Tweed River Entrance Sand Bypassing Act 1995 No 55

Schedule 2 Heads of Agreement

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.


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.

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 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 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$^3$ per year (page 8 of the Joint Consultants’ Report), but analysis to date suggests that it can vary between 270,000 m$^3$ and 900,000 m$^3$ 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$^3$ 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$^3$; 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:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost (1990 dollar terms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Initial sand supply * (based on 2M m$^3$)</td>
<td>10.0</td>
</tr>
<tr>
<td>(ii) Establishment cost of first system (based on a jack up platform)</td>
<td>13.5</td>
</tr>
<tr>
<td>(iii) Operating cost (including maintenance, monitoring)</td>
<td>1.96 p.a.</td>
</tr>
<tr>
<td>(iv) Platform/trestle replacement cost</td>
<td>8.45</td>
</tr>
</tbody>
</table>

* 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:

<table>
<thead>
<tr>
<th>Description</th>
<th>NSW (%)</th>
<th>QUEENSLAND (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial sand supply *</td>
<td>75</td>
<td>25</td>
</tr>
<tr>
<td>Establishment cost of first sand bypass system</td>
<td>75</td>
<td>25</td>
</tr>
<tr>
<td>Operating cost (including maintenance, monitoring)</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Platform/trestle replacement cost</td>
<td>50</td>
<td>50</td>
</tr>
</tbody>
</table>

* 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.

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.

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
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

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

<table>
<thead>
<tr>
<th>Year 1</th>
<th>25</th>
<th>50</th>
<th>75</th>
<th>100</th>
<th>125</th>
<th>150</th>
<th>175</th>
<th>200-+</th>
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</thead>
<tbody>
<tr>
<td>Capital costs</td>
<td></td>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Description</td>
<td>Value</td>
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<tr>
<td>Initial Sand supply</td>
<td>10</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establishment cost of first system</td>
<td>13.5</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>NPV</td>
<td>23.50</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Platform/ trestle replacement</td>
<td>0</td>
<td></td>
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<td></td>
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<tr>
<td>NPV</td>
<td>1.91</td>
<td></td>
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<tr>
<td>Operating cost (per annum)</td>
<td>1.96</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>NPV</td>
<td>28.00</td>
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<tr>
<td>Total NPV (7% discount rate)</td>
<td>53.41</td>
<td></td>
<td></td>
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</tbody>
</table>

**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%