

# 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 \$9.240 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 and Variation 1 signed by both parties on 15 February 2017. Unless otherwise stated, the parties agree that any outstanding rights and obligations arising from the Original Funding Agreement and Variation 1 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 2022 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;
  - (b) providing a consequent financial contribution to New South Wales to support the implementation of this Agreement;
  - (c) where applicable, in accordance with the *Building and Construction Industry (Improving Productivity) Act 2016*, ensuring that financial contributions to a Commonwealth funded building work falls within the scope of the relevant building code legislation; and
  - (d) where applicable, ensuring that compliance with the Building Code 2013 or Building Code 2016 is a condition of Australian Government funding.
  - (e) Agrees to consider the annual workplan and provide New South Wales with a response to the annual workplan within 20 business days of the receipt of the annual workplan.

### Role of New South Wales

10. New South Wales will be responsible for:
  - (a) providing a financial contribution to support the implementation of this Agreement;
  - (b) all aspects of delivering on the project outputs set out in this Agreement;
  - (c) reporting on the delivery of outputs as set out in Part 4 – Project Milestones, Reporting and Payments;
  - (d) where applicable, where Commonwealth funded building work for which an expression of interest or tender (however described) was submitted before 2 December 2016, ensuring that:
    - 1 the *Building Code 2013* will apply; and
    - 2 any head contractors who submitted a bid for the work before 2 December 2016 are:
      - 1 provided with the Australian Building and Construction Commission (ABCC) Information Statement available at <https://www.abcc.gov.au/building-code/building-code-resources/contractor-resources>; and
      - 2 provided with the Model Clauses Type C (Model Clauses for Code Covered Entities when engaging Subcontractors on Head Contractor Building Code

- 2013 Projects) available from <https://www.abcc.gov.au/building-code/building-code-resources/contractor-resources> for use if they further subcontract the building work; and
- 3 otherwise made aware of any other relevant transitional guidance made available by the ABCC.
- (e) where applicable, where Commonwealth funded building work for which an expression of interest or tender (however described) was submitted on or after 2 December 2016, ensuring that:
- 1 the *Code for the Tendering and Performance of Building Work 2016* (Building Code 2016) will apply; and
  - 2 it satisfies any relevant requirements set out in the model clause documentation in respect of the Building Code 2016; and
  - 3 It complies with the applicable building code legislation which may be in force from time to time.
- (f) preparing annual workplans for activities to be used as the basis for progress reporting outlined in Part 4 for the project period. The annual workplans at a minimum must include:
- 1 a description of how the work is to achieve the project aims and outcomes specified in Part 2;
  - 2 outputs for the reporting period that contribute to the achievement of the project;
  - 3 detailed budget for the relevant year that complies with the relevant activities;
  - 4 indicative budget for the out years; and
  - 5 an overview that provides certainty that the timing of planned activities for the relevant financial year contributes to both activities achieved to date and for the out years for the project.
- (g) Submitting annual workplans by 31 March of each year of the work to be undertaken in the following financial year

## 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. The Parties acknowledge that \$1,000,000 (GST exclusive) has previously been paid by the Commonwealth to New South Wales in accordance with the Agreement.
13. The Parties acknowledge that \$557,500 of in-kind contribution has previously been provided by New South Wales in accordance with the Agreement. This includes \$111,500 provided in the 2015-16 financial year and not forming a part of the Performance milestones outlined in Table 1 of the Agreement.

14. The output of this Agreement is the Modification, demolition or decommissioning of dams and other structures at Toorale for the purpose of facilitating downstream delivery of environmental flows.
15. Table 1 summarises the milestones for the project, 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: Milestone Summary**

Performance milestones	Report / Action Due	NSW Contribution		Australian Government contribution	Total
		In-Kind	Cash	Cash	
<b><u>Milestone 1</u></b> (a) Finalisation of Business Case to inform project implementation. (b) Consultation and identification of preferred arrangement of infrastructure modification works that allow the efficient delivery of environmental water, including Commonwealth environmental water. (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): <ul style="list-style-type: none"> <li>• Interim Management Guidelines;</li> <li>• Property Water Management Plan;</li> <li>• Plan of Management of the Land; and</li> <li>• Environmental Watering Plan.</li> </ul>	May 2017	 (Provided)		 (Paid)	
<b><u>Milestone 2</u></b> Aboriginal Heritage Impact Permit for project obtained. Functional design of project completed. Environmental Assessment commenced.	Apr 2018	 (Provided)		 (Paid)	
<b><u>Milestone 3 - Progress Report.</u></b> Provision of a progress report showing achievement against approved annual work plan for reporting period <b>1 July 2018 to 31 December 2018</b> . (Reporting period 1)	31 Mar 19				

<b><u>Milestone 4 - Progress Report</u></b> Provision of a progress report showing achievement against approved annual work plan for reporting period <b>1 January 2019 to 30 June 2019</b> (Reporting Period 2)	30 Sep 19				
<b><u>Milestone 5 - Progress Report</u></b> Provision of a progress report showing achievement against approved annual work plan for reporting period <b>1 July 2019 to 31 December 2019</b> (reporting period 3)	31 Mar 20				
<b><u>Milestone 6 - Progress Report</u></b> Provision of a progress report showing achievement against approved annual work plan for reporting period <b>1 January 2020 to 30 June 2020</b> (Reporting period 4)	30 Sep 20				
<b><u>Milestone 7 - Progress Report</u></b> Provision of a progress report showing achievement against approved annual work plan for reporting period <b>1 July 2020 to 30 Dec 2020</b> (Reporting period 5)	31 Mar 21				
<b><u>Milestone 8 - Progress Report</u></b> Provision of a progress report showing achievement against approved annual work plan for reporting period <b>1 January 2021 to 18 June 2021</b> (Reporting period 6)	18 Jun 21				
<b><u>Final Report</u></b> Provision of a final report that contains the information specified in item 18 of this Agreement, to the satisfaction of the Commonwealth.	30 Jun 21				
<b><u>Evaluation Report</u></b> Provision of an evaluation report that contains the information specified in item 21 of this Agreement to the satisfaction of the Commonwealth.	31 Aug 21				
Contingency Allocation Total					
	Total	\$1,115,000	\$500,000	\$9,240,000	\$10,855,000

16. 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

17. New South Wales will provide performance reports in accordance with Milestone 1 and 2 in Table 1 during the operation of the Agreement. These two reports have already been provided. New South Wales will provide progress reports in accordance with Milestone 3 onwards in Table 1 during the operation of the Agreement. Each progress report must demonstrate evidence of project management and contract management activities, progress and performance of the project and financial management, and must contain the following information:
  - a. A description of actual performance of the project to date against the aims and outcomes of the Agreement and against the relevant annual workplan, including evidence to demonstrate New South Wales' completion of the Milestones in Table 1 (Milestone 3 onwards) that were due for completion during the period that is the subject of the progress report;
  - b. a description of the activities, if any, undertaken for the Agreement to date;
  - c. promotional activities undertaken in relation to, and media coverage of, the project during the period and those proposed activities during the next period; and
  - d. any other items that are agreed by New South Wales and the Commonwealth to be included in the progress report.
18. New South Wales will provide a final report, as a standalone document that can be used for public information dissemination purposes regarding this Agreement. The final report is due at the earliest of:
  - a. Milestone 9;
  - b. Three months after the completion of the project;
  - c. Three months after the termination of the Agreement; or
  - d. 30 June 2021.
19. The final report will contain information that:
  - a. Describes the conduct, benefits and outcomes of the project as a whole;
  - b. Evaluates the project, including assessing the extent to which the aims and outcomes of the project have been achieved and explaining why any aspect of the project was not achieved;
  - c. Provides detailed financial information regarding the total project cost, funding and state contributions of the project;
  - d. Summarises all promotional activities undertaken in relation to, and media coverage of, the project;
  - e. Includes a discussion of any other matters, relating to the project, which the Commonwealth notifies New South Wales should be included in the final report at least 40 business days before it is due; and
  - f. Any other items that are agreed by New South Wales and the Commonwealth will be included in the final report.

20. The final report should be accompanied by a certified income and expenditure statement signed by a delegate officer of New South Wales.
21. New South Wales will provide an evaluation report, building on information provided in progress reports, that clearly demonstrates:
  - a. The extent to which the completed works are being used for the aims and outcomes throughout the evaluation period (12 months after completion of works at each site – Boera Dam, Booka Dam, Homestead Dam and Peebles Dam);
  - b. The extent to which the project has met, exceeded or fallen short of the project aims and outcomes during the evaluation period;
  - c. Any other items that are agreed by New South Wales and the Commonwealth to be included in the evaluation report.
22. The evaluation report is due within 40 business days after the earlier of:
  - a. The expiry of the evaluation period; or
  - b. The termination of the Agreement.
23. New South Wales will provide, on completion of each of the works at Boera Dam, Booka Dam, Homestead Dam, and Peebles Dam, a certificate of attainment of practical completion.
24. For the purpose of this Agreement, practical completion means:
  - a. Works on the dams are completed, except for minor defects or omissions, which do not prevent them from achieving their stated purpose;
  - b. All fishways on the dams have been tested and inspections have been undertaken, are successful and demonstrate operational performance as expected; and
  - c. The dams are fit for the designated use.
25. The dams at Boera, Booka and Homestead will contribute to agreed environmental water outcomes in New South Wales and across the Murray Darling Basin.

## PART 5 – FINANCIAL ARRANGEMENTS

26. The Commonwealth will provide an estimated total financial contribution to New South Wales of \$9.240 million in respect of this Agreement. All payments are GST exclusive.
27. The balance on non-Commonwealth contributions will consist of contributions from New South Wales, with New South Wales contributions being no less of \$500,000 in cash (GST exclusive) and \$1,115,000 in in-kind contribution in respect of this Agreement.
28. The Commonwealth's funding contribution will not be reduced where New South Wales secures funding from other activity partners.
29. 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	2019-20	2020-21	Total
<b>Estimated total budget</b>	██████	██████	██████	██████	██████	<b>10,855,000</b>
Less estimated FFR project payments	██████	██████	██████	██████	██████	9,240,000
Balance of non-Commonwealth contributions <sup>(a)</sup>	██████	██████	██████	██████	██████	1,615,000

(a) Non-Commonwealth contribution includes in-kind and cash contributions from New South Wales

30. 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

31. 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

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

### Delegations

34. 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

35. Either Party may give notice to the other Party of a dispute under this Agreement.
36. Officials of both Parties will attempt to resolve any dispute in the first instance.
37. 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*

A handwritten signature in black ink, appearing to read 'David Littleproud', with a stylized flourish at the end.

**The Honourable David Littleproud MP**

Minister for Agriculture and Water Resources

Date 15.4.19

*Signed for and on behalf of New South Wales by*

A handwritten signature in blue ink, appearing to read 'Matt Kean', with a stylized flourish at the end.

**The Honourable Matt Kean MP**

Minister for Energy and Environment

Date 9.4.19