

First print



New South Wales

## **Tweed River Entrance Sand Bypassing Bill 1995**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to improving the navigability of the entrance of the Tweed River and the bypassing of sand around that entrance so that it can replenish the southern Queensland beaches.

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## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** states the purpose of the proposed Act.

**Clause 4** defines certain terms for the purposes of the proposed Act. The "heads of agreement" means the agreement entered into on behalf of the States of New South Wales and Queensland a copy of which is set out in Schedule 2. The "deed of agreement" means the deed entered into on behalf of those States to give effect to the heads of agreement. A copy of the deed of agreement is set out in Schedule 1. "The works" is defined as the works to be carried out, maintained or constructed to give effect to the deed of agreement and such further agreements as may be made between those States for the purpose of giving effect to the heads of agreement or for any ancillary purpose.

### **Part 2 Agreements**

**Clause 5** provides that the execution of the heads of agreement by the Premier and of the deed of agreement by the Minister for Public Works is ratified and both agreements are approved. References to the Minister for Public Works in both of those instruments are to be construed as references to the Minister administering the proposed Act.

**Clause 6** provides for the approval of any further agreement entered into on behalf of the State of New South Wales that is certified by the Minister for Land and Water Conservation ("the Minister") to be for the purpose of giving effect to the heads of agreement or for any ancillary purpose. Any such further agreement will not be approved if either House of Parliament disapproves the agreement within 21 days of its being tabled before the House.

**Clause 7** authorises the Minister to enter into contractual arrangements in various capacities for the carrying out of the works.



### **Part 3 Implementation**

**Clause 8** authorises the implementation of the deed of agreement and each further agreement entered into for the purpose of carrying out the heads of agreement.

**Clause 9** provides for the application of certain provisions of the *Public Works Act 1912* to the works and for the acquisition of land under that Act by the Minister. Land may be acquired for the purposes of the works by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. The proposed section also provides that pre-acquisition procedures of the *Land Acquisition (Just Terms Compensation) Act 1991* (such as the requirement to give notice to the owner of the land) do not apply to the acquisition of land by compulsory process if the Minister certifies to the Governor that it is appropriate for the purposes of the works that those procedures not apply to the acquisition.

**Clause 10** provides for the application of the *Environmental Planning and Assessment Act 1979* to the works. The carrying out of the works is to be an activity for the purposes of Part 5 of that Act and the Minister is to be the determining authority for the purposes of that Part. The proposed section provides that so much of the works as was the subject of an environmental impact statement publicly exhibited before the commencement of the proposed section is taken to be maintenance dredging within the meaning of State Environmental Planning Policy No. 35-Maintenance Dredging of Tidal Waterways. The approval of the Minister for Urban Affairs and Planning will be required for so much of the works as do not consist of maintenance dredging. A saving provision in relation to that environmental impact statement is also included.

### **Part 4 Miscellaneous**

**Clause 11** protects the Minister, and any individual engaged, or performing any function, in connection with the carrying out of the works, from personal liability for things done or omitted to be done in good faith for the purpose of carrying out the works. The proposed section also provides that no action for nuisance in relation to the carrying out of the works may be brought against the State, the Minister or any individual or corporation carrying out the works or performing any function in connection with the carrying out of the works.

**Clause 12** provides a right to compensation if land that has been acquired for the purposes of the works is later found to be have been claimable Crown land. If that land had not been so acquired, it would have been transferred to the claimant under the *Aboriginal Land Rights Act 1983*. The compensation is to be determined in accordance with the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Clause 13** provides that the proposed Act binds the Crown.

**Clause 14** requires the Minister to review the proposed Act after 5 years from the date of assent to the proposed Act to determine whether the policy objectives of the proposed Act remain valid and whether the terms of the proposed Act remain appropriate for securing those objectives.

## **Schedules**

**Schedule 1** contains a copy of the deed of agreement.

**Schedule 2** contains a copy of the heads of agreement.

**Schedule 3** will contain a copy of each further agreement entered into by the Minister if the agreement has been approved by the operation of proposed section 6.



New South Wales

# **Tweed River Entrance Sand Bypassing Bill 1995**

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New South Wales

## **Tweed River Entrance Sand Bypassing Bill 1995**

No , 1995

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### **A Bill for**

An Act to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to improving the navigability of the entrance of the Tweed River and the bypassing of sand around that entrance, and for related purposes.

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Tweed River Entrance Sand Bypassing Act 1995*.

### 2 Commencement

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This Act commences on the date of assent to this Act.

### 3 Purpose of Act

The purpose of this Act is to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to:

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- (a) the improvement of the navigability of the Tweed River entrance, and
- (b) the bypassing of sand around that entrance so that it can replenish the southern Queensland beaches.

### 4 Definitions

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In this Act:

***deed of agreement*** means the Deed of Agreement dated 2 March 1995, a copy of which is set out in Schedule 1,

***further agreement*** means an agreement approved by the operation of section 6,

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***heads of agreement*** means the Heads of Agreement dated 31 March 1994, a copy of which is set out in Schedule 2,

***the works*** means the works to be carried out, maintained or constructed to give effect to the deed of agreement and any further agreement.

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## Part 2      Agreements

### 5    Ratification, approval and construction of certain agreements

- (1)    The execution of the heads of agreement and the deed of agreement on behalf of the State of New South Wales is ratified and both of those agreements are approved. 5
- (2)    References in the heads of agreement and the deed of agreement to the Minister for Public Works are taken to be, and to have been on and from 5 April 1995, references to the Minister administering this Act.

### 6    Further agreements 10

- (1)    If:
- (a)    an agreement is entered into on or after the date of assent to this Act between a New South Wales Minister and a Queensland Minister, described in the agreement as acting on behalf of their respective States, and 15
- (b)    the Minister administering this Act certifies that the agreement is for the purpose of giving effect to the heads of agreement, or for any ancillary purpose,
- the Minister administering this Act must, within 7 sitting days after this section commences or the agreement was entered into (whichever occurs later), lay a copy of the agreement before each House of Parliament or cause a copy to be so laid. 20
- (2)    The execution of any such agreement by a Minister on behalf of the State of New South Wales is ratified, and the agreement is approved, at the expiration of 21 sitting days of each House after the copy of the agreement was laid before it. 25
- (3)    However, subsection (2) does not apply if either House of Parliament resolves to disapprove the agreement during the period of 21 sitting days applicable to it.
- (4)    Schedule 3 to this Act may be amended by a proclamation inserting in that Schedule a copy of each further agreement approved by the operation of this section. 30

**7 Authorisation to enter into contracts and other arrangements**

- (1) The Minister may enter into contracts, agreements or arrangements on behalf of the State of New South Wales and (if so authorised by a Queensland Minister or another person acting on behalf of that State) on behalf of the State of Queensland for the carrying out of the works, whether or not within New South Wales. 5
- (2) Without limiting subsection (1), the Minister may be a joint party to any such contracts, agreements or arrangements.

## Part 3 Implementation

### 8 Implementation of agreements

- (1) The deed of agreement and each further agreement may be carried into effect despite the provisions of any other Act or law.
- (2) In particular, the carrying out of the works is not subject to the *Pipelines Act 1967*. 5
- (3) All acts, matters and things:
  - (a) for or with respect to which provision is made in the deed of agreement or a further agreement, or
  - (b) that by the deed of agreement or a further agreement are agreed, directed, authorised or permitted to be made, done or executed, 10

are authorised and confirmed.
- (4) Without limiting subsection (3):
  - (a) the Minister may do or cause to be done (whether or not within New South Wales) any act, matter or thing necessary for the purpose of carrying out the deed of agreement and each further agreement, and 15
  - (b) any such act, matter or thing may be done in New South Wales by or on behalf of the State of Queensland. 20
- (5) Any act, matter or thing done or omitted to be done for the purpose of carrying out the heads of agreement or the deed of agreement before their approval by this Act, or for the purpose of carrying out an agreement (which has been certified under section 6 (1)) before its approval by or disapproval under this Act, is validated. 25

### 9 Carrying out of the works

- (1) For the purposes of the *Public Works Act 1912*, the works are taken to be an authorised work and the Minister is, in relation to the works, taken to be the Constructing Authority. Sections 34, 35, 36 and 37 of that Act do not apply in respect of the works. 30
- (2) Accordingly, the Minister may acquire land under section 39 of that Act for the purposes of the works.



- (3) Section 42 of the *Aboriginal Land Rights Act 1983* does not apply to such an acquisition of land.
- (4) Division 1 (Pre-acquisition procedures) of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply to such an acquisition of land if the Minister certifies to the Governor, when obtaining the approval of the Governor to an acquisition notice under section 19 of that Act, that it is appropriate for the purposes of the works that the Division not apply to the acquisition. 5
- (5) Land may be acquired for the purposes of the works even if: 10
  - (a) any consent or permission required under the *Crown Lands Act 1989* has not been obtained or granted, or
  - (b) the Minister may not be qualified under the *Crown Lands Act 1989* to hold land of the tenure to be so acquired.
- 10 Application of Environmental Planning and Assessment Act 1979 to the works 15**
  - (1) In this section, *development* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.
  - (2) Development for the purposes of the works:
    - (a) may be carried out without the necessity for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, and 20
    - (b) may be so carried out even if the development would be prohibited, or would require development consent, in the absence of this section. 25
  - (3) Any such development is an activity within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979* and the Minister is the determining authority in relation to that activity for the purposes of that Part.
  - (4) For the purposes of section 115D of the *Environmental Planning and Assessment Act 1979*, the Minister is excluded from Division 4 of Part 5 of that Act in relation to so much of the works as is the subject of the environmental impact statement dated October 1994, entitled "Tweed River Entrance Sand Bypassing Project - 30

Tweed River Entrance Maintenance Dredging and Associated Nourishment of Southern Gold Coast Beaches” and prepared for NSW Public Works and the Queensland Department of Environment and Heritage.

- (5) So much of the works as is the subject of that environmental impact statement is taken to be, and always to have been, maintenance dredging within the meaning of State Environmental Planning Policy No. 35—Maintenance Dredging of Tidal Waterways. 5
- (6) Any act, matter or thing done in accordance with the Environmental Planning and Assessment Regulation 1980 in connection with the preparation of that environmental impact statement before the commencement of this section has the same effect as if it had been done in accordance with the Environmental Planning and Assessment Regulation 1994. 10  
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## Part 4 Miscellaneous

### 11 Limitation on liability

- (1) Any act, matter or thing done or omitted to be done by the Minister (or by any other natural person, whether or not acting on behalf of the State, being a person engaged, or involved in performing any function, in connection with the carrying out the works) does not subject the Minister (or the person) personally to any action, liability, claim or demand, if the act, matter or thing was done or omitted to be done in good faith for the purpose of carrying out the works. 5 10
- (2) An action for nuisance connected with or in any way arising out of any act, matter or thing done or omitted to be done in carrying out the works, or an action for the abatement or remedying of any such nuisance, may not be brought against the State, the Minister or any other person (including a corporation) involved in carrying out the works or performing any function in connection with the carrying out of the works, whether or not the other person was acting on behalf of the State. 15
- (3) This section applies whether the act, matter or thing concerned was done or omitted to be done before or after the commencement of this section and so applies despite any other Act or law. 20

### 12 Right to compensation for acquisition of certain claimable Crown lands

- (1) In this section, *claimable Crown Lands* has the same meaning as in section 36 (1) of the *Aboriginal Land Rights Act 1983*. 25
- (2) Any claim under Part 6 of the *Aboriginal Land Rights Act 1983* made in respect of land that has been acquired for the purposes of the works and that was claimable Crown land when the claim was made, may be determined under the *Aboriginal Land Rights Act 1983* as if the land had not been so acquired. 30
- (3) However, land so acquired is not to be transferred under section 36 of the *Aboriginal Land Rights Act 1983*. A claimant to whom land would, but for this subsection, be transferred under section 36 of that Act is entitled to compensation as if the claimant held, at the date of the acquisition, an estate in fee simple in the land. 35



- (4) The compensation is to be determined as if the land had been acquired in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (5) For the purposes of subsection (3), the Land and Environment Court may make an order for compensation if any such claim is determined by the Court. 5
- (6) This section applies to any such claim whether the claim was made before or after the commencement of this section.

**13 Act binds Crown**

This Act binds the Crown in right of New South Wales and also, as far as the legislative power of Parliament permits, in all its other capacities. 10

**14 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 15
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 20

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## Schedule 1 Deed of Agreement

(Section 4)

### TWEED RIVER ENTRANCE SAND BYPASSING PROJECT AGREEMENT

THIS DEED OF AGREEMENT is made on SECOND day of MARCH 5  
1995.

B E T W E E N: THE STATE OF NEW SOUTH WALES ("NSW")

A N D: THE STATE OF QUEENSLAND ("Queensland")

#### RECITALS

W H E R E A S: 10

- A NSW and Queensland have agreed to the implementation of a project to be known as the Tweed River Entrance Sand Bypassing Project. 10
- B The purpose of this Agreement is to enhance and maintain the attributes of the Gold Coast - Tweed Heads region and more specifically the Tweed River estuary and the southern Gold Coast beaches and to achieve the respective objectives of the Parties. NSW's objective "is to establish and maintain a navigable depth of water of at least 3.5 metres below Indian Spring Low Water (ISLW) in the approach to and within the entrance channel to the Tweed River over a width equal to that between the rubble mound breakwaters" and Queensland's objective is "to achieve a continuing supply of sand to the Southern Gold Coast beaches at a rate consistent with the natural littoral drift rates updrift and downdrift, together with the supply of such additional sand to the beaches as is required to restore the recreational amenity of the beaches and to maintain it". The intention is to achieve the objectives in perpetuity. 15 20 25
- C The Parties have agreed to implement the Project jointly and in a spirit of goodwill and cooperation. For that purpose they propose to enter into all necessary contracts contemplated by this Agreement as Joint Principals. 30

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- D The Parties have further agreed that NSW will for practical reasons and given the need to commence the Project expeditiously let the contracts for the Initial Dredging Component and either State may be authorised to let other contracts in its own name on behalf of both Parties as exceptions to the intention that all contracts be entered into by them as Joint Principals. 5
- E The Parties acknowledge that the Artificial Sand Bypassing System will need to be replaced from time to time and have agreed to do all necessary cooperative acts to ensure that any replacement system will be established and operated in such a way as to fulfil the purpose of this Agreement. 10

NOW IT IS AGREED AS FOLLOWS:—

## **PART I - INTERPRETATION**

### **1. PURPOSE**

The purpose of this Agreement is as set out in the Recitals. 15

### **2. DEFINITIONS**

In this Agreement -

“Additional Works” means the works which the Ministerial Council agrees to include as part of the Project pursuant to clause 11.

“Adjustment Formula” means the relevant monetary amount being adjusted by being divided by the Consumer Price Index (All groups) last published by the Australian Bureau of Statistics at the date of signing of this Deed and multiplied by the Consumer Price Index last published at the date of notification of the relevant default, dispute or other matter to which a monetary amount applies. If the Consumer Price Index ceases to be published a replacement index shall be agreed on in writing by the Parties and in default of agreement for a period of fourteen (14) days the index may be determined at the request of either Party by the President or Acting President of the New South Wales Division of the Australian Institute of Valuers or his nominee. 20  
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Schedule 1 Deed of Agreement

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- “Anniversary Date” means the 30th day of September each year or such other date as may be agreed by the Parties, commencing on the first 30th day of September following the commissioning of the First System or an Interim System.
- “Annual Period” means a period of one year, or part thereof for the first Annual Period, following the commissioning of the First System or an Interim System, concluding on an Anniversary Date. 5
- “Artificial Sand Bypassing System” or “System” means the works as described in the Heads of Agreement to be established pursuant to this Agreement for the hydraulic or mechanical movement of sand in perpetuity from within the Tweed River Bar and Entrance Area on the updrift side to the Beaches on the downdrift side of the Tweed River entrance other than by natural processes and includes all necessary preliminary and ancillary activities, any interim works that the Parties agree to establish for that purpose and any replacement of the works which may be necessary from time to time to meet the purpose of this Agreement but does not include any works associated with the Initial Dredging Component. 10 15
- “Beaches” means, for the purpose of the Initial Dredging Component, the area identified on the map shown in Schedule 1 and means, for the purpose of the System, Duranbah Beach, Snapper Rocks and Kirra Point or in their vicinity. 20
- “Cash Flow Period” means the period of one month, or such other period as may be agreed by the Parties for the purpose of clause 14.
- “Clear Navigation Channel” means a navigation channel which has a depth below Indian Spring Low Water (ISLW) of at least 3.5 metres over a width of 70 metres and extending from an upriver limit defined by the upriver boundary of the Tweed River Bar and Entrance Area shown in Schedule 2 to the open sea or such other parameters as may be agreed in writing between the Parties. 25 30
- “Consultation Actions” mean the actions listed in column 1 of the table in clause 10.5.
- “Contract Management” means the functions and activities referred to in clause 8.3.1(b).
- “Contract Quantity” means the cumulative quantity of sand which is to be delivered by any Anniversary Date in accordance with clause 12 or as otherwise agreed in writing by the Parties. 35



“Contracting State” means a Party who carries out or pays for work which is a Shared Project Cost.

“Coordinating State” means the Party specified in clause 8.6.2 and as varied from time to pursuant to clause 10.11.2, as the Party representing both Parties for the purposes set out in clause 8.6.

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“First System” means the first Artificial Sand Bypassing System established under this Agreement which is assessed by the Parties before accepting tenders as being capable of operating for a period of approximately 25 years and does not mean any Interim System unless the Parties expressly agree in writing that an Interim System is to be considered as the First System. The assessment of the Parties shall be based upon best available practices and best available data.

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“Government Agency” means:

- (a) a department or administrative office of the government of either Party, or of the Commonwealth of Australia;
- (b) a statutory body representing the Crown in right of either Party or the Commonwealth of Australia;
- (c) a local government body in NSW or Queensland; or
- (d) any other public authority which is agreed in writing by the Parties to be a Government Agency for the purposes of this Agreement.

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“Heads of Agreement” means the Heads of Agreement between the State of NSW and the State of Queensland relating to the Tweed River Entrance Sand Bypassing Project executed by the Premier of NSW and the Premier of Queensland on 31st March 1994.

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“Initial Dredging Component” or “Initial Dredging and Sand Supply Component” means the dredging of two (2) million cubic metres of sand from the Tweed River Bar and Entrance Area and the deposit thereof on the Beaches and includes all necessary preliminary and ancillary activities.

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“Intellectual Property” includes copyright, patent rights, design rights, eligible layout rights, rights of confidentiality and trade or business secrets and the rights to registration or proprietorship of such rights.

Tweed River Entrance Sand Bypassing Bill 1995

Schedule 1 Deed of Agreement

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- “Interim System” means an Artificial Sand Bypassing System which the Parties agree under clause 10.4 to establish prior to the establishment of the First System and which is intended by the Parties to operate for a period of less than 25 years.
- “Joint Consultants Report” means the report entitled “Tweed River Entrance - NSW/Qld Sand Transfer Negotiation” by WBM Pty Limited, The University of Queensland and Australian Water and Coastal Studies Pty Limited dated May 1991. 5
- “Joint Principals” means both Parties or one nominee of each Party for the purpose of the execution of contracts contemplated by this Agreement to be let jointly by both Parties. 10
- “Joint Principals’ Representative” means the person described in clause 8.8.
- “Latest Commencement Date” means the date specified in clause 9.3, as adjusted pursuant to this Agreement, after which Queensland may give notice that it intends to let contracts for the Initial Dredging Component. 15
- “Long Term Average” means the long term average annual net littoral transport of sand that would, in the absence of any artificial actions to influence it, cross a line perpendicular to the coastline, situated one kilometre south of the southern training wall at the Tweed River entrance and extending to the 20 metre depth contour, less the annual net quantity of sand which, after the commissioning of the System, crosses that line and reaches Queensland, or the coastal waters of the State of Queensland as defined in the Coastal Waters (State Powers) Act, 1980 (Cth), by natural means. 20 25
- “Ministerial Council” means the NSW Minister for Public Works and the Queensland Minister for Environment and Heritage or their nominees.
- “Original Project Material” means all sketches, plans, drawings, specifications, estimates, designs, calculations, data, information, computer programs, reports, models or other documents or tangible materials produced in the course of the Project or in relation to any activity connected with the Project. 30



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- “Partnering Document” means the “Partnering Guidelines” (ISBN 0 7310 0989 4) of the New South Wales Capital Works Procurement Manual dated October 1993 (ISBN 0 7310 0964 9) or any amendment or substitution to those guidelines approved by both Parties for the purpose of this Agreement. 5
- “Process” means the expert determination process as set out in clause 17.4.
- “Project” means the Tweed River Entrance Sand Bypassing Project which comprises two inter-related components namely:
- (a) the Initial Dredging Component; and 10
  - (b) the System.
- Without limitation of the above, the Project includes:
- (i) the items described in the Heads of Agreement as being part of the Project; and
  - (ii) the Additional Works. 15
- “Project Directors” means the persons described in clause 8.4.
- “Project Management” means the functions and activities referred to in clause 8.3.1(a).
- “Project Manager” means the person described in clause 8.9.
- “Reviewing State” means the Party which is not the Coordinating State. 20
- “Sand” means clean natural sand of an equivalent quality to that which exists in the natural littoral system arriving at the northern portion of Letitia Spit and includes that supplied to the bar by the natural fluvial system.
- “Shared Project Cost” means an item of work, the costs of which are to be shared by the Parties on a percentage basis as specified in this Agreement. Without limitation of the above, all works falling within the definition of the Project in this clause 2 shall be Shared Project Costs. 25
- “System” means the same as “Artificial Sand Bypassing System”. 30
- “Target Action” means an action listed in Column 1 of the table in clause 10.3.

Schedule 1 Deed of Agreement

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“Target Date” means a date listed in Column 2 of the table in clause 10. 3  
as amended by clause 10.4 or clause 10.6.

“Tweed River Bar” and Entrance Area means the area identified on the  
map shown in Schedule 2.

“Working Group” means the Working Group established under the Heads 5  
of Agreement.

**3. INTERPRETATION**

3.1 In this Agreement,

- (a) a reference to any Act includes any Act amending, or in  
substitution for, that Act; 10
- (b) a reference to this Agreement includes a reference to:
  - (i) the Schedules to this Agreement; and
  - (ii) any amendment of or addition to this Agreement or  
the Schedules hereto;
- (c) words importing the singular include the plural and vice 15  
versa;
- (d) words importing any gender include any other gender;
- (e) “person” includes a corporation; and
- (f) all monetary amounts are expressed in Australian  
currency and shall be adjusted from time to time by the 20  
application of the Adjustment Formula.

3.2 In interpreting a provision of this Agreement, a construction that  
would promote the purpose or object underlying the Agreement  
(whether or not that purpose or object is expressly stated in the  
Agreement) shall be preferred to a construction that would not 25  
promote that purpose or object.

**PART II - LEGAL RELATIONS AND RATIFICATION**

**4. LEGAL RELATIONS**

The Parties acknowledge and agree that this Agreement is intended to  
be legally binding and enforceable by the Parties. 30



## 5. COMMENCEMENT AND TERM

This Agreement shall commence on the date first set out above and shall continue in force until lawfully determined.

## 6. RATIFICATION AND SUBMISSION TO PARLIAMENT

Each Party shall promptly take every practicable step to have this Agreement ratified by its Parliament. 5

6.1 Each Party, so far as its jurisdiction extends and so far as it may be necessary, shall provide for or secure the execution and enforcement of the provisions of this Agreement and any Acts ratifying it. 10

6.2 If either Party is unable to secure ratification of this Agreement because any provision is unacceptable to its Parliament, the Parties shall negotiate in good faith to achieve a solution, including by amendment of this Agreement, which promotes the purpose of this Agreement. 15

## PART III - THE PROJECT

### 7. PARTNERING

The Parties recognise the benefits of partnering as described in the Partnering Document and will endeavour to follow the principles outlined in that document in relation to the conduct of this Agreement and any contract let by the Joint Principals or by either Party under this Agreement provided that: 20

- (i) each Party shall be a "stakeholder" for the purposes of the partnering process in any contract let by either Party for the purposes of this Agreement; and 25
- (ii) to the extent of any inconsistency between the provisions of the Partnering Document and this Agreement, the provisions of this Agreement shall prevail.

### 8. PROJECT IMPLEMENTATION

8.1 Joint Principals 30

8.1.1 Subject to this Agreement, all necessary contracts for the implementation of the Project shall be let jointly by the

Schedule 1 Deed of Agreement

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Parties as Joint Principals and executed in a manner deemed appropriate by each. It is intended by the Parties that such contracts will be let in the names of the NSW Minister for Public Works and the State of Queensland.

8.1.2 Notwithstanding clause 8.1.1, either Party may enter any contract for the Project in its own name, or in the name of its nominee, as the representative of both Parties, subject to a determination by the Working Group that it is appropriate for the contract to be entered in that way. 5

8.1.3 Subject to compliance by both Parties with their obligations to consult with the other Party, any monetary liability incurred by either Party in the course of the performance of the Project for breach of contract, in tort (excluding a liability incurred by reason solely of the negligence of that Party), or other common law or statutory cause of action, whether arising out of or in relation to a contract entered as Joint Principals, a contract entered into by either Party as representative of both Parties or otherwise, shall for the purpose of sharing costs for the Project be included as part of the final actual costs of the applicable item of work. 10  
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For the purpose of this clause 8.1.3, a liability is not incurred solely by reason of the negligence of one Party if it arises out of the implementation of a course of action approved by both Parties in accordance with this Agreement or deemed under clause 8.7.7 to be so approved, in a manner which is within the scope of such approval. 25

8.2 Project Risk Assessment

8.2.1 Each Party will be responsible for making its own assessment of Project risks for discussion with the other Party through the Project Directors or within the Working Group. 30

8.2.2 Without limiting any other obligation under this Agreement, where specific problems arise in relation to the implementation of any aspect of the Project both Parties undertake to cooperate fully in order to achieve a solution which promotes the purpose of this Agreement. 35



### 8.3 Management

- 8.3.1 The Parties acknowledge that for the purpose of defining responsibility in the implementation of the Project two separate but related lines of activity must be undertaken. These are Project Management and Contract Management. 5
- (a) Project Management is the joint responsibility of the Parties working through the Project Directors and the Working Group. It is an over-arching function which involves the coordination, forward planning and review of all elements of the Project including funding, development of a master plan and timetable, securing statutory approvals, public relations, identification of the needs of the Parties and resolution of any differences or inconsistencies between the needs of each Party. When the Project reaches the construction and the subsequent operational stage the dominant Project Management function is the ongoing review of progress. 10 15
- (b) Contract Management is the responsibility of the Coordinating State. It involves the management of the interface between the Parties and the contractor(s) for the performance of any work in implementing the Project and includes the day to day administration of contracts in accordance with any risk management strategy which the Parties agree to apply. 20 25
- 8.3.2 In order to implement the Project:
- (a) NSW may use the officers and resources of NSW Public Works or other Government Agency and may authorise any person including any Project Manager appointed under this Agreement to act on its behalf; and 30
- (b) Queensland may use the officers and resources of the Queensland Department of Environment and Heritage or other Government Agency and may authorise any person including any Project Manager appointed under this Agreement to act on its behalf. 35

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8.4 Project Directors

8.4.1 Each Party will appoint a Project Director whose primary function is the representation and promotion of the respective Party's interests.

8.4.2 The Project Directors shall be members of the Working Group. 5

8.4.3 Details of the Project Directors' responsibilities are set out in Schedule 3.

8.5 Working Group

8.5.1 The Working Group shall provide a forum for liaison between the Parties and shall be responsible for implementation of the Project on behalf of the Parties including: 10

(a) strategic action planning (including risk management); 15

(b) financial control;

(c) policy setting; and

(d) review at State Government level including review of project parameters.

8.5.2 The Working Group shall: 20

(a) report to the Ministerial Council through the Project Directors;

(b) promote close liaison and cooperation between the Parties; and

(c) provide guidance to the Coordinating State on strategic planning aspects of the Project which impact on contract development or management (an example of such a strategic planning aspect would be whether to place sand at a particular location at a particular time). 25 30

8.5.3 Decisions of the Working Group for the purpose of this Agreement, including decisions or determinations pursuant to clause 17.2, shall be by majority provided that such majority includes both Project Directors.



## 8.6 Coordinating State

- 8.6.1 One of the Parties shall be the Coordinating State which shall be the representative of both Parties for the purpose of implementing any aspect of the Project which is to be performed by way of contracts entered into by the Parties as Joint Principals. 5
- 8.6.2 Subject to this Agreement NSW shall be the Coordinating State.
- 8.6.3 The Coordinating State shall have the powers and functions expressly conferred by this Agreement and such other ancillary and incidental powers and functions as are necessary for the effective implementation of the Project but excluding the power to execute any contract on behalf of the Reviewing State unless expressly authorised in writing by the Reviewing State to do so. 10 15
- 8.6.4 The Coordinating State shall have the following functions for the purpose of managing the investigation, design, construction, commissioning, operation, maintenance and replacement from time to time of the System:
- (a) environmental impact assessment; 20
  - (b) developing contracts;
  - (c) the tender process;
  - (d) the development of designs, including benchmark designs for the System;
  - (e) technical issues; 25
  - (f) monitoring and auditing in accordance with clause 8.10.1;
  - (g) the engagement of consultants;
  - (h) Contract Management;
  - (i) financial reporting, scheduling reporting, services for the Working Group, public information and administration; 30

- (j) entering into contracts in its own name as the representative of both Parties, in accordance with clause 8.1.2; and
- (k) any other functions delegated by the Parties from time to time. 5

8.7 Consultation

8.7.1 In the performance of its functions, the Coordinating State shall consult fully and openly with the Reviewing State on all matters including risk management. This consultation shall take place through the Project Directors or, if referred by either Project Director, through the Working Group and shall continue during the implementation and operation of the Project. 10

8.7.2 Without limiting any obligation of the Coordinating State under this Agreement to consult with the Reviewing State the Parties acknowledge and agree that the Reviewing State will have input through its Project Director to all risk management decisions by the Coordinating State, including the following: 15

- (a) choice of procurement and contractual options; 20
- (b) decisions relating to the engagement of a Project Manager and the functions to be exercised by any Project Manager;
- (c) the engagement of consultants; and
- (d) evaluation of tenders. 25

8.7.3 Where the Reviewing State does not agree with:

- (a) any assessment of risk made by the Coordinating State; or
- (b) any action proposed by the Coordinating State for the management of any risk including the activities listed in clause 8.7.4, 30

the Reviewing State may refer the matter to the Working Group or, at its sole discretion, to the Ministerial Council for determination. A matter may be referred to the Ministerial Council whether or not it has previously been referred to the Working Group and whether or not the Working 35

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- Group has made a determination and in such case the determination of the Ministerial Council shall prevail. The Coordinating State will not proceed with any proposed action while a determination referred to in this clause is pending with respect to that action. 5
- 8.7.4 In managing any contract which has been awarded pursuant to this Agreement, the Coordinating State shall apply the risk management strategy determined in accordance with this clause 8, but shall ensure consultation with the Reviewing State prior to any action to implement that strategy, including consultation and notification of any action proposed in relation to: 10
- (a) valuations and progress payments;
  - (b) contractual variations; 15
  - (c) extensions of time for practical completion of contracts;
  - (d) audit procedures; and
  - (e) resolution of contractual disputes.
- 8.7.5 Where a matter referred to in clause 8.7.4 involves: 20
- (a) a monetary amount for each event of less than \$10,000; or
  - (b) a claim for an extension of time of less than four weeks,
- the Reviewing State shall notify its approval or otherwise to the action proposed by the Coordinating State within 7 days of receiving notice of such proposal. The Parties may agree in writing to vary the monetary amount and the number of weeks in sub-clauses (a) and (b) of this clause 8.7.5. 25
- 8.7.6 If the Reviewing State does not notify the Coordinating State of its approval or otherwise to any action referred to in clause 8.7.5 within the time referred to in that clause, the Coordinating State may assume approval and proceed to implement the proposed action. 30 35
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8.7.7 The Reviewing State may notify the Coordinating State in writing that the concurrence of the Reviewing State may be assumed with respect to any matter or any class of matters on such conditions, if any, as may be specified in the notice and any action taken by the Coordinating State in accordance with such notice will be valid and effective under this Agreement as if prior consultation had taken place with the Reviewing State. 5

8.7.8 If the Coordinating State takes any action under this Agreement without consulting the Reviewing State as required by this clause 8.7 or by any other provision of this Agreement: 10

(a) the Coordinating State shall indemnify and keep indemnified the Reviewing State against any liability, loss or damage whatsoever which results from such action except to the extent that clause 19.4 applies to the default to exclude clause 19.2; and 15

(b) notwithstanding any other provision of this Agreement, the Reviewing State may proceed under clause 19. 20

8.8 Joint Principals' Representative

8.8.1 The Coordinating State may:

(a) from time to time appoint a Joint Principals' Representative subject to the written consent of the Reviewing State, which consent shall not unreasonably be withheld; and 25

(b) delegate to the Joint Principals' Representative any power or function with respect to Contract Management which the Coordinating State may exercise pursuant to this Agreement. 30

8.8.2 In exercising any power or function delegated by the Coordinating State under this Agreement, the Joint Principals' Representative shall be subject to the same obligations as the Coordinating State including the obligations of consultation with the Reviewing State. 35

8.8.3 The person appointed as the Joint Principals' Representative shall hold office until that person's appointment is revoked or until the Party which appointed the Joint Principals' Representative ceases to be the Coordinating State.

5

8.8.4 Any decision by the Joint Principals' Representative within the delegated authority under clause 8.8.1 shall be binding on both Parties.

#### 8.9 Project Manager

The Coordinating State may appoint a Project Manager to assist in delivery of the Project and may delegate to the person appointed day to day responsibilities in relation to Contract Management.

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Any appointment or delegation under this clause is subject to:

- (a) in the case of an appointment, prior consultation with the Working Group and prior consent of the Reviewing State, which consent shall not unreasonably be withheld; and
- (b) in the case of a delegation, prior consent of the Reviewing State to the scope of the functions to be delegated, which consent shall not unreasonably be withheld.

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#### 8.10 Monitoring

8.10.1 The Coordinating State shall:

- (a) monitor the performance of contractors in relation to any contracts entered into in respect of the Project;
- (b) monitor the performance of the obligations created under this Agreement;
- (c) carry out such other environmental monitoring as is reasonably required; and
- (d) carry out any other monitoring required by statute in NSW or Queensland.

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8.10.2 The work associated with monitoring, including reasonable administrative costs, shall be a Shared Project Cost.

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8.10.3 The Coordinating State shall report to the Working Group and the Reviewing State on such monitoring annually or more frequently as the Parties may agree from time to time having regard to the nature and duration of the contract, obligation or type of monitoring. 5

8.10.4 The Reviewing State may obtain an independent audit of monitoring provided that an independent audit shall be at the expense of the Reviewing State unless the audit reveals a substantial failure in the monitoring in which case it shall be a Shared Project Cost. 10

8.11 Cost Optimisation

The Parties will give consideration to optimising Project costs when implementing the Project.

**9. THE INITIAL DREDGING COMPONENT**

9.1 As an exception to clause 8.1.1, but subject to clause 9.6, NSW shall let the contract(s) for the Initial Dredging Component in its own name or in the name of the NSW Minister for Public Works as the representative of both Parties and shall have such powers and functions as are necessary to ensure the effective implementation of the Initial Dredging Component, including the functions of the types listed in clause 8.6.4 (a), (b), (c), (e), (g), (h), (j) and (k) as these types apply to the Initial Dredging Component. 15 20

9.2 Clause 8.7 shall apply to the Initial Dredging Component and for that purpose any reference to the Coordinating State shall be read as a reference to the Party undertaking the Initial Dredging Component and any reference to the Reviewing State is a reference to the other Party. 25

9.3 NSW will use its best endeavours to let the contract for the Initial Dredging Component by 21 March, 1995 but failure to let the contract by that date shall not be a default under this Agreement. Subject to clause 9.5, the Latest Commencement Date is 30 June, 1995 and the Parties will use their best endeavours to complete the Initial Dredging Component by 30 September, 1997, including the completion of the first phase by 31 December, 1995. 30 35



- 9.4 To allow NSW to perform its obligations under this clause 9, Queensland undertakes to use its best endeavours to achieve the actions set out in column 1 of the following table and to achieve those actions by the times set out in column 2.

TABLE

5

	Column 1 ACTION	Column 2 TIME	
	(i) Comments on each draft environmental impact statement ("EIS")	Within one week of receiving the draft EIS	10
	(ii) Written agreement to the advertising of EIS	Within one week of receiving the final draft EIS	
	(iii) A review of the submissions on the EIS	Within one week of receiving the submissions	15
	(iv) All approvals necessary for the initial dredging	Within forty (40) days of the end of the exhibition period of the EIS	
9.5	If there is a delay in complying with any requirement of the items (i) to (iv) in the table in clause 9.4, the Latest Commencement Date shall be adjusted by a period equivalent to twice the period by which Queensland is delayed in complying with any such requirement, except in the case of a delay in (iv) which is due to the need for additional work on the environmental impact statement in which case the Latest Commencement Date will be adjusted by the period of such delay.		20
			25
9.6	If NSW does not let contracts for the Initial Dredging Component by the Latest Commencement Date, Queensland may notify NSW in writing that Queensland intends to undertake the Initial Dredging Component and if NSW has not let the first contract for the Initial Dredging Component within one month of the date of such notice Queensland may undertake the Initial Dredging Component and may let a contract or contracts for that purpose as the representative of both Parties.		30
			35

- 9.7 If Queensland becomes entitled to undertake the Initial Dredging Component pursuant to clause 9.6 but does not let the first contract or contracts for the Initial Dredging Component within four months of becoming so entitled, any notice given by Queensland under clause 9.6 shall be of no effect and NSW shall be responsible for undertaking the Initial Dredging Component within a reasonable time. 5

## 10. ARTIFICIAL SAND BYPASSING SYSTEM

- 10.1 The Coordinating State will take all necessary preparatory actions for the letting of contracts by the Joint Principals for the design, construction, commissioning, operation, maintenance and replacement from time to time of the System. 10
- 10.2 Provided there has been full and open consultation between the Parties in relation to the preparation of any contract referred to in clause 10.1, the Reviewing State shall not unreasonably refuse to execute that contract. 15
- 10.2 Subject to clause 10.6 the Coordinating State will use its best endeavours to enable the Parties to achieve the Target Actions listed in column 1 of the following table by the Target Dates listed in column 2 of the following table. 20

TABLE

	Column 1 TARGET ACTION	Column 2 TARGET DATE	
(i)	Call tenders for the First System	30 November, 1995	Date 1
(ii)	Let the above contract	28 February, 1996	Date 2
(iii)	Commission the First System and commence its operation	28 February, 1997	Date 3
(iv)	Establish a Clear Navigation Channel	31 May, 1997	Date 4

- 10.4 The Parties may agree to establish an Interim System but failure or inability of the Parties to agree to establish an Interim System shall not create any rights under this Agreement and in particular shall not be referred to expert determination pursuant to clause 17. An Interim System will be established only if the Parties agree on the following: 5
- (a) new dates for Target Dates 1, 2 and 3, in accordance with the intended period of operation of the Interim System; and
  - (b) how the costs of the Interim System will be apportioned between the Parties. 10
- 10.5 Without limiting the generality of the obligation of the Coordinating State under clause 8 to consult fully and openly with the Reviewing State, the Coordinating State will undertake the Consultation Actions listed in column 1 in the following table: 15

TABLE

	Column 1 CONSULTATION ACTION	Column 2 TIME	Column 3 NEXT ACTION	
				20
(i)	provide working drafts of the EIS to the Reviewing State for review	three weeks	not applicable	
(ii)	provide the final draft EIS to the Reviewing State for review	two weeks	finalise the EIS	25
(iii)	advise that the EIS has been finalised and seek approval to advertise	one week	commence public exhibition	30



Tweed River Entrance Sand Bypassing Bill 1995

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	(iv)	provide all responses to the EIS to the Reviewing State	three weeks	accept tender (subject to (v), (vi), and (vii))	
	(v)	provide draft tender documents to the Reviewing State	three weeks	finalise tender documentation	5
	(vi)	provide final tender documents for acceptance	three weeks	call tenders	10
	(vii)	provide copies of all tenders, their evaluation and a recommendation to the Reviewing State for review and acceptance	four weeks	accept tender	15
10.6	The Reviewing State will use its best endeavours to give the Coordinating State a response to each Consultation Action, including where applicable written approval to proceed with the action in column 3 opposite that Consultation Action, within the time shown in Column 2 opposite that Consultation Action.				20
	If the Reviewing State does not give written approval within that time each Target Date for which the Target Action has not yet been completed shall be adjusted by the period of the delay in giving written approval to proceed.				25
10.7	The Coordinating State will not carry out the action in column 3 of the table in clause 10.5 opposite any Consultation Action until the Reviewing State gives written approval in accordance with clause 10.6.				30
10.8	The Coordinating State will use its best endeavours to ensure that a Clear Navigation Channel to the Tweed River is maintained and to ensure that the Contract Quantity of sand is delivered to the Beaches by each Anniversary Date.				

- 
- 10.9 The Coordinating State shall ensure that any contracts for the operation of the System include provisions that:
- (a) require the contractor to manage the distribution of dredging between the navigation channel and other parts of the Tweed River Bar and Entrance Area to achieve the outcomes required by clause 10.8; 5
  - (b) whenever the quantity of sand delivered at any Anniversary Date falls short of the Contract Quantity, require the contractor to correct any such deficiency in the quantity of sand delivered prior to the next Anniversary Date; and 10
  - (c) whenever the quantity of sand delivered at any Anniversary Date exceeds the Contract Quantity, require the contractor to correct any such over supply in the quantity of sand delivered prior to the next Anniversary Date. 15
- 10.10 The Coordinating State will use its best endeavours to ensure that the System continues to operate to meet the requirements of this Agreement for so long as this Agreement remains in force.
- 10.11 Exchange of Roles 20
- 10.11.1 Subject to this Agreement, if for any reason whether or not by reason of default by the Coordinating State, but other than by reason of default by the Reviewing State:
- (i) any Target Action is not achieved within four months of the applicable Target Date; or 25
  - (ii) after Target Date 4 in clause 10.3, there is not a Clear Navigation Channel for a period of three months; or
  - (iii) at any Anniversary Date there has been delivered to the Beaches a quantity of sand which falls short of or exceeds the Contract Quantity by an amount exceeding five hundred thousand cubic metres; or 30
  - (iv) for any three consecutive Anniversary Dates there has been delivered to the Beaches a quantity of sand which falls short of the Contract Quantity by an amount exceeding one hundred thousand cubic metres; or 35
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- (v) or any three consecutive Anniversary Dates there has been delivered to the Beaches a quantity of sand which exceeds the Contract Quantity by an amount exceeding one hundred thousand cubic metres, 5
- the Reviewing State may notify the Coordinating State in writing that it intends to become the Coordinating State. The notice will specify one or more of the circumstances listed in this clause.
- 10.11.2 The roles of the Parties as Coordinating State and Reviewing State shall be exchanged one month after the Reviewing State gives notice under clause 10.11.1 unless in the case of a notice given under clause 10.11.1 (i) or 10.11.1 (ii) the Coordinating State corrects the circumstance referred to in the notice within that time. 10 15
- 10.11.3 After an exchange of roles under clause 10.11.2:
- (i) where the exchange of roles is based on clause 10.11.1 (i) the Target Date for any unreached Target Action shall be adjusted by one year from the exchange of roles; 20
- (ii) where the exchange of roles is based on clause 10.11.1 (ii) the Coordinating State shall use its best endeavours to achieve a Clear Navigation Channel within one year, or
- (iii) where the exchange of roles is based on clause 10.11.1 (iii) or 10.11.1 (iv) or 10.11.1 (v) the Coordinating State shall use its best endeavours to achieve the Contract Quantity within two years. 25
- 10.11.4 An exchange of roles under clause 10.11.2 may take place any number of times, provided that for the purpose of clause 10.11.1 (iv) or 10.11.1 (v), only Anniversary Dates on which the same Party is Coordinating State shall be taken into account. 30
- 10.11.5 If the cause of any of the circumstances in clause 10.11.1 arises out of or in consequence of a default by the Coordinating State under this Agreement then the 35



provisions of this clause 10.11 and clause 13.7 shall, subject to this Agreement, be exclusive of any other remedy in respect of those circumstances unless:

- (i) any Target Action is not achieved within 150% of the period referred to in clause 10.11.1 (i) after the applicable Target Date; or 5
- (ii) a failure to maintain a Clear Navigation Channel persists for a period of 150% of the period referred to in clause 10.11.1 (ii) as adjusted pursuant to clause 10.11.6; or 10
- (iii) the shortfall or excess in the quantity of sand delivered to give rise to a circumstance referred to in clause 10.11.1 (iii), (iv) or (v) is in any case 150% of the quantity referred to in the applicable clause as adjusted pursuant to clause 10.11.6. 15

10.11.6 The performance parameters in clause 10.11.1 (ii) to (v) and clause 13.7 have been based on the expectation that performance within those parameters can reasonably be achieved continuously during the Project by a competent contractor, competently managed by the Coordinating State. 20

These parameters shall be reviewed against the above criterion immediately prior to the commissioning of the First System and thereafter at the time of reassessment of the Long Term Average pursuant to clause 12.2.3 and, upon the request of either Party following such review, the Parties shall negotiate in good faith for the purpose of determining whether any adjustment should be made to these parameters. 25

Any dispute concerning the review or the proper adjustment to any parameter pursuant to this clause may be referred to an Expert appointed in accordance with clause 17. 30

#### 10.12 Suspension of Operation of the System

10.12.1 Notwithstanding any other provision of this Agreement, if for any reason whatsoever the operation of the System becomes or causes a danger or hazard to human health, the environment or the System then the Coordinating State 35

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may, and shall at the direction of the Reviewing State, suspend operation of the System for so long as the risk to human health, the environment or the System should remain.

10.12.2 If the operation of the System is suspended under this clause for more than four weeks, the time allowed for the provision of a Clear Navigation Channel shall be extended by a period equivalent to the duration of the suspension plus a reasonable period to re-establish a Clear Navigation Channel and the annual increment to the Contract Quantity for the relevant Annual Period will be adjusted to take account of the duration of the suspension. 5 10

10.12.3 If the annual increment for any Annual Period is adjusted pursuant to clause 10.12.2, a corresponding adjustment shall be made to the annual increments for the subsequent Annual Period or Periods, as may be reasonable in the circumstances having regard to the magnitude of the adjustment, in order that the sum of the annual increments to the Contract Quantity shall be in accordance with clause 12. 15 20

10.13 Replacement Systems

Without in any way limiting any other obligation under this Agreement, when any Artificial Sand Bypassing System constructed under this Agreement is to be replaced, the Parties agree to consult fully with each other and to each use its best endeavours to ensure that the replacement System is completed in a timely manner so as to continue to meet the purpose of this Agreement. 25

**11. ADDITIONAL WORKS**

11.1 The Parties acknowledge that activities incidental to the Project such as the environmental approval process, may identify works which must be undertaken in order to ensure that the objectives of one or both Parties are achieved in accordance with all legal requirements. Such works shall be undertaken by or on behalf of the Party in whose territory those works are required and, subject to clause 11.2, at the cost of that Party. 30 35

11.2 The Ministerial Council may agree to include as part of the Project works which would not otherwise be part of the Project, including works referred to in clause 11.1 and such works shall be Additional Works and shall form part of the Project.

11.3 Failure or inability of the Ministerial Council to agree as to the inclusion of any works as Additional Works shall not create any rights under this Agreement and in particular shall not be referred to expert determination pursuant to clause 17. 5

## 12. CONTRACT QUANTITY

12.1 Definition of Contract Quantity 10

The Contract Quantity of sand to be delivered to the Beaches on or before any Anniversary Date, shall be the cumulative total of:

- (a) 2 million cubic metres to be delivered as the Initial Dredging Component; plus
- (b) annual increments in respect of each Annual Period, determined in accordance with clause 12.2. 15

12.2 Calculation of the Annual Increment

12.2.1 Subject to clause 12.2.2, the annual increment to the Contract Quantity shall, in the absence of contrary agreement, be: 20

- (a) the Long Term Average; plus
- (b) where applicable, the increases provided for in clause 12.2.6.

12.2.2 Notwithstanding clause 12.2.1, if the first Annual Period is a period less than a full year the first annual increment shall be the Long Term Average multiplied by the proportion which the first Annual Period bears to a full year, plus the quantity determined pursuant to clause 12.2.6 for the first Annual Period. 25

12.2.3 The Parties acknowledge and agree that the Long Term Average is 500,000 cubic metres per annum as at the date of this Agreement. The Long Term Average shall be reassessed at 1 January, 2005, and thereafter at 10 year 30



- intervals. Any of those reassessments shall be carried out earlier if agreed by the Parties on the basis that the actual environmental impacts indicate that the assessment of the Long Term Average requires adjustment.
- 12.2.4 Three months prior to each Anniversary Date, the Parties shall negotiate in good faith with a view to reaching agreement on the annual increment to the Contract Quantity for an agreed number of succeeding Annual Periods and failing agreement the annual increments shall be as previously agreed pursuant to this clause 12.2.4 or, if there is no such agreement, as provided in clause 12.2.1.
- 12.2.5 The Parties acknowledge and agree that for the purposes of clause 12.2.4 the annual increments to the Contract Quantity may vary from year to year to take account of:
- (a) any annual variations in the quantity of sand delivered to Letitia Spit;
  - (b) the specific objectives of both Parties as set out in the recital; and
  - (c) any suspension of the operation of the System under clause 10.12,
- but that any agreement pursuant to that clause shall ensure that the average of the annual increments to the last Annual Period in respect of which there is agreement, disregarding the additional quantity provided for in clause 12.2.6, shall be equivalent to the Long Term Average.
- 12.2.6 During the first six Annual Periods an additional quantity of sand, to be known as the "Supplementary Increment" equivalent to the sum of:
- (a) 550,000 cubic metres; and
  - (b) the volume of sand which would have been transported between the completion of the first phase of the Initial Dredging Component and the commencement of the operation of the System calculated at the rate of 500,000 cubic metres per annum,
- shall be added to the Contract Quantity as provided in this clause 12.2.6.

Delivery of any part of the Supplementary Increment during the first five Annual Periods shall not trigger the operation of clause 10.11 or clause 13.7 but the annual increments shall be retrospectively adjusted by the amount of the additional quantity delivered, whether or not there is agreement pursuant to clause 12.2.4 to increase the annual increment with respect to any part of that quantity.

5

Any part of the Supplementary Increment which has not been delivered earlier will be added to the annual increment for the sixth Annual Period.

10

12.2.7 The Parties acknowledge and agree that:

(a) a quantity of sand sufficient to provide a useable beach, including nearshore shoals, to be known as the "Duranbah Supply", shall be delivered to Duranbah beach from time to time and this shall be a minor fraction (up to 10%) of the sand delivered by the System;

15

(b) 50% of such quantity, or such other percentage as may be agreed between the Parties or determined in accordance with clause 12.2.8, as the percentage which is likely to be transported to Queensland, to be known as the "Duranbah Contract Quantity", shall be considered as having been delivered as part of the Contract Quantity;

20

(c) the work associated with supplying sand to Duranbah beach shall be a Shared Project Cost;

25

(d) the quantity of sand to be delivered to Kirra Point, to be known as the "Kirra Contract Quantity", shall not exceed a total of 200,000 cubic metres in any two consecutive Annual Periods and shall not exceed 75,000 cubic metres per annum on a long term average; and

30

(e) subject to the environmental approval process, any sand which moves from the Tweed River Bar and Entrance Area including into the river following commencement of the Initial Dredging Component shall be available for the Project.

35

12.2.8 Any dispute between the Parties as to:

- (a) the Long Term Average;
  - (b) the quantity referred to in clause 12.2.7 (a); or
  - (c) the percentage referred to in clause 12.2.7 (b),
- may be referred by either Party to an Expert appointed in accordance with clause 17. 5

12.3 Supply of Sand

If, owing to insufficient sand being available or as a result of any legislative requirements, including an environmental impact assessment, or any limits imposed under the general law, the Contract Quantity cannot be delivered from the Tweed River Bar and Entrance Area to the Beaches, the Parties shall, having regard to the objectives of both Parties, use their best endeavours to ensure that the shortfall in the Contract Quantity of sand is delivered from the coastal system outside of the Tweed River Bar and Entrance Area. Obtaining the shortfall shall be a Shared Project Cost. 10 15

If the above circumstances result in a substantial failure to meet either Party's objective so as to amount to frustration of this Agreement, this clause 12.3 shall not apply to prevent frustration of this Agreement. 20

**13. SHARING COSTS FOR THE PROJECT**

13.1 Subject to the due performance of the relevant work the final actual costs of the Shared Project Costs under this Agreement will be contributed to by the Parties in accordance with this clause 13. 25

13.2 Final actual costs of any work performed pursuant to this Agreement include the costs of preliminary investigation, reports, administrative procedures and other activities, all as approved by the Ministerial Council and costs referred to in clause 8.1.3. 30



- 
- 13.3 The final actual costs of the work associated with the Initial Dredging Component and of the work associated with the establishment and commissioning of the First System will be shared by the Parties in the following proportions:
- |            |     |   |
|------------|-----|---|
| NSW        | 75% | 5 |
| QUEENSLAND | 25% |   |
- 13.4 The final actual costs of all other works which are expressed to be Shared Project Costs in this Agreement, for which a percentage cost sharing basis is not stated elsewhere in this Agreement, or otherwise agreed between the Parties pursuant to this Agreement, shall be shared equally by the Parties. 10
- Such works include without limitation the operation of the System, monitoring and auditing, and the establishment and commissioning of any replacement System.
- 13.5 In the event that, under the terms of a contract let in accordance with clause 10, the establishment costs for the First System are not paid entirely by up-front capital contribution, but are wholly or partly incorporated in a recurrent payment per unit of sand supplied, the Parties will apportion the recurrent unit charge between establishment costs and other costs for the purpose of the application of the agreed shared contributions, as set out in the preceding provisions of this clause 13. 15 20
- 13.6 For the purpose of arriving at an apportionment under clause 13.5;
- (a) if the tender submitted by the contractor has a price for the capital cost and a price for the operating cost, those prices will be used unless either Party objects to the use of those prices; and 25
- (b) if the Parties do not agree to use the prices in the contractor's tender or if the tender does not have prices which can be used to apportion the recurrent charge between establishment costs and other costs, then the Parties shall negotiate in good faith for the purpose of agreeing to an apportionment, and, failing agreement, either Party may refer the matter to an Expert appointed in accordance with clause 17. 30 35
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- 13.7 If any default by the Coordinating State under this Agreement results in any circumstance in column 1 of the following table and the Reviewing State gives notice to the Coordinating State invoking this clause 13.7, then, notwithstanding clause 13.4 but subject to clause 13.9, the cost sharing consequence in column 2 of the following table opposite the relevant circumstance shall apply: 5

TABLE

	COLUMN 1 Circumstance	COLUMN 2 Consequence	
			10
(i)	there is not a Clear Navigation Channel for a period of three months	the Coordinating State shall pay 60% of the operating costs of the System until there is a Clear Navigation Channel	15
(ii)	there has been delivered a quantity of sand which falls short of the Contract Quantity by an amount exceeding two hundred thousand cubic metres	the Coordinating State shall pay 60% of the operating costs from the relevant Anniversary Date until the Contract Quantity is achieved.	20
(iii)	there has been delivered a quantity of sand which exceeds the Contract Quantity by an amount exceeding two hundred thousand cubic metres	the Coordinating State shall pay 60% of the operating costs associated with the delivery of the quantity of the oversupply plus 60% of the operating costs from the relevant Anniversary Date until the Contract Quantity has been achieved.	25 30

- 13.8 For the purposes of the application of the consequences opposite items (ii) and (iii) in the table in clause 13.7 only, the annual increment for any Annual Period during which the consequence of the table in clause 13.7 applies shall be apportioned over the 35



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- year as equal monthly increments and the Contract Quantity will be taken to have been achieved if on the last day of any month there has been delivered a quantity of sand equivalent to the Contract Quantity at the preceding Anniversary Date plus the monthly increments, calculated in accordance with this clause 13.8, which have accrued to that date. 5
- 13.9 If a circumstance referred to in clause 13.7 results in an exchange of roles pursuant to clause 10.11, the consequences in column 2 of the table in clause 13.7 shall not apply to any operating costs of the System incurred after the date of that exchange of roles. 10
- 13.10 Subject to the provisions of clause 10.11.5, the provisions of clause 13.7 are without prejudice to any other right of the Reviewing State arising out of the relevant default by the Coordinating State provided that, so long as this Agreement remains on foot, the Coordinating State shall have no financial liability to the Reviewing State in relation to any circumstance in column 1 of the table in that clause other than the consequence provided for in column 2 of that table. 15
- 13.11 If any moneys are contributed to the Project by persons other than the Parties or local government in NSW or Queensland, such moneys shall be accounted for as follows: 20
- (a) if the moneys are specified to be for a particular element of the Project, the final actual costs of the work for that element will be reduced by the amount of the contribution; or 25
  - (b) if the moneys are not specified to be for a particular element of the Project, the final actual costs of any work undertaken after the contribution will be reduced by applying the moneys until the contribution has been fully expended. 30

#### PART IV - GENERAL

#### 14. ACCOUNTING ARRANGEMENTS

- 14.1 The Parties acknowledge that the costs of the Project may vary substantially from year to year, and agree to meet the actual costs of the Project as they become due. 35



Schedule 1 Deed of Agreement

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- 14.2 The Parties acknowledge that expenditure records for the Project shall be established and kept by one of the Parties “(the Banker)” or its nominee, on behalf of the Project.
- 14.3 Unless varied by contrary agreement, the Coordinating State shall be the Banker. 5
- 14.4 The Banker shall:
- (a) establish a consolidated set of expenditure records for Shared Project Costs;
  - (b) draw up individual accounts for each Party on the basis of the cost sharing ratios set out in clause 13; 10
  - (c) in consultation with the other Party, draw up a projected cash flow based on the Cash Flow Period; and
  - (d) report to the Working Group on progress against projected cash flow within four weeks of the conclusion of each Cash Flow Period. 15
- 14.5 Unless either Party notifies the Banker in writing that it anticipates that actual expenditure for the Cash Flow Period will have a significant variation from the projected cash flow, the Banker will bill both Parties on the basis of the projected cash flow. 20
- For the purpose of this clause a “significant variation” is any variation of more than 10% or any variation which is expected to have a duration of more than two cash flow periods.
- 14.6 Where any amount is due by a Party, after taking into account any credit pursuant to clause 14.9.2 (b), that Party will pay that amount to the Banker before the middle of each Cash Flow Period. 25
- 14.7 In the case of a significant variation in the cash flow advised to the Banker and approved by both Parties, the Banker will amend the projected cash flow and the amended projected cash flow will be used as the basis for billing and payments. 30
- 14.8 Either Party may call for a reconciliation between actual expenditure and payments. If such reconciliation is called for, the Banker shall carry out the calculations and include any necessary adjustments in the next account to each Party. 35

**14.9 Works Carried Out or Paid for by a Party**

- 14.9.1 Where either Party carries out or pays for work which is a Shared Project Cost the Contracting State will bill the Banker for the full cost of that work.
- 14.9.2 The Banker will take the value of such work or expenditure into account in issuing individual accounts to the Parties: 5
- (a) as an expenditure which becomes part of the cost of the Project; and
- (b) as a credit against the Contracting State's liability with respect to the Project. 10

**14.10 Management Fee**

- 14.10.1 The Banker may impose a management fee for managing the financial accounts. This fee shall not exceed 0.5% of the total debits in any cash flow period. 15
- 14.10.2 The management fee shall cover all costs normally associated with keeping the accounts including disbursements, but not including interest on outstanding payments and not including any auditing fees.
- 14.10.3 The management fee and any auditing fees shall be shared as a Shared Project Cost. 20

**14.11 Interest**

If either Party is late in making any payment due to the other Party, the latter may charge an interest fee which is the 90 day Bank Bill Rate last published before the day on which the payment was due. 25

**15. ASSETS ACQUIRED BY THE PARTIES**

- 15.1 The Parties shall keep a list of assets (if any) each acquires as a Shared Project Cost.
- 15.2 Neither Party shall dispose of any assets acquired as a Shared Project Cost unless both Parties agree in writing that the asset may be disposed of without adversely affecting the capacity of the Project to satisfy the purpose of this Agreement. 30

15.3 The proceeds from the disposal of any surplus assets shall be paid to the Banker to be distributed between the Parties in accordance with the contributions made by each Party to the acquisition of those assets.

15.4 Land in either State acquired for the Project as a Shared Project Cost shall be vested in the name of that State or a Minister from that State and shall be held in such name or in the name of another Minister from that State unless disposed of in accordance with this clause. 5

**16. PARTIES TO FACILITATE WORKS 10**

16.1 A Party within whose territory any of the works constituting the Project are to be performed, constructed, maintained, operated or controlled by any person shall use its best endeavours to provide to such person or its authorised agent, all such powers, leases, licences and permission over or with respect to the territory of the Party as may be necessary for the exercise and performance of the Project and each of the Parties shall take such steps either by acquiring land or interests in land or otherwise as may be necessary to give effect to the Project. 15

16.2 The Parties agree that any compensation which may be payable whether for the acquisition of land or any interest in land or otherwise for the purposes of the Project shall be a Shared Project Cost to be apportioned as an establishment cost of the System. 20

**17. DISPUTES 25**

17.1 Notwithstanding the existence of any dispute the Parties shall continue to perform their obligations under this Agreement.

17.2 Submission to the Working Group

If a dispute between the Parties arises out of or in connection with this Agreement, other than a dispute which this Agreement provides to be referred directly to expert determination or a dispute arising out of a determination or decision by the Working Group, or the failure of the Working Group to give a decision or determination, either Party may refer the dispute to the Working Group. 30  
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**17.3 Submission to the Ministerial Council**

- 17.3.1 If the Working Group cannot resolve a dispute referred to it within 30 days, or another period if agreed between the Parties, it shall refer the dispute to the Ministerial Council.
- 17.3.2 Any dispute arising out of a determination or decision of the Working Group or the failure of the Working Group to give a decision or determination may be referred by either Party to the Ministerial Council. 5
- 17.3.3 Any dispute which may be referred to the Working Group under clause 17.2 may be referred by either Party at any time to the Ministerial Council, subject to the consent of the other Party. A dispute may be referred to the Ministerial Council under this clause whether or not it has previously been referred to the Working Group. 10

**17.4 Expert Determination** 15

- 17.4.1 Subject to any provision of this Agreement that a matter shall not be referred to expert determination either Party may refer any of the following for expert determination in accordance with clause 17.4.2:
- (a) a dispute referred to the Ministerial Council which the Ministerial Council has not resolved within 60 days; 20
- (b) a dispute arising out of the inability of the Ministers constituting the Ministerial Council to reach agreement on any matter arising out of or in connection with this Agreement; 25
- (c) a dispute which this Agreement provides may be referred to expert determination; or
- (d) subject to the consent of the other Party, any other dispute, including a dispute previously referred to the Ministerial Council in respect of which the period of 60 days referred to in clause 17.4.1(a) has not elapsed. 30
- 17.4.2 The expert determination process shall be effected by an expert in the relevant field agreed upon and appointed jointly by the Parties. In the absence of agreement as to the appointment of an Expert either Party may request the Secretary General of the Australian Commercial Disputes 35

Centre Limited at Sydney, or another body as agreed, to nominate an Expert. The request shall indicate that the nominee shall not be an employee of either Party or a person in respect of whom there has been a failure to agree by the Parties.

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17.4.3 The appointment of an Expert shall be conclusive evidence that the particular dispute relates to matters properly the subject of expert determination.

17.4.4 The following shall apply to the Process:

(a) the Process shall be conducted in accordance with the Rules for the Expert Determination Process set out in Schedule 4;

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(b) for the purposes of the application of the Rules, the Party referring the dispute to the Expert is the "Claimant" and the other Party is the "Respondent";

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(c) the determination of the Expert shall be made as an Expert and not as an Arbitrator and shall be final and binding on the Parties except where the Expert's determination is that one Party shall pay the other an amount in excess of \$500,000;

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(d) the Expert may determine whatever interest the Expert considers reasonable; and

(e) if one Party has overpaid the other, whether under a mistake of law or fact, the Expert may determine what repayment (together with interest) shall be made.

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17.5 Moneys that are or become due and payable by either Party under this Agreement and which are subject to a dispute shall not be withheld during the Process but following the determination by the Expert any necessary adjustments will be made to future payments.

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## 18. UNAVOIDABLE DELAY

The Parties agree that delay caused by an unforeseen event shall not frustrate this Agreement. If either Party is delayed in performing its obligations under this Agreement, owing to an event beyond its control which could not reasonably have been foreseen, including the failure by

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a contractor to perform under the terms of any contract let in accordance with and for the purposes of this Agreement, then the delay shall not be taken to be a default under this Agreement but the Party concerned shall use its best endeavours (in consultation with the other Party) to remedy the position within such time as may be reasonable in the circumstances. 5

## 19. DEFAULT

### 19.1 Notice to Rectify and/or Pay Compensation

19.1.1 Where either Party is in default of any obligation under this Agreement, including the obligation to consult with the other Party, the Party not in default may, by notice in writing to the Party in default: 10

(a) specify the nature of the default, the facts relied upon to establish the default and if any specific action is required to rectify the default, that action; and 15

(b) if it so elects, and whether or not the Party in default is reasonably capable of rectifying the default, provide that Party with the alternative of paying a sum of money specified as reasonable compensation in substitution for rectification of the default or for rectification of any specified aspect of the default. 20

19.1.2 A notice pursuant to this clause 19.1 may include both a request for partial rectification and a claim for compensation in relation to the same default, and may be satisfied by partial rectification of the default plus payment of compensation. 25

19.1.3 A notice pursuant to this clause 19.1 is a precondition to termination of this Agreement in the event of default. 30

### 19.2 Termination

Subject to clause 19.3, where the Party in default has:

(a) not commenced appropriate action to rectify the default referred to in a notice under clause 19.1 within 30 days of receiving such notice; or 35



Schedule 1 Deed of Agreement

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- (b) commenced action in accordance with subclause (a) but has not rectified the default within a reasonable period, such period being not less than 30 days after the Party receives notice under clause 19.1,  
whether or not the default is reasonably capable of being rectified, the Party not in default may, by further notice in writing to the Party in default, terminate this Agreement. 5
- 19.3 The right to terminate under clause 19.2 shall not apply to a default unless either:
  - (a)
    - (i) the default is in respect of an obligation to consult, involves an issue of risk management and produces or is likely to produce an additional cost to the Party not in default in excess of \$1 million; and 10
    - (ii) there has been repeated and persistent failure to consult and the defaults are in respect of an obligation to consult, involve an issue of risk management, and during the preceding five year period have produced or are likely to produce an additional cost to the Party not in default in excess of \$1 million; or 15 20
  - (b) the default is in respect of any other obligation and amounts to a repudiation of this Agreement.
- 19.4 The right to terminate under clause 19.2 shall not apply to a default to the extent that a notice under clause 19.1 includes a claim for reasonable compensation; and the defaulting Party has: 25
  - (a) within 30 days of receiving notice, by notice in writing to the other Party elected to pay such compensation, and
  - (b) paid such compensation within a reasonable time.
- 19.5 At any time prior to termination in accordance with clause 19.2, a dispute between the Parties as to: 30
  - (a) the existence of a default by either Party;
  - (b) whether a default has been rectified;
  - (c) what is a reasonable period for rectification of a default; or
  - (d) whether a claim for compensation in terms of clause 19.1 is reasonable, 35

may be referred by either Party to an Expert appointed in accordance with clause 17. A notice terminating this Agreement shall be of no effect if any matter under this clause 19.5 has been referred for expert determination and the notice is given before such determination.

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19.6 The termination of this Agreement does not affect the rights of either Party for default by the other Party under this Agreement committed before the termination or any right of action or remedy which has accrued or which may accrue in favour of either Party.

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19.7 The Parties acknowledge that if this Agreement is terminated pursuant to this clause 19, then the resulting damages caused to the Party not in default may include:

(a) the contribution by the Party not in default to any compensation payable to any third party in respect of the termination of any contract entered into for the purpose of this Agreement by both Parties as Joint Principals or by either Party;

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(b) the reasonable costs of site restoration; and

(c) one of the following:

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(i) for Queensland—the net present value, at the date of termination, of the dredging of sand of an equivalent quality from the nearest available source to achieve the quantities in clause 12, less Queensland's share of the net present value of that part of the Shared Project Costs (including works and operation not yet undertaken) not yet paid for by Queensland at the date of termination; or

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(ii) for NSW—the net present value, at the date of termination, of the dredging required to achieve a Clear Navigation Channel and disposal to the nearest available deposition site in perpetuity less NSW's share of the net present value of that part of the Shared Project Costs (including works and operation not yet undertaken) not yet paid for by NSW at the date of termination.

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## 20. OWNERSHIP OF SAND

- 20.1 All sand which enters the System becomes an asset of the Project and, subject to the provisions of this clause 20, becomes the property of Queensland upon delivery to Queensland, or the coastal waters of the State of Queensland as defined in the Coastal Waters (State Powers) Act, 1980 (Cth). The value of any royalties and net profits made from or in connection with any extraction of minerals as part of the System or the sale of sand delivered by the System shall be shared equally between the Parties and where any payments are collected by either Party, any necessary adjustment will be made to the accounts prepared pursuant to clause 14 to ensure that the value of those payments is shared equally. 5 10
- 20.2 For the purposes of clause 20.1 the sale of sand refers only to sand sold and removed from the System or from the littoral system between Snapper Rocks and Currumbin Rock, excluding sand sold and removed under any rights under existing leases and permits, including rights to renewal or extension thereof which exist at the date of this Agreement. 15
- 20.3 Neither Party will levy a royalty on a Party to this Agreement in respect of sand which is transferred between the States pursuant to this Agreement. 20

## 21. APPROPRIATION

The Parties agree to submit to their respective Parliaments annually through the budgetary process for the appropriation of all funds necessary or required for the purposes of this Agreement. 25

## 22. COSTS

Each Party agrees to bear its own costs and expenses in relation to the investigation, negotiation, preparation, execution and delivery of this Agreement. 30

## 23. LIABILITY

The liability of either Party for breach of contract, or in tort or for any other common law or statutory cause of action arising out of the operation of this Agreement, shall be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia. 35



## 24. SEVERABILITY OF PROVISIONS

If any provision of this Agreement or the application of any provision of this Agreement to any person or circumstance shall be or become invalid or unenforceable, then the Parties shall in good faith enter into negotiations to agree what alteration to their respective rights and obligations under this Agreement ought reasonably to occur as a consequence. The remaining provisions of this Agreement shall not be affected by such invalidity or unenforceability and those remaining provisions shall be valid and enforceable to the fullest extent permitted by law.

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## 25. EXERCISE OF RIGHTS

25.1 Subject to this Agreement, either Party may exercise any right, power or remedy arising out of or in connection with this Agreement at its sole discretion, and either separately or concurrently with any other right, power or remedy.

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25.2 Except where a contrary intention appears, the rights, powers and remedies created by this Agreement are cumulative with and do not exclude any rights, powers or remedies provided by law independently of this Agreement.

## 26. WAIVER AND VARIATION

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A provision of or a right created under this Agreement may not be:

- (a) waived except in writing signed by the Party granting the waiver and then such waiver shall be effective only in the specific instances and for the purposes for which it is given; and
- (b) varied except in writing signed by the Parties and, in the event that this Agreement is ratified in accordance with clause 6, in accordance with any Acts ratifying it.

25

## 27. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY

27.1 The intellectual property rights in any Original Project Material which is created by or on behalf of the Parties in contemplation of and during the course of investigating and undertaking the Project shall be held by the Parties as co-owners and both Parties will do all such acts as are necessary in order to perfect such co-ownership.

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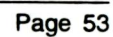
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- 27.2 Each of the Parties may use any Original Project Material for its own purposes in connection with the Project without further need to account to each other for such use and each Party hereby grants to the other a perpetual non-exclusive, non-transferable royalty-free licence for this purpose. Without limiting the generality of this clause, a Party may use Original Project Material by disclosure to contractors engaged in the Project and may authorise a contractor to use Original Project Material for the purposes of the Project. 5
- 27.3 A Party may not use any Original Project Material for a commercial or profit making purpose or grant any licence to a third party to exploit the Original Project Material for financial reward except with the express prior consent of the other Party, which consent shall not be unreasonably withheld. Any consent under this clause may be made subject to reasonable commercial terms and conditions in relation to the exploitation and the return to each Party. Any condition stipulating a return of profits from the exploitation back into the Project shall be deemed to be a reasonable commercial condition for the purposes of this clause. 10 15
- 27.4 Notwithstanding clause 27.3, each Party may transfer any Original Project Material between Government Agencies in the same State whether by sale or otherwise without the consent of the other Party. 20

**28. FURTHER ASSURANCES**

- Neither Party will undertake activities which are detrimental to or compromise the securing of the other Party's objectives, including any action which may be detrimental to the natural littoral movement of sand. 25

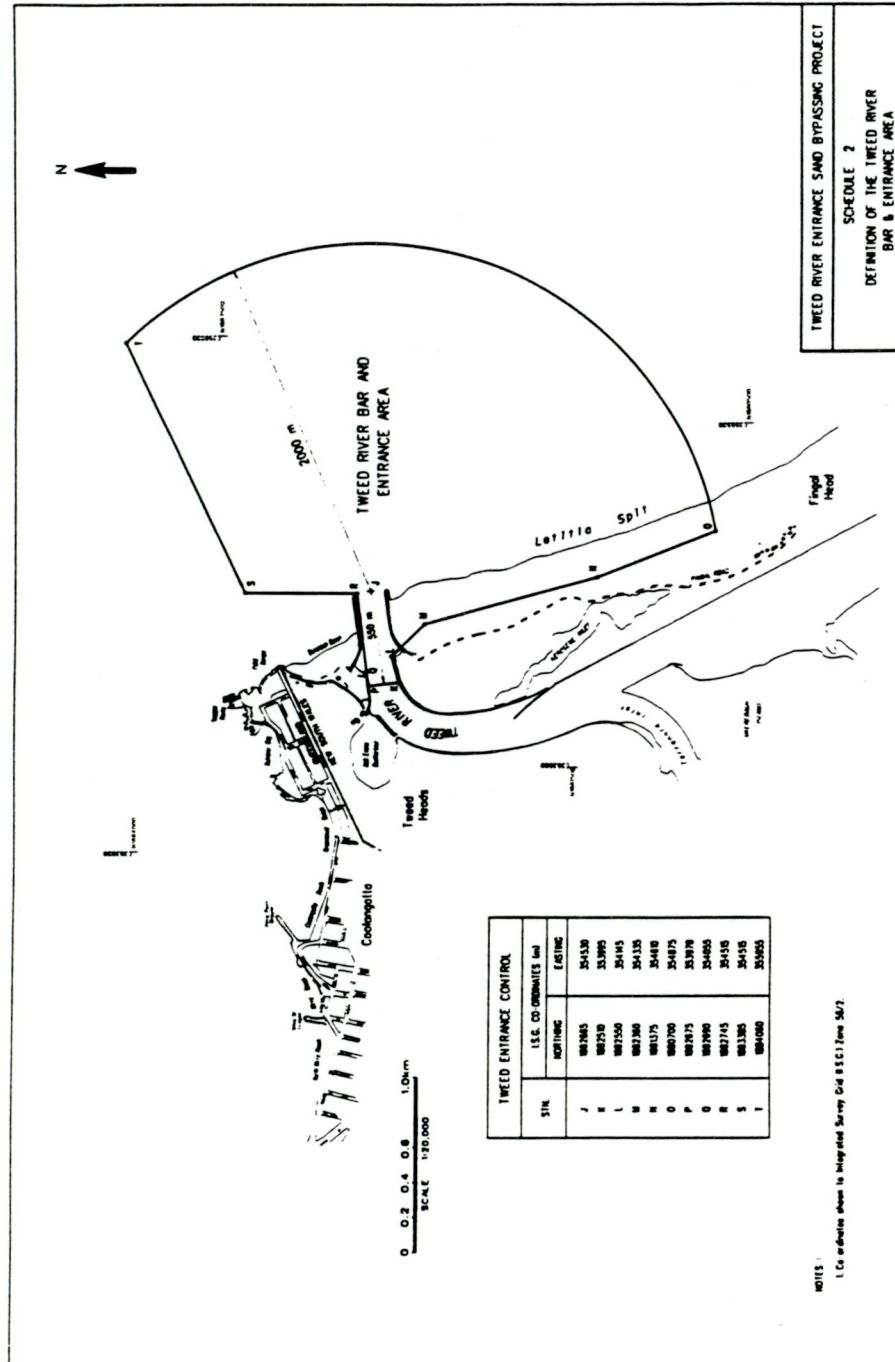
## Schedule 1





# Tweed River Entrance Sand Bypassing Bill 1995

## Schedule 1 Deed of Agreement



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SCHEDULE 3

RESPONSIBILITIES OF THE PROJECT DIRECTORS

The Project Directors are responsible for:

1. ensuring that the respective needs of the Parties are represented and promoted; 5
2. Coordinating the activities of the Parties and consultation between them;
3. ensuring that the respective Party's input to the project is made in a timely, comprehensive and efficient manner;
4. representing the respective Party on the Project Working Group, including the preparation of reports and minutes of the Working Group; 10
5. checking that the respective Party's functional requirements are met throughout the development, including during the production of design and contract drawings, specifications and other contract documents;
6. preparing regular reports to their respective agencies covering annual project cash flow requirements and monthly updates against cash flow forecasts; 15
7. arranging approvals for scope of work, budget, funding and program, as authorised by the respective Party; and
8. any other requirements of the Working Group or the respective Party that could be reasonably expected of the Project Directors. 20

SCHEDULE 4

RULES FOR THE EXPERT DETERMINATION PROCESS

1. Function of the Expert  
The function of the Expert is to make a determination on the dispute in accordance with these Rules and the letter of appointment of the Expert. 25
2. Commencement  
The Process shall commence with the acceptance by the Expert of the appointment to act to determine the dispute in accordance with these Rules. 30

3. General Conduct of the Process

- 3.1 No consultation shall take place with either Party other than in the presence of both Parties.
- 3.2 The Expert shall disclose all information and documents received from either Party to the other Party. 5
- 3.3 Where a Party fails to make a written submission or appear at any conference after having received due notice, the Expert may proceed with the Process.
- 3.4 All proceedings and submissions relating to the Process shall be kept confidential between the Parties and the Expert. No information shall be divulged to any other person except with the prior written consent of both Parties, or as may be required by law or in order to enforce the determination of the Expert. 10

4. Written Submissions 15

- 4.1 Within fourteen (14) days of the date of the commencement of the Process, the Claimant shall provide to the Respondent or its nominee and the Expert a statement detailing the nature of the dispute, any agreed statement of facts and a written submission on the dispute in support of the Claimant's contention. 20
- 4.2 Within twenty-one (21) days thereafter the Respondent or the Respondent's nominee shall provide to the Claimant and the Expert a written response to the written submission of the Claimant. 25
- 4.3 If, upon the application of the Claimant, the Expert considers it appropriate, the Claimant may make a written response to the response of the Respondent under paragraph 4.2 above within the time allowed by the Expert and a copy of such written response shall be provided by the Claimant to the Respondent. 30
- 4.4 If, upon the application of the Respondent, the Expert considers it appropriate, the Respondent may make a written response to the response of the Claimant under paragraph 4.3 above within the time allowed by the Expert and a copy of such written response shall be provided by the Respondent to the Claimant. 35



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- 4.5 If the Expert decides further information or documentation is required for the determination of the dispute the Expert may:
- (a) require a further written submission or documents from either or both Parties, giving each Party a reasonable opportunity to make a written response to the other's submission; and 5
  - (b) call a conference between the Parties and the Expert in accordance with paragraph 5 below.
5. Conference 10
- 5.1 When the Expert determines that a conference between the Parties is necessary the Expert shall be responsible for arranging the conference at a venue and time convenient for the Parties and shall notify them accordingly.
- 5.2 At least seven (7) days prior to the conference the Expert shall inform the Parties of the matters to be addressed at it and shall hear representations only on those matters. 15
- 5.3 At the time and place notified for any conference the Parties shall appear before the Expert to make representations on the matters the subject of the conference. 20
- 5.4 The Expert is not bound by the rules of evidence and may receive information at any conference in any manner the Expert thinks fit, providing that, at all times, the requirements of procedural fairness are met. 25
- 5.5 At a conference either Party may have legal or other representation.
- 5.6 Any conference shall be held in private.
- 5.7 If requested by either Party, transcripts of all conference proceedings will be taken and be available to the Expert and the Parties. 30
6. The Determination
- 6.1 As expeditiously as possible after the receipt of the submissions or after any conference and, in any event not later than three months after the commencement of the Process unless the time has been extended by agreement between the Parties, the Expert shall determine the dispute between the Parties and notify such determination in writing to the Parties. 35

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- 6.2 The notice of the determination shall include a brief statement of the reasons for the determination.
- 6.3 The Expert shall reach the determination on the basis of the information received from the Parties and on the basis of the Expert's own expertise. 5
- 6.4 Where the determination made by the Expert contains -
- (a) a clerical mistake;
  - (b) an error arising from an accidental slip or omission;
  - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or 10
  - (d) a defect of form,
- the Expert shall correct the determination.
7. Termination
- 7.1 Subject to paragraph 6.4, the Process shall conclude when the Expert has notified the determination to both Parties. 15
- 7.2 The Process shall be terminated in the event of the Expert being unable to conclude the Process by reason of the Expert's illness, death, being of unsound mind or failure to act. 20
- 7.3 If the Expert becomes aware of any circumstances that might reasonably be considered to affect adversely the Expert's capacity to act independently or impartially the Expert must inform both Parties immediately.
- The Expert must in such circumstances terminate the proceedings, unless the Parties agree otherwise. 25
- 7.4 If the Process is terminated prior to its conclusion, another expert shall be appointed in accordance with the provisions of the Agreement
8. Costs 30
- 8.1 Each Party shall bear its own costs of the Process and shall share equally the costs of the Expert and the Process.
- 8.2 Security for costs shall be deposited by both Parties at the commencement of the Process at the direction of the Expert. 35

9. Modification

Unless otherwise stated these Rules shall be modified only by agreement of the Parties and of the Expert.

SCHEDULE 5

AN INDICATIVE EXAMPLE OF THE CALCULATION OF DAMAGES (AS REFERENCED IN CLAUSE 19.7): 5

Notes in General

1. The figures are based on the Joint Consultants' Report.
2. Values are in 1990 dollar terms.
3. The figures are indicative and are based on the assumption that, at and following any termination (which is not contemplated or proposed by the Parties), the alternatives contemplated would be achievable in law and in fact, which is not certain. 10
4. The values are intended to be illustrative of components and the concept, and not to be definitive in quantum. 15

Example Calculations

1 NSW IN DEFAULT

1.1 Assumptions

- (a) the Project terminates at the 26th Anniversary Date, one year after replacement of the First System; 20
- (b) prospective operating and maintenance costs are \$2 million per annum;
- (c) scheduled replacement expenditures are \$8.45 million after 24 years and at 25 year intervals thereafter;
- (d) the applicable discount rate is 7 per cent per annum; 25
- (e) an amount of \$2 million is payable by each Party as a result of the termination of the third party contract;
- (f) the cost of site restoration is \$3 million;
- (g) the long term net littoral transport of sand at the northern portion of Letitia Spit is 500,000 cubic metres per annum; 30



Tweed River Entrance Sand Bypassing Bill 1995

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- (h) the cost of offshore dredging is \$4.43 per cubic metre. Note: the \$4.43 is based on the Joint Consultants' Report, 1/3 to nearshore at \$3.30 and 2/3 to onshore at \$5.00);
  - (i) NSW dredges the full littoral transport and removes it from the littoral system; 5
  - (j) suitable sand could be obtained from offshore in perpetuity (which is uncertain); and
  - (k) the cost of obtaining such sand does not escalate in real terms.

- 1.2 The damages recoverable by Queensland at the date of termination would be \$21.4 million, calculated as follows: 10

	\$ million	
compensation under clause 19.7 (a)	2.0	
reasonable site restoration under clause 19.7 (b)	3.0	15
amount applicable under clause 19.7 (c)	16.4	
cost of offshore dredging in perpetuity (\$2.216 million @ 7% p.a.)	31.7	
less Queensland's share of	15.3	
remaining net present value of System's future operating and maintenance (\$1 million in perpetuity @ 7% p.a.)	14.3	20
future replacement (one half of \$8.45 million after 24 years, then at 25 year intervals @ 7% p.a.)	1.0	25

## 2 QUEENSLAND IN DEFAULT

### 2.1 Assumptions

- (a) The same assumptions as in 1.1 (a) to (g) of this schedule;
- (b) the cost of dredging material from the bar and entrance area is \$5.00 per cubic metre; and 5
- (c) the sand is placed on the downdrift beaches and is not sold.

- 2.2 The damages recoverable by NSW at the date of termination would be \$25.4 million, calculated as follows: 10

	\$ million	
compensation under clause 19.7 (a)	2.0	
reasonable site restoration under clause 19.7 (b)	3.0	
amount applicable under clause 19.7 (c)	20.4	15
cost of maintaining a Clear Navigation Channel in perpetuity (\$2.5 million @ 7% p.a.)	35.7	
less NSW's share of remaining net value of System's future operating and maintenance (\$1 million in perpetuity @ 7% p.a.)	15.3 14.3	20
future replacement (one half of \$8.45 million after 24 years, then at 25 year intervals @ 7% p.a.)	1.0	25

Tweed River Entrance Sand Bypassing Bill 1995

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IN WITNESS OF WHICH this Agreement has been respectively signed for and on behalf of the Parties on the date first set out above.

SIGNED and SEALED for and on behalf of the STATE OF NEW SOUTH WALES by the Honourable Ian Armstrong, Deputy Premier and Minister for Public Works	}	Ian Armstrong	5
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in the presence of:

Witness	}	DON BECK	
Name of Witness (print)	}	DM Beck.	10

SIGNED and SEALED for and on behalf of the STATE OF QUEENSLAND by the Honourable Molly Robson, Minister for Environment and Heritage	}	Molly Robson	
	}	2/3/1995	15

in the presence of:

Witness	}	D.G. McGreevy.	
Name of Witness (print)	}	D.G. McGREEVY.	



## Schedule 2 Heads of Agreement

(Section 4)

Heads of Agreement relating to the Tweed River Entrance Sand Bypassing Project

This Heads of Agreement is made on 31st March, 1994 between the State of New South Wales and the State of Queensland. 5

### 1.0 PREAMBLE

The Governments of New South Wales and Queensland ("the States") recognise the importance of the Gold Coast -Tweed Heads region as a major international and national tourism destination, a significant growing recreational and residential area, and a unique coastal environment. 10

The region is the destination for more than 500,000 visits annually by overseas arrivals and makes a substantial contribution to Australia's exports of services. The Gold Coast/Tweed is a major destination for the 2.3 million overseas visitors who visit Australia annually. 15

In seeking to maintain and enhance the attributes of this region, specifically the Tweed River estuary and the southern Gold Coast beaches ("the Beaches"), NSW has broadly defined its objective as establishing and maintaining an improved navigable entrance to the Tweed River ("the River"), and Queensland has broadly defined its objective as achieving a continuing supply of sand together with the supply of an initial quantity of sand to the Beaches to restore amenity. 20

The States have undertaken a number of investigations to improve the understanding of this complex environment, and have implemented a number of projects to restore and enhance the area, including those undertaken by, and/or in co-operation with, local councils. 25

To aid the realisation of a means of achieving their respective objectives, the States commissioned a report entitled "Tweed River Entrance - NSW/QLD Sand Transfer Negotiations" by WBM Pty Ltd, The University of Queensland and Australian Water and Coastal Studies Pty Ltd, May, 1991, ("the Joint Consultants' Report") and noted its contents. 30

The Premiers of NSW and Queensland ("the Premiers") then exchanged letters on this matter between 11th October, 1991 and 27th January, 1994. The Director-General of NSW Premier's Department wrote to his Queensland counterpart on 7th September, 1992 and the Premiers wrote to the Prime Minister on 23rd July, 1993. 35

---

The States have agreed in principle to the future development and implementation of a joint operation to achieve their respective objectives and to that intent have agreed to enter into this Heads of Agreement as a preliminary step to the formalisation of their respective rights and obligations in connection with a project to be known as the Tweed River Entrance Sand Bypassing Project ("the Project"). 5

A Cost Benefit Analysis undertaken for the NSW Government from an inter-State perspective indicated that the Project has a Benefit Cost Ratio of 2. 4. Benefits from an overall community viewpoint include improvements in tourism expenditure, development potential, entrance safety, recreational activities and flood mitigation compared with the "Do Nothing" case. 10

## 2.0 INTENTIONS

In recognition of the benefits, the States enter this Project in a spirit of goodwill and co-operation.

This Heads of Agreement is not intended to create legal relations but the parties undertake to exercise their best endeavours to develop and implement the Project. 15

## 3.0 THE PROJECT

The States hereby agree to the development and implementation of the Project which comprises two inter-related components, namely: 20

- (a) an initial dredging of the Tweed Bar and entrance area and the nourishment of the Beaches, and
- (b) an artificial sand bypassing system, to operate in perpetuity.

The Project is derived from the Joint Consultants' Report and includes items listed in the first column of Table C1 of that report. 25

The Project is designed to satisfy the objectives of the States as defined in the Joint Consultants' Report. These objectives are:

### NSW

"To establish and maintain a navigable depth of water of at least 3.5 m below ISLW in the approach to and within the entrance channel over a width equal to that between the rubble mound breakwaters". 30

### Queensland

"To achieve a continuing supply of sand to the southern Gold Coast beaches at a rate consistent with littoral drift rates updrift and downdrift of those beaches, together with the supply of such additional sand to the beaches as is required to restore the recreational amenity of the beaches and maintain it." 35



The States acknowledge that the Project is unique and without precedent. It is located on an open high-energy coastline subject to variable natural forces, in a highly-valued environment, subject to intensive usage. Accordingly, it is recognised that the Project must be designed, evaluated and implemented prudently and in an environmental sensitive way, if the long-term benefits are to be effectively achieved.

5

The general benefits are anticipated to include:

- (a) the improvement in the safety of navigation of the River entrance with the consequent benefits to recreational boating, tourism, property values and the fishing industry,
- (b) improved tidal flushing of the River estuary, improving water quality, mitigation of flooding, and enhancing development potential, and
- (c) the restoration, widening and long-term maintenance of the Beaches, with associated benefits to tourism, recreation, property values and the reduction of erosion threats.

10

15

The States hereby agree that neither will undertake activities which are detrimental to or compromise the securing of the other's objectives.

#### **4.0 MANAGEMENT**

##### **4.1 General**

Responsibility for implementation of the Project rests with the NSW Minister for Public Works and the Queensland Minister for Environment and Heritage or their respective successors.

20

The two Ministers will be responsible for implementing the project in accordance with the cumulative intent of the letters referred to in Clause 1.0, this Heads of Agreement and the Deed of Agreement which will be produced after this Heads of Agreement is executed. Where there is any inconsistency between the letters and this Heads of Agreement the Heads of Agreement shall prevail.

25

In order to implement the Project, the Ministers may use the officers and resources of NSW Public Works and Queensland Department of Environment and Heritage. They may also delegate authority to officers of those Departments.

30

To ensure that there is close liaison and co-operation and to ensure the efficient and effective delivery of the Project a Working Group will be formed. The Working Group will be responsible to both Ministers.

35

In addition, the Ministers will be advised by an Advisory Committee.



#### **4.2 Working Group**

The Working Group will comprise three members from each State to be nominated by the respective Minister. At the Ministers' discretion one member from each State may be chosen to represent the relevant local government authority.

5

The Working Group will be responsible for implementing the Project including strategic action planning, financial control, policy setting and review at State Government level.

#### **4.3 Advisory Committee**

The Advisory Committee will comprise two officers from each State to be nominated by the respective Minister, one representative each from Tweed Council and Gold Coast City Council to be nominated by the respective Council and four community representatives (two from each State) to be nominated by the respective Minister. At least one of the State Government officers from each State on the Advisory Committee must also be a member of the Working Group.

10

15

The Advisory Committee will give advice on the following:

- Preparation of environmental impact assessment and tender documents for the bypass.
- Calling tenders.
- Acceptance of tenders.
- Preparation of a plan of management.
- Management and implementation of the works.
- Issues of relevance to the local community.
- Other matters referred to it by the Ministers.

20

25

#### **4.4 Community Input**

Both States acknowledge the importance of community input to the Project through its various stages and steps will be taken to ensure that such consultation is incorporated.

#### **4.5 Deed of Agreement**

30

The responsibility for preparation of the proposed Deed of Agreement will rest with the Ministers or their delegates.

---

#### 4.6 Initiation

Notwithstanding the provisions of Clause 2.0, if the States decide to implement the Project or part thereof prior to execution of the Deed of Agreement the Project or that part of the Project will proceed in accordance with this Heads of Agreement, to the intent that if any contract is entered into with any third party for the purposes of the Project and both Ministers first approve in writing of the terms of the contract, then, as between the States the provisions of this Heads of Agreement that are applicable to such a contract (including the proportional funding arrangements) shall to that extent be legally binding upon the States.

5

10

#### 5.0 SCOPE OF WORKS

The Project shall consist of two parts, namely, the Initial Dredging component and the Permanent Bypass component.

##### 5.1 Initial Dredging

The Initial Dredging component shall involve dredging from the River entrance bar and possibly other areas of two million cubic metres of sand and the placement of that material on the Beaches (including the nearshore zone and/or upper beach). This dredging may take place in parts.

15

The purpose of this dredging is to achieve an improvement in navigation of the River entrance and to nourish the Beaches.

20

##### 5.2 Permanent Bypass

The Permanent Bypass component consists of the design, manufacture, supply, delivery and commissioning of a sand bypassing system and the continuing operation of that system including replacement of the capital equipment.

25

The system will need to be designed and operated in a way which generally achieves the objectives of the two individual States as defined in Clause 3.0. The purpose of the bypass is to facilitate the natural littoral sand movement processes. In general terms it should convey the net littoral transport which occurs at the northern portion of Letitia Spit in the absence of actions to influence it.

30

The Bypass system will deliver sand to the Beaches generally in accordance with the Joint Consultants' Report ie; Duranbah Beach (minor quantity capability) Snapper Rocks (major quantity capability) and Kirra Point (on demand capability).

35



Tweed River Entrance Sand Bypassing Bill 1995

Schedule 2 Heads of Agreement

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Some allowance will have to be made for sand which is not captured by the bypass system before it reaches the Tweed entrance or which is lost from the natural system before it reaches the Beaches.

This long term average net littoral transport rate is currently understood to be 500,000 m<sup>3</sup> per year (page 8 of the Joint Consultants' Report), but analysis to date suggests that it can vary between 270,000 m<sup>3</sup> and 900,000 m<sup>3</sup> in any individual year. 5

The States will agree on a system for managing the delivery of sand to match the long term average net littoral transport, but which will take account of the annual variations with regard to quantities of sand delivered by natural processes to Letitia Spit, and which will also take account of the specific objectives of both States. 10

If the long term average net littoral transport rate changes, the rate of delivery will be changed accordingly.

This system will have to take account of coastal process issues as they relate to the Beaches, the River entrance, Duranbah Beach and to Letitia Spit, as well as to beach usage criteria and navigation requirements. 15

It is recognised that sand will continue to accrete in NSW until the bypass is operational. Accordingly, the total quantity of sand transported to Queensland in the first five years of bypassing system operation shall be increased above the agreed rate of 500,000 m<sup>3</sup> per year to take account of (i) ongoing sand accumulation within NSW prior to the initial dredging and (ii) the amount of material which is deposited on the bar of the River in the period between the completion of the initial dredging and the commencement of the bypass operation. The total quantity in (i) is accepted to be 550,000 m<sup>3</sup>; the total quantity in (ii) will be the difference in quantities based on the post initial dredging survey and a repeat survey immediately prior to the bypass being operational. 20 25

Consideration needs to be given to variations to the figure in (i) above to take account of any variation which may arise due to dredging of the River which may take place before Initial Dredging and in (ii) for any net transport into the estuary between the dates of the surveys. 30

### 5.3 Timing of the Project

The States agree that the Project should be implemented expeditiously. It is recognised that there are distinct technical advantages in having the Initial Dredging take place concurrently with the commissioning of the sand 35



bypassing system. However, it is accepted that there are broader advantages in carrying out the Initial Dredging as soon as possible and as a compromise the Initial Dredging should be undertaken at the earliest possible date and the interval between the Initial Dredging and the commissioning of the bypass should be the minimum possible. (It is envisaged that contracts will be let for the Initial Dredging in late 1994 and that the bypass will be operational by 1996).

5

## 6.0 FINANCE AND COSTING

### 6.1 Cost Estimate

In the correspondence between officers of the States it was accepted that for the purpose of determining the ratios for the sharing of costs of the Project, the following estimates, based on papers C and D of the Joint Consultants' Report, were adopted:

10

	\$ million	
	(1990 dollar terms)	15
(i) Initial sand supply * (based on 2M m <sup>3</sup> )	10.0	
(ii) Establishment cost of first system (based on a jack up platform)	13.5	
(iii) Operating cost (including maintenance, monitoring)	1.96 p.a.	20
(iv) Platform/trestle replacement cost	8.45	

\* The initial sand supply will be achieved by the Initial Dredging.

Similarly, in Net Present Value terms, it was accepted that the total cost estimate of the Project is \$53.41 million in 1990 dollar terms. Actual costs will not be known until after tenders are received or operation commences depending on the type of tenders accepted. A table illustrating the derivation of this estimate is set out in Attachment A.

25

## Schedule 2 Heads of Agreement

**6.2 Cost Sharing**

Notwithstanding anything in Clause 6.1 the States agree that the final actual costs of the Project will be shared as follows:

	NSW	QUEENSLAND	
	(%)	(%)	
Initial sand supply*	75	25	5
Establishment cost of first sand bypass system	75	25	
Operating cost (including maintenance, monitoring)	50	50	10
Platform/trestle replacement cost	50	50	

\* The Initial sand supply will be achieved by the Initial Dredging.

In the event that payment for the Initial sand supply and/or the Establishment cost of the first bypass system is not made by means of upfront capital, but is incorporated in a recurrent payment per unit of sand supplied, the contribution by each State to the recurrent unit charge will adequately take account of their relative contributions, as defined above, to the Initial sand supply and/or Establishment cost of the first system. 15

**6.3 Royalties, Land Rent and Acquisition Costs**

The States agree in principle that any sand royalties levied by either State which could apply to the sand which, for the purposes of this project, is transferred between the States, will not apply or shall be waived. 20

The issue of possible mineral extraction and any royalty or income therefrom has been excluded from this document and will be addressed separately should the matter arise. 25

The States agree in principle that where the use and occupation of land is necessary for the Project, no charges are to be made or imposed for land rent or land acquisition costs as the case may be, in respect of land owned or held by the States or either State. Similarly no charges are to be made or imposed for land rent in respect of land acquired for the Project from any third party. 30

As between the States, any compensation which may be payable for land acquired for the Project from any third party shall be a 75% NSW: 25% Queensland shared cost of the Project.

#### **6.4 Accounting Arrangements**

The States acknowledge that procedures satisfactory to both parties will be implemented to ensure that each State meets the agreed share of the final actual cost of the Project.

5

The accounting and audit procedures implemented must satisfy the public accountability and administration requirements of each State for the funding of infrastructure.

10

#### **6.5 Contributions to Project from Third Parties**

The States agree that any moneys contributed to the Project by parties other than the Queensland Government, the NSW Government, or local government in the States ("Third Party Contributions") shall be accounted for in the following manner:

15

- Where the Third Party Contributions are contributed for a particular part of the work, those Third Party Contributions will be deducted from the total cost of the part for which they were contributed and the remaining costs of that part will be shared as described under the heading "Cost Sharing" above.
- Where the Third Party Contributions are not contributed for a particular part, the amount of such Third Party Contributions shall be deducted from the total outstanding cost of the part then currently under way ("the Current Part") and the remaining costs of that part will be shared as described in Clause 6.2. If the amount exceeds the total outstanding cost of the Current Part, the remainder shall be deducted from the total outstanding cost of the next and successive parts in turn. In the context of this paragraph the three parts of the Project are (i) the Initial Dredging, (ii) the establishment of the bypass system and (iii) the operation of the system including replacement.

20

25

30

#### **6.6 Operation, Maintenance, Replacement and Contingency Funding**

The Project involves the operation of the sand bypass system in perpetuity including replacement of the capital equipment as necessary. It is recognised that the costs of the system will vary substantially from year to year due in part to inherently unpredictable variations in the weather, and other related matters.

35



Schedule 2 Heads of Agreement

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The States agree to meet actual funding needs for works under the provisions of this agreement as they become due including replacement and contingency items.

The States recognise there are substantial adverse consequences in the unlikely event of cessation of the Project and provision will be made for such in the Deed of Agreement. 5

**7.0 CONTRACTS, PROCUREMENT SYSTEM AND IMPLEMENTATION**

The States agree that they will act expeditiously and co-operatively to implement the Project in an efficient manner consistent with this Heads of Agreement, including inter alia developing a Deed of Agreement, establishing administrative and legislative arrangements (including introducing legislation in either or both States if necessary) and undertaking design and engineering and necessary statutory and environmental approvals of both States. 10  
15

Project development will be undertaken jointly by Queensland and NSW. Provisions concerning project risk will be made in the Deed of Agreement.

Subject to Clause 4.6 it is envisaged that minor contracts may be let by either State with the other State's interest protected by this Heads of Agreement and the Deed of Agreement. 20

For the bypass system it is envisaged expressions of interest will be called and that the contract(s) will be based on a performance based specification with the expectation that there may need to be pre and post tender negotiations.

**8.0 DISPUTES RESOLUTION** 25

The Project involves an agreement between two sovereign States and in this context dispute resolution should be undertaken in a spirit of cooperation appropriate to this joint venture between two States.

It is the intention of the parties to settle amicably by discussion and negotiation at the appropriate level or levels of their respective organisations all disputes arising in relation to this Heads of Agreement. 30

If nevertheless the States are unable to agree upon any matter under or arising out of this Heads of Agreement including matters not covered in the Heads of Agreement but necessary for or incidental to achieving the objectives of the Heads of Agreement, any disagreement will become a Dispute when one party serves written notice on the other party providing details of the disagreement. 35

In the event of a Dispute the States will seek to appoint a suitably qualified person ("the Expert") to advise them what, in the opinion of the Expert, each party should do or pay in order to give effect to the Heads of Agreement or the objectives of the Heads of Agreement.

The fees of the Expert will be shared equally between the parties. 5

The Project will continue while any dispute is being resolved.

SIGNED on behalf of the  
State of NEW SOUTH  
WALES by John Fahey,  
Premier in the presence of:

John Fahey  
.....  
John Fahey,  
Premier

10

Don Beck  
..... Witness

DON BECK  
..... Name of Witness  
(print)

15

SIGNED on behalf of the  
State of QUEENSLAND by  
Wayne Goss, Premier in the  
presence of:

Wayne Goss  
.....  
Wayne Goss,  
Premier

Merri Rose  
..... Witness

20

MERRI ROSE  
..... Name of Witness  
(print)

Tweed River Entrance Sand Bypassing Bill 1995

Schedule 2 Heads of Agreement

Attachment A

**NET PRESENT VALUE OF SAND BYPASS SYSTEM**

(\$ million, 1990 terms)

**Jack-up Platform System**

	Year 1	25	50	75	100	125	150	175	200 ≥	5
Capital costs										
Initial Sand supply	10									
Establishment cost of first system	13.5									10
NPV	23.50									
Platform/trestle replacement	0	8.45*	8.45	8.45	8.45	8.45	8.45	8.45	8.45	15
NPV	1.91									
Operating cost (per annum)	1.96	1.96	1.96	1.96	1.96	1.96	1.96	1.96	1.96	
NPV	28.00									
Total NPV (7% discount rate)	53.41									20

Note: Capital cost is 'undiscounted', i.e. it is assumed that the full \$23.5m is spent at the beginning of year 1. However, the first year's operating cost is discounted.

\* \$8.45 M is the estimated cost of replacing the jack-up platform (\$6.5 M) with a contingency allowance of 30% 25



Tweed River Entrance Sand Bypassing Bill 1995

Further Agreements

Schedule 3

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## **Schedule 3 Further Agreements**

(Section 6 (4))



TWEED RIVER ENTRANCE  
SAND BYPASSING PROJECT  
DRAFT  
UPPER HOUSE SPEECH

The object of the Tweed River Entrance Sand Bypassing Bill is to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to improving and maintaining the navigability of the entrance of the Tweed River and the bypassing of sand around that entrance so that it can replenish the southern Queensland beaches and maintain the supply of sand to those beaches.

This Bill is one which has been passed in the <sup>Lower House</sup> ~~other place~~ with the support of both sides of the House ~~[To be checked]~~. It authorises the construction of the Tweed River Entrance Sand Bypassing Project, a project which has bipartisan support, and a project which important to the Northern Region of the State.

This project has great benefits to NSW from an economic viewpoint. It will allow the Tweed River to again become an important port in northern NSW. It is particularly important to the fishing industry, but there is a growing recreational boating and tourist use of the river, which will benefit from the project.

The people of the Tweed Region have for too long had to cope with a river entrance which much of the time was inaccessible. The entrance bar has claimed a number of lives over the years. While the project will not make the entrance safe at all times it will significantly improve its navigability and safety.





The project consists of two parts: an initial dredging of two million cubic metres of sand from the Tweed River bar and entrance area; and the establishment and operation in perpetuity of a permanent system to collect the sand as it arrives to the south of the Tweed River entrance and deliver that sand to the beaches to the north of the River.

The initial dredging was able to be carried out under existing legislation. There is a need however for specific authorising legislation before the permanent system can be implemented.

Other aspects of the Bill are the ratification of the Deed of Agreement between NSW and Queensland, provision for land acquisition, simplification of the application of the Environmental Planning and Assessment Act, and limitation of liability for actions taken pursuant to the Bill.

The Bill ratifies the Deed of Agreement between NSW and Queensland and includes the ratified Deed of Agreement as Schedule 1. It provides that the Minister may amend the Deed of Agreement. Any such amendment will not be approved if either House of Parliament disapproves it within 21 days of its being tabled before the House.

Acquisition of land will be under the Land Acquisition (Just Terms Compensation) Act. Some of the pre acquisition procedures such as the need to give notice may be dispensed with if the Minister certifies that it is appropriate to do so. The Bill makes provision for the acquisition of land which is the subject of an Aboriginal Land Claim under the NSW Aboriginal Land Rights Act, with appropriate compensation being payable for land required if the appeal is successful. Negotiations have already commenced with the Tweed Byron Local Aboriginal





Land Council. A long term lease of the required land is one of the options being explored. The Bill is also consistent with the Native Title Act;

This Bill is important to the Northern Region of the State and I commended it to the House.



Second print



New South Wales

## **Tweed River Entrance Sand Bypassing Bill 1995**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to improving the navigability of the entrance of the Tweed River and the bypassing of sand around that entrance so that it can replenish the southern Queensland beaches.

---



## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** states the purpose of the proposed Act.

**Clause 4** defines certain terms for the purposes of the proposed Act. The "heads of agreement" means the agreement entered into on behalf of the States of New South Wales and Queensland a copy of which is set out in Schedule 2. The "deed of agreement" means the deed entered into on behalf of those States to give effect to the heads of agreement. A copy of the deed of agreement is set out in Schedule 1. "The works" is defined as the works to be carried out, maintained or constructed to give effect to the deed of agreement and such further agreements as may be made between those States for the purpose of giving effect to the heads of agreement or for any ancillary purpose.

### **Part 2 Agreements**

**Clause 5** provides that the execution of the heads of agreement by the Premier and of the deed of agreement by the Minister for Public Works is ratified and both agreements are approved. References to the Minister for Public Works in both of those instruments are to be construed as references to the Minister administering the proposed Act.

**Clause 6** provides for the approval of any further agreement entered into on behalf of the State of New South Wales that is certified by the Minister for Land and Water Conservation ("the Minister") to be for the purpose of giving effect to the heads of agreement or for any ancillary purpose. Any such further agreement will not be approved if either House of Parliament disapproves the agreement within 21 days of its being tabled before the House.

**Clause 7** authorises the Minister to enter into contractual arrangements in various capacities for the carrying out of the works.

### **Part 3 Implementation**

**Clause 8** authorises the implementation of the deed of agreement and each further agreement entered into for the purpose of carrying out the heads of agreement.

**Clause 9** provides for the application of certain provisions of the *Public Works Act 1912* to the works and for the acquisition of land under that Act by the Minister. Land may be acquired for the purposes of the works by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. The proposed section also provides that pre-acquisition procedures of the *Land Acquisition (Just Terms Compensation) Act 1991* (such as the requirement to give notice to the owner of the land) do not apply to the acquisition of land by compulsory process if the Minister certifies to the Governor that it is appropriate for the purposes of the works that those procedures not apply to the acquisition.

**Clause 10** provides for the application of the *Environmental Planning and Assessment Act 1979* to the works. The carrying out of the works is to be an activity for the purposes of Part 5 of that Act and the Minister is to be the determining authority for the purposes of that Part. The proposed section provides that so much of the works as was the subject of an environmental impact statement publicly exhibited before the commencement of the proposed section is taken to be maintenance dredging within the meaning of State Environmental Planning Policy No. 35-Maintenance Dredging of Tidal Waterways. The approval of the Minister for Urban Affairs and Planning will be required for so much of the works as do not consist of maintenance dredging. A saving provision in relation to that environmental impact statement is also included.

### **Part 4 Miscellaneous**

**Clause 11** protects the Minister, and any individual engaged, or performing any function, in connection with the carrying out of the works, from personal liability for things done or omitted to be done in good faith for the purpose of carrying out the works. The proposed section also provides that no action for nuisance in relation to the carrying out of the works may be brought against the State, the Minister or any individual or corporation carrying out the works or performing any function in connection with the carrying out of the works.

**Clause 12** provides a right to compensation if land that has been acquired for the purposes of the works is later found to be have been claimable Crown land. If that land had not been so acquired, it would have been transferred to the claimant under the *Aboriginal Land Rights Act 1983*. The compensation is to be determined in accordance with the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Clause 13** provides that the proposed Act binds the Crown.

**Clause 14** requires the Minister to review the proposed Act after 5 years from the date of assent to the proposed Act to determine whether the policy objectives of the proposed Act remain valid and whether the terms of the proposed Act remain appropriate for securing those objectives.

## Schedules

**Schedule 1** contains a copy of the deed of agreement.

**Schedule 2** contains a copy of the heads of agreement.

**Schedule 3** will contain a copy of each further agreement entered into by the Minister if the agreement has been approved by the operation of proposed section 6.







New South Wales

# **Tweed River Entrance Sand Bypassing Bill 1995**

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Tweed River Entrance Sand Bypassing Bill 1995

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New South Wales

## **Tweed River Entrance Sand Bypassing Bill 1995**

No , 1995

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### **A Bill for**

An Act to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to improving the navigability of the entrance of the Tweed River and the bypassing of sand around that entrance, and for related purposes.

---



The Legislature of New South Wales enacts:

## Part 1      Preliminary

### 1    Name of Act

This Act is the *Tweed River Entrance Sand Bypassing Act 1995*.

### 2    Commencement

5

This Act commences on the date of assent to this Act.

### 3    Purpose of Act

The purpose of this Act is to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to:

10

- (a) the improvement of the navigability of the Tweed River entrance, and
- (b) the bypassing of sand around that entrance so that it can replenish the southern Queensland beaches.

### 4    Definitions

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In this Act:

*deed of agreement* means the Deed of Agreement dated 2 March 1995, a copy of which is set out in Schedule 1,

*further agreement* means an agreement approved by the operation of section 6,

20

*heads of agreement* means the Heads of Agreement dated 31 March 1994, a copy of which is set out in Schedule 2,

*the works* means the works to be carried out, maintained or constructed to give effect to the deed of agreement and any further agreement.

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## Part 2      Agreements

### 5    Ratification, approval and construction of certain agreements

- (1)    The execution of the heads of agreement and the deed of agreement on behalf of the State of New South Wales is ratified and both of those agreements are approved. 5
- (2)    References in the heads of agreement and the deed of agreement to the Minister for Public Works are taken to be, and to have been on and from 5 April 1995, references to the Minister administering this Act.

### 6    Further agreements 10

- (1)    If:
- (a)    an agreement is entered into on or after the date of assent to this Act between a New South Wales Minister and a Queensland Minister, described in the agreement as acting on behalf of their respective States, and 15
- (b)    the Minister administering this Act certifies that the agreement is for the purpose of giving effect to the heads of agreement, or for any ancillary purpose,
- the Minister administering this Act must, within 7 sitting days after this section commences or the agreement was entered into (whichever occurs later), lay a copy of the agreement before each House of Parliament or cause a copy to be so laid. 20
- (2)    The execution of any such agreement by a Minister on behalf of the State of New South Wales is ratified, and the agreement is approved, at the expiration of 21 sitting days of each House after the copy of the agreement was laid before it. 25
- (3)    However, subsection (2) does not apply if either House of Parliament resolves to disapprove the agreement during the period of 21 sitting days applicable to it.
- (4)    Schedule 3 to this Act may be amended by a proclamation inserting in that Schedule a copy of each further agreement approved by the operation of this section. 30

**7 Authorisation to enter into contracts and other arrangements**

- (1) The Minister may enter into contracts, agreements or arrangements on behalf of the State of New South Wales and (if so authorised by a Queensland Minister or another person acting on behalf of that State) on behalf of the State of Queensland for the carrying out of the works, whether or not within New South Wales. 5
- (2) Without limiting subsection (1), the Minister may be a joint party to any such contracts, agreements or arrangements.



## Part 3 Implementation

### 8 Implementation of agreements

- (1) The deed of agreement and each further agreement may be carried into effect despite the provisions of any other Act or law.
- (2) In particular, the carrying out of the works is not subject to the *Pipelines Act 1967*. 5
- (3) All acts, matters and things:
  - (a) for or with respect to which provision is made in the deed of agreement or a further agreement, or
  - (b) that by the deed of agreement or a further agreement are agreed, directed, authorised or permitted to be made, done or executed, 10are authorised and confirmed.
- (4) Without limiting subsection (3):
  - (a) the Minister may do or cause to be done (whether or not within New South Wales) any act, matter or thing necessary for the purpose of carrying out the deed of agreement and each further agreement, and 15
  - (b) any such act, matter or thing may be done in New South Wales by or on behalf of the State of Queensland. 20
- (5) Any act, matter or thing done or omitted to be done for the purpose of carrying out the heads of agreement or the deed of agreement before their approval by this Act, or for the purpose of carrying out an agreement (which has been certified under section 6 (1)) before its approval by or disapproval under this Act, is validated. 25

### 9 Carrying out of the works

- (1) For the purposes of the *Public Works Act 1912*, the works are taken to be an authorised work and the Minister is, in relation to the works, taken to be the Constructing Authority. Sections 34, 35, 36 and 37 of that Act do not apply in respect of the works. 30
- (2) Accordingly, the Minister may acquire land under section 39 of that Act for the purposes of the works.

- (3) Section 42 of the *Aboriginal Land Rights Act 1983* does not apply to such an acquisition of land.
- (4) Division 1 (Pre-acquisition procedures) of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply to such an acquisition of land if the Minister certifies to the Governor, when obtaining the approval of the Governor to an acquisition notice under section 19 of that Act, that it is appropriate for the purposes of the works that the Division not apply to the acquisition. 5
- (5) Land may be acquired for the purposes of the works even if: 10
  - (a) any consent or permission required under the *Crown Lands Act 1989* has not been obtained or granted, or
  - (b) the Minister may not be qualified under the *Crown Lands Act 1989* to hold land of the tenure to be so acquired.
- 10 Application of Environmental Planning and Assessment Act 1979 to the works** 15
- (1) In this section, *development* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.
- (2) Development for the purposes of the works:
  - (a) may be carried out without the necessity for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, and 20
  - (b) may be so carried out even if the development would be prohibited, or would require development consent, in the absence of this section. 25
- (3) Any such development is an activity within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979* and the Minister is the determining authority in relation to that activity for the purposes of that Part.
- (4) For the purposes of section 115D of the *Environmental Planning and Assessment Act 1979*, the Minister is excluded from Division 4 of Part 5 of that Act in relation to so much of the works as is the subject of the environmental impact statement dated October 1994, entitled "Tweed River Entrance Sand Bypassing Project - 30

Tweed River Entrance Maintenance Dredging and Associated Nourishment of Southern Gold Coast Beaches” and prepared for NSW Public Works and the Queensland Department of Environment and Heritage.

- (5) So much of the works as is the subject of that environmental impact statement is taken to be, and always to have been, maintenance dredging within the meaning of State Environmental Planning Policy No. 35—Maintenance Dredging of Tidal Waterways. 5
- (6) Any act, matter or thing done in accordance with the Environmental Planning and Assessment Regulation 1980 in connection with the preparation of that environmental impact statement before the commencement of this section has the same effect as if it had been done in accordance with the Environmental Planning and Assessment Regulation 1994. 10  
15



## Part 4            Miscellaneous

### 11    Limitation on liability

- (1) Any act, matter or thing done or omitted to be done by the Minister (or by any other natural person, whether or not acting on behalf of the State, being a person engaged, or involved in performing any function, in connection with the carrying out the works) does not subject the Minister (or the person) personally to any action, liability, claim or demand, if the act, matter or thing was done or omitted to be done in good faith for the purpose of carrying out the works. 5  
10
- (2) An action for nuisance connected with or in any way arising out of any act, matter or thing done or omitted to be done in carrying out the works, or an action for the abatement or remedying of any such nuisance, may not be brought against the State, the Minister or any other person (including a corporation) involved in carrying out the works or performing any function in connection with the carrying out of the works, whether or not the other person was acting on behalf of the State. 15
- (3) This section applies whether the act, matter or thing concerned was done or omitted to be done before or after the commencement of this section and so applies despite any other Act or law. 20

### 12    Right to compensation for acquisition of certain claimable Crown lands

- (1) In this section, *claimable Crown Lands* has the same meaning as in section 36 (1) of the *Aboriginal Land Rights Act 1983*. 25
- (2) Any claim under Part 6 of the *Aboriginal Land Rights Act 1983* made in respect of land that has been acquired for the purposes of the works and that was claimable Crown land when the claim was made, may be determined under the *Aboriginal Land Rights Act 1983* as if the land had not been so acquired. 30
- (3) However, land so acquired is not to be transferred under section 36 of the *Aboriginal Land Rights Act 1983*. A claimant to whom land would, but for this subsection, be transferred under section 36 of that Act is entitled to compensation as if the claimant held, at the date of the acquisition, an estate in fee simple in the land. 35

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- (4) The compensation is to be determined as if the land had been acquired in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (5) For the purposes of subsection (3), the Land and Environment Court may make an order for compensation if any such claim is determined by the Court. 5
- (6) This section applies to any such claim whether the claim was made before or after the commencement of this section.

**13 Act binds Crown**

This Act binds the Crown in right of New South Wales and also, as far as the legislative power of Parliament permits, in all its other capacities. 10

**14 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 15
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 20

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## Schedule 1 Deed of Agreement

(Section 4)

### TWEED RIVER ENTRANCE SAND BYPASSING PROJECT AGREEMENT

THIS DEED OF AGREEMENT is made on SECOND day of MARCH 5  
1995.

B E T W E E N: THE STATE OF NEW SOUTH WALES ("NSW")

A N D: THE STATE OF QUEENSLAND ("Queensland")

#### RECITALS

W H E R E A S: 10

- A NSW and Queensland have agreed to the implementation of a project to be known as the Tweed River Entrance Sand Bypassing Project.
- B The purpose of this Agreement is to enhance and maintain the attributes of the Gold Coast - Tweed Heads region and more specifically the Tweed River estuary and the southern Gold Coast beaches and to achieve the respective objectives of the Parties. NSW's objective is "to establish and maintain a navigable depth of water of at least 3.5 metres below Indian Spring Low Water (ISLW) in the approach to and within the entrance channel to the Tweed River over a width equal to that between the rubble mound breakwaters" and Queensland's objective is "to achieve a continuing supply of sand to the Southern Gold Coast beaches at a rate consistent with the natural littoral drift rates updrift and downdrift, together with the supply of such additional sand to the beaches as is required to restore the recreational amenity of the beaches and to maintain it". The intention is to achieve the objectives in perpetuity. 15 20 25
- C The Parties have agreed to implement the Project jointly and in a spirit of goodwill and cooperation. For that purpose they propose to enter into all necessary contracts contemplated by this Agreement as Joint Principals. 30



- 
- D The Parties have further agreed that NSW will for practical reasons and given the need to commence the Project expeditiously let the contracts for the Initial Dredging Component and either State may be authorised to let other contracts in its own name on behalf of both Parties as exceptions to the intention that all contracts be entered into by them as Joint Principals. 5
- E The Parties acknowledge that the Artificial Sand Bypassing System will need to be replaced from time to time and have agreed to do all necessary cooperative acts to ensure that any replacement system will be established and operated in such a way as to fulfil the purpose of this Agreement. 10

NOW IT IS AGREED AS FOLLOWS:—

## PART I - INTERPRETATION

### 1. PURPOSE

The purpose of this Agreement is as set out in the Recitals. 15

### 2. DEFINITIONS

In this Agreement -

“Additional Works” means the works which the Ministerial Council agrees to include as part of the Project pursuant to clause 11.

“Adjustment Formula” means the relevant monetary amount being adjusted by being divided by the Consumer Price Index (All groups) last published by the Australian Bureau of Statistics at the date of signing of this Deed and multiplied by the Consumer Price Index last published at the date of notification of the relevant default, dispute or other matter to which a monetary amount applies. If the Consumer Price Index ceases to be published a replacement index shall be agreed on in writing by the Parties and in default of agreement for a period of fourteen (14) days the index may be determined at the request of either Party by the President or Acting President of the New South Wales Division of the Australian Institute of Valuers or his nominee. 20  
25  
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Tweed River Entrance Sand Bypassing Bill 1995

Schedule 1 Deed of Agreement

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- “Anniversary Date” means the 30th day of September each year or such other date as may be agreed by the Parties, commencing on the first 30th day of September following the commissioning of the First System or an Interim System.
- “Annual Period” means a period of one year, or part thereof for the first Annual Period, following the commissioning of the First System or an Interim System, concluding on an Anniversary Date. 5
- “Artificial Sand Bypassing System” or “System” means the works as described in the Heads of Agreement to be established pursuant to this Agreement for the hydraulic or mechanical movement of sand in perpetuity from within the Tweed River Bar and Entrance Area on the updrift side to the Beaches on the downdrift side of the Tweed River entrance other than by natural processes and includes all necessary preliminary and ancillary activities, any interim works that the Parties agree to establish for that purpose and any replacement of the works which may be necessary from time to time to meet the purpose of this Agreement but does not include any works associated with the Initial Dredging Component. 10 15
- “Beaches” means, for the purpose of the Initial Dredging Component, the area identified on the map shown in Schedule 1 and means, for the purpose of the System, Duranbah Beach, Snapper Rocks and Kirra Point or in their vicinity. 20
- “Cash Flow Period” means the period of one month, or such other period as may be agreed by the Parties for the purpose of clause 14.
- “Clear Navigation Channel” means a navigation channel which has a depth below Indian Spring Low Water (ISLW) of at least 3.5 metres over a width of 70 metres and extending from an upriver limit defined by the upriver boundary of the Tweed River Bar and Entrance Area shown in Schedule 2 to the open sea or such other parameters as may be agreed in writing between the Parties. 25 30
- “Consultation Actions” mean the actions listed in column 1 of the table in clause 10.5.
- “Contract Management” means the functions and activities referred to in clause 8.3.1(b).
- “Contract Quantity” means the cumulative quantity of sand which is to be delivered by any Anniversary Date in accordance with clause 12 or as otherwise agreed in writing by the Parties. 35



- 
- “Contracting State” means a Party who carries out or pays for work which is a Shared Project Cost.
- “Coordinating State” means the Party specified in clause 8.6.2 and as varied from time to time pursuant to clause 10.11.2, as the Party representing both Parties for the purposes set out in clause 8.6. 5
- “First System” means the first Artificial Sand Bypassing System established under this Agreement which is assessed by the Parties before accepting tenders as being capable of operating for a period of approximately 25 years and does not mean any Interim System unless the Parties expressly agree in writing that an Interim System is to be considered as the First System. The assessment of the Parties shall be based upon best available practices and best available data. 10
- “Government Agency” means:
- (a) a department or administrative office of the government of either Party, or of the Commonwealth of Australia; 15
  - (b) a statutory body representing the Crown in right of either Party or the Commonwealth of Australia;
  - (c) a local government body in NSW or Queensland; or
  - (d) any other public authority which is agreed in writing by the Parties to be a Government Agency for the purposes of this Agreement. 20
- “Heads of Agreement” means the Heads of Agreement between the State of NSW and the State of Queensland relating to the Tweed River Entrance Sand Bypassing Project executed by the Premier of NSW and the Premier of Queensland on 31st March 1994. 25
- “Initial Dredging Component” or “Initial Dredging and Sand Supply Component” means the dredging of two (2) million cubic metres of sand from the Tweed River Bar and Entrance Area and the deposit thereof on the Beaches and includes all necessary preliminary and ancillary activities. 30
- “Intellectual Property” includes copyright, patent rights, design rights, eligible layout rights, rights of confidentiality and trade or business secrets and the rights to registration or proprietorship of such rights.



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Schedule 1 Deed of Agreement

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- “Interim System” means an Artificial Sand Bypassing System which the Parties agree under clause 10.4 to establish prior to the establishment of the First System and which is intended by the Parties to operate for a period of less than 25 years.
- “Joint Consultants’ Report” means the report entitled “Tweed River Entrance - NSW/Qld Sand Transfer Negotiation” by WBM Pty Limited, The University of Queensland and Australian Water and Coastal Studies Pty Limited dated May 1991. 5
- “Joint Principals” means both Parties or one nominee of each Party for the purpose of the execution of contracts contemplated by this Agreement to be let jointly by both Parties. 10
- “Joint Principals’ Representative” means the person described in clause 8.8.
- “Latest Commencement Date” means the date specified in clause 9.3, as adjusted pursuant to this Agreement, after which Queensland may give notice that it intends to let contracts for the Initial Dredging Component. 15
- “Long Term Average” means the long term average annual net littoral transport of sand that would, in the absence of any artificial actions to influence it, cross a line perpendicular to the coastline, situated one kilometre south of the southern training wall at the Tweed River entrance and extending to the 20 metre depth contour, less the annual net quantity of sand which, after the commissioning of the System, crosses that line and reaches Queensland, or the coastal waters of the State of Queensland as defined in the Coastal Waters (State Powers) Act, 1980 (Cth), by natural means. 20
- “Ministerial Council” means the NSW Minister for Public Works and the Queensland Minister for Environment and Heritage or their nominees. 25
- “Original Project Material” means all sketches, plans, drawings, specifications, estimates, designs, calculations, data, information, computer programs, reports, models or other documents or tangible materials produced in the course of the Project or in relation to any activity connected with the Project. 30
- “Partnering Document” means the “Partnering Guidelines” (ISBN 0 7310 0989 4) of the New South Wales Capital Works Procurement Manual dated October 1993 (ISBN 0 7310 0964 9) or any amendment or substitution to those guidelines approved by both Parties for the purpose of this Agreement. 35

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“Process” means the expert determination process as set out in clause 17.4.

“Project” means the Tweed River Entrance Sand Bypassing Project which comprises two inter-related components namely:

- (a) the Initial Dredging Component; and
- (b) the System.

5

Without limitation of the above, the Project includes:

- (i) the items described in the Heads of Agreement as being part of the Project; and
- (ii) the Additional Works.

“Project Directors” means the persons described in clause 8.4.

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“Project Management” means the functions and activities referred to in clause 8.3.1(a).

“Project Manager” means the person described in clause 8.9.

“Reviewing State” means the Party which is not the Coordinating State.

“Sand” means clean natural sand of an equivalent quality to that which exists in the natural littoral system arriving at the northern portion of Letitia Spit and includes that supplied to the bar by the natural fluvial system.

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“Shared Project Cost” means an item of work, the costs of which are to be shared by the Parties on a percentage basis as specified in this Agreement. Without limitation of the above, all works falling within the definition of the Project in this clause 2 shall be Shared Project Costs.

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“System” means the same as “Artificial Sand Bypassing System”.

“Target Action” means an action listed in Column 1 of the table in clause 10.3.

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“Target Date” means a date listed in Column 2 of the table in clause 10.3 as amended by clause 10.4 or clause 10.6.

“Tweed River Bar and Entrance Area” means the area identified on the map shown in Schedule 2.

“Working Group” means the Working Group established under the Heads of Agreement.

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### **3. INTERPRETATION**

- 3.1 In this Agreement,
- (a) a reference to any Act includes any Act amending, or in substitution for, that Act;
  - (b) a reference to this Agreement includes a reference to:
    - (i) the Schedules to this Agreement; and
    - (ii) any amendment of or addition to this Agreement or the Schedules hereto;
  - (c) words importing the singular include the plural and vice versa;
  - (d) words importing any gender include any other gender;
  - (e) "person" includes a corporation; and
  - (f) all monetary amounts are expressed in Australian currency and shall be adjusted from time to time by the application of the Adjustment Formula.
- 3.2 In interpreting a provision of this Agreement, a construction that would promote the purpose or object underlying the Agreement (whether or not that purpose or object is expressly stated in the Agreement) shall be preferred to a construction that would not promote that purpose or object.

## **PART II - LEGAL RELATIONS AND RATIFICATION**

### **4. LEGAL RELATIONS**

The Parties acknowledge and agree that this Agreement is intended to be legally binding and enforceable by the Parties.

### **5. COMMENCEMENT AND TERM**

This Agreement shall commence on the date first set out above and shall continue in force until lawfully determined.

### **6. RATIFICATION AND SUBMISSION TO PARLIAMENT**

- 6.1 Each Party shall promptly take every practicable step to have this Agreement ratified by its Parliament.
- 6.2 Each Party, so far as its jurisdiction extends and so far as it may be necessary, shall provide for or secure the execution and enforcement of the provisions of this Agreement and any Acts ratifying it.



- 6.3 If either Party is unable to secure ratification of this Agreement because any provision is unacceptable to its Parliament, the Parties shall negotiate in good faith to achieve a solution, including by amendment of this Agreement, which promotes the purpose of this Agreement.

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### PART III - THE PROJECT

#### 7. PARTNERING

The Parties recognise the benefits of partnering as described in the Partnering Document and will endeavour to follow the principles outlined in that document in relation to the conduct of this Agreement and any contract let by the Joint Principals or by either Party under this Agreement provided that:

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- (i) each Party shall be a "stakeholder" for the purposes of the partnering process in any contract let by either Party for the purposes of this Agreement; and
- (ii) to the extent of any inconsistency between the provisions of the Partnering Document and this Agreement, the provisions of this Agreement shall prevail.

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#### 8. PROJECT IMPLEMENTATION

##### 8.1 Joint Principals

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8.1.1 Subject to this Agreement, all necessary contracts for the implementation of the Project shall be let jointly by the Parties as Joint Principals and executed in a manner deemed appropriate by each. It is intended by the Parties that such contracts will be let in the names of the NSW Minister for Public Works and the State of Queensland.

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8.1.2 Notwithstanding clause 8.1.1, either Party may enter any contract for the Project in its own name, or in the name of its nominee, as the representative of both Parties, subject to a determination by the Working Group that it is appropriate for the contract to be entered in that way.

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8.1.3 Subject to compliance by both Parties with their obligations to consult with the other Party, any monetary liability incurred by either Party in the course of the performance of the Project for breach of contract, in tort (excluding a liability incurred by reason solely of the

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- negligence of that Party), or other common law or statutory cause of action, whether arising out of or in relation to a contract entered as Joint Principals, a contract entered into by either Party as representative of both Parties or otherwise, shall for the purpose of sharing costs for the Project be included as part of the final actual costs of the applicable item of work. 5
- For the purpose of this clause 8.1.3, a liability is not incurred solely by reason of the negligence of one Party if it arises out of the implementation of a course of action approved by both Parties in accordance with this Agreement or deemed under clause 8.7.7 to be so approved, in a manner which is within the scope of such approval. 10
- 8.2 Project Risk Assessment 15
- 8.2.1 Each Party will be responsible for making its own assessment of Project risks for discussion with the other Party through the Project Directors or within the Working Group.
- 8.2.2 Without limiting any other obligation under this Agreement, where specific problems arise in relation to the implementation of any aspect of the Project both Parties undertake to cooperate fully in order to achieve a solution which promotes the purpose of this Agreement. 20
- 8.3 Management 25
- 8.3.1 The Parties acknowledge that for the purpose of defining responsibility in the implementation of the Project two separate but related lines of activity must be undertaken. These are Project Management and Contract Management. 30
- (a) Project Management is the joint responsibility of the Parties working through the Project Directors and the Working Group. It is an over-arching function which involves the coordination, forward planning and review of all elements of the Project including funding, development of a master plan and timetable, securing statutory approvals, public relations, identification of the needs of the Parties 35

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	and resolution of any differences or inconsistencies between the needs of each Party. When the Project reaches the construction and the subsequent operational stage the dominant Project Management function is the ongoing review of progress.	5
(b)	Contract Management is the responsibility of the Coordinating State. It involves the management of the interface between the Parties and the contractor(s) for the performance of any work in implementing the Project and includes the day to day administration of contracts in accordance with any risk management strategy which the Parties agree to apply.	10
8.3.2	In order to implement the Project:	
(a)	NSW may use the officers and resources of NSW Public Works or other Government Agency and may authorise any person including any Project Manager appointed under this Agreement to act on its behalf; and	15
(b)	Queensland may use the officers and resources of the Queensland Department of Environment and Heritage or other Government Agency and may authorise any person including any Project Manager appointed under this Agreement to act on its behalf.	20
8.4	<u>Project Directors</u>	25
8.4.1	Each Party will appoint a Project Director whose primary function is the representation and promotion of the respective Party's interests.	
8.4.2	The Project Directors shall be members of the Working Group.	30
8.4.3	Details of the Project Directors' responsibilities are set out in Schedule 3.	
8.5	<u>Working Group</u>	
8.5.1	The Working Group shall provide a forum for liaison between the Parties and shall be responsible for implementation of the Project on behalf of the Parties including:	35

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- (a) strategic action planning (including risk management);
  - (b) financial control;
  - (c) policy setting; and
  - (d) review at State Government level including review of project parameters. 5
- 8.5.2 The Working Group shall:
  - (a) report to the Ministerial Council through the Project Directors;
  - (b) promote close liaison and cooperation between the Parties; and 10
  - (c) provide guidance to the Coordinating State on strategic planning aspects of the Project which impact on contract development or management (an example of such a strategic planning aspect would be whether to place sand at a particular location at a particular time). 15
- 8.5.3 Decisions of the Working Group for the purpose of this Agreement, including decisions or determinations pursuant to clause 17.2, shall be by majority provided that such majority includes both Project Directors. 20
- 8.6 Coordinating State
  - 8.6.1 One of the Parties shall be the Coordinating State which shall be the representative of both Parties for the purpose of implementing any aspect of the Project which is to be performed by way of contracts entered into by the Parties as Joint Principals. 25
  - 8.6.2 Subject to this Agreement NSW shall be the Coordinating State.
  - 8.6.3 The Coordinating State shall have the powers and functions expressly conferred by this Agreement and such other ancillary and incidental powers and functions as are necessary for the effective implementation of the Project but excluding the power to execute any contract on behalf of the Reviewing State unless expressly authorised in writing by the Reviewing State to do so. 30 35

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- 8.6.4 The Coordinating State shall have the following functions for the purpose of managing the investigation, design, construction, commissioning, operation, maintenance and replacement from time to time of the System:
- (a) environmental impact assessment; 5
  - (b) developing contracts;
  - (c) the tender process;
  - (d) the development of designs, including benchmark designs for the System;
  - (e) technical issues; 10
  - (f) monitoring and auditing in accordance with clause 8.10.1;
  - (g) the engagement of consultants;
  - (h) Contract Management;
  - (i) financial reporting, scheduling reporting, services for the Working Group, public information and administration; 15
  - (j) entering into contracts in its own name as the representative of both Parties, in accordance with clause 8.1.2; and 20
  - (k) any other functions delegated by the Parties from time to time.
- 8.7 Consultation
- 8.7.1 In the performance of its functions, the Coordinating State shall consult fully and openly with the Reviewing State on all matters including risk management. This consultation shall take place through the Project Directors or, if referred by either Project Director, through the Working Group and shall continue during the implementation and operation of the Project. 25
- 8.7.2 Without limiting any obligation of the Coordinating State under this Agreement to consult with the Reviewing State the Parties acknowledge and agree that the Reviewing State will have input through its Project Director to all risk management decisions by the Coordinating State, including the following: 30 35
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- (a) choice of procurement and contractual options;
  - (b) decisions relating to the engagement of a Project Manager and the functions to be exercised by any Project Manager;
  - (c) the engagement of consultants; and 5
  - (d) evaluation of tenders.
- 8.7.3 Where the Reviewing State does not agree with:
- (a) any assessment of risk made by the Coordinating State; or
  - (b) any action proposed by the Coordinating State for the management of any risk including the activities listed in clause 8.7.4, 10
- the Reviewing State may refer the matter to the Working Group or, at its sole discretion, to the Ministerial Council for determination. A matter may be referred to the Ministerial Council whether or not it has previously been referred to the Working Group and whether or not the Working Group has made a determination and in such case the determination of the Ministerial Council shall prevail. The Coordinating State will not proceed with any proposed action while a determination referred to in this clause is pending with respect to that action. 15 20
- 8.7.4 In managing any contract which has been awarded pursuant to this Agreement, the Coordinating State shall apply the risk management strategy determined in accordance with this clause 8, but shall ensure consultation with the Reviewing State prior to any action to implement that strategy, including consultation and notification of any action proposed in relation to: 25
- (a) valuations and progress payments; 30
  - (b) contractual variations;
  - (c) extensions of time for practical completion of contracts;
  - (d) audit procedures; and
  - (e) resolution of contractual disputes. 35



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- 8.7.5 Where a matter referred to in clause 8.7.4 involves:
- (a) a monetary amount for each event of less than \$10,000; or
  - (b) a claim for an extension of time of less than four weeks,
- 5
- the Reviewing State shall notify its approval or otherwise to the action proposed by the Coordinating State within 7 days of receiving notice of such proposal. The Parties may agree in writing to vary the monetary amount and the number of weeks in sub-clauses (a) and (b) of this clause 8.7.5.
- 10
- 8.7.6 If the Reviewing State does not notify the Coordinating State of its approval or otherwise to any action referred to in clause 8.7.5 within the time referred to in that clause, the Coordinating State may assume approval and proceed to implement the proposed action.
- 15
- 8.7.7 The Reviewing State may notify the Coordinating State in writing that the concurrence of the Reviewing State may be assumed with respect to any matter or any class of matters on such conditions, if any, as may be specified in the notice and any action taken by the Coordinating State in accordance with such notice will be valid and effective under this Agreement as if prior consultation had taken place with the Reviewing State.
- 20
- 8.7.8 If the Coordinating State takes any action under this Agreement without consulting the Reviewing State as required by this clause 8.7 or by any other provision of this Agreement:
- 25
- (a) the Coordinating State shall indemnify and keep indemnified the Reviewing State against any liability, loss or damage whatsoever which results from such action except to the extent that clause 19.4 applies to the default to exclude clause 19.2; and
  - (b) notwithstanding any other provision of this Agreement, the Reviewing State may proceed under clause 19.
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8.8 Joint Principals' Representative

8.8.1 The Coordinating State may:

- (a) from time to time appoint a Joint Principals' Representative subject to the written consent of the Reviewing State, which consent shall not unreasonably be withheld; and 5
- (b) delegate to the Joint Principals' Representative any power or function with respect to Contract Management which the Coordinating State may exercise pursuant to this Agreement. 10

8.8.2 In exercising any power or function delegated by the Coordinating State under this Agreement, the Joint Principals' Representative shall be subject to the same obligations as the Coordinating State including the obligations of consultation with the Reviewing State. 15

8.8.3 The person appointed as the Joint Principals' Representative shall hold office until that person's appointment is revoked or until the Party which appointed the Joint Principals' Representative ceases to be the Coordinating State. 20

8.8.4 Any decision by the Joint Principals' Representative within the delegated authority under clause 8.8.1 shall be binding on both Parties.

8.9 Project Manager

The Coordinating State may appoint a Project Manager to assist in delivery of the Project and may delegate to the person appointed day to day responsibilities in relation to Contract Management. 25

Any appointment or delegation under this clause is subject to:

- (a) in the case of an appointment, prior consultation with the Working Group and prior consent of the Reviewing State, which consent shall not unreasonably be withheld; and 30
- (b) in the case of a delegation, prior consent of the Reviewing State to the scope of the functions to be delegated, which consent shall not unreasonably be withheld. 35

## 8.10 Monitoring

### 8.10.1 The Coordinating State shall:

- (a) monitor the performance of contractors in relation to any contracts entered into in respect of the Project; 5
- (b) monitor the performance of the obligations created under this Agreement;
- (c) carry out such other environmental monitoring as is reasonably required; and
- (d) carry out any other monitoring required by statute in NSW or Queensland. 10

8.10.2 The work associated with monitoring, including reasonable administrative costs, shall be a Shared Project Cost.

8.10.3 The Coordinating State shall report to the Working Group and the Reviewing State on such monitoring annually or more frequently as the Parties may agree from time to time having regard to the nature and duration of the contract, obligation or type of monitoring. 15

8.10.4 The Reviewing State may obtain an independent audit of monitoring provided that an independent audit shall be at the expense of the Reviewing State unless the audit reveals a substantial failure in the monitoring in which case it shall be a Shared Project Cost. 20

## 8.11 Cost Optimisation

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The Parties will give consideration to optimising Project costs when implementing the Project.

## 9. THE INITIAL DREDGING COMPONENT

- 9.1 As an exception to clause 8.1.1, but subject to clause 9.6, NSW shall let the contract(s) for the Initial Dredging Component in its own name or in the name of the NSW Minister for Public Works as the representative of both Parties and shall have such powers and functions as are necessary to ensure the effective implementation of the Initial Dredging Component, including the functions of the types listed in clause 8.6.4 (a), (b), (c), (e), (g), (h), (j) and (k) as these types apply to the Initial Dredging Component. 30  
35



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- 9.2 Clause 8.7 shall apply to the Initial Dredging Component and for that purpose any reference to the Coordinating State shall be read as a reference to the Party undertaking the Initial Dredging Component and any reference to the Reviewing State is a reference to the other Party. 5
- 9.3 NSW will use its best endeavours to let the contract for the Initial Dredging Component by 21 March, 1995 but failure to let the contract by that date shall not be a default under this Agreement. Subject to clause 9.5, the Latest Commencement Date is 30 June, 1995 and the Parties will use their best endeavours to complete the Initial Dredging Component by 30 September, 1997, including the completion of the first phase by 31 December, 1995. 10
- 9.4 To allow NSW to perform its obligations under this clause 9, Queensland undertakes to use its best endeavours to achieve the actions set out in column 1 of the following table and to achieve those actions by the times set out in column 2. 15

TABLE

	Column 1 ACTION	Column 2 TIME	
(i)	Comments on each draft environmental impact statement ("EIS")	Within one week of receiving the draft EIS	20
(ii)	Written agreement to the advertising of EIS	Within one week of receiving the final draft EIS	25
(iii)	A review of the submissions on the EIS	Within one week of receiving the submissions	
(iv)	All approvals necessary for the initial dredging	Within forty (40) days of the end of the exhibition period of the EIS	30

- 
- 9.5 If there is a delay in complying with any requirement of the items (i) to (iv) in the table in clause 9.4, the Latest Commencement Date shall be adjusted by a period equivalent to twice the period by which Queensland is delayed in complying with any such requirement, except in the case of a delay in (iv) which is due to the need for additional work on the environmental impact statement in which case the Latest Commencement Date will be adjusted by the period of such delay. 5
- 9.6 If NSW does not let contracts for the Initial Dredging Component by the Latest Commencement Date, Queensland may notify NSW in writing that Queensland intends to undertake the Initial Dredging Component and if NSW has not let the first contract for the Initial Dredging Component within one month of the date of such notice Queensland may undertake the Initial Dredging Component and may let a contract or contracts for that purpose as the representative of both Parties. 10  
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- 9.7 If Queensland becomes entitled to undertake the Initial Dredging Component pursuant to clause 9.6 but does not let the first contract or contracts for the Initial Dredging Component within four months of becoming so entitled, any notice given by Queensland under clause 9.6 shall be of no effect and NSW shall be responsible for undertaking the Initial Dredging Component within a reasonable time. 20
- 10. ARTIFICIAL SAND BYPASSING SYSTEM** 25
- 10.1 The Coordinating State will take all necessary preparatory actions for the letting of contracts by the Joint Principals for the design, construction, commissioning, operation, maintenance and replacement from time to time of the System.
- 10.2 Provided there has been full and open consultation between the Parties in relation to the preparation of any contract referred to in clause 10.1, the Reviewing State shall not unreasonably refuse to execute that contract. 30
- 10.3 Subject to clause 10.6 the Coordinating State will use its best endeavours to enable the Parties to achieve the Target Actions listed in column 1 of the following table by the Target Dates listed in column 2 of the following table. 35
-

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TABLE

	Column 1 TARGET ACTION	Column 2 TARGET DATE	
	(i) Call tenders for the First System	30 November, 1995	Date 1 5
	(ii) Let the above contract	28 February, 1996	Date 2
	(iii) Commission the First System and commence its operation	28 February, 1997	Date 3 10
	(iv) Establish a Clear Navigation Channel	31 May, 1997	Date 4
10.4	The Parties may agree to establish an Interim System but failure or inability of the Parties to agree to establish an Interim System shall not create any rights under this Agreement and in particular shall not be referred to expert determination pursuant to clause 17. An Interim System will be established only if the Parties agree on the following:		15
	(a) new dates for Target Dates 1, 2 and 3, in accordance with the intended period of operation of the Interim System; and		20
	(b) how the costs of the Interim System will be apportioned between the Parties.		
10.5	Without limiting the generality of the obligation of the Coordinating State under clause 8 to consult fully and openly with the Reviewing State, the Coordinating State will undertake the Consultation Actions listed in column 1 in the following table:		25



TABLE

	Column 1 CONSULTATION ACTION	Column 2 TIME	Column 3 NEXT ACTION	
(i)	provide working drafts of the EIS to the Reviewing State for review	three weeks	not applicable	5
(ii)	provide the final draft EIS to the Reviewing State for review	two weeks	finalise the EIS	10
(iii)	advise that the EIS has been finalised and seek approval to advertise	one week	commence public exhibition	15
(iv)	provide all responses to the EIS to the Reviewing State	three weeks	accept tender (subject to (v), (vi), and (vii))	20
(v)	provide draft tender documents to the Reviewing State	three weeks	finalise tender documentation	
(vi)	provide final tender documents for acceptance	three weeks	call tenders	25
(vii)	provide copies of all tenders, their evaluation and a recommendation to the Reviewing State for review and acceptance	four weeks	accept tender	30

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- 10.6 The Reviewing State will use its best endeavours to give the Coordinating State a response to each Consultation Action, including where applicable written approval to proceed with the action in column 3 opposite that Consultation Action, within the time shown in Column 2 opposite that Consultation Action. 5
- If the Reviewing State does not give written approval within that time each Target Date for which the Target Action has not yet been completed shall be adjusted by the period of the delay in giving written approval to proceed.
- 10.7 The Coordinating State will not carry out the action in column 3 of the table in clause 10.5 opposite any Consultation Action until the Reviewing State gives written approval in accordance with clause 10.6. 10
- 10.8 The Coordinating State will use its best endeavours to ensure that a Clear Navigation Channel to the Tweed River is maintained and to ensure that the Contract Quantity of sand is delivered to the Beaches by each Anniversary Date. 15
- 10.9 The Coordinating State shall ensure that any contracts for the operation of the System include provisions that:
- (a) require the contractor to manage the distribution of dredging between the navigation channel and other parts of the Tweed River Bar and Entrance Area to achieve the outcomes required by clause 10.8; 20
  - (b) whenever the quantity of sand delivered at any Anniversary Date falls short of the Contract Quantity, require the contractor to correct any such deficiency in the quantity of sand delivered prior to the next Anniversary Date; and 25
  - (c) whenever the quantity of sand delivered at any Anniversary Date exceeds the Contract Quantity, require the contractor to correct any such over supply in the quantity of sand delivered prior to the next Anniversary Date. 30
- 10.10 The Coordinating State will use its best endeavours to ensure that the System continues to operate to meet the requirements of this Agreement for so long as this Agreement remains in force. 35

## 10.11 Exchange of Roles

- 10.11.1 Subject to this Agreement, if for any reason whether or not by reason of default by the Coordinating State, but other than by reason of default by the Reviewing State:
- (i) any Target Action is not achieved within four months of the applicable Target Date; or 5
  - (ii) after Target Date 4 in clause 10.3, there is not a Clear Navigation Channel for a period of three months; or
  - (iii) at any Anniversary Date there has been delivered to the Beaches a quantity of sand which falls short of or exceeds the Contract Quantity by an amount exceeding five hundred thousand cubic metres; or 10
  - (iv) for any three consecutive Anniversary Dates there has been delivered to the Beaches a quantity of sand which falls short of the Contract Quantity by an amount exceeding one hundred thousand cubic metres; or 15
  - (v) for any three consecutive Anniversary Dates there has been delivered to the Beaches a quantity of sand which exceeds the Contract Quantity by an amount exceeding one hundred thousand cubic metres, 20
- the Reviewing State may notify the Coordinating State in writing that it intends to become the Coordinating State. The notice will specify one or more of the circumstances listed in this clause. 25
- 10.11.2 The roles of the Parties as Coordinating State and Reviewing State shall be exchanged one month after the Reviewing State gives notice under clause 10.11.1 unless in the case of a notice given under clause 10.11.1 (i) or 10.11.1 (ii) the Coordinating State corrects the circumstance referred to in the notice within that time. 30
- 10.11.3 After an exchange of roles under clause 10.11.2:
- (i) where the exchange of roles is based on clause 10.11.1 (i) the Target Date for any unreached Target Action shall be adjusted by one year from the exchange of roles; 35



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- (ii) where the exchange of roles is based on clause 10.11.1 (ii) the Coordinating State shall use its best endeavours to achieve a Clear Navigation Channel within one year; or
  - (iii) where the exchange of roles is based on clause 10.11.1 (iii) or 10.11.1 (iv) or 10.11.1 (v) the Coordinating State shall use its best endeavours to achieve the Contract Quantity within two years. 5
- 10.11.4 An exchange of roles under clause 10.11.2 may take place any number of times, provided that for the purpose of clause 10.11.1 (iv) or 10.11.1 (v), only Anniversary Dates on which the same Party is Coordinating State shall be taken into account. 10
- 10.11.5 If the cause of any of the circumstances in clause 10.11.1 arises out of or in consequence of a default by the Coordinating State under this Agreement then the provisions of this clause 10.11 and clause 13.7 shall, subject to this Agreement, be exclusive of any other remedy in respect of those circumstances unless: 15
  - (i) any Target Action is not achieved within 150% of the period referred to in clause 10.11.1 (i) after the applicable Target Date; or 20
  - (ii) a failure to maintain a Clear Navigation Channel persists for a period of 150% of the period referred to in clause 10.11.1 (ii) as adjusted pursuant to clause 10.11.6; or 25
  - (iii) the shortfall or excess in the quantity of sand delivered to give rise to a circumstance referred to in clause 10.11.1 (iii), (iv) or (v) is in any case 150% of the quantity referred to in the applicable clause as adjusted pursuant to clause 10.11.6. 30
- 10.11.6 The performance parameters in clause 10.11.1 (ii) to (v) and clause 13.7 have been based on the expectation that performance within those parameters can reasonably be achieved continuously during the Project by a competent contractor, competently managed by the Coordinating State. 35

These parameters shall be reviewed against the above criterion immediately prior to the commissioning of the First System and thereafter at the time of reassessment of the Long Term Average pursuant to clause 12.2.3 and, upon the request of either Party following such review, the Parties shall negotiate in good faith for the purpose of determining whether any adjustment should be made to these parameters.

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Any dispute concerning the review or the proper adjustment to any parameter pursuant to this clause may be referred to an Expert appointed in accordance with clause 17.

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#### 10.12 Suspension of Operation of the System

10.12.1 Notwithstanding any other provision of this Agreement, if for any reason whatsoever the operation of the System becomes or causes a danger or hazard to human health, the environment or the System then the Coordinating State may, and shall at the direction of the Reviewing State, suspend operation of the System for so long as the risk to human health, the environment or the System should remain.

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10.12.2 If the operation of the System is suspended under this clause for more than four weeks, the time allowed for the provision of a Clear Navigation Channel shall be extended by a period equivalent to the duration of the suspension plus a reasonable period to re-establish a Clear Navigation Channel and the annual increment to the Contract Quantity for the relevant Annual Period will be adjusted to take account of the duration of the suspension.

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10.12.3 If the annual increment for any Annual Period is adjusted pursuant to clause 10.12.2, a corresponding adjustment shall be made to the annual increments for the subsequent Annual Period or Periods, as may be reasonable in the circumstances having regard to the magnitude of the adjustment, in order that the sum of the annual increments to the Contract Quantity shall be in accordance with clause 12.

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10.13 Replacement Systems

Without in any way limiting any other obligation under this Agreement, when any Artificial Sand Bypassing System constructed under this Agreement is to be replaced, the Parties agree to consult fully with each other and to each use its best endeavours to ensure that the replacement System is completed in a timely manner so as to continue to meet the purpose of this Agreement. 5

**11. ADDITIONAL WORKS**

11.1 The Parties acknowledge that activities incidental to the Project such as the environmental approval process, may identify works which must be undertaken in order to ensure that the objectives of one or both Parties are achieved in accordance with all legal requirements. Such works shall be undertaken by or on behalf of the Party in whose territory those works are required and, subject to clause 11.2, at the cost of that Party. 10 15

11.2 The Ministerial Council may agree to include as part of the Project works which would not otherwise be part of the Project, including works referred to in clause 11.1 and such works shall be Additional Works and shall form part of the Project. 20

11.3 Failure or inability of the Ministerial Council to agree as to the inclusion of any works as Additional Works shall not create any rights under this Agreement and in particular shall not be referred to expert determination pursuant to clause 17.

**12. CONTRACT QUANTITY** 25

12.1 Definition of Contract Quantity

The Contract Quantity of sand to be delivered to the Beaches on or before any Anniversary Date, shall be the cumulative total of:

- (a) 2 million cubic metres to be delivered as the Initial Dredging Component; plus 30
- (b) annual increments in respect of each Annual Period, determined in accordance with clause 12.2.



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## 12.2 Calculation of the Annual Increment

- 12.2.1 Subject to clause 12.2.2, the annual increment to the Contract Quantity shall, in the absence of contrary agreement, be:
- (a) the Long Term Average; plus 5
  - (b) where applicable, the increases provided for in clause 12.2.6.
- 12.2.2 Notwithstanding clause 12.2.1, if the first Annual Period is a period less than a full year the first annual increment shall be the Long Term Average multiplied by the proportion which the first Annual Period bears to a full year, plus the quantity determined pursuant to clause 12.2.6 for the first Annual Period. 10
- 12.2.3 The Parties acknowledge and agree that the Long Term Average is 500,000 cubic metres per annum as at the date of this Agreement. The Long Term Average shall be reassessed at 1 January, 2005, and thereafter at 10 year intervals. Any of those reassessments shall be carried out earlier if agreed by the Parties on the basis that the actual environmental impacts indicate that the assessment of the Long Term Average requires adjustment. 15 20
- 12.2.4 Three months prior to each Anniversary Date, the Parties shall negotiate in good faith with a view to reaching agreement on the annual increment to the Contract Quantity for an agreed number of succeeding Annual Periods and failing agreement the annual increments shall be as previously agreed pursuant to this clause 12.2.4 or, if there is no such agreement, as provided in clause 12.2.1. 25
- 12.2.5 The Parties acknowledge and agree that for the purposes of clause 12.2.4 the annual increments to the Contract Quantity may vary from year to year to take account of:
- (a) any annual variations in the quantity of sand delivered to Letitia Spit;
  - (b) the specific objectives of both Parties as set out in the recital; and 35
  - (c) any suspension of the operation of the System under clause 10.12,

- but that any agreement pursuant to that clause shall ensure that the average of the annual increments to the last Annual Period in respect of which there is agreement, disregarding the additional quantity provided for in clause 12.2.6, shall be equivalent to the Long Term Average. 5
- 12.2.6 During the first six Annual Periods an additional quantity of sand, to be known as the "Supplementary Increment" equivalent to the sum of:
- (a) 550,000 cubic metres; and
  - (b) the volume of sand which would have been transported between the completion of the first phase of the Initial Dredging Component and the commencement of the operation of the System calculated at the rate of 500,000 cubic metres per annum, 10
- shall be added to the Contract Quantity as provided in this clause 12.2.6. 15
- Delivery of any part of the Supplementary Increment during the first five Annual Periods shall not trigger the operation of clause 10.11 or clause 13.7 but the annual increments shall be retrospectively adjusted by the amount of the additional quantity delivered, whether or not there is agreement pursuant to clause 12.2.4 to increase the annual increment with respect to any part of that quantity. 20
- Any part of the Supplementary Increment which has not been delivered earlier will be added to the annual increment for the sixth Annual Period. 25
- 12.2.7 The Parties acknowledge and agree that:
- (a) a quantity of sand sufficient to provide a useable beach, including nearshore shoals, to be known as the "Duranbah Supply", shall be delivered to Duranbah beach from time to time and this shall be a minor fraction (up to 10%) of the sand delivered by the System; 30

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- (b) 50% of such quantity, or such other percentage as may be agreed between the Parties or determined in accordance with clause 12.2.8, as the percentage which is likely to be transported to Queensland, to be known as the "Duranbah Contract Quantity", shall be considered as having been delivered as part of the Contract Quantity; 5
- (c) the work associated with supplying sand to Duranbah beach shall be a Shared Project Cost;
- (d) the quantity of sand to be delivered to Kirra Point, to be known as the "Kirra Contract Quantity", shall not exceed a total of 200,000 cubic metres in any two consecutive Annual Periods and shall not exceed 75,000 cubic metres per annum on a long term average; and 10  
15
- (e) subject to the environmental approval process, any sand which moves from the Tweed River Bar and Entrance Area including into the river following commencement of the Initial Dredging Component shall be available for the Project. 20
- 12.2.8 Any dispute between the Parties as to:
- (a) the Long Term Average;
- (b) the quantity referred to in clause 12.2.7 (a); or
- (c) the percentage referred to in clause 12.2.7 (b), may be referred by either Party to an Expert appointed in accordance with clause 17. 25
- 12.3 Supply of Sand
- If, owing to insufficient sand being available or as a result of any legislative requirements, including an environmental impact assessment, or any limits imposed under the general law, the Contract Quantity cannot be delivered from the Tweed River Bar and Entrance Area to the Beaches, the Parties shall, having regard to the objectives of both Parties, use their best endeavours to ensure that the shortfall in the Contract Quantity of sand is delivered from the coastal system outside of the Tweed River Bar and Entrance Area. Obtaining the shortfall shall be a Shared Project Cost. 30  
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If the above circumstances result in a substantial failure to meet either Party's objective so as to amount to frustration of this Agreement, this clause 12.3 shall not apply to prevent frustration of this Agreement.

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|--|----------|
| <b>13. SHARING COSTS FOR THE PROJECT</b>   | <b>5</b> |
| 13.1 Subject to the due performance of the relevant work the final actual costs of the Shared Project Costs under this Agreement will be contributed to by the Parties in accordance with this clause 13.  |          |
| 13.2 Final actual costs of any work performed pursuant to this Agreement include the costs of preliminary investigation, reports, administrative procedures and other activities, all as approved by the Ministerial Council and costs referred to in clause 8.1.3.  | 10       |
| 13.3 The final actual costs of the work associated with the Initial Dredging Component and of the work associated with the establishment and commissioning of the First System will be shared by the Parties in the following proportions:   | 15       |
| NSW  | 75%      |
| QUEENSLAND   | 25%      |
|  | 20       |
| 13.4 The final actual costs of all other works which are expressed to be Shared Project Costs in this Agreement, for which a percentage cost sharing basis is not stated elsewhere in this Agreement, or otherwise agreed between the Parties pursuant to this Agreement, shall be shared equally by the Parties.  | 25       |
| Such works include without limitation the operation of the System, monitoring and auditing, and the establishment and commissioning of any replacement System.   |          |
| 13.5 In the event that, under the terms of a contract let in accordance with clause 10, the establishment costs for the First System are not paid entirely by up-front capital contribution, but are wholly or partly incorporated in a recurrent payment per unit of sand supplied, the Parties will apportion the recurrent unit charge between establishment costs and other costs for the purpose of the application of the agreed shared contributions, as set out in the preceding provisions of this clause 13. | 30       |
|  | 35       |

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- 13.6 For the purpose of arriving at an apportionment under clause 13.5;
- (a) if the tender submitted by the contractor has a price for the capital cost and a price for the operating cost, those prices will be used unless either Party objects to the use of those prices; and 5
  - (b) if the Parties do not agree to use the prices in the contractor's tender or if the tender does not have prices which can be used to apportion the recurrent charge between establishment costs and other costs, then the Parties shall negotiate in good faith for the purpose of agreeing to an apportionment, and, failing agreement, either Party may refer the matter to an Expert appointed in accordance with clause 17. 10
- 13.7 If any default by the Coordinating State under this Agreement results in any circumstance in column 1 of the following table and the Reviewing State gives notice to the Coordinating State invoking this clause 13.7, then, notwithstanding clause 13.4 but subject to clause 13.9, the cost sharing consequence in column 2 of the following table opposite the relevant circumstance shall apply: 15
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	COLUMN 1 Circumstance	COLUMN 2 Consequence	
(i)	there is not a Clear Navigation Channel for a period of three months	the Coordinating State shall pay 60% of the operating costs of the System until there is a Clear Navigation Channel	25
(ii)	there has been delivered a quantity of sand which falls short of the Contract Quantity by an amount exceeding two hundred thousand cubic metres	the Coordinating State shall pay 60% of the operating costs from the relevant Anniversary Date until the Contract Quantity is achieved.	30
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| (iii) | there has been delivered a quantity of sand which exceeds the Contract Quantity by an amount exceeding two hundred thousand cubic metres   | the Coordinating State shall pay 60% of the operating costs associated with the delivery of the quantity of the oversupply plus 60% of the operating costs from the relevant Anniversary Date until the Contract Quantity has been achieved. | 5            |
| 13.8  | For the purposes of the application of the consequences opposite items (ii) and (iii) in the table in clause 13.7 only, the annual increment for any Annual Period during which the consequence of the table in clause 13.7 applies shall be apportioned over the year as equal monthly increments and the Contract Quantity will be taken to have been achieved if on the last day of any month there has been delivered a quantity of sand equivalent to the Contract Quantity at the preceding Anniversary Date plus the monthly increments, calculated in accordance with this clause 13.8, which have accrued to that date. |  | 10<br><br>15 |
| 13.9  | If a circumstance referred to in clause 13.7 results in an exchange of roles pursuant to clause 10.11, the consequences in column 2 of the table in clause 13.7 shall not apply to any operating costs of the System incurred after the date of that exchange of roles.  |  | 20           |
| 13.10 | Subject to the provisions of clause 10.11.5, the provisions of clause 13.7 are without prejudice to any other right of the Reviewing State arising out of the relevant default by the Coordinating State provided that, so long as this Agreement remains on foot, the Coordinating State shall have no financial liability to the Reviewing State in relation to any circumstance in column 1 of the table in that clause other than the consequence provided for in column 2 of that table.  |  | 25<br><br>30 |
| 13.11 | If any moneys are contributed to the Project by persons other than the Parties or local government in NSW or Queensland, such moneys shall be accounted for as follows:  |  | 35           |
| (a)   | if the moneys are specified to be for a particular element of the Project, the final actual costs of the work for that element will be reduced by the amount of the contribution; or   |  |              |
-



- (b) if the moneys are not specified to be for a particular element of the Project, the final actual costs of any work undertaken after the contribution will be reduced by applying the moneys until the contribution has been fully expended.

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#### **PART IV - GENERAL**

### **14. ACCOUNTING ARRANGEMENTS**

- 14.1 The Parties acknowledge that the costs of the Project may vary substantially from year to year, and agree to meet the actual costs of the Project as they become due.

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- 14.2 The Parties acknowledge that expenditure records for the Project shall be established and kept by one of the Parties ("the Banker") or its nominee, on behalf of the Project.

- 14.3 Unless varied by contrary agreement, the Coordinating State shall be the Banker.

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- 14.4 The Banker shall:

- (a) establish a consolidated set of expenditure records for Shared Project Costs;

- (b) draw up individual accounts for each Party on the basis of the cost sharing ratios set out in clause 13;

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- (c) in consultation with the other Party, draw up a projected cash flow based on the Cash Flow Period; and

- (d) report to the Working Group on progress against projected cash flow within four weeks of the conclusion of each Cash Flow Period.

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- 14.5 Unless either Party notifies the Banker in writing that it anticipates that actual expenditure for the Cash Flow Period will have a significant variation from the projected cash flow, the Banker will bill both Parties on the basis of the projected cash flow.

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For the purpose of this clause a "significant variation" is any variation of more than 10% or any variation which is expected to have a duration of more than two cash flow periods.

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- 14.6 Where any amount is due by a Party, after taking into account any credit pursuant to clause 14.9.2 (b), that Party will pay that amount to the Banker before the middle of each Cash Flow Period.
- 14.7 In the case of a significant variation in the cash flow advised to the Banker and approved by both Parties, the Banker will amend the projected cash flow and the amended projected cash flow will be used as the basis for billing and payments. 5
- 14.8 Either Party may call for a reconciliation between actual expenditure and payments. If such reconciliation is called for, the Banker shall carry out the calculations and include any necessary adjustments in the next account to each Party. 10
- 14.9 Works Carried Out or Paid for by a Party
- 14.9.1 Where either Party carries out or pays for work which is a Shared Project Cost the Contracting State will bill the Banker for the full cost of that work. 15
- 14.9.2 The Banker will take the value of such work or expenditure into account in issuing individual accounts to the Parties:
- (a) as an expenditure which becomes part of the cost of the Project; and 20
- (b) as a credit against the Contracting State's liability with respect to the Project.
- 14.10 Management Fee
- 14.10.1 The Banker may impose a management fee for managing the financial accounts. This fee shall not exceed 0.5% of the total debits in any cash flow period. 25
- 14.10.2 The management fee shall cover all costs normally associated with keeping the accounts including disbursements, but not including interest on outstanding payments and not including any auditing fees. 30
- 14.10.3 The management fee and any auditing fees shall be shared as a Shared Project Cost.

14.11 Interest

If either Party is late in making any payment due to the other Party, the latter may charge an interest fee which is the 90 day Bank Bill Rate last published before the day on which the payment was due.

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**15. ASSETS ACQUIRED BY THE PARTIES**

15.1 The Parties shall keep a list of assets (if any) each acquires as a Shared Project Cost.

15.2 Neither Party shall dispose of any assets acquired as a Shared Project Cost unless both Parties agree in writing that the asset may be disposed of without adversely affecting the capacity of the Project to satisfy the purpose of this Agreement.

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15.3 The proceeds from the disposal of any surplus assets shall be paid to the Banker to be distributed between the Parties in accordance with the contributions made by each Party to the acquisition of those assets.

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15.4 Land in either State acquired for the Project as a Shared Project Cost shall be vested in the name of that State or a Minister from that State and shall be held in such name or in the name of another Minister from that State unless disposed of in accordance with this clause.

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**16. PARTIES TO FACILITATE WORKS**

16.1 A Party within whose territory any of the works constituting the Project are to be performed, constructed, maintained, operated or controlled by any person shall use its best endeavours to provide to such person or its authorised agent, all such powers, leases, licences and permission over or with respect to the territory of the Party as may be necessary for the exercise and performance of the Project and each of the Parties shall take such steps either by acquiring land or interests in land or otherwise as may be necessary to give effect to the Project.

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16.2 The Parties agree that any compensation which may be payable whether for the acquisition of land or any interest in land or otherwise for the purposes of the Project shall be a Shared Project Cost to be apportioned as an establishment cost of the System.

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## 17. DISPUTES

- 17.1 Notwithstanding the existence of any dispute the Parties shall continue to perform their obligations under this Agreement.
- 17.2 Submission to the Working Group
- If a dispute between the Parties arises out of or in connection with this Agreement, other than a dispute which this Agreement provides to be referred directly to expert determination or a dispute arising out of a determination or decision by the Working Group, or the failure of the Working Group to give a decision or determination, either Party may refer the dispute to the Working Group. 5 10
- 17.3 Submission to the Ministerial Council
- 17.3.1 If the Working Group cannot resolve a dispute referred to it within 30 days, or another period if agreed between the Parties, it shall refer the dispute to the Ministerial Council. 15
- 17.3.2 Any dispute arising out of a determination or decision of the Working Group or the failure of the Working Group to give a decision or determination may be referred by either Party to the Ministerial Council.
- 17.3.3 Any dispute which may be referred to the Working Group under clause 17.2 may be referred by either Party at any time to the Ministerial Council, subject to the consent of the other Party. A dispute may be referred to the Ministerial Council under this clause whether or not it has previously been referred to the Working Group. 20 25
- 17.4 Expert Determination
- 17.4.1 Subject to any provision of this Agreement that a matter shall not be referred to expert determination either Party may refer any of the following for expert determination in accordance with clause 17.4.2: 30
- (a) a dispute referred to the Ministerial Council which the Ministerial Council has not resolved within 60 days;
- (b) a dispute arising out of the inability of the Ministers constituting the Ministerial Council to reach agreement on any matter arising out of or in connection with this Agreement; 35

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- (c) a dispute which this Agreement provides may be referred to expert determination; or
    - (d) subject to the consent of the other Party, any other dispute, including a dispute previously referred to the Ministerial Council in respect of which the period of 60 days referred to in clause 17.4.1(a) has not elapsed. 5
  - 17.4.2 The expert determination process shall be effected by an expert in the relevant field agreed upon and appointed jointly by the Parties. In the absence of agreement as to the appointment of an Expert either Party may request the Secretary General of the Australian Commercial Disputes Centre Limited at Sydney, or another body as agreed, to nominate an Expert. The request shall indicate that the nominee shall not be an employee of either Party or a person in respect of whom there has been a failure to agree by the Parties. 10 15
  - 17.4.3 The appointment of an Expert shall be conclusive evidence that the particular dispute relates to matters properly the subject of expert determination. 20
  - 17.4.4 The following shall apply to the Process:
    - (a) the Process shall be conducted in accordance with the Rules for the Expert Determination Process set out in Schedule 4;
    - (b) for the purposes of the application of the Rules, the Party referring the dispute to the Expert is the "Claimant" and the other Party is the "Respondent"; 25
    - (c) the determination of the Expert shall be made as an Expert and not as an Arbitrator and shall be final and binding on the Parties except where the Expert's determination is that one Party shall pay the other an amount in excess of \$500,000; 30
    - (d) the Expert may determine whatever interest the Expert considers reasonable; and 35
    - (e) if one Party has overpaid the other, whether under a mistake of law or fact, the Expert may determine what repayment (together with interest) shall be made.
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- 17.5 Moneys that are or become due and payable by either Party under this Agreement and which are subject to a dispute shall not be withheld during the Process but following the determination by the Expert any necessary adjustments will be made to future payments. 5

## 18. UNAVOIDABLE DELAY

The Parties agree that delay caused by an unforeseen event shall not frustrate this Agreement. If either Party is delayed in performing its obligations under this Agreement, owing to an event beyond its control which could not reasonably have been foreseen, including the failure by a contractor to perform under the terms of any contract let in accordance with and for the purposes of this Agreement, then the delay shall not be taken to be a default under this Agreement but the Party concerned shall use its best endeavours (in consultation with the other Party) to remedy the position within such time as may be reasonable in the circumstances. 10 15

## 19. DEFAULT

### 19.1 Notice to Rectify and/or Pay Compensation

- 19.1.1 Where either Party is in default of any obligation under this Agreement, including the obligation to consult with the other Party, the Party not in default may, by notice in writing to the Party in default: 20

(a) specify the nature of the default, the facts relied upon to establish the default and if any specific action is required to rectify the default, that action; and 25

(b) if it so elects, and whether or not the Party in default is reasonably capable of rectifying the default, provide that Party with the alternative of paying a sum of money specified as reasonable compensation in substitution for rectification of the default or for rectification of any specified aspect of the default. 30

- 19.1.2 A notice pursuant to this clause 19.1 may include both a request for partial rectification and a claim for compensation in relation to the same default, and may be satisfied by partial rectification of the default plus payment of compensation. 35



19.1.3 A notice pursuant to this clause 19.1 is a precondition to termination of this Agreement in the event of default.

## 19.2 Termination

Subject to clause 19.3, where the Party in default has:

- (a) not commenced appropriate action to rectify the default referred to in a notice under clause 19.1 within 30 days of receiving such notice; or 5
- (b) commenced action in accordance with subclause (a) but has not rectified the default within a reasonable period, such period being not less than 30 days after the Party receives notice under clause 19.1, 10

whether or not the default is reasonably capable of being rectified, the Party not in default may, by further notice in writing to the Party in default, terminate this Agreement.

19.3 The right to terminate under clause 19.2 shall not apply to a default unless either: 15

- (a) (i) the default is in respect of an obligation to consult, involves an issue of risk management and produces or is likely to produce an additional cost to the Party not in default in excess of \$1 million; and 20
- (ii) there has been repeated and persistent failure to consult and the defaults are in respect of an obligation to consult, involve an issue of risk management, and during the preceding five year period have produced or are likely to produce an additional cost to the Party not in default in excess of \$1 million; or 25
- (b) the default is in respect of any other obligation and amounts to a repudiation of this Agreement.

19.4 The right to terminate under clause 19.2 shall not apply to a default to the extent that a notice under clause 19.1 includes a claim for reasonable compensation; and the defaulting Party has: 30

- (a) within 30 days of receiving notice, by notice in writing to the other Party elected to pay such compensation; and
- (b) paid such compensation within a reasonable time. 35

Tweed River Entrance Sand Bypassing Bill 1995

Schedule 1 Deed of Agreement

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- 19.5 At any time prior to termination in accordance with clause 19.2, a dispute between the Parties as to:
- (a) the existence of a default by either Party;
  - (b) whether a default has been rectified;
  - (c) what is a reasonable period for rectification of a default; or 5
  - (d) whether a claim for compensation in terms of clause 19.1 is reasonable,
- may be referred by either Party to an Expert appointed in accordance with clause 17. A notice terminating this Agreement shall be of no effect if any matter under this clause 19.5 has been referred for expert determination and the notice is given before such determination. 10
- 19.6 The termination of this Agreement does not affect the rights of either Party for default by the other Party under this Agreement committed before the termination or any right of action or remedy which has accrued or which may accrue in favour of either Party. 15
- 19.7 The Parties acknowledge that if this Agreement is terminated pursuant to this clause 19, then the resulting damages caused to the Party not in default may include: 20
- (a) the contribution by the Party not in default to any compensation payable to any third party in respect of the termination of any contract entered into for the purpose of this Agreement by both Parties as Joint Principals or by either Party; 25
  - (b) the reasonable costs of site restoration; and
  - (c) one of the following:
    - (i) for Queensland—the net present value, at the date of termination, of the dredging of sand of an equivalent quality from the nearest available source to achieve the quantities in clause 12, less Queensland's share of the net present value of that part of the Shared Project Costs (including works and operation not yet undertaken) not yet paid for by Queensland at the date of termination; or 30 35



- (ii) for NSW—the net present value, at the date of termination, of the dredging required to achieve a Clear Navigation Channel and disposal to the nearest available deposition site in perpetuity less NSW's share of the net present value of that part of the Shared Project Costs (including works and operation not yet undertaken) not yet paid for by NSW at the date of termination. 5

## 20. OWNERSHIP OF SAND

- 20.1 All sand which enters the System becomes an asset of the Project and, subject to the provisions of this clause 20, becomes the property of Queensland upon delivery to Queensland, or the coastal waters of the State of Queensland as defined in the Coastal Waters (State Powers) Act, 1980 (Cth). The value of any royalties and net profits made from or in connection with any extraction of minerals as part of the System or the sale of sand delivered by the System shall be shared equally between the Parties and where any payments are collected by either Party, any necessary adjustment will be made to the accounts prepared pursuant to clause 14 to ensure that the value of those payments is shared equally. 10 15 20
- 20.2 For the purposes of clause 20.1 the sale of sand refers only to sand sold and removed from the System or from the littoral system between Snapper Rocks and Currumbin Rock, excluding sand sold and removed under any rights under existing leases and permits, including rights to renewal or extension thereof which exist at the date of this Agreement. 25
- 20.3 Neither Party will levy a royalty on a Party to this Agreement in respect of sand which is transferred between the States pursuant to this Agreement. 30

## 21. APPROPRIATION

The Parties agree to submit to their respective Parliaments annually through the budgetary process for the appropriation of all funds necessary or required for the purposes of this Agreement.

## 22. COSTS

Each Party agrees to bear its own costs and expenses in relation to the investigation, negotiation, preparation, execution and delivery of this Agreement. 35



### **23. LIABILITY**

The liability of either Party for breach of contract, or in tort or for any other common law or statutory cause of action arising out of the operation of this Agreement, shall be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia. 5

### **24. SEVERABILITY OF PROVISIONS**

If any provision of this Agreement or the application of any provision of this Agreement to any person or circumstance shall be or become invalid or unenforceable, then the Parties shall in good faith enter into negotiations to agree what alteration to their respective rights and obligations under this Agreement ought reasonably to occur as a consequence. The remaining provisions of this Agreement shall not be affected by such invalidity or unenforceability and those remaining provisions shall be valid and enforceable to the fullest extent permitted by law. 10 15

### **25. EXERCISE OF RIGHTS**

25.1 Subject to this Agreement, either Party may exercise any right, power or remedy arising out of or in connection with this Agreement at its sole discretion, and either separately or concurrently with any other right, power or remedy. 20

25.2 Except where a contrary intention appears, the rights, powers and remedies created by this Agreement are cumulative with and do not exclude any rights, powers or remedies provided by law independently of this Agreement. 25

### **26. WAIVER AND VARIATION**

A provision of or a right created under this Agreement may not be:

- (a) waived except in writing signed by the Party granting the waiver and then such waiver shall be effective only in the specific instances and for the purposes for which it is given; and 30
- (b) varied except in writing signed by the Parties and, in the event that this Agreement is ratified in accordance with clause 6, in accordance with any Acts ratifying it.

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**27. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY**

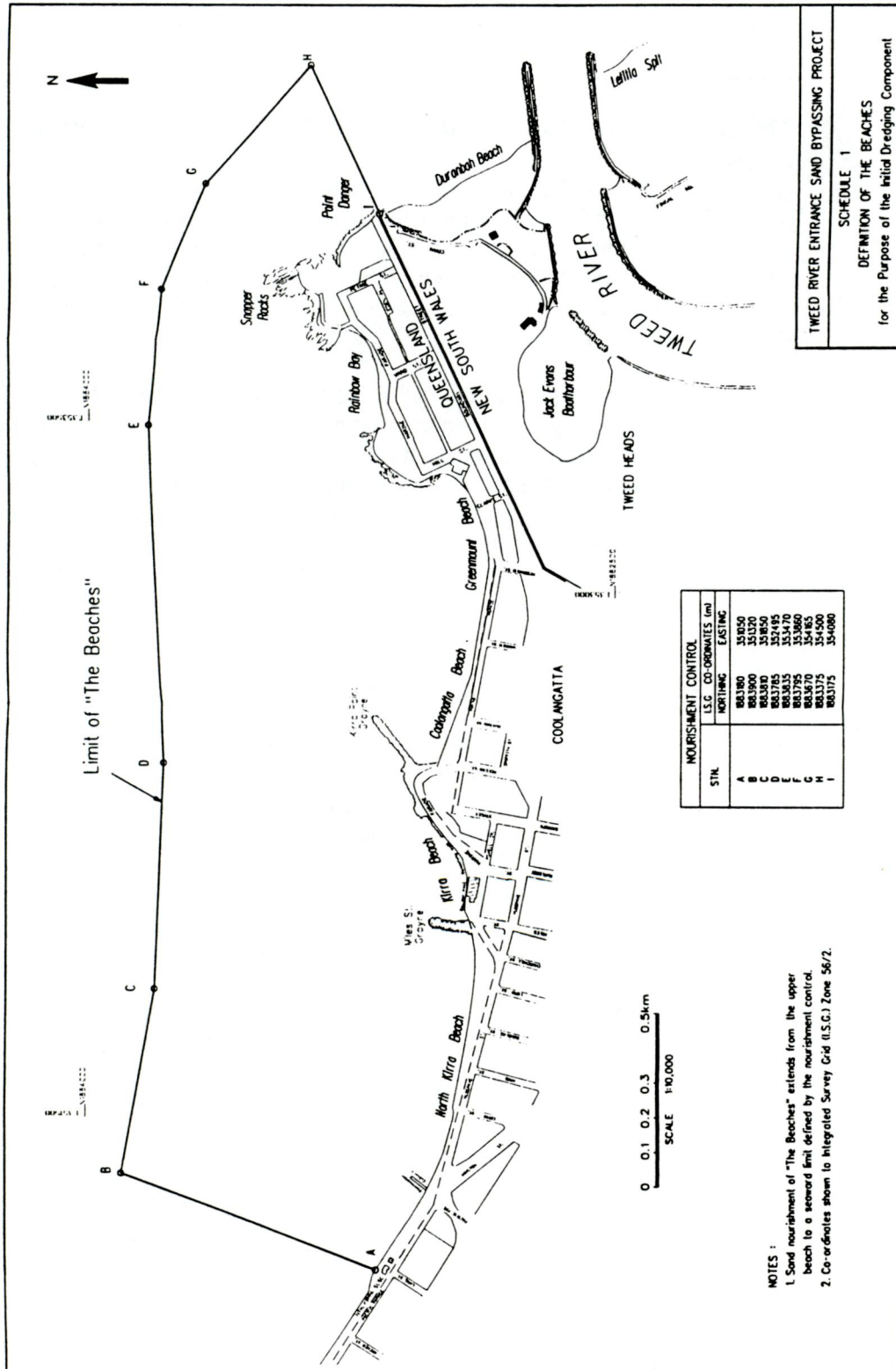
- 27.1 The intellectual property rights in any Original Project Material which is created by or on behalf of the Parties in contemplation of and during the course of investigating and undertaking the Project shall be held by the Parties as co-owners and both Parties will do all such acts as are necessary in order to perfect such co-ownership. 5
- 27.2 Each of the Parties may use any Original Project Material for its own purposes in connection with the Project without further need to account to each other for such use and each Party hereby grants to the other a perpetual non-exclusive, non-transferable royalty-free licence for this purpose. Without limiting the generality of this clause, a Party may use Original Project Material by disclosure to contractors engaged in the Project and may authorise a contractor to use Original Project Material for the purposes of the Project. 10 15
- 27.3 A Party may not use any Original Project Material for a commercial or profit making purpose or grant any licence to a third party to exploit the Original Project Material for financial reward except with the express prior consent of the other Party, which consent shall not be unreasonably withheld. Any consent under this clause may be made subject to reasonable commercial terms and conditions in relation to the exploitation and the return to each Party. Any condition stipulating a return of profits from the exploitation back into the Project shall be deemed to be a reasonable commercial condition for the purposes of this clause. 20 25
- 27.4 Notwithstanding clause 27.3, each Party may transfer any Original Project Material between Government Agencies in the same State whether by sale or otherwise without the consent of the other Party. 30

**28. FURTHER ASSURANCES**

Neither Party will undertake activities which are detrimental to or compromise the securing of the other Party's objectives, including any action which may be detrimental to the natural littoral movement of sand.

\* \* \*

# Tweed River Entrance Sand Bypassing Bill 1995



TWEED RIVER ENTRANCE SAND BYPASSING PROJECT  
SCHEDULE 1  
DEFINITION OF THE BEACHES  
for the Purpose of the Initial Dredging Component



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1. Co-ordinates shown to Integrated Survey Grid (I.S.G.) Zone 56/2.

SCHEDULE 3

RESPONSIBILITIES OF THE PROJECT DIRECTORS

The Project Directors are responsible for:

1. ensuring that the respective needs of the Parties are represented and promoted; 5
2. coordinating the activities of the Parties and consultation between them;
3. ensuring that the respective Party's input to the project is made in a timely, comprehensive and efficient manner;
4. representing the respective Party on the Project Working Group, including the preparation of reports and minutes of the Working Group; 10
5. checking that the respective Party's functional requirements are met throughout the development, including during the production of design and contract drawings, specifications and other contract documents;
6. preparing regular reports to their respective agencies covering annual project cash flow requirements and monthly updates against cash flow forecasts; 15
7. arranging approvals for scope of work, budget, funding and program, as authorised by the respective Party; and
8. any other requirements of the Working Group or the respective Party that could be reasonably expected of the Project Directors. 20

SCHEDULE 4

RULES FOR THE EXPERT DETERMINATION PROCESS

1. Function of the Expert  
The function of the Expert is to make a determination on the dispute in accordance with these Rules and the letter of appointment of the Expert. 25
2. Commencement  
The Process shall commence with the acceptance by the Expert of the appointment to act to determine the dispute in accordance with these Rules. 30

- 
3. General Conduct of the Process
- 3.1 No consultation shall take place with either Party other than in the presence of both Parties.
- 3.2 The Expert shall disclose all information and documents received from either Party to the other Party. 5
- 3.3 Where a Party fails to make a written submission or appear at any conference after having received due notice, the Expert may proceed with the Process.
- 3.4 All proceedings and submissions relating to the Process shall be kept confidential between the Parties and the Expert. No information shall be divulged to any other person except with the prior written consent of both Parties, or as may be required by law or in order to enforce the determination of the Expert. 10
4. Written Submissions 15
- 4.1 Within fourteen (14) days of the date of the commencement of the Process, the Claimant shall provide to the Respondent or its nominee and the Expert a statement detailing the nature of the dispute, any agreed statement of facts and a written submission on the dispute in support of the Claimant's contention. 20
- 4.2 Within twenty-one (21) days thereafter the Respondent or the Respondent's nominee shall provide to the Claimant and the Expert a written response to the written submission of the Claimant. 25
- 4.3 If, upon the application of the Claimant, the Expert considers it appropriate, the Claimant may make a written response to the response of the Respondent under paragraph 4.2 above within the time allowed by the Expert and a copy of such written response shall be provided by the Claimant to the Respondent. 30
- 4.4 If, upon the application of the Respondent, the Expert considers it appropriate, the Respondent may make a written response to the response of the Claimant under paragraph 4.3 above within the time allowed by the Expert and a copy of such written response shall be provided by the Respondent to the Claimant. 35
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- 4.5 If the Expert decides further information or documentation is required for the determination of the dispute the Expert may:
- (a) require a further written submission or documents from either or both Parties, giving each Party a reasonable opportunity to make a written response to the other's submission; and 5
  - (b) call a conference between the Parties and the Expert in accordance with paragraph 5 below.
5. Conference 10
- 5.1 When the Expert determines that a conference between the Parties is necessary the Expert shall be responsible for arranging the conference at a venue and time convenient for the Parties and shall notify them accordingly.
- 5.2 At least seven (7) days prior to the conference the Expert shall inform the Parties of the matters to be addressed at it and shall hear representations only on those matters. 15
- 5.3 At the time and place notified for any conference the Parties shall appear before the Expert to make representations on the matters the subject of the conference. 20
- 5.4 The Expert is not bound by the rules of evidence and may receive information at any conference in any manner the Expert thinks fit, providing that, at all times, the requirements of procedural fairness are met. 25
- 5.5 At a conference either Party may have legal or other representation.
- 5.6 Any conference shall be held in private.
- 5.7 If requested by either Party, transcripts of all conference proceedings will be taken and be available to the Expert and the Parties. 30
6. The Determination
- 6.1 As expeditiously as possible after the receipt of the submissions or after any conference and, in any event not later than three months after the commencement of the Process unless the time has been extended by agreement between the Parties, the Expert shall determine the dispute between the Parties and notify such determination in writing to the Parties. 35

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- 6.2 The notice of the determination shall include a brief statement of the reasons for the determination.
- 6.3 The Expert shall reach the determination on the basis of the information received from the Parties and on the basis of the Expert's own expertise. 5
- 6.4 Where the determination made by the Expert contains -
- (a) a clerical mistake;
  - (b) an error arising from an accidental slip or omission;
  - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or 10
  - (d) a defect of form,
- the Expert shall correct the determination.
7. Termination
- 7.1 Subject to paragraph 6.4, the Process shall conclude when the Expert has notified the determination to both Parties. 15
- 7.2 The Process shall be terminated in the event of the Expert being unable to conclude the Process by reason of the Expert's illness, death, being of unsound mind or failure to act. 20
- 7.3 If the Expert becomes aware of any circumstances that might reasonably be considered to affect adversely the Expert's capacity to act independently or impartially the Expert must inform both Parties immediately.
- The Expert must in such circumstances terminate the proceedings, unless the Parties agree otherwise. 25
- 7.4 If the Process is terminated prior to its conclusion, another expert shall be appointed in accordance with the provisions of the Agreement
8. Costs 30
- 8.1 Each Party shall bear its own costs of the Process and shall share equally the costs of the Expert and the Process.
- 8.2 Security for costs shall be deposited by both Parties at the commencement of the Process at the direction of the Expert. 35

9. Modification

Unless otherwise stated these Rules shall be modified only by agreement of the Parties and of the Expert.

SCHEDULE 5

AN INDICATIVE EXAMPLE OF THE CALCULATION OF DAMAGES 5  
(AS REFERENCED IN CLAUSE 19.7):

Notes in General

1. The figures are based on the Joint Consultants' Report.
2. Values are in 1990 dollar terms.
3. The figures are indicative and are based on the assumption that, at and following any termination (which is not contemplated or proposed by the Parties), the alternatives contemplated would be achievable in law and in fact, which is not certain. 10
4. The values are intended to be illustrative of components and the concept, and not to be definitive in quantum. 15

EXAMPLE CALCULATIONS

1 NSW IN DEFAULT

1.1 Assumptions

- (a) the Project terminates at the 26th Anniversary Date, one year after replacement of the First System; 20
- (b) prospective operating and maintenance costs are \$2 million per annum;
- (c) scheduled replacement expenditures are \$8.45 million after 24 years and at 25 year intervals thereafter;
- (d) the applicable discount rate is 7 per cent per annum; 25
- (e) an amount of \$2 million is payable by each Party as a result of the termination of the third party contract;
- (f) the cost of site restoration is \$3 million;
- (g) the long term net littoral transport of sand at the northern portion of Letitia Spit is 500,000 cubic metres per annum; 30



- 
- (h) the cost of offshore dredging is \$4.43 per cubic metre. Note: the \$4.43 is based on the Joint Consultants' Report, 1/3 to nearshore at \$3.30 and 2/3 to onshore at \$5.00);
- (i) NSW dredges the full littoral transport and removes it from the littoral system; 5
- (j) suitable sand could be obtained from offshore in perpetuity (which is uncertain); and
- (k) the cost of obtaining such sand does not escalate in real terms.
- 1.2 The damages recoverable by Queensland at the date of termination would be \$21.4 million, calculated as follows: 10

	\$ million	
compensation under clause 19.7 (a)	2.0	
reasonable site restoration under clause 19.7 (b)	3.0	15
amount applicable under clause 19.7 (c)	16.4	
cost of offshore dredging in perpetuity (\$2.216 million @ 7% p.a.)	31.7	
less Queensland's share of	15.3	
remaining net present value of System's future operating and maintenance (\$1 million in perpetuity @ 7% p.a.)	14.3	20
future replacement (one half of \$8.45 million after 24 years, then at 25 year intervals @ 7% p.a.)	1.0	25

Tweed River Entrance Sand Bypassing Bill 1995

Schedule 1 Deed of Agreement

2 QUEENSLAND IN DEFAULT

2.1 Assumptions

- (a) The same assumptions as in 1.1 (a) to (g) of this schedule;
- (b) the cost of dredging material from the bar and entrance area is \$5.00 per cubic metre; and 5
- (c) the sand is placed on the downdrift beaches and is not sold.

- 2.2 The damages recoverable by NSW at the date of termination would be \$25.4 million, calculated as follows: 10

	\$ million	
compensation under clause 19.7 (a)	2.0	
reasonable site restoration under clause 19.7 (b)	3.0	
amount applicable under clause 19.7 (c)	20.4	15
cost of maintaining a Clear Navigation Channel in perpetuity (\$2.5 million @ 7% p.a.)	35.7	
less NSW's share of remaining net present value of System's	15.3	20
future operating and maintenance (\$1 million in perpetuity @ 7% p.a.)	14.3	
future replacement (one half of \$8.45 million after 24 years, then at 25 year intervals @ 7% p.a.)	1.0	25

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IN WITNESS OF WHICH this Agreement has been respectively signed for and on behalf of the Parties on the date first set out above.

SIGNED and SEALED for and on behalf of the STATE OF NEW SOUTH WALES by the Honourable Ian Armstrong, Deputy Premier and Minister for Public Works in the presence of:	}	Ian Armstrong (sgd)	5
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Witness	}	DON BECK	
Name of Witness (print)	}	DM Beck. (sgd)	10

SIGNED and SEALED for and on behalf of the STATE OF QUEENSLAND by the Honourable Molly Robson, Minister for Environment and Heritage in the presence of:	}	Molly Robson (sgd)	
	}	2/3/1995	15

Witness	}	D.G. McGreevy.	
Name of Witness (print)	}	(sgd) D.G. McGREEVY.	



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## Schedule 2 Heads of Agreement

(Section 4)

This Heads of Agreement is made on 31st March, 1994 between the State of New South Wales and the State of Queensland.

### 1.0 PREAMBLE

5

The Governments of New South Wales and Queensland ("the States") recognise the importance of the Gold Coast -Tweed Heads region as a major international and national tourism destination, a significant growing recreational and residential area, and a unique coastal environment.

The region is the destination for more than 500,000 visits annually by overseas arrivals and makes a substantial contribution to Australia's exports of services. The Gold Coast/Tweed is a major destination for the 2.3 million overseas visitors who visit Australia annually.

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In seeking to maintain and enhance the attributes of this region, specifically the Tweed River estuary and the southern Gold Coast beaches ("the Beaches"), NSW has broadly defined its objective as establishing and maintaining an improved navigable entrance to the Tweed River ("the River"), and Queensland has broadly defined its objective as achieving a continuing supply of sand together with the supply of an initial quantity of sand to the Beaches to restore amenity.

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The States have undertaken a number of investigations to improve the understanding of this complex environment, and have implemented a number of projects to restore and enhance the area, including those undertaken by, and/or in co-operation with, local councils.

To aid the realisation of a means of achieving their respective objectives, the States commissioned a report entitled "Tweed River Entrance - NSW/QLD Sand Transfer Negotiations" by WBM Pty Ltd, The University of Queensland and Australian Water and Coastal Studies Pty Ltd, May, 1991, ("the Joint Consultants' Report") and noted its contents.

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The Premiers of NSW and Queensland ("the Premiers") then exchanged letters on this matter between 11th October, 1991 and 27th January, 1994. The Director-General of NSW Premier's Department wrote to his Queensland counterpart on 7th September, 1992 and the Premiers wrote to the Prime Minister on 23rd July, 1993.

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The States have agreed in principle to the future development and implementation of a joint operation to achieve their respective objectives and to that intent have agreed to enter into this Heads of Agreement as a preliminary step to the formalisation of their respective rights and obligations in connection with a project to be known as the Tweed River Entrance Sand Bypassing Project ("the Project").

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A Cost Benefit Analysis undertaken for the NSW Government from an inter-State perspective indicated that the Project has a Benefit Cost Ratio of 2.4. Benefits from an overall community viewpoint include improvements in tourism expenditure, development potential, entrance safety, recreational activities and flood mitigation compared with the "Do Nothing" case.

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## 2.0 INTENTIONS

In recognition of the benefits, the States enter this Project in a spirit of goodwill and co-operation.

This Heads of Agreement is not intended to create legal relations but the parties undertake to exercise their best endeavours to develop and implement the Project.

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## 3.0 THE PROJECT

The States hereby agree to the development and implementation of the Project which comprises two inter-related components, namely:

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- (a) an initial dredging of the Tweed Bar and entrance area and the nourishment of the Beaches; and
- (b) an artificial sand bypassing system, to operate in perpetuity.

The Project is derived from the Joint Consultants' Report and includes items listed in the first column of Table C1 of that report.

25

The Project is designed to satisfy the objectives of the States as defined in the Joint Consultants' Report. These objectives are:

### NSW

"To establish and maintain a navigable depth of water of at least 3.5 m below ISLW in the approach to and within the entrance channel over a width equal to that between the rubble mound breakwaters".

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**Queensland**

“To achieve a continuing supply of sand to the southern Gold Coast beaches at a rate consistent with littoral drift rates updrift and downdrift of those beaches, together with the supply of such additional sand to the beaches as is required to restore the recreational amenity of the beaches and maintain it.” 5

The States acknowledge that the Project is unique and without precedent. It is located on an open high-energy coastline subject to variable natural forces, in a highly-valued environment, subject to intensive usage. Accordingly, it is recognised that the Project must be designed, evaluated and implemented prudently and in an environmental sensitive way, if the long-term benefits are to be effectively achieved. 10

The general benefits are anticipated to include:

- (a) the improvement in the safety of navigation of the River entrance with the consequent benefits to recreational boating, tourism, property values and the fishing industry; 15
- (b) improved tidal flushing of the River estuary, improving water quality, mitigation of flooding, and enhancing development potential; and
- (c) the restoration, widening and long-term maintenance of the Beaches, with associated benefits to tourism, recreation, property values and the reduction of erosion threats. 20

The States hereby agree that neither will undertake activities which are detrimental to or compromise the securing of the other's objectives.

**4.0 MANAGEMENT**

**4.1 General** 25

Responsibility for implementation of the Project rests with the NSW Minister for Public Works and the Queensland Minister for Environment and Heritage or their respective successors.

The two Ministers will be responsible for implementing the project in accordance with the cumulative intent of the letters referred to in Clause 1.0, this Heads of Agreement and the Deed of Agreement which will be produced after this Heads of Agreement is executed. Where there is any inconsistency between the letters and this Heads of Agreement the Heads of Agreement shall prevail. 30

In order to implement the Project, the Ministers may use the officers and resources of NSW Public Works and Queensland Department of 35



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Environment and Heritage. They may also delegate authority to officers of those Departments.

To ensure that there is close liaison and co-operation and to ensure the efficient and effective delivery of the Project a Working Group will be formed. The Working Group will be responsible to both Ministers. 5

In addition, the Ministers will be advised by an Advisory Committee.

#### **4.2 Working Group**

The Working Group will comprise three members from each State to be nominated by the respective Minister. At the Ministers' discretion one member from each State may be chosen to represent the relevant local government authority. 10

The Working Group will be responsible for implementing the Project including strategic action planning, financial control, policy setting and review at State Government level.

#### **4.3 Advisory Committee**

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The Advisory Committee will comprise two officers from each State to be nominated by the respective Minister, one representative each from Tweed Council and Gold Coast City Council to be nominated by the respective Council and four community representatives (two from each State) to be nominated by the respective Minister. At least one of the State Government officers from each State on the Advisory Committee must also be a member of the Working Group. 20

The Advisory Committee will give advice on the following:

- Preparation of environmental impact assessment and tender documents for the bypass. 25
- Calling tenders.
- Acceptance of tenders.
- Preparation of a plan of management.
- Management and implementation of the works.
- Issues of relevance to the local community. 30
- Other matters referred to it by the Ministers.

#### **4.4 Community Input**

Both States acknowledge the importance of community input to the Project through its various stages and steps will be taken to ensure that such consultation is incorporated. 35

#### **4.5 Deed of Agreement**

The responsibility for preparation of the proposed Deed of Agreement will rest with the Ministers or their delegates.

#### **4.6 Initiation**

Notwithstanding the provisions of Clause 2.0, if the States decide to 5  
implement the Project or part thereof prior to execution of the Deed of  
Agreement the Project or that part of the Project will proceed in accordance  
with this Heads of Agreement, to the intent that if any contract is entered  
into with any third party for the purposes of the Project and both Ministers 10  
first approve in writing of the terms of the contract, then, as between the  
States the provisions of this Heads of Agreement that are applicable to such  
a contract (including the proportional funding arrangements) shall to that  
extent be legally binding upon the States.

#### **5.0 SCOPE OF WORKS**

The Project shall consist of two parts, namely, the Initial Dredging 15  
component and the Permanent Bypass component.

##### **5.1 Initial Dredging**

The Initial Dredging component shall involve dredging from the River  
entrance bar and possibly other areas of two million cubic metres of sand  
and the placement of that material on the Beaches (including the nearshore 20  
zone and/or upper beach). This dredging may take place in parts.

The purpose of this dredging is to achieve an improvement in navigation of  
the River entrance and to nourish the Beaches.

##### **5.2 Permanent Bypass**

The Permanent Bypass component consists of the design, manufacture, 25  
supply, delivery and commissioning of a sand bypassing system and the  
continuing operation of that system including replacement of the capital  
equipment.

The system will need to be designed and operated in a way which generally  
achieves the objectives of the two individual States as defined in Clause 3.0. 30  
The purpose of the bypass is to facilitate the natural littoral sand movement  
processes. In general terms it should convey the net littoral transport which  
occurs at the northern portion of Letitia Spit in the absence of actions to  
influence it.

The Bypass system will deliver sand to the Beaches generally in accordance 35  
with the Joint Consultants' Report ie; Durambah Beach (minor quantity



capability) Snapper Rocks (major quantity capability) and Kirra Point (on demand capability).

Some allowance will have to be made for sand which is not captured by the bypass system before it reaches the Tweed entrance or which is lost from the natural system before it reaches the Beaches.

5

This long term average net littoral transport rate is currently understood to be 500,000 m<sup>3</sup> per year (page 8 of the Joint Consultants' Report), but analysis to date suggests that it can vary between 270,000 m<sup>3</sup> and 900,000 m<sup>3</sup> in any individual year.

The States will agree on a system for managing the delivery of sand to match the long term average net littoral transport, but which will take account of the annual variations with regard to quantities of sand delivered by natural processes to Letitia Spit, and which will also take account of the specific objectives of both States.

10

If the long term average net littoral transport rate changes, the rate of delivery will be changed accordingly.

15

This system will have to take account of coastal process issues as they relate to the Beaches, the River entrance, Duranbah Beach and to Letitia Spit, as well as to beach usage criteria and navigation requirements.

It is recognised that sand will continue to accrete in NSW until the bypass is operational. Accordingly, the total quantity of sand transported to Queensland in the first five years of bypassing system operation shall be increased above the agreed rate of 500,000 m<sup>3</sup> per year to take account of (i) ongoing sand accumulation within NSW prior to the initial dredging and (ii) the amount of material which is deposited on the bar of the River in the period between the completion of the initial dredging and the commencement of the bypass operation. The total quantity in (i) is accepted to be 550,000 m<sup>3</sup>; the total quantity in (ii) will be the difference in quantities based on the post initial dredging survey and a repeat survey immediately prior to the bypass being operational.

20

25

30

Consideration needs to be given to variations to the figure in (i) above to take account of any variation which may arise due to dredging of the River which may take place before Initial Dredging and in (ii) for any net transport into the estuary between the dates of the surveys.

### 5.3 Timing of the Project

35

The States agree that the Project should be implemented expeditiously. It is recognised that there are distinct technical advantages in having the Initial



## Tweed River Entrance Sand Bypassing Bill 1995

### Schedule 2 Heads of Agreement

Dredging take place concurrently with the commissioning of the sand bypassing system. However, it is accepted that there are broader advantages in carrying out the Initial Dredging as soon as possible and as a compromise the Initial Dredging should be undertaken at the earliest possible date and the interval between the Initial Dredging and the commissioning of the bypass should be the minimum possible. (It is envisaged that contracts will be let for the Initial Dredging in late 1994 and that the bypass will be operational by 1996). 5

## 6.0 FINANCE AND COSTING

### 6.1 Cost Estimate 10

In the correspondence between officers of the States it was accepted that for the purpose of determining the ratios for the sharing of costs of the Project, the following estimates, based on papers C and D of the Joint Consultants' Report, were adopted:

	\$ million	
	(1990 dollar terms)	
(i) Initial sand supply * (based on 2M m <sup>3</sup> )	10.0	
(ii) Establishment cost of first system (based on a jack up platform)	13.5	
(iii) Operating cost (including maintenance, monitoring)	1.96 p.a.	20
(iv) Platform/trestle replacement cost	8.45	

\* The Initial sand supply will be achieved by the Initial Dredging.

Similarly, in Net Present Value terms, it was accepted that the total cost estimate of the Project is \$53.41 million in 1990 dollar terms. Actual costs will not be known until after tenders are received or operation commences depending on the type of tenders accepted. A table illustrating the derivation of this estimate is set out in Attachment A. 25

### 6.2 Cost Sharing

Notwithstanding anything in Clause 6.1 the States agree that the final actual costs of the Project will be shared as follows: 30

	NSW	QUEENSLAND	
	(%)	(%)	
Initial sand supply *	75	25	
Establishment cost of first sand bypass system	75	25	5
Operating cost (including maintenance, monitoring)	50	50	
Platform/trestle replacement cost	50	50	

\* The Initial sand supply will be achieved by the Initial Dredging.

In the event that payment for the Initial sand supply and/or the Establishment cost of the first bypass system is not made by means of upfront capital, but is incorporated in a recurrent payment per unit of sand supplied, the contribution by each State to the recurrent unit charge will adequately take account of their relative contributions, as defined above, to the Initial sand supply and/or Establishment cost of the first system. 10  
15

### 6.3 Royalties, Land Rent and Acquisition Costs

The States agree in principle that any sand royalties levied by either State which could apply to the sand which, for the purposes of this project, is transferred between the States, will not apply or shall be waived.

The issue of possible mineral extraction and any royalty or income therefrom has been excluded from this document and will be addressed separately should the matter arise. 20

The States agree in principle that where the use and occupation of land is necessary for the Project, no charges are to be made or imposed for land rent or land acquisition costs as the case may be, in respect of land owned or held by the States or either State. Similarly no charges are to be made or imposed for land rent in respect of land acquired for the Project from any third party. As between the States, any compensation which may be payable for land acquired for the Project from any third party shall be a 75% NSW: 25% Queensland shared cost of the Project. 25  
30

### 6.4 Accounting Arrangements

The States acknowledge that procedures satisfactory to both parties will be implemented to ensure that each State meets the agreed share of the final actual cost of the Project.



The accounting and audit procedures implemented must satisfy the public accountability and administration requirements of each State for the funding of infrastructure.

### **6.5 Contributions to Project from Third Parties**

The States agree that any moneys contributed to the Project by parties other than the Queensland Government, the NSW Government, or local government in the States ("Third Party Contributions") shall be accounted for in the following manner: 5

- Where the Third Party Contributions are contributed for a particular part of the work, those Third Party Contributions will be deducted from the total cost of the part for which they were contributed and the remaining costs of that part will be shared as described under the heading "Cost Sharing" above. 10
- Where the Third Party Contributions are not contributed for a particular part, the amount of such Third Party Contributions shall be deducted from the total outstanding cost of the part then currently under way ("the Current Part") and the remaining costs of that part will be shared as described in Clause 6.2. If the amount exceeds the total outstanding cost of the Current Part, the remainder shall be deducted from the total outstanding cost of the next and successive parts in turn. In the context of this paragraph the three parts of the Project are (i) the Initial Dredging, (ii) the establishment of the bypass system and (iii) the operation of the system including replacement. 15  
20

### **6.6 Operation, Maintenance, Replacement and Contingency Funding**

The Project involves the operation of the sand bypass system in perpetuity including replacement of the capital equipment as necessary. It is recognised that the costs of the system will vary substantially from year to year due in part to inherently unpredictable variations in the weather, and other related matters. 25

The States agree to meet actual funding needs for works under the provisions of this agreement as they become due including replacement and contingency items. 30

The States recognise there are substantial adverse consequences in the unlikely event of cessation of the Project and provision will be made for such in the Deed of Agreement. 35



## **7.0 CONTRACTS, PROCUREMENT SYSTEM AND IMPLEMENTATION**

The States agree that they will act expeditiously and co-operatively to implement the Project in an efficient manner consistent with this Heads of Agreement, including inter alia developing a Deed of Agreement, establishing administrative and legislative arrangements (including introducing legislation in either or both States if necessary) and undertaking design and engineering and necessary statutory and environmental approvals of both States. 5

Project development will be undertaken jointly by Queensland and NSW. Provisions concerning project risk will be made in the Deed of Agreement. 10

Subject to Clause 4.6 it is envisaged that minor contracts may be let by either State with the other State's interest protected by this Heads of Agreement and the Deed of Agreement.

For the bypass system it is envisaged expressions of interest will be called and that the contract(s) will be based on a performance based specification with the expectation that there may need to be pre and post tender negotiations. 15

## **8.0 DISPUTES RESOLUTION**

The Project involves an agreement between two sovereign States and in this context dispute resolution should be undertaken in a spirit of cooperation appropriate to this joint venture between two States. 20

It is the intention of the parties to settle amicably by discussion and negotiation at the appropriate level or levels of their respective organisations all disputes arising in relation to this Heads of Agreement. 25

If nevertheless the States are unable to agree upon any matter under or arising out of this Heads of Agreement including matters not covered in the Heads of Agreement but necessary for or incidental to achieving the objectives of the Heads of Agreement, any disagreement will become a Dispute when one party serves written notice on the other party providing details of the disagreement. 30

In the event of a Dispute the States will seek to appoint a suitably qualified person ("the Expert") to advise them what, in the opinion of the Expert, each party should do or pay in order to give effect to the Heads of Agreement or the objectives of the Heads of Agreement. 35

The fees of the Expert will be shared equally between the parties.

The Project will continue while any dispute is being resolved.

Tweed River Entrance Sand Bypassing Bill 1995

Schedule 2 Heads of Agreement

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SIGNED on behalf of the  
State of NEW SOUTH  
WALES by John Fahey,  
Premier in the presence of:

John Fahey (Sgd)  
.....  
John Fahey, Premier

Don Beck (Sgd)  
..... Witness

5

DON BECK  
..... Name of  
Witness  
(print)

10

SIGNED on behalf of the  
State of QUEENSLAND by  
Wayne Goss, Premier in the  
presence of:

Wayne Goss (Sgd)  
.....  
Wayne Goss, Premier

Merri Rose (Sgd)  
..... Witness

15

MERRI ROSE  
..... Name of  
Witness  
(print)

20

## Attachment A

## NET PRESENT VALUE OF SAND BYPASS SYSTEM

(\$ million, 1990 terms)

## Jack-up Platform System

	Year 1	25	50	75	100	125	150	175	200 →	5
Capital costs										
Initial Sand supply	10									
Establishment cost of first system	13.5									10
NPV	23.50									
Platform/trestle replacement	0	8.45*	8.45	8.45	8.45	8.45	8.45	8.45	8.45	
NPV	1.91									15
Operating cost (per annum)	1.96	1.96	1.96	1.96	1.96	1.96	1.96	1.96	1.96	
NPV	28.00									
Total NPV (7% discount rate)	53.41									20
Note: Capital cost is 'undiscounted', i.e. it is assumed that the full \$23.5m is spent at the beginning of year 1. However, the first year's operating cost is discounted.										
* \$8.45 M is the estimated cost of replacing the jack-up platform (\$6.5 M) with a contingency allowance of 30%										



## **Schedule 3 Further Agreements**

(Section 6 (4))



New South Wales

# **Tweed River Entrance Sand Bypassing Act 1995 No 55**

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New South Wales

## **Tweed River Entrance Sand Bypassing Act 1995 No 55**

Act No 55, 1995

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An Act to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to improving the navigability of the entrance of the Tweed River and the bypassing of sand around that entrance, and for related purposes. [Assented to 22 November 1995]

---

The Legislature of New South Wales enacts:

## Part 1      Preliminary

### 1    Name of Act

This Act is the *Tweed River Entrance Sand Bypassing Act 1995*.

### 2    Commencement

This Act commences on the date of assent to this Act.

### 3    Purpose of Act

The purpose of this Act is to provide for the carrying out of agreements between the States of New South Wales and Queensland with regard to:

- (a) the improvement of the navigability of the Tweed River entrance, and
- (b) the bypassing of sand around that entrance so that it can replenish the southern Queensland beaches.

### 4    Definitions

In this Act:

*deed of agreement* means the Deed of Agreement dated 2 March 1995, a copy of which is set out in Schedule 1,

*further agreement* means an agreement approved by the operation of section 6,

*heads of agreement* means the Heads of Agreement dated 31 March 1994, a copy of which is set out in Schedule 2,

*the works* means the works to be carried out, maintained or constructed to give effect to the deed of agreement and any further agreement.

---

## Part 2      Agreements

### 5    Ratification, approval and construction of certain agreements

- (1)    The execution of the heads of agreement and the deed of agreement on behalf of the State of New South Wales is ratified and both of those agreements are approved.
- (2)    References in the heads of agreement and the deed of agreement to the Minister for Public Works are taken to be, and to have been on and from 5 April 1995, references to the Minister administering this Act.

### 6    Further agreements

- (1)    If:
  - (a)    an agreement is entered into on or after the date of assent to this Act between a New South Wales Minister and a Queensland Minister, described in the agreement as acting on behalf of their respective States, and
  - (b)    the Minister administering this Act certifies that the agreement is for the purpose of giving effect to the heads of agreement, or for any ancillary purpose,

the Minister administering this Act must, within 7 sitting days after this section commences or the agreement was entered into (whichever occurs later), lay a copy of the agreement before each House of Parliament or cause a copy to be so laid.

- (2)    The execution of any such agreement by a Minister on behalf of the State of New South Wales is ratified, and the agreement is approved, at the expiration of 21 sitting days of each House after the copy of the agreement was laid before it.
- (3)    However, subsection (2) does not apply if either House of Parliament resolves to disapprove the agreement during the period of 21 sitting days applicable to it.
- (4)    Schedule 3 to this Act may be amended by a proclamation inserting in that Schedule a copy of each further agreement approved by the operation of this section.



## **7 Authorisation to enter into contracts and other arrangements**

- (1) The Minister may enter into contracts, agreements or arrangements on behalf of the State of New South Wales and (if so authorised by a Queensland Minister or another person acting on behalf of that State) on behalf of the State of Queensland for the carrying out of the works, whether or not within New South Wales.
- (2) Without limiting subsection (1), the Minister may be a joint party to any such contracts, agreements or arrangements.

## Part 3 Implementation

### 8 Implementation of agreements

- (1) The deed of agreement and each further agreement may be carried into effect despite the provisions of any other Act or law.
- (2) In particular, the carrying out of the works is not subject to the *Pipelines Act 1967*.
- (3) All acts, matters and things:
  - (a) for or with respect to which provision is made in the deed of agreement or a further agreement, or
  - (b) that by the deed of agreement or a further agreement are agreed, directed, authorised or permitted to be made, done or executed,are authorised and confirmed.
- (4) Without limiting subsection (3):
  - (a) the Minister may do or cause to be done (whether or not within New South Wales) any act, matter or thing necessary for the purpose of carrying out the deed of agreement and each further agreement, and
  - (b) any such act, matter or thing may be done in New South Wales by or on behalf of the State of Queensland.
- (5) Any act, matter or thing done or omitted to be done for the purpose of carrying out the heads of agreement or the deed of agreement before their approval by this Act, or for the purpose of carrying out an agreement (which has been certified under section 6 (1)) before its approval by or disapproval under this Act, is validated.

### 9 Carrying out of the works

- (1) For the purposes of the *Public Works Act 1912*, the works are taken to be an authorised work and the Minister is, in relation to the works, taken to be the Constructing Authority. Sections 34, 35, 36 and 37 of that Act do not apply in respect of the works.
- (2) Accordingly, the Minister may acquire land under section 39 of that Act for the purposes of the works.

- (3) Section 42 of the *Aboriginal Land Rights Act 1983* does not apply to such an acquisition of land.
- (4) Division 1 (Pre-acquisition procedures) of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply to such an acquisition of land if the Minister certifies to the Governor, when obtaining the approval of the Governor to an acquisition notice under section 19 of that Act, that it is appropriate for the purposes of the works that the Division not apply to the acquisition.
- (5) Land may be acquired for the purposes of the works even if:
  - (a) any consent or permission required under the *Crown Lands Act 1989* has not been obtained or granted, or
  - (b) the Minister may not be qualified under the *Crown Lands Act 1989* to hold land of the tenure to be so acquired.

#### **10 Application of Environmental Planning and Assessment Act 1979 to the works**

- (1) In this section, *development* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.
- (2) Development for the purposes of the works:
  - (a) may be carried out without the necessity for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, and
  - (b) may be so carried out even if the development would be prohibited, or would require development consent, in the absence of this section.
- (3) Any such development is an activity within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979* and the Minister is the determining authority in relation to that activity for the purposes of that Part.
- (4) For the purposes of section 115D of the *Environmental Planning and Assessment Act 1979*, the Minister is excluded from Division 4 of Part 5 of that Act in relation to so much of the works as is the subject of the environmental impact statement dated October 1994, entitled "Tweed River Entrance Sand Bypassing Project -



Tweed River Entrance Maintenance Dredging and Associated Nourishment of Southern Gold Coast Beaches” and prepared for NSW Public Works and the Queensland Department of Environment and Heritage.

- (5) So much of the works as is the subject of that environmental impact statement is taken to be, and always to have been, maintenance dredging within the meaning of State Environmental Planning Policy No. 35—Maintenance Dredging of Tidal Waterways.
- (6) Any act, matter or thing done in accordance with the Environmental Planning and Assessment Regulation 1980 in connection with the preparation of that environmental impact statement before the commencement of this section has the same effect as if it had been done in accordance with the Environmental Planning and Assessment Regulation 1994.

## Part 4 Miscellaneous

### 11 Limitation on liability

- (1) Any act, matter or thing done or omitted to be done by the Minister (or by any other natural person, whether or not acting on behalf of the State, being a person engaged, or involved in performing any function, in connection with the carrying out the works) does not subject the Minister (or the person) personally to any action, liability, claim or demand, if the act, matter or thing was done or omitted to be done in good faith for the purpose of carrying out the works.
- (2) An action for nuisance connected with or in any way arising out of any act, matter or thing done or omitted to be done in carrying out the works, or an action for the abatement or remedying of any such nuisance, may not be brought against the State, the Minister or any other person (including a corporation) involved in carrying out the works or performing any function in connection with the carrying out of the works, whether or not the other person was acting on behalf of the State.
- (3) This section applies whether the act, matter or thing concerned was done or omitted to be done before or after the commencement of this section and so applies despite any other Act or law.

### 12 Right to compensation for acquisition of certain claimable Crown lands

- (1) In this section, ***claimable Crown Lands*** has the same meaning as in section 36 (1) of the *Aboriginal Land Rights Act 1983*.
- (2) Any claim under Part 6 of the *Aboriginal Land Rights Act 1983* made in respect of land that has been acquired for the purposes of the works and that was claimable Crown land when the claim was made, may be determined under the *Aboriginal Land Rights Act 1983* as if the land had not been so acquired.
- (3) However, land so acquired is not to be transferred under section 36 of the *Aboriginal Land Rights Act 1983*. A claimant to whom land would, but for this subsection, be transferred under section 36 of that Act is entitled to compensation as if the claimant held, at the date of the acquisition, an estate in fee simple in the land.

- (4) The compensation is to be determined as if the land had been acquired in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (5) For the purposes of subsection (3), the Land and Environment Court may make an order for compensation if any such claim is determined by the Court.
- (6) This section applies to any such claim whether the claim was made before or after the commencement of this section.

### **13 Act binds Crown**

This Act binds the Crown in right of New South Wales and also, as far as the legislative power of Parliament permits, in all its other capacities.

### **14 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.



## **Schedule 1 Deed of Agreement**

(Section 4)

### **TWEED RIVER ENTRANCE SAND BYPASSING PROJECT AGREEMENT**

THIS DEED OF AGREEMENT is made on SECOND day of MARCH 1995.

**B E T W E E N:** THE STATE OF NEW SOUTH WALES ("NSW")

**A N D:** THE STATE OF QUEENSLAND ("Queensland")

#### **RECITALS**

#### **W H E R E A S:**

- A** NSW and Queensland have agreed to the implementation of a project to be known as the Tweed River Entrance Sand Bypassing Project.
- B** The purpose of this Agreement is to enhance and maintain the attributes of the Gold Coast - Tweed Heads region and more specifically the Tweed River estuary and the southern Gold Coast beaches and to achieve the respective objectives of the Parties. NSW's objective is "to establish and maintain a navigable depth of water of at least 3.5 metres below Indian Spring Low Water (ISLW) in the approach to and within the entrance channel to the Tweed River over a width equal to that between the rubble mound breakwaters" and Queensland's objective is "to achieve a continuing supply of sand to the Southern Gold Coast beaches at a rate consistent with the natural littoral drift rates updrift and downdrift, together with the supply of such additional sand to the beaches as is required to restore the recreational amenity of the beaches and to maintain it". The intention is to achieve the objectives in perpetuity.
- C** The Parties have agreed to implement the Project jointly and in a spirit of goodwill and cooperation. For that purpose they propose to enter into all necessary contracts contemplated by this Agreement as Joint Principals.

- 
- D The Parties have further agreed that NSW will for practical reasons and given the need to commence the Project expeditiously let the contracts for the Initial Dredging Component and either State may be authorised to let other contracts in its own name on behalf of both Parties as exceptions to the intention that all contracts be entered into by them as Joint Principals.
- E The Parties acknowledge that the Artificial Sand Bypassing System will need to be replaced from time to time and have agreed to do all necessary cooperative acts to ensure that any replacement system will be established and operated in such a way as to fulfil the purpose of this Agreement.

NOW IT IS AGREED AS FOLLOWS:—

## **PART I - INTERPRETATION**

### **1. PURPOSE**

The purpose of this Agreement is as set out in the Recitals.

### **2. DEFINITIONS**

In this Agreement -

“Additional Works” means the works which the Ministerial Council agrees to include as part of the Project pursuant to clause 11.

“Adjustment Formula” means the relevant monetary amount being adjusted by being divided by the Consumer Price Index (All groups) last published by the Australian Bureau of Statistics at the date of signing of this Deed and multiplied by the Consumer Price Index last published at the date of notification of the relevant default, dispute or other matter to which a monetary amount applies. If the Consumer Price Index ceases to be published a replacement index shall be agreed on in writing by the Parties and in default of agreement for a period of fourteen (14) days the index may be determined at the request of either Party by the President or Acting President of the New South Wales Division of the Australian Institute of Valuers or his nominee.

“Anniversary Date” means the 30th day of September each year or such other date as may be agreed by the Parties, commencing on the first 30th day of September following the commissioning of the First System or an Interim System.

“Annual Period” means a period of one year, or part thereof for the first Annual Period, following the commissioning of the First System or an Interim System, concluding on an Anniversary Date.

“Artificial Sand Bypassing System” or “System” means the works as described in the Heads of Agreement to be established pursuant to this Agreement for the hydraulic or mechanical movement of sand in perpetuity from within the Tweed River Bar and Entrance Area on the updrift side to the Beaches on the downdrift side of the Tweed River entrance other than by natural processes and includes all necessary preliminary and ancillary activities, any interim works that the Parties agree to establish for that purpose and any replacement of the works which may be necessary from time to time to meet the purpose of this Agreement but does not include any works associated with the Initial Dredging Component.

“Beaches” means, for the purpose of the Initial Dredging Component, the area identified on the map shown in Schedule 1 and means, for the purpose of the System, Duranbah Beach, Snapper Rocks and Kirra Point or in their vicinity.

“Cash Flow Period” means the period of one month, or such other period as may be agreed by the Parties for the purpose of clause 14.

“Clear Navigation Channel” means a navigation channel which has a depth below Indian Spring Low Water (ISLW) of at least 3.5 metres over a width of 70 metres and extending from an upriver limit defined by the upriver boundary of the Tweed River Bar and Entrance Area shown in Schedule 2 to the open sea or such other parameters as may be agreed in writing between the Parties.

“Consultation Actions” mean the actions listed in column 1 of the table in clause 10.5.

“Contract Management” means the functions and activities referred to in clause 8.3.1(b).

“Contract Quantity” means the cumulative quantity of sand which is to be delivered by any Anniversary Date in accordance with clause 12 or as otherwise agreed in writing by the Parties.



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“Contracting State” means a Party who carries out or pays for work which is a Shared Project Cost.

“Coordinating State” means the Party specified in clause 8.6.2 and as varied from time to time pursuant to clause 10.11.2, as the Party representing both Parties for the purposes set out in clause 8.6.

“First System” means the first Artificial Sand Bypassing System established under this Agreement which is assessed by the Parties before accepting tenders as being capable of operating for a period of approximately 25 years and does not mean any Interim System unless the Parties expressly agree in writing that an Interim System is to be considered as the First System. The assessment of the Parties shall be based upon best available practices and best available data.

“Government Agency” means:

- (a) a department or administrative office of the government of either Party, or of the Commonwealth of Australia;
- (b) a statutory body representing the Crown in right of either Party or the Commonwealth of Australia;
- (c) a local government body in NSW or Queensland; or
- (d) any other public authority which is agreed in writing by the Parties to be a Government Agency for the purposes of this Agreement.

“Heads of Agreement” means the Heads of Agreement between the State of NSW and the State of Queensland relating to the Tweed River Entrance Sand Bypassing Project executed by the Premier of NSW and the Premier of Queensland on 31st March 1994.

“Initial Dredging Component” or “Initial Dredging and Sand Supply Component” means the dredging of two (2) million cubic metres of sand from the Tweed River Bar and Entrance Area and the deposit thereof on the Beaches and includes all necessary preliminary and ancillary activities.

“Intellectual Property” includes copyright, patent rights, design rights, eligible layout rights, rights of confidentiality and trade or business secrets and the rights to registration or proprietorship of such rights.

“Interim System” means an Artificial Sand Bypassing System which the Parties agree under clause 10.4 to establish prior to the establishment of the First System and which is intended by the Parties to operate for a period of less than 25 years.

“Joint Consultants’ Report” means the report entitled “Tweed River Entrance - NSW/Qld Sand Transfer Negotiation” by WBM Pty Limited, The University of Queensland and Australian Water and Coastal Studies Pty Limited dated May 1991.

“Joint Principals” means both Parties or one nominee of each Party for the purpose of the execution of contracts contemplated by this Agreement to be let jointly by both Parties.

“Joint Principals’ Representative” means the person described in clause 8.8.

“Latest Commencement Date” means the date specified in clause 9.3, as adjusted pursuant to this Agreement, after which Queensland may give notice that it intends to let contracts for the Initial Dredging Component.

“Long Term Average” means the long term average annual net littoral transport of sand that would, in the absence of any artificial actions to influence it, cross a line perpendicular to the coastline, situated one kilometre south of the southern training wall at the Tweed River entrance and extending to the 20 metre depth contour, less the annual net quantity of sand which, after the commissioning of the System, crosses that line and reaches Queensland, or the coastal waters of the State of Queensland as defined in the Coastal Waters (State Powers) Act, 1980 (Cth), by natural means.

“Ministerial Council” means the NSW Minister for Public Works and the Queensland Minister for Environment and Heritage or their nominees.

“Original Project Material” means all sketches, plans, drawings, specifications, estimates, designs, calculations, data, information, computer programs, reports, models or other documents or tangible materials produced in the course of the Project or in relation to any activity connected with the Project.

“Partnering Document” means the “Partnering Guidelines” (ISBN 0 7310 0989 4) of the New South Wales Capital Works Procurement Manual dated October 1993 (ISBN 0 7310 0964 9) or any amendment or substitution to those guidelines approved by both Parties for the purpose of this Agreement.

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“Process” means the expert determination process as set out in clause 17.4.

“Project” means the Tweed River Entrance Sand Bypassing Project which comprises two inter-related components namely:

- (a) the Initial Dredging Component; and
- (b) the System.

Without limitation of the above, the Project includes:

- (i) the items described in the Heads of Agreement as being part of the Project; and
- (ii) the Additional Works.

“Project Directors” means the persons described in clause 8.4.

“Project Management” means the functions and activities referred to in clause 8.3.1(a).

“Project Manager” means the person described in clause 8.9.

“Reviewing State” means the Party which is not the Coordinating State.

“Sand” means clean natural sand of an equivalent quality to that which exists in the natural littoral system arriving at the northern portion of Letitia Spit and includes that supplied to the bar by the natural fluvial system.

“Shared Project Cost” means an item of work, the costs of which are to be shared by the Parties on a percentage basis as specified in this Agreement. Without limitation of the above, all works falling within the definition of the Project in this clause 2 shall be Shared Project Costs.

“System” means the same as “Artificial Sand Bypassing System”.

“Target Action” means an action listed in Column 1 of the table in clause 10.3.

“Target Date” means a date listed in Column 2 of the table in clause 10.3 as amended by clause 10.4 or clause 10.6.

“Tweed River Bar and Entrance Area” means the area identified on the map shown in Schedule 2.

“Working Group” means the Working Group established under the Heads of Agreement.



### **3. INTERPRETATION**

- 3.1 In this Agreement,
- (a) a reference to any Act includes any Act amending, or in substitution for, that Act;
  - (b) a reference to this Agreement includes a reference to:
    - (i) the Schedules to this Agreement; and
    - (ii) any amendment of or addition to this Agreement or the Schedules hereto;
  - (c) words importing the singular include the plural and vice versa;
  - (d) words importing any gender include any other gender;
  - (e) "person" includes a corporation; and
  - (f) all monetary amounts are expressed in Australian currency and shall be adjusted from time to time by the application of the Adjustment Formula.
- 3.2 In interpreting a provision of this Agreement, a construction that would promote the purpose or object underlying the Agreement (whether or not that purpose or object is expressly stated in the Agreement) shall be preferred to a construction that would not promote that purpose or object.

## **PART II - LEGAL RELATIONS AND RATIFICATION**

### **4. LEGAL RELATIONS**

The Parties acknowledge and agree that this Agreement is intended to be legally binding and enforceable by the Parties.

### **5. COMMENCEMENT AND TERM**

This Agreement shall commence on the date first set out above and shall continue in force until lawfully determined.

### **6. RATIFICATION AND SUBMISSION TO PARLIAMENT**

- 6.1 Each Party shall promptly take every practicable step to have this Agreement ratified by its Parliament.
- 6.2 Each Party, so far as its jurisdiction extends and so far as it may be necessary, shall provide for or secure the execution and enforcement of the provisions of this Agreement and any Acts ratifying it.

- 6.3 If either Party is unable to secure ratification of this Agreement because any provision is unacceptable to its Parliament, the Parties shall negotiate in good faith to achieve a solution, including by amendment of this Agreement, which promotes the purpose of this Agreement.

### **PART III - THE PROJECT**

#### **7. PARTNERING**

The Parties recognise the benefits of partnering as described in the Partnering Document and will endeavour to follow the principles outlined in that document in relation to the conduct of this Agreement and any contract let by the Joint Principals or by either Party under this Agreement provided that:

- (i) each Party shall be a "stakeholder" for the purposes of the partnering process in any contract let by either Party for the purposes of this Agreement; and
- (ii) to the extent of any inconsistency between the provisions of the Partnering Document and this Agreement, the provisions of this Agreement shall prevail.

#### **8. PROJECT IMPLEMENTATION**

##### **8.1 Joint Principals**

8.1.1 Subject to this Agreement, all necessary contracts for the implementation of the Project shall be let jointly by the Parties as Joint Principals and executed in a manner deemed appropriate by each. It is intended by the Parties that such contracts will be let in the names of the NSW Minister for Public Works and the State of Queensland.

8.1.2 Notwithstanding clause 8.1.1, either Party may enter any contract for the Project in its own name, or in the name of its nominee, as the representative of both Parties, subject to a determination by the Working Group that it is appropriate for the contract to be entered in that way.

8.1.3 Subject to compliance by both Parties with their obligations to consult with the other Party, any monetary liability incurred by either Party in the course of the performance of the Project for breach of contract, in tort (excluding a liability incurred by reason solely of the

negligence of that Party), or other common law or statutory cause of action, whether arising out of or in relation to a contract entered as Joint Principals, a contract entered into by either Party as representative of both Parties or otherwise, shall for the purpose of sharing costs for the Project be included as part of the final actual costs of the applicable item of work.

For the purpose of this clause 8.1.3, a liability is not incurred solely by reason of the negligence of one Party if it arises out of the implementation of a course of action approved by both Parties in accordance with this Agreement or deemed under clause 8.7.7 to be so approved, in a manner which is within the scope of such approval.

## 8.2 Project Risk Assessment

8.2.1 Each Party will be responsible for making its own assessment of Project risks for discussion with the other Party through the Project Directors or within the Working Group.

8.2.2 Without limiting any other obligation under this Agreement, where specific problems arise in relation to the implementation of any aspect of the Project both Parties undertake to cooperate fully in order to achieve a solution which promotes the purpose of this Agreement.

## 8.3 Management

8.3.1 The Parties acknowledge that for the purpose of defining responsibility in the implementation of the Project two separate but related lines of activity must be undertaken. These are Project Management and Contract Management.

- (a) Project Management is the joint responsibility of the Parties working through the Project Directors and the Working Group. It is an over-arching function which involves the coordination, forward planning and review of all elements of the Project including funding, development of a master plan and timetable, securing statutory approvals, public relations, identification of the needs of the Parties



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and resolution of any differences or inconsistencies between the needs of each Party. When the Project reaches the construction and the subsequent operational stage the dominant Project Management function is the ongoing review of progress.

- (b) Contract Management is the responsibility of the Coordinating State. It involves the management of the interface between the Parties and the contractor(s) for the performance of any work in implementing the Project and includes the day to day administration of contracts in accordance with any risk management strategy which the Parties agree to apply.

8.3.2 In order to implement the Project:

- (a) NSW may use the officers and resources of NSW Public Works or other Government Agency and may authorise any person including any Project Manager appointed under this Agreement to act on its behalf; and
- (b) Queensland may use the officers and resources of the Queensland Department of Environment and Heritage or other Government Agency and may authorise any person including any Project Manager appointed under this Agreement to act on its behalf.

8.4 Project Directors

8.4.1 Each Party will appoint a Project Director whose primary function is the representation and promotion of the respective Party's interests.

8.4.2 The Project Directors shall be members of the Working Group.

8.4.3 Details of the Project Directors' responsibilities are set out in Schedule 3.

8.5 Working Group

8.5.1 The Working Group shall provide a forum for liaison between the Parties and shall be responsible for implementation of the Project on behalf of the Parties including:

- (a) strategic action planning (including risk management);
- (b) financial control;
- (c) policy setting; and
- (d) review at State Government level including review of project parameters.

8.5.2 The Working Group shall:

- (a) report to the Ministerial Council through the Project Directors;
- (b) promote close liaison and cooperation between the Parties; and
- (c) provide guidance to the Coordinating State on strategic planning aspects of the Project which impact on contract development or management (an example of such a strategic planning aspect would be whether to place sand at a particular location at a particular time).

8.5.3 Decisions of the Working Group for the purpose of this Agreement, including decisions or determinations pursuant to clause 17.2, shall be by majority provided that such majority includes both Project Directors.

8.6 Coordinating State

8.6.1 One of the Parties shall be the Coordinating State which shall be the representative of both Parties for the purpose of implementing any aspect of the Project which is to be performed by way of contracts entered into by the Parties as Joint Principals.

8.6.2 Subject to this Agreement NSW shall be the Coordinating State.

8.6.3 The Coordinating State shall have the powers and functions expressly conferred by this Agreement and such other ancillary and incidental powers and functions as are necessary for the effective implementation of the Project but excluding the power to execute any contract on behalf of the Reviewing State unless expressly authorised in writing by the Reviewing State to do so.

8.6.4 The Coordinating State shall have the following functions for the purpose of managing the investigation, design, construction, commissioning, operation, maintenance and replacement from time to time of the System:

- (a) environmental impact assessment;
- (b) developing contracts;
- (c) the tender process;
- (d) the development of designs, including benchmark designs for the System;
- (e) technical issues;
- (f) monitoring and auditing in accordance with clause 8.10.1;
- (g) the engagement of consultants;
- (h) Contract Management;
- (i) financial reporting, scheduling reporting, services for the Working Group, public information and administration;
- (j) entering into contracts in its own name as the representative of both Parties, in accordance with clause 8.1.2; and
- (k) any other functions delegated by the Parties from time to time.

8.7 Consultation

8.7.1 In the performance of its functions, the Coordinating State shall consult fully and openly with the Reviewing State on all matters including risk management. This consultation shall take place through the Project Directors or, if referred by either Project Director, through the Working Group and shall continue during the implementation and operation of the Project.

8.7.2 Without limiting any obligation of the Coordinating State under this Agreement to consult with the Reviewing State the Parties acknowledge and agree that the Reviewing State will have input through its Project Director to all risk management decisions by the Coordinating State, including the following:



- (a) choice of procurement and contractual options;
- (b) decisions relating to the engagement of a Project Manager and the functions to be exercised by any Project Manager;
- (c) the engagement of consultants; and
- (d) evaluation of tenders.

8.7.3 Where the Reviewing State does not agree with:

- (a) any assessment of risk made by the Coordinating State; or
- (b) any action proposed by the Coordinating State for the management of any risk including the activities listed in clause 8.7.4,

the Reviewing State may refer the matter to the Working Group or, at its sole discretion, to the Ministerial Council for determination. A matter may be referred to the Ministerial Council whether or not it has previously been referred to the Working Group and whether or not the Working Group has made a determination and in such case the determination of the Ministerial Council shall prevail. The Coordinating State will not proceed with any proposed action while a determination referred to in this clause is pending with respect to that action.

8.7.4 In managing any contract which has been awarded pursuant to this Agreement, the Coordinating State shall apply the risk management strategy determined in accordance with this clause 8, but shall ensure consultation with the Reviewing State prior to any action to implement that strategy, including consultation and notification of any action proposed in relation to:

- (a) valuations and progress payments;
- (b) contractual variations;
- (c) extensions of time for practical completion of contracts;
- (d) audit procedures; and
- (e) resolution of contractual disputes.

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8.7.5 Where a matter referred to in clause 8.7.4 involves:

- (a) a monetary amount for each event of less than \$10,000; or
- (b) a claim for an extension of time of less than four weeks,

the Reviewing State shall notify its approval or otherwise to the action proposed by the Coordinating State within 7 days of receiving notice of such proposal. The Parties may agree in writing to vary the monetary amount and the number of weeks in sub-clauses (a) and (b) of this clause 8.7.5.

8.7.6 If the Reviewing State does not notify the Coordinating State of its approval or otherwise to any action referred to in clause 8.7.5 within the time referred to in that clause, the Coordinating State may assume approval and proceed to implement the proposed action.

8.7.7 The Reviewing State may notify the Coordinating State in writing that the concurrence of the Reviewing State may be assumed with respect to any matter or any class of matters on such conditions, if any, as may be specified in the notice and any action taken by the Coordinating State in accordance with such notice will be valid and effective under this Agreement as if prior consultation had taken place with the Reviewing State.

8.7.8 If the Coordinating State takes any action under this Agreement without consulting the Reviewing State as required by this clause 8.7 or by any other provision of this Agreement:

- (a) the Coordinating State shall indemnify and keep indemnified the Reviewing State against any liability, loss or damage whatsoever which results from such action except to the extent that clause 19.4 applies to the default to exclude clause 19.2; and
- (b) notwithstanding any other provision of this Agreement, the Reviewing State may proceed under clause 19.

8.8 Joint Principals' Representative

8.8.1 The Coordinating State may:

- (a) from time to time appoint a Joint Principals' Representative subject to the written consent of the Reviewing State, which consent shall not unreasonably be withheld; and
- (b) delegate to the Joint Principals' Representative any power or function with respect to Contract Management which the Coordinating State may exercise pursuant to this Agreement.

8.8.2 In exercising any power or function delegated by the Coordinating State under this Agreement, the Joint Principals' Representative shall be subject to the same obligations as the Coordinating State including the obligations of consultation with the Reviewing State.

8.8.3 The person appointed as the Joint Principals' Representative shall hold office until that person's appointment is revoked or until the Party which appointed the Joint Principals' Representative ceases to be the Coordinating State.

8.8.4 Any decision by the Joint Principals' Representative within the delegated authority under clause 8.8.1 shall be binding on both Parties.

8.9 Project Manager

The Coordinating State may appoint a Project Manager to assist in delivery of the Project and may delegate to the person appointed day to day responsibilities in relation to Contract Management.

Any appointment or delegation under this clause is subject to:

- (a) in the case of an appointment, prior consultation with the Working Group and prior consent of the Reviewing State, which consent shall not unreasonably be withheld; and
- (b) in the case of a delegation, prior consent of the Reviewing State to the scope of the functions to be delegated, which consent shall not unreasonably be withheld.



8.10 Monitoring

8.10.1 The Coordinating State shall:

- (a) monitor the performance of contractors in relation to any contracts entered into in respect of the Project;
- (b) monitor the performance of the obligations created under this Agreement;
- (c) carry out such other environmental monitoring as is reasonably required; and
- (d) carry out any other monitoring required by statute in NSW or Queensland.

8.10.2 The work associated with monitoring, including reasonable administrative costs, shall be a Shared Project Cost.

8.10.3 The Coordinating State shall report to the Working Group and the Reviewing State on such monitoring annually or more frequently as the Parties may agree from time to time having regard to the nature and duration of the contract, obligation or type of monitoring.

8.10.4 The Reviewing State may obtain an independent audit of monitoring provided that an independent audit shall be at the expense of the Reviewing State unless the audit reveals a substantial failure in the monitoring in which case it shall be a Shared Project Cost.

8.11 Cost Optimisation

The Parties will give consideration to optimising Project costs when implementing the Project.

**9. THE INITIAL DREDGING COMPONENT**

- 9.1 As an exception to clause 8.1.1, but subject to clause 9.6, NSW shall let the contract(s) for the Initial Dredging Component in its own name or in the name of the NSW Minister for Public Works as the representative of both Parties and shall have such powers and functions as are necessary to ensure the effective implementation of the Initial Dredging Component, including the functions of the types listed in clause 8.6.4 (a), (b), (c), (e), (g), (h), (j) and (k) as these types apply to the Initial Dredging Component.

Schedule 1 Deed of Agreement

- 9.2 Clause 8.7 shall apply to the Initial Dredging Component and for that purpose any reference to the Coordinating State shall be read as a reference to the Party undertaking the Initial Dredging Component and any reference to the Reviewing State is a reference to the other Party.
- 9.3 NSW will use its best endeavours to let the contract for the Initial Dredging Component by 21 March, 1995 but failure to let the contract by that date shall not be a default under this Agreement. Subject to clause 9.5, the Latest Commencement Date is 30 June, 1995 and the Parties will use their best endeavours to complete the Initial Dredging Component by 30 September, 1997, including the completion of the first phase by 31 December, 1995.
- 9.4 To allow NSW to perform its obligations under this clause 9, Queensland undertakes to use its best endeavours to achieve the actions set out in column 1 of the following table and to achieve those actions by the times set out in column 2.

TABLE

	Column 1 ACTION	Column 2 TIME
(i)	Comments on each draft environmental impact statement ("EIS")	Within one week of receiving the draft EIS
(ii)	Written agreement to the advertising of EIS	Within one week of receiving the final draft EIS
(iii)	A review of the submissions on the EIS	Within one week of receiving the submissions
(iv)	All approvals necessary for the initial dredging	Within forty (40) days of the end of the exhibition period of the EIS

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- 9.5 If there is a delay in complying with any requirement of the items (i) to (iv) in the table in clause 9.4, the Latest Commencement Date shall be adjusted by a period equivalent to twice the period by which Queensland is delayed in complying with any such requirement, except in the case of a delay in (iv) which is due to the need for additional work on the environmental impact statement in which case the Latest Commencement Date will be adjusted by the period of such delay.
- 9.6 If NSW does not let contracts for the Initial Dredging Component by the Latest Commencement Date, Queensland may notify NSW in writing that Queensland intends to undertake the Initial Dredging Component and if NSW has not let the first contract for the Initial Dredging Component within one month of the date of such notice Queensland may undertake the Initial Dredging Component and may let a contract or contracts for that purpose as the representative of both Parties.
- 9.7 If Queensland becomes entitled to undertake the Initial Dredging Component pursuant to clause 9.6 but does not let the first contract or contracts for the Initial Dredging Component within four months of becoming so entitled, any notice given by Queensland under clause 9.6 shall be of no effect and NSW shall be responsible for undertaking the Initial Dredging Component within a reasonable time.

## **10. ARTIFICIAL SAND BYPASSING SYSTEM**

- 10.1 The Coordinating State will take all necessary preparatory actions for the letting of contracts by the Joint Principals for the design, construction, commissioning, operation, maintenance and replacement from time to time of the System.
- 10.2 Provided there has been full and open consultation between the Parties in relation to the preparation of any contract referred to in clause 10.1, the Reviewing State shall not unreasonably refuse to execute that contract.
- 10.3 Subject to clause 10.6 the Coordinating State will use its best endeavours to enable the Parties to achieve the Target Actions listed in column 1 of the following table by the Target Dates listed in column 2 of the following table.



TABLE

Column 1 TARGET ACTION		Column 2 TARGET DATE
(i)	Call tenders for the First System	30 November, 1995 Date 1
(ii)	Let the above contract	28 February, 1996 Date 2
(iii)	Commission the First System and commence its operation	28 February, 1997 Date 3
(iv)	Establish a Clear Navigation Channel	31 May, 1997 Date 4

10.4 The Parties may agree to establish an Interim System but failure or inability of the Parties to agree to establish an Interim System shall not create any rights under this Agreement and in particular shall not be referred to expert determination pursuant to clause 17. An Interim System will be established only if the Parties agree on the following:

- (a) new dates for Target Dates 1, 2 and 3, in accordance with the intended period of operation of the Interim System; and
- (b) how the costs of the Interim System will be apportioned between the Parties.

10.5 Without limiting the generality of the obligation of the Coordinating State under clause 8 to consult fully and openly with the Reviewing State, the Coordinating State will undertake the Consultation Actions listed in column 1 in the following table:

TABLE

	Column 1 CONSULTATION ACTION	Column 2 TIME	Column 3 NEXT ACTION
(i)	provide working drafts of the EIS to the Reviewing State for review	three weeks	not applicable
(ii)	provide the final draft EIS to the Reviewing State for review	two weeks	finalise the EIS
(iii)	advise that the EIS has been finalised and seek approval to advertise	one week	commence public exhibition
(iv)	provide all responses to the EIS to the Reviewing State	three weeks	accept tender (subject to (v), (vi), and (vii))
(v)	provide draft tender documents to the Reviewing State	three weeks	finalise tender documentation
(vi)	provide final tender documents for acceptance	three weeks	call tenders
(vii)	provide copies of all tenders, their evaluation and a recommendation to the Reviewing State for review and acceptance	four weeks	accept tender

- 10.6 The Reviewing State will use its best endeavours to give the Coordinating State a response to each Consultation Action, including where applicable written approval to proceed with the action in column 3 opposite that Consultation Action, within the time shown in Column 2 opposite that Consultation Action.

If the Reviewing State does not give written approval within that time each Target Date for which the Target Action has not yet been completed shall be adjusted by the period of the delay in giving written approval to proceed.

- 10.7 The Coordinating State will not carry out the action in column 3 of the table in clause 10.5 opposite any Consultation Action until the Reviewing State gives written approval in accordance with clause 10.6.
- 10.8 The Coordinating State will use its best endeavours to ensure that a Clear Navigation Channel to the Tweed River is maintained and to ensure that the Contract Quantity of sand is delivered to the Beaches by each Anniversary Date.
- 10.9 The Coordinating State shall ensure that any contracts for the operation of the System include provisions that:
- (a) require the contractor to manage the distribution of dredging between the navigation channel and other parts of the Tweed River Bar and Entrance Area to achieve the outcomes required by clause 10.8;
  - (b) whenever the quantity of sand delivered at any Anniversary Date falls short of the Contract Quantity, require the contractor to correct any such deficiency in the quantity of sand delivered prior to the next Anniversary Date; and
  - (c) whenever the quantity of sand delivered at any Anniversary Date exceeds the Contract Quantity, require the contractor to correct any such over supply in the quantity of sand delivered prior to the next Anniversary Date.
- 10.10 The Coordinating State will use its best endeavours to ensure that the System continues to operate to meet the requirements of this Agreement for so long as this Agreement remains in force.



10.11 Exchange of Roles

10.11.1 Subject to this Agreement, if for any reason whether or not by reason of default by the Coordinating State, but other than by reason of default by the Reviewing State:

- (i) any Target Action is not achieved within four months of the applicable Target Date; or
- (ii) after Target Date 4 in clause 10.3, there is not a Clear Navigation Channel for a period of three months; or
- (iii) at any Anniversary Date there has been delivered to the Beaches a quantity of sand which falls short of or exceeds the Contract Quantity by an amount exceeding five hundred thousand cubic metres; or
- (iv) for any three consecutive Anniversary Dates there has been delivered to the Beaches a quantity of sand which falls short of the Contract Quantity by an amount exceeding one hundred thousand cubic metres; or
- (v) for any three consecutive Anniversary Dates there has been delivered to the Beaches a quantity of sand which exceeds the Contract Quantity by an amount exceeding one hundred thousand cubic metres,

the Reviewing State may notify the Coordinating State in writing that it intends to become the Coordinating State. The notice will specify one or more of the circumstances listed in this clause.

10.11.2 The roles of the Parties as Coordinating State and Reviewing State shall be exchanged one month after the Reviewing State gives notice under clause 10.11.1 unless in the case of a notice given under clause 10.11.1 (i) or 10.11.1 (ii) the Coordinating State corrects the circumstance referred to in the notice within that time.

10.11.3 After an exchange of roles under clause 10.11.2:

- (i) where the exchange of roles is based on clause 10.11.1 (i) the Target Date for any unreached Target Action shall be adjusted by one year from the exchange of roles;

- (ii) where the exchange of roles is based on clause 10.11.1 (ii) the Coordinating State shall use its best endeavours to achieve a Clear Navigation Channel within one year; or
  - (iii) where the exchange of roles is based on clause 10.11.1 (iii) or 10.11.1 (iv) or 10.11.1 (v) the Coordinating State shall use its best endeavours to achieve the Contract Quantity within two years.
- 10.11.4 An exchange of roles under clause 10.11.2 may take place any number of times, provided that for the purpose of clause 10.11.1 (iv) or 10.11.1 (v), only Anniversary Dates on which the same Party is Coordinating State shall be taken into account.
- 10.11.5 If the cause of any of the circumstances in clause 10.11.1 arises out of or in consequence of a default by the Coordinating State under this Agreement then the provisions of this clause 10.11 and clause 13.7 shall, subject to this Agreement, be exclusive of any other remedy in respect of those circumstances unless:
- (i) any Target Action is not achieved within 150% of the period referred to in clause 10.11.1 (i) after the applicable Target Date; or
  - (ii) a failure to maintain a Clear Navigation Channel persists for a period of 150% of the period referred to in clause 10.11.1 (ii) as adjusted pursuant to clause 10.11.6; or
  - (iii) the shortfall or excess in the quantity of sand delivered to give rise to a circumstance referred to in clause 10.11.1 (iii), (iv) or (v) is in any case 150% of the quantity referred to in the applicable clause as adjusted pursuant to clause 10.11.6.
- 10.11.6 The performance parameters in clause 10.11.1 (ii) to (v) and clause 13.7 have been based on the expectation that performance within those parameters can reasonably be achieved continuously during the Project by a competent contractor, competently managed by the Coordinating State.

These parameters shall be reviewed against the above criterion immediately prior to the commissioning of the First System and thereafter at the time of reassessment of the Long Term Average pursuant to clause 12.2.3 and, upon the request of either Party following such review, the Parties shall negotiate in good faith for the purpose of determining whether any adjustment should be made to these parameters.

Any dispute concerning the review or the proper adjustment to any parameter pursuant to this clause may be referred to an Expert appointed in accordance with clause 17.

#### 10.12 Suspension of Operation of the System

- 10.12.1 Notwithstanding any other provision of this Agreement, if for any reason whatsoever the operation of the System becomes or causes a danger or hazard to human health, the environment or the System then the Coordinating State may, and shall at the direction of the Reviewing State, suspend operation of the System for so long as the risk to human health, the environment or the System should remain.
- 10.12.2 If the operation of the System is suspended under this clause for more than four weeks, the time allowed for the provision of a Clear Navigation Channel shall be extended by a period equivalent to the duration of the suspension plus a reasonable period to re-establish a Clear Navigation Channel and the annual increment to the Contract Quantity for the relevant Annual Period will be adjusted to take account of the duration of the suspension.
- 10.12.3 If the annual increment for any Annual Period is adjusted pursuant to clause 10.12.2, a corresponding adjustment shall be made to the annual increments for the subsequent Annual Period or Periods, as may be reasonable in the circumstances having regard to the magnitude of the adjustment, in order that the sum of the annual increments to the Contract Quantity shall be in accordance with clause 12.



10.13 Replacement Systems

Without in any way limiting any other obligation under this Agreement, when any Artificial Sand Bypassing System constructed under this Agreement is to be replaced, the Parties agree to consult fully with each other and to each use its best endeavours to ensure that the replacement System is completed in a timely manner so as to continue to meet the purpose of this Agreement.

**11. ADDITIONAL WORKS**

- 11.1 The Parties acknowledge that activities incidental to the Project such as the environmental approval process, may identify works which must be undertaken in order to ensure that the objectives of one or both Parties are achieved in accordance with all legal requirements. Such works shall be undertaken by or on behalf of the Party in whose territory those works are required and, subject to clause 11.2, at the cost of that Party.
- 11.2 The Ministerial Council may agree to include as part of the Project works which would not otherwise be part of the Project, including works referred to in clause 11.1 and such works shall be Additional Works and shall form part of the Project.
- 11.3 Failure or inability of the Ministerial Council to agree as to the inclusion of any works as Additional Works shall not create any rights under this Agreement and in particular shall not be referred to expert determination pursuant to clause 17.

**12. CONTRACT QUANTITY**

12.1 Definition of Contract Quantity

The Contract Quantity of sand to be delivered to the Beaches on or before any Anniversary Date, shall be the cumulative total of:

- (a) 2 million cubic metres to be delivered as the Initial Dredging Component; plus
- (b) annual increments in respect of each Annual Period, determined in accordance with clause 12.2.

**12.2 Calculation of the Annual Increment**

- 12.2.1 Subject to clause 12.2.2, the annual increment to the Contract Quantity shall, in the absence of contrary agreement, be:
- (a) the Long Term Average; plus
  - (b) where applicable, the increases provided for in clause 12.2.6.
- 12.2.2 Notwithstanding clause 12.2.1, if the first Annual Period is a period less than a full year the first annual increment shall be the Long Term Average multiplied by the proportion which the first Annual Period bears to a full year, plus the quantity determined pursuant to clause 12.2.6 for the first Annual Period.
- 12.2.3 The Parties acknowledge and agree that the Long Term Average is 500,000 cubic metres per annum as at the date of this Agreement. The Long Term Average shall be reassessed at 1 January, 2005, and thereafter at 10 year intervals. Any of those reassessments shall be carried out earlier if agreed by the Parties on the basis that the actual environmental impacts indicate that the assessment of the Long Term Average requires adjustment.
- 12.2.4 Three months prior to each Anniversary Date, the Parties shall negotiate in good faith with a view to reaching agreement on the annual increment to the Contract Quantity for an agreed number of succeeding Annual Periods and failing agreement the annual increments shall be as previously agreed pursuant to this clause 12.2.4 or, if there is no such agreement, as provided in clause 12.2.1.
- 12.2.5 The Parties acknowledge and agree that for the purposes of clause 12.2.4 the annual increments to the Contract Quantity may vary from year to year to take account of:
- (a) any annual variations in the quantity of sand delivered to Letitia Spit;
  - (b) the specific objectives of both Parties as set out in the recital; and
  - (c) any suspension of the operation of the System under clause 10.12,

but that any agreement pursuant to that clause shall ensure that the average of the annual increments to the last Annual Period in respect of which there is agreement, disregarding the additional quantity provided for in clause 12.2.6, shall be equivalent to the Long Term Average.

12.2.6 During the first six Annual Periods an additional quantity of sand, to be known as the "Supplementary Increment" equivalent to the sum of:

- (a) 550,000 cubic metres; and
- (b) the volume of sand which would have been transported between the completion of the first phase of the Initial Dredging Component and the commencement of the operation of the System calculated at the rate of 500,000 cubic metres per annum,

shall be added to the Contract Quantity as provided in this clause 12.2.6.

Delivery of any part of the Supplementary Increment during the first five Annual Periods shall not trigger the operation of clause 10.11 or clause 13.7 but the annual increments shall be retrospectively adjusted by the amount of the additional quantity delivered, whether or not there is agreement pursuant to clause 12.2.4 to increase the annual increment with respect to any part of that quantity.

Any part of the Supplementary Increment which has not been delivered earlier will be added to the annual increment for the sixth Annual Period.

12.2.7 The Parties acknowledge and agree that:

- (a) a quantity of sand sufficient to provide a useable beach, including nearshore shoals, to be known as the "Duranbah Supply", shall be delivered to Duranbah beach from time to time and this shall be a minor fraction (up to 10%) of the sand delivered by the System;



- 
- (b) 50% of such quantity, or such other percentage as may be agreed between the Parties or determined in accordance with clause 12.2.8, as the percentage which is likely to be transported to Queensland, to be known as the "Duranbah Contract Quantity", shall be considered as having been delivered as part of the Contract Quantity;
  - (c) the work associated with supplying sand to Duranbah beach shall be a Shared Project Cost;
  - (d) the quantity of sand to be delivered to Kirra Point, to be known as the "Kirra Contract Quantity", shall not exceed a total of 200,000 cubic metres in any two consecutive Annual Periods and shall not exceed 75,000 cubic metres per annum on a long term average; and
  - (e) subject to the environmental approval process, any sand which moves from the Tweed River Bar and Entrance Area including into the river following commencement of the Initial Dredging Component shall be available for the Project.

12.2.8 Any dispute between the Parties as to:

- (a) the Long Term Average;
  - (b) the quantity referred to in clause 12.2.7 (a); or
  - (c) the percentage referred to in clause 12.2.7 (b),
- may be referred by either Party to an Expert appointed in accordance with clause 17.

### 12.3 Supply of Sand

If, owing to insufficient sand being available or as a result of any legislative requirements, including an environmental impact assessment, or any limits imposed under the general law, the Contract Quantity cannot be delivered from the Tweed River Bar and Entrance Area to the Beaches, the Parties shall, having regard to the objectives of both Parties, use their best endeavours to ensure that the shortfall in the Contract Quantity of sand is delivered from the coastal system outside of the Tweed River Bar and Entrance Area. Obtaining the shortfall shall be a Shared Project Cost.

If the above circumstances result in a substantial failure to meet either Party's objective so as to amount to frustration of this Agreement, this clause 12.3 shall not apply to prevent frustration of this Agreement.

### **13. SHARING COSTS FOR THE PROJECT**

13.1 Subject to the due performance of the relevant work the final actual costs of the Shared Project Costs under this Agreement will be contributed to by the Parties in accordance with this clause 13.

13.2 Final actual costs of any work performed pursuant to this Agreement include the costs of preliminary investigation, reports, administrative procedures and other activities, all as approved by the Ministerial Council and costs referred to in clause 8.1.3.

13.3 The final actual costs of the work associated with the Initial Dredging Component and of the work associated with the establishment and commissioning of the First System will be shared by the Parties in the following proportions:

NSW	75%
QUEENSLAND	25%

13.4 The final actual costs of all other works which are expressed to be Shared Project Costs in this Agreement, for which a percentage cost sharing basis is not stated elsewhere in this Agreement, or otherwise agreed between the Parties pursuant to this Agreement, shall be shared equally by the Parties.

Such works include without limitation the operation of the System, monitoring and auditing, and the establishment and commissioning of any replacement System.

13.5 In the event that, under the terms of a contract let in accordance with clause 10, the establishment costs for the First System are not paid entirely by up-front capital contribution, but are wholly or partly incorporated in a recurrent payment per unit of sand supplied, the Parties will apportion the recurrent unit charge between establishment costs and other costs for the purpose of the application of the agreed shared contributions, as set out in the preceding provisions of this clause 13.

13.6 For the purpose of arriving at an apportionment under clause 13.5;

- (a) if the tender submitted by the contractor has a price for the capital cost and a price for the operating cost, those prices will be used unless either Party objects to the use of those prices; and
- (b) if the Parties do not agree to use the prices in the contractor's tender or if the tender does not have prices which can be used to apportion the recurrent charge between establishment costs and other costs, then the Parties shall negotiate in good faith for the purpose of agreeing to an apportionment, and, failing agreement, either Party may refer the matter to an Expert appointed in accordance with clause 17.

13.7 If any default by the Coordinating State under this Agreement results in any circumstance in column 1 of the following table and the Reviewing State gives notice to the Coordinating State invoking this clause 13.7, then, notwithstanding clause 13.4 but subject to clause 13.9, the cost sharing consequence in column 2 of the following table opposite the relevant circumstance shall apply:

COLUMN 1 Circumstance	COLUMN 2 Consequence
(i) there is not a Clear Navigation Channel for a period of three months	the Coordinating State shall pay 60% of the operating costs of the System until there is a Clear Navigation Channel
(ii) there has been delivered a quantity of sand which falls short of the Contract Quantity by an amount exceeding two hundred thousand cubic metres	the Coordinating State shall pay 60% of the operating costs from the relevant Anniversary Date until the Contract Quantity is achieved.



- |  |  |
|--|--|
| (iii) there has been delivered a quantity of sand which exceeds the Contract Quantity by an amount exceeding two hundred thousand cubic metres | the Coordinating State shall pay 60% of the operating costs associated with the delivery of the quantity of the oversupply plus 60% of the operating costs from the relevant Anniversary Date until the Contract Quantity has been achieved. |
|--|--|

- 13.8 For the purposes of the application of the consequences opposite items (ii) and (iii) in the table in clause 13.7 only, the annual increment for any Annual Period during which the consequence of the table in clause 13.7 applies shall be apportioned over the year as equal monthly increments and the Contract Quantity will be taken to have been achieved if on the last day of any month there has been delivered a quantity of sand equivalent to the Contract Quantity at the preceding Anniversary Date plus the monthly increments, calculated in accordance with this clause 13.8, which have accrued to that date.
- 13.9 If a circumstance referred to in clause 13.7 results in an exchange of roles pursuant to clause 10.11, the consequences in column 2 of the table in clause 13.7 shall not apply to any operating costs of the System incurred after the date of that exchange of roles.
- 13.10 Subject to the provisions of clause 10.11.5, the provisions of clause 13.7 are without prejudice to any other right of the Reviewing State arising out of the relevant default by the Coordinating State provided that, so long as this Agreement remains on foot, the Coordinating State shall have no financial liability to the Reviewing State in relation to any circumstance in column 1 of the table in that clause other than the consequence provided for in column 2 of that table.
- 13.11 If any moneys are contributed to the Project by persons other than the Parties or local government in NSW or Queensland, such moneys shall be accounted for as follows:
- (a) if the moneys are specified to be for a particular element of the Project, the final actual costs of the work for that element will be reduced by the amount of the contribution; or

- (b) if the moneys are not specified to be for a particular element of the Project, the final actual costs of any work undertaken after the contribution will be reduced by applying the moneys until the contribution has been fully expended.

#### **PART IV - GENERAL**

### **14. ACCOUNTING ARRANGEMENTS**

- 14.1 The Parties acknowledge that the costs of the Project may vary substantially from year to year, and agree to meet the actual costs of the Project as they become due.
- 14.2 The Parties acknowledge that expenditure records for the Project shall be established and kept by one of the Parties ("the Banker") or its nominee, on behalf of the Project.
- 14.3 Unless varied by contrary agreement, the Coordinating State shall be the Banker.
- 14.4 The Banker shall:
  - (a) establish a consolidated set of expenditure records for Shared Project Costs;
  - (b) draw up individual accounts for each Party on the basis of the cost sharing ratios set out in clause 13;
  - (c) in consultation with the other Party, draw up a projected cash flow based on the Cash Flow Period; and
  - (d) report to the Working Group on progress against projected cash flow within four weeks of the conclusion of each Cash Flow Period.
- 14.5 Unless either Party notifies the Banker in writing that it anticipates that actual expenditure for the Cash Flow Period will have a significant variation from the projected cash flow, the Banker will bill both Parties on the basis of the projected cash flow.

For the purpose of this clause a "significant variation" is any variation of more than 10% or any variation which is expected to have a duration of more than two cash flow periods.

Schedule 1 Deed of Agreement

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- 14.6 Where any amount is due by a Party, after taking into account any credit pursuant to clause 14.9.2 (b), that Party will pay that amount to the Banker before the middle of each Cash Flow Period.
- 14.7 In the case of a significant variation in the cash flow advised to the Banker and approved by both Parties, the Banker will amend the projected cash flow and the amended projected cash flow will be used as the basis for billing and payments.
- 14.8 Either Party may call for a reconciliation between actual expenditure and payments. If such reconciliation is called for, the Banker shall carry out the calculations and include any necessary adjustments in the next account to each Party.
- 14.9 Works Carried Out or Paid for by a Party
- 14.9.1 Where either Party carries out or pays for work which is a Shared Project Cost the Contracting State will bill the Banker for the full cost of that work.
- 14.9.2 The Banker will take the value of such work or expenditure into account in issuing individual accounts to the Parties:
- (a) as an expenditure which becomes part of the cost of the Project; and
  - (b) as a credit against the Contracting State's liability with respect to the Project.
- 14.10 Management Fee
- 14.10.1 The Banker may impose a management fee for managing the financial accounts. This fee shall not exceed 0.5% of the total debits in any cash flow period.
- 14.10.2 The management fee shall cover all costs normally associated with keeping the accounts including disbursements, but not including interest on outstanding payments and not including any auditing fees.
- 14.10.3 The management fee and any auditing fees shall be shared as a Shared Project Cost.



**14.11 Interest**

If either Party is late in making any payment due to the other Party, the latter may charge an interest fee which is the 90 day Bank Bill Rate last published before the day on which the payment was due.

**15. ASSETS ACQUIRED BY THE PARTIES**

- 15.1 The Parties shall keep a list of assets (if any) each acquires as a Shared Project Cost.
- 15.2 Neither Party shall dispose of any assets acquired as a Shared Project Cost unless both Parties agree in writing that the asset may be disposed of without adversely affecting the capacity of the Project to satisfy the purpose of this Agreement.
- 15.3 The proceeds from the disposal of any surplus assets shall be paid to the Banker to be distributed between the Parties in accordance with the contributions made by each Party to the acquisition of those assets.
- 15.4 Land in either State acquired for the Project as a Shared Project Cost shall be vested in the name of that State or a Minister from that State and shall be held in such name or in the name of another Minister from that State unless disposed of in accordance with this clause.

**16. PARTIES TO FACILITATE WORKS**

- 16.1 A Party within whose territory any of the works constituting the Project are to be performed, constructed, maintained, operated or controlled by any person shall use its best endeavours to provide to such person or its authorised agent, all such powers, leases, licences and permission over or with respect to the territory of the Party as may be necessary for the exercise and performance of the Project and each of the Parties shall take such steps either by acquiring land or interests in land or otherwise as may be necessary to give effect to the Project.
- 16.2 The Parties agree that any compensation which may be payable whether for the acquisition of land or any interest in land or otherwise for the purposes of the Project shall be a Shared Project Cost to be apportioned as an establishment cost of the System.

## 17. DISPUTES

17.1 Notwithstanding the existence of any dispute the Parties shall continue to perform their obligations under this Agreement.

### 17.2 Submission to the Working Group

If a dispute between the Parties arises out of or in connection with this Agreement, other than a dispute which this Agreement provides to be referred directly to expert determination or a dispute arising out of a determination or decision by the Working Group, or the failure of the Working Group to give a decision or determination, either Party may refer the dispute to the Working Group.

### 17.3 Submission to the Ministerial Council

17.3.1 If the Working Group cannot resolve a dispute referred to it within 30 days, or another period if agreed between the Parties, it shall refer the dispute to the Ministerial Council.

17.3.2 Any dispute arising out of a determination or decision of the Working Group or the failure of the Working Group to give a decision or determination may be referred by either Party to the Ministerial Council.

17.3.3 Any dispute which may be referred to the Working Group under clause 17.2 may be referred by either Party at any time to the Ministerial Council, subject to the consent of the other Party. A dispute may be referred to the Ministerial Council under this clause whether or not it has previously been referred to the Working Group.

### 17.4 Expert Determination

17.4.1 Subject to any provision of this Agreement that a matter shall not be referred to expert determination either Party may refer any of the following for expert determination in accordance with clause 17.4.2:

- (a) a dispute referred to the Ministerial Council which the Ministerial Council has not resolved within 60 days;
- (b) a dispute arising out of the inability of the Ministers constituting the Ministerial Council to reach agreement on any matter arising out of or in connection with this Agreement;

- (c) a dispute which this Agreement provides may be referred to expert determination; or
- (d) subject to the consent of the other Party, any other dispute, including a dispute previously referred to the Ministerial Council in respect of which the period of 60 days referred to in clause 17.4.1(a) has not elapsed.

17.4.2 The expert determination process shall be effected by an expert in the relevant field agreed upon and appointed jointly by the Parties. In the absence of agreement as to the appointment of an Expert either Party may request the Secretary General of the Australian Commercial Disputes Centre Limited at Sydney, or another body as agreed, to nominate an Expert. The request shall indicate that the nominee shall not be an employee of either Party or a person in respect of whom there has been a failure to agree by the Parties.

17.4.3 The appointment of an Expert shall be conclusive evidence that the particular dispute relates to matters properly the subject of expert determination.

17.4.4 The following shall apply to the Process:

- (a) the Process shall be conducted in accordance with the Rules for the Expert Determination Process set out in Schedule 4;
- (b) for the purposes of the application of the Rules, the Party referring the dispute to the Expert is the "Claimant" and the other Party is the "Respondent";
- (c) the determination of the Expert shall be made as an Expert and not as an Arbitrator and shall be final and binding on the Parties except where the Expert's determination is that one Party shall pay the other an amount in excess of \$500,000;
- (d) the Expert may determine whatever interest the Expert considers reasonable; and
- (e) if one Party has overpaid the other, whether under a mistake of law or fact, the Expert may determine what repayment (together with interest) shall be made.



- 17.5 Moneys that are or become due and payable by either Party under this Agreement and which are subject to a dispute shall not be withheld during the Process but following the determination by the Expert any necessary adjustments will be made to future payments.

## **18. UNAVOIDABLE DELAY**

The Parties agree that delay caused by an unforeseen event shall not frustrate this Agreement. If either Party is delayed in performing its obligations under this Agreement, owing to an event beyond its control which could not reasonably have been foreseen, including the failure by a contractor to perform under the terms of any contract let in accordance with and for the purposes of this Agreement, then the delay shall not be taken to be a default under this Agreement but the Party concerned shall use its best endeavours (in consultation with the other Party) to remedy the position within such time as may be reasonable in the circumstances.

## **19. DEFAULT**

### **19.1 Notice to Rectify and/or Pay Compensation**

- 19.1.1 Where either Party is in default of any obligation under this Agreement, including the obligation to consult with the other Party, the Party not in default may, by notice in writing to the Party in default:

- (a) specify the nature of the default, the facts relied upon to establish the default and if any specific action is required to rectify the default, that action; and
- (b) if it so elects, and whether or not the Party in default is reasonably capable of rectifying the default, provide that Party with the alternative of paying a sum of money specified as reasonable compensation in substitution for rectification of the default or for rectification of any specified aspect of the default.

- 19.1.2 A notice pursuant to this clause 19.1 may include both a request for partial rectification and a claim for compensation in relation to the same default, and may be satisfied by partial rectification of the default plus payment of compensation.

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19.1.3 A notice pursuant to this clause 19.1 is a precondition to termination of this Agreement in the event of default.

19.2 Termination

Subject to clause 19.3, where the Party in default has:

- (a) not commenced appropriate action to rectify the default referred to in a notice under clause 19.1 within 30 days of receiving such notice; or
- (b) commenced action in accordance with subclause (a) but has not rectified the default within a reasonable period, such period being not less than 30 days after the Party receives notice under clause 19.1,

whether or not the default is reasonably capable of being rectified, the Party not in default may, by further notice in writing to the Party in default, terminate this Agreement.

19.3 The right to terminate under clause 19.2 shall not apply to a default unless either:

- (a)
  - (i) the default is in respect of an obligation to consult, involves an issue of risk management and produces or is likely to produce an additional cost to the Party not in default in excess of \$1 million; and
  - (ii) there has been repeated and persistent failure to consult and the defaults are in respect of an obligation to consult, involve an issue of risk management, and during the preceding five year period have produced or are likely to produce an additional cost to the Party not in default in excess of \$1 million; or
- (b) the default is in respect of any other obligation and amounts to a repudiation of this Agreement.

19.4 The right to terminate under clause 19.2 shall not apply to a default to the extent that a notice under clause 19.1 includes a claim for reasonable compensation; and the defaulting Party has:

- (a) within 30 days of receiving notice, by notice in writing to the other Party elected to pay such compensation; and
- (b) paid such compensation within a reasonable time.

19.5 At any time prior to termination in accordance with clause 19.2, a dispute between the Parties as to:

- (a) the existence of a default by either Party;
- (b) whether a default has been rectified;
- (c) what is a reasonable period for rectification of a default;  
or
- (d) whether a claim for compensation in terms of clause 19.1 is reasonable,

may be referred by either Party to an Expert appointed in accordance with clause 17. A notice terminating this Agreement shall be of no effect if any matter under this clause 19.5 has been referred for expert determination and the notice is given before such determination.

19.6 The termination of this Agreement does not affect the rights of either Party for default by the other Party under this Agreement committed before the termination or any right of action or remedy which has accrued or which may accrue in favour of either Party.

19.7 The Parties acknowledge that if this Agreement is terminated pursuant to this clause 19, then the resulting damages caused to the Party not in default may include:

- (a) the contribution by the Party not in default to any compensation payable to any third party in respect of the termination of any contract entered into for the purpose of this Agreement by both Parties as Joint Principals or by either Party;
- (b) the reasonable costs of site restoration; and
- (c) one of the following:
  - (i) for Queensland—the net present value, at the date of termination, of the dredging of sand of an equivalent quality from the nearest available source to achieve the quantities in clause 12, less Queensland's share of the net present value of that part of the Shared Project Costs (including works and operation not yet undertaken) not yet paid for by Queensland at the date of termination; or



- (ii) for NSW—the net present value, at the date of termination, of the dredging required to achieve a Clear Navigation Channel and disposal to the nearest available deposition site in perpetuity less NSW's share of the net present value of that part of the Shared Project Costs (including works and operation not yet undertaken) not yet paid for by NSW at the date of termination.

## **20. OWNERSHIP OF SAND**

- 20.1 All sand which enters the System becomes an asset of the Project and, subject to the provisions of this clause 20, becomes the property of Queensland upon delivery to Queensland, or the coastal waters of the State of Queensland as defined in the Coastal Waters (State Powers) Act, 1980 (Cth). The value of any royalties and net profits made from or in connection with any extraction of minerals as part of the System or the sale of sand delivered by the System shall be shared equally between the Parties and where any payments are collected by either Party, any necessary adjustment will be made to the accounts prepared pursuant to clause 14 to ensure that the value of those payments is shared equally.
- 20.2 For the purposes of clause 20.1 the sale of sand refers only to sand sold and removed from the System or from the littoral system between Snapper Rocks and Currumbin Rock, excluding sand sold and removed under any rights under existing leases and permits, including rights to renewal or extension thereof which exist at the date of this Agreement.
- 20.3 Neither Party will levy a royalty on a Party to this Agreement in respect of sand which is transferred between the States pursuant to this Agreement.

## **21. APPROPRIATION**

The Parties agree to submit to their respective Parliaments annually through the budgetary process for the appropriation of all funds necessary or required for the purposes of this Agreement.

## **22. COSTS**

Each Party agrees to bear its own costs and expenses in relation to the investigation, negotiation, preparation, execution and delivery of this Agreement.

## **23. LIABILITY**

The liability of either Party for breach of contract, or in tort or for any other common law or statutory cause of action arising out of the operation of this Agreement, shall be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

## **24. SEVERABILITY OF PROVISIONS**

If any provision of this Agreement or the application of any provision of this Agreement to any person or circumstance shall be or become invalid or unenforceable, then the Parties shall in good faith enter into negotiations to agree what alteration to their respective rights and obligations under this Agreement ought reasonably to occur as a consequence. The remaining provisions of this Agreement shall not be affected by such invalidity or unenforceability and those remaining provisions shall be valid and enforceable to the fullest extent permitted by law.

## **25. EXERCISE OF RIGHTS**

- 25.1 Subject to this Agreement, either Party may exercise any right, power or remedy arising out of or in connection with this Agreement at its sole discretion, and either separately or concurrently with any other right, power or remedy.
- 25.2 Except where a contrary intention appears, the rights, powers and remedies created by this Agreement are cumulative with and do not exclude any rights, powers or remedies provided by law independently of this Agreement.

## **26. WAIVER AND VARIATION**

A provision of or a right created under this Agreement may not be:

- (a) waived except in writing signed by the Party granting the waiver and then such waiver shall be effective only in the specific instances and for the purposes for which it is given; and
- (b) varied except in writing signed by the Parties and, in the event that this Agreement is ratified in accordance with clause 6, in accordance with any Acts ratifying it.

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## **27. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY**

- 27.1 The intellectual property rights in any Original Project Material which is created by or on behalf of the Parties in contemplation of and during the course of investigating and undertaking the Project shall be held by the Parties as co-owners and both Parties will do all such acts as are necessary in order to perfect such co-ownership.
- 27.2 Each of the Parties may use any Original Project Material for its own purposes in connection with the Project without further need to account to each other for such use and each Party hereby grants to the other a perpetual non-exclusive, non-transferable royalty-free licence for this purpose. Without limiting the generality of this clause, a Party may use Original Project Material by disclosure to contractors engaged in the Project and may authorise a contractor to use Original Project Material for the purposes of the Project.
- 27.3 A Party may not use any Original Project Material for a commercial or profit making purpose or grant any licence to a third party to exploit the Original Project Material for financial reward except with the express prior consent of the other Party, which consent shall not be unreasonably withheld. Any consent under this clause may be made subject to reasonable commercial terms and conditions in relation to the exploitation and the return to each Party. Any condition stipulating a return of profits from the exploitation back into the Project shall be deemed to be a reasonable commercial condition for the purposes of this clause.
- 27.4 Notwithstanding clause 27.3, each Party may transfer any Original Project Material between Government Agencies in the same State whether by sale or otherwise without the consent of the other Party.

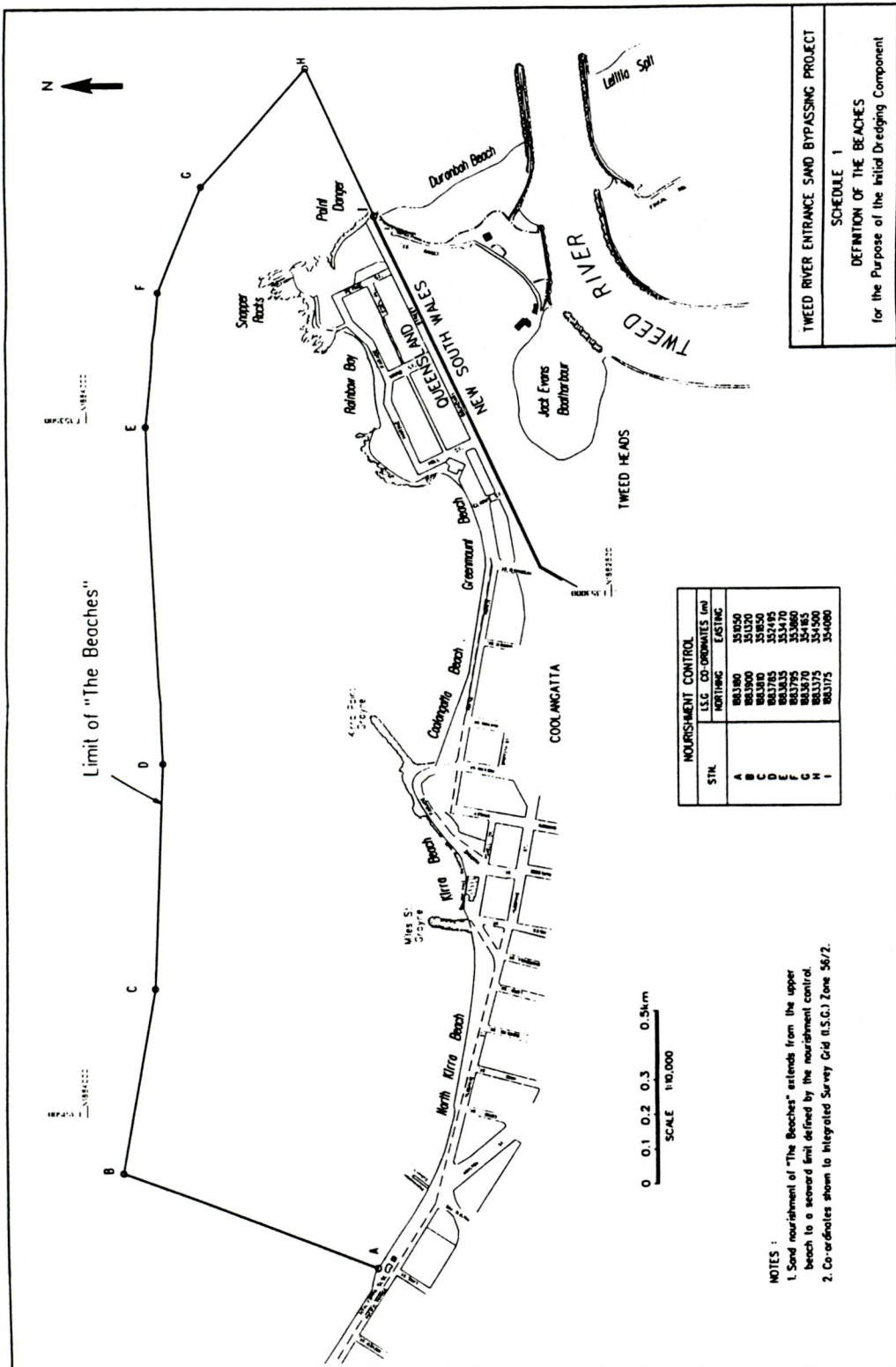
## **28. FURTHER ASSURANCES**

Neither Party will undertake activities which are detrimental to or compromise the securing of the other Party's objectives, including any action which may be detrimental to the natural littoral movement of sand.

\* \* \*



# Tweed River Entrance Sand Bypassing Bill 1995



SCHEDULE 1  
TWEED RIVER ENTRANCE SAND BYPASSING PROJECT  
DEFINITION OF THE BEACHES  
for the Purpose of the Initial Dredging Component

**z** ←



TWEED ENTRANCE CONTROL		U.S.G. CO-ORDINATES (m)	
	\$TIN	WORTHING	EASTING
	J	882265	354330
	K	882250	353995
	L	882235	353665
	M	882220	353335
	N	882205	353005
	O	882175	352680
	P	882175	352370
	Q	882190	352065
	R	882145	351615
	S	883365	351615
	T	884060	351665

NOTES :  
1 Co-ordinates shown to Integrated Survey Grid (I.S.G.) Zone 56/2.

SCHEDULE 2  
DEFINITION OF THE TWEED RIVER  
BAR & ENTRANCE AREA

### SCHEDULE 3

#### RESPONSIBILITIES OF THE PROJECT DIRECTORS

The Project Directors are responsible for:

1. ensuring that the respective needs of the Parties are represented and promoted;
2. coordinating the activities of the Parties and consultation between them;
3. ensuring that the respective Party's input to the project is made in a timely, comprehensive and efficient manner;
4. representing the respective Party on the Project Working Group, including the preparation of reports and minutes of the Working Group;
5. checking that the respective Party's functional requirements are met throughout the development, including during the production of design and contract drawings, specifications and other contract documents;
6. preparing regular reports to their respective agencies covering annual project cash flow requirements and monthly updates against cash flow forecasts;
7. arranging approvals for scope of work, budget, funding and program, as authorised by the respective Party; and
8. any other requirements of the Working Group or the respective Party that could be reasonably expected of the Project Directors.

### SCHEDULE 4

#### RULES FOR THE EXPERT DETERMINATION PROCESS

1. Function of the Expert

The function of the Expert is to make a determination on the dispute in accordance with these Rules and the letter of appointment of the Expert.

2. Commencement

The Process shall commence with the acceptance by the Expert of the appointment to act to determine the dispute in accordance with these Rules.



3. General Conduct of the Process

- 3.1 No consultation shall take place with either Party other than in the presence of both Parties.
- 3.2 The Expert shall disclose all information and documents received from either Party to the other Party.
- 3.3 Where a Party fails to make a written submission or appear at any conference after having received due notice, the Expert may proceed with the Process.
- 3.4 All proceedings and submissions relating to the Process shall be kept confidential between the Parties and the Expert. No information shall be divulged to any other person except with the prior written consent of both Parties, or as may be required by law or in order to enforce the determination of the Expert.

4. Written Submissions

- 4.1 Within fourteen (14) days of the date of the commencement of the Process, the Claimant shall provide to the Respondent or its nominee and the Expert a statement detailing the nature of the dispute, any agreed statement of facts and a written submission on the dispute in support of the Claimant's contention.
- 4.2 Within twenty-one (21) days thereafter the Respondent or the Respondent's nominee shall provide to the Claimant and the Expert a written response to the written submission of the Claimant.
- 4.3 If, upon the application of the Claimant, the Expert considers it appropriate, the Claimant may make a written response to the response of the Respondent under paragraph 4.2 above within the time allowed by the Expert and a copy of such written response shall be provided by the Claimant to the Respondent.
- 4.4 If, upon the application of the Respondent, the Expert considers it appropriate, the Respondent may make a written response to the response of the Claimant under paragraph 4.3 above within the time allowed by the Expert and a copy of such written response shall be provided by the Respondent to the Claimant.

4.5 If the Expert decides further information or documentation is required for the determination of the dispute the Expert may:

- (a) require a further written submission or documents from either or both Parties, giving each Party a reasonable opportunity to make a written response to the other's submission; and
- (b) call a conference between the Parties and the Expert in accordance with paragraph 5 below.

5. Conference

- 5.1 When the Expert determines that a conference between the Parties is necessary the Expert shall be responsible for arranging the conference at a venue and time convenient for the Parties and shall notify them accordingly.
- 5.2 At least seven (7) days prior to the conference the Expert shall inform the Parties of the matters to be addressed at it and shall hear representations only on those matters.
- 5.3 At the time and place notified for any conference the Parties shall appear before the Expert to make representations on the matters the subject of the conference.
- 5.4 The Expert is not bound by the rules of evidence and may receive information at any conference in any manner the Expert thinks fit, providing that, at all times, the requirements of procedural fairness are met.
- 5.5 At a conference either Party may have legal or other representation.
- 5.6 Any conference shall be held in private.
- 5.7 If requested by either Party, transcripts of all conference proceedings will be taken and be available to the Expert and the Parties.

6. The Determination

- 6.1 As expeditiously as possible after the receipt of the submissions or after any conference and, in any event not later than three months after the commencement of the Process unless the time has been extended by agreement between the Parties, the Expert shall determine the dispute between the Parties and notify such determination in writing to the Parties.

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- 6.2 The notice of the determination shall include a brief statement of the reasons for the determination.
- 6.3 The Expert shall reach the determination on the basis of the information received from the Parties and on the basis of the Expert's own expertise.
- 6.4 Where the determination made by the Expert contains -
- (a) a clerical mistake;
  - (b) an error arising from an accidental slip or omission;
  - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
  - (d) a defect of form,
- the Expert shall correct the determination.

7. Termination

- 7.1 Subject to paragraph 6.4, the Process shall conclude when the Expert has notified the determination to both Parties.
- 7.2 The Process shall be terminated in the event of the Expert being unable to conclude the Process by reason of the Expert's illness, death, being of unsound mind or failure to act.
- 7.3 If the Expert becomes aware of any circumstances that might reasonably be considered to affect adversely the Expert's capacity to act independently or impartially the Expert must inform both Parties immediately.
- The Expert must in such circumstances terminate the proceedings, unless the Parties agree otherwise.
- 7.4 If the Process is terminated prior to its conclusion, another expert shall be appointed in accordance with the provisions of the Agreement

8. Costs

- 8.1 Each Party shall bear its own costs of the Process and shall share equally the costs of the Expert and the Process.
- 8.2 Security for costs shall be deposited by both Parties at the commencement of the Process at the direction of the Expert.



9. Modification

Unless otherwise stated these Rules shall be modified only by agreement of the Parties and of the Expert.

SCHEDULE 5

AN INDICATIVE EXAMPLE OF THE CALCULATION OF DAMAGES  
(AS REFERENCED IN CLAUSE 19.7):

Notes in General

1. The figures are based on the Joint Consultants' Report.
2. Values are in 1990 dollar terms.
3. The figures are indicative and are based on the assumption that, at and following any termination (which is not contemplated or proposed by the Parties), the alternatives contemplated would be achievable in law and in fact, which is not certain.
4. The values are intended to be illustrative of components and the concept, and not to be definitive in quantum.

EXAMPLE CALCULATIONS

1 NSW IN DEFAULT

1.1 Assumptions

- (a) the Project terminates at the 26th Anniversary Date, one year after replacement of the First System;
- (b) prospective operating and maintenance costs are \$2 million per annum;
- (c) scheduled replacement expenditures are \$8.45 million after 24 years and at 25 year intervals thereafter;
- (d) the applicable discount rate is 7 per cent per annum;
- (e) an amount of \$2 million is payable by each Party as a result of the termination of the third party contract;
- (f) the cost of site restoration is \$3 million;
- (g) the long term net littoral transport of sand at the northern portion of Letitia Spit is 500,000 cubic metres per annum;

- 
- (h) the cost of offshore dredging is \$4.43 per cubic metre. Note: the \$4.43 is based on the Joint Consultants' Report, 1/3 to nearshore at \$3.30 and 2/3 to onshore at \$5.00);
  - (i) NSW dredges the full littoral transport and removes it from the littoral system;
  - (j) suitable sand could be obtained from offshore in perpetuity (which is uncertain); and
  - (k) the cost of obtaining such sand does not escalate in real terms.

- 1.2 The damages recoverable by Queensland at the date of termination would be \$21.4 million, calculated as follows:

	\$ million
compensation under clause 19.7 (a)	2.0
reasonable site restoration under clause 19.7 (b)	3.0
amount applicable under clause 19.7 (c)	16.4
cost of offshore dredging in perpetuity (\$2.216 million @ 7% p.a.)	31.7
less Queensland's share of	15.3
remaining net present value of System's future operating and maintenance (\$1 million in perpetuity @ 7% p.a.)	14.3
future replacement (one half of \$8.45 million after 24 years, then at 25 year intervals @ 7% p.a.)	1.0

## 2 QUEENSLAND IN DEFAULT

### 2.1 Assumptions

- (a) The same assumptions as in 1.1 (a) to (g) of this schedule;
- (b) the cost of dredging material from the bar and entrance area is \$5.00 per cubic metre; and
- (c) the sand is placed on the downdrift beaches and is not sold.

2.2 The damages recoverable by NSW at the date of termination would be \$25.4 million, calculated as follows:

	\$ million
compensation under clause 19.7 (a)	2.0
reasonable site restoration under clause 19.7 (b)	3.0
amount applicable under clause 19.7 (c)	20.4
cost of maintaining a Clear Navigation Channel in perpetuity (\$2.5 million @ 7% p.a.)	35.7
less NSW's share of remaining net present value of System's	15.3
future operating and maintenance (\$1 million in perpetuity @ 7% p.a.)	14.3
future replacement (one half of \$8.45 million after 24 years, then at 25 year intervals @ 7% p.a.)	1.0



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IN WITNESS OF WHICH this Agreement has been respectively signed for and on behalf of the Parties on the date first set out above.

SIGNED and SEALED for and on behalf  
of the STATE OF NEW SOUTH WALES  
by the Honourable Ian Armstrong,  
Deputy Premier and  
Minister for Public Works  
in the presence of: } Ian Armstrong (sgd)

Witness } DON BECK  
Name of Witness (print) } DM Beck. (sgd)

SIGNED and SEALED for and on behalf  
of the STATE OF QUEENSLAND  
by the Honourable Molly Robson,  
Minister for Environment and Heritage  
in the presence of: } Molly Robson (sgd)  
2/3/1995

Witness } D.G. McGreevy.  
Name of Witness (print) } (sgd)  
D.G. McGREEVY.

## **Schedule 2 Heads of Agreement**

(Section 4)

This Heads of Agreement is made on 31st March, 1994 between the State of New South Wales and the State of Queensland.

### **1.0 PREAMBLE**

The Governments of New South Wales and Queensland ("the States") recognise the importance of the Gold Coast -Tweed Heads region as a major international and national tourism destination, a significant growing recreational and residential area, and a unique coastal environment.

The region is the destination for more than 500,000 visits annually by overseas arrivals and makes a substantial contribution to Australia's exports of services. The Gold Coast/Tweed is a major destination for the 2.3 million overseas visitors who visit Australia annually.

In seeking to maintain and enhance the attributes of this region, specifically the Tweed River estuary and the southern Gold Coast beaches ("the Beaches"), NSW has broadly defined its objective as establishing and maintaining an improved navigable entrance to the Tweed River ("the River"), and Queensland has broadly defined its objective as achieving a continuing supply of sand together with the supply of an initial quantity of sand to the Beaches to restore amenity.

The States have undertaken a number of investigations to improve the understanding of this complex environment, and have implemented a number of projects to restore and enhance the area, including those undertaken by, and/or in co-operation with, local councils.

To aid the realisation of a means of achieving their respective objectives, the States commissioned a report entitled "Tweed River Entrance - NSW/QLD Sand Transfer Negotiations" by WBM Pty Ltd, The University of Queensland and Australian Water and Coastal Studies Pty Ltd, May, 1991, ("the Joint Consultants' Report") and noted its contents.

The Premiers of NSW and Queensland ("the Premiers") then exchanged letters on this matter between 11th October, 1991 and 27th January, 1994. The Director-General of NSW Premier's Department wrote to his Queensland counterpart on 7th September, 1992 and the Premiers wrote to the Prime Minister on 23rd July, 1993.

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The States have agreed in principle to the future development and implementation of a joint operation to achieve their respective objectives and to that intent have agreed to enter into this Heads of Agreement as a preliminary step to the formalisation of their respective rights and obligations in connection with a project to be known as the Tweed River Entrance Sand Bypassing Project ("the Project").

A Cost Benefit Analysis undertaken for the NSW Government from an inter-State perspective indicated that the Project has a Benefit Cost Ratio of 2.4. Benefits from an overall community viewpoint include improvements in tourism expenditure, development potential, entrance safety, recreational activities and flood mitigation compared with the "Do Nothing" case.

## **2.0 INTENTIONS**

In recognition of the benefits, the States enter this Project in a spirit of goodwill and co-operation.

This Heads of Agreement is not intended to create legal relations but the parties undertake to exercise their best endeavours to develop and implement the Project.

## **3.0 THE PROJECT**

The States hereby agree to the development and implementation of the Project which comprises two inter-related components, namely:

- (a) an initial dredging of the Tweed Bar and entrance area and the nourishment of the Beaches; and
- (b) an artificial sand bypassing system, to operate in perpetuity.

The Project is derived from the Joint Consultants' Report and includes items listed in the first column of Table C1 of that report.

The Project is designed to satisfy the objectives of the States as defined in the Joint Consultants' Report. These objectives are:

### **NSW**

"To establish and maintain a navigable depth of water of at least 3.5 m below ISLW in the approach to and within the entrance channel over a width equal to that between the rubble mound breakwaters".



## **Queensland**

“To achieve a continuing supply of sand to the southern Gold Coast beaches at a rate consistent with littoral drift rates updrift and downdrift of those beaches, together with the supply of such additional sand to the beaches as is required to restore the recreational amenity of the beaches and maintain it.”

The States acknowledge that the Project is unique and without precedent. It is located on an open high-energy coastline subject to variable natural forces, in a highly-valued environment, subject to intensive usage. Accordingly, it is recognised that the Project must be designed, evaluated and implemented prudently and in an environmental sensitive way, if the long-term benefits are to be effectively achieved.

The general benefits are anticipated to include:

- (a) the improvement in the safety of navigation of the River entrance with the consequent benefits to recreational boating, tourism, property values and the fishing industry;
- (b) improved tidal flushing of the River estuary, improving water quality, mitigation of flooding, and enhancing development potential; and
- (c) the restoration, widening and long-term maintenance of the Beaches, with associated benefits to tourism, recreation, property values and the reduction of erosion threats.

The States hereby agree that neither will undertake activities which are detrimental to or compromise the securing of the other's objectives.

## **4.0 MANAGEMENT**

### **4.1 General**

Responsibility for implementation of the Project rests with the NSW Minister for Public Works and the Queensland Minister for Environment and Heritage or their respective successors.

The two Ministers will be responsible for implementing the project in accordance with the cumulative intent of the letters referred to in Clause 1.0, this Heads of Agreement and the Deed of Agreement which will be produced after this Heads of Agreement is executed. Where there is any inconsistency between the letters and this Heads of Agreement the Heads of Agreement shall prevail.

In order to implement the Project, the Ministers may use the officers and resources of NSW Public Works and Queensland Department of

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Environment and Heritage. They may also delegate authority to officers of those Departments.

To ensure that there is close liaison and co-operation and to ensure the efficient and effective delivery of the Project a Working Group will be formed. The Working Group will be responsible to both Ministers.

In addition, the Ministers will be advised by an Advisory Committee.

#### **4.2 Working Group**

The Working Group will comprise three members from each State to be nominated by the respective Minister. At the Ministers' discretion one member from each State may be chosen to represent the relevant local government authority.

The Working Group will be responsible for implementing the Project including strategic action planning, financial control, policy setting and review at State Government level.

#### **4.3 Advisory Committee**

The Advisory Committee will comprise two officers from each State to be nominated by the respective Minister, one representative each from Tweed Council and Gold Coast City Council to be nominated by the respective Council and four community representatives (two from each State) to be nominated by the respective Minister. At least one of the State Government officers from each State on the Advisory Committee must also be a member of the Working Group.

The Advisory Committee will give advice on the following:

- Preparation of environmental impact assessment and tender documents for the bypass.
- Calling tenders.
- Acceptance of tenders.
- Preparation of a plan of management.
- Management and implementation of the works.
- Issues of relevance to the local community.
- Other matters referred to it by the Ministers.

#### **4.4 Community Input**

Both States acknowledge the importance of community input to the Project through its various stages and steps will be taken to ensure that such consultation is incorporated.



#### **4.5 Deed of Agreement**

The responsibility for preparation of the proposed Deed of Agreement will rest with the Ministers or their delegates.

#### **4.6 Initiation**

Notwithstanding the provisions of Clause 2.0, if the States decide to implement the Project or part thereof prior to execution of the Deed of Agreement the Project or that part of the Project will proceed in accordance with this Heads of Agreement, to the intent that if any contract is entered into with any third party for the purposes of the Project and both Ministers first approve in writing of the terms of the contract, then, as between the States the provisions of this Heads of Agreement that are applicable to such a contract (including the proportional funding arrangements) shall to that extent be legally binding upon the States.

#### **5.0 SCOPE OF WORKS**

The Project shall consist of two parts, namely, the Initial Dredging component and the Permanent Bypass component.

##### **5.1 Initial Dredging**

The Initial Dredging component shall involve dredging from the River entrance bar and possibly other areas of two million cubic metres of sand and the placement of that material on the Beaches (including the nearshore zone and/or upper beach). This dredging may take place in parts.

The purpose of this dredging is to achieve an improvement in navigation of the River entrance and to nourish the Beaches.

##### **5.2 Permanent Bypass**

The Permanent Bypass component consists of the design, manufacture, supply, delivery and commissioning of a sand bypassing system and the continuing operation of that system including replacement of the capital equipment.

The system will need to be designed and operated in a way which generally achieves the objectives of the two individual States as defined in Clause 3.0. The purpose of the bypass is to facilitate the natural littoral sand movement processes. In general terms it should convey the net littoral transport which occurs at the northern portion of Letitia Spit in the absence of actions to influence it.

The Bypass system will deliver sand to the Beaches generally in accordance with the Joint Consultants' Report ie; Duranbah Beach (minor quantity



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capability) Snapper Rocks (major quantity capability) and Kirra Point (on demand capability).

Some allowance will have to be made for sand which is not captured by the bypass system before it reaches the Tweed entrance or which is lost from the natural system before it reaches the Beaches.

This long term average net littoral transport rate is currently understood to be 500,000 m<sup>3</sup> per year (page 8 of the Joint Consultants' Report), but analysis to date suggests that it can vary between 270,000 m<sup>3</sup> and 900,000 m<sup>3</sup> in any individual year.

The States will agree on a system for managing the delivery of sand to match the long term average net littoral transport, but which will take account of the annual variations with regard to quantities of sand delivered by natural processes to Letitia Spit, and which will also take account of the specific objectives of both States.

If the long term average net littoral transport rate changes, the rate of delivery will be changed accordingly.

This system will have to take account of coastal process issues as they relate to the Beaches, the River entrance, Duranbah Beach and to Letitia Spit, as well as to beach usage criteria and navigation requirements.

It is recognised that sand will continue to accrete in NSW until the bypass is operational. Accordingly, the total quantity of sand transported to Queensland in the first five years of bypassing system operation shall be increased above the agreed rate of 500,000 m<sup>3</sup> per year to take account of (i) ongoing sand accumulation within NSW prior to the initial dredging and (ii) the amount of material which is deposited on the bar of the River in the period between the completion of the initial dredging and the commencement of the bypass operation. The total quantity in (i) is accepted to be 550,000 m<sup>3</sup>; the total quantity in (ii) will be the difference in quantities based on the post initial dredging survey and a repeat survey immediately prior to the bypass being operational.

Consideration needs to be given to variations to the figure in (i) above to take account of any variation which may arise due to dredging of the River which may take place before Initial Dredging and in (ii) for any net transport into the estuary between the dates of the surveys.

### **5.3 Timing of the Project**

The States agree that the Project should be implemented expeditiously. It is recognised that there are distinct technical advantages in having the Initial

Dredging take place concurrently with the commissioning of the sand bypassing system. However, it is accepted that there are broader advantages in carrying out the Initial Dredging as soon as possible and as a compromise the Initial Dredging should be undertaken at the earliest possible date and the interval between the Initial Dredging and the commissioning of the bypass should be the minimum possible. (It is envisaged that contracts will be let for the Initial Dredging in late 1994 and that the bypass will be operational by 1996).

## 6.0 FINANCE AND COSTING

### 6.1 Cost Estimate

In the correspondence between officers of the States it was accepted that for the purpose of determining the ratios for the sharing of costs of the Project, the following estimates, based on papers C and D of the Joint Consultants' Report, were adopted:

	\$ million
	(1990 dollar terms)
(i) Initial sand supply * (based on 2M m <sup>3</sup> )	10.0
(ii) Establishment cost of first system (based on a jack up platform)	13.5
(iii) Operating cost (including maintenance, monitoring)	1.96 p.a.
(iv) Platform/trestle replacement cost	8.45

\* The Initial sand supply will be achieved by the Initial Dredging.

Similarly, in Net Present Value terms, it was accepted that the total cost estimate of the Project is \$53.41 million in 1990 dollar terms. Actual costs will not be known until after tenders are received or operation commences depending on the type of tenders accepted. A table illustrating the derivation of this estimate is set out in Attachment A.

### 6.2 Cost Sharing

Notwithstanding anything in Clause 6.1 the States agree that the final actual costs of the Project will be shared as follows:



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	NSW	QUEENSLAND
	(%)	(%)
Initial sand supply *	75	25
Establishment cost of first sand bypass system	75	25
Operating cost (including maintenance, monitoring)	50	50
Platform/trestle replacement cost	50	50

\* The Initial sand supply will be achieved by the Initial Dredging.

In the event that payment for the Initial sand supply and/or the Establishment cost of the first bypass system is not made by means of upfront capital, but is incorporated in a recurrent payment per unit of sand supplied, the contribution by each State to the recurrent unit charge will adequately take account of their relative contributions, as defined above, to the Initial sand supply and/or Establishment cost of the first system.

### **6.3 Royalties, Land Rent and Acquisition Costs**

The States agree in principle that any sand royalties levied by either State which could apply to the sand which, for the purposes of this project, is transferred between the States, will not apply or shall be waived.

The issue of possible mineral extraction and any royalty or income therefrom has been excluded from this document and will be addressed separately should the matter arise.

The States agree in principle that where the use and occupation of land is necessary for the Project, no charges are to be made or imposed for land rent or land acquisition costs as the case may be, in respect of land owned or held by the States or either State. Similarly no charges are to be made or imposed for land rent in respect of land acquired for the Project from any third party. As between the States, any compensation which may be payable for land acquired for the Project from any third party shall be a 75% NSW: 25% Queensland shared cost of the Project.

### **6.4 Accounting Arrangements**

The States acknowledge that procedures satisfactory to both parties will be implemented to ensure that each State meets the agreed share of the final actual cost of the Project.



The accounting and audit procedures implemented must satisfy the public accountability and administration requirements of each State for the funding of infrastructure.

### **6.5 Contributions to Project from Third Parties**

The States agree that any moneys contributed to the Project by parties other than the Queensland Government, the NSW Government, or local government in the States ("Third Party Contributions") shall be accounted for in the following manner:

- Where the Third Party Contributions are contributed for a particular part of the work, those Third Party Contributions will be deducted from the total cost of the part for which they were contributed and the remaining costs of that part will be shared as described under the heading "Cost Sharing" above.
- Where the Third Party Contributions are not contributed for a particular part, the amount of such Third Party Contributions shall be deducted from the total outstanding cost of the part then currently under way ("the Current Part") and the remaining costs of that part will be shared as described in Clause 6.2. If the amount exceeds the total outstanding cost of the Current Part, the remainder shall be deducted from the total outstanding cost of the next and successive parts in turn. In the context of this paragraph the three parts of the Project are (i) the Initial Dredging, (ii) the establishment of the bypass system and (iii) the operation of the system including replacement.

### **6.6 Operation, Maintenance, Replacement and Contingency Funding**

The Project involves the operation of the sand bypass system in perpetuity including replacement of the capital equipment as necessary. It is recognised that the costs of the system will vary substantially from year to year due in part to inherently unpredictable variations in the weather, and other related matters.

The States agree to meet actual funding needs for works under the provisions of this agreement as they become due including replacement and contingency items.

The States recognise there are substantial adverse consequences in the unlikely event of cessation of the Project and provision will be made for such in the Deed of Agreement.

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## **7.0 CONTRACTS, PROCUREMENT SYSTEM AND IMPLEMENTATION**

The States agree that they will act expeditiously and co-operatively to implement the Project in an efficient manner consistent with this Heads of Agreement, including inter alia developing a Deed of Agreement, establishing administrative and legislative arrangements (including introducing legislation in either or both States if necessary) and undertaking design and engineering and necessary statutory and environmental approvals of both States.

Project development will be undertaken jointly by Queensland and NSW. Provisions concerning project risk will be made in the Deed of Agreement.

Subject to Clause 4.6 it is envisaged that minor contracts may be let by either State with the other State's interest protected by this Heads of Agreement and the Deed of Agreement.

For the bypass system it is envisaged expressions of interest will be called and that the contract(s) will be based on a performance based specification with the expectation that there may need to be pre and post tender negotiations.

## **8.0 DISPUTES RESOLUTION**

The Project involves an agreement between two sovereign States and in this context dispute resolution should be undertaken in a spirit of cooperation appropriate to this joint venture between two States.

It is the intention of the parties to settle amicably by discussion and negotiation at the appropriate level or levels of their respective organisations all disputes arising in relation to this Heads of Agreement.

If nevertheless the States are unable to agree upon any matter under or arising out of this Heads of Agreement including matters not covered in the Heads of Agreement but necessary for or incidental to achieving the objectives of the Heads of Agreement, any disagreement will become a Dispute when one party serves written notice on the other party providing details of the disagreement.

In the event of a Dispute the States will seek to appoint a suitably qualified person ("the Expert") to advise them what, in the opinion of the Expert, each party should do or pay in order to give effect to the Heads of Agreement or the objectives of the Heads of Agreement.

The fees of the Expert will be shared equally between the parties.

The Project will continue while any dispute is being resolved.

Tweed River Entrance Sand Bypassing Act 1995 No 55

Schedule 2 Heads of Agreement

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SIGNED on behalf of the State of NEW SOUTH WALES by John Fahey, Premier in the presence of:	}	John Fahey (Sgd) ..... John Fahey, Premier
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Don Beck (Sgd)  
..... Witness

DON BECK  
..... Name of  
Witness  
(print)

SIGNED on behalf of the State of QUEENSLAND by Wayne Goss, Premier in the presence of:	}	Wayne Goss (Sgd) ..... Wayne Goss, Premier
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Merri Rose (Sgd)  
..... Witness

MERRI ROSE  
..... Name of  
Witness  
(print)



## Attachment A

**NET PRESENT VALUE OF SAND BYPASS SYSTEM**

(\$ million, 1990 terms)

**Jack-up Platform System**

	Year 1	25	50	75	100	125	150	175	200 →
Capital costs									
Initial Sand supply	10								
Establishment cost of first system	13.5								
NPV	23.50								
Platform/trestle replacement	0	8.45*	8.45	8.45	8.45	8.45	8.45	8.45	8.45
NPV	1.91								
Operating cost (per annum)	1.96	1.96	1.96	1.96	1.96	1.96	1.96	1.96	1.96
NPV	28.00								
Total NPV (7% discount rate)	53.41								

Note: Capital cost is 'undiscounted', i.e. it is assumed that the full \$23.5m is spent at the beginning of year 1. However, the first year's operating cost is discounted.

\* \$8.45 M is the estimated cost of replacing the jack-up platform (\$6.5 M) with a contingency allowance of 30%

## **Schedule 3 Further Agreements**

(Section 6 (4))

[Minister's second reading speech made in—  
Legislative Assembly on 20 September 1995  
Legislative Council on 16 November 1995]

BY AUTHORITY