



Launceston Flood Risk Management Deed

Dated

29 April

2008

The Crown in Right of Tasmania ("Crown")

and

Launceston City Council ("Council")

The Crown Solicitor of Tasmania

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Launceston Flood Risk Management Deed

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Details

Parties	Council, Crown	
Council	Name	Launceston City Council ("Council")
	Address	St. John Street, Launceston, Tasmania
	Telephone	(03) 6323 3000
	Fax	(03) 6323 3001
	Attention	The General Manager
Crown	Name	The Crown in Right of Tasmania represented by the Department of Treasury and Finance ("Crown")
	Address	21 Murray Street, Hobart in Tasmania
	Telephone	(03) 6233 3100
	Fax	(03) 6223 2755
	Attention	Secretary, Department of Treasury and Finance
Recitals	A	The Crown and the Council have entered into a Funding Agreement dated 13 June 2007 ("Funding Agreement") whereby the Crown has agreed to provide funding by way of an appropriation in the sum of Ten Million Dollars (\$10,000,000.00) to the Council for the Project.
	B	It was a condition of the Funding Agreement that the parties enter into a further agreement in respect of the Project and the use of the Funds.
	C	The Crown agrees to provide a further Three Million Dollars (\$3,000,000.00) for the Project upon the terms and conditions of this Deed.
	D	The Commonwealth has also agreed to provide the sum of Thirteen Million Dollars (\$13,000,000.00) through the Crown for the Project.

E	The Council and the Crown agree upon the following terms and conditions in respect of the use of the Funds for the Project.
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Date of agreement	See Signing page
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General terms

1 Definitions and interpretation

1.1 Definitions

Authority means an authority established in accordance with clause 5.1.

Business Day means a day (not being a Saturday or a Sunday) on which banks (as defined in the *Banking Act 1959* (Cwlth)) are open for business in Tasmania.

Commonwealth means the Commonwealth of Australia and where the context requires the servants, employees and agents of the Commonwealth.

Commonwealth Contribution means the contribution of the Commonwealth to the Project of \$13 Million Dollars (\$13,000,000) as described in clause 3.8.

Crown includes where the context requires the servants, employees and agents of the Crown.

Deed means this Deed including any Schedules.

Department means the Department of Treasury and Finance.

Funds means the payments towards the cost of the Project as specified in Schedule 2 to be made by the Crown not exceeding \$13 Million Dollars (\$13,000,000) and including the Commonwealth Contribution.

GHD Report means the GHD report titled *Invermay floodplain: a social, economic, infrastructure and risk evaluation study* issued in October 2006.

Interest means interest calculated at the Commonwealth ten (10) year bond rate from the day or days that the Council received the Funds or any component thereof.

Legislative Requirements means Acts, Ordinance, regulations, by-laws, orders, awards and proclamations of the Commonwealth or the State applicable to the Project and where the context requires all Australian standards applicable to the Project.

Project means the cost of improving the flood protection scheme at Invermay, including the capital costs of the levee restructuring as designed to achieve a 1 in 200 year level of flood protection, the necessary land acquisition costs and the costs of revising emergency management plans but does not include costs associated with reviewing and amending the relevant planning schemes or any recurrent costs for operations and maintenance.

UTRIA means the Upper Tamar River Improvement Authority.

1.2 Interpretation

Unless expressed to the contrary in this Deed, the following interpretation provisions apply to it:

- (a) a reference to this Deed includes schedules, appendices and annexures and any variation or replacement of any of it;
- (b) a reference to a statute, ordinance, code or other legislative requirement includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a day is to be interpreted as the period starting at midnight and ending twenty-four (24) hours later;
- (e) a reference to a month or a year means a calendar month or calendar year respectively;
- (f) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (g) a term of inclusion must not be interpreted to be a term of limitation;
- (h) all payments referred to in, or made under this Deed must be in Australian dollars;
- (i) a reference to the payment of money within a specified time is a reference to the full clearance of any cheque into the account of the payee within that time;
- (j) this Deed operates under Tasmanian time;
- (k) if the day on, or by, which an act, matter or thing is to be done under this Deed is not a Business Day, then that act, matter or thing must be done no later than the next Business Day;
- (l) an uncertainty or ambiguity in the meaning of a provision of this Deed is not to be interpreted against a party only because that party prepared the provision; and
- (m) headings in this Deed are included for convenience only, do not form part of it, and are not to be used in its interpretation.

1.3 Supplementary to Funding Agreement

This Deed is supplementary to the Funding Agreement and shall be interpreted with and having regard to the provisions of the Funding Agreement.

1.4 Inconsistency

If this Deed is inconsistent with the Funding Agreement then this Deed prevails.

2 Contribution by the Council to Project

2.1 Funding

The Council agrees to contribute Thirteen Million Dollars (\$13,000,000.00) to the Project.

2.2 Over-run

The Council agrees that it will be liable for all costs and expenses for the completion of the Project over and above Thirty Nine Million Dollars (\$39,000,000.00).

2.3 Acknowledgement

The Council acknowledges and agrees that the acceptance of the Funds by the Council does not commit the Crown to any future financial assistance to the Council or the Authority to be established under clause 5 in respect of the Project, except as specified in this Agreement.

3 Funding

3.1 Acknowledgement

The Council acknowledges and agrees that the Crown has provided the sum of Ten Million Dollars (\$10,000,000.00) of the Funds for the Project in accordance with the Funding Agreement.

3.2 Drawing down of the Funds

The drawing down of the Funds by the Council is conditional on the Crown advising the Council in writing that it is satisfied that:

- (a) the Crown has received the Commonwealth Contribution as described in clause 3.8; and
- (b) the Council has developed and submitted amendments to the Launceston Planning Scheme as required by clause 4.2; and
- (c) the Council has reviewed and revised all relevant emergency management procedures and documents, but limited to all procedures and documents over which it has authority or control, to address the concerns raised in the GHD Report; and
- (d) the Council will prepare best practice emergency management plans and procedures as required by clause 4.4(b); and
- (e) the Council will develop key performance indicators as required by clause 4.4(c).

3.3 Limit on Crown Funding

The Council acknowledges and agrees that the Crown's contribution to the Project will not exceed Thirteen Million Dollars (\$13,000,000.00).

3.4 Payment

Upon the execution of this Deed the Crown undertakes to transfer the Funds to the Council for the Project in accordance with Schedule 2 of this Deed.

3.5 Progressive instalments

Where Schedule 2 provides that the Council is to be funded by progressive instalments the Crown shall be entitled to defer the payment of any instalment until the Council has completed to the satisfaction of the Crown that part of the Project to which the instalment relates.

3.6 Return of Funds at completion of Project

At the completion of the Project the Council must return any unspent Funds to the Crown within twenty (20) Business Days of the date of the completion of the Project, such that the contribution of the spent Funds to the Project excluding Interest does not exceed two thirds of the total cost of the Project.

3.7 Failure to implement Project

In the event that the Council does not implement the Project in part or in full the Council must reimburse the Crown the Funds in accordance with clause 10.

3.8 Acknowledgement of Commonwealth Funding

The Council acknowledges and agrees that Thirteen Million Dollars (\$13,000,000.00) of the Funds has been made available to the Crown by the Commonwealth under the Natural Disaster Mitigation Programme.

3.9 Waiver of conditions

- (a) The conditions described in clause 3.2 are for the benefit of the Crown and the conditions in clause 3.2(a), (c), (d) and (e) may only be waived in writing by the Crown.
- (b) At its absolute discretion the Crown may give consideration of a request for a waiver of one or more conditions in clause 3.2 (except conditions in clause 3.2(b)) only if the Council:
 - (i) gives a written request to the Crown for the waiver; and
 - (ii) gives detailed reasons why the condition or conditions should be waived.

4 Conditions and obligations

4.1 The Project

- (a) The Council agrees to undertake the Project in accordance with the terms and conditions of this Deed and all Legislative Requirements.
- (b) The Council must apply the Funds solely for the purposes of the Project.

4.2 Planning Controls

- (a) The Council must prepare amendments to the Launceston Planning Scheme and submit those amendments to the Resource Planning and Development Commission. The amendments are to constrain increases in potential future flood damage to property in the 1:100 year flooding overlay areas in Invermay and must address the flood hazard by introducing measures that:
 - (i) prohibit new residential developments;
 - (ii) prohibit extensions or modifications to residences which create residential spaces below the 1:100 flood level;
 - (iii) prohibit new schools and other educational facilities, aged care homes and any essential services premises or similar premises;
 - (iv) prohibit new public buildings that would experience significant structural damage or significant damage to electrical or other fittings in a 1 in 100 year flood event;
 - (v) prohibit developments that increase the number of people that are at risk of injury or death in case of a 1 in 100 year flood event;
 - (vi) prohibit developments that increase the expected duration of a flood, unless that increase is part of an approved flood mitigation strategy; and
 - (vii) encourage the conversion of land use to activities that incur low levels of damage in cases of flood.
- (b) Prior to submitting those amendments to the Commission, the Council will submit those draft amendments to the Crown to obtain the Crown's consent to lodgement. The Crown will not unreasonably withhold consent to amendments which comply with the requirements as set out in clause 4.2(a).
- (c) The Crown and the Council agree that in the event of any inconsistency between the amended Launceston Planning Scheme arising from the Council's obligations under clause 4.2(a) of this Deed and a State Policy on development in flood risk areas, the

State Policy is to take precedence over the requirements of this Deed.

- (d) Before the amended Launceston Planning Scheme to reflect the provisions of clause 4.2(a) comes into effect, the Council and the Crown must apply whatever policies and other measures as are necessary to prevent any developments at Invermay that would be prohibited under that amended Scheme.
- (e) To the extent of their powers, the Crown and the Council must apply whatever policies and other measures as are necessary to prevent any significant New Development upstream or downstream that would, in the view of an independent expert, significantly reduce the efficacy of the new flood protection scheme at Invermay. For the purpose of this sub-clause (e) "New Development" means any significant new urban development.
- (f) The Crown agrees to make available reasonable levels of technical assistance from the relevant Crown agencies to assist in preparing amendments to the Launceston Planning Scheme and in securing the necessary approvals.
- (g) The Crown will not provide any assistance, financial or otherwise, other than through a State Emergency Service operational response, arising from any flood in the 1:100 flood risk areas of Invermay in relation to any developments that:
 - (i) would not be approved under the Launceston Planning Scheme if that Scheme were amended to include the provisions in clause 4.2(a); and
 - (ii) were approved or facilitated by the Council since the Funding Agreement was signed.

4.3 Public education

- (a) The Council must develop a public education strategy to increase public awareness of the flood risks in the Invermay area and the need for effective measures to reduce these risks and commence implementing the strategy by 30 June 2008.
- (b) The Crown agrees to use its reasonable endeavours to make available reasonable levels of technical assistance towards a public education strategy.

4.4 Emergency management

- (a) The Council must review and revise all relevant emergency management procedures and documents, for which it is responsible, as a priority to address GHD's concerns as set out in the GHD Report and have in place effective emergency management plans and procedures.

- (b) The Council must have a full set of revised emergency management plans in place by 30 June 2008.
- (c) The Council must develop key performance indicators to the satisfaction of the Crown by 30 June 2008 to assess the ongoing effectiveness of emergency management plans and the flood event preparedness of the people in the flood risk area of Invermay.
- (d) The Crown agrees to use its reasonable endeavours to make available reasonable levels of technical assistance from the relevant Crown agencies to assist the Council to develop its emergency management procedures and documents.

4.5 Construction

- (a) The Council must prepare to procure at the earliest opportunity the services required to develop the detailed designs for the engineering works for the upgrading of the Invermay flood levees.
- (b) The Council and the Crown agree that the maximum time for completion of the upgrade program shall be six (6) years from commencement of the construction works, and that these works should be commenced within twelve (12) months of this Deed being executed.
- (c) If the Council considers it essential to carry out emergency works before the detailed surveying work is completed and the Crown agrees that the works form part of the full scheme design:
 - (i) the emergency works should be carried out at the earliest opportunity;
 - (ii) the Council must fund the emergency works; and
 - (iii) the Crown agrees that these costs form part of the Council's share of the funding provided for the Project.
- (d) If the Council considers that the levee base should accommodate a levee system that provides a 1 in 500 year level of protection, the additional costs are to be met by the Council.

5 New Authority

5.1 Establishment of authority

- (a) The Council must, before 30 June 2008, establish a single authority pursuant to Section 30 of the *Local Government Act 1993* to be responsible for design, construction and maintenance of the Invermay flood levee and maintenance of all publicly owned flood levees in the Launceston Flood Protection Scheme and other functions including but not limited to the development from time to time of emergency management procedures relating directly to the flood risks from failure or overtopping of the levees and other such

specific activities that relate to Invermay flood levees to be agreed between the Council and the Crown. The rules of the authority must reflect the obligations of the Council under this Deed.

- (b) The Crown and the Council must not unreasonably obstruct the Authority from carrying out its functions.
- (c) The Council must not wind up the Authority without approval, in writing, from the Crown.

5.2 Other functions of the Authority

- (a) The Authority will also be responsible for all flood risk mitigation structures in the Launceston Flood Protection Scheme including the levee banks situated on the central business district side of the rivers.
- (b) The Council and the Crown together must arrange for the activities of the existing UTRIA to be transferred to the Authority and, for UTRIA to be wound up.

5.3 Costs

- (a) The Authority will be responsible for all necessary work plans, including maintenance, relating to flood risk mitigation in the Launceston Flood Protection Scheme area. The associated costs are to be determined by the Authority and agreed by the Council as being necessary for the tasks required for each year for three financial years ahead, with the amount for the financial year ahead being specified by the Authority by 31 March of the previous financial year.
- (b) Every three years the Authority must commission an independent expert to assess the adequacy of the costs as determined by the Authority and the adequacy of the Authority's reserves. The independent expert must also make an assessment whether or not the levees are fit for the purpose and whether the maintenance program is adequate to maintain the efficacy of the flood risk mitigation measures. The Authority must make a copy of the report publicly available.

5.4 Funding of the Authority

The parties agree to provide operational funding to the Authority on an annual basis as follows:

- (a) the Crown – to the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) annually (in June 2006 dollars indexed by the Hobart CPI); and
- (b) the Council – the sum specified by the Authority in clause 5.3(a), less the amount received by the Authority under clause 5.4(a).

5.5 Legislation

The Crown will use its best endeavours to have legislation presented to the Parliament of Tasmania for the facilitation of flood protection in the Invermay area including providing immunity from legal action for the Authority and the Council while undertaking flood risk mitigation activities or emergency management activities after the date of this Agreement.

5.6 Dredging costs

- (a) Subject to clause 5.6(b) the Crown will contribute the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) per year (in June 2006 dollars indexed by the Hobart CPI) to the Authority for the cost of dredging in the upper reaches of the Tamar River.
- (b) The amount referred to in clause 5.6(a) must be applied for dredging in the first instance. If the Authority determines that dredging is not required in any given year, these funds may be used by the Authority for the maintenance of other flood mitigation measures.

5.7 Flood Protection Agreement

- (a) The Crown and the Council agree that the *Flood Protection Agreement 1975* will terminate on 30 June 2011 and that the parties cease to have an obligation to fulfill the terms and conditions of that Agreement from that date. The Council acknowledges and agrees that on the termination of the *Flood Protection Agreement 1975* the Crown has no other legal financial obligations that relate to flood protection in the Invermay area except those arising under this Deed and the Funding Agreement, or other state policy or legislation.
- (b) The Council agrees that it will support publicly and otherwise the introduction and passage through the Parliament of Tasmania of a Bill to repeal the *Launceston Flood Protection Act 1977*.
- (c) The Crown and the Council agree that clauses 5.7(a) and (b) survive the termination of this Deed.

5.8 Council remains responsible

Notwithstanding the establishment of the Authority the Council is fully responsible for the performance of the Council's obligations under this Deed.

6 Reporting

6.1 Reports

The Council must submit a written report to the Crown every three (3) months during the term of the Project. Such reports are to be in a form approved by the Crown.

6.2 Content of a report

Subject to any other requirements of the Crown, a report referred to in clause 6.1 shall contain:

- (a) Project details/description (including Project objectives);
- (b) capital works carried out to date (this should be supported by photographs showing the progress of the work);
- (c) the amount of Funds that has been spent;
- (d) total expenditure on the Project to date;
- (e) whether or not the Project is on time and if not a proposed amended works schedule;
- (f) monitoring data collected to date and an assessment of the results;
- (g) a general assessment of the progress of the Project;
- (h) estimates of the Funds required for the following quarter; and
- (i) details of any contracts let for the Project including names of contractors used and value of contract.

7 Final report

7.1 Final report

The Council will submit a written report in a form approved by the Crown within thirty (30) Business Days of completing the Project.

7.2 Further matters

Subject to any other requirements of the Crown, the report referred to in clause 7.1 shall contain:

- (a) the extent of the work completed;
- (b) whether the objectives of the Project were achieved and how this was measured;
- (c) outputs produced;
- (d) outcomes or impact of the Project;

- (e) future actions;
- (f) media releases and other published material;
- (g) details of all contracts let for the Project including:
 - (i) the trading name of the contractor or consultant;
 - (ii) the scope of work undertaken by the contractor or consultant; and
 - (iii) the value of the contracts let; and
- (h) total expenditure incurred in completing the Project, including unspent funds.

7.3 Final report

The final report will be accompanied by an audited financial statement as required by clause 8.6.

8 Financial Records

8.1 Accounting records

The Council must keep such accounting records as correctly record and explain its transactions and financial position and such accounting records shall be kept in such a manner to enable true and fair accounts to be prepared from time to time.

8.2 Details of accounting records

Notwithstanding the generality of clause 8.1, the accounting records shall disclose as at times:

- (a) the amount of Funds received;
- (b) other receipts of income or donations;
- (c) expenditure on:
 - (i) salaries and wages;
 - (ii) operating expenses (including all expenses of the Project); and
 - (iii) capital items.

8.3 Inspection of records

The Crown or Commonwealth shall have the right during the term of the Project and the period twelve (12) months after the completion of the Project to inspect and make copies of all accounting records, records and

data that relate to the Project (including extracts of the minute books of the Council and the Authority).

8.4 Information

The Council must supply to the Crown or Commonwealth such information concerning the Project prior to and after completion as may be reasonably requested by the Crown or Commonwealth.

8.5 Audit

The Council shall submit to the Crown an audited financial statement within three (3) months of the end of the financial year in which the Funds is provided. The financial statement must contain full details of the expenditure of the Funds.

8.6 Final financial statement

The Council shall submit to the Crown an audited financial statement within thirty (30) Business Days of the completion of the Project or termination of this Deed. The financial statement must contain the full details of the expenditure of the Funds to the date of expiration or termination of this Deed.

9 Review

The Crown and the Council agree to jointly commission a review of the integrity and effectiveness of the levees at Invermay by 2028 and agree to discuss possible joint funding of major structural work to the levees if such work is required.

10 Termination

10.1 Termination

This Deed and the Funding Agreement may be terminated by the Crown at any time by notice in writing to the Council:

- (a) if the Council has refused or failed to fulfil a condition of this Deed or the Funding Agreement; or
- (b) if the Project has not been undertaken in accordance with this Deed and the Funding Agreement.

10.2 Refund of Funds

A notice issued under clause 10.1 is to specify:

- (a) the date on which the Deed and the Funding Agreement are to be terminated; and
- (b) the amount of the Funds that the Council is to refund to the Crown.

10.3 Maximum Refund of Funds

The Crown and the Council agree that the maximum refund to be specified in a notice under clause 10.1 is all the Funds, together with Interest.

10.4 Date of Refund of Funds

Upon termination under this clause 10, the Council must refund all or part of the Funds, as specified in the notice under clause 10.1, to the Crown within sixty (60) Business Days of the date of issue of the notice.

11 Indemnity

11.1 Indemnity

The Council must at all times indemnify and hold harmless the Crown and the Commonwealth, their officers, employees and agents (in this clause referred to as "those Indemnified") for liability reasonably incurred or suffered by any of those Indemnified arising from any claim, suit, demand, action or proceedings by any person against any of those Indemnified where such loss or liability was caused by any willful, unlawful or negligent act or omission of the Council, its officers, employees, agents or subcontractors in connection with this Deed and the Project.

11.2 Reduction of indemnity

The Council's liability to indemnify the Crown under clause 11.1 will be reduced proportionally to the extent that any act or omission of the Crown or the Commonwealth, their officers, employees or agents contributed to the loss or liability.

11.3 Survival

The indemnity referred to in clause 11.1 will survive the expiration or termination of this Deed and the Funding Agreement.

12 Insurance

12.1 Maintenance of insurance

The Council will, for so long as any obligations remain in connection with this Deed and the Funding Agreement, effect and maintain insurance policies as will adequately cover all obligations arising under this Deed including a public liability policy, professional indemnity policy and workers compensation policy.

12.2 Provision of copies

Upon the request of the Crown the Council shall provide the Crown with a copy of any insurance policy required to be effected and maintained under clause 12.1 or a certificate of currency.

13 Negation of employment, partnership and agency

13.1 No representation

The Council shall not represent itself, and will ensure that its officers, employees, agents and sub-contractors do not represent themselves, as being an officer, employee, partner or agent of the Crown or as otherwise able to bind or represent the Crown.

13.2 Not an agent etc.

The Council will not by virtue of this Deed or Funding Agreement be or for any purpose be deemed to be an officer, employee, partner or agent of the Crown or Commonwealth, or as having any power or authority to bind or represent the Crown or Commonwealth.

14 Permits, Licences or other authorisations

The Council must ensure that all permits, licences or other authorisations under any Legislative Requirements are obtained and completed for the purposes of carrying out the Project.

15 Retention of records

The Council must, for a minimum of seven (7) years following the termination of this Deed and the Funding Agreement, keep all operational records and data relating to the Project securely and in a form and manner as to facilitate any inspection and/or audit by the Crown.

16 Publicity

16.1 Acknowledgements

The Council agrees that appropriate acknowledgement will be given to the Crown with respect to funding support for the Project.

16.2 Recognising the support of the Crown and the Commonwealth

Specifically, in addition to recognising its own contribution, the Council will give recognition to the Crown's and Commonwealth's contributions to the Project and ensure that:

- (a) any publications, articles, newsletters or other literary works prepared as part of a Project acknowledge that it is being conducted under the Natural Disaster Mitigation Programme and has received financial support from the Commonwealth and the Crown. Two copies of any such publication are to be provided to the Crown;
- (b) signs, posters or other appropriate means are used to acknowledge the Natural Disaster Mitigation Programme and the Commonwealth and the Crown's financial support; and

- (c) the Commonwealth, the Crown and the Council's role, and the Natural Disaster Mitigation Programme, is acknowledged at relevant forums, conferences and at Project openings.

16.3 Consultation

The Council will consult far enough in advance on announcements with respect to the Project to enable Commonwealth and Crown Ministers or their representatives to participate in events.

17 Exchange of information

17.1 Regular contact

The Council agrees to maintain regular contact with the Crown to ensure information about the administration of the Project is freely shared.

17.2 Compliance with requests

The Council and Crown agree to promptly comply with any reasonable request from the other party to supply information relating to the management or administration of the Project covered by this Deed and Funding Agreement.

17.3 Provision of data

The Council agrees to provide data for the purposes of meeting the Crown's responsibilities relating to this Project.

17.4 Intellectual Property

Nothing contained in this clause affects the ownership of any intellectual property created by an author under the Project, or any provisions of the *Copyright Act 1968*.

18 Special Conditions

In addition to any other provision or condition set out in this Deed the special provision and conditions set out in Schedule 1 apply to this Deed.

19 Confidentiality

- (a) Despite any confidentiality or intellectual property right subsisting in this Deed or a schedule, appendix, annexure or attachment to it, either party may publish all or any part of it without reference to the other.
- (b) Nothing in this clause derogates from a party's obligation under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

20 Goods and Services Tax

20.1 Appropriation

The parties agree that the funding under this Deed is not a supply for consideration but an appropriation covered by paragraphs 9-15(3)(c) of the GST Act.

20.2 Liability for GST

If for any reason the funding under this Deed is not an appropriation as contemplated by clause 20.1 and if GST is imposed on a supply made under it, then the party paying for the supply must pay the amount of the GST to the party making the supply, at the same time as, and in addition to, the amount payable for the supply.

20.3 Tax invoice

A party making a taxable supply under this Deed must give the recipient a tax invoice for the taxable supply when that supply is made.

20.4 Terms defined in the GST Act

In this clause "GST" refers to the goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* and the terms used have the meanings as defined in the GST Act.

21 Notices

21.1 Form

Unless expressly stated otherwise in this Deed, all notices, requests, consents, approvals, waivers and other communications in connection with this Deed must be in writing signed by an authorised officer and must be marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the last way notified.

21.2 Delivery

Notices must be:

- (a) left at the address set out or referred to in the Details on page 1; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details on page 1; or
- (c) sent by fax to the fax number set out or referred to in the Details on page 1 of this Deed; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

21.3 When effective

- (a) Notices take effect from the time they are received unless a later time is specified.
- (b) If sent by post, they are taken to have been received three (3) days after posting (or seven (7) days after posting if posted to or from a place outside Australia).

22 Resolution of disputes

22.1 Notification of dispute

Either party may give a written notice to the other party of dispute in relation to matters contained in this Deed.

22.2 Parties to negotiate about dispute

If a dispute arises between the parties under this Deed (except in the case of action required to be taken under statute) the parties undertake in good faith to use all reasonable endeavours to resolve the dispute between them by negotiation.

22.3 Notice of dispute

- (a) If one party has given a written notice of a dispute to the other party and the parties are unable to resolve the dispute by means of meeting or meetings held between them within twenty (20) Business Days after receipt of the notice, then the dispute must be submitted for resolution under the following sub-clauses.
- (b) The failure by a party to notify the other of a breach or event of dispute immediately following that party becoming aware of that breach or event of dispute does not affect that party's right to act on that breach or event of dispute at any other time.

22.4 Reference for determination

The matter in dispute must be referred for resolution by a person of appropriate qualifications and experience agreed between the parties. In the absence of agreement the matter in dispute must be determined under the provisions of the *Commercial Arbitration Act 1986*.

22.5 Final and binding decision

The arbitrator's or independent expert's decision, including any decision as to an expense arising from the dispute, is final and binding on the parties.

22.6 Party not to commence legal action

Except to enforce this clause, or to seek an urgent interim determination, a party must not commence or maintain an action by way of legal proceedings relating to the dispute until it has been dealt with as provided in this clause.

23 Governing Law

- (a) The law of Tasmania governs this Deed, and the parties submit to the jurisdiction of the courts of Tasmania.
- (b) Any proceedings issued under, or about, this Deed, must be instituted either:
 - (i) in a Tasmanian court; or
 - (ii) in the Federal Court, from the Tasmanian Registry of that court.

24 Counterparts

This Deed may be executed in any number of counterparts. All counterparts will be taken to constitute one agreement. The parties agree that if necessary, they may exchange faxed copies of counterparts, and those faxed copies will be taken to constitute one agreement. The parties must exchange originals as soon as possible afterwards.

25 Severance

If any provision of this Deed is void or voidable by any party or illegal, it will be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, the offending words) will be severed from this Deed, and the legality or enforceability of the remaining provisions (or part of those provisions) of this Deed will continue in full force and effect.

26 Variations

This Deed may be varied by the parties in writing.

27 Force Majeure Event

27.1 Definition

In this clause:

Force Majeure Event means any of the following events or occurrences, and the effect of the following events and occurrences not within the Council's control, but only to the extent that the Council is prevented from, or delayed in, performing the Council's obligation under this Deed

taking into account contingency measures the Council should reasonably have in place:

- (a) acts of God, including fire, tidal wave, cyclone, earthquake, landslide, mudslide;
- (b) collisions or accidents that constitute a major catastrophe, an example being an aircraft crash.

27.2 Notice and suspension of obligations

- (a) If the Council considers it is affected, or likely to be affected, by a Force Majeure Event the Council must immediately give the Crown notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it.
- (b) Within seven days of receiving a notice from the Council under sub-clause 27.2(a) the Crown must notify the Council of its acceptance or otherwise that a Force Majeure Event has occurred and whether or not it is satisfied that one or more of the Council's obligations cannot be performed.

27.3 Suspension of Council's obligations

A Council obligation under this Deed is suspended if the Crown is satisfied that the obligation cannot be performed as a result of a Force Majeure Event for as long as the Force Majeure Event continues.

27.4 Effort to overcome

The Council must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.

27.5 Refund of Funds

If this Deed is terminated following the Crown recognising a Force Majeure Event, the Crown agrees to not give notice of a refund of any of the Funds properly expended on the Project prior to the Deed's termination.

Executed as a Deed.

Signing page

Dated: 29 April 2008

2007

The Common Seal of Launceston
City Council was affixed in the
presence of:

Signature of witness

Name of witness (block letters)

Address of witness C/- LAUNCESTON CITY COUNCIL

Occupation COUNCIL OFFICER

Signed by The Honourable)
Michael Anthony Aird MLC)
Treasurer for the State of Tasmania)
for and on behalf of the Crown in
Right of Tasmania in the presence
of:

Signature of witness

Name of witness (block letters)

Address of witness

Occupation

PUBLIC SERVANT



Schedule 1

Special provisions and conditions

- 1. The Council must make adequate provision for depreciation of the flood levees created from the Project, provide for their replacement at the end of their service life, and undertake all required routine maintenance of the flood levees to maintain their serviceability.
- 2. The Council must make available for public comment all development plans associated with the Project before proceeding, either through the required development approval process, or separately if necessary.
- 3. A sign is to be erected adjacent to the project site acknowledging the support and financial assistance of the Crown and the Australian Government, with the form and style of the sign to be approved by the Crown.
- 4. The Council must, after having been given reasonable notice, allow the Crown, its servants, employees or agents to inspect the Project for the purpose of monitoring or evaluating whether the purposes of the Project are being achieved.

Schedule 2

Provision of the Funds

1. Provision of the Funds is contingent on the Council committing and applying Thirteen Million Dollars (\$13,000,000.00) towards the Project over the term of the Project.
2. The Funds have a maximum value of Twenty Six Million Dollars (\$26,000,000.00) and comprise the contribution of the Crown and the Commonwealth Contribution towards the Project.
3. An initial payment by the Crown to the Council of Ten Million Dollars (\$10,000,000.00) of the Funds has been made under the Funding Agreement.
4. The Crown shall provide the remaining Funds to the Council in accordance with the following schedule:
 - (A) A transfer of Ten Million Dollars (\$10,000,000.00) of the Funds upon execution of this Deed or receipt of the Commonwealth Contribution pursuant to clause 3.8, whichever is the later.
 - (B) A transfer or transfers to a maximum of Six Million Dollars (\$6,000,000.00) subject to:
 - (i) the Council providing evidence to the Crown that expenditure on the Project has exceeded Thirty Million Dollars (\$30,000,000.00); and
 - (ii) the Council submitting a claim to the Crown for reimbursement of two thirds of any expenditure in excess of Thirty Million Dollars (\$30,000,000.00) that includes evidence of that expenditure; and
 - (iii) clause 5 below.
5. The Crown may withhold up to Three Million Dollars (\$3,000,000.00) of the Funds until receipt of a satisfactory final report and the audited financial statement as required by clause 8.6.
6. The drawdown and use of the Funds is determined by the provisions of the Funding Agreement and this Deed.