



Memorandum of Understanding

Eastern side of the Port of Devonport Reconfiguration Project

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Tasmanian Ports Corporation Pty Ltd (ACN 114 161 938) (TasPorts)

TT-Line Company Pty. Ltd. (ACN 061 996 174) (TT-Line)

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Memorandum of Understanding

Eastern side of the Port of Devonport

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Details

Date

24 DECEMBER 2019

Parties

Name	Tasmanian Ports Corporation Pty Ltd
Short form name	TasPorts
Notice details	Address: 90-110 Willis Street, Launceston, 7250
	Email: [REDACTED]
	Attention: Stephen Casey

Name	TT-Line Company Pty. Ltd.
Short form name	TT-Line
Notice details	Address: PO Box 168E, East Devonport, TAS, 7310
	Email: [REDACTED]
	Attention: Kym Sayers

Background

- A TasPorts operates under the Tasmanian Ports Corporation Act 2005 (Tas) and has functions relating to the operation and management of the Port of Devonport.
- B TT Line is currently occupying facilities which are part of the eastern side of the Port of Devonport.
The eastern side of the Port of Devonport is the subject of a planned reconfiguration to accommodate future shipping requirements (Reconfiguration Project).
- C This MOU outlines the parties' commitment to further discussions and collaboration in relation to the Reconfiguration Project.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this MOU:

Actual Costs means all third party costs and expenses incurred by TasPorts prior to entering into the Transaction Documents in connection with the Reconfiguration Project including:

- (a) consultant costs (including project management, design, survey, geotechnical, planning, environmental, navigational simulation, architectural, modelling and engineering costs);
- (b) any costs associated with obtaining and complying with any approvals, permits and other requirements of any relevant authority;
- (c) programme and project management costs; and
- (d) legal and procurement costs.

Background IP means any Intellectual Property Rights developed by a Party prior to this MOU and independently of the Reconfiguration Project.

Business Day means a day that is not a Saturday, Sunday or public holiday in Hobart.

Confidential Information means:

- (a) any information, irrespective of its form, relating to the Reconfiguration Project and which is provided by or on behalf of one Party to the other Party in connection with the Reconfiguration Project;
- (b) this MOU;
- (c) any information acquired by a party for the purpose, or under the terms, of this MOU, whether made available or obtained directly or indirectly before, on or after the date of this MOU;
- (d) any information designated by a Party as confidential; and
- (e) any other information belonging to a Party which is of a confidential nature.

Foreground IP means any Intellectual Property Rights developed by a Party during the currency of this MOU in connection with the Reconfiguration Project.

Intellectual Property Rights means all intellectual property and proprietary rights (whether registered or unregistered) including:

- (a) copyright and similar industrial or intellectual property rights;
- (b) any right to have information (including confidential information) kept confidential; and
- (c) rights in respect of patents, patent applications, inventions, trade secrets, technical data, formulae, know how and registered designs.

MOU means this Memorandum of Understanding.

Party means each of the parties to this MOU.

Party's Material means all documents (including drawings, plans, specifications, calculations and photographs) in whatever form (including computer readable) created by or on behalf of a Party during the currency of this MOU in connection with the Reconfiguration Project.

Reconfiguration Project has the meaning in the Background.

Transaction Documents has the meaning in clause 4.

1.2 Interpretation

In this MOU, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to:
 - (i) a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this MOU, and a reference to this MOU includes any schedule or annexure;
 - (ii) a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (iii) A\$, \$A, dollar or \$ is to Australian currency;
 - (iv) time is to the time in Hobart, Tasmania;
 - (v) a party is to a party to this MOU and includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - (vi) a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) words importing a natural person include a partnership, body corporate, association and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, tribunal, authority, agency or other entity;
- (e) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (f) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (g) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (h) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this MOU or any part of it; and
- (i) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Status of MOU

The Parties acknowledge and agree that, despite any other provision of this MOU:

- (a) this MOU and the terms contained in it:
 - (i) are merely statements of the current intention of the parties, which intentions may change;
 - (ii) are not, and are not intended to be, legally binding on the parties or to give rise to legal rights or obligations, except for clauses 1, 2, 3, 6, 7, 8, 9, 10, 11 and 12;

- (iii) do not constitute a binding undertaking or representation concerning the Reconfiguration Project or the Transaction Documents, even if the parties subsequently work together and take action or refrain from taking action on the assumption or in the expectation that the Reconfiguration Project or the Transaction Documents will eventuate; and
- (b) for the avoidance of doubt:
 - (i) the decision to proceed with the Reconfiguration Project and the Transaction Documents is subject to TasPorts' and TT-Line's respective sole discretions; and
 - (ii) TasPorts and TT-Line will not be obliged to proceed with the Reconfiguration Project and the Transaction Documents unless and until each of them has obtained all requisite internal and external approvals and executed and exchanged the Transaction Documents.
- (c) The parties acknowledge and agree that this MOU is not intended to amend, vary or replace any existing agreement between them in relation to the eastern side of the Port of Devonport.

3. Term of MOU

- (a) This MOU commences on the date it is signed by the parties (or if signed on different dates, the date of the last signature) and continues until the earlier of:
 - (i) the execution of the Transaction Documents; and
 - (ii) the date this MOU is terminated in accordance with clause 3(b).
- (b) If the Parties do not execute the Transaction Documents by 30 June 2020, or a further period as agreed by the parties no later than 30 days prior to 30 June 2020 or the agreed extension date, either party may immediately terminate this MOU by giving written notice to the other party.

4. Purpose of this Memorandum of Understanding

The purpose of this Memorandum of Understanding is to:

- (a) confirm the Parties commitment to further discussions and collaboration in relation to the Reconfiguration Project;
- (b) record the terms on which the Parties agree to discuss and investigate the design and construction of the Reconfiguration Project and the negotiation and execution of:
 - (i) interim licences as required to facilitate the Reconfiguration Project;
 - (ii) an operating deed / agreement for lease and lease,
 and such other documentation as the Parties consider necessary (Transaction Documents).

5. General obligations and timelines

The Parties agree to work together collaboratively to discuss and investigate the design and construction of the works forming part of the Reconfiguration Project, arrangements required to implement the Reconfiguration Project and the negotiation of the Transaction Documents with a view to:

- (a) negotiating term sheets for the Transaction Documents (including key commercial terms) by 31 December 2019; and

- (b) executing the Transaction Documents by 30 June 2020.

6. Representatives

- (a) For the term of this MOU, each Party may appoint one or more of its employees to act as its representatives in relation to this MOU (each such person being a "Representative").

- (a) The Representative of any appointing party will be responsible for:
- (i) managing, overseeing or coordinating that party's relationship with the other parties in respect of the matters dealt with in this MOU;
 - (ii) identifying any issues that arise between the parties and referring those issues to the appropriate person within the representative's organisation;
 - (iii) discussing issues arising out of this MOU with the Representatives of the other parties; and
 - (iv) coordinating any exchange of information between the parties.

- (b) The initial Representatives of each Party are:

TasPorts: Chief Operating Officer

Stephen.Casey@tasports.com.au

Executive General Manager Commercial and Trade

Phil.Hoggett@tasports.com.au

General Manager Property

Jarred.Moore@tasports.com.au

Senior Commercial Manager

Gary.McCarthy@tasports.com.au

TT-Line: Head of Strategic Projects

pxd@spiritoftasmania.com.au

Chief Financial Officer

ksayers@spiritoftasmania.com.au

7. Communications

- (a) The communications between the Parties in relation to the Reconfiguration Project shall be in accordance with the protocols determined by the Representatives.
- (b) The Parties agree to develop a joint communication strategy in relation to the Reconfiguration Project.

8. Confidentiality and use of information

- (a) Subject to clause 8(b) and 8(c) each Party must:
- (i) keep confidential and not disclose Confidential Information of the other Party to any person;
 - (ii) not do any act or thing involving the use or disclosure of the Confidential Information which may cause loss or damage to the other Party;

- (iii) not use or permit the use of the Confidential Information for any purpose other than the purposes contemplated by this MOU without the prior written consent of other Party;
 - (iv) not introduce any Confidential Information into any computer system or other device unless the system or device is secure and the information on the system or device is able to be kept confidential; and
 - (v) not copy or reproduce the Confidential Information except to the extent necessary for the purposes contemplated by this MOU.
- (b) A Party may disclose Confidential Information:
- (i) with the prior written consent of the other Party;
 - (iii) to its employees and legal or other professional advisors to the extent that that person has a need to know and provide that the disclosing Party ensures that that person observes and complies with obligations of confidentiality equivalent to those in this MOU;
 - (iv) which is at the time lawfully in the possession of the proposed recipient of the information through sources other than a Party;
 - (v) required to be disclosed by law; or
 - (vi) which is at the time generally and publicly available other than as a result of breach of obligations of confidentiality.
- (c) Both parties may disclose Confidential Information to a regulatory authority, government agency or government department provided that the disclosing party:
- (i) limits the content of the disclosure to the information requested by the regulatory authority, government agency or government department; and
 - (ii) provides the other party, where possible, with prompt notice of the request.
- (d) This clause survives termination of this MOU.

9. Public announcements

- (a) Subject to (b), neither party may make, or authorise or cause to be made, any public announcement or have discussion with the media relating to this MOU or the matters contained in this MOU except:
 - (i) as required by law, or
 - (ii) with the prior written agreement of the other party..
- (b) Nothing in this MOU restricts TasPorts from making announcements in the ordinary course of its business or in connection with the port master plan provided always that such announcements does not mention any commitments by TT-Line in relation to the Reconfiguration Project, without prior approval by TT-Line.
- (c) Where an announcement is required by law, the party required to make that announcement must:
 - (i) limit the content of the announcement to that required by law; and
 - (ii) provide the other party, where possible, with prior notice of the announcement.
- (d) This clause survives termination of this MOU.

10. Costs

- (a) Subject to clause 10(b), each Party must pay its own costs in relation to preparing, negotiating and executing this MOU and any document related to this MOU.
- (b) If this MOU is terminated under clause 3(b), then TT-Line will pay a proportion of the Actual Costs as they relate specifically to TT-Line's role and involvement in the Reconfiguration Project to TasPorts within 30 days of receiving an invoice from TasPorts.
- (c) Upon request by TT-Line in any month during the term of this MOU, TasPorts will provide details of the Actual Costs incurred in the preceding month.
- (d) This clause survives termination of this MOU.

11. Intellectual Property

- (a) Each Party retains ownership of Intellectual Property Rights in any Background IP.
- (b) Each Party licenses any Background IP to the other Party for the sole purpose of the Reconfiguration Project.
- (c) Ownership of all Foreground IP vests in and is owned by TasPorts.
- (d) To the extent the Intellectual Property Rights in any Foreground IP are not capable of being vested in the TasPorts because TT-Line does not own that Intellectual Property Right, TT-Line must ensure TasPorts is granted an irrevocable licence to use that Intellectual Property Right for the purposes of the Reconfiguration Project.
- (e) Each Party must ensure that the Party's Materials, and any use of them by the other Party or anyone authorised by the other Party, does not infringe the Intellectual Property Rights of any person.
- (f) Each Party undertakes that it has obtained or will obtain valid consent from all relevant authors in the creation of any of the Party's Materials so that the use by the other Party of such Party's Materials will not infringe any Intellectual Property Rights or any author's moral rights under the Copyright Act 1968 (Cth).
- (g) This clause survives termination of this MOU.

12. Dispute Resolution

- (a) **Settlement of Disputes**
Should any dispute or difference ("Dispute") arise between the parties in relation to this Agreement or the subject matter of it, the procedure to be followed by the parties to resolve the dispute is in accordance with this clause 12.
- (b) **Meeting between Parties**
The parties will meet within fourteen (14) days of one party notifying the other party that a Dispute exists with a view to resolving the Dispute by negotiation.
- (c) **Mediation**
 - (i) If the parties are not able to resolve the Dispute in accordance with clause 12(b), the parties will meet with a mediator appointed by agreement of the parties or, failing agreement, appointed by the President of the Law Society of Tasmania at the request of either party ("Mediator") within sixty days (60) from the expiry of the period referred to in clause 12(b).
 - (ii) The costs of the Mediator shall be borne equally by the parties.
- (d) **Litigation**

If the parties are unable to resolve the Dispute within the period referred to in clause 13(c), the parties will be at liberty to refer the dispute to a court of competent jurisdiction in Tasmania.

13. General

- (a) This MOU is governed by the laws in force in the Tasmania, and the parties hereby submit to the jurisdiction of the courts of the Tasmania and courts competent to hear appeals therefrom.
- (b) No amendment or variation to this MOU is valid or binding on a party unless made in writing executed by both parties.
- (c) If any provision of this MOU is or becomes illegal or unenforceable, it shall be considered separate and severed from this MOU and the remaining provisions will remain in force and be binding on the parties.
- (d) This MOU may be executed in any number of counterparts which, when taken together, shall constitute one instrument.
- (e) Nothing in the MOU creates a relationship of trust, agency, partnership or joint venture between the Parties.

Signing page

EXECUTED as an agreement.

EXECUTED by Tasmanian Ports Corporation
Pty Ltd by an authorised representative and in
the presence of:


Signature of witness

OLIVIA GOODWIN
Full name of witness

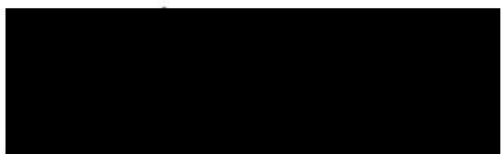

Signature of authorised representative

Full name of authorised representative

EXECUTED by TT-Line Company Pty. Ltd. in
accordance with section 127 of the
Corporations Act:


Signature of director

Bernardo V. Duya
Full name of director


Signature of director / secretary

KEVIN MAYNARD
Full name of director / secretary