

Owner's Consent

Date 11 March 2024

Parties

Landowner Port of Townsville Limited ACN 130 077 673
Address PO Box 1031, Townsville Qld 4810
Contact: Mark McNeil
Email: mmcneil@townsville-port.com.au
Fax No.: (07) 4781 1525

Proponent Sealink Queensland Pty Ltd ACN 148 811 170
Address Sir Leslie Thiess Drive, Townsville Qld 4810
Contact: Darren Spearman
Email: darren.spearman@sealink.com.au
Fax No.: NA

Details

Agreement Date 11 March 2024

Land Lot 785 on CP EP2254 (the area shaded in yellow on the plan in Annexure B).

Premises The whole of the Land.

For Development Approval	Type of Approval	Description of Proposal
	Operational Works for Tidal Works (Pontoon)	Installation of a pontoon within the boundaries of the Land in accordance with the Plans.

Plans

<u>Title</u>	<u>Author</u>	<u>Drawing No.</u>	<u>Sheet No.</u>	<u>Rev No.</u>	<u>Date</u>
Location Plan	EDMS	1187-7309-D-271779	001	P2	15/09/2023
Location Plan Stage 1	EDMS	1187-7309-D-271779	002	P2	21/11/2023
General Arrangements	EDMS	1187-7309-D-271779	003	P1	08/08/2023
Isometrics	EDMS	1187-7309-D-271779	004	P1	08/08/2023
Gangway Slope Views	EDMS	1187-7309-D-271779	005	P1	08/08/2023
Pile Details, Pile & Pontoon Installation	PMG	MP02	n/a	0	10/10/2023

1. Background

- (a) The Landowner is the lessee of the Land.
- (b) The Landowner and Proponent are in negotiations for a sublease over the Premises.
- (c) The Proponent has requested the Landowner's consent to lodge the Development Application.

- (d) The Landowner has advised that it requires the Conditions to be met before allowing the Proponent to commence any developments works and/or operations on the Premises.
- (e) The parties have agreed on the terms and conditions set out in this agreement for the Proponent to progress the Development Application.

2. Definitions

Terms that are defined in the Lease and capitalised, but not separately defined, in this agreement are taken to have the same meaning unless the contrary intention appears.

These meanings apply in this agreement unless the contrary intention appears:

Act means the Transport Infrastructure Act 1994.

Agreement Date means the date this agreement is formed, which is taken to be the date shown in the Details unless the contrary is proved.

Approval includes the Development Approval and any licence, permit, consent, approval, determination or certificate from an Authority or under any Law that must be obtained to satisfy a condition in this agreement, or to comply with obligations or exercise rights under this agreement.

Assessment Manager means, for a development application, the Authority that will decide the application.

Associate means, for a party, the employees, agents and contractors of the party and for the Tenant includes the Tenant's visitors to the Premises.

Authority means:

- (a) a government or government department or other body;
- (b) a Court or Tribunal;
- (c) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (d) a person who:
 - (i) is charged with the administration of a Law; or
 - (ii) can give an Approval.

To be clear, the Port of Townsville Limited is an Authority and is not subject to the duties and obligations of the Landowner under this agreement when acting in that capacity.

Business Day means any day that is not:

- (a) a Saturday, Sunday, public holiday or bank holiday; or
- (b) after 23 December and before the following 3 January,

in the place where something is to be done or given under this agreement.

Claim means, in relation to a party, any:

- (a) cause of action the party has against another person;
- (b) liability that the party owes to another person; or

(c) proceeding or suit brought against the party.

Costs means all costs, charges and expenses incurred by a party, including those in connection with advisers.

Details means the part of this agreement called that.

Development Application means an application for a Development Approval.

Development Approval means a development approval shown in the Development Approval table in the Details.

Land means the land described in the Details.

Law means any statute, statutory instrument or code or other instrument enforceable under a statute or statutory instrument.

Liability means an obligation to do or refrain from something, or to pay money, that arises because of a breach of a Law or through a civil wrong.

Loss means any loss, Costs or damage that a person incurs or suffers, and any compensation or penalty that a person is liable to pay including:

- (a) any legal Cost on a full indemnity basis;
- (b) whether it is present or future, fixed or unascertained, actual or contingent; and
- (c) any consequential or indirect loss, economic loss or loss of profits.

Planning Act means the Act or any other Law providing for the Approval of development for the Land.

Port means the Port of Townsville as defined under the *Transport Infrastructure (Ports) Regulation 2016* (Qld).

Premises means at the Agreement Date, the part of the Land shown on the plan in Annexure B.

3. Development Application

- (a) Subject to the Proponent agreeing with the terms of this Agreement and complying (at its cost) with the Conditions, the Landowner:
 - (i) consents to the Proponent lodging the Development Application; and
 - (ii) will sign the necessary forms to allow the Proponent to lodge the Development Application.
- (b) To be clear, this consent:
 - (i) is provided by the Landowner in its capacity as the Landowner and not as an Assessment Manager and that it is not an Approval and clause 7.1 will apply to the assessment of the Development Application by the Landowner under the Planning Act; and
 - (ii) is not an approval for construction to commence on the Premises or the Proponent to commence operations on the Premises.

4. Conditions

4.1 Department of Resources Condition

- (a) The Proponent must obtain owner's consent from the Department of Resources for the development and provide a copy to the Landowner.

4.2 Sublease Condition

- (a) The Landowner and Proponent will negotiate in good faith a sublease for the Premises.
- (b) The agreed Sublease must be signed by the Proponent and returned to the Landowner prior to any works occurring on the Premises.

4.3 Terminal Lease Condition

- (a) The Proponent to sign and return the following documents to the Landowner:
 - (i) Deed of extension for the Terminal Lease (which commenced on 1 February 2011) or such other documentation as agreed by the parties to record the extended term of the terminal lease between the parties;
 - (ii) Sublease for Lot 784 on CP EP2284; and
 - (iii) Sublease for Lot 800 on CP EP837705.

4.4 Seabed Profiling Condition

- (a) The Proponent must provide to the Landowner an updated engineering assessment (prepared by a Registered Professional Engineer of Queensland) which details:
 - (i) the seabed profiling;
 - (ii) the proposed maximum seabed profile (The existing Swash engineering assessment report, submitted 4th March 2024, presents in Figure 8 a 'predicted deepened bed'. This is insufficient. The Proponent must ensure the method of construction does not exceed the allowable slope);
 - (iii) a RPEQ drawing of the construction intended (ie sea bed material to be removed) and controls to ensure the works do not exceed the allowable slope depth limit;
 - (iv) post-profiling survey and RPEQ verification; and
 - (v) clarification in the updated engineering assessment report where Figure 8 refers to 'chainage W to E', where is this in relation to the rock wall.

4.5 General Conditions

Upon the satisfactory provision of all approvals from the relevant authority and the Landowner to construct the development works, the Proponent agrees to comply with the general conditions contained in Annexure A.

4.6 Works Commencement

When the conditions in this clause 4 have been complied with by the Proponent, to the satisfaction of the Landowner (acting reasonably), the Landowner will notify the Proponent in writing that the Proponent can commence development works on the Premises.

5. Risks and acknowledgements

5.1 Proponent's risk

- (a) The Proponent acknowledges and accepts all risks (including costs and expenses) associated with the conditions of this consent whether ascertainable or not.
- (b) The Proponent acknowledges that it has made its own assessment as to the risks associated with this consent and has taken into account all of the risks and has made or will make full allowance for those risks.
- (c) If the Proponent is obliged to do anything under this consent, it does so at its own risk.
- (d) Without limiting any other clause of this agreement, the Proponent accepts all risks associated with, and bears all Costs of, and will have no Claim against the Landowner arising out of or in any way in connection with:
 - (i) Authorities exercising their statutory functions and powers in a manner that affects the Land or the exercise of the Proponent's rights and performance of its obligations;
 - (ii) delay in, or refusal by, any Authority in granting any Approval, or the condition of any Approval;
 - (iii) any act or omission of an Authority; and
 - (iv) any Law (now or in the future) affecting the Proponent's rights or obligations.

5.2 Proponent's Acknowledgements

- (a) The Proponent acknowledges that this consent does not constitute nor imply approval of the proposed development application, which is subject to normal development assessment requirements as set out under the *Planning Act 2016* (Qld).
- (b) The Proponent acknowledges and agrees that:
 - (i) this consent does not waive the requirement that the Proponent requires a sublease over the Premises prior to any development works occurring on the Premises;
 - (ii) this consent does not impose any obligation on the Landowner to grant a sublease of the Premises to the Proponent;
 - (iii) the Landowner does not provide any warranty or guarantee that a sublease for the Premises will be granted to the Proponent; and
 - (iv) nothing in this consent:
 - (A) confers on the Proponent any rights as a tenant of the Premises; or
 - (B) creates the relationship of landlord and tenant between the parties; or
 - (C) creates any relationship of employment or agency between the parties or confers on the Proponent any rights to represent the Landowner, and the Proponent must ensure it and its Associates do not at any time conduct themselves in any manner that would infer or represent to third parties that any such rights or relationship exists.

6. Breach

- (a) The Proponent agrees that if:
 - (i) it fails to comply with this agreement; and/or
 - (ii) the Proponent's project does not proceed for any reason,the Landowner may direct the Proponent to withdraw the Development Application.
- (b) The direction to withdraw the Development Application will be without prejudice to any action or other right or remedy which the Landowner has or may have or otherwise could have had for any breach or default on the part of the Proponent under this agreement.

7. General provisions

7.1 No restrictions on Landowner's statutory functions

The Proponent acknowledges and agrees that:

- (a) nothing in this agreement will in any way restrict or affect the unfettered discretion of the Landowner under the Act and in its capacity as an Authority to exercise any of its statutory or regulatory functions or powers or fetter the exercise of a discretion of any person required to exercise a statutory discretion in relation to the operation of the Port; or
- (b) neither the Proponent, nor any of its Associates, can make any claim against the Landowner in respect of anything that the Landowner does, fails to do, or purports to do, pursuant to the exercise or non-exercise of its statutory or regulatory functions, powers or discretions.

7.2 Indemnity

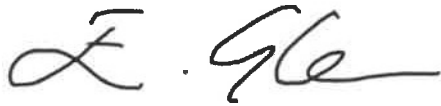
- (a) The Landowner does not accept any liability arising from the Proponent's decision to commence and/or lodge a Development Application.
- (b) The Proponent indemnifies the Landowner against any Claim, Cost, Liability or Loss that the Landowner incurs or suffers howsoever arising from the Proponent's decision to comment a Development Application.

7.3 Development Work/Operations

- (a) This agreement does not permit:
 - (i) any development works to occur on the Premises; and/or
 - (ii) operations to commence on the Premises.

Signing Page

Signed for and on behalf of **Port of Townsville Limited (ABN 44 411 774 236)** by a duly authorised representative in the presence of:



Signature of authorised representative

Elaine Glen - Acting General Manager, Assets, Planning & Environment

Name and title of authorised representative
(please print)

11/09/2024

Date



Signature of Witness

Jaimen Brazzale / Planning Officer

Print Name

Signed for and on behalf of **Sealink Queensland Pty Ltd (ACN 148 811 170)** by a duly authorised representative in the presence of:



Signature of authorised representative

Donna Gauci – Chief Executive Officer

Name and title of authorised representative
(please print)

28 May 2024

Date



Signature of Witness

Jeannine Winchester

Print Name

Annexure A – General Conditions

No	Condition	Timing
1	Carry out the Approved Development Carry out the approved development generally in accordance with the Plans.	Prior to the commencement of works and for the duration of the operations.
2	Additional Plan/s and As Constructed Drawings A complete set of design plans 'for construction' signed by a Registered Professional Engineer (or company) of Queensland must be submitted to, and approved by Port of Townsville Limited prior to works commencing on the site. A Registered Professional Engineer of Queensland (RPEQ) must certify that the works 'as constructed' have been constructed in accordance with the approved Plans, the applicable regulations and good engineering practice. The RPEQ shall also countersign the 'as constructed' drawings. A copy of plans of the constructed works (A1 and A3 size in digital AutoCAD DXF format) must be submitted to Port of Townsville Limited prior to the commencement of the use.	Prior to the commencement of works. Upon completion of the works. Prior to the commencement of operations.
3	Port Notices Carry out the approved development in accordance with the Port of Townsville 'Port Notices' July 2020 (as amended). Without limiting this condition, the Proponent will specifically comply with Section 4 – Port Management, which requires obtaining permits before the commencement of works (for example, excavations, trenching, hot work or blasting work).	Prior to the commencement of works and for the duration of the operations.
4	Environmental Management Plan (Construction) The Proponent must ensure works are carried out generally in accordance with the Construction Environmental Management Plan (CEMP), for the development in accordance with the Port of Townsville Sustainable Port Guidelines for environmental management (Appendix 2 - Environmental Management Plan Guideline), subject to the following: Piling and blasting work exclusion zones must be confirmed appropriate for the works and adequate noise and vibration controls must be implemented to minimise nuisance.	Prior to the commencement of works and for the duration of works.
5	Environmental Management Plan (Operation) The Proponent must update its operational Environmental Management Plan (EMP), for the development in accordance with the Port of Townsville Sustainable Port Guidelines for environmental management (Appendix 2 - Environmental Management Plan Guideline).	Prior to the commencement of operations and for the duration of operations.

No	Condition	Timing
6	Soil Erosion Minimisation, Sediment Control and Dust Control The Proponent must implement and maintain adequate erosion and sediment control management. In particular, the proponent must ensure that all materials on site are contained within the property boundaries of the site and do not cause nuisance or damage to neighbouring properties, roadways and waterways.	For the duration of construction.
7	Environmental Incidents The Proponent is to advise the Port as soon as practical of any incidents arising from the construction works.	For the duration of the works and operations.
8	Provision for Spills Provision must be made for any spillage of material, to be banded and retained on site for removal and disposal by an approved means in accordance with Port of Townsville 'Port Notices'. Site remediation will be required to the satisfaction of the Port. Control measures to ensure no loss of spilt material into the stormwater system must be implemented and maintained.	For the duration of the construction works and operations.
9	Contamination The Proponent must not, and must ensure not to cause any spills, pollution or contamination of any kind to occur on the development site, or surrounding area. Where the Proponent has caused a spill, pollution or contamination of any kind, the Proponent must rectify the damage in accordance with all requirements at law and to the satisfaction of the Port.	For the duration of the construction works and operations.
10	Vector Control The proponent must take into consideration the control mechanisms for any vector species in accordance with the state and federal legislation.	For the duration of the construction works and operations.
11	Other Legislative Requirements and Advice All works and operations must comply with all relevant legislation including but not limited to: <i>Environmental Protection Act 1994</i> (Qld): all emission to water, air and noise as a result of the activity should be minimised and monitored with appropriate management initiatives implemented to mitigate any potential or actual environmental harm, including environmental nuisance; and - any associated building work is to comply with the <i>Building Act 1975</i>, the <i>Building Regulation 2005</i> and the <i>Building Code of Australia</i>; and - any additional approvals for environmentally relevant activities applying to the activity must be obtained prior to the activity commencing.	For the duration of the construction works and operations.

Annexure B – Premises plan

