

A PROJECT AGREEMENT FOR TOORALE WATER INFRASTRUCTURE WORKS

An agreement between:

- the Commonwealth of Australia; and
- New South Wales.

The output of this Project will be the modification, demolition or decommissioning of dams and other structures at Toorale for the purpose of facilitating downstream delivery of environmental flows.

Project Agreement for Toorale water infrastructure works

OVERVIEW

1. This Project Agreement (the Agreement) is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) and should be read in conjunction with that Agreement and its Schedules, which provide information in relation to performance reporting and payment arrangements under the IGA FFR.

Purpose

2. This Agreement will support the modification, demolition or decommissioning of dams and other structures at the Toorale property at the junction of the Warrego and Darling rivers in New South Wales for the purpose of facilitating downstream delivery of environmental flows.

Reporting Arrangements

3. New South Wales will report against the agreed milestones during the operation of this Agreement, as set out in Part 4 – Project Milestones, Reporting and Payments.

Financial Arrangements

4. The Commonwealth will provide an estimated total financial contribution to New South Wales of \$4.0 million exclusive of GST in respect of this Agreement, as set out in Part 5 – Financial Arrangements.

PART 1 – FORMALITIES

5. This Agreement constitutes the entire agreement for this project and supersedes and replaces the *Funding Agreement in relation to NSW's Purchase of the Toorale Property* (the Original Funding Agreement) signed by the parties on 22 December 2008. Unless otherwise stated, the parties agree that any outstanding rights and obligations arising from the Original Funding Agreement are discharged and replaced by the rights and obligations contained in this Agreement. Any additional works outside the agreed project would be subject to a separate agreement.

Parties to this Agreement

6. This Agreement is between the Commonwealth of Australia (the Commonwealth) and New South Wales.

Term of the Agreement

7. This Agreement will commence as soon as the Commonwealth and New South Wales sign it and will expire on 30 June 2019 or on completion of the project, including final performance reporting and processing of final payments against milestones, unless terminated earlier or extended as agreed in writing by the Parties.

PART 2 – PROJECT OUTPUT

Output

8. The output of this Agreement will be modification, demolition or decommissioning of dams and other structures at Toorale by the NSW Government for the purpose of facilitating downstream delivery of environmental flows as specified in the Milestones at Part 4 - Project Milestones, Reporting and Payments.

PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

Role of the Commonwealth

9. The Commonwealth will be responsible for:
 - (a) monitoring and assessing achievement against milestones in the delivery of the Toorale water infrastructure works under this Agreement to ensure that outputs are delivered within the agreed timeframe; and
 - (b) providing a consequent financial contribution to New South Wales to support the implementation of this Agreement.

Role of New South Wales

10. New South Wales will be responsible for:
 - (a) all aspects of delivering on the project outputs set out in this Agreement; and
 - (b) reporting on the delivery of outputs as set out in Part 4 – Project Milestones, Reporting and Payments.

Shared roles

11. The Parties will meet the requirements of Schedule E, Clause 26 of the IGA FFR, by ensuring that prior agreement is reached on the nature and content of any events, announcements, promotional material or publicity relating to activities under this Agreement, and that the roles of both Parties will be acknowledged and recognised appropriately.

PART 4 – PROJECT MILESTONES, REPORTING AND PAYMENTS

12. Table 1 summarises the milestones for the project, their relationship to the outputs, relevant reporting dates and expected payments to be made. The Commonwealth will make payments subject to performance reports demonstrating the milestones have been met.

Table 1: Performance requirements, reporting and payment summary

Output	Performance milestones	Report due	Payment
Modification, demolition or decommissioning of dams and other structures at Toorale for the purpose of facilitating downstream delivery of environmental flows.	<p><u>Milestone 1</u></p> <p>(a) Finalisation of Business Case to inform project implementation.</p> <p>(b) Consultation and identification of preferred arrangement of infrastructure modification works that allow the efficient delivery of environmental water, including Commonwealth environmental water.</p> <p>(c) Provision to the Commonwealth of the following documents updated to meet current requirements for such plans and guidelines (previously provided under item C.5. of the Original Funding Agreement):</p> <ul style="list-style-type: none"> • Interim Management Guidelines; • Property Water Management Plan; • Plan of Management of the Land; and • Environmental Watering Plan. 	December 2016	\$4,00,000
	<p><u>Milestone 2</u></p> <p>Aboriginal Heritage Impact Permit for project obtained.</p> <p>Functional design of project completed.</p> <p>Environmental Assessment commenced.</p>	October 2017	\$600,000
	<p><u>Milestone 3</u></p> <p>Environmental Assessment finalised.</p> <p>Detailed design completed.</p> <p>Nomination of priority and final works by NSW and approval by Commonwealth.</p>	March 2018	\$700,000
	<p><u>Milestone 4</u></p> <p>Priority works commenced.</p>	October 2018	\$400,000
	<p><u>Milestone 5</u></p> <p>Works completed and final report provided by NSW to the Commonwealth.</p>	March 2019	\$1,900,000

13. If a milestone is met in advance of the due date, where the relevant performance report demonstrates that the milestone has been met, the Commonwealth may make the associated payment earlier than scheduled provided it falls within the same financial year as the original milestone date.

Reporting arrangements

14. New South Wales will provide performance reports in accordance with Table 1 during the operation of the Agreement. Each performance report is to contain a description of actual performance in the period to date against the project milestones.

PART 5 – FINANCIAL ARRANGEMENTS

15. The Commonwealth will provide an estimated total financial contribution to New South Wales of \$4.0 million in respect of this Agreement. All payments are GST exclusive.
16. The Commonwealth's funding contribution will not be reduced where New South Wales secures funding from other activity partners.
17. The Commonwealth's and New South Wales' estimated financial contributions to the operation of this Agreement, including through National Partnership payments to the States paid in accordance with *Schedule D – Payment Arrangements* of the IGA FFR, are shown in Table 2.

Table 2: Estimated financial contributions

(\$ million)	2016-17	2017-18	2018-19	Total
Estimated total budget	0.4	1.3	2.3	4.0
Less estimated FFR project payments	0.4	1.3	2.3	4.0
Balance of non-Commonwealth contributions	0	0	0	0

18. Having regard to the agreed estimated costs of projects specified in this Agreement, New South Wales will not be required to pay a refund to the Commonwealth if the actual cost of the project is less than the agreed estimated cost of the project. Similarly, New South Wales bears all risk should the costs of a project exceed the agreed estimated costs. The Parties acknowledge that this arrangement provides the maximum incentive for New South Wales to deliver projects cost effectively and efficiently.

PART 6 – GOVERNANCE ARRANGEMENTS

Enforceability of the Agreement

19. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

Variation of the Agreement

20. The Agreement may be amended at any time by agreement in writing by both the Parties.
21. Either Party to the Agreement may terminate their participation in the Agreement at any time by notifying the other Party in writing.

Delegations

22. The Commonwealth Minister may delegate the assessment of performance against milestones and the authorisation of related project payments to senior Commonwealth officials, having regard to the financial and policy risks associated with those payments.

Dispute resolution

23. Either Party may give notice to the other Party of a dispute under this Agreement.
24. Officials of both Parties will attempt to resolve any dispute in the first instance.
25. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.

The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth
of Australia by



The Honourable Barnaby Joyce MP
Minister for Agriculture and Water Resources

Date 15-2-17

Signed for and on behalf of New South Wales by



The Honourable Mark Speakman MP
Minister for the Environment

Date 23/1/17