



Port of Port Fairy Delegated Committee Meeting

Agenda

Date: Tuesday 16 May 2023

Time: 3.30pm

Venue: Seacombe House Motor Inn – Port Fairy

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CONFIDENTIAL AGENDA ITEMS

- 6. Debtors/Finance Report
- 7. Discussion Mary S
- 8. Discussion Chikara
- 9. Discussion Putty’s Pride
- 9. Discussion Killara

Committee Members

Cr Jordan Lockett (Chair)
Cr James Purcell
Mr Daniel Hoey
Mr John Sproal
Mr Russell Allardice
Mr Garry Stewart
Mr Peter O'Keeffe

Apologies

Mr Rex Grady

Officers (non-voting attendees)

Mr Colin McKane – Acting Manager Environment and Regulatory Services
Ms Edith Farrell – Director Infrastructure and Environment
Mr Cameron Brown – Port of Port Fairy Coordinator
Mr Kane Church – Environment Services Coordinator

Acknowledgment of Country

The Chair will read the following:

We begin by acknowledging the Traditional Custodians of the land on which we meet today and pay our respects to their Elders past and present. We extend that respect to Aboriginal and Torres Strait Islander peoples here today.

Declarations of Conflict Interest

Reference: Local Government Act 2020 – Sections 130 (1)(a) and 130(2) Disclosure of Conflict of Interest in respect of a matter to be considered at a Council Meeting

A relevant person who has a conflict of interest in respect of a matter must:

- a) disclose the conflict of interest in the manner required by the Council's Governance Rules [Refer to Governance Rules – Division 2 Councillor conflict of interest disclosures] and
- b) exclude themselves from the decision-making process in relation to that matter, including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.

Members of Staff

If a member of Council staff has a conflict of interest in a matter which they are providing advice to Council:

- a) if the advice is included in a report, the report must disclose the conflict of interest
- b) if the officer is speaking in the Council meeting, the officer must disclose the conflict of interest before speaking on the matter.

Confirmation of Minutes

Recommendation

That the Minutes and Confidential Minutes of the previous Port of Port Fairy Delegated Committee meeting held on 7 February 2023 be confirmed.

Attachment(s)

Attachment 1 – Minutes of 7 February 2023 PoPF Delegated Committee Meeting

Attachment 2 – Confidential Minutes of 7 February 2023 PoPF Delegated Committee Meeting



Port of Port Fairy Delegated Committee Meeting

Minutes

Date: Tuesday 7 Feb 2023

Time: 3.00pm

Venue: Port Fairy Office – Old Council Chambers

Committee Members

Cr Jordan Lockett (Chair)
Cr James Purcell
Mr Rex Grady
Mr John Sproal
Mr Russell Allardice

Officers (non-voting attendees)

Mr Kane Church – Acting Manager Environment and Regulatory Services
Ms Edith Farrell – Director Infrastructure and Environment
Mr Cameron Brown – Port of Port Fairy Coordinator
Ms Sarah Fenton – Admin Support Officer

Apologies

Mr Robert Gibson – Manager Environment and Regulatory Services
Mr Garry Stewart
Mr Daniel Hoey
Mr Peter O’Keeffe

Formal acknowledgement extended to Cr Jim Doukas, thanking him for his years of service.

Acknowledgment of Country

The Chair read the following:

We begin by acknowledging the Traditional Custodians of the land on which we meet today and pay our respects to Peek Whurrong and Gunditjmarra people, their Elders past, present and emerging. We extend that respect to Aboriginal and Torres Strait Islander peoples here today.

Recording of Delegated Committee Meetings

The Chair read the following:

Today’s meeting is being minuted.

Declarations of Conflict Interest

Reference: Local Government Act 2020 – Sections 130 (1)(a) and 130(2) Disclosure of Conflict of Interest in respect of a matter to be considered at a Council Meeting

A relevant person who has a conflict of interest in respect of a matter must:

- a) disclose the conflict of interest in the manner required by the Council's Governance Rules [Refer to Governance Rules – Division 2 Councillor conflict of interest disclosures] and
- b) exclude themselves from the decision making process in relation to that matter, including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.

Members of Staff

If a member of Council staff has a conflict of interest in a matter which they are providing advice to Council:

- a) if the advice is included in a report, the report must disclose the conflict of interest
- b) if the officer is speaking in the Council meeting, the officer must disclose the conflict of interest before speaking on the matter.

Confirmation of Minutes

Recommendation

That the Minutes and Confidential Minutes of the previous Port of Port Fairy Delegated Committee meeting held on 22 November 2022 be confirmed.

Russell Allardice moved, John Sproal seconded that

the Minutes and Confidential Minutes of the previous meeting held on 22 November 2022 be confirmed.

Carried 5:0 unanimous

Public Participation

Refer to Governance Rules - Division 5 – Clause 62 Public Participation/Clause 63 Public questions/Clause 64 Public statements

62. Public participation in scheduled meeting

The agenda for every scheduled meeting must include provision for public participation.

The Council must suspend standing orders for the period of public participation.

Public participation in a Delegated Committee meeting may include:

- (a) questions from members of the public in accordance with clause 63; or
- (b) statements from members of the public in accordance with clause 64.

Unless an extension is granted by a ruling of the Delegated Committee Chair, a member of the public asking a question or making a statement under this Division must not speak for more than five minutes.

If the Delegated Committee Chair considers that a member of the public is making comments that are offensive or defamatory when given an opportunity to ask a question or make a statement:

- (a) the Delegated Committee Chair must direct the person to cease speaking; and
- (b) the meeting must proceed to the next matter.

63. Public questions

A member of the public may ask a question at a delegated committee meeting if they comply with this clause.

A person wishing to ask a question must, no later than 12 noon on the business day before the scheduled meeting, give the Delegated Committee Chair:

- (a) their name and address; and
- (b) the text of the question they wish to ask.

The Delegated Committee Chair may reject a question that is offensive or defamatory of any person, including of a Councillor or a member of Council staff.

At the discretion of the Delegated Committee Chair a question may be answered by the Delegated Committee Chair or a member of staff nominated by the Delegated Committee Chair.

If a question cannot be answered at the meeting, the Delegated Committee Chair must provide a written response to the question as soon as is practicable to:

- (a) the person asking the question; and

(b) the Delegated Committee.

64. Public statements

A member of the public may make a statement at a delegated committee meeting if they comply with this clause.

A person making a statement may:

- (a) speak on behalf of themselves or another person or group of persons;
- (b) speak to a matter on the agenda for the scheduled meeting; or
- (c) speak on any other matter that falls within responsibilities.

A person wishing to make a statement must, no later than 12 noon on the business day before the scheduled meeting, give the Delegated Committee Chair:

- (a) their name and address;
- (b) the name of any person or group they wish to represent; and
- (c) a general description of the statement they wish to make.

The Delegated Committee Chair may reject a request to make a statement if it appears to be:

- (a) offensive or defamatory of any person, including of a Delegated Committee member or a member of Council staff; or
- (b) not a matter that falls within the responsibilities of the Council.

Public Participation attendees for this meeting:

None

1. Business Arising from Previous Meeting/Actions

Meeting Date	Action item	Responsible Officer	Comments
22/11/22	Continue to work towards removal of Mary S from the Port.	Port Coordinator	IN-PROGRESS Commence legal proceedings to have Mary S removed from the port.
27/05/21	Budget bid through Tourism Department for media centre at bait shed. Kane Church – took on notice. ACTION: Follow up next meeting with progress ACTION: Manager to follow-up with Heritage Victoria	Sub Committee	IN-PROGRESS
15/02/22	Request DOT/AMSA lighthouse lumens upgrade	Port Coordinator	COMPLETED
22/11/22	Write off both outstanding debtors now their vessels are out of the port	Port Coordinator	COMPLETED
22/11/22	Port of Port Fairy Training wall assessment ACTION: Manager to begin RFQ process to assess the report and see if it is still valid, and if not, what changes are required	Port Coordinator	IN-PROGRESS Engage an engineer to review 2009 assessment of training walls and engage with Heritage Victoria
11/10/22	Funding for Boat Ramp ACTION: Director to continue conversation with Better Boating Victoria (BBV) in line with PoPF Masterplan.	Director Infrastructure and Environment	COMPLETED BBV explained proposal for consultation, planning and design.

Meeting Date	Action item	Responsible Officer	Comments
11/10/22	Griffiths Street footpath, from rivers edge to boat ramp for safety	Director Infrastructure and Environment	COMPLETED Costings provided and included in Council budget process for consideration.
11/10/22	Battery Hill Signage requires updating	Port Coordinator	YTC Suggestion from Community Bank of Sponsorship of interpretive signage.
11/10/22	Landscaping footbridge pathway, Rotary Club	Port Coordinator	YTC Obtain details of what is proposed by Rotary
11/10/22	Fender replacement Noted this will take place at end of February	Port Coordinator	IN PROGRESS Contractor engaged to undertake works.
11/10/22	Follow up on funding allocation from Better Boating Vic and circulate details with Minutes.	Director of Infrastructure and Environment	COMPLETED BBV presented to committee 22/11/22
22/11/22	Continue pylon wrapping with unspent funds ACTION: Manager reviewing Tender process.	Port Coordinator	YTC
22/11/22	Obtain costing for historic lifeboat slipway replacement Kane Church – taken on notice	Port Coordinator	IN-PROGRES Engineer engaged

ACTION: Coordinator to inspect round bollards and present photos to committee.

2. Correspondence In/Out

Overview: Update of correspondence in and correspondence out since the last Port of Port Fairy Delegated Committee meeting.

Noted in confidential items.

3. Port Quarterly Operations Report

Overview: This report contains information relating to the operation and management of the Port of Port Fairy for the period December 2022 to January 2023.

ACTION: Officers to further investigation options for the Kayak access.

ACTION: Officers to investigate if there is an option to use the BBV funding for kayak access.

ACTION: The consultant completing the fender replacement will also inspect the red Bouy.

ACTION: Manager to follow-up review for tender for dredging.

The Port of Port Fairy Delegated Committee noted the Port of Port Fairy Operations Report for the period November 2022 to January 2023

4. Berthing Prices Adjacent to Marina

John Sproal moved, Cr James Purcell seconded that

The Port of Port Fairy Delegated Committee seeks further information and clarification on this item.

Carried 5:0

5. Kayak Launching Jetty

6. 2023 Port of Port Fairy Business Plan

Rusell Allardice moved, Cr Jordan Lockett seconded that

The Port of Port Fairy Delegated Committee approve submission of the 2023 Port of Port Fairy Business Plan to the Department of Transport & Planning

Carried 3:2

Rex Grady, Rusell Allardice, Cr Jordan Lockett in favour

Cr James Purcell, John Sproal against

7. Port of Port Fairy Budget Update

Overview: Update of the Port of Port Fairy 2022-2023 Budget.

Cr James Purcell moved, Russell Allardice seconded that

the Port of Port Fairy delegated committee received the update for the 2022-2023 budget

Carried 5:0

8. General Business

Next Meeting

Tuesday 9th May 2023

Meeting Close

Confirmed this 22nd of November 2022

John Sproal moved, Cr Purcell seconded that

the Port of Port Fairy meeting be closed in order to consider the Confidential Port of Port Fairy agenda items.

.....

Chair, Cr Jordan Lockett

Public Participation

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- (a) offensive or defamatory of any person, including of a Delegated Committee member or a member of Council staff; or
- (b) not a matter that falls within the responsibilities of the Council.

Public Participation attendees for this meeting:

Nil

1. Business Arising from Previous Meeting

Meeting Date	Action item	Responsible Officer	Comments
22/11/22	Continue to work towards removal of Mary S from the Port.	Port Coordinator	IN-PROGRESS Letter issued 5 th May awaiting response within 28 days. If Mary S removed no recovery of outstanding fees.
27/05/21	Budget bid through Tourism Department for media centre at bait shed. ACTION: Follow up next meeting with progress ACTION: Manager to follow-up with Heritage Victoria	Sub Committee	IN-PROGRESS S17B Crown Licence Agreement for current use under investigation TBA
22/11/22	Port of Port Fairy Training wall assessment ACTION: Manager to begin RFQ process to assess the report and see if it is still valid, and if not, what changes are required	Port Coordinator	IN-PROGRESS Seeking quotes Engage an engineer to review 2009 assessment of training walls and engage with Heritage Victoria
11/10/22	Battery Hill Signage requires updating	Port Coordinator	TBA Coordinator has tried to contact no reply as yet Suggestion from Community Bank of Sponsorship of interpretive signage.
11/10/22	Landscaping footbridge pathway, Rotary Club	Port Coordinator	Rotary willing to undertake maintenance and inductions. Working through ongoing maintenance requirements with parks and gardens.
11/10/22	Fender replacement	Port Coordinator	COMPLETED
22/11/22	Continue pylon wrapping with unspent funds	Port Coordinator	IN-PROGRESS Exemption request granted and quote to complete 20 pylons within budget. Contractor to be engaged in near future

22/11/22	Obtain costing for historic lifeboat slipway replacement	Port Coordinator	IN-PROGRES Reviewed plan indicates use of timber, Historic Life Boat Committee has agreed to utilise steel as timber no longer viable. Will require redesign with engineer for steel specifications. Budget allocated for replacement is \$50,000
07/02/23	Further investigate options for Kayak access	Port Coordinator	IN-PROGRESS Consultant has indicated \$3,000-\$5,000 to further investigate options to reduce scope. However, design will likely be above budget allocated (\$30,000). Warrnambool Council just installed DDA ramp and pontoon with cost in the order of \$400,000
07/02/23	Officers to investigate if there is an option to use the BBV funding for kayak access.	Port Coordinator	TBA
07/02/23	The consultant completing the fender replacement will also inspect the red buoy.	Port Coordinator	COMPLETE Awaiting consultant report
07/02/23	Manager to follow-up review for tender for dredging	Port Coordinator	IN-PROGRESS Will require purchase exemption as no tenderer appointed.
07/02/23	Round bollard assessment	Port Coordinator	IN-PROGRESS Report under review

2. Correspondence In/Out

Overview: Update of correspondence in and correspondence out since the last Port of Port Fairy Delegated Committee meeting.

Recommendation

That the Port of Port Fairy Delegated Committee note and receive correspondence in and correspondence out since the last delegated committee meeting.

Attachment(s)

- Attachment 1 – **Confidential** - Inward correspondence regarding Chikara
- Attachment 2 – **Confidential** - Inward correspondence regarding Putty's Pride
- Attachment 3 – Inward correspondence Recreational Boating Access and Dredging Grant Program 2022-23 – Dredging and Jetty Grants
- Attachment 4 – Outward Berthing Renewal Application Letter & Terms and Conditions
- Attachment 5 – Outward Port of Port Fairy Delegated Committee Interim Report Edition 1
- Attachment 6 – Outward Port of Port Fairy Management Agreement



The Hon Sonya Kilkenny MP

Minister for Planning
Minister for Outdoor Recreation

8 Nicholson Street
East Melbourne, Victoria 3002 Australia

Mr Kane Church
Acting Manager Environment and Regulatory Services
Moyne Shire Council
PO Box 51
Port Fairy, VIC, 3284

Dear Mr Church

RECREATIONAL BOATING ACCESS AND DREDGING GRANT PROGRAM 2022-23

Thank you for your application for funding through the Recreational Boating Access and Dredging Grant Program.

As part of the Victorian Government's commitment to make recreational boating easier, cheaper and more accessible, \$1 million was made available from the 2022-23 Better Boating Fund for improved dredging access at public boating facilities through the Recreational Access and Dredging Grant Program.

This funding will be delivered through grants and available to applicants who manage public boating facilities. The program will be overseen by Better Boating Victoria (BBV).

I take great pleasure in informing you that the following grant application submitted by your organisation has been successful:

Project Title	Funding awarded (ex GST)
Port of Port Fairy Moyne River Dredging Program	\$100,000

Please find attached a copy of a Funding Agreement for your attention and a set of instructions on the next steps attached to this letter.

If you have any queries about your grant, please contact Louis Hogarth, Program Delivery Officer on 0459 955 313 or louis.hogarth@vfa.vic.gov.au

Congratulations on your successful application and I look forward to seeing improvements to access at public boating facilities across Victoria.

Yours sincerely

The Hon. Sonya Kilkenny
Minister for Outdoor Recreation

24/4/2023



The Hon Sonya Kilkenny MP

Minister for Planning
Minister for Outdoor Recreation

8 Nicholson Street
East Melbourne, Victoria 3002 Australia

Mr Kane Church
Acting Manager Environment and Regulatory Services
Moynes Shire Council
PO Box 51
Port Fairy, Vic, 3284

Dear Mr Church

RECREATIONAL BOATING STRUCTURAL MAINTENANCE PROGRAM 2022/23

Thank you for your application for funding under the Recreational Boating Structural Maintenance Program.

As part of the Victorian Government's commitment to make recreational boating easier, cheaper and more accessible, \$2 million was made available from the 2022-23 Better Boating Fund for maintaining public boating facilities through the Recreational Boating Structural Maintenance Program.

This funding will be delivered through grants and available to applicants who manage public boating facilities. The program will be overseen by Better Boating Victoria (BBV).

I take great pleasure in informing you that the following grant application submitted by your organisation has been successful:

Project Title	Funding awarded (ex GST)
Port Fairy Jetty Upgrades	\$50,000

Please find attached a copy of a Funding Agreement for your attention and a set of instructions on the next steps attached to this letter.

If you have any queries about your grant, please contact Louis Hogarth, Program Delivery Officer on 0459 955 313 or louis.hogarth@vfa.vic.gov.au

Congratulations on your successful application and I look forward to seeing improvements and maintenance to public boating facilities across Victoria.

Yours sincerely

The Hon. Sonya Kilkenny
Minister for Outdoor Recreation

24/4/2023

1 May 2023

«NAME»
«ADDRESS»
«SUBURB_STATE_POSTCODE»

Port of Port Fairy Berthing Permit

As permits for berthing vessels within the Port of Port Fairy are issued for the financial year, it is again time to renew your berthing permit.

Enclosed is the 2023 / 24 Port of Port Fairy “Berthing Terms and Conditions” and *Berthing Permit Renewal Application* form.

Included with these documents is a new policy the “Moyne Shire Non-Compliant Berthing Holder Policy (Authorised August 2021).” Which is to provide a clear and transparent process and ensure that noncompliance is clearly explained. This document is required to be distributed to all berth holders and prospective applicants for a berth.

As a berth holder, it is important you read and understand the berthing permit terms and conditions as well as the policy as they detail obligations associated with being a permit holder.

In order to renew your berthing permit, you are required to complete the enclosed:-*Berthing Permit Renewal Application* form, and return it along with evidence of vessel registration and certificate of currency for insurance using the enclosed reply paid envelope or by email moyne@moyne.vic.gov.au due date is 30 June 2023.

Signing the *Berthing Permit Renewal Application* form constitutes acceptance of the 2023 Berthing Terms and Conditions.

A Berthing Permit authorising you to berth your vessel within the Port of Port Fairy for up to twelve consecutive months ending on June 30. Permit will only be issued after you provide the following documents:

- **Berthing Permit Renewal Application Form** (Signed & witnessed)
- **Evidence of Registration** (Certificate of Registration or Survey),
- **Evidence of Adequate Insurance** (Current certificate of Insurance)

Please contact me by phone on 0408 529 190 or email cameron.brown@moyne.vic.gov.au if you have queries regarding renewal of your berthing permit.

Yours sincerely

Cameron Brown
Coordinator, Port of Port Fairy

PORT OF PORT FAIRY

BERTHING PERMIT RENEWAL APPLICATION - 2023/24

I make application to renew my permit to berth a vessel within the Port of Port Fairy. By signing below, I acknowledge that a permit to berth my vessel within the Port of Port Fairy is subject to the *2023 Port of Port Fairy Berthing Terms and Conditions* and further acknowledge that I have read, understand and agree to comply with the *2023 Port of Port Fairy Berthing Terms and Conditions* as provided with this application form.

Vessel Owner's Name (Please Print)	Witness Name (Please Print)
Signature	Witness Signature
Vessel Name	
Date	Date

ATTACHMENTS REQUIRED

Berthing permits are issued pursuant to section 17(2) of the *Port Management (Local Ports) Regulations 2015*. This Berthing Permit Renewal Application **must** be submitted with the following documents in order for a permit to be issued.

- This Berthing Permit Renewal Application
- Evidence of vessel registration (Current certificate of Registration)
- Evidence of adequate insurance (Current certificate of Insurance)

All permits to berth a vessel within the Port of Port Fairy are subject to the *2023 Port of Port Fairy Berthing Terms and Conditions* and berth availability.

P.T.O.

Please complete the following table to ensure the Port of Port Fairy retains accurate and up to date records and can readily contact you with regard to matters associated with the Port of Port Fairy.

If no change to details from previous year please tick this box

Home Address	
Postal Address	
Email Address	
Mobile Number	
Emergency Contact Name	
Emergency Contact Mobile Number	

The information requested on this form will be used solely by the Moyne Shire Council. We will not use your personal information for any other purpose without first seeking your consent, unless authorized or required by law. The Council may not be able to process your request unless sufficient information is given. You may apply to the Moyne Shire Council for access to and/or amendment of the information on 1300 65 65 64.



Port of Port Fairy

Berthing Terms & Conditions

Version: May 2023

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Definitions

In these Terms and Conditions, the following capitalised terms have the corresponding meanings:

- “Act” means the Port Management Act 1995 (Vic);
- “Applicant” means the person completing an Application or Renewal;
- “Application” means the application completed by the Owner for the Vessel to receive a Permit;
- “Berth” means the berth issued to the Owner for the berthing of the Vessel by the PoPF;
- “Berthing Fees” means the fees charged by the PoPF to the Owner for the issuing of the Permit;
- “Council” means the Moyne Shire Council 69 056 376 923;
- “Fee” means the fee payable by the Owner to the PoPF for use of the Berth;
- “Itinerant Berth” means an itinerant berth at the Port;
- “Law” means any law, including any common law, equity, statute, regulation, proclamation, ordinance, by-law, mandatory code of conduct, writ, judgment and any award or other industrial instrument;
- “Notice” means a written notice provided by the PoPF or the Owner to the other, in accordance with clause 10;
- “Owner” means the owner of the Vessel who has applied for and/or been granted a Permit;
- “Permits” means the permit to berth the Vessel at the Port granted to the Owner by the PoPF in accordance with these Terms and Conditions;
- “Policies” means the policies of Council and the PoPF, copies of which are available at the Council’s website;
- “PoPF” means the Council trading as the Port of Port Fairy;
- “PoPF Board” means the board empowered under section 86 of the Local Government Act 1988 (Vic) as a committee of Council;
- “PoPF Staff” means all employees, contractors, representatives, and agents of Council and/or the PoPF;
- “Port” means the port waters of the Port of Port Fairy, and port land owned by Council and managed by the PoPF;
- “Port Manager” means the port manager of the Port;
- “Regulations” means the Port Management (Local Ports) Regulations 2015 (Vic);
- “Renewal” means an application to renew a Permit;
- “SEMP” means the Safety and Environment Management Plan for the Port, a copy of which is available at the PoPF depot or online at the Council’s website;
- “Term” means the term of the Permit set in accordance with clauses 2.4 and 2.5; and
- “Vessel” means the vessel of the Owner.

Issuing of Permit

The Owner is only permitted to berth at the Port following the issuing of a Permit. The Permit will only be considered issued where the Owner been issued with a formal letter of approval confirming that a Permit has been issued to the Owner.

The Owner acknowledges and agrees that they have been afforded the opportunity to inspect the Berth prior to the issuing of the Permit and is satisfied that the Berth is suitable for the Vessel.

No vessel other than the Vessel, regardless of ownership, may use the Berth issued to the Owner in accordance with a Permit for any purpose, without the prior written consent of the PoPF. For the avoidance of doubt, if the Owner disposes of the Vessel and purchases a replacement vessel, the Berth will not transfer to the new Vessel without the prior written consent of the PoPF.

Subject to clause 2.5, a Permit is issued for a period of up to twelve consecutive months commencing on the date the Permit is issued and ending on the next 30 June, unless terminated earlier in accordance with clause 16.3.1.

If a Permit is issued in accordance with clause 11.4, it is issued for the period of time specified on the permit, unless terminated earlier in accordance with clause 16.3.1.

Use of the Berth is subject to the Owner's payment of Fees in accordance with clause 3.

If a Permit has been issued in the name of more than one person, it is issued to the persons jointly, and all persons named on the permit are responsible for the Berth and are liable for any act or failure to act by any one or more of them.

The PoPF will not accept instructions from any attorney, agent, or other person purporting to act on behalf of the Owner unless the Owner has sought the prior written approval of the PoPF for that person to act on their behalf.

The Owner will not use the Berth for charter, hire, or other commercial activities unless the Owner has obtained the prior written approval of the PoPF. If the PoPF approves the use of the Berth for charter, hire, or other commercial activities, the Owner must not inconvenience or disturb any other berth or berthing permit holder through their use of the Berth.

The rights provided to the Owner in accordance with these Terms and Conditions are personal and not transferrable and will cease immediately on the earlier to occur of the expiry of the Permit, the termination of the Permit, or the death of the Owner.

If the Owner intends to renew their use of the Berth, the Owner must provide written notice to the PoPF not more than 12 and not less than 6 weeks prior to the expiry of the Term. For the avoidance of doubt, the Owner has no right to renew a Permit issued in accordance with clause 11.4.

Issuing of Permit continued

The PoPF may, at its sole discretion, accept or reject a Renewal application for any reason and will provide written notice to the Owner of its decision.

If the PoPF issues an offer of renewal of a Permit to the Owner, the offer is only valid from 14 days after it has been issued. If the Owner has not accepted an offer to renew their Berth within this period, the offer is deemed to have been rejected by the Owner.

On expiry of the Permit, the Owner will immediately remove the Vessel from the Berth. If the Owner fails to remove the Vessel in accordance with this clause, the Owner agrees that PoPF Staff may, at the cost of the Owner, remove the Vessel from the Berth.

Fees

The Fee is payable by the Owner to the PoPF quarterly in advance, with payments to be made in January, April, July, and October of each year.

The PoPF will issue a quarterly invoice to the Owner, which must be paid by the due date specified on that invoice.

The Fee will be set by the PoPF who may, at its sole discretion, amend the Fee at any time and from time to time, with such amendment to take effect from the date determined by the PoPF and any updated Fee will be payable by the Owner at the next Fee Payment Date. The PoPF will provide notice to the Owner of any increase in the Fee. The Owner may, prior to the next Fee Payment Date, immediately terminate the Permit if the Owner does not agree to pay the amended Fee.

If the Permit is terminated before its expiry, or if the Owner otherwise vacates the Berth, the Owner is not entitled to any refund of Fees paid to the PoPF.

If at any time the Owner has not paid all Fees owing to the PoPF, the PoPF may at its sole discretion:

- place restrictions on the Owner's use of the Port including but not limited to:
- removing access rights to slipways;
- temporarily limiting access to the Berth; and/or
- removing the Vessel from the Berth; and / or
- immediately terminate the Permit.

Rights and Responsibilities

Under the Regulations, the authorisation of the Port Manager is required in order to conduct certain activities in the Port. Berthing of the Vessel within the PoPF is subject to application for a Permit before arriving at the Port.

Any person entering the Port, by land or water, does so entirely at their own risk and warrants to abide by these Terms and Conditions.

The PoPF is not responsible for any loss, damage or injury to persons or possessions, arising from use of the Port, except to the extent that the loss, damage, or injury is a result of negligence of the PoPF.

Parking vehicles at the Port is entirely at the Owner's risk. Vehicles must only be parked in allotted vehicle spaces and must not obstruct pedestrian thoroughfare, PoPF's loading bay or emergency access.

The PoPF is not liable for any loss or damage suffered by the Owner due to environmental conditions.

Access to the Port does not entitle any person to abuse the privilege for commercial purposes, distribute leaflets, business cards or the like, or perform surveys of any nature without written consent of the PoPF.

All persons at the Port must comply with safety and informational signage posted in the PoPF.

The PoPF may at any time and from time to time amend these Terms and Conditions. Any amended version of these Terms and Conditions is binding on the Owner from the date that the amended Terms and Conditions are made available from the Council's website. The PoPF will provide notice of the amended Terms and Conditions to the Owner. The Owner may, within 20 days of that notice, immediately terminate the Permit if the Owner does not agree to be bound by the amended Terms and Conditions. If the Owner terminates the Permit in accordance with this clause, the PoPF will provide the Owner with a pro rata refund of any Fee paid by the Owner for the period between the date of termination and the next Fee Payment Date.

The PoPF will not tolerate any verbal, physical or written abuse to any of the PoPF staff, clients, or visitors. Any person who displays such behaviour will be deemed to have contravened the Terms and Conditions and their permit may at the sole discretion of the PoPF, be terminated.

The Council and the PoPF will retain records of all transactions regarding the Owner and Vessel, and contact information provided by the Owner will be kept confidential and held in accordance with data protection and privacy legislation.

Conduct – vessel

The Vessel must not be moored, sailed, or manoeuvred in a manner that creates any danger, obstacle, or inconvenience to other Port users.

Double berthing is not permitted at the Port, except at Itinerant Berths or loading bays where all Itinerant Berths or loading bays (as applicable) are occupied.

The Owner may not leave or store any equipment on the docks, and must not attach, affix, modify or install any other objects or materials to the docks without the prior written permission from the PoPF. If the Owner breaches this clause, the PoPF may remove, store, or dispose of any materials left on the docks, at the Owner's expense.

All water hoses, electrical cords and dock line tails shall be stowed aboard the Vessel when not in use to minimise tripping hazards on the docks.

Without exception, all electrical connections made to the PoPF's receptacles must be approved, weatherproof, and earthed connected. Wiring must be of sufficient amperage for its use as specified by the applicable electrical code. Power cords may not cross walkways nor be affixed or secured to docks and must have current test tag in place. Non-tagged or damaged power cords will be disconnected by PoPF Staff.

The supply and issuance of all electrical and water connections between a Vessel and PoPF property are the responsibility of the Owner. The PoPF makes no warranty as to the suitability or standard of utilities provided for any specific Vessel. It is the Owner's responsibility to ensure their Vessel requirements and connectivity is sufficient for receiving supply.

No portion of any Vessel may extend, overhang or obstruct the walkway at any time.

A Vessel's tender, gear, equipment, stores, inflatable vessels and all other small watercraft, when not in immediate use, must be kept on the Vessel. Items must not be left on the wharf or jetties. Dinghies must not be kept in the Berth.

All Vessels with engines must use engines for propulsion within the Port waters. Maximum speed in Port waters is 5 Knots.

Excessive Vessel wash can damage boats, property, and persons. Any violation of this clause the Owner will receive an official warning. If the Owner repeatedly breaches clause 5.9, the PoPF may at its sole discretion, terminate the Permit. If the PoPF deems a breach of this clause to be a significant breach, it may terminate the Permit without issuing an official warning.

Registration & insurance

On submission of an Application or Renewal, the Owner must provide the PoPF with evidence of the current registration and insurance of the Vessel in order to be eligible to be granted a Permit.

The Vessel must at all times be insured with a reputable insurer at least in respect of third-party injury and property damage (including salvage) for an amount not less than \$AUD5,000,000.00. A copy of a current certificate of currency and the insurance policy must be provided to PoPF, including renewal of that insurance.

If the Owner breaches the obligations in this clause 6, the PoPF may at its sole discretion immediately terminate the Permit.

If the Owner fails to remove the Vessel following termination of the Permit for breach of this clause 6, the Owner agrees that PoPF staff may, at the Owners expense, remove the Vessel from the Berth to another location.

Vessel condition & right to inspect

The Owner must ensure the Vessel is inspected frequently and kept in good condition and repair. The Vessel must be kept to a high standard of appearance and be safe and seaworthy at all times.

Notwithstanding the issuing of the Permit, the PoPF may refuse to allow the Vessel to berth where the PoPF considers, at its sole discretion, the Vessel is unsafe, unseaworthy, or not in keeping with the standards of the PoPF.

The Vessel's engines and equipment must not produce excessive or unreasonable noise or environmental pollution and must at all times be kept in a good state of repair.

Vessel registration and/or identification mark or name must be clearly displayed at all times.

The Vessel must not run auxiliary generators except for maintenance purposes and only during daylight hours.

The Vessel must use the following minimum mooring standards and mooring lines are the responsibility of the owner of the vessel:

- for alongside moorings, a minimum of three mooring lines (1 x stern, 1 x bow and 1 x spring) must secure the Vessel and be a standard no less than three strand rope of a diameter appropriate for securing the Vessel. Adequate rubber fenders supplied by the Owner should also be used to protect the Vessel.
- if the Vessel is moored within the yacht pen mooring, a minimum of 4 mooring lines (2 x stern, 2 x bow) of a standard no less than three strand rope of a diameter adequate for securing the Vessel.

If the Owner fails to moor the Vessel in accordance with clause 7.6, the PoPF may, at the Owners expense properly moor the Vessel.

The Vessel must not be secured to any handrail or ladder, and vehicle tyres must not be used as fenders.

Vessel must be cleaned out of water every 24 months.

The Owner will, if reasonably directed by the PoPF, clean the hull and superstructure of the Vessel at the Owner's expense.

No work, other than minor operational repairs or routine maintenance may be conducted on the Vessel while at the Berth without the prior written approval of the PoPF.

Any use of sanding, painting, welding, or fabrication works involving any power tools must be undertaken in the slipways, unless the prior written approval of the PoPF has been obtained by the Owner.

If the Owner breaches the obligations in this clause 7, the PoPF may at its sole discretion:

- board and relocate the Vessel; and/or
- immediately terminate the Permit.

Berth ownership

The Permit does not give the Owner any right of ownership of the Berth, only a right to utilise the Berth for the Term.

The issuing of the Permit for a particular Berth does not mean the PoPF must issue a Permit for the same Berth following a successful Renewal application.

Directions

The Owner must at all times obey lawful directions given the by the PoPF staff.

The PoPF Board is empowered by section 86 of the *Local Government Act 1989 (Vic)* as a Committee of Council with delegated functions, obligations, and roles in the operation and management of the Port.

The Owner must obey the Act, Regulations, Council Policies, and other applicable Laws.

The PoPF may, at its sole discretion, temporarily restrict vessel movement in the Port and, if possible, the PoPF will provide the Owner with notice of the restriction.

Notice and change of details

The Owner must inform the PoPF within 14 days if any of the Owner's personal information or information about the Vessel becomes incorrect, incomplete, or misleading.

Any Notice issued by the PoPF will be provided to the Owner:

- via email; postal address or in person.

A Notice is deemed to have been received by the Owner:

- if sent by email before 5:30pm on a business day, that day, otherwise on the next business day.
- if delivered to the Owner's address before 5:30pm on a business day, that day, otherwise on the next business day; or in person at the time.
- if sent by pre-paid mail, on the fifth business day after posting.

Sublicensing

If the Vessel is to be absent from the Berth for a period of 30 consecutive days or more, the Owner must notify the PoPF that the Berth will be temporarily vacant (**Temporary Absence**). The Owner acknowledges the PoPF may, at its sole discretion, issue a Permit to a third party during a Temporary Absence.

Unless the Owner has obtained the prior written approval of the PoPF, if the Vessel is absent from the Berth for 180 days or more, the Berth will be deemed forfeited and the Permit will be immediately terminated.

The Owner is not permitted to sublicense or otherwise allow any other person or vessel to use the Berth, during a Temporary Absence.

The PoPF may, at its sole discretion, sublicense the Berth during a period of Temporary Absence, which includes issuing of a separate Permit for the Berth.

Prior to sublicensing the Berth under a Permit, the PoPF will ensure:

- the suitability of the vessel for the Berth;
- the owner of the vessel that will obtain the benefit of the Permit signs these Terms and Conditions; and
- the Permit is issued for a period not exceeding 180 days.

Residing on vessel

The Owner must not, and must not allow any other person to, reside on the Vessel overnight unless the person has been granted a short-term permit for overnight accommodation (**STPOA**), an application form for which may be obtained from the PoPF.

A STPOA will only be issued to the Owner and/or regular crew of the Vessel, for a maximum of two consecutive nights and only when the Vessel has the capacity to store all toilet effluent, bilge water, and black/greywater on board in holding tanks.

If the Vessel is berthed in a short-term Itinerant Berth, the restrictions in this clause on overnight accommodation will not apply provided that berthing in the Itinerant Berth has been approved by the PoPF, and only when the Vessel has the capacity to store all toilet effluent, bilge water, and black/greywater on board in holding tanks.

The Owner may not, under any circumstances, allow the Vessel to be rented or let for overnight accommodation under any circumstances.

Waste

The Owner must take all reasonable precautions to prevent pollution in accordance with this clause and is responsible for all costs associated with rectifying any breach of this clause.

The Owner will not:

- allow any toilet effluent, bilge water, black/greywater, or other pollutant to be discharged, thrown overboard, or left in the Port except in the case of emergency (ie. the Vessel is sinking).
- place or dispose of lubricant, engine oil, fuel filter, damaged or old batteries, old paint cans, thinner or solvent bottles, fire extinguishers or any other hazardous materials on site or in any PoPF waste bin.

If waste is released into the Port, the Owner must:

- immediately act to clean up, isolate and/or contain the release.
- notify the PoPF staff of the release; and
- pay all costs associated with the release, including but not limited to clean-up costs, legal or enforcement expenses, costs or penalties incurred.

Damage

The Owner must as soon as reasonably practicable report to the PoPF any accident or incident involving the Vessel, whether or not involving any injury to any person, or any damage to property.

The Owner must complete a property and incident report within 24 hours of the incident.

The Owner will immediately on demand pay to PoPF all costs associated with any accident or incident, including damage caused to any Port property by the Owner and/or the Vessel.

The Owner expressly acknowledges the PoPF is not under any duty or obligation to salvage or preserve the Vessel or any of the Owner's property as a consequence of any accident, incident, defect of the Vessel, or act or failure to act of the Owner.

The PoPF may, at its sole discretion and at the Owners expense, remove or relocate any items recovered or salvaged following any accident or incident.

Refuelling

The Vessel may only be refuelled at the designated fuelling berth and the Owner must at all times obey instructions posted by the PoPF in relation to refuelling Vessels.

The Vessel must not remain in the designated fuelling berth after refuelling is complete.

If the Owner intends to refuel the Vessel from a source other than the PoPF fuel bowser, the Owner must:

- notify the Port Manager of the name of the Vessel and the time refuelling is proposed to occur.
- only refuel when a member of the PoPF Staff is present with a spill response kit; and
- remain on the Vessel at all times during refuelling.

If fuel is released into the Port, the Owner must:

- immediately act to clean up, isolate and/or contain the release.
- notify the PoPF staff of the release; and
- pay all costs associated with the release, including but not limited to clean-up costs, legal or enforcement expenses, costs or penalties incurred.

Warranty & indemnity

The Owner warrants that all information provided by the Owner is correct, complete, up-to-date, and not misleading.

The Owner agrees to indemnify and keep indemnified, the PoPF, Council, and PoPF staff from and against any claim, liability, or loss, including consequential loss, arising from a breach by the Owner of these Terms and Conditions, including but not limited to:

- the Owner's use of the Vessel;
- the Owner's use of the Berth; and
- any safety or environmental matter in the Port.

The PoPF, Council, and PoPF staff will not be liable for any claim, liability, or loss suffered by the Owner for any reason, including but not limited to:

- any loss or theft of items or equipment from the Vessel;
- moving the Vessel in accordance with these Terms and Conditions and any applicable Law; and
- any damage to the Vessel.

Access to berth

The PoPF may at any time and from time to time restrict, limit, or remove access to the Berth for any reason including but not limited to maintenance and repair works. The PoPF will, except where in its sole discretion considers the restriction, limitation, or removal of access is required to be immediate, provide the Owner with 7 days' notice of any restriction, limitation, or removal of access to the Berth.

The PoPF will not be liable if it is unable to provide use or access to, or the Owner is unable to use or access, the Berth due to an act, event or occurrence such as fire, flood, explosion, riot, war, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions and other like events that are beyond the reasonable anticipation and control of the PoPF affected despite the PoPF's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which are not attributable to the POPF's failure to perform its obligations under these Terms and Conditions (**Force Majeure Event**).

Termination

The Owner may, on provision of not less than 20 days' written notice, terminate the Permit.

The PoPF may, on the provision of 20 days' written notice, terminate the Permit regardless of whether the Owner has breached these Terms and Conditions. If the Permit is terminated in accordance with this clause 18.2, the PoPF will reimburse the Owner a portion of the Fee on a pro rata basis.

- The PoPF may, at its sole discretion, immediately terminate the Permit:
- in accordance with clauses 3.5.2, 4.9, 5.10, 6.3, 7.13.2, 10 and 11.2;
- if the PoPF considers, acting reasonably, that the Owner has brought the PoPF into disrepute;
- if the Vessel is seized by a third party, creditor, liquidator, receiver, or under a Court order or judgement;
- if the Owner and/or the Vessel breach the Act, Regulations, Council Policies, or other applicable Laws; or
- if the PoPF consider, acting reasonably, that it is in the interests of public safety.

Either the Owner or the PoPF may terminate the Permit by notice in writing to the other if a Force Majeure Event has persisted for a period of at least 20 consecutive days.

If the Permit is terminated in accordance with clause 18.1 or 18.3, the Owner is not entitled to any refund of any Fee paid.

On termination of the Permit, the Owner must as soon as reasonably practicable, but in any event within 5 days, remove the Vessel from the Berth.

If the Vessel has not been removed from the Berth in breach of clause 18.4, the PoPF may at its sole discretion:

- at the Owners expense, including enforcement and legal expenses, relocate the Vessel; or
- charge the Owner the current itinerant overnight visitors rate and the Owner agrees to pay that amount to the PoPF on demand.

Laws

These Terms and Conditions and the issuing of the Permit is subject to, and is governed by, the Act, Regulations, and any other relevant Law, and the Council's General Local Law No. 1-2015.

If there is any inconsistency between these Terms and Conditions and the Act, Regulations, other relevant Law, the Act, Regulations or other relevant Law will prevail.

The Owner and the Vessel may be bound by Laws that impose additional obligations to these Terms and Conditions on the Owner, and the Owner agrees to abide by any relevant Law.

If the Owner breaches this clause 19, the PoPF may, at its sole discretion, immediately terminate the Permit.

Semp

The Owner must at all times abide by the SEMP, a copy of which is available for inspection at the PoPF depot or online at the Council's website.

References and links

Name	Location
Port Management Act 1995	www.legislation.vic.gov.au
Port Management (Local Ports) Regulations	www.legislation.vic.gov.au
Port of Port Fairy Annual Berthing Renewal Application Form	www.moyne.vic.gov.au
Port of Port Fairy Berth Waiting List Application Form	www.moyne.vic.gov.au
Non-Compliant Berth Holder Policy	www.moyne.vic.gov.au
Port of Port Fairy Short Term / Overnight Accommodation Permit	www.moyne.vic.gov.au



Port of Port Fairy Delegated Committee Interim Report

15 March 2023, Edition 1

The Chair of the Committee sought to initiate better frequency of reporting to the Committee and welcomes Committee members to read our inaugural Port of Port Fairy delegated Committee Interim report. The interim report will provide updates to Committee members between Committee meetings.

See you at the next meeting on **Tuesday 9th May**.

February Statistics

- Large slipway has had 4 vessels high and dry throughout the month of February.
- 6 Vessels and crew have been through our beautiful port as itinerant moorings in February.

BBV Grants

Better Boating Victoria have funding applications open for improving Victorian boating facilities.

We are in the process of putting together 2 applications, one for some extra dredging of the Moyne river, and one for some improvements to the boat ramp jetty.



Roving Enterprises

Port Coordinator, Cameron, ventured to Portland to check out a demonstration by Roving Enterprises in regards to x-ray of underwater assets, which could be potentially used for assessment of our historic round timber bollards on our South Wharf. Cameron will provide an update on the learnings from this at our next Committee meeting.

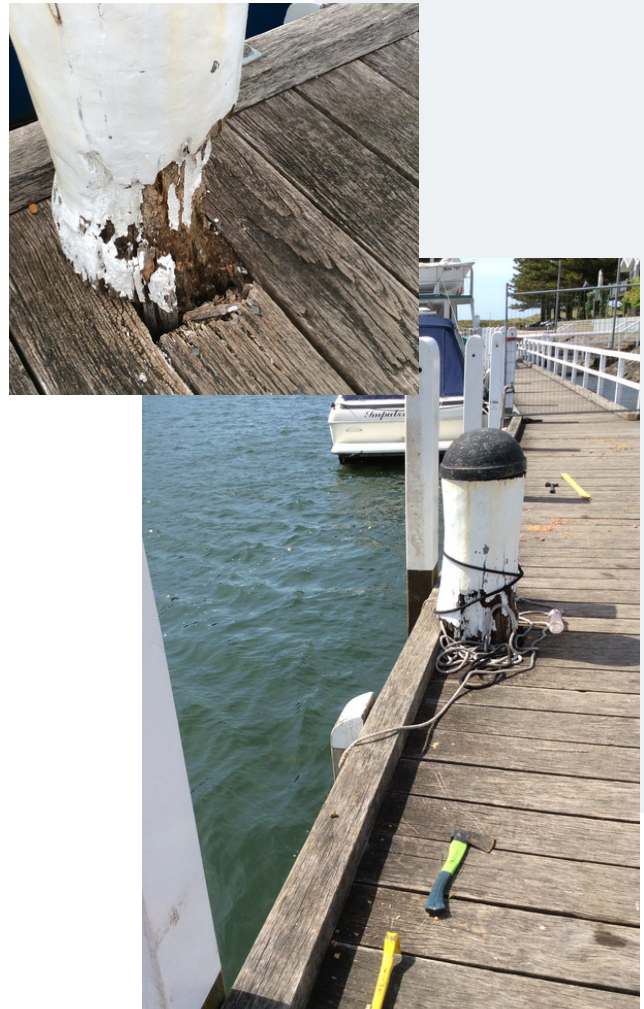
Red Buoy

The team from Maintenance Concepts and port staff replaced the jewelry on the red buoy in the bay. The beacon had been out and was reported to us by a member of the public. Maintenance Concepts checked all underwater infrastructure and a condition report will be with the Port Coordinator soon.



Historic Bollards

Officers are waiting on a quote for an engineering condition report on historic round timber bollards.



Fender Replacements

Maintenance Concepts have been busy replacing fenders and some sections of timber whaler, which has been infiltrated by borer and has major cracking.



Moyne Shire Council
PO Box 51
PORT FAIRY VIC 3284

Attention: Paul Roy, A/Manager Environment and Regulatory Services

Dear Paul

Variation of Port of Port Fairy Management Agreement

I refer to the Port of Port Fairy Management Agreement between Head, Transport for Victoria (**TfV**) and Moyne Shire Council dated 26 September 2017 (**Contract**).

With effect from 1 January 2020:

- Head, TfV was incorporated and the assets and liabilities of Head, TfV (unincorporated) vested in Head, TfV (incorporated); and
- The powers and functions of TfV in relation to ports and ports management were transferred to the Secretary to the Department of Transport (**Secretary**).

Consequently, pursuant to clause 15.2.3 of the Contract, the Contract is now between the Secretary and Moyne Shire Council, and all references to TfV in the Contract to be read as references to the Secretary. The Department of Transport (**Department**) administers the Contract on behalf of the Secretary.

Agreement

DoT seeks to record the variations to the Contract set out in the Attachment to this letter, which variations the parties agree took effect on and from 29 June 2022.

Except as noted in this letter, the terms and conditions of the Contract remain unchanged.

Would Moyne Shire Council please arrange for its authorised representative to countersign this letter and return it by email to lynn.kisler@transport.vic.gov.au.

Once we have received your countersigned letter, DoT will provide advice in relation to provision of port operating and maintenance funding for 2022-23.

If you have any queries, please contact Lynn Kisler, Manager Local Ports on 0400 578 664.

Yours faithfully



Praveen Reddy

Executive Director, Freight Victoria

5/8/2022

I confirm acceptance of the variations to the Contract set out in the Attachment to this letter for and on behalf of Moyne Shire Council



.....
Signature of authorised representative

Brett Davis

.....
Name of authorised representative

Chief Executive Officer

.....
Position/title of authorised representative

9 September 2022

.....
Date

By signing this variation letter, the signatory warrants that the signatory is duly authorised to sign this variation letter for and on behalf of Moyne Shire Council.

Attachment Variations to the Contract

Clause	Amendment
<i>Schedule 1, Item 3 (Completion Date)</i>	<i>Delete "30 June 2022" and replace with "30 September 2023".</i>



Department of Transport

VARIATION AGREEMENT

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AGREEMENT

DATE

This Agreement is made on the latest date on which it is executed by a party as indicated on the signing page.

PARTIES

The **HEAD, TRANSPORT FOR VICTORIA** a body corporate established under section 64A of the TIA of 1 Spring Street Melbourne, Victoria, 3000.

(TFV)

and

MOYNE SHIRE COUNCIL (ABN 69 056 376 923) the port manager of the Port of Port Fairy declared to be a local port under section 6 of the *Port Management Act 1995* of Princes Street, Port Fairy Victoria 3284.

(Port Manager)

BACKGROUND

- A. The Principal Agreement was originally entered into between the Port Manager and the Former Head.
- B. Pursuant to section 296 of the TIA as from 1 January 2020, all property, rights and liabilities of the Former Head became the property, rights and liabilities of TFV.
- C. Pursuant to section 297 of the TIA anything done by the Former Head, in the performance of a function or duty, or exercise of a power, under the TIA or any other Act before 1 January 2020 is taken, on that day, to have been done by TFV in the performance of a function or duty, or exercise of a power, under the relevant Act.
- D. By operation of sections 296 and 297 of the TIA, as from 1 January 2020 TFV is a party to the Principal Agreement in place of the Former Head.
- E. Under clause 13.1 of the Principal Agreement, the Principal Agreement may only be varied or replaced by a document duly executed by the parties.
- F. The Port Manager and TFV agree to amend the Principal Agreement in accordance with this Agreement.

TERMS & CONDITIONS

1. DEFINITIONS & INTERPRETATION

1.1 Defined terms from Principal Agreement

Terms defined in (or incorporated by reference into) the Principal Agreement have the same meanings when used in this Agreement unless otherwise defined in this Agreement.

1.2 Other defined terms

In this Agreement, unless the context otherwise requires:

Effective Date means the date so described and specified in, or determined in accordance with, Schedule 1.

Former Head means the person appointed to the now-defunct statutory office of Head, Transport for Victoria under former section 64A of the TIA as in force at the time of that appointment.

Principal Agreement means the agreement specified in Schedule 1.

TIA means the *Transport Integration Act 2010*.

1.3 Interpretation

The provisions of clauses 15.2, 15.3, 15.4, 15.5, 15.7, and 15.8 of the Principal Agreement are incorporated into, and apply to, this Agreement as if set out in full with any necessary amendments.

2. VARIATION TO AGREEMENT

By executing this Agreement, TFV and the Port Manager agree that with effect on and from the Effective Date the Principal Agreement will be amended in accordance with Schedule 2.

3. CONFIRMATION

- (a) The Port Manager and TFV agree that, except as amended under clause 2, the Principal Agreement continues in full force and effect.
- (b) Nothing in this Agreement:
 - (ii) prejudices or adversely affects any right, power, authority, discretion or remedy; or
 - (iii) discharges, releases or otherwise affects any liability or obligation,
arising under the Principal Agreement before the date of this Agreement.
- (c) From the date of this Agreement, the Principal Agreement as amended by this Agreement is to be read as a single integrated

document incorporating the amendments effected by this Agreement.

4. MISCELLANEOUS

4.1 Costs

Unless otherwise stated in this Agreement each party must pay its own costs of negotiating, preparing and executing this Agreement.

4.2 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

4.3 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

4.4 Governing law and jurisdiction

This Agreement is governed by the law of Victoria and each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria.

4.5 Attorneys

To the extent that a party intends to execute this Agreement under power of attorney, each attorney executing this Agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

4.6 Further Assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may reasonably be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

SCHEDULE 1: AGREEMENT DETAILS

Principal Agreement (clause 1.2)	The Port of Port Fairy Management Agreement, dated 26 September 2017, entered into between the Port Manager and the Former Head.
Effective Date: (clause 1.2)	The date on which the party executing the Agreement last, executes the Agreement.

SCHEDULE 2: AMENDMENTS

1. Port Manager Representative

The contents of the “Details” field of Item 1 (Port Manager’s Representative) of Schedule 1 (Representatives and Port Details) to the Principal Agreement are replaced with the following:

Person: Robert Gibson

Title: Manager Environment and Regulatory Services

Address: Port of Port Fairy, PO Box 51, PORT FAIRY VIC 3248

Email address: robert.gibson@moyne.vic.gov.au

2. Fixed Assets and Floating Plant

The contents of Schedule 2 (Fixed Assets and Floating Plant) to the Principal Agreement are replaced with the following:

FIXED ASSETS

Wharves, jetties, walls

Training Walls

Refuelling Jetty

Boat Ramp Jetty North

Small Slipway Jetty

Martins Point Jetty and Wharf

Marina

Haldanes Landing

Newmans Landing

Depot Jetty

North Wharf

King George Square Wharf

South Wharf

Slipways

Large Slipway, Cradle and Winch

Small Slipway, Cradle and Winch

Buildings/Depot/Equipment

Rocket Shed

Lifeboat Shed

Diesel Tank, Bowser and Pipeline

Port Depot and Office

Depot Site Improvements

Bait Shed

Large Slipway Winch House

Small Slipway Winch House

Navigation aids

Starboard Light Marker
Port Light Marker
Martins Point light
South Entrance Mole Light
Reef buoy and solar light
North entrance mole light

FLOATING PLANT

Marvin Workboat
Work Barge
Dredge Pipeline

SIGNING PAGE

Executed as an Agreement.


Executed for and on behalf of the
HEAD, TRANSPORT FOR VICTORIA
by its authorised representative in
the presence of:



Signature of witness

Markus Winter

Name of witness



Signature of authorised representative

Paul Younis - Secretary

Position of authorised representative

31/07/2020

Date

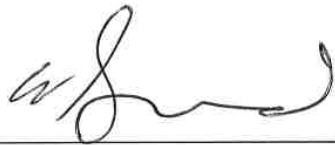
Executed for and on behalf of
MOYNE SHIRE COUNCIL by its
authorised representative in the
presence of:



Signature of witness

TRACY O'CONNOR

Name of witness



Signature of authorised representative

CHIEF EXECUTIVE

Position of authorised representative

24/08/2020

Date

Date 26 September 2017

**Port of Port Fairy
Management Agreement**

HEAD, TRANSPORT FOR VICTORIA

and

MOYNE SHIRE COUNCIL

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Port of Port Fairy Management Agreement

DATE 26 September 2017

BETWEEN

HEAD, TRANSPORT FOR VICTORIA, a statutory office established under the *Transport Integration Act 2010*, on behalf of the Crown in right of the State of Victoria of Level 21, 1 Spring Street, Melbourne, Victoria, 3000

(TFV)

AND

MOYNE SHIRE COUNCIL a port manager of a local port established under the *Port Management Act 1995* of Princes Street, Port Fairy, Victoria, 3284

(Port Manager)

RECITALS

- A. TFV is responsible for managing the overall funding program for local ports and providing broad strategic planning services for local port facilities across the State.
- B. The Port Manager manages and administers the Port as part of its statutory functions as set out in the *Port Management Act 1995*.
- C. TFV has agreed to provide the Port Manager with funding for the administration and management of the Port.
- D. This Agreement sets out the terms and conditions on which the Port Manager will manage and administer the Port and TFV will provide funding for the management and administration of the Port.

THIS AGREEMENT WITNESSES

1. DEFINITIONS

In this document unless expressed or implied to the contrary:

Agreement means this agreement;

Asset Management Plan means an asset management plan prepared by the Port Manager and approved by TFV;

Business Day means a day on which banks are open for general banking business in Melbourne, Australia, other than a Saturday, Sunday or public holiday;

Business Plan means a business plan prepared in accordance with clause 5 and which contains, as a minimum, the information set out in Schedule 5;

Commencement Date means the date specified at item 2 of Schedule 1;

Completion Date means the date specified at item 3 of Schedule 1;

Dispute Guidelines means the Guidelines for the conduct of disputes between different public sector bodies within the State of Victoria issued by the Attorney-General, 2008, or any replacement dispute guidelines;

Financial Year means:

- (a) the period commencing on the Commencement Date and ending on the following 30 June;
- (b) each successive period of twelve months commencing on 1 July and ending on 30 June; and
- (c) the period commencing on 1 July immediately preceding the date of termination of this Agreement and ending on the date of such termination.

Fixed Asset means any asset that is static or immovable within the Port listed in Schedule 2, or other asset as agreed in writing from time to time;

Floating Plant means all vessels, boats, barges and associated equipment to be used in relation to the Port listed in Schedule 2, or other asset as agreed in writing from time to time;

Incident means an event that occurs within the Port that causes or has the potential to cause personal injury, property damage or environmental damage and is likely to result in an insurance claim or other action against the Port Manager, TFV or the Department of Economic Development, Jobs, Transport and Resources;

Indemnity Policy means the Victorian Government's policy titled "Government policy and guidelines: indemnities and immunities, June 2008", or any replacement policy;

Non-Fixed Asset means any asset that is portable or movable other than Floating Plant to be used in relation to the Port and includes plant, vehicles, office equipment and furniture;

Port means the local port specified in Schedule 1;

Port Manager means the entity appointed to manage the Port by the Governor in Council under section 44A of the *Port Management Act 1995* and named at item 1 of Schedule 1;

Project Agreement means an agreement between TFV and the Port Manager for Project Funding substantially in the form attached at Schedule 3;

Project Funding means the funding provided by TFV or other Government entity in accordance with clauses 6.4 and 6.5 for the construction, reconstruction or replacement of Fixed Assets or Floating Plant;

Representatives means the representatives of each of the parties for the day to day administration of this Agreement nominated in writing from time to time, initially being the persons set out at items 6 and 7 of Schedule 1;

Safety and Environment Management Plan means a management plan prepared in accordance with Part 6A of the *Port Management Act 1995*;

State means the Crown in right of the State of Victoria; and

Term means the term set out in clause 3.

2. GOVERNING PRINCIPLES AND PURPOSE

2.1 Guiding Principle

The parties will cooperate at all times to ensure that both parties meet their respective obligations under this Agreement.

2.2 Role of this Agreement

The role of this Agreement is to set out the terms and conditions on which:

2.2.1 the Port Manager will:

2.2.1.1 manage and administer the Port; and

2.2.1.2 consult with TFV in relation to the management and administration of the Port; and

2.2.2 TFV will fund the management and administration of the Port.

2.3 Status of Agreement

The parties acknowledge and agree that this Agreement is legally enforceable.

2.4 Agreement to Negotiate

The parties agree to use best endeavours to negotiate, in the last 12 months of this Agreement, the terms of a new management agreement relating to the management and administration of the Port that will commence on the day following the Completion Date.

2.5 Revocation of Appointment as Port Manager

The parties acknowledge and agree that the termination or the expiry of this Agreement will not revoke the appointment of the Port Manager as port manager of the Port. Such appointment will continue unless and until such time as it is revoked by Governor in Council pursuant to section 44A(2)(a) of the *Port Management Act 1995*. If the Port Manager requests that its appointment as port manager of the Port is to be revoked by Governor in Council, TFV will use its best endeavours to expedite this matter through the Governor in Council process.

2.6 Representatives

The Representatives of the parties will be responsible for the day to day management of this Agreement and any communications under this Agreement.

3. TERM

The Term of this Agreement is specified at Item 4 of Schedule 1 and will commence on the Commencement Date and will expire on the Completion Date unless this Agreement is terminated in accordance with clause 12.

4. OWNERSHIP AND MANAGEMENT OF ASSETS

4.1 Fixed Assets

- 4.1.1 The State owns the Fixed Assets and will retain ownership of the Fixed Assets.
- 4.1.2 TFV controls the Fixed Assets on behalf of the State.
- 4.1.3 The Port Manager will be responsible for the management, maintenance and operational control of the Fixed Assets on behalf of TFV.
- 4.1.4 Ownership of the Fixed Assets will not transfer to the Port Manager.
- 4.1.5 The Port Manager must not dispose, remove, close permanently or change the use of any Fixed Assets unless it has notified, consulted with and obtained the prior written approval of TFV.
- 4.1.6 The Port Manager must provide written notice to TFV as soon as practicable after closing any Fixed Asset due to:
 - 4.1.6.1 an emergency situation; or
 - 4.1.6.2 where the Fixed Asset has been damaged and is unsafe for public use;and the notice must include the proposed date of re-opening of the Fixed Asset.

4.2 Non-Fixed Assets and Floating Plant

- 4.2.1 Non-Fixed Assets and any Floating Plant are the property of the Port Manager and, subject to clauses 4.2.2 and 4.2.3, may be sold or otherwise disposed of, replaced, repaired or dealt with by the Port Manager as its own property.
- 4.2.2 If this Agreement terminates as referred to in clause 12.1 or otherwise, the Non-Fixed Assets and the Floating Plant owned by the Port Manager at the date of termination will cease to be property of the Port Manager and will immediately transfer to the property of TFV.
- 4.2.3 The Port Manager must not sell or otherwise dispose of a Non-Fixed Asset or Floating Plant with a current replacement value exceeding \$50,000 without giving 1 month's prior written notice to TFV and offering first right of purchase to the port managers of all other Victorian local ports.

4.3 Maintenance

The Port Manager must manage, repair, maintain in good condition and, where necessary, replace all assets to the best of its ability, within the constraints of available funding and income, and in accordance with good business practice.

4.4 Permitted Use of Assets

The Port Manager must only use the Fixed Assets, Non-Fixed Assets and Floating Plant for the management and administration of the Port unless otherwise approved in writing by TFV.

4.5 Asset Register

4.5.1 The Port Manager must maintain a register of all assets held or managed by it.

4.5.2 The Port Manager must record the Fixed Assets, Non-Fixed Assets and Floating Plant in the asset register at a fair value and must state the estimated remaining life of the Asset.

4.5.3 The Port Manager will, by no later than 31 March in each year of the Term, submit to TFV a copy of the asset register maintained in accordance with this clause 4.5.

5. BUSINESS PLAN

5.1 By 31 March in each year of the Term, the Port Manager must prepare and submit to TFV a Business Plan for the 3 Financial Years commencing on the immediately following 1 July which establishes a planning framework for the management and administration of the Port and forecasts for end of year position for the current Financial Year.

5.2 The Business Plan must:

5.2.1 be reviewed by TFV by 31 May of that year and TFV must, as soon as practicable after that date, advise the Port Manager of approval or otherwise, and where necessary, provide particulars of items which have not been approved;

5.2.2 form the basis of budget proposals for the management and administration of the Port;

5.2.3 include proposed major works for the 3 Financial Years commencing on 1 July of that year; and

5.2.4 be prepared following a review of the previous year's Business Plan with variations reported on and submitted in conjunction with the annual budget submission.

6. FUNDING

OPERATING AND MAINTENANCE FUNDS

6.1 TFV agrees to provide the Port Manager with operating and maintenance funds for the operation and maintenance of the Assets, payment of wages and for the management and administration of the Port.

- 6.2 TFV will:
- 6.2.1 confirm the operating and maintenance funds that TFV will provide to the Port Manager for each Financial Year;
 - 6.2.2 provide an estimate of operating and maintenance funds that TFV anticipates that it will provide to the Port Manager for future Financial Years; and
 - 6.2.3 provide operating and maintenance funds to the Port Manager for each Financial Year,

in accordance with the timetable set out below:

Date by which TFV will provide confirmation of operating and maintenance funds and an estimate of operating and maintenance funds for future Financial Years	Financial Year to which the confirmation of operating and maintenance funds will relate	When TFV will pay the operating and maintenance funds to the Port Manager	Financial Years to which the estimate of operating and maintenance funding will relate
30 June 2017	1 July 2017 – 30 June 2018	On or after 1 July 2017	1 July 2018 – 30 June 2019 1 July 2019 – 30 June 2020
30 June 2018	1 July 2018 – 30 June 2019	On or after 1 July 2018	1 July 2019 – 30 June 2020 1 July 2020 – 30 June 2021
30 June 2019	1 July 2019 – 30 June 2020	On or after 1 July 2019	1 July 2020 – 30 June 2021 1 July 2021 – 30 June 2022
30 June 2020	1 July 2020 – 30 June 2021	On or after 1 July 2020	1 July 2021 – 30 June 2022 1 July 2022– 30 June 2023
30 June 2021	1 July 2021 – 30 June 2022	On or after 1 July 2021	1 July 2022 – 30 June 2023 1 July 2023 – 30 June 2024

- 6.3 In determining the amount of operating and maintenance funds described in clauses 6.2.1 and 6.2.2, TFV will take into account the most recent Business Plan submitted by the Port Manager.

PROJECT FUNDING

- 6.4 TFV may provide to the Port Manager an amount of Project Funding. All Project Funding that is provided by TFV to the Port Manager will be governed by the terms of a Project Agreement.
- 6.5 TFV will determine the amount of Project Funding referred to in clause 6.4 (if any) by reference to:
- 6.5.1 the priorities identified in the Business Plan;
 - 6.5.2 the priorities identified in the Asset Management Plan prepared in accordance with clause 10;
 - 6.5.3 the priorities identified in the Safety and Environment Management Plan;
 - 6.5.4 the priorities identified by TFV across the whole of the Victorian local ports program; and
 - 6.5.5 available funding under the Victorian local ports program or available funding under other Victorian Government sources.

USE OF FUNDS

- 6.6 The Port Manager must use the funds provided to it under this Agreement:
- 6.6.1 in accordance with this Agreement;
 - 6.6.2 in accordance with the Business Plan; and
 - 6.6.3 in accordance with any Project Agreement.

FEES AND CHARGES

- 6.7 The Port Manager will utilise its legislative power to levy fees and charges for services provided, having regard to issues of equity of use and access, to maximise the user pays component of its income. In addition, to the extent permitted by legislation, the Port Manager must endeavour to recover the full cost of all utilities (such as electricity and water) provided to Port users.

UNFORESEEN EVENT

- 6.8 In the event that storms or other serious unforeseen events result in significant damage to any Fixed Assets, Non-Fixed Assets or Floating Plant, the Port Manager may submit to TFV, no later than 30 days following the storm or other serious unforeseen event, an application to access repairs, maintenance or other funds for the purpose of repair or of reimbursement of costs.
- 6.9 Any application for funds in accordance with clause 6.8 must include details of the material and labour costs required to undertake the response and rectification works, and may only include costs incurred over and above the normal operating and maintenance budget.

- 6.10 Upon receipt of a submission made under clause 6.8, TFV will reassess the state-wide repairs and maintenance program for Victorian local ports and make payments as determined appropriate.
- 6.11 If TFV does not provide funding for the full cost of performing any necessary repairs and maintenance following a submission from the Port Manager under clause 6.8, nothing in this Agreement shall require the Port Manager to itself provide funding from its own resources. Nothing in this clause in any way excludes, limits or reduces the Port Manager's statutory functions as a port manager of a local port under the *Port Management Act 1995*.

GENERAL

- 6.12 The Port Manager must invest any funds provided by TFV or other Government entity for the Port in accordance with Standing Direction 3.7.2.3 issued by the Minister for Finance under the *Financial Management Act 1994* (as varied or replaced).
- 6.13 If:
- 6.13.1 the Port Manager does not expend the funds (or any part of the funds) during the Financial Year in which the funds are provided; and/or
- 6.13.2 the Port Manager earns interest on the funds,
- the Port Manager is permitted to retain those funds (including any interest earned) and must use those funds in accordance with the timetable for their expenditure approved by TFV under clause 7.1.2.

7. FINANCIAL REPORTING

7.1 Annual Budget Process

- 7.1.1 The Port Manager must prepare and submit to TFV by no later than 31 March in each year of the Term a proposed annual budget for the upcoming Financial Year which shows:
- 7.1.1.1 estimated revenue and sources of revenue of the Port including fees, charges and grants;
- 7.1.1.2 other sources of funding of the Port of an operating nature;
- 7.1.1.3 details of any funds provided to the Port Manager during a previous Financial Year which it is anticipated will remain unexpended and details of and a timetable for their expenditure;
- 7.1.1.4 a schedule of proposed fees and charges to be levied by the Port Manager for services provided in accordance with clause 6.7 of this Agreement;
- 7.1.1.5 direct employment expenses and other direct operating expenses of the Port, including any associated overheads;
- 7.1.1.6 detailed forecast of estimated major works (including associated dredging) necessary for the Port, including total

estimated cost for each project, for the following three years, listed in order of priority;

7.1.1.7 reason for the requirement of any major works (eg. addresses risk or adds value to the ports business); and

7.1.1.8 details of forecast asset maintenance expenditure.

7.1.2 TFV will, by 31 May of that year, review the budget submitted and will, as soon as practicable after that date, advise the Port Manager of approval or otherwise and, where necessary, provide particulars of items which have not been approved.

7.2 Accounts

7.2.1 The Port Manager must maintain a separate cost centre or identifiable charge line in its accounts for its functions as a port manager.

7.2.2 The Port Manager must comply with Australian Accounting Standards including the use of accrual not cash accounting.

7.2.3 Administrative costs (including all staff costs not directly attributable to on-ground works and services), must be separated from direct operating expenditure on facilities and functions.

7.2.4 Expenditure must be allocated to identifiable facilities, assets or services.

7.3 Annual Reporting

7.3.1 The Port Manager will, by no later than 30 September in each year of the Term, prepare and submit to TFV a report on the outcomes of the previous Financial Year's Business Plan and budget as well as the following annual accounts and statements:

7.3.1.1 Financial reports – to show budget and actual revenue and expenditure and commentary on material variations and be prepared on an accrual basis

7.3.1.1.1 An operating statement showing revenue and expenditure.

7.3.1.1.2 A statement showing capital expenditure.

7.3.1.1.3 A statement of funds provided to the Port Manager during previous Financial Years that remain unexpended, including a reasonable allocation of interest earned on accumulated cash funds over the year; and a statement detailing cash which is earmarked for specific purposes (e.g. employee benefits) showing committed and uncommitted cash (e.g. future major works).

7.3.1.1.4 A statement showing maintenance expenditure (annual cost of asset maintenance for fixed

assets and major plant and equipment) for each class of asset (eg. jetties, navigation aids, etc.).

- 7.3.1.1.5 A statement of cash flows.
- 7.3.1.1.6 A statement of financial position (excluding valuations for Crown Land).
- 7.3.1.1.7 A statement of the accounting policy employed for the preparation of the annual accounts and statements.
- 7.3.1.1.8 Any known contingent liabilities.

7.3.1.2 Program reporting (in respect of capital and recurrent works)

- 7.3.1.2.1 Details of operations in comparison to budget.
- 7.3.1.2.2 Cash flow details in comparison to budget.
- 7.3.1.2.3 Details of works progress against works program.
- 7.3.1.2.4 A commentary in respect of any substantial variation regarding the preceding items.
- 7.3.1.2.5 Where dredging operations are performed, a statement on the cost of the dredging, an estimate of the amount of dredging performed (either number of days in operation or volumes dredged) and whether access to the Port has been restricted by a failure/inability to dredge.
- 7.3.1.2.6 Significant (known or anticipated) events that may adversely impact on the Port Manager's ability to perform its task as port manager.

7.3.1.3 Incident reporting

- 7.3.1.3.1 A summary of each and every Incident which was reported or recorded in the Port during the course of the year.
- 7.3.1.3.2 A separate report on any Incident for which further information was requested through the Port Manager's insurers.

7.3.2 The report provided to TFV in accordance with clause 7.3.1 must contain, as a minimum, the information set out in Schedule 4.

7.4 Auditing

The annual accounts to be provided to TFV in accordance with clause 7.3.1.1 must be prepared in accordance with Australian Accounting Standards and audited and signed off by an independent certified company auditor in accordance with Australian Auditing Standards.

8. INSURANCE AND LIABILITY

8.1 Insurance

- 8.1.1 The Port Manager will insure and keep insured the Non-Fixed Assets against damage by theft, fire, explosion, storm and tempest, riots, strikes, accidental and malicious damage, earthquake, impact by vehicles vessels or aircraft, internal water and flood, as appropriate, and in accordance with good business practice.
- 8.1.2 TFV will maintain or will ensure the following insurance cover is maintained as appropriate:
- 8.1.2.1 insurance for the Fixed Assets (under an Industrial Special Risks policy);
 - 8.1.2.2 Port Operators Liability; and
 - 8.1.2.3 Marine Hulls (Floating Plant).
- 8.1.3 TFV will pay any deductibles (excess) arising under the insurance policies listed in clause 8.1.2 or will ensure any deductibles (excess) are paid or will provide self insurance at an appropriate level in consultation with the Port Manager.
- 8.1.4 If there is an Incident, the Port Manager must notify TFV immediately and provide written details about the Incident in the form requested by TFV.

8.2 Indemnities

In accordance with clause 5.3.12 of the Indemnity Policy, the parties acknowledge that the use of contractual indemnities between Government entities is not recommended. The parties agree that this Agreement is an appropriate mechanism to identify and state the respective roles and responsibilities of each of the parties.

Any dispute relating to any actions, claims or losses (including liability for loss) arising from or in connection with this Agreement shall be determined in accordance with clause 11.

9. RISK MANAGEMENT

- 9.1 The Port Manager must undertake a risk audit as part of its Business Plan preparation and report to TFV by 31 March in each year of the Term on actions taken to address identified risks.
- 9.2 The Port Manager must develop and seek approval for its Safety and Environment Management Plan as required in Part 6A of the *Port Management Act 1995*, and will monitor, report on and update its plan as required. In addition to the requirements set out in section 91D of the *Port Management Act 1995*, the Port Manager must prioritise the measures and strategies to be implemented by the Port Manager to prevent or reduce risks associated with the operation of the Port in the Safety and Environment Management Plan.

10. ASSET MANAGEMENT PLAN

The Port Manager must:

- 10.1 monitor, report on and update its Asset Management Plan as required under that plan;
- 10.2 prioritise asset maintenance projects in its Asset Management Plan; and
- 10.3 undertake a detailed review of its Asset Management Plan every three years (where the relevant years are specified in Schedule 6), and submit it to TFV by 30 September of the years specified in Schedule 6, for TFV's approval.

11. DISPUTE RESOLUTION

If there is a dispute between the parties related to the Agreement, then the dispute will be resolved in accordance with the Dispute Guidelines.

12. TERMINATION

12.1 Termination Events

- 12.1.1 The parties may agree in writing to terminate this Agreement at any time.
- 12.1.2 This Agreement will immediately terminate if the Port Manager ceases to be a port manager under the *Port Management Act 1995* in respect of the Port.
- 12.1.3 Either party may terminate this Agreement in the event that the other party commits a breach of this Agreement and fails to remedy the breach within 90 days of notice of the breach and where the breach has not been resolved by the procedure in clause 11 of this Agreement.

12.2 Consequences of Termination

If this Agreement is terminated under clause 12.1:

- 12.2.1 clause 4.2.2 will apply; and
- 12.2.2 the Port Manager will return any funds provided to it by TFV under this Agreement which have not been expended by the Port Manager in accordance with this Agreement.

13. GENERAL

13.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the parties.

13.2 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it.

13.3 Waiver and Exercise of Rights

- 13.3.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 13.3.2 No party will be liable for any loss or expense incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

13.4 Assignment

Neither party may assign its rights under this Agreement without the prior written consent of the other party.

13.5 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

13.6 GST

- 13.6.1 In this clause 13.6 unless expressed or implied to the contrary:

Adjustment has the same meaning given to that term in the GST Act.

Adjustment Note has the same meaning given to that term in the GST Act.

Consideration means consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of GST.

GST has the same meaning given to that term in the GST Act.

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

GST Amount has the same meaning given to that term in clause 13.6.3.

Input Tax Credit has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act.

Recipient has the same meaning given to that term in the GST Act.

Supplier means the entity making a Supply to the Recipient.

Supply has the same meaning given to that term in the GST Act.

Tax Invoice has the same meaning given to that term in the GST Act.

Taxable Supply has the same meaning given to that term in the GST Act.

- 13.6.2 Except as otherwise provided by this clause, all Consideration payable under this Agreement in relation to any Supply is inclusive of GST.
- 13.6.3 To the extent that any Supply under this Agreement constitutes a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.
- 13.6.4 Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).
- 13.6.5 If this Agreement requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier, the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled to claim in respect of the outgoing, in addition to any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.
- 13.6.6 The Supplier must issue the Recipient with a valid Tax Invoice at or prior to the time of payment of any GST Amount.
- 13.6.7 To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within five Business Days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within five Business Days after the date of receipt of the Adjustment Note.

14. NOTICES

14.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 14.1.1 personally on the person specified in clause 14.2.1;
- 14.1.2 by leaving it at the person's current address for service;
- 14.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 14.1.4 by email to the person's current email address for service, provided that the party giving notice obtains a confirmation report or other written evidence that the email reached the recipient's mailbox.

14.2 Particulars for Service

- 14.2.1 The particulars for service of each of the parties are the particulars for their Representatives set out in Schedule 1.

14.2.2 Any party may change the address for service by giving notice to the other parties.

14.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

14.3 Time of Service

A notice or other communication is deemed served:

14.3.1 if served personally or left at the person's address, upon service;

14.3.2 if posted within Australia to an Australian address, six Business Days after posting and in any other case, seven Business Days after posting;

14.3.3 if served by email, subject to clause 14.3.4 at the time the notice or other communication comes to the attention of the addressee;

14.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

15. INTERPRETATION

15.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

15.2 Persons

In this Agreement, a reference to:

15.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

15.2.2 a person includes the legal personal representatives, successors and permitted assignees of that person; and

15.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

15.3 Legislation

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

15.4 This Agreement, Clauses and Headings

In this Agreement:

15.4.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;

- 15.4.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
- 15.4.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 15.4.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 15.4.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 15.4.6 where the expression 'including' is used, it means 'including without limitation'.

15.5 Severance

- 15.5.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 15.5.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

15.6 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

15.7 Number and Gender

In this Agreement, a reference to:

- 15.7.1 the singular includes the plural and vice versa; and
- 15.7.2 a gender includes the other genders.

15.8 Relationship of Parties

This Agreement is not intended to create a partnership or joint venture relationship between the parties.

EXECUTED by the parties

SIGNED by the **HEAD, TRANSPORT**)
FOR VICTORIA on behalf of the)
CROWN IN RIGHT OF THE STATE)
OF VICTORIA in the presence of:

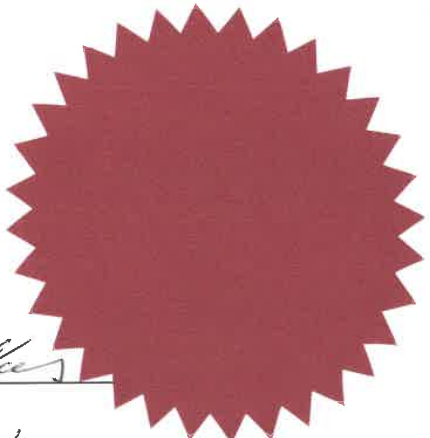
Witness (Signature)

Gillian Miles
Head, Transport for Victoria

Witness (Print name)

Date:

THE COMMON SEAL of **MOYNE**)
SHIRE COUNCIL was affixed in the)
presence of:)



L Cook

Witness (Signature)

[Signature]

Councillor (Signature)

Lesley Cook

Witness (Print Name)

Jim Doukas

Councillor (Print Name)

Date: 26 Sept 2017

[Signature]
David Madden CEO

Schedule 1 – Representatives and Port Details

Item	Item Description	Details
1	Port Manager	Moyne Shire Council
2	Commencement Date	1 July 2017
3	Completion Date	30 June 2022
4	Term	5 years
5	Annual operating and maintenance funds	Amount to be confirmed annually in accordance with clause 6.2
6	TFV's Representative (for day to day administration of this Agreement)	<p>Person: Marcus Higgins</p> <p>Title: Senior Project Officer,</p> <p>Address: Transport For Victoria, GPO Box 4509, Melbourne, Victoria, 3001</p> <p>Ph: (03) 8392 6466</p> <p>Email address: marcus.higgins@ecodev.vic.gov.au</p>
7	Port Manager's Representative (for day to day administration of this Agreement)	<p>Person: Adam Boyle</p> <p>Title: Manager – Corporate Business & Tourism</p> <p>Address: Port of Port Fairy, PO Box 51, Port Fairy, Victoria, 3284</p> <p>Email address: adam.boyle@moyne.vic.gov.au</p>

Description of Port

The land and waters declared to be port land and waters of the Port of Port Fairy by Order dated 14 November 1995, published in Government Gazette number G45 on 16 November 1995, pages 3209-3210 (as amended or replaced).

Schedule 2 – Fixed Assets and Floating Plant

Fixed Assets

Wharves, jetties, walls

- Training walls
- Refuelling Jetty
- Boat Ramp Jetty North
- Slipway Jetty
- Martins Point Jetty and Wharf
- Yacht Marina
- Haldane's Landing
- Newman's Landing
- Depot Wharf
- Western Wharf
- King George Square Wharf

Slipways

- Large Slipway and winch
- Small Slipway and winch

Buildings/Depot/Equipment

- Crane shed
- Rocket shed
- Lifeboat shed
- Refuelling facility
- Depot site including office workshop and amenities

Navigation aids

- Starboard light marker 1
- Starboard light marker 2
- Martins Point light
- South entrance light mole
- Reef buoy and solar light
- North entrance mole light

Floating Plant

- Belfast workboat
- Cormorant Dredge and pipeline
- Work barge
- Marvin workboat

Schedule 3 – Project Agreement

Date / /

**[Insert Project Title]
Funding Agreement**

HEAD, TRANSPORT FOR VICTORIA

and

[PORT MANAGER]

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Funding Agreement

DATE / /

BETWEEN

HEAD, TRANSPORT FOR VICTORIA, a statutory office established under the *Transport Integration Act 2010*, on behalf of the Crown in right of the State of Victoria of Level 21, 1 Spring Street, Melbourne, Victoria, 3000 (**TFV**)

AND

[PORT MANAGER] a port manager of a local port established under the *Port Management Act 1995* of [address of the Port Manager] (**Port Manager**)

RECITALS

- A. This Agreement sets out the terms and conditions on which the Port Manager will deliver the Project and TFV will provide the Funds for the Project.
- B. [Insert recital(s) specific to the Project, if necessary.]

THIS AGREEMENT WITNESSES

1. DEFINITIONS

In this document unless expressed or implied to the contrary:

Adjustment has the same meaning given to that term in the GST Act.

Adjustment Note has the same meaning given to that term in the GST Act.

Agreement means this agreement, including the Schedules.

Asset means any asset specified in item 6 of Schedule 1 that is created or acquired as a result of the Project.

Business Day means a day on which banks are open for general banking business in Melbourne, Australia, other than a Saturday, Sunday or public holiday in Victoria.

Commencement Date means the date specified in item 1 of Schedule 1.

Completion Date means the date specified in item 2 of Schedule 1.

Conflict Direction has the same meaning given to that term in clause 9.3.2.

Conflict Notice has the same meaning given to that term in clause 9.3.1.

Conflict of Interest means an actual or potential conflict of interest, or a conflict of interest that could reasonably be perceived to exist, between the Port Manager and TFV in relation to the performance of the Port Manager's obligations under this Agreement.

Consideration means consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of GST.

Dispute Guidelines means the “Guidelines for the conduct of disputes between different public sector bodies within the State of Victoria” issued by the Attorney-General, 2008, or any replacement dispute guidelines.

Fixed Asset has the meaning given to that term in the Management Agreement.

Floating Plant has the meaning given to that term in the Management Agreement.

Funds means the sum of money to be provided by TFV to the Port Manager in accordance with this Agreement, specified in item 4 of Schedule 1.

GST has the same meaning given to that term in the GST Act.

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

GST Amount has the same meaning given to that term in clause 24.2.

Indemnity Policy means the Victorian Government’s policy titled “Government policy and guidelines: indemnities and immunities, June 2008”, or any replacement policy.

Input Tax Credit has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act.

Intellectual Property includes business names, copyrights, and all rights in relation to inventions, patents, registered or unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Management Agreement means the management agreement between TFV and the Port Manager commencing on or about 1 July 2017, as varied or replaced.

Milestones means the milestones described in Schedule 3.

Non-Fixed Asset has the meaning given to that term in the Management Agreement.

Payment Deliverables means each of the documents and other deliverables set out in Schedule 3, required to be delivered to TFV prior to payment of any instalment of the Funds.

Personnel means officers, employees, agents and subcontractors.

Port Manager's Representative means the person nominated by the Port Manager in writing from time to time, initially being the person named in item 9 of Schedule 1.

Project means the works described in the Project Brief.

Project Brief means the project brief in Schedule 2.

Project Reference Group has the same meaning given to that term in clause 12.1.

Proposed Assignee has the same meaning given to that term in clause 16.1.

Recipient has the same meaning given to that term in the GST Act.

Relevant Legislation means: any Act, regulation, rule, ordinance, proclamation, by-law or similar statutory instrument, whether of the Commonwealth, State, local or other duly constituted Committee.

Schedule means a schedule to this Agreement.

Supplier means the entity making a Supply to the Recipient.

Supply has the same meaning given to that term in the GST Act.

Tax Invoice has the same meaning given to that term in the GST Act.

Taxable Supply has the same meaning given to that term in the GST Act.

Term means the period specified in item 3 of Schedule 1 or such lesser period if this Agreement is terminated earlier in accordance with this Agreement.

TFV's Representative means the person nominated by TFV in writing from time to time, initially being the person holding the position specified in item 8 of Schedule 1.

2. TERM

This Agreement commences on the Commencement Date and continues for the Term.

3. PAYMENT OF FUNDS

3.1 Payment of Funds

- 3.1.1 Subject to the terms of this Agreement (including the conditions set out in clause 4), TFV will pay the Funds to the Port Manager in the instalments specified in Schedule 3.
- 3.1.2 Each instalment of the Funds is conditional upon the Port Manager achieving the Milestones or providing to TFV the Payment Deliverables.
- 3.1.3 TFV may in its absolute discretion extend any of the dates for the achievement of a Milestone or for the provision of any of the Payment Deliverables.
- 3.1.4 Where an instalment of the Funds is to be paid upon achievement of a Milestone, TFV will pay the relevant instalment of the Funds to the Port Manager within 30 Business Days of the later of:
 - 3.1.4.1 TFV providing the Port Manager with written approval (in accordance with clause 4.3) that the relevant Milestone has been achieved; and
 - 3.1.4.2 TFV receiving a tax invoice from the Port Manager for the instalment of the Funds that the Port Manager is entitled to be paid in accordance with this Agreement.
- 3.1.5 Where an instalment of the Funds is to be paid upon provision of Payment Deliverables, TFV will pay the relevant instalment of the Funds to the Port Manager within 30 Business Days of receiving a tax invoice from the Port Manager for the instalment of the Funds that the Port Manager is entitled to be paid in accordance with this Agreement.

3.2 Port Manager's Contribution to Project

- 3.2.1 In undertaking the Project, the Port Manager must contribute and use a sum of money (including any money provided to the Port Manager by third parties) that is necessary to complete the Project, as estimated in Item 5 of Schedule 1.
- 3.2.2 Where TFV determines in its discretion that the Port Manager has not complied with clause 3.2.1, TFV may terminate this Agreement pursuant to clause 19.

4. CONDITIONS ON FUNDING

4.1 Use of Funds

- 4.1.1 The Port Manager must only use the Funds for the Project in accordance with the terms and conditions of this Agreement. TFV will not reimburse the Port Manager for any expenditure that the Port Manager incurs in addition to the expenditure covered by the Funds.
- 4.1.2 Without limiting clause 4.1.1, the Port Manager must not use the Funds for any other purpose, including:
 - 4.1.2.1 to meet the ongoing operational costs, salary subsidies or other administrative expenses of the Port Manager outside of those arising from or in connection with the Project, unless otherwise approved by the TFV Representative;
 - 4.1.2.2 as security for any form of finance;
 - 4.1.2.3 to meet existing debts, liabilities or obligations; or
 - 4.1.2.4 any purpose that is inconsistent with the stated priorities of TFV.

4.2 Funds to be Expended Before More Funds Paid

- 4.2.1 TFV may defer payment of the instalment of the Funds payable upon the Port Manager achieving a particular Milestone or providing particular Payment Deliverables until the Port Manager has expended all of the Funds that have been paid to it in relation to a previous Milestone or Payment Deliverables.
- 4.2.2 The Port Manager must continue to comply with its obligations under this Agreement, regardless of any payment of the Funds being deferred by TFV pursuant to clause 4.2.1.

4.3 Milestones and Payment Deliverables

- 4.3.1 The Port Manager must:
 - 4.3.1.1 ensure that the Milestones are achieved and the Payment Deliverables are submitted to TFV within the periods or by the dates specified in Schedule 3 (or any extended date agreed by the TFV in accordance with clause 3.1.3);

- 4.3.1.2 notify TFV in writing when it considers that each Milestone has been achieved; and
- 4.3.1.3 provide TFV with the evidence specified in Schedule 3 that each Milestone has been achieved.
- 4.3.2 After being notified by the Port Manager that a Milestone has been achieved and receiving evidence that the Milestone has been achieved, TFV will as soon as reasonably practicable:
 - 4.3.2.1 provide the Port Manager with written approval that the Milestone has been achieved; or
 - 4.3.2.2 notify the Port Manager in writing that it does not agree that the Milestone has been achieved and will provide the Port Manager with an explanation as to why TFV does not consider that the Milestone has been achieved.
- 4.3.3 If TFV notifies the Port Manager under clause 4.3.2.2, the Port Manager must:
 - 4.3.3.1 notify TFV in writing when it considers that the Milestone has been achieved; and
 - 4.3.3.2 provide TFV with evidence that the Milestone has been achieved.

After being notified by the Port Manager that the Milestone has been achieved, TFV will consider the achievement of the Milestone in accordance with clause 4.3.2.
- 4.3.4 TFV may defer payment of the Funds if in its view the relevant Milestone has not been reached or Payment Deliverables have not been provided, until that Milestone has been reached or Payment Deliverables have been provided, in its view.
- 4.3.5 The Port Manager must continue to comply with its obligations under this Agreement, regardless of any payment of the Funds being deferred by TFV pursuant to clause 4.3.4.

4.4 Investment of Funds

The Port Manager must invest the Funds in accordance with Standing Direction 3.7.2.3 issued by the Minister for Finance under the *Financial Management Act 1994* (as varied or replaced).

4.5 Assets

The parties acknowledge and agree to treat any Asset as a Fixed Asset, Non-Fixed Asset or Floating Plant (whichever definition applies) and that the terms of the Management Agreement to apply to that Asset. This clause 4.5 survives the expiration of this Agreement.

5. UNEXPENDED FUNDS

Notwithstanding any other clause in this Agreement, upon completion of the Project, TFV will determine in consultation with the Port Manager, but at TFV's sole discretion, the purposes for which the Port Manager may retain and use any unexpended Funds and the conditions of such use.

6. PROJECT

- 6.1 In relation to the Project, the Port Manager must, at all times:
- 6.1.1 exercise due care, skill and judgment;
 - 6.1.2 act in accordance with the highest professional principles and standards;
 - 6.1.3 observe and comply with all Relevant Legislation;
 - 6.1.4 observe and comply with all applicable Victorian Government policies; and
 - 6.1.5 have regard to any matters notified in writing from time to time to the Port Manager by TFV's Representative.
- 6.2 The Port Manager must:
- 6.2.1 undertake and complete the Project in accordance with this Agreement;
 - 6.2.2 employ or engage sufficient Personnel (including, but not limited to, a project manager) who have appropriate qualifications, skills and experience, including experience in projects of a similar size and nature to the Project, to enable the Port Manager to successfully complete the Project in accordance with the Project Brief;
 - 6.2.3 ensure that it and its Personnel comply with all Relevant Legislation, awards or orders applying to matters within the scope of the Project;
 - 6.2.4 without limiting the generality of clause 6.2.3, obtain and comply with all permits, approvals and the like that are necessary to undertake the Project;
 - 6.2.5 implement appropriate monitoring and review processes to enable it to ensure that the Milestones are achieved and Payment Deliverables are provided in accordance with this Agreement; and
 - 6.2.6 ensure that it and any person employed or engaged to work on the Project does not:
 - 6.2.6.1 engage in unethical work practices; or

- 6.2.6.2 engage employees or subcontracted workers upon terms and conditions that will not meet industrial standards generally applicable in Victoria.
- 6.2.7 advise TFV promptly if there is a delay to the Project or change to the estimated cost or other aspect about the delivery of the Project in relation to which DEJDTR should reasonably be made aware.
- 6.3 The Port Manager must not subcontract any material part of the Project without TFV's prior written consent which may be withheld in TFV's absolute discretion or subject to conditions required by TFV. Notwithstanding any subcontract or any approval by TFV, the Port Manager will remain responsible for the acts, defaults and omissions of its subcontractors as if they were those of the Port Manager.

7. VARIATION OF PROJECT BRIEF

- 7.1 The Port Manager must not amend or vary the Project Brief without the prior written approval of TFV's Representative.
- 7.2 If the Port Manager wishes to amend or vary any aspect of the Project Brief, it may submit a proposal to TFV's Representative detailing the nature of the proposed amendment or variation and explaining why this amendment or variation is necessary.
- 7.3 TFV's Representative may, in his or her absolute discretion, approve or reject any proposed amendment or variation to the Project Brief. Such approval will not be unreasonably withheld.

8. NATURE OF RELATIONSHIP

8.1 No Employment Relationship Between Parties

The parties acknowledge and agree that:

- 8.1.1 this Agreement does not create a relationship of employment, partnership or joint venture between them; and
- 8.1.2 it is the express intention of the parties that any relationship of employment, partnership or joint venture between them is denied.

8.2 No Deemed Employment for Any Purpose

The Port Manager acknowledges and agrees that:

- 8.2.1 TFV is not and will not at any time be construed as the employer of the Port Manager or its employees for the purposes of any Relevant Legislation;
- 8.2.2 the Port Manager is solely responsible and liable for making any payments in respect of superannuation, payroll or any other tax, WorkCover levy or any similar payments in relation to its employees; and
- 8.2.3 under no circumstances will TFV be responsible for fulfilling the obligations set out in clauses 8.2.1 and 8.2.2.

9. CONFLICT OF INTEREST

9.1 Port Manager's Warranty

The Port Manager warrants to TFV that, at the time of entering into this Agreement, no Conflict of Interest exists, is likely to arise or could reasonably be perceived to exist.

9.2 Port Manager to Use Best Endeavours

The Port Manager must use its best endeavours to ensure that no Conflict of Interest arises or could reasonably be perceived to arise during the Term.

9.3 Port Manager to Notify of Potential Conflict

9.3.1 The Port Manager must immediately notify TFV's Representative of any matter that may give rise to a Conflict of Interest (**Conflict Notice**).

9.3.2 Upon receipt of a Conflict Notice, or whenever TFV's Representative considers that a Conflict of Interest has arisen or is likely to arise, TFV's Representative may direct the Port Manager to resolve the Conflict of Interest to the satisfaction of TFV's Representative within 14 Business Days (**Conflict Direction**).

9.3.3 Where TFV's Representative determines that the Port Manager has not resolved the Conflict of Interest to the sole and unfettered satisfaction of TFV's Representative within 14 Business Days of the issuance of the Conflict Direction, TFV may terminate this Agreement pursuant to clause 19.

10. TFV'S REPRESENTATIVE

10.1 TFV's Representative will:

10.1.1 represent TFV and carry out its functions as an agent of TFV in connection with this Agreement; and

10.1.2 be available at all reasonable times for consultation with the Port Manager's Representative in connection with any matter arising under this Agreement.

10.2 Except as otherwise provided by this Agreement, TFV's Representative may give a direction orally, but TFV's Representative must confirm an oral direction in writing as soon as practicable.

11. PORT MANAGER'S REPRESENTATIVE

11.1 The Port Manager's Representative will:

11.1.1 represent the Port Manager and be deemed to be the agent of the Port Manager in relation to any matter arising under this Agreement, including any decision made or information given or received by the Port Manager; and

- 11.1.2 be available at all reasonable times for consultation with TFV's Representative in connection with any matter arising under this Agreement.
- 11.2 TFV may rely on any statement or representation made by the Port Manager's Representative and that statement or representation shall be binding on the Port Manager as if it had been made by the Port Manager itself.

12. GOVERNANCE

12.1 Project Reference Group

If requested by either TFV or the Port Manager, TFV and the Port Manager must establish a committee (**Project Reference Group**) comprising up to two members from each of TFV and the Port Manager with the functions set out in clause 12.2.

12.2 Project Reference Group Functions

- 12.2.1 The functions of the Project Reference Group will include:
- 12.2.1.1 overseeing and facilitating matters with respect to the Agreement, including but not limited to monitoring and reporting;
 - 12.2.1.2 overseeing and reviewing the progress of the Project including but not limited to issues relating to Project budget, Milestones, Payment Deliverables, risk and quality;
 - 12.2.1.3 facilitating discussions between senior Personnel of TFV and the Port Manager with a view to reaching a consensus on issues relating to the Project;
 - 12.2.1.4 reviewing and commenting on any strategy or documentation to contract goods or services for the Project;
 - 12.2.1.5 reviewing and commenting on any proposals to amend the Project Brief and/or any proposed material variations, including considering any risk or liability issues arising from the amendments or variations;
 - 12.2.1.6 suggesting and drafting amendments to the Project Brief;
 - 12.2.1.7 identifying and facilitating any approvals, consents or the like that may be required in order to carry out the Project or implement an amendment to the Project Brief;
 - 12.2.1.8 considering any matter relevant to the Project as may be raised by either party; and
 - 12.2.1.9 making recommendations to the parties in relation to any dispute or conflict between the parties.
- 12.2.2 The Project Reference Group will carry out its functions for the Term.
- 12.2.3 Neither TFV nor the Port Manager will be bound by any recommendation made by the Project Reference Group, but may take into account any

such recommendation in exercising its duties, discretions and powers under this Agreement.

13. AUDITING, REPORTING AND RECORD-KEEPING

13.1 Reports

13.1.1 The Port Manager must provide to TFV each of the reports specified in Schedule 5.

13.1.2 Each report must contain the information specified in Schedule 5.

13.2 Statement of Compliance

13.2.1 Without limiting clause 13.1, if requested by TFV's Representative, the Port Manager must submit to TFV's Representative:

13.2.1.1 a statement of compliance signed by an authorised representative of the Port Manager certifying:

13.2.1.1.1 that the Funds have been expended solely for the purposes of the Project; and

13.2.1.1.2 that the terms and conditions of this Agreement have been complied with, or, where any terms or conditions have not been complied with, the reasons for such non-compliance; and

13.2.1.2 a financial report detailing expenditure in relation to the Project,

within the timeframe requested by TFV's Representative.

13.3 Records

13.3.1 The Port Manager must establish and maintain proper books of account of all transactions relating to the Funds and operating records necessary to afford a correct and complete record and explanation of all expenditure by the Port Manager of the Funds, including:

13.3.1.1 proper books of account; and

13.3.1.2 disbursement records.

Such records must be maintained in accordance with accounting principles generally applied in commercial practice and to an auditable standard, as required by any Relevant Legislation or any applicable Victorian Government policies.

13.3.2 The Port Manager must establish and maintain records of the Project-related activities undertaken by or on behalf of the Port Manager to enable TFV to undertake an audit of such activities.

13.4 Inspection of Records and Audit

- 13.4.1 The Port Manager must give TFV's Representative, or a third party nominated by TFV's Representative (including an auditor appointed by TFV), access to the information referred to in clause 13.3, or in any other clause of this Agreement, to enable TFV's Representative or the third party to:
- 13.4.1.1 determine whether the Port Manager is complying with all of its obligations under this Agreement; and
 - 13.4.1.2 ascertain any other matters reasonably considered by TFV's Representative or the third party to be relevant to the performance of the Port Manager's obligations under this Agreement.
- 13.4.2 If requested by TFV's Representative or an auditor appointed by TFV, the Port Manager must provide to TFV's Representative documentation evidencing costs, losses or expenses incurred by the Port Manager in undertaking the Project, or part of the Project, as soon as possible and in any event within five Business Days of receiving such a request.

14. INDEMNITY

In accordance with clause 5.3.12 of the Indemnity Policy, the parties acknowledge that the use of contractual indemnities between Government entities is not recommended. The parties agree that this Agreement is an appropriate mechanism to identify and state the respective roles and responsibilities of the parties. Any dispute relating to any actions, claims or losses (including liability for loss) arising from or in connection with this Agreement shall be determined in accordance with clause 23.

15. INSURANCE

15.1 Insurances to be taken out by the Port Manager

The Port Manager must:

- 15.1.1 effect and maintain the insurances specified in item 1 of Schedule 4;
- 15.1.2 ensure that any subcontractors engaged by the Port Manager effect and maintain the insurances specified in item 2 of Schedule 4; and
- 15.1.3 effect and maintain any other insurance policies required by law.

15.2 Proof of Insurance

The Port Manager must, upon request by TFV provide TFV with copies of certificates of currency for any insurances referred to in clause 15.1.

16. ASSIGNMENT

16.1 The Port Manager must not:

- 16.1.1 sell, transfer, delegate, assign, licence; or

- 16.1.2 mortgage, charge or otherwise encumber,
- any right under this Agreement to any person (**Proposed Assignee**), or permit a Proposed Assignee to assume any obligation under this Agreement without the prior written consent of TFV which may be withheld in the absolute discretion or subject to conditions required by TFV.
- 16.2 Without limiting clause 16.1, the assigning party must pay all fees and expenses (including legal fees on a solicitor/own client basis) incurred by TFV in connection with the proposed assignment and the investigation of the Proposed Assignee, whether or not consent is granted.
- 16.3 Without limiting clause 16.1, the assigning party must deliver to TFV:
- 16.3.1 the name, address and occupation of the Proposed Assignee;
- 16.3.2 two written references as to financial circumstances of the Proposed Assignee;
- 16.3.3 an agreement in a form approved by TFV, executed by the Proposed Assignee, in which the Proposed Assignee agrees to perform the obligations of the assigning party under this Agreement;
- 16.3.4 if required by TFV, a guarantee in a form approved by TFV executed by persons approved by TFV, guaranteeing the performance of the Proposed Assignee's obligations; and
- 16.3.5 any other documents reasonably required by TFV.

17. INTELLECTUAL PROPERTY

- 17.1 All Intellectual Property created in relation to the Project or in any reports, documents or other material created for the purposes of or as a consequence of the Port Manager performing or complying with its obligations under this Agreement, vest in the Port Manager upon creation.
- 17.2 The Port Manager grants to TFV a world-wide, non-exclusive, royalty-free, paid up, non-exclusive licence (including the right to sub-licence) to reproduce, publish, adapt, modify or otherwise use for non-commercial purposes the reports and any documents and other materials provided by the Port Manager under this Agreement.
- 17.3 The Port Manager warrants that any Intellectual Property used by it in connection with the Project and this Agreement (including any documents and other materials prepared for the purposes of the Project and this Agreement) are the sole property of the Port Manager or the Port Manager is legally entitled to use such Intellectual Property and is able to grant the licence under clause 17.2.

18. VARIATION

This Agreement may only be varied or replaced by an agreement duly executed by the parties.

19. DEFAULT AND TERMINATION

- 19.1 TFV may terminate this Agreement immediately by notice in writing to the Port Manager if:
- 19.1.1 the Port Manager fails to comply with any of the conditions set out in clause 4;
 - 19.1.2 the Port Manager engages in any conduct that causes or may cause imminent and serious risk to the health or safety of a person, or to the reputation, viability or profitability of the Project or TFV's provision of Funds for the Project;
 - 19.1.3 the Port Manager is dissolved or amalgamated with another entity;
 - 19.1.4 the Port Manager commits an act of insolvency or enters into a scheme of arrangement or composition with creditors or a liquidator, receiver or receiver and manager, administrator or controller of the Port Manager or any of its assets is appointed;
 - 19.1.5 the Port Manager is found guilty of any criminal offence other than an offence that, in TFV's opinion, does not affect the Port Manager's ability to undertake and complete the Project properly;
 - 19.1.6 there is any wilful failure or neglect on the part of the Port Manager in undertaking the Project, any act of serious misconduct or any other serious or persistent breach of any of the terms of this Agreement; or
 - 19.1.7 TFV is entitled to do so in accordance with any other clause of this Agreement (excluding clause 20).
- 19.2 If TFV terminates this Agreement pursuant to clause 19.1:
- 19.2.1 the Port Manager must immediately cease all work on the Project and take all appropriate action necessary to minimise further expenditure of the Funds;
 - 19.2.2 TFV will not make any further payment of Funds;
 - 19.2.3 the Port Manager must, within 30 Business Days, repay to TFV all Funds that have not been expended as at the date of termination; and
 - 19.2.4 the Port Manager comply with any directions given by TFV in a notice under clause 19.1 in relation to the transition of the Project to TFV or any third party.

20. TERMINATION FOR CONVENIENCE

- 20.1 In addition to TFV's rights under clause 19.1, TFV may terminate this Agreement at any time before the end of the Term with or without a reason by giving the Port

Manager 30 Business Days' notice in writing of TFV's intention to terminate this Agreement, after which this Agreement is at an end.

- 20.2 On receipt of a notice terminating the Agreement under clause 20.1,
 - 20.2.1 the Port Manager must immediately cease all work on the Project and take all appropriate action to mitigate any loss or prevent any further costs being incurred with respect to the Agreement;
 - 20.2.2 the Port Manager will not be entitled to be paid any additional compensation by TFV in respect of the termination; and
 - 20.2.3 the Port Manager must comply with any directions given by TFV in a notice given under clause 20.1 in relation to the transition of the Project to TFV or any third party.
- 20.3 If TFV gives a notice under clause 20.1, TFV must pay the reasonable expenses of the Port Manager for all work performed by the Port Manager on the Project in accordance with the Agreement up to the date of termination plus all costs which, in the opinion of TFV are reasonable.
- 20.4 If the Funds paid by TFV to the Port Manager exceeds the amount determined in accordance with clause 20.3, TFV may in its absolute discretion seek reimbursement of the excess.

21. PUBLICATION OF PROMOTIONAL MATERIAL

- 21.1 Except as required by law, the Port Manager may not make any public announcement or issue any promotional material or press release relating to:
 - 21.1.1 the Project;
 - 21.1.2 any negotiations between the Port Manager and TFV; or
 - 21.1.3 the existence or subject matter or terms of this Agreement,without the prior written consent of TFV.
- 21.2 Where TFV gives consent under clause 21.1, or where otherwise requested by TFV, the Port Manager must acknowledge TFV's assistance in all publications and promotional materials relating to the Project by prominently displaying in such publications and on such promotional materials the statement and logo to be provided by TFV's Representative.

22. CONFIDENTIALITY AND RESTRICTIONS AFTER TERMINATION

22.1 Return of Property

Upon the termination of this Agreement, if requested by TFV, the Port Manager must return to TFV's Representative all manuals, drawings, computer programs and other documents supplied by TFV or TFV's Representative to the Port Manager and any other property belonging to TFV relating to delivery of the Project. If requested by TFV, the Port Manager must not retain copies of any documents that it is returning.

22.2 Use of Information

The Port Manager must not, whether during or after the Term, make any improper use of:

- 22.2.1 any trade secrets and any financial, accounting, marketing and technical information, customer and supply lists, pricing information, ideas, inventions, techniques, systems, concepts, formulae, know how, technology, operating procedures, processes, knowledge and other information belonging to, used by or relating to TFV in the conduct of its business or gained as a result of the Port Manager's involvement with TFV at any time;
- 22.2.2 the position of TFV on any confidential matter; or
- 22.2.3 any other information which may be detrimental to the interests of TFV or any other person who has provided information to TFV on a confidential basis, unless the Port Manager is required to disclose the information by law.

22.3 Non-Disclosure

- 22.3.1 The Port Manager must not disclose to any third party or use any material or information referred to in clauses 22.2.1 to 22.2.3 without the prior written consent of TFV which may be withheld in TFV's absolute discretion or subject to conditions required by TFV.
- 22.3.2 The Port Manager may only use any material or information referred to in clauses 22.2.1 to 22.2.3 provided by TFV for the sole purpose of undertaking the Project.
- 22.3.3 The Port Manager must take or cause to be taken all necessary precautions to maintain the secrecy and confidentiality of any material or information referred to in clauses 22.2.1 to 22.2.3, including using their best endeavours to prevent improper publication or disclosure by a third party.
- 22.3.4 The Port Manager acknowledges that TFV may be required to publish either summary details of this Agreement or the Agreement itself on the internet or otherwise and the Port Manager consents to TFV fulfilling any such requirement.

23. DISPUTE RESOLUTION

If there is a dispute between the parties related to the Agreement, then the dispute will be resolved in accordance with the Dispute Guidelines.

24. GST

24.1 GST Inclusive

Except as otherwise provided by this clause, all Consideration payable under this Agreement in relation to any Supply is inclusive of GST.

24.2 Increase in Consideration

To the extent that any Supply under this Agreement constitutes a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

24.3 Payment of GST

Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).

24.4 Reimbursements

If this Agreement requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier, the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled to claim in respect of the outgoing, in addition to any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.

24.5 Tax Invoice

The Supplier must issue the Recipient with a valid Tax Invoice at or prior to the time of payment of any GST Amount.

24.6 Adjustments & Adjustment Notes

To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within five Business Days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within five Business Days after the date of receipt of the Adjustment Note.

25. GENERAL

25.1 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

25.2 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

25.3 Legal Costs and Expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

25.4 Waiver and Exercise of Rights

25.4.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

25.4.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

25.5 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

25.6 No Relationship

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

25.7 Rule of Construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the Agreement on the basis that it put forward this Agreement or any part of it.

26. NOTICES

26.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

26.1.1 personally on the person;

26.1.2 by leaving it at the person's current address for service;

26.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or

26.1.4 by email to the person's current email address for service, provided that the party giving notice obtains a confirmation report or other written evidence that the email has reached the recipient's mailbox.

26.2 Particulars for Service

- 26.2.1 The particulars for service of TFV are provided in item 8 of Schedule 1.
- 26.2.2 The particulars for service of the Port Manager are provided in item 10 of Schedule 1.
- 26.2.3 Any party may change the particulars for service by giving written notice to the other party.
- 26.2.4 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

26.3 Time of Service

A notice or other communication is deemed served:

- 26.3.1 if served personally or left at the person's address, upon service;
- 26.3.2 if posted within Australia to an Australian address, six Business Days after posting;
- 26.3.3 if served by email, subject to clause 26.3.4, at the time the notice or other communication comes to the attention of the addressee;
- 26.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

27. INTERPRETATION

27.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

27.2 Persons

In this Agreement, a reference to:

- 27.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 27.2.2 a person includes the legal personal representatives, successors and permitted assignees of that person; and
- 27.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

27.3 Joint and Several

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

27.4 Legislation

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

27.5 This Agreement, Clauses and Headings

In this Agreement:

- 27.5.1 a reference to this Agreement or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 27.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
- 27.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 27.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 27.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 27.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

27.6 Severance

- 27.6.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 27.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

27.7 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

27.8 Currency

In this Agreement, a reference to '\$' or 'dollars' is a reference to Australian dollars.

27.9 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

27.10 Number and Gender

In this Agreement, a reference to:

27.10.1 the singular includes the plural and vice versa; and

27.10.2 a gender includes the other genders.

27.11 Survival of Terms

The provisions of this Agreement which by their nature survive termination or expiry of this Agreement will survive termination or expiry of this Agreement.

EXECUTED by the parties as an Agreement

SIGNED by the **HEAD, TRANSPORT
FOR VICTORIA** on behalf of the
**CROWN IN RIGHT OF THE STATE
OF VICTORIA** in the presence of:

)
)
)

Witness (Signature)

TFV's Representative (Signature)

Witness (Print name)

TFV's Representative (Name)

Date:

[Insert Port Manager's execution clause]

Date:

Schedule 1 – Details

Item	Item Description	Details
1	Commencement Date:	
2	Completion Date:	
3	Term:	
4	Funds:	GST Exclusive: GST Inclusive:
5	Port Manager's Contribution:	GST Exclusive: GST Inclusive:
6	Asset:	
7	TFV's Representative:	
8	TFV's Particulars for Service:	Person: Title: Address: Email address:
9	Port Manager's Representative:	
10	Port Manager's Particulars for Service:	Person: Title: Address: Email address:

Schedule 2 – Project Brief

Schedule 3 – Milestones and Payment Deliverables

No.	Milestone or Payment Deliverable	Evidence required to demonstrate that the Milestone has been achieved	Date for Reaching Milestone or providing Payment Deliverable	Funding Contributed excl GST	Port Manager's Contribution excl GST	Cumulative Cashflow excl GST
1						
2						
3						
4						
5						
6						
7						
8						
9	TOTAL					

[Note 1: Examples of payment deliverables include: provision of a signed copy of the funding agreement, provision of project plan, provision of a signed copy of the subcontract for works, provision of invoices to evidence certain amounts of expenditure, provision of project status reports, provision of final report]

[Note 2: Examples of evidence to demonstrate achievement of Milestones include: project plan, milestone report, final reports, photographs, site inspection by IFV, certificate of practical completion.]

Schedule 5 – Reporting Requirements

[Drafting note: The reports listed below are examples only.]

[Note: If the report is a Payment Deliverable, specify the date for provision of the report in the “Date for Reaching Milestone or providing Payment Deliverable” column of the Milestones and Payment Deliverables table.

If the milestone report (or other type of report) is evidence required to demonstrate a particular Milestone has been achieved, you do not need to specify a date for provision of the report because there is a date in the Milestones and Payment Deliverables table for reaching the Milestone. Payment of Funds by TFV depends on the provision of supporting evidence (see clause 3.1).

If the report is not required as evidence to support a Milestone and is not a Payment Deliverable (i.e. it is a reporting requirement not linked to payment of Funds), then specify the date for provision of the report in this Schedule 5.]

1. Project Plan

The project plan must be provided [by [date] / by the date specified in the Milestones and Payment Deliverables table at Schedule 3] and must confirm the following information as a minimum:

- [insert details as relevant to the Project]

2. Milestone Report

Each milestone report specified in the Milestones and Payment Deliverables table at Schedule 3 as evidence required to demonstrate that a Milestone has been achieved must contain the following information (at a minimum) in relation to the relevant Milestone:

- a description of the Milestone;
- report on the progress of the Project;
- the outcomes achieved as a result of the Milestone (for example, in terms of quality, timing and budget);
- any variations from the Milestone;
- the impact that achieving the Milestone has or may have on any other Milestone; and
- any issues, opportunities or lessons that arose in relation to the Milestone or the Project.

3. Project Status Report

Each project status report must be provided [by the dates set out below / by the dates specified in the Milestones and Payment Deliverables table at Schedule 3] and must contain the following information (at a minimum):

- report on the progress of the Project;

- the outcomes achieved in relation to the Project (for example, in terms of quality, timing and budget);
- any issues, opportunities or lessons that arose in relation to the Project.

4. Final Report

The final report must be provided [by [date] / by the date specified in the Milestones and Payment Deliverables table at Schedule 3] and must contain the following information (at a minimum):

- provide evidence that the Project has been completed
- provide evidence that the [infrastructure] is operating
- the outcomes achieved in relation to the Project (for example, in terms of quality, timing and budget);
- any issues, opportunities or lessons that arose in relation to the Project.
- [other]

5. Post Completion Evaluation Report

The post-completion evaluation report must be provided [12 months after the Completion Date] and must:

- evaluate the impact of the completed Project
- [other]

[END OF TEMPLATE FUNDING AGREEMENT – Note: Remove this text when drafting any funding agreements.]

Schedule 4 – Annual Report Template

This template is provided as a guide only for Local Port Managers in the preparation of their Annual Report. The Annual Report must contain, as a minimum, the sections described here.

Cover Sheet

Table of Contents

Introduction

--

Chair’s Report

--

Executive Officer’s Report

--

Committee

Description
Include details of: <ul style="list-style-type: none"> • Members of the committee/governing body • Number of meetings held • Attendance of members at each meeting

Summary of Operations

Description
This is a non-financial summary of operations and may include: <ul style="list-style-type: none"> • Number of berths and mooring permits • Number of itinerant vessel berthing • Amount of dredging undertaken • Major works completed/underway/planned • Maintenance works completed • events

Performance/Program Reporting

Description
Include details of performance against: <ul style="list-style-type: none"> • program delivery (as per clause 7.3.1.2 of the management agreement) • objectives and projected performance, including explanations of objectives or projected performance not achieved

- SEMP
- Incident reports (as per clause 7.3.1.3 of the management agreement)

Projected Performance for the coming year

--

Disclosures

Description
This includes details of disclosures, if any, under: <ul style="list-style-type: none">• The Freedom of Information Act 1982• The Protected Disclosure Act 2012

FOI Disclosures

--

Annual Financial Report

As per clause 7.3.1 of the management agreement.

Schedule 5 – Business Plan Template

This template is provided as a guide only for Local Port Managers in the preparation of their annual Business Plan. The Business Plan must contain, as a minimum, the sections described here.

Cover Sheet

Table of Contents

Executive Summary

Description
<p>The Executive Summary provides:</p> <ul style="list-style-type: none"> • an overview of the local port; • briefly mentions major events; and • identifies the strategic direction of the organisation over the time frame of the plan. <p>An executive summary can outline past achievements, strengths, outlines future challenges and performance targets and recommendations</p> <p>Hint: write last</p>

Purpose of the Business Plan

Description
<p>This section will describe why the business plan is being developed.</p> <p>Likely reasons are to enable all stakeholders to understand:</p> <ul style="list-style-type: none"> • future directions • needs and challenges • proposed implementation plans <p>Hint: Consider who will read this – e.g. TFV, users</p>

Organisational Structure

Description
<p>This would include:</p> <ul style="list-style-type: none"> • brief outline of governance arrangements e.g. Committee of Council • the organisational chart

Business Overview

Description
<p>This can include the following sections:</p> <ol style="list-style-type: none"> 1. <u>Background and Organisational History</u> 2. <u>Local Port Facilities</u> <p>A brief overview of what facilities are available</p> 3. <u>Accountability</u> <p>Detail the responsibilities of TFV, TSV, Local Port, Other – make it clear to all</p> 4. <u>Key activities/responsibilities</u> <p>e.g. dredging, mooring allocation Capital works program</p> <p>Hint: write for external audience</p>

Major Assumptions

Description
<p>This section should includes details on short and long term:</p> <ul style="list-style-type: none"> • goals; • objectives; • strategies; and • action plans, <p>and the underlying assumptions on which they are based.</p> <p>Some sample assumptions could be:</p> <ul style="list-style-type: none"> • The organisation will receive funding from Government of \$X per annum over a three year period. • The port manager has to comply with statutory obligations. • The port manager will require additional administration support staff.

SWOT

Description
<p>This section demonstrates your understanding of the potential and limitations of the business. The following are examples:</p>

<p><u>Strengths</u></p> <ul style="list-style-type: none"> • good reputation with users • sheltered harbour • good quality facilities • high user demand • strong tourism <p><u>Weaknesses</u></p> <ul style="list-style-type: none"> • demand for berthing exceeds supply • no support facilities such as slipway or pump out facilities <p><u>Opportunities</u></p> <ul style="list-style-type: none"> • growth in recreational fishing and boating • strong tourist town <p><u>Threats</u></p> <ul style="list-style-type: none"> • declining grant funding opportunities • increasingly stringent dredging requirements <p>Hint: Use standard SWOT analysis techniques</p>
--

Risk Analysis

<p>Description</p> <p>This would generally be in table format and include:</p> <ul style="list-style-type: none"> • description of the risk • impact • minimisation strategy <p>The SEMP covers the some of the risk, and can be attached as an appendix.</p>

Goals and Strategies

<p>Description</p> <p>Describe goals and strategies to achieve goals</p>

3 Year Financial Plan including detailed Annual Budget

Attach the budget prepared in accordance with clause 7.1.1 of the management agreement.

Schedule 6 – Reporting

Report to TFV	Date	Who	Clause
Business Plan	31 March	Port Manager	5.1
Annual Budget	31 March	Port Manager	7.1.1
Asset Register	31 March	Port Manager	4.5.3
Annual Report	30 September	Port Manager	7.3.1
Asset Management Plan	30 September 2018 and 30 September 2021	Port Manager	10.3
Incident	Immediately	Port Manager	8.1.4

Response by TFV	Date	Who	Clause
Business Plan	31 May	TFV	5.2.1
Annual Budget	31 May	TFV	7.1.2
Operating and Maintenance Funding confirmation and estimate	30 June	TFV	6.2

Date *26 September 2017*

**Port of Port Fairy
Management Agreement**

HEAD, TRANSPORT FOR VICTORIA

and

MOYNE SHIRE COUNCIL

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Port of Port Fairy Management Agreement

DATE 26 September 2017

BETWEEN

HEAD, TRANSPORT FOR VICTORIA, a statutory office established under the *Transport Integration Act 2010*, on behalf of the Crown in right of the State of Victoria of Level 21, 1 Spring Street, Melbourne, Victoria, 3000

(TFV)

AND

MOYNE SHIRE COUNCIL a port manager of a local port established under the *Port Management Act 1995* of Princes Street, Port Fairy, Victoria, 3284

(Port Manager)

RECITALS

- A. TFV is responsible for managing the overall funding program for local ports and providing broad strategic planning services for local port facilities across the State.
- B. The Port Manager manages and administers the Port as part of its statutory functions as set out in the *Port Management Act 1995*.
- C. TFV has agreed to provide the Port Manager with funding for the administration and management of the Port.
- D. This Agreement sets out the terms and conditions on which the Port Manager will manage and administer the Port and TFV will provide funding for the management and administration of the Port.

THIS AGREEMENT WITNESSES

1. DEFINITIONS

In this document unless expressed or implied to the contrary:

Agreement means this agreement;

Asset Management Plan means an asset management plan prepared by the Port Manager and approved by TFV;

Business Day means a day on which banks are open for general banking business in Melbourne, Australia, other than a Saturday, Sunday or public holiday;

Business Plan means a business plan prepared in accordance with clause 5 and which contains, as a minimum, the information set out in Schedule 5;

Commencement Date means the date specified at item 2 of Schedule 1;

Completion Date means the date specified at item 3 of Schedule 1;

Dispute Guidelines means the Guidelines for the conduct of disputes between different public sector bodies within the State of Victoria issued by the Attorney-General, 2008, or any replacement dispute guidelines;

Financial Year means:

- (a) the period commencing on the Commencement Date and ending on the following 30 June;
- (b) each successive period of twelve months commencing on 1 July and ending on 30 June; and
- (c) the period commencing on 1 July immediately preceding the date of termination of this Agreement and ending on the date of such termination.

Fixed Asset means any asset that is static or immovable within the Port listed in Schedule 2, or other asset as agreed in writing from time to time;

Floating Plant means all vessels, boats, barges and associated equipment to be used in relation to the Port listed in Schedule 2, or other asset as agreed in writing from time to time;

Incident means an event that occurs within the Port that causes or has the potential to cause personal injury, property damage or environmental damage and is likely to result in an insurance claim or other action against the Port Manager, TFV or the Department of Economic Development, Jobs, Transport and Resources;

Indemnity Policy means the Victorian Government's policy titled "Government policy and guidelines: indemnities and immunities, June 2008", or any replacement policy;

Non-Fixed Asset means any asset that is portable or movable other than Floating Plant to be used in relation to the Port and includes plant, vehicles, office equipment and furniture;

Port means the local port specified in Schedule 1;

Port Manager means the entity appointed to manage the Port by the Governor in Council under section 44A of the *Port Management Act 1995* and named at item 1 of Schedule 1;

Project Agreement means an agreement between TFV and the Port Manager for Project Funding substantially in the form attached at Schedule 3;

Project Funding means the funding provided by TFV or other Government entity in accordance with clauses 6.4 and 6.5 for the construction, reconstruction or replacement of Fixed Assets or Floating Plant;

Representatives means the representatives of each of the parties for the day to day administration of this Agreement nominated in writing from time to time, initially being the persons set out at items 6 and 7 of Schedule 1;

Safety and Environment Management Plan means a management plan prepared in accordance with Part 6A of the *Port Management Act 1995*;

State means the Crown in right of the State of Victoria; and

Term means the term set out in clause 3.

2. GOVERNING PRINCIPLES AND PURPOSE

2.1 Guiding Principle

The parties will cooperate at all times to ensure that both parties meet their respective obligations under this Agreement.

2.2 Role of this Agreement

The role of this Agreement is to set out the terms and conditions on which:

2.2.1 the Port Manager will:

2.2.1.1 manage and administer the Port; and

2.2.1.2 consult with TFV in relation to the management and administration of the Port; and

2.2.2 TFV will fund the management and administration of the Port.

2.3 Status of Agreement

The parties acknowledge and agree that this Agreement is legally enforceable.

2.4 Agreement to Negotiate

The parties agree to use best endeavours to negotiate, in the last 12 months of this Agreement, the terms of a new management agreement relating to the management and administration of the Port that will commence on the day following the Completion Date.

2.5 Revocation of Appointment as Port Manager

The parties acknowledge and agree that the termination or the expiry of this Agreement will not revoke the appointment of the Port Manager as port manager of the Port. Such appointment will continue unless and until such time as it is revoked by Governor in Council pursuant to section 44A(2)(a) of the *Port Management Act 1995*. If the Port Manager requests that its appointment as port manager of the Port is to be revoked by Governor in Council, TFV will use its best endeavours to expedite this matter through the Governor in Council process.

2.6 Representatives

The Representatives of the parties will be responsible for the day to day management of this Agreement and any communications under this Agreement.

3. TERM

The Term of this Agreement is specified at Item 4 of Schedule 1 and will commence on the Commencement Date and will expire on the Completion Date unless this Agreement is terminated in accordance with clause 12.

4. OWNERSHIP AND MANAGEMENT OF ASSETS

4.1 Fixed Assets

- 4.1.1 The State owns the Fixed Assets and will retain ownership of the Fixed Assets.
- 4.1.2 TFV controls the Fixed Assets on behalf of the State.
- 4.1.3 The Port Manager will be responsible for the management, maintenance and operational control of the Fixed Assets on behalf of TFV.
- 4.1.4 Ownership of the Fixed Assets will not transfer to the Port Manager.
- 4.1.5 The Port Manager must not dispose, remove, close permanently or change the use of any Fixed Assets unless it has notified, consulted with and obtained the prior written approval of TFV.
- 4.1.6 The Port Manager must provide written notice to TFV as soon as practicable after closing any Fixed Asset due to:
 - 4.1.6.1 an emergency situation; or
 - 4.1.6.2 where the Fixed Asset has been damaged and is unsafe for public use;and the notice must include the proposed date of re-opening of the Fixed Asset.

4.2 Non-Fixed Assets and Floating Plant

- 4.2.1 Non-Fixed Assets and any Floating Plant are the property of the Port Manager and, subject to clauses 4.2.2 and 4.2.3, may be sold or otherwise disposed of, replaced, repaired or dealt with by the Port Manager as its own property.
- 4.2.2 If this Agreement terminates as referred to in clause 12.1 or otherwise, the Non-Fixed Assets and the Floating Plant owned by the Port Manager at the date of termination will cease to be property of the Port Manager and will immediately transfer to the property of TFV.
- 4.2.3 The Port Manager must not sell or otherwise dispose of a Non-Fixed Asset or Floating Plant with a current replacement value exceeding \$50,000 without giving 1 month's prior written notice to TFV and offering first right of purchase to the port managers of all other Victorian local ports.

4.3 Maintenance

The Port Manager must manage, repair, maintain in good condition and, where necessary, replace all assets to the best of its ability, within the constraints of available funding and income, and in accordance with good business practice.

4.4 Permitted Use of Assets

The Port Manager must only use the Fixed Assets, Non-Fixed Assets and Floating Plant for the management and administration of the Port unless otherwise approved in writing by TFV.

4.5 Asset Register

4.5.1 The Port Manager must maintain a register of all assets held or managed by it.

4.5.2 The Port Manager must record the Fixed Assets, Non-Fixed Assets and Floating Plant in the asset register at a fair value and must state the estimated remaining life of the Asset.

4.5.3 The Port Manager will, by no later than 31 March in each year of the Term, submit to TFV a copy of the asset register maintained in accordance with this clause 4.5.

5. BUSINESS PLAN

5.1 By 31 March in each year of the Term, the Port Manager must prepare and submit to TFV a Business Plan for the 3 Financial Years commencing on the immediately following 1 July which establishes a planning framework for the management and administration of the Port and forecasts for end of year position for the current Financial Year.

5.2 The Business Plan must:

5.2.1 be reviewed by TFV by 31 May of that year and TFV must, as soon as practicable after that date, advise the Port Manager of approval or otherwise, and where necessary, provide particulars of items which have not been approved;

5.2.2 form the basis of budget proposals for the management and administration of the Port;

5.2.3 include proposed major works for the 3 Financial Years commencing on 1 July of that year; and

5.2.4 be prepared following a review of the previous year's Business Plan with variations reported on and submitted in conjunction with the annual budget submission.

6. FUNDING

OPERATING AND MAINTENANCE FUNDS

6.1 TFV agrees to provide the Port Manager with operating and maintenance funds for the operation and maintenance of the Assets, payment of wages and for the management and administration of the Port.

6.2 TFV will:

- 6.2.1 confirm the operating and maintenance funds that TFV will provide to the Port Manager for each Financial Year;
- 6.2.2 provide an estimate of operating and maintenance funds that TFV anticipates that it will provide to the Port Manager for future Financial Years; and
- 6.2.3 provide operating and maintenance funds to the Port Manager for each Financial Year,

in accordance with the timetable set out below:

Date by which TFV will provide confirmation of operating and maintenance funds and an estimate of operating and maintenance funds for future Financial Years	Financial Year to which the confirmation of operating and maintenance funds will relate	When TFV will pay the operating and maintenance funds to the Port Manager	Financial Years to which the estimate of operating and maintenance funding will relate
30 June 2017	1 July 2017 – 30 June 2018	On or after 1 July 2017	1 July 2018 – 30 June 2019 1 July 2019 – 30 June 2020
30 June 2018	1 July 2018 – 30 June 2019	On or after 1 July 2018	1 July 2019 – 30 June 2020 1 July 2020 – 30 June 2021
30 June 2019	1 July 2019 – 30 June 2020	On or after 1 July 2019	1 July 2020 – 30 June 2021 1 July 2021 – 30 June 2022
30 June 2020	1 July 2020 – 30 June 2021	On or after 1 July 2020	1 July 2021 – 30 June 2022 1 July 2022 – 30 June 2023
30 June 2021	1 July 2021 – 30 June 2022	On or after 1 July 2021	1 July 2022 – 30 June 2023 1 July 2023 – 30 June 2024

- 6.3 In determining the amount of operating and maintenance funds described in clauses 6.2.1 and 6.2.2, TFV will take into account the most recent Business Plan submitted by the Port Manager.

PROJECT FUNDING

- 6.4 TFV may provide to the Port Manager an amount of Project Funding. All Project Funding that is provided by TFV to the Port Manager will be governed by the terms of a Project Agreement.
- 6.5 TFV will determine the amount of Project Funding referred to in clause 6.4 (if any) by reference to:
- 6.5.1 the priorities identified in the Business Plan;
 - 6.5.2 the priorities identified in the Asset Management Plan prepared in accordance with clause 10;
 - 6.5.3 the priorities identified in the Safety and Environment Management Plan;
 - 6.5.4 the priorities identified by TFV across the whole of the Victorian local ports program; and
 - 6.5.5 available funding under the Victorian local ports program or available funding under other Victorian Government sources.

USE OF FUNDS

- 6.6 The Port Manager must use the funds provided to it under this Agreement:
- 6.6.1 in accordance with this Agreement;
 - 6.6.2 in accordance with the Business Plan; and
 - 6.6.3 in accordance with any Project Agreement.

FEES AND CHARGES

- 6.7 The Port Manager will utilise its legislative power to levy fees and charges for services provided, having regard to issues of equity of use and access, to maximise the user pays component of its income. In addition, to the extent permitted by legislation, the Port Manager must endeavour to recover the full cost of all utilities (such as electricity and water) provided to Port users.

UNFORESEEN EVENT

- 6.8 In the event that storms or other serious unforeseen events result in significant damage to any Fixed Assets, Non-Fixed Assets or Floating Plant, the Port Manager may submit to TFV, no later than 30 days following the storm or other serious unforeseen event, an application to access repairs, maintenance or other funds for the purpose of repair or of reimbursement of costs.
- 6.9 Any application for funds in accordance with clause 6.8 must include details of the material and labour costs required to undertake the response and rectification works, and may only include costs incurred over and above the normal operating and maintenance budget.

- 6.10 Upon receipt of a submission made under clause 6.8, TFV will reassess the state-wide repairs and maintenance program for Victorian local ports and make payments as determined appropriate.
- 6.11 If TFV does not provide funding for the full cost of performing any necessary repairs and maintenance following a submission from the Port Manager under clause 6.8, nothing in this Agreement shall require the Port Manager to itself provide funding from its own resources. Nothing in this clause in any way excludes, limits or reduces the Port Manager's statutory functions as a port manager of a local port under the *Port Management Act 1995*.

GENERAL

- 6.12 The Port Manager must invest any funds provided by TFV or other Government entity for the Port in accordance with Standing Direction 3.7.2.3 issued by the Minister for Finance under the *Financial Management Act 1994* (as varied or replaced).
- 6.13 If:
- 6.13.1 the Port Manager does not expend the funds (or any part of the funds) during the Financial Year in which the funds are provided; and/or
- 6.13.2 the Port Manager earns interest on the funds,
- the Port Manager is permitted to retain those funds (including any interest earned) and must use those funds in accordance with the timetable for their expenditure approved by TFV under clause 7.1.2.

7. FINANCIAL REPORTING

7.1 Annual Budget Process

- 7.1.1 The Port Manager must prepare and submit to TFV by no later than 31 March in each year of the Term a proposed annual budget for the upcoming Financial Year which shows:
- 7.1.1.1 estimated revenue and sources of revenue of the Port including fees, charges and grants;
- 7.1.1.2 other sources of funding of the Port of an operating nature;
- 7.1.1.3 details of any funds provided to the Port Manager during a previous Financial Year which it is anticipated will remain unexpended and details of and a timetable for their expenditure;
- 7.1.1.4 a schedule of proposed fees and charges to be levied by the Port Manager for services provided in accordance with clause 6.7 of this Agreement;
- 7.1.1.5 direct employment expenses and other direct operating expenses of the Port, including any associated overheads;
- 7.1.1.6 detailed forecast of estimated major works (including associated dredging) necessary for the Port, including total

estimated cost for each project, for the following three years, listed in order of priority;

7.1.1.7 reason for the requirement of any major works (eg. addresses risk or adds value to the ports business); and

7.1.1.8 details of forecast asset maintenance expenditure.

7.1.2 TFV will, by 31 May of that year, review the budget submitted and will, as soon as practicable after that date, advise the Port Manager of approval or otherwise and, where necessary, provide particulars of items which have not been approved.

7.2 Accounts

7.2.1 The Port Manager must maintain a separate cost centre or identifiable charge line in its accounts for its functions as a port manager.

7.2.2 The Port Manager must comply with Australian Accounting Standards including the use of accrual not cash accounting.

7.2.3 Administrative costs (including all staff costs not directly attributable to on-ground works and services), must be separated from direct operating expenditure on facilities and functions.

7.2.4 Expenditure must be allocated to identifiable facilities, assets or services.

7.3 Annual Reporting

7.3.1 The Port Manager will, by no later than 30 September in each year of the Term, prepare and submit to TFV a report on the outcomes of the previous Financial Year's Business Plan and budget as well as the following annual accounts and statements:

7.3.1.1 Financial reports – to show budget and actual revenue and expenditure and commentary on material variations and be prepared on an accrual basis

7.3.1.1.1 An operating statement showing revenue and expenditure.

7.3.1.1.2 A statement showing capital expenditure.

7.3.1.1.3 A statement of funds provided to the Port Manager during previous Financial Years that remain unexpended, including a reasonable allocation of interest earned on accumulated cash funds over the year; and a statement detailing cash which is earmarked for specific purposes (e.g. employee benefits) showing committed and uncommitted cash (e.g. future major works).

7.3.1.1.4 A statement showing maintenance expenditure (annual cost of asset maintenance for fixed

assets and major plant and equipment) for each class of asset (eg. jetties, navigation aids, etc.).

- 7.3.1.1.5 A statement of cash flows.
- 7.3.1.1.6 A statement of financial position (excluding valuations for Crown Land).
- 7.3.1.1.7 A statement of the accounting policy employed for the preparation of the annual accounts and statements.
- 7.3.1.1.8 Any known contingent liabilities.

7.3.1.2 Program reporting (in respect of capital and recurrent works)

- 7.3.1.2.1 Details of operations in comparison to budget.
- 7.3.1.2.2 Cash flow details in comparison to budget.
- 7.3.1.2.3 Details of works progress against works program.
- 7.3.1.2.4 A commentary in respect of any substantial variation regarding the preceding items.
- 7.3.1.2.5 Where dredging operations are performed, a statement on the cost of the dredging, an estimate of the amount of dredging performed (either number of days in operation or volumes dredged) and whether access to the Port has been restricted by a failure/inability to dredge.
- 7.3.1.2.6 Significant (known or anticipated) events that may adversely impact on the Port Manager's ability to perform its task as port manager.

7.3.1.3 Incident reporting

- 7.3.1.3.1 A summary of each and every Incident which was reported or recorded in the Port during the course of the year.
- 7.3.1.3.2 A separate report on any Incident for which further information was requested through the Port Manager's insurers.

7.3.2 The report provided to TFV in accordance with clause 7.3.1 must contain, as a minimum, the information set out in Schedule 4.

7.4 Auditing

The annual accounts to be provided to TFV in accordance with clause 7.3.1.1 must be prepared in accordance with Australian Accounting Standards and audited and signed off by an independent certified company auditor in accordance with Australian Auditing Standards.

8. INSURANCE AND LIABILITY

8.1 Insurance

- 8.1.1 The Port Manager will insure and keep insured the Non-Fixed Assets against damage by theft, fire, explosion, storm and tempest, riots, strikes, accidental and malicious damage, earthquake, impact by vehicles vessels or aircraft, internal water and flood, as appropriate, and in accordance with good business practice.
- 8.1.2 TFV will maintain or will ensure the following insurance cover is maintained as appropriate:
- 8.1.2.1 insurance for the Fixed Assets (under an Industrial Special Risks policy);
 - 8.1.2.2 Port Operators Liability; and
 - 8.1.2.3 Marine Hulls (Floating Plant).
- 8.1.3 TFV will pay any deductibles (excess) arising under the insurance policies listed in clause 8.1.2 or will ensure any deductibles (excess) are paid or will provide self insurance at an appropriate level in consultation with the Port Manager.
- 8.1.4 If there is an Incident, the Port Manager must notify TFV immediately and provide written details about the Incident in the form requested by TFV.

8.2 Indemnities

In accordance with clause 5.3.12 of the Indemnity Policy, the parties acknowledge that the use of contractual indemnities between Government entities is not recommended. The parties agree that this Agreement is an appropriate mechanism to identify and state the respective roles and responsibilities of each of the parties.

Any dispute relating to any actions, claims or losses (including liability for loss) arising from or in connection with this Agreement shall be determined in accordance with clause 11.

9. RISK MANAGEMENT

- 9.1 The Port Manager must undertake a risk audit as part of its Business Plan preparation and report to TFV by 31 March in each year of the Term on actions taken to address identified risks.
- 9.2 The Port Manager must develop and seek approval for its Safety and Environment Management Plan as required in Part 6A of the *Port Management Act 1995*, and will monitor, report on and update its plan as required. In addition to the requirements set out in section 91D of the *Port Management Act 1995*, the Port Manager must prioritise the measures and strategies to be implemented by the Port Manager to prevent or reduce risks associated with the operation of the Port in the Safety and Environment Management Plan.

10. ASSET MANAGEMENT PLAN

The Port Manager must:

- 10.1 monitor, report on and update its Asset Management Plan as required under that plan;
- 10.2 prioritise asset maintenance projects in its Asset Management Plan; and
- 10.3 undertake a detailed review of its Asset Management Plan every three years (where the relevant years are specified in Schedule 6), and submit it to TFV by 30 September of the years specified in Schedule 6, for TFV's approval.

11. DISPUTE RESOLUTION

If there is a dispute between the parties related to the Agreement, then the dispute will be resolved in accordance with the Dispute Guidelines.

12. TERMINATION

12.1 Termination Events

- 12.1.1 The parties may agree in writing to terminate this Agreement at any time.
- 12.1.2 This Agreement will immediately terminate if the Port Manager ceases to be a port manager under the *Port Management Act 1995* in respect of the Port.
- 12.1.3 Either party may terminate this Agreement in the event that the other party commits a breach of this Agreement and fails to remedy the breach within 90 days of notice of the breach and where the breach has not been resolved by the procedure in clause 11 of this Agreement.

12.2 Consequences of Termination

If this Agreement is terminated under clause 12.1:

- 12.2.1 clause 4.2.2 will apply; and
- 12.2.2 the Port Manager will return any funds provided to it by TFV under this Agreement which have not been expended by the Port Manager in accordance with this Agreement.

13. GENERAL

13.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the parties.

13.2 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it.

13.3 Waiver and Exercise of Rights

13.3.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

13.3.2 No party will be liable for any loss or expense incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

13.4 Assignment

Neither party may assign its rights under this Agreement without the prior written consent of the other party.

13.5 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

13.6 GST

13.6.1 In this clause 13.6 unless expressed or implied to the contrary:

Adjustment has the same meaning given to that term in the GST Act.

Adjustment Note has the same meaning given to that term in the GST Act.

Consideration means consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of GST.

GST has the same meaning given to that term in the GST Act.

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

GST Amount has the same meaning given to that term in clause 13.6.3.

Input Tax Credit has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act.

Recipient has the same meaning given to that term in the GST Act.

Supplier means the entity making a Supply to the Recipient.

Supply has the same meaning given to that term in the GST Act.

Tax Invoice has the same meaning given to that term in the GST Act.

Taxable Supply has the same meaning given to that term in the GST Act.

- 13.6.2 Except as otherwise provided by this clause, all Consideration payable under this Agreement in relation to any Supply is inclusive of GST.
- 13.6.3 To the extent that any Supply under this Agreement constitutes a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.
- 13.6.4 Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).
- 13.6.5 If this Agreement requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier, the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled to claim in respect of the outgoing, in addition to any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.
- 13.6.6 The Supplier must issue the Recipient with a valid Tax Invoice at or prior to the time of payment of any GST Amount.
- 13.6.7 To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within five Business Days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within five Business Days after the date of receipt of the Adjustment Note.

14. NOTICES

14.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 14.1.1 personally on the person specified in clause 14.2.1;
- 14.1.2 by leaving it at the person's current address for service;
- 14.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 14.1.4 by email to the person's current email address for service, provided that the party giving notice obtains a confirmation report or other written evidence that the email reached the recipient's mailbox.

14.2 Particulars for Service

- 14.2.1 The particulars for service of each of the parties are the particulars for their Representatives set out in Schedule 1.

14.2.2 Any party may change the address for service by giving notice to the other parties.

14.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

14.3 **Time of Service**

A notice or other communication is deemed served:

14.3.1 if served personally or left at the person's address, upon service;

14.3.2 if posted within Australia to an Australian address, six Business Days after posting and in any other case, seven Business Days after posting;

14.3.3 if served by email, subject to clause 14.3.4 at the time the notice or other communication comes to the attention of the addressee;

14.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

15. **INTERPRETATION**

15.1 **Governing Law and Jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

15.2 **Persons**

In this Agreement, a reference to:

15.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

15.2.2 a person includes the legal personal representatives, successors and permitted assignees of that person; and

15.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

15.3 **Legislation**

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

15.4 **This Agreement, Clauses and Headings**

In this Agreement:

15.4.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;

- 15.4.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
- 15.4.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 15.4.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 15.4.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 15.4.6 where the expression 'including' is used, it means 'including without limitation'.

15.5 Severance

- 15.5.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 15.5.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

15.6 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

15.7 Number and Gender

In this Agreement, a reference to:

- 15.7.1 the singular includes the plural and vice versa; and
- 15.7.2 a gender includes the other genders.

15.8 Relationship of Parties

This Agreement is not intended to create a partnership or joint venture relationship between the parties.

EXECUTED by the parties

SIGNED by the **HEAD, TRANSPORT FOR VICTORIA** on behalf of the **CROWN IN RIGHT OF THE STATE OF VICTORIA** in the presence of:)
)
)



I Witkowski
Witness (Signature)

Gillian Miles
Head, Transport for Victoria

Ingrid Witkowski
Witness (Print name)

Date: 6.7.17

THE COMMON SEAL of **MOYNE SHIRE COUNCIL** was affixed in the presence of:)
)
)

Witness (Signature)

Councillor (Signature)

Witness (Print Name)

Councillor (Print Name)

Date:

Schedule 1 – Representatives and Port Details

Item	Item Description	Details
1	Port Manager	Moyne Shire Council
2	Commencement Date	1 July 2017
3	Completion Date	30 June 2022
4	Term	5 years
5	Annual operating and maintenance funds	Amount to be confirmed annually in accordance with clause 6.2
6	TFV's Representative (for day to day administration of this Agreement)	Person: Marcus Higgins Title: Senior Project Officer, Address: Transport For Victoria, GPO Box 4509, Melbourne, Victoria, 3001 Ph: (03) 8392 6466 Email address: marcus.higgins@ecodev.vic.gov.au
7	Port Manager's Representative (for day to day administration of this Agreement)	Person: Adam Boyle Title: Manager – Corporate Business & Tourism Address: Port of Port Fairy, PO Box 51, Port Fairy, Victoria, 3284 Email address: adam.boyle@moyne.vic.gov.au

Description of Port

The land and waters declared to be port land and waters of the Port of Port Fairy by Order dated 14 November 1995, published in Government Gazette number G45 on 16 November 1995, pages 3209-3210 (as amended or replaced).

Schedule 2 – Fixed Assets and Floating Plant

Fixed Assets

Wharves, jetties, walls

- Training walls
- Refuelling Jetty
- Boat Ramp Jetty North
- Slipway Jetty
- Martins Point Jetty and Wharf
- Yacht Marina
- Haldane's Landing
- Newman's Landing
- Depot Wharf
- Western Wharf
- King George Square Wharf

Slipways

- Large Slipway and winch
- Small Slipway and winch

Buildings/Depot/Equipment

- Crane shed
- Rocket shed
- Lifeboat shed
- Refuelling facility
- Depot site including office workshop and amenities

Navigation aids

- Starboard light marker 1
- Starboard light marker 2
- Martins Point light
- South entrance light mole
- Reef buoy and solar light
- North entrance mole light

Floating Plant

- Belfast workboat
- Cormorant Dredge and pipeline
- Work barge
- Marvin workboat

Schedule 3 – Project Agreement

Date / /

**[Insert Project Title]
Funding Agreement**

HEAD, TRANSPORT FOR VICTORIA

and

[PORT MANAGER]

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Funding Agreement

DATE / /

BETWEEN

HEAD, TRANSPORT FOR VICTORIA, a statutory office established under the *Transport Integration Act 2010*, on behalf of the Crown in right of the State of Victoria of Level 21, 1 Spring Street, Melbourne, Victoria, 3000 (TFV)

AND

[PORT MANAGER] a port manager of a local port established under the *Port Management Act 1995* of [address of the Port Manager] (**Port Manager**)

RECITALS

- A. This Agreement sets out the terms and conditions on which the Port Manager will deliver the Project and TFV will provide the Funds for the Project.
- B. [Insert recital(s) specific to the Project, if necessary.]

THIS AGREEMENT WITNESSES

1. DEFINITIONS

In this document unless expressed or implied to the contrary:

Adjustment has the same meaning given to that term in the GST Act.

Adjustment Note has the same meaning given to that term in the GST Act.

Agreement means this agreement, including the Schedules.

Asset means any asset specified in item 6 of Schedule 1 that is created or acquired as a result of the Project.

Business Day means a day on which banks are open for general banking business in Melbourne, Australia, other than a Saturday, Sunday or public holiday in Victoria.

Commencement Date means the date specified in item 1 of Schedule 1.

Completion Date means the date specified in item 2 of Schedule 1.

Conflict Direction has the same meaning given to that term in clause 9.3.2.

Conflict Notice has the same meaning given to that term in clause 9.3.1.

Conflict of Interest means an actual or potential conflict of interest, or a conflict of interest that could reasonably be perceived to exist, between the Port Manager and TFV in relation to the performance of the Port Manager's obligations under this Agreement.

Consideration means consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of GST.

Dispute Guidelines means the “Guidelines for the conduct of disputes between different public sector bodies within the State of Victoria” issued by the Attorney-General, 2008, or any replacement dispute guidelines.

Fixed Asset has the meaning given to that term in the Management Agreement.

Floating Plant has the meaning given to that term in the Management Agreement.

Funds means the sum of money to be provided by TFV to the Port Manager in accordance with this Agreement, specified in item 4 of Schedule 1.

GST has the same meaning given to that term in the GST Act.

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

GST Amount has the same meaning given to that term in clause 24.2.

Indemnity Policy means the Victorian Government’s policy titled “Government policy and guidelines: indemnities and immunities, June 2008”, or any replacement policy.

Input Tax Credit has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act.

Intellectual Property includes business names, copyrights, and all rights in relation to inventions, patents, registered or unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Management Agreement means the management agreement between TFV and the Port Manager commencing on or about 1 July 2017, as varied or replaced.

Milestones means the milestones described in Schedule 3.

Non-Fixed Asset has the meaning given to that term in the Management Agreement.

Payment Deliverables means each of the documents and other deliverables set out in Schedule 3, required to be delivered to TFV prior to payment of any instalment of the Funds.

Personnel means officers, employees, agents and subcontractors.

Port Manager's Representative means the person nominated by the Port Manager in writing from time to time, initially being the person named in item 9 of Schedule 1.

Project means the works described in the Project Brief.

Project Brief means the project brief in Schedule 2.

Project Reference Group has the same meaning given to that term in clause 12.1.

Proposed Assignee has the same meaning given to that term in clause 16.1.

Recipient has the same meaning given to that term in the GST Act.

Relevant Legislation means: any Act, regulation, rule, ordinance, proclamation, by-law or similar statutory instrument, whether of the Commonwealth, State, local or other duly constituted Committee.

Schedule means a schedule to this Agreement.

Supplier means the entity making a Supply to the Recipient.

Supply has the same meaning given to that term in the GST Act.

Tax Invoice has the same meaning given to that term in the GST Act.

Taxable Supply has the same meaning given to that term in the GST Act.

Term means the period specified in item 3 of Schedule 1 or such lesser period if this Agreement is terminated earlier in accordance with this Agreement.

TFV's Representative means the person nominated by TFV in writing from time to time, initially being the person holding the position specified in item 8 of Schedule 1.

2. TERM

This Agreement commences on the Commencement Date and continues for the Term.

3. PAYMENT OF FUNDS

3.1 Payment of Funds

- 3.1.1 Subject to the terms of this Agreement (including the conditions set out in clause 4), TFV will pay the Funds to the Port Manager in the instalments specified in Schedule 3.
- 3.1.2 Each instalment of the Funds is conditional upon the Port Manager achieving the Milestones or providing to TFV the Payment Deliverables.
- 3.1.3 TFV may in its absolute discretion extend any of the dates for the achievement of a Milestone or for the provision of any of the Payment Deliverables.
- 3.1.4 Where an instalment of the Funds is to be paid upon achievement of a Milestone, TFV will pay the relevant instalment of the Funds to the Port Manager within 30 Business Days of the later of:
 - 3.1.4.1 TFV providing the Port Manager with written approval (in accordance with clause 4.3) that the relevant Milestone has been achieved; and
 - 3.1.4.2 TFV receiving a tax invoice from the Port Manager for the instalment of the Funds that the Port Manager is entitled to be paid in accordance with this Agreement.
- 3.1.5 Where an instalment of the Funds is to be paid upon provision of Payment Deliverables, TFV will pay the relevant instalment of the Funds to the Port Manager within 30 Business Days of receiving a tax invoice from the Port Manager for the instalment of the Funds that the Port Manager is entitled to be paid in accordance with this Agreement.

3.2 Port Manager's Contribution to Project

- 3.2.1 In undertaking the Project, the Port Manager must contribute and use a sum of money (including any money provided to the Port Manager by third parties) that is necessary to complete the Project, as estimated in Item 5 of Schedule 1.
- 3.2.2 Where TFV determines in its discretion that the Port Manager has not complied with clause 3.2.1, TFV may terminate this Agreement pursuant to clause 19.

4. CONDITIONS ON FUNDING

4.1 Use of Funds

- 4.1.1 The Port Manager must only use the Funds for the Project in accordance with the terms and conditions of this Agreement. TFV will not reimburse the Port Manager for any expenditure that the Port Manager incurs in addition to the expenditure covered by the Funds.
- 4.1.2 Without limiting clause 4.1.1, the Port Manager must not use the Funds for any other purpose, including:
- 4.1.2.1 to meet the ongoing operational costs, salary subsidies or other administrative expenses of the Port Manager outside of those arising from or in connection with the Project, unless otherwise approved by the TFV Representative;
 - 4.1.2.2 as security for any form of finance;
 - 4.1.2.3 to meet existing debts, liabilities or obligations; or
 - 4.1.2.4 any purpose that is inconsistent with the stated priorities of TFV.

4.2 Funds to be Expended Before More Funds Paid

- 4.2.1 TFV may defer payment of the instalment of the Funds payable upon the Port Manager achieving a particular Milestone or providing particular Payment Deliverables until the Port Manager has expended all of the Funds that have been paid to it in relation to a previous Milestone or Payment Deliverables.
- 4.2.2 The Port Manager must continue to comply with its obligations under this Agreement, regardless of any payment of the Funds being deferred by TFV pursuant to clause 4.2.1.

4.3 Milestones and Payment Deliverables

- 4.3.1 The Port Manager must:
- 4.3.1.1 ensure that the Milestones are achieved and the Payment Deliverables are submitted to TFV within the periods or by the dates specified in Schedule 3 (or any extended date agreed by the TFV in accordance with clause 3.1.3);

- 4.3.1.2 notify TFV in writing when it considers that each Milestone has been achieved; and
- 4.3.1.3 provide TFV with the evidence specified in Schedule 3 that each Milestone has been achieved.
- 4.3.2 After being notified by the Port Manager that a Milestone has been achieved and receiving evidence that the Milestone has been achieved, TFV will as soon as reasonably practicable:
 - 4.3.2.1 provide the Port Manager with written approval that the Milestone has been achieved; or
 - 4.3.2.2 notify the Port Manager in writing that it does not agree that the Milestone has been achieved and will provide the Port Manager with an explanation as to why TFV does not consider that the Milestone has been achieved.
- 4.3.3 If TFV notifies the Port Manager under clause 4.3.2.2, the Port Manager must:
 - 4.3.3.1 notify TFV in writing when it considers that the Milestone has been achieved; and
 - 4.3.3.2 provide TFV with evidence that the Milestone has been achieved.

After being notified by the Port Manager that the Milestone has been achieved, TFV will consider the achievement of the Milestone in accordance with clause 4.3.2.
- 4.3.4 TFV may defer payment of the Funds if in its view the relevant Milestone has not been reached or Payment Deliverables have not been provided, until that Milestone has been reached or Payment Deliverables have been provided, in its view.
- 4.3.5 The Port Manager must continue to comply with its obligations under this Agreement, regardless of any payment of the Funds being deferred by TFV pursuant to clause 4.3.4.

4.4 Investment of Funds

The Port Manager must invest the Funds in accordance with Standing Direction 3.7.2.3 issued by the Minister for Finance under the *Financial Management Act 1994* (as varied or replaced).

4.5 Assets

The parties acknowledge and agree to treat any Asset as a Fixed Asset, Non-Fixed Asset or Floating Plant (whichever definition applies) and that the terms of the Management Agreement to apply to that Asset. This clause 4.5 survives the expiration of this Agreement.

5. UNEXPENDED FUNDS

Notwithstanding any other clause in this Agreement, upon completion of the Project, TFV will determine in consultation with the Port Manager, but at TFV's sole discretion, the purposes for which the Port Manager may retain and use any unexpended Funds and the conditions of such use.

6. PROJECT

- 6.1 In relation to the Project, the Port Manager must, at all times:
- 6.1.1 exercise due care, skill and judgment;
 - 6.1.2 act in accordance with the highest professional principles and standards;
 - 6.1.3 observe and comply with all Relevant Legislation;
 - 6.1.4 observe and comply with all applicable Victorian Government policies; and
 - 6.1.5 have regard to any matters notified in writing from time to time to the Port Manager by TFV's Representative.
- 6.2 The Port Manager must:
- 6.2.1 undertake and complete the Project in accordance with this Agreement;
 - 6.2.2 employ or engage sufficient Personnel (including, but not limited to, a project manager) who have appropriate qualifications, skills and experience, including experience in projects of a similar size and nature to the Project, to enable the Port Manager to successfully complete the Project in accordance with the Project Brief;
 - 6.2.3 ensure that it and its Personnel comply with all Relevant Legislation, awards or orders applying to matters within the scope of the Project;
 - 6.2.4 without limiting the generality of clause 6.2.3, obtain and comply with all permits, approvals and the like that are necessary to undertake the Project;
 - 6.2.5 implement appropriate monitoring and review processes to enable it to ensure that the Milestones are achieved and Payment Deliverables are provided in accordance with this Agreement; and
 - 6.2.6 ensure that it and any person employed or engaged to work on the Project does not:
 - 6.2.6.1 engage in unethical work practices; or

- 6.2.6.2 engage employees or subcontracted workers upon terms and conditions that will not meet industrial standards generally applicable in Victoria.
 - 6.2.7 advise TFV promptly if there is a delay to the Project or change to the estimated cost or other aspect about the delivery of the Project in relation to which DEJDTR should reasonably be made aware.
- 6.3 The Port Manager must not subcontract any material part of the Project without TFV's prior written consent which may be withheld in TFV's absolute discretion or subject to conditions required by TFV. Notwithstanding any subcontract or any approval by TFV, the Port Manager will remain responsible for the acts, defaults and omissions of its subcontractors as if they were those of the Port Manager.

7. VARIATION OF PROJECT BRIEF

- 7.1 The Port Manager must not amend or vary the Project Brief without the prior written approval of TFV's Representative.
- 7.2 If the Port Manager wishes to amend or vary any aspect of the Project Brief, it may submit a proposal to TFV's Representative detailing the nature of the proposed amendment or variation and explaining why this amendment or variation is necessary.
- 7.3 TFV's Representative may, in his or her absolute discretion, approve or reject any proposed amendment or variation to the Project Brief. Such approval will not be unreasonably withheld.

8. NATURE OF RELATIONSHIP

8.1 No Employment Relationship Between Parties

The parties acknowledge and agree that:

- 8.1.1 this Agreement does not create a relationship of employment, partnership or joint venture between them; and
- 8.1.2 it is the express intention of the parties that any relationship of employment, partnership or joint venture between them is denied.

8.2 No Deemed Employment for Any Purpose

The Port Manager acknowledges and agrees that:

- 8.2.1 TFV is not and will not at any time be construed as the employer of the Port Manager or its employees for the purposes of any Relevant Legislation;
- 8.2.2 the Port Manager is solely responsible and liable for making any payments in respect of superannuation, payroll or any other tax, WorkCover levy or any similar payments in relation to its employees; and
- 8.2.3 under no circumstances will TFV be responsible for fulfilling the obligations set out in clauses 8.2.1 and 8.2.2.

9. CONFLICT OF INTEREST

9.1 Port Manager's Warranty

The Port Manager warrants to TFV that, at the time of entering into this Agreement, no Conflict of Interest exists, is likely to arise or could reasonably be perceived to exist.

9.2 Port Manager to Use Best Endeavours

The Port Manager must use its best endeavours to ensure that no Conflict of Interest arises or could reasonably be perceived to arise during the Term.

9.3 Port Manager to Notify of Potential Conflict

9.3.1 The Port Manager must immediately notify TFV's Representative of any matter that may give rise to a Conflict of Interest (**Conflict Notice**).

9.3.2 Upon receipt of a Conflict Notice, or whenever TFV's Representative considers that a Conflict of Interest has arisen or is likely to arise, TFV's Representative may direct the Port Manager to resolve the Conflict of Interest to the satisfaction of TFV's Representative within 14 Business Days (**Conflict Direction**).

9.3.3 Where TFV's Representative determines that the Port Manager has not resolved the Conflict of Interest to the sole and unfettered satisfaction of TFV's Representative within 14 Business Days of the issuance of the Conflict Direction, TFV may terminate this Agreement pursuant to clause 19.

10. TFV'S REPRESENTATIVE

10.1 TFV's Representative will:

10.1.1 represent TFV and carry out its functions as an agent of TFV in connection with this Agreement; and

10.1.2 be available at all reasonable times for consultation with the Port Manager's Representative in connection with any matter arising under this Agreement.

10.2 Except as otherwise provided by this Agreement, TFV's Representative may give a direction orally, but TFV's Representative must confirm an oral direction in writing as soon as practicable.

11. PORT MANAGER'S REPRESENTATIVE

11.1 The Port Manager's Representative will:

11.1.1 represent the Port Manager and be deemed to be the agent of the Port Manager in relation to any matter arising under this Agreement, including any decision made or information given or received by the Port Manager; and

- 11.1.2 be available at all reasonable times for consultation with TFV's Representative in connection with any matter arising under this Agreement.
- 11.2 TFV may rely on any statement or representation made by the Port Manager's Representative and that statement or representation shall be binding on the Port Manager as if it had been made by the Port Manager itself.

12. GOVERNANCE

12.1 Project Reference Group

If requested by either TFV or the Port Manager, TFV and the Port Manager must establish a committee (**Project Reference Group**) comprising up to two members from each of TFV and the Port Manager with the functions set out in clause 12.2.

12.2 Project Reference Group Functions

- 12.2.1 The functions of the Project Reference Group will include:
- 12.2.1.1 overseeing and facilitating matters with respect to the Agreement, including but not limited to monitoring and reporting;
 - 12.2.1.2 overseeing and reviewing the progress of the Project including but not limited to issues relating to Project budget, Milestones, Payment Deliverables, risk and quality;
 - 12.2.1.3 facilitating discussions between senior Personnel of TFV and the Port Manager with a view to reaching a consensus on issues relating to the Project;
 - 12.2.1.4 reviewing and commenting on any strategy or documentation to contract goods or services for the Project;
 - 12.2.1.5 reviewing and commenting on any proposals to amend the Project Brief and/or any proposed material variations, including considering any risk or liability issues arising from the amendments or variations;
 - 12.2.1.6 suggesting and drafting amendments to the Project Brief;
 - 12.2.1.7 identifying and facilitating any approvals, consents or the like that may be required in order to carry out the Project or implement an amendment to the Project Brief;
 - 12.2.1.8 considering any matter relevant to the Project as may be raised by either party; and
 - 12.2.1.9 making recommendations to the parties in relation to any dispute or conflict between the parties.
- 12.2.2 The Project Reference Group will carry out its functions for the Term.
- 12.2.3 Neither TFV nor the Port Manager will be bound by any recommendation made by the Project Reference Group, but may take into account any

such recommendation in exercising its duties, discretions and powers under this Agreement.

13. AUDITING, REPORTING AND RECORD-KEEPING

13.1 Reports

- 13.1.1 The Port Manager must provide to TFV each of the reports specified in Schedule 5.
- 13.1.2 Each report must contain the information specified in Schedule 5.

13.2 Statement of Compliance

- 13.2.1 Without limiting clause 13.1, if requested by TFV's Representative, the Port Manager must submit to TFV's Representative:
- 13.2.1.1 a statement of compliance signed by an authorised representative of the Port Manager certifying:
- 13.2.1.1.1 that the Funds have been expended solely for the purposes of the Project; and
- 13.2.1.1.2 that the terms and conditions of this Agreement have been complied with, or, where any terms or conditions have not been complied with, the reasons for such non-compliance; and
- 13.2.1.2 a financial report detailing expenditure in relation to the Project,

within the timeframe requested by TFV's Representative.

13.3 Records

- 13.3.1 The Port Manager must establish and maintain proper books of account of all transactions relating to the Funds and operating records necessary to afford a correct and complete record and explanation of all expenditure by the Port Manager of the Funds, including:
- 13.3.1.1 proper books of account; and
- 13.3.1.2 disbursement records.

Such records must be maintained in accordance with accounting principles generally applied in commercial practice and to an auditable standard, as required by any Relevant Legislation or any applicable Victorian Government policies.

- 13.3.2 The Port Manager must establish and maintain records of the Project-related activities undertaken by or on behalf of the Port Manager to enable TFV to undertake an audit of such activities.

13.4 Inspection of Records and Audit

13.4.1 The Port Manager must give TFV's Representative, or a third party nominated by TFV's Representative (including an auditor appointed by TFV), access to the information referred to in clause 13.3, or in any other clause of this Agreement, to enable TFV's Representative or the third party to:

13.4.1.1 determine whether the Port Manager is complying with all of its obligations under this Agreement; and

13.4.1.2 ascertain any other matters reasonably considered by TFV's Representative or the third party to be relevant to the performance of the Port Manager's obligations under this Agreement.

13.4.2 If requested by TFV's Representative or an auditor appointed by TFV, the Port Manager must provide to TFV's Representative documentation evidencing costs, losses or expenses incurred by the Port Manager in undertaking the Project, or part of the Project, as soon as possible and in any event within five Business Days of receiving such a request.

14. INDEMNITY

In accordance with clause 5.3.12 of the Indemnity Policy, the parties acknowledge that the use of contractual indemnities between Government entities is not recommended. The parties agree that this Agreement is an appropriate mechanism to identify and state the respective roles and responsibilities of the parties. Any dispute relating to any actions, claims or losses (including liability for loss) arising from or in connection with this Agreement shall be determined in accordance with clause 23.

15. INSURANCE

15.1 Insurances to be taken out by the Port Manager

The Port Manager must:

15.1.1 effect and maintain the insurances specified in item 1 of Schedule 4;

15.1.2 ensure that any subcontractors engaged by the Port Manager effect and maintain the insurances specified in item 2 of Schedule 4; and

15.1.3 effect and maintain any other insurance policies required by law.

15.2 Proof of Insurance

The Port Manager must, upon request by TFV provide TFV with copies of certificates of currency for any insurances referred to in clause 15.1.

16. ASSIGNMENT

16.1 The Port Manager must not:

16.1.1 sell, transfer, delegate, assign, licence; or

- 16.1.2 mortgage, charge or otherwise encumber,
- any right under this Agreement to any person (**Proposed Assignee**), or permit a Proposed Assignee to assume any obligation under this Agreement without the prior written consent of TFV which may be withheld in the absolute discretion or subject to conditions required by TFV.
- 16.2 Without limiting clause 16.1, the assigning party must pay all fees and expenses (including legal fees on a solicitor/own client basis) incurred by TFV in connection with the proposed assignment and the investigation of the Proposed Assignee, whether or not consent is granted.
- 16.3 Without limiting clause 16.1, the assigning party must deliver to TFV:
- 16.3.1 the name, address and occupation of the Proposed Assignee;
- 16.3.2 two written references as to financial circumstances of the Proposed Assignee;
- 16.3.3 an agreement in a form approved by TFV, executed by the Proposed Assignee, in which the Proposed Assignee agrees to perform the obligations of the assigning party under this Agreement;
- 16.3.4 if required by TFV, a guarantee in a form approved by TFV executed by persons approved by TFV, guaranteeing the performance of the Proposed Assignee's obligations; and
- 16.3.5 any other documents reasonably required by TFV.

17. INTELLECTUAL PROPERTY

- 17.1 All Intellectual Property created in relation to the Project or in any reports, documents or other material created for the purposes of or as a consequence of the Port Manager performing or complying with its obligations under this Agreement, vest in the Port Manager upon creation.
- 17.2 The Port Manager grants to TFV a world-wide, non-exclusive, royalty-free, paid up, non-exclusive licence (including the right to sub-licence) to reproduce, publish, adapt, modify or otherwise use for non-commercial purposes the reports and any documents and other materials provided by the Port Manager under this Agreement.
- 17.3 The Port Manager warrants that any Intellectual Property used by it in connection with the Project and this Agreement (including any documents and other materials prepared for the purposes of the Project and this Agreement) are the sole property of the Port Manager or the Port Manager is legally entitled to use such Intellectual Property and is able to grant the licence under clause 17.2.

18. VARIATION

This Agreement may only be varied or replaced by an agreement duly executed by the parties.

19. DEFAULT AND TERMINATION

19.1 TFV may terminate this Agreement immediately by notice in writing to the Port Manager if:

19.1.1 the Port Manager fails to comply with any of the conditions set out in clause 4;

19.1.2 the Port Manager engages in any conduct that causes or may cause imminent and serious risk to the health or safety of a person, or to the reputation, viability or profitability of the Project or TFV's provision of Funds for the Project;

19.1.3 the Port Manager is dissolved or amalgamated with another entity;

19.1.4 the Port Manager commits an act of insolvency or enters into a scheme of arrangement or composition with creditors or a liquidator, receiver or receiver and manager, administrator or controller of the Port Manager or any of its assets is appointed;

19.1.5 the Port Manager is found guilty of any criminal offence other than an offence that, in TFV's opinion, does not affect the Port Manager's ability to undertake and complete the Project properly;

19.1.6 there is any wilful failure or neglect on the part of the Port Manager in undertaking the Project, any act of serious misconduct or any other serious or persistent breach of any of the terms of this Agreement; or

19.1.7 TFV is entitled to do so in accordance with any other clause of this Agreement (excluding clause 20).

19.2 If TFV terminates this Agreement pursuant to clause 19.1:

19.2.1 the Port Manager must immediately cease all work on the Project and take all appropriate action necessary to minimise further expenditure of the Funds;

19.2.2 TFV will not make any further payment of Funds;

19.2.3 the Port Manager must, within 30 Business Days, repay to TFV all Funds that have not been expended as at the date of termination; and

19.2.4 the Port Manager comply with any directions given by TFV in a notice under clause 19.1 in relation to the transition of the Project to TFV or any third party.

20. TERMINATION FOR CONVENIENCE

20.1 In addition to TFV's rights under clause 19.1, TFV may terminate this Agreement at any time before the end of the Term with or without a reason by giving the Port

- Manager 30 Business Days' notice in writing of TFV's intention to terminate this Agreement, after which this Agreement is at an end.
- 20.2 On receipt of a notice terminating the Agreement under clause 20.1,
- 20.2.1 the Port Manager must immediately cease all work on the Project and take all appropriate action to mitigate any loss or prevent any further costs being incurred with respect to the Agreement;
- 20.2.2 the Port Manager will not be entitled to be paid any additional compensation by TFV in respect of the termination; and
- 20.2.3 the Port Manager must comply with any directions given by TFV in a notice given under clause 20.1 in relation to the transition of the Project to TFV or any third party.
- 20.3 If TFV gives a notice under clause 20.1, TFV must pay the reasonable expenses of the Port Manager for all work performed by the Port Manager on the Project in accordance with the Agreement up to the date of termination plus all costs which, in the opinion of TFV are reasonable.
- 20.4 If the Funds paid by TFV to the Port Manager exceeds the amount determined in accordance with clause 20.3, TFV may in its absolute discretion seek reimbursement of the excess.

21. PUBLICATION OF PROMOTIONAL MATERIAL

- 21.1 Except as required by law, the Port Manager may not make any public announcement or issue any promotional material or press release relating to:
- 21.1.1 the Project;
- 21.1.2 any negotiations between the Port Manager and TFV; or
- 21.1.3 the existence or subject matter or terms of this Agreement,
- without the prior written consent of TFV.
- 21.2 Where TFV gives consent under clause 21.1, or where otherwise requested by TFV, the Port Manager must acknowledge TFV's assistance in all publications and promotional materials relating to the Project by prominently displaying in such publications and on such promotional materials the statement and logo to be provided by TFV's Representative.

22. CONFIDENTIALITY AND RESTRICTIONS AFTER TERMINATION

22.1 Return of Property

Upon the termination of this Agreement, if requested by TFV, the Port Manager must return to TFV's Representative all manuals, drawings, computer programs and other documents supplied by TFV or TFV's Representative to the Port Manager and any other property belonging to TFV relating to delivery of the Project. If requested by TFV, the Port Manager must not retain copies of any documents that it is returning.

22.2 Use of Information

The Port Manager must not, whether during or after the Term, make any improper use of:

- 22.2.1 any trade secrets and any financial, accounting, marketing and technical information, customer and supply lists, pricing information, ideas, inventions, techniques, systems, concepts, formulae, know how, technology, operating procedures, processes, knowledge and other information belonging to, used by or relating to TFV in the conduct of its business or gained as a result of the Port Manager's involvement with TFV at any time;
- 22.2.2 the position of TFV on any confidential matter; or
- 22.2.3 any other information which may be detrimental to the interests of TFV or any other person who has provided information to TFV on a confidential basis, unless the Port Manager is required to disclose the information by law.

22.3 Non-Disclosure

- 22.3.1 The Port Manager must not disclose to any third party or use any material or information referred to in clauses 22.2.1 to 22.2.3 without the prior written consent of TFV which may be withheld in TFV's absolute discretion or subject to conditions required by TFV.
- 22.3.2 The Port Manager may only use any material or information referred to in clauses 22.2.1 to 22.2.3 provided by TFV for the sole purpose of undertaking the Project.
- 22.3.3 The Port Manager must take or cause to be taken all necessary precautions to maintain the secrecy and confidentiality of any material or information referred to in clauses 22.2.1 to 22.2.3, including using their best endeavours to prevent improper publication or disclosure by a third party.
- 22.3.4 The Port Manager acknowledges that TFV may be required to publish either summary details of this Agreement or the Agreement itself on the internet or otherwise and the Port Manager consents to TFV fulfilling any such requirement.

23. DISPUTE RESOLUTION

If there is a dispute between the parties related to the Agreement, then the dispute will be resolved in accordance with the Dispute Guidelines.

24. GST

24.1 GST Inclusive

Except as otherwise provided by this clause, all Consideration payable under this Agreement in relation to any Supply is inclusive of GST.

24.2 Increase in Consideration

To the extent that any Supply under this Agreement constitutes a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

24.3 Payment of GST

Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).

24.4 Reimbursements

If this Agreement requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier, the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled to claim in respect of the outgoing, in addition to any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.

24.5 Tax Invoice

The Supplier must issue the Recipient with a valid Tax Invoice at or prior to the time of payment of any GST Amount.

24.6 Adjustments & Adjustment Notes

To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within five Business Days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within five Business Days after the date of receipt of the Adjustment Note.

25. GENERAL

25.1 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

25.2 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

25.3 Legal Costs and Expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

25.4 Waiver and Exercise of Rights

25.4.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

25.4.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

25.5 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

25.6 No Relationship

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

25.7 Rule of Construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the Agreement on the basis that it put forward this Agreement or any part of it.

26. NOTICES

26.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

26.1.1 personally on the person;

26.1.2 by leaving it at the person's current address for service;

26.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or

26.1.4 by email to the person's current email address for service, provided that the party giving notice obtains a confirmation report or other written evidence that the email has reached the recipient's mailbox.

26.2 Particulars for Service

- 26.2.1 The particulars for service of TFV are provided in item 8 of Schedule 1.
- 26.2.2 The particulars for service of the Port Manager are provided in item 10 of Schedule 1.
- 26.2.3 Any party may change the particulars for service by giving written notice to the other party.
- 26.2.4 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

26.3 Time of Service

A notice or other communication is deemed served:

- 26.3.1 if served personally or left at the person's address, upon service;
- 26.3.2 if posted within Australia to an Australian address, six Business Days after posting;
- 26.3.3 if served by email, subject to clause 26.3.4, at the time the notice or other communication comes to the attention of the addressee;
- 26.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

27. INTERPRETATION

27.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

27.2 Persons

In this Agreement, a reference to:

- 27.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 27.2.2 a person includes the legal personal representatives, successors and permitted assignees of that person; and
- 27.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

27.3 Joint and Several

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

27.4 Legislation

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

27.5 This Agreement, Clauses and Headings

In this Agreement:

- 27.5.1 a reference to this Agreement or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 27.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
- 27.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 27.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 27.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 27.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

27.6 Severance

- 27.6.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 27.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

27.7 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

27.8 Currency

In this Agreement, a reference to '\$' or 'dollars' is a reference to Australian dollars.

27.9 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

27.10 Number and Gender

In this Agreement, a reference to:

27.10.1 the singular includes the plural and vice versa; and

27.10.2 a gender includes the other genders.

27.11 Survival of Terms

The provisions of this Agreement which by their nature survive termination or expiry of this Agreement will survive termination or expiry of this Agreement.

EXECUTED by the parties as an Agreement

SIGNED by the **HEAD, TRANSPORT**)
FOR VICTORIA on behalf of the)
CROWN IN RIGHT OF THE STATE)
OF VICTORIA in the presence of:

Witness (Signature)

TFV's Representative (Signature)

Witness (Print name)

TFV's Representative (Name)

Date:

[Insert Port Manager's execution clause]

Date:

Schedule 1 – Details

Item	Item Description	Details
1	Commencement Date:	
2	Completion Date:	
3	Term:	
4	Funds:	GST Exclusive: GST Inclusive:
5	Port Manager's Contribution:	GST Exclusive: GST Inclusive:
6	Asset:	
7	TFV's Representative:	
8	TFV's Particulars for Service:	Person: Title: Address: Email address:
9	Port Manager's Representative:	
10	Port Manager's Particulars for Service:	Person: Title: Address: Email address:

Schedule 2 – Project Brief

Schedule 3 – Milestones and Payment Deliverables

No.	Milestone or Payment Deliverable	Evidence required to demonstrate that the Milestone has been achieved	Date for Reaching Milestone or providing Payment Deliverable	Funding Contributed excl GST	Port Manager's Contribution excl GST	Cumulative Cashflow excl GST
1						
2						
3						
4						
5						
6						
7						
8						
9	TOTAL					

[Note 1: Examples of payment deliverables include: provision of a signed copy of the funding agreement, provision of project plan, provision of a signed copy of the subcontract for works, provision of invoices to evidence certain amounts of expenditure, provision of project status reports, provision of final report]

[Note 2: Examples of evidence to demonstrate achievement of Milestones include: project plan, milestone report, final reports, photographs, site inspection by TFV, certificate of practical completion.]

Schedule 5 – Reporting Requirements

[Drafting note: The reports listed below are examples only.]

[Note: If the report is a Payment Deliverable, specify the date for provision of the report in the “Date for Reaching Milestone or providing Payment Deliverable” column of the Milestones and Payment Deliverables table.

If the milestone report (or other type of report) is evidence required to demonstrate a particular Milestone has been achieved, you do not need to specify a date for provision of the report because there is a date in the Milestones and Payment Deliverables table for reaching the Milestone. Payment of Funds by TFV depends on the provision of supporting evidence (see clause 3.1).

If the report is not required as evidence to support a Milestone and is not a Payment Deliverable (i.e. it is a reporting requirement not linked to payment of Funds), then specify the date for provision of the report in this Schedule 5.]

1. Project Plan

The project plan must be provided [by [date] / by the date specified in the Milestones and Payment Deliverables table at Schedule 3] and must confirm the following information as a minimum:

- [insert details as relevant to the Project]

2. Milestone Report

Each milestone report specified in the Milestones and Payment Deliverables table at Schedule 3 as evidence required to demonstrate that a Milestone has been achieved must contain the following information (at a minimum) in relation to the relevant Milestone:

- a description of the Milestone;
- report on the progress of the Project;
- the outcomes achieved as a result of the Milestone (for example, in terms of quality, timing and budget);
- any variations from the Milestone;
- the impact that achieving the Milestone has or may have on any other Milestone; and
- any issues, opportunities or lessons that arose in relation to the Milestone or the Project.

3. Project Status Report

Each project status report must be provided [by the dates set out below / by the dates specified in the Milestones and Payment Deliverables table at Schedule 3] and must contain the following information (at a minimum):

- report on the progress of the Project;

- the outcomes achieved in relation to the Project (for example, in terms of quality, timing and budget);
- any issues, opportunities or lessons that arose in relation to the Project.

4. Final Report

The final report must be provided [by [date] / by the date specified in the Milestones and Payment Deliverables table at Schedule 3] and must contain the following information (at a minimum):

- provide evidence that the Project has been completed
- provide evidence that the [infrastructure] is operating
- the outcomes achieved in relation to the Project (for example, in terms of quality, timing and budget);
- any issues, opportunities or lessons that arose in relation to the Project.
- [other]

5. Post Completion Evaluation Report

The post-completion evaluation report must be provided [12 months after the Completion Date] and must:

- evaluate the impact of the completed Project
- [other]

[END OF TEMPLATE FUNDING AGREEMENT – Note: Remove this text when drafting any funding agreements.]

Schedule 4 – Annual Report Template

This template is provided as a guide only for Local Port Managers in the preparation of their Annual Report. The Annual Report must contain, as a minimum, the sections described here.

Cover Sheet

Table of Contents

Introduction

--

Chair's Report

--

Executive Officer's Report

--

Committee

Description
Include details of: <ul style="list-style-type: none"> • Members of the committee/governing body • Number of meetings held • Attendance of members at each meeting

Summary of Operations

Description
This is a non-financial summary of operations and may include: <ul style="list-style-type: none"> • Number of berths and mooring permits • Number of itinerant vessel berthing • Amount of dredging undertaken • Major works completed/underway/planned • Maintenance works completed • events

Performance/Program Reporting

Description
Include details of performance against: <ul style="list-style-type: none"> • program delivery (as per clause 7.3.1.2 of the management agreement) • objectives and projected performance, including explanations of objectives or projected performance not achieved

- SEMP
- Incident reports (as per clause 7.3.1.3 of the management agreement)

Projected Performance for the coming year

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Disclosures

Description
This includes details of disclosures, if any, under: <ul style="list-style-type: none">• The Freedom of Information Act 1982• The Protected Disclosure Act 2012

FOI Disclosures

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Annual Financial Report

As per clause 7.3.1 of the management agreement.

Schedule 5 – Business Plan Template

This template is provided as a guide only for Local Port Managers in the preparation of their annual Business Plan. The Business Plan must contain, as a minimum, the sections described here.

Cover Sheet

Table of Contents

Executive Summary

Description
<p>The Executive Summary provides:</p> <ul style="list-style-type: none"> • an overview of the local port; • briefly mentions major events; and • identifies the strategic direction of the organisation over the time frame of the plan. <p>An executive summary can outline past achievements, strengths, outlines future challenges and performance targets and recommendations</p> <p>Hint: write last</p>

Purpose of the Business Plan

Description
<p>This section will describe why the business plan is being developed.</p> <p>Likely reasons are to enable all stakeholders to understand:</p> <ul style="list-style-type: none"> • future directions • needs and challenges • proposed implementation plans <p>Hint: Consider who will read this – e.g. TFV, users</p>

Organisational Structure

Description
<p>This would include:</p> <ul style="list-style-type: none"> • brief outline of governance arrangements e.g. Committee of Council • the organisational chart

Business Overview

Description
<p>This can include the following sections:</p> <ol style="list-style-type: none"> 1. <u>Background and Organisational History</u> 2. <u>Local Port Facilities</u> A brief overview of what facilities are available 3. <u>Accountability</u> Detail the responsibilities of TFV, TSV, Local Port, Other – make it clear to all 4. <u>Key activities/responsibilities</u> e.g. dredging, mooring allocation Capital works program <p>Hint: write for external audience</p>

Major Assumptions

Description
<p>This section should includes details on short and long term:</p> <ul style="list-style-type: none"> • goals; • objectives; • strategies; and • action plans, <p>and the underlying assumptions on which they are based.</p> <p>Some sample assumptions could be:</p> <ul style="list-style-type: none"> • The organisation will receive funding from Government of \$X per annum over a three year period. • The port manager has to comply with statutory obligations. • The port manager will require additional administration support staff.

SWOT

Description
<p>This section demonstrates your understanding of the potential and limitations of the business. The following are examples:</p>

<p><u>Strengths</u></p> <ul style="list-style-type: none"> • good reputation with users • sheltered harbour • good quality facilities • high user demand • strong tourism <p><u>Weaknesses</u></p> <ul style="list-style-type: none"> • demand for berthing exceeds supply • no support facilities such as slipway or pump out facilities <p><u>Opportunities</u></p> <ul style="list-style-type: none"> • growth in recreational fishing and boating • strong tourist town <p><u>Threats</u></p> <ul style="list-style-type: none"> • declining grant funding opportunities • increasingly stringent dredging requirements <p>Hint: Use standard SWOT analysis techniques</p>
--

Risk Analysis

<p>Description</p> <p>This would generally be in table format and include:</p> <ul style="list-style-type: none"> • description of the risk • impact • minimisation strategy <p>The SEMP covers the some of the risk, and can be attached as an appendix.</p>

Goals and Strategies

<p>Description</p> <p>Describe goals and strategies to achieve goals</p>

3 Year Financial Plan including detailed Annual Budget

Attach the budget prepared in accordance with clause 7.1.1 of the management agreement.

Schedule 6 – Reporting

Report to TFV	Date	Who	Clause
Business Plan	31 March	Port Manager	5.1
Annual Budget	31 March	Port Manager	7.1.1
Asset Register	31 March	Port Manager	4.5.3
Annual Report	30 September	Port Manager	7.3.1
Asset Management Plan	30 September 2018 and 30 September 2021	Port Manager	10.3
Incident	Immediately	Port Manager	8.1.4

Response by TFV	Date	Who	Clause
Business Plan	31 May	TFV	5.2.1
Annual Budget	31 May	TFV	7.1.2
Operating and Maintenance Funding confirmation and estimate	30 June	TFV	6.2



Department of Transport

GPO Box 2392
Melbourne, VIC 3001 Australia
Telephone: +61 3 9651 9999
www.transport.vic.gov.au
DX 210292

Mr Bill Millard
Chief Executive Officer
Moyne Shire Council
PO Box 51
PORT FAIRY VIC 3284

Dear Mr Millard

CORRECTION TO VARIATION AGREEMENT

In late 2019 Moyne Shire (Council) requested an amendment to the Port of Port Fairy Management Agreement dated 26 September 2017, entered into between it and the former Head, Transport for Victoria. The amendment is needed to reflect changes to the fixed assets and floating plant managed by the Council as the port manager.

A Variation Agreement addressing Council's requested changes to Schedule 2: Fixed assets and floating plant has been executed by the Head, Transport for Victoria.

Your staff have advised us of an error in Schedule 2 relating to an email address for the Port Manager's Representative. The correct email is rgibson@moyne.vic.gov.au

I confirm that Council should continue to execute the Variation Agreement. As the Variation Agreements are being executed in counterparts, please sign two copies of the Variation Agreement and return one signed copy to the Department of Transport for its records. We will provide you with a hard copy of the Variation Agreement executed by the Head, Transport for Victoria for your records.

This letter confirms the correct email address for the Port Manager's Representative and should be retained together with the executed copy of the Variation Agreement.

Should you wish to discuss this matter you are encouraged to contact Lynn Kisler, Manager Local Ports at Department of Transport on telephone 8392 6468.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Newman'.

Andrew Newman
Director, Freight Ports and Intermodal, Freight Victoria

19 / 8 / 2020

3. Port Quarterly Operations Report

Overview: This report contains information relating to the operation and management of the Port of Port Fairy for the period February 2023 to May 2023.

Recommendation

That the Port of Port Fairy Delegated Committee note and receive the Port of Port Fairy Operations Report for the period February 23 to May 2023

[DOTP Management Agreement Renewal](#)

Conversations have begun in relation to reviewing and renewing Moyne Shire and Department of Transport & Planning's management agreement. DOTP to provide draft agreement for council review and approval.

[Better Boating Victoria Grant](#)

Two applications lodged with Better Boating Victoria (BBV) for dredging and jetty/user facility upgrades have been successful with \$50,000 granted for the boat ramp and \$100,000 for additional dredging.

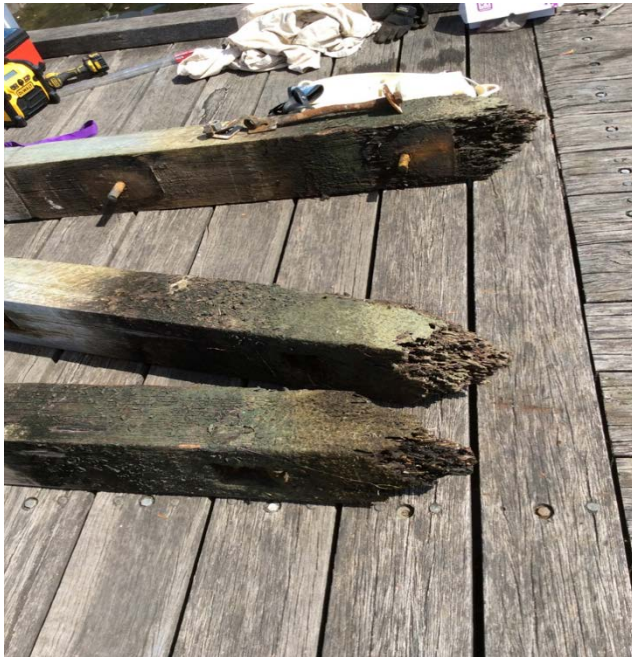
[Historical Lifeboat Inspection](#)

Ferrier marine conducted an out of water survey for the historic lifeboat for MSC insurance purposes, vessel had to be on our small slip cradle. Thanks to the volunteers who braved the elements and took of one cradle and rowed vessel to our slip and back.



Fender Replacement

Maintenance Concepts was engaged to replace failing fenders throughout the port. 29 large fenders changed over and approximately 20 metres of whaler beam replaced due to failing conditions.



Red Buoy

Maintenance Concepts also completed a maintenance condition dive on the red buoy under water infrastructure, while port crew changed over a faulty navigation aid, which are both required actions for ongoing SEMP compliance



General Maintenance

Ongoing rain has meant grass management has been constant throughout the summer period, painting of existing handrail and the replacing of wharf deck boards as required has kept the team busy.

- 14-Number of vessels been high and dry with the use of both our slipways.
- 12-Number of itinerant berth holders has enjoyed a visit to the Port and surrounding areas.

Incident Reports

Nil

4. Berthing Prices Adjacent to Marina

Recommendation

The Port of Port Fairy Delegated Committee deem the vessels berthed between the marina and the training wall to be alongside berths (yellow shaded area) rather than marina pen berths and charge berthing fees accordingly from next quarter.

DOTP Management Agreement Renewal

A number of smaller vessels are berthed alongside between the marina jetty and the training wall (See yellow shaded areas). Vessels in the marina pens, berthed nose in north of the jetty and alongside between the jetty and the training walls are all charged a fixed fee per berth. This is rational for vessels berthed in a pen of nose in to the jetty as they each occupy the same length of jetty space.

However, for those berthed alongside, this is inconsistent with all other alongside berths throughout the remainder of the port. Alongside berths elsewhere in the port are charged according to the length of the vessel (per fees and charges \$47 per m) and therefore the length of jetty they each occupy.

It has become apparent there is a longstanding arrangement whereby vessels berthed alongside on the east side of the marina are charged at 'pen rates' rather than alongside rates.

As an example, a vessel relocated from alongside the north wharf has gone from being charged \$191 a quarter to \$360 a quarter equating to an additional \$676 per annum. Based on this figure, if all similarly sized vessels berthed in this area of the port were charged at alongside rates, it would reduce port income by an estimated \$5,000 or 4% per annum.

Image of Marina Showing Pens and Alongside Berths



5. Port of Port Fairy Budget Update

Overview: Update of the Port of Port Fairy 2022-2023 Budget.

Recommendation

That the Port of Port Fairy delegated committee received the update for the 2022-2023 budget

A summary of savings as previously reported and proposed expenditure over the remainder of the 22/23 financial year is below.

Summary of Savings and Proposed Expenditure - Previously Endorsed

Savings	Value	Proposed Expenditure Jan-Jun 2023	Value
Pays	\$51,000	Training Wall Report Review	\$12,000
Consultants	\$33,000	Shed Walls	\$18,000
Nav Aid Maintenance	\$35,000	Shed Roof	\$12,000
Wharf Maintenance	\$28,000	Nav Marker	\$35,000
Carry Forward	\$60,000	Pile Wrapping	\$80,000
		Historic Lifeboat Slipway	\$50,000
	\$207,000		\$207,000

Summary of Savings and Proposed Expenditure - Proposed to close out 2022-23 financial year

Savings	Value	Proposed Expenditure Jan-Jun 2023	Value
Pays	\$ 47,000	Training Wall Report Review	\$ 12,000
Consultants	\$ 30,000	Shed Walls	\$ 18,000
Nav Aid Maintenance	\$ 32,000	Shed Roof	\$ 12,000
Wharf Maintenance	\$ 15,000	Nav Marker	\$ 32,000
Carry Forward	\$ 60,000	Pile Wrapping	\$ 60,000
		Historic Lifeboat Slipway	\$ 50,000
	\$184,000		\$184,000

Attachment(s)

Attachment – 2022-23 Port of Port Fairy Financials as of end April 2023

Moyne Shire Council
Port of Port Fairy Cost Centre
Natural Account Details
For Period April

Natural Account	2022/23 Annual Budget Update	2022/23 YTD Actuals	2022/23 Funds Available (Committed)
1035 Port of Port Fairy Operations			
1330 Consultants	40,000	6,590	30,589
1399 External Contractor	0	0	(273)
1440 Registration	2,500	2,411	89
1529 Insurance	6,814	6,243	571
1616 Rates Inc Kerbside Collection	822	828	(6)
1910 Bad and Doubtful Debts	0	3,394	(3,394)
2655 Port - Mooring Fees	(120,000)	(80,654)	(39,346)
2660 Port - Slipway Fees	(27,000)	(14,989)	(12,011)
2846 Government Grants - Operating State Gov	(326,000)	0	(326,000)
Total 1035 Port of Port Fairy Operations	(422,864)	(76,177)	(349,780)
1043 Port Management/Supervision			
1101 Ordinary Pay	242,439	44,803	197,636
1123 Allowances other	10,000	2,219	7,781
1125 Annual Leave	23,692	19,136	4,556
1127 Sick Leave	0	657	(657)
1129 Public Holidays	0	8,389	(8,389)
1137 Rostered Day Off	0	2	(2)
1143 Superannuation - Lasplan	28,505	16,163	12,341
1145 Workcover Premiums	5,637	5,378	258
1149 LSL Provision	6,653	5,374	1,279
1167 Union/Staff Meetings	0	95	(95)
1315 Legal Fees	5,000	2,358	(1,627)
1325 Cleaning Offices	5,100	2,211	2,066
1515 Bank Charges	600	479	121
1530 Consumables	1,000	0	1,000
1535 Computer Costs-Internet	1,000	831	(46)
1549 Minor Equipment Purchases	5,000	2,923	2,077
1560 Donations/Contributions	0	0	0
1620 Telephone	1,628	526	1,010
1710 Photocopying and Printer Expenses	660	362	298
1775 Protective Clothing	1,000	141	859
8020 Plant Hire Expense	4,116	3,087	1,029
8025 IT Support Overhead Expense	6,915	5,763	1,153
8030 HR/Payroll Support Overhead Expense	16,817	14,014	2,803
8031 Finance Overhead Expense	15,022	12,518	2,504
8045 General Office Overhead Expense	15,595	12,996	2,599
Total 1043 Port Management/Supervision	396,379	160,426	230,554
1044 Dredging and Channel Maintenance			

1357 Dredging	40,000	0	40,000
1399 External Contractor	8,000	0	8,000
1420 Fuel	2,000	0	2,000
1620 Telephone	76	92	(16)
Total 1044 Dredging and Channel Maintenance	50,076	92	49,984
1045 Navigational Aids Maintenance			
1101 Ordinary Pay	0	386	(386)
1399 External Contractor	35,000	3,000	32,000
1770 Plant and Equipment Maintenance	1,000	0	1,000
Total 1045 Navigational Aids Maintenance	36,000	3,386	32,614
1047 Dredge and Pipeline Maintenance			
1101 Ordinary Pay	0	4,987	(4,987)
1123 Allowances other	0	313	(313)
Total 1047 Dredge and Pipeline Maintenance	0	5,300	(5,300)
1048 Marina Maintenance			
1101 Ordinary Pay	0	834	(834)
1123 Allowances other	0	41	(41)
Total 1048 Marina Maintenance	0	875	(875)
1049 Wharf Maintenance			
1101 Ordinary Pay	0	35,234	(35,234)
1123 Allowances other	0	1,494	(1,494)
1330 Consultants	0	1,669	(1,669)
1395 Building Supplies	0	188	(270)
1399 External Contractor	30,000	14,944	15,056
1605 Electricity	3,799	2,000	1,799
Total 1049 Wharf Maintenance	33,799	55,529	(21,812)
1050 Jetty Maintenance			
1101 Ordinary Pay	0	2,010	(2,010)
1399 External Contractor	59,295	0	59,295
Total 1050 Jetty Maintenance	59,295	2,010	57,285
1051 Boat Ramp Maintenance			
1101 Ordinary Pay	0	3,178	(3,178)
Total 1051 Boat Ramp Maintenance	0	3,178	(3,178)
1052 Lg Slipway Mtce			
1101 Ordinary Pay	0	4,840	(4,840)
1123 Allowances other	0	138	(138)
1395 Building Supplies	1,500	0	1,500
1399 External Contractor	3,000	393	2,335
Total 1052 Lg Slipway Mtce	4,500	5,371	(1,144)
1053 Sml Slipway Mtce			
1101 Ordinary Pay	0	1,739	(1,739)

1399 External Contractor	1,500	0	1,500
Total 1053 Sml Slipway Mtce	1,500	1,739	(239)
1054 Lg Slipway Operations			
1101 Ordinary Pay	0	4,474	(4,474)
1123 Allowances other	0	41	(41)
Total 1054 Lg Slipway Operations	0	4,515	(4,515)
1055 Sml Slipway Operations			
1101 Ordinary Pay	0	1,092	(1,092)
1395 Building Supplies	456	0	456
Total 1055 Sml Slipway Operations	456	1,092	(636)
1056 Port Parks Maintenance			
1101 Ordinary Pay	0	20,428	(20,428)
1103 Overtime Pay	0	205	(205)
1123 Allowances other	0	954	(954)
1395 Building Supplies	0	0	0
1399 External Contractor	1,000	350	650
Total 1056 Port Parks Maintenance	1,000	21,937	(20,937)
1057 Port Garbage and Waste Collection			
1349 Site Maintenance	0	9,747	(15,733)
1399 External Contractor	8,500	0	8,500
Total 1057 Port Garbage and Waste Collection	8,500	9,747	(7,233)
1058 Port Depot Maintenance			
1101 Ordinary Pay	0	8,649	(8,649)
1103 Overtime Pay	0	231	(231)
1123 Allowances other	0	249	(249)
1395 Building Supplies	2,500	0	2,500
1530 Consumables	1,000	402	598
1605 Electricity	3,745	1,677	2,068
1615 Water & Sewerage	2,364	1,287	1,077
Total 1058 Port Depot Maintenance	9,609	12,496	(2,887)
1059 Port Plant and Equipment Maintenance			
1101 Ordinary Pay	0	4,111	(4,111)
1123 Allowances other	0	41	(41)
1399 External Contractor	0	683	(683)
1420 Fuel	3,500	3,469	31
1440 Registration	0	62	(62)
1445 Servicing	0	1,199	(1,199)
1530 Consumables	1,000	49	951
1549 Minor Equipment Purchases	1,000	0	1,000
1770 Plant and Equipment Maintenance	3,000	(17)	3,017
Total 1059 Port Plant and Equipment Maintenance	8,500	9,597	(1,097)
1068 Port Plant and Equipment Purchases			
1516 Lease Payments	17,000	12,250	4,750

Total 1068 Port Plant and Equipment Purchases	17,000	12,250	4,750
3430 Port - Asset Maintenance			
2846 Government Grants - Operating State Gov	(133,758)	0	(133,758)
Total 3430 Port - Asset Maintenance	(133,758)	0	(133,758)
3768 Port Risk Mitigation			
1101 Ordinary Pay	0	100	(100)
1123 Allowances other	0	41	(41)
Total 3768 Port Risk Mitigation	0	141	(141)
3917 Port Refuelling Facility			
1420 Fuel	80,000	101,655	(21,655)
1515 Bank Charges	0	2,189	(2,189)
2790 Sales Other	(88,000)	(102,699)	14,699
Total 3917 Port Refuelling Facility	(8,000)	1,145	(9,145)
Grand Total	61,993	234,649	(187,490)

6. General Business

- Update regarding visit from Minster for Local Government, Ports and Freight and Roads – Mellissa Horne MP & Member for Western Victoria Jacinta Ermacora MP
- Economic Development Advisory Committee's request for meeting to discuss future commercial opportunities at the Port of Port Fairy

Next Meeting

Tuesday 8 August 2023

Tuesday 7 November 2023

Tuesday 6 February 2024

Meeting Close