



Transport
for NSW

Confidentiality Deed Poll

Port Macquarie Southern Breakwater Construction Project
22.0000138138.1705

Document # 4440755_3

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Details

Date

Parties

Name **Transport for NSW (TfNSW)**
ABN 18 804 239 602
(“Principal”)
Notice details 7 Harvest Street
Macquarie Park NSW 2113
Attention: Technical Director, Commercial

Name
ABN
(“Recipient”)
Notice details
(insert Address)

Facsimile:
Attention:

Background

- A This Confidentiality Deed Poll (Deed Poll) is given in favour of Transport for NSW **(Principal)**.
- B The Principal is in the process of preparing for and delivering Port Macquarie Southern Breakwater Construction Project (22.0000138138.1705), directed by the NSW Government.
- C The Recipient has or may become acquainted with Confidential Information relating to the Project.
- D The Principal has requested and the Recipient has agreed, to execute this deed poll.

Agreed terms

1. Defined terms & interpretation

Confidential Information means any information relating to the Project (including, information contained in the Invitation Document, proposals, designs, tenders, reports, advices, minutes of meetings or correspondence) in any form which has come to the knowledge of the Recipient by any means and which has been or will be given to the Recipient either directly or indirectly by the Principal or any of the Principal's Personnel, but does not include:

- (a) information which, at the time of disclosure, was already in the public domain;
- (b) information which, subsequent to disclosure, enters the public domain except through breach of this Deed Poll or any other obligation of confidence; or
- (c) information which the Recipient is required to disclose by law or the listing rules of the Australian Stock Exchange.

Including means including, without limiting the generality of what is mentioned, and other parts of speech have a corresponding meaning.

Invitation Document means the RFT for the Project issued on or after 1 December 2022.

Personnel means, in relation to a party:

- (a) the officers or employees of the party or a related body corporate of it;
- (b) an agent, adviser or consultant of the party or a related body corporate of it, and the officers and employees of that agent, adviser or consultant; and
- (c) a contractor or sub-contractor of a party or a related body corporate of it, and the officers and employees of that contractor or sub-contractor,

and, for the avoidance of doubt, includes all Representatives.

Project means the Port Macquarie Southern Breakwater Construction (22.0000138138.1705) Project.

Representative means the persons listed in Schedule A to this Deed Poll as amended from time to time in accordance with clause 3.1.

Tender means the Recipient's response to the Invitation Document for the Project.

2. Permitted Purpose

The Recipient:

- (a) may only use the Confidential Information to develop and produce the Tender and participate in discussions with the Principal about the Invitation Document and the Tender (**Permitted Purpose**); and
- (b) must not use the Confidential Information for any purpose except the Permitted Purpose.

3. Permitted disclosure

3.1 Disclosure of Confidential Information

The Recipient must not disclose Confidential Information to its Personnel, unless those Personnel are listed in Schedule A to this Deed Poll as Representatives or the Recipient and the Principal agree in writing to the addition of further names to Schedule A.

3.2 Compliance by Recipient's Personnel

The Recipient must ensure that its Personnel (whether or not still employed or engaged by the Recipient) do not do or omit to do anything which if done or omitted to be done by the Recipient would be a breach of the Recipient's obligations under this Deed Poll.

In the event that the Recipient's Personnel does or omits to do anything which if done or omitted to be done by the Recipient would be a breach of the Recipient's obligations under this Deed Poll, such conduct will be deemed to be a breach of this Deed Poll by the Recipient.

The Recipient agrees to notify the Principal promptly if any of the Representatives leave the employ or engagement of the Recipient.

3.3 Authorised Disclosure

If a duly authorised representative of the Principal approves in writing the disclosure of Confidential Information, the Recipient may disclose that Confidential Information in accordance with the terms of that approval.

3.4 Cost of compliance

The Recipient is responsible for any cost of complying with its obligations in connection with this Deed Poll.

3.5 If Contractor must disclose by law

If the Recipient must disclose Confidential Information by law, the Recipient must give the Principal notice of the disclosure as soon as reasonably practicable.

4. Security and control

4.1 Security

The Recipient must:

- (a) treat and keep Confidential Information as secret, confidential and at all times under its secure control; and
- (b) not copy, produce or disclose Confidential Information (in whole or in part), other than for the purposes of producing the Tender, without the prior written permission of the Principal.

In the event of uncertainty as to whether:

- (a) any information is Confidential Information; or
- (b) any information is lawfully within the public domain,

that information is taken to be Confidential Information and the Confidential Information is taken to be not within the public domain, unless the Recipient is informed by the Principal in writing to the contrary.

4.2 Breach of confidentiality

The Recipient must:

- (a) immediately give the Principal notice of any suspected or actual breach of this Deed Poll including any suspected or actual breach which arises as a result of the actions of its Personnel;
- (b) immediately take steps to prevent or stop any suspected or actual breach; and
- (c) comply with the Principal's directions regarding the enforcement of this Deed Poll (including, starting, conducting and settling enforcement proceedings).

5. Warranty and covenant

The Recipient must treat and keep the Confidential Information in the strictest of secrecy and confidentiality and expressly acknowledges and agrees that the Confidential Information is of a secret and confidential nature.

The Recipient must do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.

The Recipient may not disclose to any person other than:

- (a) the Principal;
- (b) a Representative; or
- (c) a person who has signed a Confidentiality Deed Poll in favour of the Principal,

that the Confidential Information has been made available to the Recipient and the Recipient undertakes:

- (d) to protect and safeguard Confidential Information against unauthorised publication or disclosure;
- (e) not to use Confidential Information for any reason or purpose except in accordance with this Deed Poll or as directed by the Principal; and
- (f) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

6. Indemnity

The Recipient indemnifies the Principal and its Personnel against any loss, damage, expense and legal cost (on a solicitor and own client basis and whether incurred by or awarded against a party) that any of them may incur, directly or indirectly, because of a breach by the Recipient of this Deed Poll including where that loss, damage, expense or legal cost is incurred as a result of a breach of the Recipient's obligations under this Deed Poll through the actions of a Representative.

7. Return and destruction of Confidential Information

- (a) Subject to Clause 8, if the Principal requests it, the Recipient must: promptly return to the Principal all documents and other physical records of Confidential Information in its possession, custody, power or control;

- (b) if any Confidential Information in the possession, custody, power or control of the Recipient is in a form that cannot be detached from valuable equipment (including Confidential Information stored by electronic or electromagnetic means), the Recipient must erase the Confidential Information and
- (c) provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or erased, as appropriate.

8. Continuing obligation

The obligations of the Recipient under this Deed Poll continue after the completion or termination of any employment, engagement, assignment or involvement in relation to the Project.

9. Non-waiver

The failure of the Principal to enforce any of the provisions of this Deed Poll or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of the Principal to enforce that or any other provision at a later date.

10. Jurisdiction

This deed is governed by and subject to the laws of New South Wales.

11. No revocation

This Deed Poll must not be revoked or otherwise modified without the prior written consent of the Principal.

Execution page

EXECUTED as a deed poll.

**Signed, sealed and delivered
by the Recipient in the presence of:**

Recipient

Witness

Name (please print)

Name (please print)

Recipient

Name (please print)

Schedule A
Representatives

Name	Position