more than or a different type of inmates to that which is set out in the Project Deed; or
- a change to the services or services requirements.

35.1 State proposed Modifications

The State may propose a Modification at any time but will not be obliged to proceed with any Modification it proposes. The State may approve, reject or withdraw a Modification that it does not wish to proceed with. If the State directs Project Co to carry out a Modification, the State will pay Project Co for the net financial impact of the Modification in accordance with the Change Compensation Principles and grant an extension of time where the Modification will cause a delay in achieving Completion or otherwise prevents Project Co from performing the Delivery Phase Activities.

If Project Co is granted an extension of time because of a State proposed Modification, Project Co will be entitled to an amount in respect of finance delay costs and prolongation costs in addition to compensation in respect of the Modification, calculated in accordance with the Change Compensation Principles.

35.2 Project Co proposed Modifications

If Project Co proposes a Modification, the State will consider Project Co's proposed Modification and may, in its absolute discretion, direct Project Co to proceed with the Modification. Project Co bears all risks and costs associated with a Modification proposed by Project Co and any savings that result from a Modification proposed by Project Co will be shared by the parties in accordance with the Change Compensation Principles.

35.3 Minor Modifications

Project Co or the State may propose Minor Modifications throughout the project in order to better facilitate and more efficiently give effect to Minor Modifications and ease the administrative burden on Project Co and the State in the implementation of Minor Modifications.

The State and Project Co will implement the Minor Modification on the terms agreed and amounts paid or claimed in accordance with the Change Compensation Principles.

If at any time the State considers that the Minor Modification regime is not meeting the objectives of the process described above, the State may direct Project Co to stop using the Minor Modification regime and submit all 'Minor Modification proposals' through the main Modification process.

Compensation and relief

36. Relief Events

The State recognises that there may be events out of Project Co's control, which prevent Project Co from performing their obligations under the Project Documents.

Relief Events include Extension Events, Intervening Events, Compensable Events and Change Compensation Events. If a Relief Event occurs then Project Co may be entitled to any or all of an extension of time, compensation, or relief from its obligations.

In any claim for relief as a result of a Relief Event, Project Co's entitlement to relief will be reduced:

- (a) to the extent that the Relief Event was caused or contributed to by Project Co and was within the reasonable control of Project Co;
- (b) to the extent that Project Co failed to mitigate the effects, consequences or duration of the Relief Event; and
- (c) by any insurance proceeds payable or that would be payable in connection with the Relief Event.

The State may request that the parties meet to discuss the consequences of a Relief Event including questions or issues the State may wish to raise, further steps Project Co should reasonably take to mitigate the effects of the Relief Event, and any other relevant matters.

37. Relief

Project Co is obliged to achieve each of the following completion milestones:

Completion milestone	Relevant 'date for'
Technical Completion	31 March 2020
Commercial Acceptance	30 June 2020

Project Co may be entitled to:

- (a) during the Delivery Phase, relief (eg. an extension of time) where an Extension Event occurs and that Extension Event delays or is expected to delay achievement of Completion or otherwise prevents Project Co from performing the Delivery Phase Activities; or
- (b) during the Operating Phase, relief (eg. relief from abatement) where an Intervening Event occurs and that Intervening Event prevents Project Co from meeting any of the service requirements under the Project Deed.

The State also has a right to grant a unilateral extension of time to Project Co whether or not Project Co is entitled to claim for an extension of time.

37.2 Extension Events

The Project Deed categorises each of the following events as Extension Events:

- (a) a 'compensable extension event' which includes:
 - (i) State breach;
 - (ii) fraudulent, reckless, unlawful or malicious act or omission of the State;
 - (iii) certain contamination;
 - (iv) native title and heritage claims;

- (v) project specific industrial action;
- (vi) emergency and step-in;
- (vii) 'Stage 2' development consent contest (directed by the State); and
- (viii) circumstances where the 'Stage 2' development consent is not granted by 2 January 2018 to the extent directly caused by:
 - (A) certain delays by the Development Consent Authority;
 - (B) the State failing to provide Project Co with landowner consent in respect of lodgement of the 'Stage 2' development application by 16 June 2017;
 - (C) certain circumstances where the Development Consent Authority requires certain additional processes, peer reviewed, submissions or information;
 - (D) the State lodging the 'Stage 2' development application with the Development Consent Authority after Financial Close; or
 - (E) the State failing to provide certain information;
- (ix) certain unforeseeable conditions being imposed under the 'Stage 2' development consent;
- (x) any change or modification to the 'Stage 2' development consent requested by the State; or
- (xi) the Facilitation Works not being completed by certain specified dates;
- (b) State act or omission;
- (c) a Force Majeure Event;
- (d) a blockade or embargo;
- (e) Change in Mandatory Requirements;
- (f) Modification; or
- (g) where the State requires Project Co to repair or rebuild the Works due to loss or damage caused by certain State acts, including State breach or fraudulent acts of the State; and
- (h) where the State requires Project Co to repair or rebuild the Works because of the occurrence of certain uninsurable risks.

The Project Deed sets out more detailed definitions of the Extension Events above.

37.3 Intervening Events

If Project Co has been prevented from meeting any of the Services Requirements under the Project Deed because of an Intervening Event then Project Co will be entitled to claim relief from performance of that relevant obligation until the Intervening Event ceases to prevent Project Co's performance of that service. Additionally, the failure to perform the affected Services will not be a breach of the Project Deed by Project Co until the date that the Intervening Event ceases to prevent performance.

The Project Deed categorises each of the following events as an Intervening Event:

- (a) a 'Compensable Intervening Event' which includes:
 - (i) State breach;
 - (ii) fraudulent, reckless, unlawful or malicious act or omission of the State;
 - (iii) certain contamination;
 - (iv) native title and heritage claims;
 - (v) project specific industrial action;
 - (vi) on the commencement date of the Operating Phase, the NSW Governor has not declared the Site to be a correctional centre or correctional complex in accordance with the Corrections Legislation; and

- (vii) a governor has not been appointed in respect of the correctional complex in accordance with the Corrections Legislation by the commencement date of the Operating Phase;
- (b) State act or omission;
- (c) a Force Majeure Event;
- (d) where the State requires Project Co to repair or rebuild the Works due to loss or damage caused by certain State acts, including State breach or fraudulent acts of the State; and
- (e) emergency and step-in.

The Project Deed sets out more detailed definitions of the Intervening Events above.

37.4 Change Compensation Events

If certain events occur, either party may be entitled to compensation in accordance with the Change Compensation Principles under the Project Deed. The events that trigger a right to compensation are called 'change compensation events' and entitle the parties to certain compensation.

In some cases Project Co will be entitled to compensation from the State for the net financial impact of a Change Compensation Event and in other cases the State will be entitled to payment from Project Co for savings that result from a Change Compensation Event.

Where a Change Compensation Event occurs, the compensation or savings payable are calculated in accordance with the Change Compensation Principles.

Under the Project Deed, Change Compensation Events include:

- (a) a requirement for Project Co to remediate certain contamination on the Site that has been caused or contributed to by the State;
- (b) the location of the Facilitation Works for power changes prior to a certain date;
- (c) any proposed changes to design documents or a Modification to the project that results in a saving to the State;
- (d) any 'refurbishment works' that have not been carried out by Project Co by the Expiry Date;
- (e) the omission of certain 'reviewable services' from the Services to be performed by Project Co by way of a Modification;
- (f) each Compensable Extension Event (see section 37.2(a));
- (g) each Compensable Event, being:
 - (i) certain Facilitation Works not being completed by certain dates; or
 - (ii) certain unforeseeable conditions being imposed under the 'Stage 2' development consent;
- (h) a requirement by the State for Project Co to accelerate certain Project Activities;
- (i) a Force Majeure Event;
- (j) each Compensable Intervening Event (see section 37.3(a));
- (k) where the State makes alternative arrangements for the provision of certain Services during a period of suspension due to an Intervening Event;
- (l) any Modifications required by the State (except for any Minor Modifications or Modification proposed by Project Co);
- (m) Minor Modifications;
- (n) a Change in Mandatory Requirements due to a general change in law, project-specific change in law or change in policy;
- (o) emergencies and step-in by the State;
- (p) damage caused by the State or its associates; and
- (q) damage caused by an Agreed Uninsurable Risk.

Default and termination arrangements

38. Defaults

38.1 Major Default by Project Co

A 'major default' under the Project Deed can be summarised as any of the following:

- (a) late Technical Completion;
- (b) late Commercial Acceptance;
- (c) any event that would restrict or cancel any Project Co Entity's ability to obtain or have finance available in accordance with the finance documents (subject to certain exceptions);
- (d) fraud;
- (e) representations or warranties found to be misleading;
- (f) a breach of the subcontracting or key people clauses in the Project Deed;
- (g) failing to comply with confidentiality obligations;
- (h) a breach of any State Project Document (other than certain excluded breaches) which is not cured within specified timeframes;
- (i) as a result of a 'change in management', Project Co no longer has the same or better management skills available to it;
- (j) 'change in control' occurs in respect of certain Consortium Members;
- (k) Project Co fails to remedy a 'probity event';
- (l) failure to inform or obtain the State's prior consent to a refinancing;
- (m) a breach of other Project Documents which will have a material adverse effect;
- (n) Project Co incurs 'total deductions' and Charge Events with an aggregate value greater than specified percentages of the fee;
- (o) Project Co's performance falls within the lowest performance standard for certain KPIs in certain circumstances for specified periods;
- (p) a Charge Event occurs;
- (q) an insolvency event occurs in relation to a Consortium Member of Project Co;
- (r) a breach of Project Co's insurance obligations;
- (s) failure to obtain and maintain certain accreditations;
- (t) failure to obtain certain licences;
- (u) it is found that any person involved in providing health services has engaged in unsatisfactory professional conduct or professional misconduct;
- (v) the Commissioner revokes the authority issued to the General Manager pursuant to the Corrections Legislation; or
- (w) where any outstanding items for Commercial Acceptance is not completed or remedied within the specified timeframe.

If a Major Default occurs, Project Co must promptly notify the State and take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default. If Project Co provides such notice to the State or the State considers that a Major Default has occurred, the State may issue a 'Major Default Notice' to Project Co which:

- if the Major Default is capable of remedy, provides a reasonable amount of time for Project Co to remedy the Major Default; or

- if the Major Default is not capable of remedy, states any reasonable requirements of the State in connection with the default and the date by which the requirements must be satisfied or if there are no reasonable requirements that can be met by Project Co, a statement to that effect along with its reasons for forming that view.

38.2 Remedy program

Project Co must prepare and submit a draft cure program to the State within 10 business days of receiving a 'Major Default Notice' (except where the Major Default is a failure to pay money which must be remedied immediately) setting out:

- where the Major Default is capable of remedy, a program to remedy the Major Default; or
- where the Major Default is not capable of remedy, a program to prevent the Major Default from recurring and complying with any reasonable requirements of the State set out in the 'Major Default Notice'.

Any program provided by Project Co will be reviewed by the State in accordance with the Review Procedures. In certain circumstances where a Relief Event occurs, Project Co will be entitled to an extension of time to the period by which the Major Default must be remedied.

39. Termination Rights

39.1 State termination rights

The Project Deed entitles the State to terminate the Project Deed for a number of reasons. The following is a summary of the State's right to terminate the Project Deed.

39.2 Project Co termination events

The State will be entitled to terminate the Project Deed, subject to the Financiers Tripartite Deed, by written notice to Project Co if a Default Termination Event occurs. The 'Default Termination Events' under the Project Deed include:

- (a) abandonment;
- (b) an insolvency event occurs in relation to a Group Member;
- (c) Project Co Entity fraud;
- (d) a Project Co Entity assignment, transfer or disposal in breach of the Project Deed;
- (e) a 'change in control' not in accordance with the Project Deed;
- (f) unremedied Major Default within the time period set out in the 'Major Default Notice';
- (g) unremedied Major Default by a specified 'sunset date' (where remedy is possible);
- (h) Project Co fails to comply with the State's reasonable requirements to overcome the consequences of a Major Default not capable of remedy;
- (i) repeated 'major default service failure' (being Project Co incurring 'total deductions' and Charge Events with an aggregate value greater than specified percentages of the fee, or Project Co's performance falls within the lowest performance standard for certain KPIs in certain circumstances for specified periods);
- (j) Project Co has accrued a Charge Event liability of greater than a specified amount in a specified period;
- (k) Project Co has incurred 'total deductions' and Charge Events with an aggregate value greater than certain percentages of the fee;
- (l) an 'illegality event' occurs;
- (m) Project Co fails to comply with certain obligations in relation to a 'probity event'; and

- (n) following a Project Co challenge to any part of a 'Major Default Notice' the State maintains the view that there are no reasonable requirements that can be met by Project Co (where the Major Default is not capable of remedy).

Alternatively, if a Default Termination Event occurs, the State may elect to step-in or to exercise its rights to cure or attempt to cure the Default Termination Event.

39.3 Voluntary termination

The State may voluntarily terminate the Project Deed by prior written notice to Project Co. The Project Deed will terminate on the date specified in the notice which must be at least 60 business days after the date of the notice.

39.4 Termination for a Force Majeure Event

If a Force Majeure Event occurs or is deemed to occur, either party may terminate the Project Deed by giving notice to the other party if:

- either party has been prevented from carrying out all or substantially all of the Project Activities for a continuous period exceeding 180 days as a result of the Force Majeure Event; and
- at least 180 days has elapsed since Project Co gave notice to the State of the Force Majeure Event in accordance with the Project Deed.

However, Project Co may not terminate the Project Deed because of a Force Majeure Event during the period that Project Co is able to recover under the advance loss of profits insurance, the consequential loss cover of the industrial special risks insurance or other business interruption insurance for the relevant Force Majeure Event.

39.5 Termination payments

If the Project Deed is terminated under clause 49 of the Project Deed (being voluntary termination, termination for force majeure or default termination event) by either party, the State will pay Project Co a termination payment calculated in accordance with Schedule 24 of the Project Deed.

The calculation of the termination payment differs depending on why the Project Deed was terminated.

39.6 Failure to achieve conditions precedent

The State may terminate the Project Deed if the conditions precedent set out in clause 3 and Schedule 2 of the Project Deed are not satisfied (or waived in writing) by the State by the 'condition precedent deadline'.

In such circumstances, neither party will have any claim against the other party arising out of or in connection with the NGCC project except for any antecedent breaches of the Day 1 Clauses.

40. Contractual remedies available to the State

The State will have a number of different contractual remedies available to it should Project Co default on its obligations related to the NGCC project in addition to termination and step in. These include:

40.1 Indemnity

Project Co indemnifies the State, the State's employees and officers and the NSW Government (**Indemnified Persons**) from and against any claim or liability suffered or incurred by any Indemnified Person in connection with:

- any breach by Project Co of the Project Deed or any breach by Project Co or its associates of any State Project Document;
- any loss of, or damage or destruction to, property (other than the cost of repairing or rebuilding the Relevant Infrastructure), any injury to, illness or death of, any person, or any third party actions (including by inmates) brought against the Indemnified Persons, including claims by inmates, to the extent caused or contributed to by Project Co or any of its associates in connection with the NGCC project or Project Activities; and

- damage to the correctional complex and any associated public property in the possession or under the control of Project Co or its associates, and the State attending or responding to any complaint, inquiry, inquest or commission arising out of or in connection with the correctional complex or an inmate (or former inmate).

Additionally, Project Co has provided indemnities:

- to the State and its associates in relation to the provision and reliance on certain project specific information;
- to the State, its associates and certain sub-licensees in relation to certain intellectual property rights, moral rights and any other analogous rights in connection with the NGCC project; and
- to the State and its associates in relation to certain privacy legislation.

The indemnities provided by Project Co under the Project Deed are reduced and limited in circumstances agreed between the parties, including where that claim or liability is caused or contributed to by any breach by the State of any State Project Documents, any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Indemnified Persons or, in certain circumstances, a Relief Event.

In addition, Project Co and its associates have no liability to the State or its associates, and the State and its associates have no liability to Project Co or its associates, in relation to consequential or indirect loss (subject to specific exceptions).

40.2 Set off rights

The State has the right, subject to certain restrictions, to set-off or deduct from any moneys due and payable to Project Co under the State Project Documents or otherwise at law:

- any moneys due and payable by any Group Member to the State;
- certain liabilities where adjustment of the MSP is not the sole remedy; or
- the amount of any claim that the State may make in good faith against any Group Member.

Project Co does not have set-off rights.

40.3 Final refurbishment works

In certain circumstances during the period leading up to the handover of the correctional complex, Project Co must also give to the State:

- an unconditional bank bond, for the estimated total cost of the remaining final refurbishment works; or
- notice directing the State to deposit subsequent MSPs into an escrow account until the balance of the escrow account is equal to the estimated total cost of the remaining final refurbishment works,

as security for the performance of Project Co's handover obligations.

40.4 Monthly Service Payment deductions

The State has the right to deduct amounts from the MSPs if Project Co fails to meet certain performance requirements (see section 33 for further detail on the MSPs).

41. State Step-In rights

41.1 Emergencies

If certain emergencies occur which cannot be dealt with by the normal performance of the Project Activities, the State may instruct Project Co to immediately suspend performance of all or any part of the Project Activities or undertake additional or alternative services as and when required by the State.

In certain circumstances, the direction by the State to suspend the performance of all or part of the Project Activities due to an 'emergency' will be considered a Relief Event that may entitle Project Co to an extension of time, compensation or both an extension of time and compensation.

41.2 Step-in under the Project Deed

The State will have a right to 'step-in' to the role of Project Co and assume Project Co's obligations under the Project Deed if any of the following 'Step-In Events' occur:

- (a) a Major Default (see section 38.1);
- (b) a Default Termination Event (see section 39.2);
- (c) a 'State Cure Notice' has been issued by the D&C Subcontractor or Operator in accordance with the D&C Side Deed or Operator Side Deed requiring the State to cure a default by Project Co under the relevant subcontract (as applicable);
- (d) Project Co requests, in writing;
- (e) an Intervening Event occurs (see section 37.3);
- (f) an event or circumstance occurs which requires additional or alternate services materially greater than the Services required under the Services Requirements;
- (g) certain emergencies occur (see section 41.1); or
- (h) the State is entitled by law (including under the Corrections Legislation) to act or discharge a statutory power or duty.

On the occurrence of a Step-In Event, the State may elect to do any or all of the following:

- assume total or partial management and control of the whole or any part of the Site, the Relevant Infrastructure or the Project Activities;
- access those parts of the Site and the Relevant Infrastructure to which Project Co has access or is entitled to occupy; and
- take such other steps as are necessary in the reasonable opinion of the State for it to carry out the Project Activities and minimise the effect of the relevant Step-In Event.

However, the State may not exercise its rights to step-in where the Step-In Event is the occurrence of a Major Default and Project Co is complying with its obligations to remedy that Major Default.

During the period of step-in by the State, Project Co and the State must comply with certain cooperation obligations as outlined under the Project Deed.

Where the State has exercised its Step-In rights as a result of the occurrence of an event listed in paragraphs (a) – (d) or (e) – (h) (where it was the result of any act or omission of Project Co or an inmate):

- during the Delivery Phase, any step-in liability incurred by the State will be a debt due and payable by Project Co to the State; and
- during the Operating Phase, the MSP will be adjusted in accordance with the Performance Regime and Payment Schedule to the extent that Services are not being provided in accordance with the Project Deed and any step-in liability in excess of the MSP will be a debt due and payable by Project Co to the State.

Where a Step-In Event under paragraphs (e) – (h) occurs which is not the result of an act or omission of Project Co or an inmate, then the State's exercise of its rights to step-in will be assessed under the Project Deed as a Compensable Extension Event, Intervening Event or Force Majeure Event depending on the specific circumstances at hand.

The State may cease to exercise its step-in rights upon written notice to Project Co and must cease to exercise its step-in rights in specific circumstances where the relevant event has ceased and its consequences have been remedied or overcome.

41.3 Step-in by Financiers

Upon the occurrence of a Default Termination Event, and prior to the State issuing a notice to terminate the Project Deed, the State is required under the Financiers Tripartite Deed to issue a notice to the Security Trustee of its intention to terminate the Project Deed (**State Intention to Terminate Notice**).

At any time from the receipt of a State Intention to Terminate Notice until the period ending one business day prior to the proposed termination date (as set out in the State Intention to Terminate Notice), the Security Trustee may provide notice to the State of its intention to step-in.

During the period of step-in by the Security Trustee, certain rights of the State to terminate the Project Deed are restricted by the operation of the Financiers Tripartite Deed.

The parties have agreed to an order of priority of step-in rights under the Financiers Tripartite Deed.

41.4 Side Deeds

Under the D&C Side Deed and Operator Side Deed, on the occurrence of any default by Project Co under the relevant subcontract or any other event which gives rise to a right of the relevant subcontractor to terminate the subcontract (**Subcontract Default Event**), the State may take steps to remedy such default.

If the State issues a State Cure Notice (following a Subcontract Default Event), the State may:

- in certain circumstances, appoint a receiver over any Project Co Entity or any or all of its assets;
- enter into possession of any or all of the assets of any Project Co Entity;
- take such other action as it is permitted to take under the terms of the Project Documents; and
- procure an additional entity to assume jointly and severally with Project Co all of Project Co's rights and obligations under the relevant subcontract and parent guarantee.

Subject to the Financiers Tripartite Deed, the State may at any time after it has become entitled to exercise the above step-in rights, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Subcontract Documents, as if it were Project Co to the exclusion of Project Co.

The State's rights to step-in under the D&C Side Deed and Operator Side Deed are subject to the Security Trustee's rights to step-in to the D&C Subcontract and Operator Subcontract under the consent deeds (being direct deed between the financiers, Project Co and the relevant subcontractor in relation to certain rights and obligations).

Change in Control and Assignment

42. Change in Control

The Project Deed places certain restrictions on the State and Project Co in the event of a 'change in control'.

Project Co is also under an obligation to notify the State of any 'change in control' or 'change of management' (being the appointment, resignation or termination of an officer of a Project Co Entity or the Operator or the General Manager) of a Project Co Entity or the Operator.

Under the Project Deed, except in certain permitted circumstances, Project Co must not and must ensure that each Group Member is restricted from permitting or suffering a 'change in control' of a Consortium Member without the State's prior consent. The State may, acting reasonably, refuse to consent to a 'change in control' on a number of grounds set out in the Project Deed.

If a 'change in control' occurs other than a 'permitted change in control' or with consent of the State, then a Default Termination Event is deemed to have occurred (see section 39).

Project Co has a right under the Project Deed to effect, permit, suffer or allow 'permitted changes in control', as long as notice is provided to the State.

43. Assignment

The State may not assign its interest in the State Project Documents without the prior consent of Project Co except where the proposed transferee is:

- the State of New South Wales (including the Crown in right of the State of New South Wales);
- a Minister on behalf of the Crown in right of the State of New South Wales;
- any other person acting on behalf of the State of New South Wales where the State of New South Wales remains bound by the obligations and liabilities of, and has the benefit of the rights and interests of, the State under the State Project Documents (other than the PAFA Act Deed Poll of Guarantee); or
- any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality where their obligations are supported by a guarantee from the State of New South Wales.

Project Co is not permitted to assign any Project Document except as expressly permitted under the Project Deed, the Financiers Tripartite Deed or the State Security without the State's prior consent. The State cannot withhold consent where the assignment will not have a material adverse effect on:

- the ability of any Project Co Entity to perform, and observe its respective obligations under any Project Document to which it is a party; or
- the rights or liability of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

Handover obligations

The Project Deed sets out a detailed process for the 'handover' of the correctional complex back to the State from Project Co at the end of the Term.

44. At the end of the Term

Project Co must cooperate fully and facilitate the smooth transfer of responsibility for delivering the NGCC to the State or its nominee (including by meeting with the State to discuss delivery of the NGCC, providing access to its operations for managers and supervisors of the State and providing sufficient resources to facilitate the transfer of the NGCC).

45. Handover preparation and audit

In preparation for the handover of the NGCC, Project Co must provide a dedicated person with appropriate expertise and experience to manage the transition out and handover of the NGCC at least 6 months before the Final Expiry Date or where the Term is due to expire prior to the Final Expiry Date and Project Co is given less than 6 months' notice, during that notice period.

The State and Project Co will jointly appoint a person with suitable expertise and experience to be the independent certifier for the handover (**Handover Reviewer**). The Handover Reviewer will carry out joint inspections of the Works (where handover occurs during the Delivery Phase) and the correctional complex (where handover occurs during the Operating Phase) at least 3 years before the Final Expiry Date and every 6 months after that initial inspection until the Final Expiry Date or where the Term is set to expire prior to the Final Expiry Date, within any shorter period as the State reasonably requires.

The Handover Reviewer will give a report to the State and Project Co after each inspection setting out certain maintenance and repair work which must be carried out by Project Co prior to the handover and Project Co must undertake these relevant final refurbishment works in accordance with the Project Deed. If any 'final refurbishment works' are not undertaken by the Expiry Date to the satisfaction of the Handover Reviewer, the State may undertake those works and all costs incurred by the State will be a debt due and payable by Project Co to the State.

The State has the right to alter when the Handover Reviewer carries out their inspections within the final 3 year period of the Term, relieve Project Co from any obligation to undertake any of the 'final refurbishment works' or increase the number of inspections that the Handover Reviewer must undertake.

In certain circumstances, Project Co may be required to provide an unconditional bank bond to the State or set up a handover escrow account for part of the handover period (see section 47).

46. Handover obligations

Project Co must, among other obligations:

- hand over the Relevant Infrastructure and the Site (including all rights, title and interest in them) to the State (or its nominee) free from any encumbrances and in a state and condition as agreed in the Project Deed;
- deliver to the State all items required as contemplated by the 'handover package' (as updated in accordance with the Delivery Phase Plans and Reports Schedule, the Operating Phase Plans and Reports Schedule, the Output Specification and any other requirements of the Project Deed);
- transfer to the State (or its nominee) all rights, title and interest, free from any encumbrances, in equipment used by Project Co or its associates predominantly or exclusively for the delivery of the Services and required by the State to allow the State (or its nominee) to provide the Services to the standards required of Project Co under the Project Deed;

- deliver to the State (or its nominee), certain Project Co material not previously delivered to the State as required by the State (or its nominee);
- pay to the State (or its nominee) any insurance proceeds Project Co has received from any insurances for the reinstatement or replacement of the Relevant Infrastructure to the extent not already reinstated or replaced, and assigned to the State any rights available to Project Co under the insurances in respect of the reinstatement or replacement of the Relevant Infrastructure;
- procure novation to the State (or its nominee) of intellectual property rights to enable the State (or its nominee) to deliver the NGCC to the standards specified in, and in accordance with, the Project Deed;
- procure novation (or assignment when novation is not possible) to the State (or its nominee) of each subcontract that the State nominates, any leases, subleases and licences requested by the State and any warranties (provided in respect of the NGCC project that are capable of assignment); and
- complete all acts and things necessary to enable the State (or its nominee) to have transferred to it or to obtain all approvals necessary to deliver the NGCC project.

Guarantees and security obligations

47. State Security Agreements

In order to secure the State's rights relating to the NGCC project, the State has entered into:

- a 'State Security' dated 14 June 2017 between the State and Project Co; and
- a 'State Security' dated 14 June 2017 between the State and Finance Co.

Each of the State Security agreements secure all the obligations of Project Co and Finance Co (respectively) to the State under or by reason of the Project Deed or any other Project Document by charges over the assets, undertakings and rights of Project Co or Finance Co (as relevant).

48. PAFA Act Guarantee

Under the '*PAFA Act Deed Poll of Guarantee*' executed by the NSW Treasurer (on behalf of the State of NSW), in favour of Project Co dated 19 June 2017, the State of NSW provides a guarantee by the State of NSW to the beneficiaries including Project Co in accordance with section 22B of the *Public Authorities (Financial Arrangements) Act 1987* (NSW), of the State's performance of its payment obligations under the State Project Documents and any other documents approved in writing by the NSW Treasurer from time to time.

Other key elements of contractual arrangements

49. Dispute resolution

The Project Deed requires all disputes that arise between the State and Project Co to be resolved in line with the procedures set out in the Project Deed.

49.1 Dispute process

The dispute resolution process follows three progressive steps: senior negotiations, expert determination and arbitration. Throughout these processes both parties must continue to perform all of their obligations under the Project Deed.

If a dispute arises, either party may give the other party notice of the dispute and request referral of the dispute for resolution by negotiation between the chief executive officers (or equivalent) of the State and Project Co. If no resolution is achieved within the timeframe set out in the Project Deed, the dispute may be referred for expert determination or arbitration, depending on the circumstances.

If the dispute is referred to arbitration, the Australian Centre for International Commercial Arbitration (ACICA) arbitration rules will apply. This process aims to achieve a timely and cost-effective resolution of any dispute.

49.2 Disputes under related contracts

Independent Certifier Deed

Any dispute that arises between the State and Project Co in connection with the Independent Certifier Deed is to be resolved in accordance with the dispute resolution process set out in the Project Deed.

If a dispute arises between one or both of the State and Project Co (on the one hand) and the Independent Certifier (on the other hand) under the Independent Certifier Deed, then any of the relevant disputing parties may give a notice to each other party in relation to the dispute.

The 'executive negotiators' set out in the Independent Certifier Deed must meet and undertake genuine and good faith negotiations to resolve the dispute or if it cannot be resolved, to agree upon a procedure to resolve the dispute. If the parties cannot resolve the dispute or agree upon a procedure to resolve the dispute, it must be referred to mediation. If mediation does not resolve the dispute within specified timeframes, the dispute may be referred to litigation.

Side Deeds

If a dispute arises under a side deed, any party to the relevant side deed may refer the dispute for resolution in accordance with the side deed and will be resolved through the same manner as disputes are resolved in the Project Deed.

50. Insurance

50.1 Delivery Phase

Project Co is required to maintain the following types of insurance during the Delivery Phase:

- (a) contract works insurance;
- (b) public liability insurance;
- (c) advance loss of profits insurance;
- (d) marine transit (material damage) insurance;
- (e) professional indemnity insurance;

- (f) workers' compensation insurance;
- (g) motor vehicle insurance; and
- (h) D&C Subcontractor temporary equipment insurance.

Further, Project Co must ensure that the D&C Subcontractor effects and maintains plant and equipment insurance at all times during the Delivery Phase.

50.2 Operating Phase

Project Co is required to maintain the following types of insurance during the Operating Phase:

- (a) industrial special risks/consequential loss insurance;
- (b) public and products liability insurance;
- (c) professional indemnity insurance;
- (d) workers' compensation insurance; and
- (e) motor vehicle insurance.

50.3 Requirements in relation to insurance

All required insurance must be:

- maintained with reputable insurers with at least a Standard and Poor's (Australia) Pty Limited credit rating of A- or Moody's Investor Service Inc. credit rating of A3 or an equivalent rating with another reputable rating agency; and
- on terms acceptable to the State and in accordance with Schedule 22 of the Project Deed.

Project Co is responsible for paying the premiums, deductibles and/or excesses payable under any of the insurances required to be effected in accordance with Schedule 22 of the Project Deed or as required by law (except that the State will pay the relevant deductible or excess in relation to claims made in respect of Compensable Extension Events, Compensable Intervening Events or loss or damage to the Works or correctional complex caused by State breach).

50.4 Insurance claims procedure

The State is not required to make a claim against an insurer under any of the relevant insurance policies before enforcing any of its rights or remedies under the indemnities in the Project Deed.

Other than workers compensation or motor vehicle insurances, Project Co must promptly notify the State of any occurrence that may give rise to a claim (except where such notice would prejudice the insured's right of indemnity) and must:

- keep the State informed of subsequent developments;
- diligently pursue any claim which it has under any insurance; and
- not compromise, settle, prosecute or enforce any claim under any insurance without the prior consent of the State (not to be unreasonably withheld).

50.5 Insurance proceeds

All proceeds of insurance (except business interruption insurance) must be applied:

- towards replacement or repair of the relevant infrastructure or the site;
- to discharge the relevant liability or claim, or make good the relevant liability; or
- to the State or to such account as the State may reasonably direct.

Appendix 1 – Glossary of Terms

Term	Definition
Agent	means the person appointed from time to time as agent under the 'syndicated facility agreement' and, as at the date of the Project Deed, is Commonwealth Bank of Australia (ABN 48 123 123 124).
Agreed Uninsurable Risk	means certain uninsurable risks agreed between the parties under the Project Deed.
Better Prisons Program	means the program described in section 11.
Change Compensation Events	includes those events set out in section 37.4 and described in the Change Compensation Principles.
Change Compensation Principles	means Schedule 5 of the Project Deed.
Change in Mandatory Requirements	means a project-specific change in law or change in policy that occurs after the date of the Project Deed and that will have an effect on the cost of carrying out the Project Activities or a general change in law that occurs after the operational commencement date, that will have an effect on the cost of carrying out the Project Activities.
Charge Event	includes certain events that result in Project Co incurring a charge as set out in the performance standards section and the Performance Regime.
Commercial Acceptance	means when all the 'commercial acceptance criteria' set out in the Project Deed have been met to the satisfaction of the State (acting reasonably) and the correctional complex can begin operating.
Compensable Event	includes those events described in section 37.4(g).
Compensable Intervening Event	includes those events described in section 37.3(a).
Completion	means Technical Completion and Commercial Acceptance, or the relevant one of these as the case may be.
Consortium	means: <ul style="list-style-type: none"> (a) any Project Co Entity; (b) the D&C Subcontractor for a specified period under the Project Deed; (c) the Operator; (d) the Parent Guarantor of the D&C Subcontractor for a specified period under the Project Deed; and (e) the Parent Guarantor of the Operator.
Consortium Members	means any of the members of the Consortium.
Corrections Legislation	means the <i>Crimes (Administration of Sentences) Act 1999</i> (NSW) and the <i>Crimes (Administration of Sentences) Regulation 2014</i> (NSW).
CPI	means consumer price index as more fully set out in the Project Deed.
CSNSW	means Corrective Services NSW.
D&C Side Deed	means the relevant side deed described in section 19.2.
D&C Subcontract	means the relevant subcontract described in section 19.2.
D&C Subcontractor	means John Holland Pty Limited.
D&C Subcontractor Parent Guarantee	means the relevant parent guarantee described in section 19.2.
D&C Subcontractor Parent Guarantor	means a parent company of the D&C Subcontractor.
Date of Commercial Acceptance	means the date that Commercial Acceptance is achieved and when the correctional complex is ready to accept inmates.
Day 1 Clauses	has the meaning given to that term in section 20.
Default Termination Event	includes the occurrence of the events described in section 39.2 and set out in the Project Deed.
Delivery Phase	means the period beginning on the date of the Project Deed and ending on and including the Date of Commercial Acceptance.

Term	Definition
Delivery Phase Plans and Reports Schedule	means Schedule 11 of the Project Deed.
Design Subcontract	means the relevant subcontract described in section 0.
Design Subcontract Side Deed	means the relevant side deed described in section 0.
Design Subcontractor	means Perumal Pedavoli Pty Limited.
Development Consent Authority	means the Authority or Authorities with jurisdiction to assess or determine the 'Stage 1' development application and the 'Stage 2' development application (as applicable).
Electronic Security Provider	means Saab Australia Pty Ltd.
Electronic Security Provider Side Deed (Delivery Phase):	means the relevant side deed described in section 0.
Electronic Security Provider Side Deed (Operating Phase)	means the relevant side deed described in section 0.
Electronic Security Provider Subcontract	means the relevant subcontract described in section 0.
EOI	means expression of interest.
Expiry Date	means the date that the Project Deed expires as described in in section 20.
Extension Event	includes those events described in section 37.2.
Facilitation Works	means certain enabling works to be delivered to the Site by the State including works in relation to water, road, power and telecommunications.
FFP Warranty	means the warranty described in section 0.
Final Expiry Date	means the date which is the twentieth anniversary of the earlier of the anticipated date of Commercial Acceptance and the actual Date of Commercial Acceptance.
Finance Co	means NorthernPathways Finance Pty Limited (ACN 615 483 737).
Financial Close	means the date on which the last condition precedent of the Project Deed has been satisfied (or waived).
Financiers Tripartite Deed	means the document entitled 'New Grafton Correctional Centre - Financiers Tripartite Deed' dated 14 June 2017 between the State, Project Co, Finance Co and the Security Trustee on behalf of the financiers.
FM	means facilities management.
Force Majeure Event	includes certain agreed events that prevent Project Co from carrying out all or substantially all of the Project Activities which can not have been avoided and were not caused by Project Co.
General Manager	means the person appointed from time to time as the governor of the correctional complex pursuant to the Project Deed and the Corrections Legislation.
Group Member	means any of Project Co, Finance Co, each of their holding entities or any wholly owned subsidiary of any of them.
Handover Reviewer	means the person described in section 45 which has suitable expertise and experience appointed as the independent certifier for handover in accordance with clause 37.4 of the Project Deed.
Indemnified Person	means those persons described in section 40.1.
Independent Certifier	means the entity appointed as the Independent Certifier under the Independent Certifier Deed and Project Deed.
Independent Certifier Deed	means the document entitled 'New Grafton Correctional Centre - Independent Certifier Deed of Appointment' dated 14 June 2017 between the State, Project Co and the Independent Certifier substantially in the form set out in Schedule 25 of the Project Deed.
INSW	means Infrastructure New South Wales.
Intervening Event	includes those events described in section 37.3.
Key Performance Indicators (KPI)	includes those key performance indicators described in performance standards section and set out in the Performance Regime.
Key Subcontractors	means, as at the date of the Project Deed, the D&C Subcontractor and the Operator.
Major Default	includes those events described in section 38.1.

Term	Definition
Major Default Notice	means the notice described in section 38.
Minor Modification	means a Modification proposed by either Project Co or the State in accordance with clause 40.12(b) of the Project Deed: <ul style="list-style-type: none"> (a) in respect of which Project Co will not be entitled to an extension of time to the Date for Completion if it occurs during the Delivery Phase; (b) which is minor in respect of its scope and likely impact on the Project Activities; and (c) has a price not exceeding \$30,000 (as indexed).
Modification	means, generally: <ul style="list-style-type: none"> (a) during the Delivery Phase, any addition, decrease, omission, deletion, demolition or removal to or from the Works or the Design Requirements; (b) during the Operating Phase, any addition, increase, decrease, omission, deletion, demolition or removal to or from the Correctional Complex, a change to the Services Requirements or the Services or certain changes to inmate population.
MSP	means a monthly service payment payable to Project Co calculated in accordance with the Payment Schedule as described in section 34.
National PPP Guidelines	means the 'National Public Private Partnership Guidelines'.
NGCC	means New Grafton Correctional Centre.
NSW PPP Guidelines 2017	means the 'NSW Public Private Partnership Guidelines 2017' TPP17-07.
Operating Phase	means the operating period of the correctional complex commencing after the Date of Commercial Acceptance and ending on the Expiry Date.
Operating Phase Plans and Reports Schedule	means Schedule 15 of the Project Deed.
Operator	means Serco Australia Pty Ltd.
Operator Parent Guarantee	means the parent guarantee described in section 19.2.
Operator Parent Guarantor	means a parent company of the Operator.
Operator Side Deed	means the relevant side deed described in section 19.2.
Operator Subcontract	means the relevant subcontract described in section 19.2.
Output Specification	means Schedule 3 of the Project Deed.
Payment Schedule	means Schedule 16 of the Project Deed.
Performance Regime	means Schedule 17 of the Project Deed.
PPP	means public private partnership.
Project Activities	means all works, things and tasks that Project Co is, or may be, required to do to comply with its obligations in connection with the State Project Documents, including the Delivery Phase Activities and the Services.
Project Co	means NorthernPathways Pty Limited (ACN 618 985 452) in its capacity as trustee for the NorthernPathways Project Trust (ABN 36 175 930 685).
Project Co Entities	means Project Co and Finance Co, or if the context requires, the relevant one of them.
Project Deed	means the agreement described in section 19.1.
Project Documents	means certain project documents including, amongst others, the Project Deed, the Financiers Tripartite Deed, the D&C Subcontract, the Operator Subcontract, each side deed, each Consent Deed, each parent guarantee and the Independent Certifier Deed.
Project Objectives	means the objectives of the Project included in Schedule 1 of the Project Deed and described in section 5.
PSC	means the public sector comparator as described in section 0.
Relevant Infrastructure	means, during the Delivery Phase, the Works and during the Operating Phase, the correctional complex.
Relief Event	includes, amongst other events under the Project Deed, any Extension Events, Intervening Events, Change Compensation Events and Compensable Events.

Term	Definition
Review Procedures	means Schedule 9 of the Project Deed.
Reviewable Services	means those services described in section 27.1.
RFP	means the request for proposal.
Security Trustee	means CBA Corporate Services (NSW) Pty Limited.
Services	means the services referred to in the Services Requirements to be undertaken by Project Co during the Operating Phase and all other things Project Co is, or may be, required to provide or undertake during the Operating Phase as set out in the Services Requirements or State Project Documents, in each case as modified in accordance with the Project Deed.
Services Proposal	means Annexure B of the Project Deed.
Services Requirements	means the requirements for the provision of the Services as set out in the Output Specification, the Services Proposal; and the remainder of the Project Deed.
Significant Subcontract	means, amongst other contracts, the Design Subcontract, the Electronic Security Provider Subcontract (Delivery Phase) and the Electronic Security Provider Subcontract (Operating Phase).
Significant Subcontractor	means a party (other than Project Co or a Key Subcontractor) to a Significant Subcontract.
Site	means the relevant Delivery Phase sites and Operating Phase sites on which the Works will be constructed and the correctional complex operated.
State	means: <ul style="list-style-type: none"> (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales; (b) Infrastructure New South Wales (ABN 85 031 302 516); and (c) for the purposes of the Project Deed and the Operator Side Deed only, the Commissioner.
State Intention to Terminate Notice	means that notice described in section 0.
State Project Document	means those Project Documents to which the State is a party.
Step-In Events	includes those events described in section 41.2.
Subcontract Default Event	has the meaning given to that term in section 41.4.
Subcontract Documents	means the relevant subcontract and where relevant, the applicable parent guarantee.
Technical Completion	means when all the 'technical completion criteria' have been met to the satisfaction of the Independent Certifier (or waived by the State) in accordance with the Project Deed.
Term	means the term of the Project Deed.
Works	means, during the Delivery Phase, the physical things and works which Project Co must design, supply, construct, install, produce, commission and complete in accordance with this Deed, including any Equipment and Modifications and any rectification of Defects.

Appendix 2 – Site Plan

