

# HEADS OF AGREEMENT

## AN AGREEMENT SUPPORTING THE NIMMIE- CAIRA SYSTEM ENHANCED ENVIRONMENTAL WATER DELIVERY PROJECT

### **PARTIES:**

1. Commonwealth of Australia represented by the Minister for Sustainability, Environment, Water, Population and Communities, The Hon Tony Burke MP
2. Government of New South Wales represented by the Minister for Primary Industries, The Hon Katrina Hodgkinson, MP

## Background

- 1) On 3 July 2008, the Australian and New South Wales Governments signed an Intergovernmental Agreement on Murray-Darling Basin Reform (the **IGA**) which gave effect to the urgent need to undertake water reforms in the Murray-Darling Basin to deliver a sustainable cap on surface water and groundwater diversions across the Murray-Darling Basin to ensure the future of communities, industry and enhanced environmental outcomes.
- 2) The Parties entered into a Water Management Partnership Agreement (**WMPA**) to undertake State Priority Projects that deliver the following outcomes:
  - a. substantial and lasting returns of water for the environment;
  - b. secure a long-term future for irrigation communities; and
  - c. deliver value for money in the context of the first two outcomes.
- 3) In July 2012 NSW submitted a Business Case for the **Nimmie-Caira System Enhanced Environmental Water Delivery State Priority Project** (the **Project**) which has been the subject of a due diligence assessment by the Commonwealth Department of Sustainability, Environment, Water, Population and Communities. [REDACTED]  
[REDACTED]
- 4) In entering into this Heads of Agreement for the Project, the Commonwealth and the State of NSW recognise that they have a shared responsibility and mutual interest in improving environmental, social and economic outcomes in the Murrumbidgee catchment.
- 5) The Project will contribute to the overall Murray-Darling Basin Plan (the **Plan**) outcomes, specifically, helping to bridge the gap to the Sustainable Diversion Limits (**SDL**) as specified in Schedule 2 of the Plan.
- 6) The Project was approved on [date] 2013 by the Commonwealth for funding of [\$180,133,974] subject to Conditions of Funding set out in the final due diligence report. The Parties acknowledge that the approved funding is the total funding available for the project from the Commonwealth.
- 7) The Parties agree that the Nimmie-Caira water entitlement (the **Nimmie-Caira Entitlement**) has a long term average annual yield of 172.974 gegalitres (GL) under current levels of development of which 40.374 GL is currently estimated by the Murray-Darling Basin Authority as already benefitting local environmental assets. NSW considers that the 'gap bridging' volume should be recognised as 172.974 GL, but recognises that this may result in consequent changes to the Sustainable Diversion Limit (SDL) in the Murrumbidgee Valley. The Parties agree to jointly seek a review by the MDBA of the Murrumbidgee SDL, taking into account the Nimmie-Caira Entitlement, in the context of

the next available opportunity for review of SDLs. Until that review, the Commonwealth will treat the 'gap bridging' volume of the Nimmie-Caira entitlement as 132.6GL. The Parties also note that the Project has the potential to provide an SDL adjustment (as a supply measure) through application of the SDL Adjustment Mechanism set out in the Plan.

## **Objectives**

- 8) The Parties recognise the potential system level environmental benefits of Basin-scale significance which can be achieved from the Project through protecting and restoring the local environment, relaxing constraints through Nimmie-Caira Lands, allowing for improved coordination of watering events between the Murrumbidgee and other rivers, and helping to 'bridge the gap' in the Murrumbidgee Valley.
- 9) The Parties agree to collaborate and act so as to achieve the following objectives:
  - a. realising the full potential of the Project to achieve environmental benefits of Basin-scale significance both within and beyond the Lowbidgee including:
    - i. the restoration of floodplain health and ecosystem functions in the Nimmie-Caira area of the Lowbidgee floodplain; and
    - ii. secure and lasting protection for the ecological assets, floodways and key habitats in the Nimmie-Caira area; and
    - iii. planning and undertaking activities to make an assessment against convention listing requirements with a view to a potential joint nomination of high ecological value areas of the Lowbidgee floodplain for inclusion on the List of Wetlands of International Importance under the Ramsar Convention.
  - b. implementing management arrangements for the Nimmie-Caira area which give priority to enhancement of environmental and indigenous cultural outcomes within and potentially beyond the Nimmie-Caira area;
  - c. providing substantially enhanced capacity for improved environmental watering outcomes including through:
    - i. relaxing physical constraints in the Nimmie-Caira area in the short term and (potentially) in adjacent areas in the longer term (subject to there being no adverse third party impacts); and
    - ii. facilitating shepherding and accounting of return flows for the Nimmie-Caira Entitlement in the short term and (potentially) for other entitlements in the longer term (subject to there being no adverse third party impacts).

- d. achieving water recovery which provides a substantial contribution towards 'bridging the gap' under the Basin Plan;
- e. determining the technical feasibility of the Project to provide a further SDL adjustment for the Murrumbidgee catchment as a supply measure under the processes specified in the Basin Plan and the IGA.

### **Elements of this Agreement**

- 10) This Heads of Agreement records the Parties' commitments to achieving the desired objectives, outcomes and responsibilities for implementing the Project within agreed timeframes and budgets and as informed by advice from the Advisory Committee. It includes the following elements/commitments:
- a. implementation of agreed Project governance arrangements;
  - b. entry into a Project Schedule under the WMPA in respect of the Project;
  - c. the purchase by NSW of the Nimmie-Caira Entitlement (comprising 381,000 shares of supplementary water (Lowbidgee) access) and, once acquired from the current owners, its timely transfer to the Commonwealth;
  - d. the acquisition by NSW of 84,417 hectares of privately owned land in the Nimmie-Caira as defined in schedule of properties as set out in Attachment E (the **Nimmie-Caira Land**);
  - e. agreement that the purchase by NSW of the Nimmie-Caira land and water assets for [REDACTED] from the existing landholders is on an 'all or nothing' basis, unless otherwise agreed by the Parties;
  - f. all access to water consistent with the Nimmie-Caira Entitlement accruing to the Commonwealth from the date of transfer of the entitlement;
  - g. implementation of water management arrangements that include:
    - i. interim arrangements that provide for an orderly transition from current ownership to Commonwealth ownership, with priority for interim water management to be on appropriate watering of environmental assets identified in the 2012 Business Case;
    - ii. joint development (with input from the Advisory Committee) of an agreed Environmental Watering Plan for the Nimmie-Caira to be completed within one year of the date of the Project Schedule; and
    - iii. joint development (with input from the Advisory Committee) of a long term water infrastructure management and operation plan within three years of the date of the Project Schedule that is consistent with the

Long Term Land Management Plan and that will determine how environmental water management objectives in the Environmental Watering Plan for the Nimmie-Caira can best be met, including arrangements for ownership, management and operation of delivery infrastructure;

- h. the construction of works by NSW necessary to enable the efficient delivery of water to environmental and indigenous cultural assets, within the Nimmie-Caira area and potentially beyond the area, provided there are no adverse third party impacts;
- i. implementation by NSW of land management arrangements that comprise at a minimum the requirements at Attachment D:
  - i. interim land management arrangements that provide for an orderly transition from current ownership to state-owned arrangements, with the priority to be on protection of the environmental assets identified in the Business Case and, having regard to the commitment at paragraph (ii) below, early implementation of fully commercial arrangements for any continued occupation or use of houses, buildings and land based on the value of the land and assets being occupied, including ongoing or new access to land for farming purposes; and
  - ii. joint development (with the Commonwealth) of a Long Term Land Management Plan to be completed within two years of the date of the Project Schedule consistent with the Environmental Watering Plan for the Nimmie-Caira and considering any findings from indigenous cultural heritage surveys. The objective of the Long Term Land Management Plan will be to protect and maintain the environmental and indigenous cultural assets of the Nimmie-Caira area and integrate where possible with long term objectives for environmental watering in Yanga National Park. NSW will be responsible for all community consultation associated with, or necessary as part of, developing the Long Term Land Management Plan and will advise the Commonwealth when such consultation will occur;
- j. commercial use of the Nimmie-Caira Land, e.g. leasing for dry land cropping or other farming activities, will be approved by NSW only if the proposed activities are consistent with the environmental restoration, ecological objectives and indigenous cultural values of this Agreement and the interim land management arrangements or the Long Term Land Management Plan, as applicable;
- k. until the Long Term Land Management Plan is in place and subject to clauses (l) and (m) of this Agreement, Nimmie-Caira Land cannot be leased for greater

than 5 years, or sold, without the prior agreement of the Commonwealth. The terms of any such sale or lease must be consistent with the objectives at paragraph 9 of this Agreement;

- l. once a Long Term Land Management Plan is in place, the sale or lease of Nimmie-Caira Land must be consistent with the objectives of the Long Term Land Management Plan which are to protect and maintain the environmental and indigenous cultural assets of the Nimmie-Caira area and integrate where possible with long term objectives for environmental watering in Yanga National Park;
- m. in the event that the Long Term Land Management Plan has not been agreed within three years of the date of the Project Schedule, the Parties agree that interim land management arrangements will continue and that they will seek to resolve the issues which remain to be settled in the Plan through the dispute resolution process provided in Part 10 of the Water Management Partnership Agreement. The Parties further agree that if the Long Term Land Management Plan has not been agreed within five years of the date of the Project Schedule, NSW may then sell or lease the Nimmie-Caira land where the terms of that sale or lease are consistent, by means of covenants and caveats, with the objectives in paragraph 9 of this Agreement, the environmental outcomes incorporated into this Agreement, and the Interim Land Management arrangements.
- n. revenues from any lease or sale of Nimmie-Caira Land are to be managed and utilised by NSW exclusively for ongoing costs of land management for environmental purposes in the Nimmie-Caira area, including operation and maintenance of water management infrastructure not operated by State Water Corporation. Any funds not expended on land management costs are to be retained by NSW or transferred to an entity managing the land for environmental purposes (refer clause r) for use in the longer term financial management arrangements to be implemented for land management for environmental purposes in the Nimmie-Caira area or, if agreed by the Parties, for land management for environmental purposes on the broader Lowbidgee floodplain or, if agreed by the Parties, for a contribution towards the cost of further gap-bridging NSW State Priority Projects. The Long Term Land Management Plan will also embody the principles in this paragraph;
- o. NSW will use its best endeavours to make changes to relevant state laws and statutes, including the Water Sharing Plan and land tenure arrangements, to enable full implementation of this Agreement.
- p. NSW will complete, in time for inclusion in the Long Term Land Management Plan, a comprehensive indigenous heritage survey to ensure adequate protection is afforded to sites of significance, excepting those properties which

have already been the subject of a previous Commonwealth survey. This should include engagement with the local Indigenous community consistent with, at a minimum, the Department of Sustainability, Environment, Water, Population and Communities Reconciliation Action Plan (RAP) engagement guidelines;

- q. The Parties recognise that there are some 32,000 hectares of water dependent vegetation in the Nimmie-Caira identified in the Business case, including red gum and black box communities and sensitive lignum wetlands. Further the Business Case points to there being significant potential to restore cleared land and floodways to reconnect and reintegrate areas of water dependent vegetation. The Parties agree that the Long Term Land Management Plan will identify the location and extent of areas within the Nimmie-Caira that are to be protected or restored as environmental assets and the routes by which environmental water will be conveyed to these areas. This will include identification of areas beyond the key ecological assets but within the Nimmie-Caira that need to be managed to enable effective environmental water flows, provide for wildlife corridors (including for fish passage) and promote ecological resilience.
- r. Commencing within two years of the date of the Project Schedule, the Parties will jointly explore the opportunity for the long term ownership and management of land, particularly the ecological and indigenous cultural assets therein, of the Nimmie-Caira, by a suitable non-government entity. That entity must be prepared to undertake the long term conservation of ecological and indigenous cultural assets and management of those assets in accordance with the principles set out in this Heads of Agreement and consistent with the Long Term Land Management Plan and clause 10 (n) in particular;
- s. NSW will make a ten per cent co-contribution to the project and the Commonwealth accepts that the NSW ten per cent co-contribution to the Project will comprise:
  - i. NSW providing additional water entitlements to the Commonwealth from the Basin Pipe State Priority Project, in respect of which the total entitlement to be held by the Commonwealth from compliant projects will amount to 75 per cent of the total water savings; and
  - ii. Commonwealth recognition of an in kind contribution, recognising NSW's actions over the long term to realise the environmental potential of the Nimmie-Caira area.

### **Project Governance**

- 11) The Parties agree that NSW will establish a Nimmie-Caira Project Control Group (the **Project Control Group**) within 90 days of signing of the Nimmie-Caira Project Schedule

under the WMPA. Membership will comprise one representative each from the following organisations:

- a. NSW Office of Water (**NOW**);
- b. NSW Office of Environment and Heritage (**OEH**);
- c. NSW State Water Corporation (**SWC**);
- d. Commonwealth Department of Sustainability, Environment, Water, Population and Communities (**SEWPaC**);
- e. Commonwealth Environmental Water Office (**CEWO**).

12) The Parties agree that NSW will establish a Nimmie-Caira Project Advisory Committee (the **Advisory Committee**) within 90 days of the signing of the Project Schedule. The role of the Committee is to advise the Project Control Group on delivery of the Project in a way which best achieves the objectives specified at paragraph 8. The Committee will meet at least twice annually before the Long term Land Management Plan is completed and at least yearly thereafter, and will be chaired by SEWPaC and NOW on an alternating basis and members will comprise representatives from the following:

- a. NSW Office of Water (**NOW**);
- b. NSW Office of Environment and Heritage (**OEH**);
- c. NSW State Water Corporation (**SWC**);
- d. Commonwealth Department of Sustainability, Environment, Water, Population and Communities (**SEWPaC**);
- e. Commonwealth Environmental Water Office (**CEWO**);
- f. Balranald, Hay and Wakool Shire Councils;
- g. Up to three local landholders with experience in operating the water infrastructure of the Nimmie-Caira;
- h. indigenous representation; and
- i. an environmental scientist with expertise relevant to the Project.

13) The Parties agree to work cooperatively on agreeing the membership and Terms of Reference for the Advisory Committee consistent with this Heads of Agreement to enable the Committee to meet within four months of the signing of the Project Schedule.

14) The Advisory Committee will report jointly to the NSW Water Commissioner and the SEWPaC Deputy Secretary Water Group through the Project Control Group. The



Advisory Committee may agree to invite others to participate where local experience or particular expertise is necessary to support the provision of advice on specific project elements. Government and council members will cover their own expenses. Costs of other members and invited participants will be met from the Project management budget as specified at Attachment A.

### **Delivery and Management of the Project**

- 15) Delivery of this Project will be under the WMPA.
- 16) The Parties will make every effort to complete and sign a Project Schedule for this Project within 20 business days of signing of this Heads of Agreement.
- 17) The Commonwealth commits to:
  - a. subject to execution of a Project Schedule, providing funding for the Project of \$[180,133,974], under the Intergovernmental Agreement on Federal Financial Relations, and the related Federal Financial Relations Act 1999, utilising the WMPA under the IGA;
  - b. timely payment of funds:
    - i. on the basis of NSW's achievement of defined milestones for delivery of Project outcomes as detailed in the Project Schedule (including ensuring that sufficient funds are made available on a timely basis to enable NSW to enter into and meet contractual obligations assumed by NSW for the land and water purchase transaction); and
    - ii. at all times consistent with terms of the Project Schedule.
  - c. working with NSW to identify opportunities from the Nimmie-Caira project which may contribute to the NSW proportion of downstream shared requirements by way of 'supply measures' under the SDL Adjustment Mechanism in the Basin Plan. These opportunities could include constraints relaxation, water shepherding and accounting of return flows that would otherwise not occur; and
  - d. working with NSW to finalise land and water management arrangements within the timeframes detailed in this Heads of Agreement.
- 18) The Commonwealth recognises that the delivery of environmental water holdings; water shepherding and accounting of return flows should be implemented in such a way as to avoid adverse third party impacts.
- 19) The NSW Government commits to:
  - a. implementing the interim land management arrangements as specified at Attachment B in consultation with the Advisory Committee, and preparing a Long

Term Land Management Plan in consultation with the Nimmie-Caira community and other stakeholders, the Advisory Committee and the Commonwealth;

- b. providing regular reports on the Project's progress in line with Project Schedule milestone requirements. This includes reporting on the purchase transactions for the Nimmie-Caira Land and Nimmie-Caira Entitlement components and other relevant outcomes, including any collection and disbursement of revenue from the sale or lease back of land. The reporting framework will be consistent with the relevant provisions of the WMPA;
- c. managing Project delivery for all aspects in a way which supports the achievement of the objectives at paragraph 9 and considers the views of the Project Control Group and the advice of the Advisory Committee;
- d. managing Project delivery and risks in a way that ensures that all Project and budget milestones are delivered in a timely and cost effective manner;
- e. in consultation with the Advisory Committee and subject to the agreed budget, undertaking the design and construction of works necessary to enable the efficient delivery of environmental water (including from the Nimmie-Caira Entitlement) to assets in the Nimmie-Caira itself, to other assets in the Lowbidgee area such as the Fiddlers/Uara Creek system and to the Murrumbidgee below Chaston's Cutting provided there are no adverse third party impacts;
- f. working, in consultation with the Commonwealth, to develop and implement water shepherding arrangements for the Nimmie-Caira Entitlement as a priority; and
- g. working, in consultation with the Commonwealth, towards developing and implementing a NSW policy on accounting of return flows from the Nimmie-Caira system.

### **Implementation of the Project**

- 20) On signing this Heads of Agreement in the financial year 2012-13, the Commonwealth will provide NSW with a payment of [REDACTED] to be held in trust by NSW. These funds are to be used solely for the purpose of the exchange and completion of the Contracts to acquire the Nimmie-Caira land and water entitlements and solely in accordance with the Project Schedule to be negotiated under the Water Management Partnership Agreement, subject to clause 21 and 22 below.

- 21) In the event that the Parties have not agreed on a Project Schedule within six months of the date of this Heads of Agreement, NSW will promptly return all funds with interest to the Commonwealth unless otherwise agreed.
- 22) In the event that, despite having agreed a Project Schedule NSW is unable to secure the agreement of the landowners to proceed with the sale of the land and water entitlement on an all or nothing basis, consistent with the Project Schedule, within twelve months of the date of this Heads of Agreement, NSW will promptly return all funds with interest to the Commonwealth unless otherwise agreed.
- 23) The parties agree that the allowance for contingencies will be reviewed in line with more detailed costings and that any unspent funds can, by agreement of the parties, be used for land management for environmental purposes in the Nimmie-Caira area, or in the broader Lowbidgee floodplain, or for the purpose of making a contribution towards the cost of further gap-bridging NSW State Priority Projects.
- 24) NSW agrees to ensure that all activity within the Nimmie-Caira area remains consistent with the land management arrangements at Attachment D. This includes, subject to 10 (m), ensuring that all activity is consistent with the interim land management arrangements until the Long Term Land Management Plan is completed.
- 25) In the event that either Party is dissatisfied with the way the project is being implemented and the matter(s) cannot be resolved by the Project Control Group, the Parties will enter into a dispute resolution process consistent with Part 10 of the Water Management Partnership Agreement. The dispute resolution process will be conducted in the context of the overarching requirement for the Project to be delivered in a way which meets the objectives at paragraph 9.
- 26) If a dispute resolution process has commenced under Paragraph 22, NSW will nevertheless ensure that all activity under its control within the Nimmie-Caira area remains consistent with the objectives at paragraph 9. In the event that either Party is dissatisfied with the way the project is being implemented and the matter(s) cannot be resolved by the dispute resolution process consistent with Part 10 of the Water Management Partnership Agreement, both Parties acknowledge the right to commence action under Part Eleven of the Water Management Partnership Agreement (Termination of the Agreement).
- 27) NSW agrees to use its best endeavours to develop internal water distribution rules in consultation with the Advisory Committee and consistent with the environmental watering plan for the Nimmie-Caira area.
- 28) NSW agrees to establish flood easements on all land titles acquired under this Project, to enable the Commonwealth to inundate those lands that have the potential to be inundated through any managed environmental watering events.

- 29) NSW agrees to work with the Commonwealth to ensure that the current and any future Nimmie-Caira water infrastructure is available as required to facilitate environmental watering within and through the Nimmie-Caira area, subject to there being no adverse third party impacts outside of the Nimmie-Caira area.
- 30) NSW agrees that, consistent with NSW laws, the CEWO will determine how environmental water holdings will be distributed in the Nimmie-Caira area, and through to adjacent areas, subject to no adverse third party impacts, consistent with any approved environmental watering plans, internal water distribution rules or use approvals.
- 31) This Agreement will inform development of the Project Schedule.

### **Notices**

- 32) Any notice or other communication under or in connection with this Heads of Agreement shall be in writing and dealt with as follows:
  - a. If to be given by NSW to the Commonwealth then signed by the person giving the notice and:
    - i. delivered by hand;
    - ii. sent by pre-paid post; or
    - iii. transmitted electronically by electronic mail:

To :

Deputy Secretary Water Group  
Department of Sustainability, Environment, Water, Population and  
Communities  
John Gorton Building  
King Edward Tce  
Parkes ACT 2600

- b. If to be given by the Commonwealth to NSW then signed by the person giving the notice and:
  - i. delivered by hand;
  - ii. sent by pre-paid post; or
  - iii. transmitted electronically by electronic mail:

To :

Commissioner

NSW Office of Water  
Level 18, 227 Elizabeth Street  
SYDNEY NSW 2001

- 33) A notice or communication is deemed to be effected:
- a. *if delivered by hand* - upon delivery to the relevant address;
  - b. *if sent by post* - upon delivery to the relevant address;
  - c. *if transmitted electronically* - upon actual receipt by the addressee.
- 34) A notice received after 5.00 pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

**Signed**

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The Hon Tony Burke MP

Minister for Sustainability, Environment, Water, Population and Communities

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The Hon Katrina Hodgkinson MP

New South Wales Minister for Primary Industries

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**Attachments:**

A Budget for the Nimmie-Caira project

[REDACTED]

[REDACTED]

D Land management arrangements

[REDACTED]

Nimmie-Caira Project Budget Summary

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

### Nimmie-Caira System Enhanced Environmental Water Delivery State Priority Project

#### Land Management Arrangements

**Issue:** NSW must, in consultation and agreement with the Commonwealth, prepare and implement:

- Interim Land Management Arrangements immediately following the signing of the Heads of Agreement and the Project Schedule; and
- A Long Term Land Management Plan (LMP), within two years of signing of a Project Schedule. This will cover land use and management in perpetuity, and environmental restoration activities, consistent with the Environmental Watering Plan.

#### **Background:**

The environmental values of the Nimmie-Caira project area are significant and well documented. On a larger scale, the project area is a significant component of the broader Lower Murrumbidgee floodplain, playing an important role in the distribution of water and in turn the health of the floodplain-river ecosystem. The soils, catchment processes and flow regime of the floodplain support a complex mosaic of wetland habitats, which in combination contribute to the high water bird numbers and biological diversity found in the region.

In terms of indigenous cultural values, reports by early explorers suggest that large numbers of Indigenous people lived in the area. The wetlands would have provided rich food resources for a large part of the year and there have been numerous observations of Aboriginal burial sites, campfire ovens and artefacts across the broader Lowbidgee floodplain.

One of the key project objectives as identified in the business case is to protect the environmental and indigenous cultural heritage values of the Nimmie-Caira project area, through the development of a LMP agreed by NSW and the Commonwealth. This plan should include consideration of both long-term ownership and ongoing funding.

The LMP will identify those areas acquired through the Nimmie-Caira project that should be managed and/or restored for conservation in perpetuity, and the areas which could be made available for other uses which do not detract from the environmental values of the project, such as compatible dryland agricultural activities, tourism or forestry management. As a starting point, the Business Case identifies areas which at a minimum are expected to be reserved and/or protected for environmental outcomes, including major floodways.

#### **Funding conditions:**

At a minimum, all areas of land within the Nimmie-Caira which are currently Lowbidgee protected floodways will be protected for conservation. A LMP, including planned activities for environmental restoration, must be developed and will determine the permissible land



uses for lands identified as being not required for long term conservation purposes.

### **Interim Land Management Arrangements**

Interim Land Management Arrangements will be developed by NSW in consultation with the Commonwealth, with these arrangements to apply upon transfer of land and water entitlements to the NSW Water Administration Ministerial Corporation.

Interim Land Management Arrangements will ensure all activities approved on land in the project area are aligned with the objectives of the Heads of Agreement.

The Advisory Committee will provide advice on the implementation of interim land management arrangements.

Within 3 months of signing the Project Schedule, the Parties will agree on arrangements for management, holding and use of revenue from any lease or sale of land or other activities in the project area, consistent with paragraph 15 of the Heads of Agreement.

Interim Land Management Arrangements have the following minimum requirements:

1. Upon signing of the Project Schedule, unless otherwise agreed by the Parties, all existing commercial operations are to cease within 12 months and no new commercial operations are to be permitted to commence in this time. This will allow sufficient time to harvest already established crops and enable stock to be removed in an orderly way
2. Until the Long Term Land Management Plan is agreed and subject to clause 10 (m) of the Heads of Agreement, any lease or sale of land for commercial operations will be subject to advice from the Advisory Committee and require approval by the Commonwealth. Leases will be limited to a maximum of five years.
3. From the point of sale to NSW, current owners may continue to occupy their current residences only under a commercial lease arrangement at rates determined by independent valuers and based on the purchase price received by each individual landholder.
4. Land in the project area that is vacated as a result of sale to NSW may be leased to an approved commercial enterprise and only by way of a process of public tender and only for activities consistent with the agreed objectives for the project.
5. Pest plant and animal control programs are to be undertaken by each lessee as a condition of lease.

Within 12 months of signing of the Heads of Agreement, NSW will:

- a) develop and implement a policy on accessibility of the area to the public;
- b) complete a comprehensive Indigenous heritage survey to ensure adequate protection is afforded to sites of significance, excepting those properties which have already been the subject of a previous Commonwealth survey. This should include engagement with the local Indigenous community consistent with, at a minimum, Department of

Sustainability, Environment, Water, Population and Communities (SEWPaC) Reconciliation Action Plan (RAP) engagement guidelines;

- c) complete a comprehensive ecological survey to ensure aquatic and terrestrial values and conditions are documented, including the extent and condition of the land/vegetation cover and land form/contours of the entire project area.
- d) jointly develop (with input from the Advisory Committee) an Environmental Watering Plan for the Nimmie-Caira that incorporates findings from Indigenous heritage and ecological surveys;
- e) develop and commence implementation of appropriate pest plant and animal control programs.

### **Long-term Land Management Plan**

- 1) A long-term land management plan LMP must be developed by NSW in consultation with, and agreed by, the Commonwealth no later than 2 years from the date of the Project Schedule.
- 2) The LMP will ensure that the Commonwealth can undertake environmental watering in accordance with any environmental watering plan, internal distribution rules or use approval (including for the inundation of land), and will identify areas of land acquired through this Project for conservation in perpetuity. Irrigated agriculture, forestry and mining will be excluded as future activities in these areas. Restoration and ongoing management of the conservation areas will also be detailed in the LMP. At the conclusion of the development of the LMP the scope and design requirements of a stock and domestic system for Nimmie-Caira will be determined.
- 3) The LMP will detail long-term ownership, land management actions to be undertaken including permanent funding arrangements for land management. The LMP will restrict the use of revenue raised by any sale or lease of land to activities required for the management of the Nimmie-Caira area for conservation and indigenous cultural purposes, or, if agreed by the Parties, for land management for conservation and indigenous cultural purposes in the broader Lowbidgee floodplain or, if agreed by the Parties, for a contribution towards the cost of further SDL gap-bridging NSW State Priority Projects.
- 4) The LMP will, consistent with the Environmental Watering Plan for the Nimmie-Caira, identify the location and extent of areas within the Nimmie-Caira that are to be protected or restored as environmental assets and the routes by which environmental water will be conveyed to these areas. This will include identification of areas beyond the key ecological assets but within the Nimmie-Caira that need to be managed to enable effective environmental water flows, provide for wildlife corridors (including for fish passage) and promote ecological resilience.
- 5) The areas identified in 4 will be afforded sufficient protection to ensure that the environmental outcomes can be achieved. This may take the form of easements and,

for areas of high ecological value, some form of conservation agreement in perpetuity.

- 6) Land title documents must contain permanent conservation covenants or conservation agreements or restrictions on use or easements as appropriate to ensure long-term land management practices align with the the Long Term Land Management Plan and the Environmental Watering Plan for the Nimmie-Caira.
- 7) The Commonwealth's rights to inundate the land for environmental watering purposes will be documented and understood by all parties, including future lessors and owners of lands in the project area. The LMP will require flood easements to be registered and included on the land title for those lands in the project area which have the potential to be inundated through any managed environmental watering events.
- 8) The LMP will set out plans for environmental restoration, including re-vegetation and erosion control, management and control of feral pests and weeds. Environmental restoration activities will aim to maximise the environmental values of the project area.
- 9) The LMP will maintain the focus on maximising the environmental values of the project area, including the management and control of feral pests and weeds.
- 10) The LMP will provide for the potential for the long term ownership and management of the land, particularly the environmental and indigenous cultural assets within Nimmie-Caira, to be undertaken by a suitable non-government entity whose business objectives are the long term conservation of ecological and indigenous cultural assets and protection of these assets.
- 11) The Project Schedule and LMP will document the Commonwealth's priority use of the infrastructure and land for environmental watering purposes. The LMP will set out requirements for fencing management agreements so as to protect and manage rookery sites; river banks, etc.
- 12) Appropriate protection against liability will be included whereby the Commonwealth is not liable to maintain the land, including management of feral pests and weeds in the future.

**Key principles in relation to continued use/ occupation of Nimmie-Caira project area**

- All sale or lease of land, other than interim arrangements for existing landholders, will be by public tender at competitive market rates and must be consistent with the long Term Land Management Plan (as applicable) and the objectives of this Agreement;
- Interim leases will be at market rates set with reference to the price received by each individual landholder and the Commonwealth valuation of the land;
- Interim leases will be allowed only for activities demonstrably consistent with the objectives of this Heads of Agreement;

- Until the LMP is in place, and subject to clause 10 (m) of the Heads of Agreement, lease or sale of land can take place only with the prior agreement of the Australian government.
- Future revenue from sale or lease of assets is to be used exclusively to fund land management activities for environmental purposes in the Nimmie-Caira. Use of the funds for purposes other than this will require the prior agreement of the Australian government.

