



## Funding Deed

**Department:** The Department of Trade and Investment,  
Regional Infrastructure and Services

**Agency/Division:** Industry, Innovation, Hospitality & the Arts / Investment  
and Export Services / Office of Regional Development

**Proponent:** The Old Bega Hospital (R180050) Reserve Trust

**Name of Project:** Old Bega Hospital Roof Replacement

## Details

### Department

Name The Crown in right of the State of New South Wales acting through the Department of Trade and Investment, Regional Infrastructure and Services (ABN 72 189 919 072).

---

Agency/ Division Industry, Innovation, Hospitality & the Arts / Investment and Export Services / Office of Regional Development

---

Address PO Box 5477  
Sydney 2001

### Department Authorised Person (refer to clause 16 - Notices)

Name Megan Cleary  
Position Business Development Manager  
Address PO Box 112  
Nowra NSW 2541

---

Telephone 02 4428 9126

Mobile 0407 678 053

Fax

E-mail Megan.cleary@business.nsw.gov.au

---

### Organisation ('You')

Name The Old Bega Hospital (R180050) Reserve Trust  
Address 301 Princes Highway Bega 2550

---

ABN 68 124 323 984

---

### Your Authorised Person (refer to clause 16 - Notices)

Name Ms Pat Jones  
Position Chairperson  
Address 24 Barrack St Bega NSW 2550

---

Telephone 02 6492 4936

Mobile

Fax

E-mail jonesamrpe@bigpond.com

---

### Project

Replacement of the roof of the Old Bega Hospital as part of the Old Bega Hospital Restoration Project. The details annexed in Schedule 1 contain further information about the Project You must undertake.

### Premises

301 Princes Highway Bega 2550

**Grant** A maximum total of up to \$500,000 payable in the amounts, and on the dates, set out in the Schedule.

**Total Restoration Cost** \$2.24 million

**Commencement Date** 19 February 2015  
(refer to clause 2 - Commencement)

**Project Term** From 19 February 2015 to 28 February 2018 and includes any extensions granted by the Department.

**Insurance Policies**

(refer to clause 13 - Insurance)

Types of Insurances	Minimum Sum Insured	Tick if Required
Broadform Public Liability	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences.	✓

**Special Conditions**

# Definitions and Commencement

---

## 1. Definitions and Interpretation

### 1.1 Interpretation

Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
- (b) references to you and yours are references to the The Old Bega Hospital (R180050) Reserve Trust;
- (c) words in the singular include the plural and vice versa;
- (d) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (e) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (f) headings are for convenience only and do not affect the interpretation of this Deed;
- (g) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (h) references to persons include bodies corporate, government agencies and vice versa;
- (i) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (j) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it; and
- (k) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

### 1.2 Definitions

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales.

**Claim** means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

**Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damage.

**Deed** means this funding deed document and includes the Details, Terms, schedules and any annexures or other documents cross-referenced in this deed.

**Final Project Cost** means, at the completion of the Project, the total expenditure on the Project as certified by the authorised representative of The Old Bega Hospital (R180050) Reserve Trust by way of a statutory declaration made in the form of Schedule 2.

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

**Grant Funds** means any part of the Grant used for the Project.

**Grantee's Contributions** means the additional funding for the total restoration of the Old Bega Hospital being the Total Restoration Cost less the Grant.

**Infrastructure** means any and all infrastructure funded in whole or in part by the Grant

**Interest** means the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points on a daily compounding basis.

**Milestones** mean the stages at which you will complete parts of the Project. Further details of the Milestones are set out in **Schedule 1**.

**Notice** means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication to be given under this Deed.

**Personal Information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

## 2. Commencement

2.1 This Deed will commence on the Commencement Date.

# What you must do

---

## 3. Your obligations

3.1 You must:

- (a) ensure the Grant is used only for the approved Project;
- (b) carry out the Project according to this Deed and the Schedule(s) at the Premises during the Project Term;
- (c) make the Grantee's Contributions;
- (d) consult the Industry Capability Network (NSW) Ltd to identify competitive local sources of equipment, supplies and services for the construction and operation of the Project;
- (e) comply with all policies, guidelines and reasonable directions the Department provides to you.

## About Payments

---

### 4. Payment of Grant

- 4.1 Once you have met the Milestone(s) and have provided the Department with the evidence of compliance required plus a tax invoice, on or before the date by which claim for payment must be made, the Department will pay you the relevant Payment.
- 4.2 If you do not make a claim for payment by the date by which claim for payment must be made as set out in the Schedule, you will no longer have a right to claim that payment and the Department will not be obliged to pay you for that Milestone.
- 4.3 The Grant is intended to cover the actual cost of the Project to a maximum of the value of the Grant. The amount to be paid in the final instalment will be adjusted to reflect the Final Project Cost where the Final Project Cost is less than the Grant.
- 4.4 The Department making any payment to you does not constitute an admission that the performance of the Project is in conformity with this Deed and no payment will be deemed to release you from your obligations under this Deed.

### 5. Visits

- 5.1 The Department may carry out a visit to the Premises prior to a payment being approved.

### 6. Withholding, Suspension, Changes to Grant and Repayment

- 6.1 The Department may change the amount of the Grant by issuing you with a written notice setting out the details of the changes.
- 6.2 If you are not complying with this Deed the Department may withhold or suspend any payment until you comply with your obligations to the Department's satisfaction.
- 6.3 If the Department withholds or suspends a payment you must continue to perform your obligations under this Deed,
- 6.4 You must repay within 28 days of a demand being sent:
  - (a) If at the completion of the Project, the amount of Grant the Department has paid you was greater than the Final Project Cost, the overpayment;
  - (b) any payment spent in breach of this Deed;
  - (c) any overpayment;
  - (d) any interest earned on any payment required to be repaid.
- 6.5 Where you have failed to comply with this Deed, the Department will calculate the amount of repayment you must make with regard to the extent you have failed to meet the objectives and/or the Milestones of the Project.
- 6.6 The Department may set off the amount of any overpayment or claim for repayment against any future payments to you.
- 6.7 Any repayment the Department claims from you under this clause 6 will be a debt due and owing by you to the Department.

### 7. Infrastructure

- 7.1 All Infrastructure you build or establish pursuant to the Project will be your property or that of the agreed third party.
- 7.2 Where you are the owner of the infrastructure, maintenance is your responsibility and you agree to maintain the Infrastructure during the Term.
- 7.3 You must ensure that, without the prior written consent of the Department the Infrastructure:
- (a) is not encumbered in any way, sold or disposed of during the Term;
  - (b) is at all times physically located within the State of New South Wales.
- 7.4 As a condition of any consent given by the Department under clause 7.3 the Department may require you to repay to the Department some or all of the Grant used to build or establish the Infrastructure.

## 8. GST

- 8.1 Unless otherwise defined in this Deed, words or expressions used in this clause have the same meaning as defined in the GST Law.
- 8.2 Unless otherwise indicated all amounts referred to in this Deed are exclusive of GST.
- 8.3 If a taxable supply is made to a recipient, the party which makes the taxable supply must provide the recipient with a tax invoice or other document with information required by the GST law to be included in a tax invoice to enable the recipient to claim an input tax credit.
- 8.4 If the party which makes a taxable supply does not quote an Australian Business Number (“**ABN**”) to the recipient for any reason by the time the first invoice related to that supply is issued, or does not otherwise provide a completed “statement by a supplier” (reason for not quoting an ABN) form to the recipient, the recipient will withhold an amount from the payment it makes to the supplier for that supply on account of withholding tax, as required by law.
- 8.5 If any GST is payable by the party which makes the taxable supply under this Deed, any consideration payable for any such taxable supply will be increased by the amount of GST payable (except to the extent that the consideration is already expressed to be GST inclusive).

## Material and Information

---

### 9. Reporting Requirements

- 9.1 You agree to liaise with the Department as required and to make your staff available to the Department to discuss the progress of the Project.
- 9.2 You agree to participate in any survey or feedback request conducted by the Department, whether during or after this Deed ends including any:
- (a) client confirmation questionnaire regarding the benefits of assistance received from the Department;
  - (b) independent survey of the Department’s service levels and the effectiveness of assistance provided;
  - (c) Department survey of project outcomes.

- 9.3 you must keep financial accounts and records relating to the Project so as to enable:
- (a) all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Deed;
  - (b) unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards.

**10. Confidential Information**

- 10.1 Each party must maintain the confidentiality of all commercially sensitive information it receives from the other party, except for the information listed in clause 11.

**11. Public Announcements and Acknowledgement**

- 11.1 You must:

- (a) acknowledge the support of the Department, as directed by the Department from time to time:
  - (i) in any public statements about the Project;
  - (ii) on the home page of any web site established in connection with the Project; and
  - (iii) at any development site funded by the Grant.

- 11.2 The Department may publish the title and brief description, including outcomes, of the Project, and your name.

**12. Privacy**

- 12.1 You will:

- (a) ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss and against unauthorised access, use, modification or disclosure or against other misuse;
- (b) not disclose any such Personal Information without the written consent of:
  - (i) the individual to whom the Personal Information relates; or
  - (ii) the Department,unless otherwise required or authorised by law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998 (NSW)* when doing any act or engaging in any practice in relation to Personal Information as if it were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this clause 12) in any subcontract entered into to perform the Project.

## Dealing with Risk

---

**13. Insurance**

- 13.1 You must maintain until the end of this Deed, the Insurance Policies listed in the Details on terms that are reasonably satisfactory to the Department.



- 13.2 You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.
- 13.3 On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
- 13.4 Without limitation to clause 13.1, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

#### 14. Indemnities

- 14.1 You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
- (a) the Grant or the use of any outcomes from the Project;
  - (b) your breach of this Deed;
  - (c) any unlawful or negligent act or omission by you or your subcontractors in connection with this Deed;
  - (d) any illness, injury or death of any person you or your subcontractors cause or contribute to in connection with this Deed;
  - (e) any loss or damage to real or personal property you or your subcontractors cause or contribute to in connection with this Deed; or
  - (f) any of your or your subcontractors acts or omissions in connection with this Deed that is in infringement of any intellectual property, or privacy rights of the Department or any third party.
- 14.2 Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.
- 14.3 No party will be liable to the other party under or in respect of the Deed whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.
- 14.4 Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

## Terminating the Agreement

---

#### 15. Termination

- 15.1 Unless terminated earlier in accordance with this clause, this Agreement will end at the end of the Project Term and once you have completed the Project to the Department's satisfaction and the Department has made all Payments due.
- 15.2 A party may give Notice to the other party terminating this Agreement where the other party has breached any material provision of this Agreement and that other party has not rectified the breach within thirty (30) days of receiving Notice requiring it to do so.

- 15.3 The Department may terminate this Agreement by giving you 30 days' notice, if any one or more of the following occurs:
- (a) in the Department's opinion you are not carrying out the Project diligently and competently;
  - (b) you have not achieved one or more of the Milestones by the date they are due to be completed;
  - (c) the Department considers the Project no longer viable; or
  - (d) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity.
- 15.4 The Department may terminate this agreement immediately by written notice if:
- (a) you breach a provision of this Agreement in a manner that, in the Department's opinion, is not capable of remedy;
  - (b) you breach a provision of this Agreement that in the Department's opinion is capable of remedy and fail to comply with a notice from us to remedy the breach within the period for remedy specified in that notice;
  - (c) you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with Your creditors.
- 15.5 You may terminate this agreement at any time prior to the completion date of the first milestone by giving the Department 30 days' written notice provided that no amount of the Grant has been paid to you.

## Other Legal Matters

---

### 16. Notices

- 16.1 The Department's Contact Person will be the primary liaison and contact officer between the Department and you, and the Department's Contact Person is authorised to give and receive Notices on the Department's behalf.
- 16.2 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the contact details for the Contact Person specified in the Details or as otherwise notified in writing.
- 16.3 Any Notice is deemed to be received by the receiving party as follows:
- (a) if hand delivered, the day on which it is left at the relevant address;
  - (b) if sent by regular post within Australia, six (6) Business Days after the day on which it is posted;
  - (c) if sent by email, on entering the information system of the recipient party,
- provided that any such Notices which are hand-delivered or emailed, are delivered before 5.00pm on a Business Day, otherwise they will be deemed to be received on the next Business Day.
- 16.4 Any such mode of service will be in all respects valid and effectual notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

16.5 Notices given under the following clauses of the Deed must not be sent by email: **clause 7** (GST), **clause 13** (Insurance), **clause 14** (Indemnities) and **clause 15** (Termination).

## 17. General

17.1 **Survival:** The following clauses survive termination or expiry of this Deed, clause 6, Withholding, Suspension, Changes to Payments and Repayment, clause 10 (Confidential Information), clause 12 (Privacy), clause 14 (Indemnities), clause 15 (Termination), this clause 17 and any other clause which by its nature is intended to survive this Deed.

17.2 **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.

17.3 **Keeping of records, audit and rights of access to such records:** You:

- (a) must keep complete and accurate records and books of account with respect to its performance of the Project (the “**Records**”), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
- (b) authorises the Department to undertake audits, to examine and inspect, at reasonable times and on reasonable notice, any records you hold, and allow any such Records to be copied; and
- (c) must provide all reasonable assistance in order for the Department to properly carry out the inspections and audits referred to in this clause.

17.4 **Conflict of Interest:** You must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out its obligations under this Deed, and you agree to immediately notify the Department in writing if a risk of such a conflict arises.

17.5 **Entire Agreement:** This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings.

17.6 **Variation:** This Deed may only be varied by a deed in writing signed by the parties.

17.7 **Inconsistency:** If there is any inconsistency between provisions then the order of precedence will be:

- (a) the **Details**; then
- (b) any **Special Conditions**; then
- (c) these **Terms**; then
- (d) any **Schedules**.

17.8 **Negation of employment, partnership or agency**

- (a) This Deed does not create a relationship of agency, partnership, and/or employment between the parties.
- (b) You must not represent itself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.

17.9 **Waiver**

- (a) If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.
- (b) Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

17.10 **Assignment:** You must not assign or novate its obligations or interests under this Deed, without the prior written consent of the Department.

17.11 **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.

17.12 **Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

## Execution clauses

### Department

Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the Department by its authorised signatory but not so as to incur personal liability:

Before

---

Signature

Signature of Witness

---

Name

Name of Witness

---

Title

Address of Witness

---

Date

Date

### You (Organisation)

Signed, sealed and delivered for and on behalf of The Old Bega Hospital (R180050) Reserve Trust by its authorised signatory but not so as to incur personal liability:

Before

---

Signature

Signature of Witness

---

Name

Name of Witness

---

Title

Address of Witness



## Schedule 1 – Terms of Grant *(refer to clause 4)*

Name of Milestone	Description of Milestone	Evidence of Compliance	Grant by Department (excluding GST)	Grantee's Contribution (excluding GST)	Day by which Milestone must be completed:	Date by which claim for payment must be made:
1	<ul style="list-style-type: none"> <li>• Acceptance and signing of the Funding Deed</li>   <li>• Balance of Old Bega Hospital Restoration Project funding secured from other sources</li>   <li>• Commencement of the Old Bega Hospital Restoration Project, including the roof</li> </ul>	<ul style="list-style-type: none"> <li>• Signed and sealed Funding Deed returned to the Department, and</li>   <li>• Documentary evidence provided to the Department confirming the balance of Old Bega Hospital Restoration Project funding (approximately \$1.74 million) has been secured from other sources, and</li>   <li>• A site visit by a NSW Trade &amp; Investment officer to confirm commencement of the Old Bega Hospital Restoration Project,</li> </ul>	\$250,000		31 October 2016	30 November 2016

Name of Milestone	Description of Milestone	Evidence of Compliance	Grant by Department (excluding GST)	Grantee's Contribution (excluding GST)	Day by which Milestone must be completed:	Date by which claim for payment must be made:
	replacement component	including the roof replacement component				
2	Completion of the roof replacement component of the Old Bega Hospital Restoration Project	<ul style="list-style-type: none"> <li>• A letter from the contractor confirming that the roof replacement component of the Old Bega Hospital Restoration Project has been completed in full;</li> <li>• Documentation confirming any payments made by the Trust to the roofing contractor;</li> <li>• A copy of all tax invoices including the final invoice issued by the contractor for the roof replacement component of the Old Bega Hospital Restoration Project</li> </ul>	Up to \$250,000		31 October 2017	28 February 2018



Name of Milestone	Description of Milestone	Evidence of Compliance	Grant by Department (excluding GST)	Grantee's Contribution (excluding GST)	Day by which Milestone must be completed:	Date by which claim for payment must be made:
		<ul style="list-style-type: none"> <li>A site inspection by a NSW Trade &amp; Investment officer to confirm completion of the roof replacement component of the Old Bega Hospital Restoration Project</li> </ul>				
	<b>Total</b>		<b>Up to \$500,000</b>			

Schedule 2

**STATUTORY DECLARATION**

***Oaths Act 1900, New South Wales, Eighth Schedule***

<p><i>1 Insert the name, address and occupation of the person making the declaration</i></p>	<p>1</p> <p>1. I, .....of address..... ABN 68 124 323 984</p> <p>do solemnly and sincerely declare that:</p>																											
<p><i>2 Set out matter declared to in numbered paragraphs</i></p>	<p>2</p> <p>2. I am authorised to make the following declarations on behalf of Old Bega Hospital (R180050) Reserve Trust, ABN 68 124 323 984 ('the Organisation') about the expenditure for the roof replacement component of the Old Bega Hospital Restoration Project ("the Project") at 301 Princes Highway, Bega 2550</p> <p>3. The Organisation incurred a total expenditure of <b>[insert total cost of roof replacement] exclusive of GST</b> as shown in the table at 4.</p> <p>4. The following table itemises all of the expenditure incurred by the Organisation for the roof replacement component of the Old Bega Hospital Restoration Project:</p> <table border="1" data-bbox="279 1220 1428 1769"> <thead> <tr> <th>Project Item</th> <th>Provider</th> <th>Value (ex GST)</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table> <p>and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the <i>Oaths Act 1900</i>.</p>	Project Item	Provider	Value (ex GST)																								
Project Item	Provider	Value (ex GST)																										

3 Declaration – Place, Date	3 Declared at.....on..... [place] [date]
4 Signature of person making the declaration	4 ..... [Signature of declarant]
5 Witness	<p>in the presence of an authorised witness who states:</p> <p>I, ....., a .....</p> <p>[name of authorised witness] [qualification of authorised witness]</p> <p>Certify the following matters concerning the making of this statutory declaration by the person who made it:</p> <p>[* please cross out any text that does not apply]</p> <p>1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and</p> <p>2. *I have known the person for at least 12 months OR *I have confirmed the person’s identity using an identification document and the document I relied on was</p> <p>.....</p> <p>[describe identification document relied on]</p> <p>.....</p> <p>[signature of authorised witness] [date]</p>

\*\* The following persons may witness a statutory declaration in New South Wales:

- The Registrar-General, a Deputy Registrar-General or any justice of the peace;
- a notary public;
- a commissioner of the court for taking affidavits;
- an Australian legal practitioner authorised under section 27(1) to take and receive any affidavit, or
- other person by law authorised to administer an oath.

Note: Falsely swearing a statutory declaration is an offence under section 25 of the Oaths Act 1900, the punishment for which is imprisonment for five years.