

Mr Andrew Dooley
Project Director - Kamay Ferry Wharves
Transport for NSW
PO Box K659
Haymarket NSW 1240

09/06/2023

Kamay Ferry Wharves (SSI 10049)

Extension of time request - bank guarantee to offset marine biodiversity offsets (E19)

Dear Mr Dooley

I refer to your letter dated 26 May 2023, requesting an extension of time in accordance with condition A13 to provide the bank guarantee required to secure marine biodiversity offsets prior to marine works commencing under condition E19 of SSI 10049.

I understand that subsequent to the SSI approval in July 2022, NSW Treasury issued a Treasurer's Direction (TD 22-30) in December 2022 that included the prohibition of the issuance of bank guarantees between NSW State agencies. The extension of time request is required to allow NSW Treasury to amend TD 22-30 to allow the bank guarantee required by condition E19 to be issued to DPI Fisheries. I acknowledge Transport for NSW is committed to providing the bank guarantee required by condition E19 to DPI Fisheries as soon as TD 22-30 has been amended.

I note that DPI Fisheries supports deferring the bank guarantee for a maximum of 180 calendar days from the time of this approval.

Accordingly, as nominee of the Planning Secretary, I agree to your request for an extension of time to 6 December 2023 for the issue of the bank guarantee to DPI Fisheries under condition E19 of SSI 10049.

I ask that you provide DPI Fisheries and the Department with fortnightly updates on the progress towards provision of the bank guarantee.

Please ensure that you make this determination publicly available on the project website in accordance with condition B15.

If you wish to discuss the matter further, please contact Sarah Kamarudin at sarah.kamarudin@dpie.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "D Crinnion". The signature is written in a cursive style with a large initial "D" and a smaller "C".

Dominic Crinnion
Director
Infrastructure Management

As nominee of the Planning Secretary

Dominic Crinnion
Department of Planning and Environment
Level 17, 4PSQ, 12 Darcy Street
Parramatta, NSW, 2150

Re: Kamay Ferry Wharves Project - Request for Approval to Defer the Bank Guarantee

26 May 2023

Dear Dominic Crinnion,

In accordance with the Kamay Ferry Wharves (SSI-10049) Condition of Approval (CoA) E19 issued in July 2022, Transport for NSW is required to provide to DPI Fisheries (DPI-F), prior to marine Works, a bank guarantee to secure marine biodiversity offsets.

Subsequent to this approval, NSW Treasury, in December 2022, issued a Treasurer's Direction (TD 22-30) in respect of a number of financial matters including a prohibition on the future issuance of bank guarantees between NSW State agencies.

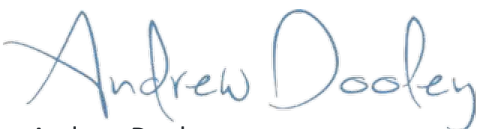
In accordance with CoA A13, a deferral of the CoA E19 is requested due to the administrative impasse the publication of Treasurer's Direction has created. Exercising this discretion permits the Department of Planning and Environment (DPE) to defer submission of the bank guarantee while still allowing for the commencement of marine Works.

Transport for NSW discussed with DPE, DPI-F and Treasury, and all parties agreed for the bank guarantee to be provided for a maximum of 180 calendar days from time of DPE approval. This will allow sufficient time for the amendment to the Treasurer's Direction to be finalised and published by NSW Treasury.

Transport for NSW has consulted with DPI-F on the deferral of the bank guarantee required in CoA 19, the correspondence with DPI-F is provided in Attachment A.

Should you have any questions please contact Chris Williams, Senior Environment and Sustainability Office on 0427 782 678 or christopher.williams2@transport.nsw.gov.au.

Sincerely,



Andrew Dooley
Senior Project Manager

Attachment A: Correspondence with DPI-F

Attachment A

OFFICIAL

Christopher Williams

Subject: FW: Kamay Ferry Wharves - Bank Guarantee - Marine Biodiversity Offset Strategy
Attachments: KFW - Letter for Deferral of Bank Guarantee.pdf

From: Heath Folpp <heath.folpp@dpi.nsw.gov.au>
Sent: Friday, 26 May 2023 8:45 AM
To: Andrew Dooley <andrew.dooley@transport.nsw.gov.au>
Cc: Estelle Ouari <Estelle.Ouari@transport.nsw.gov.au>; James Wraith <james.wraith@dpi.nsw.gov.au>
Subject: Re: Kamay Ferry Wharves - Bank Guarantee - Marine Biodiversity Offset Strategy

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Dear Andrew,

DPI Fisheries (DPI-F) acknowledges the tight timeframes and potential costs to delays to Transport for NSW (TfNSW) delivery of State Significant Infrastructure project [SSI-10049](#), and strives to work in collaboration with TfNSW and key stakeholders to enable the best outcomes.

DPI-F would also like to highlight the importance of the conditions of the Infrastructure approval including the Marine Biodiversity Offset Strategy (MBOS; conditions E12-E20). This instrument, in accordance with DPI-F Policy and Guidelines for Fish Habitat Conservation and Management 2013, and the Fisheries Management Act 1994, offsets the impacts of this project on the local marine environment.

Condition E19 of the Infrastructure approval requires a bank guarantee to DPI-F **prior to marine works**. The bond provides all stakeholders insurance that sustained conservation measures identified in the MBOS are achieved.

Recent Treasury Direction (TD22-30; December 2022) precludes the issue of a bank guarantee from TfNSW to DPI F. As you have noted, this causes an impasse to project delivery. However, DPI-F understands TfNSW remains committed to providing the bank guarantee and is working with NSW Treasury to amend TD22-30 to allow for exemptions, and grant exemption for SSI-10049.

In accordance with condition A13 of the Infrastructure approval, which states “*Any document that must be submitted or action taken within a timeframe specified in or under the terms of this approval may be submitted or undertaken within a later timeframe agreed with the Planning Secretary*”, DPI-F supports a request from TfNSW to the Planning Secretary to defer the bank guarantee for a **maximum** of 180 calendar days from time of Secretary approval. it is the understanding of DPI-F that marine works will not commence until Planning Secretary agreement is obtained. DPI-F also requests that progress towards provision of the bank guarantee is communicated at regular fortnightly intervals.

Please don't hesitate to contact me at any time to discuss further.

Kind regards

Heath

From: Andrew Dooley <andrew.dooley@transport.nsw.gov.au>
Sent: Monday, 22 May 2023 4:11 PM
To: Heath Folpp <heath.folpp@dpi.nsw.gov.au>
Cc: Estelle Ouari <Estelle.Ouari@transport.nsw.gov.au>
Subject: Kamay Ferry Wharves - Bank Guarantee - Marine Biodiversity Offset Strategy

Dear Heath,

This email seeks your written confirmation of a mutually acceptable pathway to resolve the current regulatory impasse associated with the bank guarantee required to be provided by TfNSW to DPI Fisheries for the Kamay Ferry Wharves Project (SSI 10049) as part of the project's marine biodiversity offset strategy.

Background

- Transport for NSW received [Department of Planning and Environment approval \(SSI-10049\)](#) for the construction of new wharves at La Perouse and Kurnell on the 21st of July 2022.
- The approval contains a number of conditions including Condition E19 which requires a bank guarantee to be provided to DPI Fisheries to offset marine biodiversity impacts, if planned activities as agreed under the MBOS are unsuccessful.
- Subsequent to this approval, NSW Treasury, in December 2022, issued a Treasurers Direction (TD 22-30) in respect of a number of financial matters including a prohibition on the future issuance of bank guarantees between State agencies.

Present Position

- The publication of the Treasurer's Direction has created an administrative impasse. While not varying the terms of the planning approval it does prohibit the issue of the required bank guarantee.
- A pathway to resolve this impasse is to amend TD 22-30 to allow for exemptions, and to then grant an exemption for SSI 10049.
- Drafting the necessary amendment by NSW Treasury is in train but the timeframe for completion of the amendment will cause delays to the Kamay Ferry Wharves project which will trigger substantial penalty payments to the contractors engaged to undertake the work.
- To avoid delaying the project and incurring the penalty payments the parties have discussed options for resolving the impasse.
- TfNSW is committed to provide the bank guarantee to DPI Fisheries as soon as TD 22-30 has been amended to allow it.

Recommended Action

- SSI 10049, Administrative Condition A13, allows that *"Any document that must be submitted or action taken within a timeframe specified in or under the terms of this approval may be submitted or undertaken within a later timeframe agreed with the Planning Secretary"*.
- Exercising this discretion permits the Department of Planning and Environment to defer submission of the bank guarantee while still allowing for the commencement of works.
- It is proposed that the bank guarantee required by Condition E19 be provided within 180 calendar days following the commencement of marine works. This will allow sufficient time for the amendment to the Treasurer's Direction to be finalised and published by NSW Treasury while not resulting in significant delay costs to NSW Government.

Next Steps

- We seek confirmation of your written agreement to the recommended course of action.
- Subject to receiving your written agreement, TfNSW will then write to Department of Planning and Environment requesting their agreement of the same.

Please give me a call anytime if you wish to discuss.

Kind Regards,

Andrew Dooley
Project Director, Maritime Infrastructure Delivery Office
Maritime
Greater Sydney
Transport for NSW
M: 0402 725 627
E: andrew.dooley@transport.nsw.gov.au
Level 2, 91 Foreshore Road Port Kembla NSW 2505