



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN CAPITAL TERRITORY

AND

THE STATE OF NEW SOUTH WALES

AND

THE COMMONWEALTH OF AUSTRALIA

ON

AUSTRALIAN CAPITAL TERRITORY AND NEW SOUTH WALES Cross Border Water Resources 2006

**As amended and agreed through correspondence
and taking effect on 17 August 2006**

1 SIGNATORIES

- 1.1 This Memorandum of Understanding (MoU) is entered into by the Commonwealth of Australia (the Commonwealth), the Australian Capital Territory (the Territory) and the State of New South Wales (the State) (together, the Parties).

2 PREAMBLE

- 2.1 Under the *Seat of Government Acceptance Act 1909* (Cth), the Commonwealth gained the land and water now comprising the Australian Capital Territory (the ACT) and paramount rights to certain waters of the Queanbeyan and Molonglo Rivers in New South Wales (NSW). The waters of the Queanbeyan catchment were subsequently specifically developed through the construction of Googong Dam for paramount supply of water for the ACT.
- 2.2 Control of the waters of the Googong Dam is vested in the Territory Executive by the *Canberra Water Supply (Googong Dam) Act 1974* (Cth). However the prior agreement of the Commonwealth and NSW is required for any supply of Googong Dam water to a place in NSW. New developments in NSW are subject to planning approval under laws of the State.
- 2.3 In 1999/2000, the then Minister for Territories, Senator the Hon Ian Macdonald, stated that no additional supplies of Googong Dam water could be provided to any new development in NSW without an agreed strategy for integrated water supply. It is sensible to consider the supply of water from ACT dams and Googong Dam as one supply.

3. DEFINITIONS

- 3.1 '*ACT sourced water*' means all water supplied from the ACT to places in NSW;
- 3.2 '*ACT controlled water*' means all water that enters ACT control and which arises in NSW;
- 3.3 '*ACT water*' refers to 3.1 and 3.2 collectively; and
- 3.4 '*ACT/NSW Cross Border Region*' includes the ACT and surrounding NSW Local Government areas of Yass Valley, Queanbeyan City and Palerang.

4. PURPOSE AND STATUS OF THIS MoU

- 4.1 The Parties have entered into this MoU for the following purposes:

- 4.1.1 to formalise and secure water supply arrangements from the ACT to existing NSW recipients;
 - 4.1.2 to articulate the conditions of further supply of ACT water (whether from ACT dams or the Googong Dam) to areas of the ACT/NSW Cross Border region and for the purpose of Clause 2.3, to articulate an agreed strategy for integrated water supply.
 - 4.1.3 to provide a framework to allow formalisation of possible future access to NSW water for use in the ACT;
 - 4.1.4 to advance the sustainable management of ACT water for the purposes of the National Capital, the ACT and the ACT/NSW Cross Border Region;
 - 4.1.5 to ensure that management of ACT water and the water resources of the ACT/NSW Cross Border region is in accordance with other related water intergovernmental agreements;
 - 4.1.6 to ensure a best practice approach to water quality protection, environmental flows and catchment management; and
 - 4.1.7 to complement the separate Memorandum of Understanding on ACT/NSW Cross Border Region Settlement entered into between the Territory and the State on or about the date of this MoU (the ACT/NSW Cross Border Region Settlement MoU).
- 4.2 The Parties intend that this MoU should be interpreted in a manner consistent with:
- 4.2.1 the statutory framework establishing the National Capital, governance and planning arrangements in the ACT;
 - 4.2.2 the legislative responsibilities of the parties (Refer to **Schedule A – Summary of Legislative Responsibilities**);
 - 4.2.3 the need to achieve sustainable use and management of ACT water;
 - 4.2.4 the need to support sustainable development in the ACT and ACT/NSW Cross Border region;
 - 4.2.5 the Commonwealth's National Capital interests in the ACT; and
 - 4.2.6 all applicable laws of the Parties.

4.3 The Parties do not intend that this MoU should be interpreted to give rise to legal rights or obligations but, instead, intend that it should record their intentions for the achievement of the purposes set out in clause 4.1.

4.4 The Parties intend that, in the administration of this agreement, they and their officers should be guided by the following principles:

4.4.1 the Parties should share water on a sustainable basis, within resource limits, in order to enable appropriate settlement in both the ACT and the ACT/NSW Cross Border Region; and

4.4.2 the impact of climate change and climate variability on water availability within the ACT/NSW Cross Border Region should be recognised, and these circumstances may require a different way of managing water resources into the future.

4.5 The parties intend that this MoU should:

4.5.1 facilitate the parties to use their best endeavours to ensure this MoU or agreements made pursuant to it supersede all previous agreements, whether signed or unsigned, that deal with the supply of ACT water to Queanbeyan, including those entered into by the Commonwealth of Australia; and

4.5.2 operate for a period of 30 years from signing, subject to:

4.5.2 (a) formal review by the Parties each 5 years; and

4.5.2 (b) any subsequent agreement between them.

5 EXISTING SUPPLY OF ACT WATER TO NEW SOUTH WALES

5.1 The supply of ACT water for use in existing developments within the boundaries of the former Queanbeyan City Council (not the revised Queanbeyan City Council) prior to proclamation of the local government area on 11 February 2004 and the Ridgeway and Weetalabah Estates will continue in accordance with the Service Level Agreement (SLA) between ACTEW Corporation Limited and the Queanbeyan City Council.

5.2 The Territory and the State shall use their best endeavours to facilitate the entering into by ACTEW Corporation Limited and Queanbeyan City Council of a new Service Level Agreement between them in terms consistent with this MoU to supersede the SLA referred to in clause 5.1 and any other agreement between them, whether signed or unsigned, that deals with the supply of water from the ACT to Queanbeyan.

6 ADDITIONAL SUPPLY OF ACT WATER TO NSW

6.1 The Territory and the State will, by written agreement between them, subject to agreement by the Commonwealth and NSW consistent with S12(2) of the *Canberra Water Supply (Googong Dam) Act 1974*, agree to the supply of ACT water, where:

6.1.1 such supply is to service population growth over the next 30 years in the ACT-NSW cross border region as expressed from time to time in the Canberra Spatial Plan, the Territory Plan and the ACT/NSW Cross Border Region Settlement MoU; and

6.1.2 such additional areas are consistent with developing the National Capital as a compact and sustainable city;

6.1.3 the provision of such supply would be in accordance with the settlement principles contained in the ACT/NSW Cross Border Region Settlement MoU, as amended from time to time;

6.2 The Parties will work cooperatively together to facilitate approval and construction of any new water infrastructure required in order to secure future water supplies agreed in accordance with clause 6.1.

6.3 In addition to complying with the existing legislative obligations of the Parties, including the paramount rights of the Commonwealth to certain NSW waters under the *Seat of Government Acceptance Act 1909* (Cth), the conditions of supply of water under an agreement made under clause 6.1 are to include the following principles:

6.3.1 that the Territory has the capacity within its available water resources to supply into the ACT/NSW Cross Border Region, having regard to existing allocations, allowing for necessary environmental flows and meeting its Murray Darling Basin, Council of Australian Governments and other water related intergovernmental commitments from time to time;

6.3.2 that additional water supplies from ACT waters into NSW are taken from the NSW Cap under the Murray Darling Basin allocations;

6.3.3 that there is compliance with legislative requirements from time to time within the Queanbeyan and Molonglo catchments, recognising Googong Dam as a priority catchment for the supply of potable water;

6.3.4 that catchment management, including in catchments to which ACT water may be supplied in the future, embraces emerging best practice to protect appropriate down stream flows and water quality;

- 6.3.5 that urban development is directed to areas that are consistent with the ACT/NSW Cross Border Region Settlement MoU and subsequent ACT/NSW Cross Border Region Settlement Strategy, as amended from time to time;
- 6.3.6 that those persons to whom ACT water is to be supplied are subjected to the same demand management principles and measures as recipients in the ACT;
- 6.3.7 that the cost of providing additional infrastructure to access ACT water is not borne by the Territory;
- 6.3.8 that other costs of providing services to NSW residents benefiting from ACT water supply are agreed between the Territory and the State and met other than by the Territory;
- 6.3.9 that those persons to whom ACT water is to be supplied are subject to the same charging regimes as users in the ACT from time to time, including the water abstraction charge; and
- 6.3.10 that yield and water quality in the Molonglo and Queanbeyan (including Jerrabomberra) catchments is managed to take into account the Commonwealth's paramount rights and the urban water supply nature of the Queanbeyan catchment, without compromising NSW sovereignty.

7 OBLIGATIONS OF SIGNATORIES

7.1 Without limiting the existing legislative obligations of the signatories, the Parties note that:

7.1.1 ACT obligations include, but are not limited to:

- providing potable water to existing recipients and to agreed settlements;
- managing the Cotter Catchment;
- managing the Googong Dam Foreshore Area; and
- managing ACT water so as to ensure an adequate environmental flow and water quality for Lake Burley Griffin.

7.1.2 Consistent with the requirements of the *Seat of Government Surrender Act*, NSW obligations include, but are not limited to:

- working with councils on land use planning issues;
- working with catchment management authorities to assist in managing catchments; and
- managing the catchment of the Queanbeyan and Molonglo Rivers (including Jerrabomberra) so as to preserve the paramount rights of the Commonwealth to those waters for National Capital purposes.

7.1.3 Commonwealth obligations include, but are not limited to:

- consideration of an agreement with NSW under s12(2) of the *Canberra Water Supply (Googong Dam) Act 1974* in a manner which is consistent with that Act and which furthers the purposes of the MoU.

7.1.4 Joint ACT, NSW and Commonwealth obligations include, but are not limited to:

- managing water resources in accordance with this MoU.

8 APPROVAL PROCESS FOR ADDITIONAL PROVISION OF ACT WATER

8.1 Proposed developments will be assessed against the principles expressed in the ACT/NSW Cross Border Region Settlement MoU and the supporting ACT/NSW Cross Border Region Settlement Strategy, as amended from time to time.

8.2 Following agreement by the State and the Territory that the proposed development is consistent with the principles expressed in that Settlement Agreement and Strategy, the proposed development will be assessed under the provisions of the *Environmental Planning and Assessment Act 1979 (NSW)*.

8.3 Costs associated in the provision of infrastructure are to be resolved in accordance with clauses 6.3.7 and 6.3.8 of this MoU.

8.4 The ACT Government will agree to the supply of ACT water to approved developments, subject to the conditions of supply detailed in clause 6.3 of this MoU being agreed. The Parties note that NSW planning approval of any specific area does not result in an automatic entitlement to water supply by the ACT.

8.5 Before supply commences, there must be an appropriate agreement in place between the Australian and NSW Governments under s 12(2) of the *Canberra Water Supply (Googong Dam) Act 1974*.

8.6 The ACT's water utility is to negotiate an appropriate Service Level Agreement (SLA) with the 'receiving' council. The ACT Government shall ensure that the SLA is consistent with the utility's relevant licence terms and Clause 6 of this MoU.

9 MONITORING, EVALUATION AND REPORTING

9.1 The Territory and the State will jointly resource an independent baseline assessment of the condition of the Googong catchment within 12 months of signing this MoU. This assessment will be supported by ACT and NSW data collected under existing catchment management functions.

9.2 In the course of their implementation of this MoU, the Parties will develop a program to address ongoing assessment of the catchment and rectification of any outstanding issues arising from the baseline assessment referred to in clause 9.1.

9.3 Further, in the recognition of the spirit of cooperation, and to enable each of the Parties to more effectively implement the intent of the MoU, each Party will share or supply relevant data and information and provide updated information to the others where necessary or desirable.

10 COMPLIANCE AND DISPUTE RESOLUTION

10.1 Each jurisdiction will monitor compliance with this MoU and non-compliance will be managed through the Regional Management Framework or subsequent arrangements to be agreed by the Parties.

10.2 The Parties agree to direct their respective officers to work cooperatively together to seek mutually acceptable resolutions.

11 AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING

11.1 Proposals for amendments to this MoU can be put forward by any Party at any time.

11.2 An amendment to this MoU will come into effect only when agreed by all Parties.

12 IMPLEMENTATION OF SPECIFIC PROJECTS

12.1 Within 12 months of the signing of this MoU, the following implementation projects will be completed by ACT.

12.1.1 ACT Water Supply Options;

12.1.2 Review of ACT Environmental Flow Guidelines;

12.1.3 Catchment Management Principles for Cotter;

12.2 Within 24 months of the signing of this MoU, the following implementation project will be completed by NSW

12.2.1 Water Management Plan for the Googong/Molonglo (including Jerrabomberra) Catchment with representation from the State, the Territory and the Commonwealth.

ACT-NSW Cross Border Water Resources Agreement

Jon Stanhope MLA
ACT Chief Minister

The Hon. Morris Iemma MP
NSW Premier, Treasurer,
Minister for Citizenship

The Hon Jim Lloyd MP
Commonwealth Minister for
Local Government, Territories
and Roads

Date

Date

Date

Witness

Witness

Witness

Name

Name

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Date

Date