



PR15/01205

Howard Glenn  
General Manager Maritime Management Centre  
Transport for NSW  
18 Lee St  
CHIPPENDALE NSW 2008

Dear Mr Glenn

**EXECUTED FUNDING DEED –  
PORT OF EDEN BOATING INFRASTRUCTURE IMPROVEMENT PROGRAM**

I refer to your letter dated 23 January 2015.

Please find enclosed a copy of the Executed Deed for the Port of Eden Boating Infrastructure Improvement Program.

As requested in your letter, invoices will be sent to Matt Jones, Policy Manager, Waterways Access and Reform.

Schedule A of this Funding Deed will be revised once a decision on the preferred solution and delivery method is made.

Yours Sincerely,

Stephen Wills  
Director Infrastructure and Land Management

27 April 2015





## Funding Deed (Department Receiving Funding)

**Department:** The Department of Trade and Investment,  
Regional Infrastructure and Services

**Agency/Division:** Crown Lands Division

**Agency:** Transport for NSW

**Name of Project:** Port of Eden Boating Infrastructure Improvement  
Program



## Details

### Department

Name The Crown in right of the State of New South Wales acting through the Department of Trade and Investment, Regional Infrastructure and Services (ABN 72 189 919 072).

Agency/  
Division Crown Lands Division

Address NSW Primary Industries  
Locked Bag 21  
Orange NSW 2800

### Department Authorised

Person (refer to clause Error!

Reference source not found.

- Notices)

Name Stephen Wills

Position Director Infrastructure and Land Management

Address Level 4 437 Hunter Street Newcastle NSW 2300

Telephone 02 4920 5049

Mobile 0477 380 790

Fax

E-mail [stephen.wills@crownland.nsw.gov](mailto:stephen.wills@crownland.nsw.gov)

### Granting Body ('You')

Name Transport for NSW

Address PO Box K659  
Haymarket NSW 1240

ABN 18 804 239 602

### The your Authorised Person

(refer to clause Error!

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- Notices)

Name Howard Glenn

Position General Manager  
Maritime Management Centre

Address 18 Lee Street  
Chippendale NSW 2008

Telephone 02 8265 7410

Mobile 0409 038 452

Fax 02 8202 3891

E-mail [howard.glenn@transport.nsw.gov.au](mailto:howard.glenn@transport.nsw.gov.au)

### Project

The Port of Eden Boating Infrastructure Improvement Program is exploring options to improve the safety of the Port of Eden anchorage for local and visiting vessels. \$10 million has been allocated to this project for investigation works and construction of a preferred solution.

**Payment**

As land owner, the Crown Lands Division is responsible for project management with input from the Port of Eden Project Control Group.

A maximum total of \$10,000,000 (GST exclusive) payable in the amounts, and on the dates, set out in the Schedule(s).

**Commencement Date**  
(refer to clause 2 - Commencement)

The date on which the last party signed this Deed.

**Project Term**

From Commencement Date to Date of Final Milestone.

**Special Conditions**

Released Under NSW GIPA Act 2009



## Definitions and Commencement

### 1. Definitions and Interpretation

#### 1.1 Interpretation

Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
- (b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) the meaning of general words is not limited by specific examples introduced by "including" or "for example" or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

#### 1.2 Definitions

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales.

**Deed** means this funding deed document and includes the Details, Terms, schedules and any annexures or other documents cross-referenced in this deed.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999*.

**Milestones** mean the stages at which the Department will complete parts of the Project. Further details of the Milestones are set out in **Schedule A**.

**Personal Information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

**Unexpended Payment** means any amount of funds comprising part of the Payment you pay the Department that are unspent at the end of the Project Term and includes any amount of such funds that is committed but unspent as at the end of the Project Term.

### 2. Commencement

#### 2.1 This Deed will commence on the Commencement Date.

## What the Department must do

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### 3. The Department obligations

#### 3.1 The Department must:

- (a) ensure the Payment is used only for the Project;
- (b) provide you with the evidence of compliance as set out in Schedule A;
- (c) comply with all policies, guidelines and reasonable directions you provide to the Department with respect to accounting for the application of the Payment to the Project; and
- (d) undertake the Project at its own risk and in accordance with all applicable laws, NSW Government policies and codes of conduct and all relevant Australian standards with application to the Project.

## About Payments

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### 4. Payment

- 4.1 Once the Department has met the Milestones and has provided you with the evidence of compliance required plus a tax invoice, on or before the date by which claim for payment must be made, you will pay the Department the relevant Payment.

### 5. Visits

- 5.1 You may carry out a visit to review the Activities prior to Payment being approved.

### 6. Withholding, Suspension, Changes to Payments and Repayment

- 6.1 You may change the amount of the Payment by issuing the Department with a written notice setting out the details of the changes.
- 6.2 If the Department is not complying with this Deed you may withhold or suspend payment until the Department comply with the Department's obligations to your satisfaction.
- 6.3 If you withhold or suspend the Department's payment the Department must continue to perform the Department's obligations under this Deed.
- 6.4 The Department must repay within 28 days of a demand being sent:
- (a) any payment spent in breach of this Deed;
  - (b) all Unexpended Payment;
  - (c) any overpayment.
- 6.5 Where the Department have failed to comply with this Deed, you will calculate the amount of repayment the Department must make with regard to the extent the Department has failed to meet the objectives and/or the milestones of the Project.
- 6.6 You may set off the amount of any overpayment or claim for repayment against any future Payment to the Department.

### 7. Infrastructure



- 7.1 All Infrastructure built or established pursuant to the Project will be owned by the Department as agreed in Schedule A.
8. **GST**
- 8.1 Unless otherwise indicated, all consideration for any supply under this Agreement is exclusive of any GST imposed in relation to the supply.
- 8.2 If:
- (a) despite any other provision of this Agreement, GST is imposed on a supply the Department make to You under this Agreement; and
  - (b) You are or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,
- You will pay the Department an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Agreement in relation to that supply.
- 8.3 If for any reason you pay the Department an amount under this clause 7 which is more than the GST imposed on the supply, the Department must repay the excess to you on demand or you may set off the excess against any other amounts due to the Department.

## Material and Information

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### 9. Reporting Requirements

- 9.1 The Department agree to liaise with you as required and to make the Department's staff available to you to discuss the progress of the Project.

### 10. Confidential Information

- 10.1 Each party must maintain the confidentiality of all commercially sensitive information it receives from the other party, including the amount of the Payment, except for the information listed in clause 11.

### 11. Public Announcements and Acknowledgement

- 11.1 The Department must:
- (a) seek your approval of any public announcement about the Project;
  - (b) acknowledge your support, as directed by you from time to time:
    - (i) in any public statements about the Project;
    - (ii) on the home page of any web site established in connection with the Project; and
    - (iii) as appropriate, on any visible infrastructure or other facility you fund.
- 11.2 You may publish the title and brief description, including outcomes, of the Project and the Department's name.
12. **Privacy**
- 12.1 The Department will:
- (a) ensure that Personal Information it provides or collects under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss and against unauthorised access, use, modification or disclosure or against other misuse;

- (b) not disclose any such Personal Information without the written consent of the individual to whom the Personal Information relates unless otherwise required or authorised by law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998 (NSW)* when doing any act or engaging in any practice in relation to Personal Information as if it were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this clause 12) in any subcontract entered into to perform the Project.

## Dealing with Risk

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### 13. Insurance

- 13.1 The Department is self-insured for the purposes of undertaking the Project. Such self-insurance covers the Department's liability including coverage for, but not limited to Worker's Compensation, public liability and professional liability.

## Terminating the Agreement

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### 14. Termination

- 14.1 Unless terminated earlier in accordance with this clause, this Agreement will end at the end of the Project Term and once the Department has completed the Project to your satisfaction and you have made all Payments due.
- 14.2 A party may give Notice to the other party terminating this Agreement where the other party has breached any material provision of this Agreement and that other party has not rectified the breach within thirty (30) days of receiving Notice requiring it to do so.

## Other Legal Matters

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### 15. General

- 15.1 **Survival:** The following clauses survive termination or expiry of this Deed, clause 6, Withholding, Suspension, Changes to Payments and Repayment, clause 9 (Confidential Information), clause 12 (Privacy), clause 13.1 (Indemnities), clause 14 (Termination), this clause 15 and any other clause which by its nature is intended to survive this Deed.
- 15.2 **Subcontractors:** The Department remains fully responsible for the performance of the Project if the Department subcontracts the performance of any part of the Project.
- 15.3 **Keeping of records, audit and rights of access to such records:** The Department:
- (a) must keep complete and accurate records and books of account with respect to its performance of the Project (the "Records"), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
  - (b) authorises you to undertake audits, to examine and inspect, at reasonable times and on reasonable notice, any records the Department holds, and allow any such Records to be copied; and

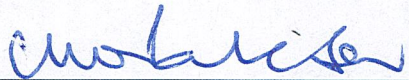
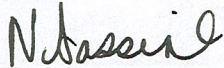


- (c) provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
- 15.4 **Entire Agreement:** This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior agreements and understandings between the parties relating to the subject matter of this Deed.
- 15.5 **Variation:** This Deed may only be varied by agreement in writing signed by the parties.
- 15.6 **Inconsistency:** If there is any inconsistency between provisions or this Deed then the order of precedence will be:
- (a) the **Details**; then
  - (b) any **Special Conditions**; then
  - (c) these **Funding Terms**; then
  - (d) any **Schedules**.
- 15.7 **Negation of employment, partnership or agency**
- (a) This Deed does not create a relationship of agency, partnership, and/or employment between the parties.
  - (b) The Department must not represent itself as being your agent or as otherwise able to bind or represent you.
- 15.8 **Waiver**
- (a) If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect stop a party from relying on the terms of this Deed to their full force and effect.
  - (b) Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
- 15.9 **Assignment:** The Department must not assign or novate its obligations or interests under this Deed, without your prior written consent.
- 15.10 **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.

## Execution clauses

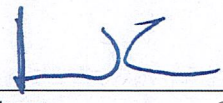
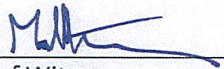
### Department

Signed for and on behalf of the Crown in right of the State of New South Wales acting through the Department by its authorised signatory but not so as to incur personal liability:

	Before 
Signature	Signature of Witness
<u>MARK PATERSON</u>	<u>Narelle Sassine</u>
Name	Name of Witness
<u>SECRETARY TRADE &amp; INVESTMENT</u>	<u>L49, 19 Martin Place, MLC Centre, Sydney NSW 2000</u>
Title	Address of Witness
<u>13/4/15</u>	<u>13/4/15</u>
Date	Date

### You (Agency)

Signed for and on behalf Transport for NSW by its authorised signatory but not so as to incur personal liability:

	Before 
Signature	Signature of Witness
<u>Howard Green</u>	<u>Matt Jones</u>
Name	Name of Witness
<u>GM, MLC</u>	<u>12/481 Gunnerang Rd</u>
Title	Address of Witness
	<u>Bottriville NSW 2036</u>



## Schedule A – Terms of Payment (refer to clause 4)

### Terms of Grant

#### 1. Milestones

1.1 The Department must ensure any Milestones are completed by the timeframe set out below.

Name of Milestone	Description of Milestone	Evidence of Compliance	Grant by Department (excluding GST)	Day by which Milestone must be completed:	Date by which claim for payment must be made:
Milestone 1	Execute Funding Deed	Signed Funding Deed returned to Transport for NSW	\$0	30 January 2015	N/A
Milestone 2	Completion of consultant report	Delivery of consultant report	Cost of consultant report	30 January 2015	Payment within 30 days of receipt of tax invoice
Milestone 3	Completion of geotechnical surveys	Progress report provided to Transport for NSW	Cost of survey	28 February 2015	Payment within 30 days of receipt of tax invoice
Milestone 4	Recommendation to Government on preferred option to improve the safety of the Port of Eden anchorage and method	Recommendation to Government from the Project Control Group	Additional costs incurred	30 April 2015	Payment within 30 days of receipt of tax invoice

	<i>of delivery.</i>					
Milestone 5	Remaining milestones to be determined once a decision is made on the preferred option and method of delivery.		N/A	29 May 2015	NA	
			Total \$10,000,000			

Released Under NSW GIPA Act 2009





Mr Simon Smith  
Secretary  
NSW Department of Industry  
GPO Box 5477  
SYDNEY NSW 2001

Dear Mr Smith,

As discussed at our meeting on 31 May 2017, I write to confirm funding, delivery and governance arrangements for the Eden Safe Harbour Project (the Project).

The Project is a strategic priority for Transport for NSW (TfNSW) in order to deliver on the Government's commitment to provide a safer harbour in Snug Cove for visiting and local vessels. I therefore request your assistance to expedite the delivery of the Project in accordance with the attached Project end user requirements. These were developed by TfNSW in consultation with the Department of Industry – Lands & Forestry (DoI Lands).

Total Project capital costs should not exceed \$10 million. Roads and Maritime Services has transferred \$8 million from the \$10 million project budget to NSW Treasury to be allocated to DoI Lands for the delivery of the Project. DoI Lands should invoice TfNSW for expenses incurred in addition to the \$8 million already allocated up to \$10 million. The funding deed between TfNSW and DoI Lands dated April 2015 will be updated to reflect these arrangements and the Project moving into the delivery phase.

While DoI Lands will own the wave attenuator and be responsible for its ongoing maintenance, TfNSW will fund these ongoing maintenance costs from year six until the end of the 30 year design life.

Consistent with the Terms of Reference for the Port of Eden Development Steering Committee, DoI is responsible for all aspects of project delivery.

TfNSW will be responsible for responding to any issue arising from the Infrastructure NSW (INSW) Strategic Gateway Review and will register this project on the INSW Reporting and Assurance Portal in accordance with the NSW Gateway Policy.

I would appreciate your assistance to expedite the completion of the procurement strategy as the next critical step for delivering this project. Revised milestones and timeframes identified in this procurement strategy will inform the revision of the funding deed between TfNSW and DoI.

If you have any further questions, Mr Andrew Mogg, Principal Manager Economic Innovation, TfNSW, would be pleased to take your call on (02) 8265 7413.

Yours sincerely

**Tim Reardon**  
**Secretary**

Encl

26 JUN 2017

End user requirements have been defined as follows:

1. The project scope must include a fixed or floating wave attenuator located in Snug Cove.
2. The safe waterway area created by the Wave Attenuator Project should satisfy, as a minimum, the criteria for 'moderate' wave climate in accordance with AS 3962 - 2001, Guidelines for Design of Marinas. The protected area must also be suitable for small craft having regard to wash created by cruise ships and tugs.
3. To the maximum extent possible, the wave attenuator shall provide protection to the Mooring Jetty.
4. To the maximum extent possible, the wave attenuator shall provide protection to the Multipurpose jetty and not impact on current operations (i.e. ensure tugs can still get in and out)
5. The project must not compromise the Eden Breakwater Wharf Extension Project and the safety of current and future operations at the Wharf. In particular, the position of the wave attenuator must be offset a minimum distance of 160m from the new fender face line of the cruise ship berth.
6. The project must be affordable. The capital cost budget is \$10M and should include for, but not necessarily limited to, sunk costs, owners' costs, project management, engineering, planning approvals, environmental impact assessment, fabrication, installation, maintenance costs for a period of 5 years and contingency.
7. The wave attenuator should have a minimum service life of 30 years, based on normal maintenance practices. Whole of life costs for the attenuator should be estimated to ensure full visibility of ongoing maintenance costs.
8. Ongoing maintenance costs from year six until the end of the 30 year design life shall be funded by TfNSW.
9. The wave attenuator must not impact adversely on currents and wave climate elsewhere (eg due to reflected waves) and must withstand forces from ship and tug propulsion systems.
10. The extent of the safe waterway area created by the wave attenuator must be maximised. There is no minimum extent of safe waterway that must be provided by the wave attenuator.
11. The wave attenuator must not impact on the planned development of a potential marina and wave attenuator at Cattle Bay.