



E06-101

Jon Stanhope MLA

CHIEF MINISTER

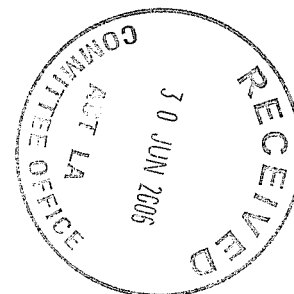
TREASURER MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT
MINISTER FOR INDIGENOUS AFFAIRS MINISTER FOR THE ARTS

MEMBER FOR GINNINDERRA

ESTIMATES 2006-2007

Select Committee on Estimates 2006

Question taken on notice on Thursday 22 June 2006



Mr Brendan Smyth asked in relation to ACTEW Corporation:

Can you provide a copy of the Deed of Agreement for the Lower Cotter Catchment Restoration?

Chief Minister: The response to the Member's question is:

A copy of the deed of Agreement for the Lower Cotter Catchment Restoration is attached.

Approved for circulation to the Select Committee on Estimates 2006.

By the Chief Minister Mr Jon Stanhope MLA

Signature:.....

Date:/...../.....

ACT LEGISLATIVE ASSEMBLY

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Lower Cotter Catchment Restoration Deed

Dated 8 June 2006

ACTEW Corporation Limited, ABN 86 069 381 960 ("ACTEW")

and

Australian Capital Territory as represented by the Chief Minister's
Department, Environment ACT, ABN 76 675 490 875 ("Environment ACT")

Mallesons Stephen Jaques
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Canberra ACT 2601

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Lower Cotter Catchment Restoration Deed

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Lower Cotter Catchment Restoration Deed

Details

Interpretation – definitions are at the end of the General terms

Parties		ACTEW and Environment ACT
ACTEW	Name	ACTEW Corporation Limited
	ABN/ACN/ARBN	86 069 381 960
	Incorporated in	Commonwealth of Australia
	Address	221 London Circuit, Canberra City, ACT, 2601
	Fax	(02) 6248 3567
	Attention	Mr Ross Knee, Principal Strategic Planner
	Email	ross.knee@actew.com.au
Environment ACT	Name	Australian Capital Territory, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth) as represented by the Chief Minister's Department, Environment ACT
	ABN/ACN/ARBN	76 675 490 875
	Address	12 Wattle Street, Lyneham, ACT, 2602
	Fax	(02) 6207 2316
	Attention	Dr Maxine Cooper, Executive Director, Arts Heritage and Environment
	Email	maxine.cooper@act.gov.au
Recitals	A	As a result of damage caused by the January 2003 bushfires, the parties have identified a need to accelerate restoration work in the Lower Cotter Catchment. Works in the Lower Cotter Catchment impact on the quality and quantity of water available to ACTEW for supply to consumers.
	B	The parties have agreed that, subject to this deed, ACTEW will fund and participate in the coordination of restoration work in the Lower Cotter Catchment in accordance with a jointly developed plan.

- C** This deed does not commit ACTEW to expend funds on restoration work but, instead, sets out the processes that the parties have agreed to follow in order to identify and agree on works that ACTEW may wish to fund and/or undertake.

Business Day Canberra
place(s)

Governing law Australian Capital Territory

Date of deed See Signing page

Lower Cotter Catchment Restoration Deed

General terms

1 Consideration

This deed is entered into in consideration of the parties incurring obligations and giving rights under this deed and for other valuable consideration.

2 Term

This deed begins on the date it is signed by the parties and continues until terminated in accordance with its terms.

3 ACTEW tasks

ACTEW will undertake the tasks set out in Schedule 1 for the purpose of allowing it to decide whether to fund restoration works in the Lower Cotter Catchment which may impact on the quality and quantity of water which ACTEW may supply to consumers and, where it does decide to fund such works, for the purpose of advancing the undertaking of them.

4 Environment ACT tasks

Environment ACT will undertake the tasks set out in Schedule 2 for the purposes of assisting ACTEW to decide whether it will fund restoration work in the Lower Cotter Catchment and supporting ACTEW's participation in the coordination of those restoration works that ACTEW agrees to fund.

5 Statutory Authorities

The parties acknowledge that nothing in this deed limits or diminishes the ability of the:

- (a) Environment Protection Authority, established by section 11 of the *Environment Protection Act 1997* (ACT);
- (b) the Conservator of Flora and Fauna, established pursuant to the *Nature Conservation Act 1980* (ACT); or
- (c) the Emergency Services Authority, established pursuant to the *Emergencies Act 2004* (ACT),

to carry out their statutory functions or exercise their powers as set out in any relevant legislation.

6 ACTEW obligation to fund restoration work

Nothing in this deed commits ACTEW to expend any, or any particular amount of, funds on restoration work in the Lower Cotter Catchment or elsewhere.

7 Commencement of work - agreement to scope and ICRC approval

The parties agree that nothing in this deed places ACTEW under any obligation to commence or undertake work in the Lower Cotter Catchment. However, ACTEW may agree to commence or undertake work in the Lower Cotter Catchment, which it has agreed to wholly or partially fund, where:

- (a) the parties have agreed all details about the work to be undertaken by ACTEW in the Lower Cotter Catchment, including but not limited to:
 - (i) the scope of the works, if any;
 - (ii) arrangements, including in relation to title of works, for any jointly funded or jointly undertaken activities;
 - (iii) arrangements for funding the future operation and maintenance of any works undertaken under or in connection with this deed; and
 - (b) the ICRC has approved (or is likely to approve), to ACTEW's reasonable satisfaction, a scheme or method for ACTEW to recover:
 - (i) any funds that ACTEW anticipates it would expend or any amount that it does expend; and
 - (ii) any interest payments or other charges associated with ACTEW borrowing such funds,
- for or in relation to works under or in connection with this deed.

8 Works and other activities

8.1 Title in new works

Title in any completed new works in the Lower Cotter Catchment funded solely by ACTEW will vest in Environment ACT at the end of the Term. Title in any new works that are uncompleted at the end of the Term will vest in Environment ACT upon completion of those works or, if this deed is terminated by ACTEW pursuant to clause 17.1(b), upon termination. Unless this deed is terminated by ACTEW pursuant to clause 17.1(b), ACTEW must complete new works uncompleted at the end of the Term and the deed applies to the extent necessary, to and in respect of the completion of those works. For the purposes of this clause, completion means the final

undertaking of all new works agreed to be funded solely by ACTEW. This clause 8.1 survives the termination or expiry (for whatever reason) of the deed.

Note: this clause would apply where, for example, ACTEW agreed to wholly fund the construction of a new bridge in the Lower Cotter Catchment.

8.2 Jointly funded new works

Where the parties are considering undertaking jointly funded new works, the parties agree to negotiate in good faith and document all arrangements, including in relation to title and (if applicable) the timing of transfer of title, prior to work on such jointly funded new works commencing.

Note: this clause would apply where, for example, ACTEW and Environment ACT agree to jointly fund the construction of a new bridge in the Lower Cotter Catchment.

8.3 Upgrades or maintenance in respect of pre-existing assets

Unless otherwise agreed in writing between the parties:

- (a) nothing in this deed affects the title in any pre-existing assets in the Lower Cotter Catchment which ACTEW may agree to upgrade or maintain under or in connection with this deed;

Note: this clause would apply where, for example, ACTEW agreed to upgrade an existing road, or maintain existing erosion control barriers, owned by Environment ACT in the Lower Cotter Catchment.

- (b) where ACTEW is, or both parties jointly are, considering undertaking upgrades to or maintenance of pre-existing assets, the parties will negotiate in good faith and document all arrangements prior to such work commencing; and
- (c) nothing in this deed places ACTEW under any obligation to continue to maintain or to further upgrade pre-existing assets in the Lower Cotter Catchment once ACTEW has completed any initially agreed upgrade or maintenance of such assets.

Note: for example, if ACTEW agreed to upgrade an existing road in the Lower Cotter Catchment, nothing in this deed would oblige ACTEW to continue to maintain that road after ACTEW had completed the initially agreed task.

8.4 Maintenance of new works

ACTEW is responsible for all costs associated with maintaining new works completed or to be completed pursuant to this deed that are or are to be funded solely by ACTEW, until they vest in Environment ACT. Responsibility for costs associated with maintaining any new works jointly

funded by ACTEW and Environment ACT shall, until they vest in Environment ACT, be borne by ACTEW and Environment ACT in the same proportions as they contribute to that funding.

8.5 Undertaking other activities

Where ACTEW is, or both parties jointly are, considering undertaking other activities in the Lower Cotter Catchment (that is, activities that do not involve the creation or maintenance of assets), the parties agree to negotiate in good faith and document all arrangements prior to such activities commencing.

Note: for example, ACTEW may agree to fund and/or conduct weed removal or revegetation activities in the Lower Cotter Catchment in order to improve the quality and quantity of water available to ACTEW for supply to consumers.

8.6 Contracts entered into under or in connection with this deed

ACTEW is responsible for all its costs associated with negotiating, managing and complying with its obligations under any contracts entered into by it under or in connection with this deed, unless otherwise agreed by Environment ACT.

8.7 Environment ACT People's access to works

ACTEW agrees to provide Environment ACT's People with reasonable access to any works undertaken under or in connection with this deed, except if in ACTEW's opinion the provision of such access to the works could expose any of Environment ACT's People to unreasonable danger or result in ACTEW breaching any of its obligations under law. The parties must agree to procedures for notifying Environment ACT's People in relation to any dangers in relation to accessing works, and must do so before such access is provided. Environment ACT indemnifies ACTEW against any liability to any of Environment ACT's People arising from exercise of the right of access under this clause, except to the extent that such liability is due to negligence on the part of ACTEW.

8.8 Control of contractors

The parties agree that, where ACTEW has let a contract under or in connection with this Deed (or is otherwise responsible for contractors' activities), only ACTEW may direct contractors in the performance of those contracts.

9 Subsequent works

9.1 Subsequent works affecting ACTEW works

Subject to clause 9.2, the parties agree that, where restoration work has been undertaken in the Lower Cotter Catchment under or in connection with this deed, Environment ACT will not, and will use its best endeavours to ensure

that other parties do not, subsequently undertake any action, or omit to take any action, where to do so may adversely impact on the quality or quantity of water that ACTEW might otherwise draw from the Lower Cotter Catchment for supply to consumers.

9.2 Environment ACT to liaise with ACTEW about subsequent works

The parties acknowledge that, in the future, it may be necessary or desirable to undertake works that might have an adverse impact on the quality or quantity of water that ACTEW might otherwise draw from the Lower Cotter Catchment for supply to consumers.

If such circumstances arise, Environment ACT agrees to liaise with ACTEW, and take account of ACTEW's views, as soon as practicable after becoming aware of any the need for or desirability of such future works. If such future works would adversely affect the capacity of works undertaken in accordance with this deed to beneficially impact the quality or quantity of water that ACTEW might otherwise draw from the Lower Cotter Catchment, Environment ACT will not undertake those works until an operational plan has been agreed between the parties to this deed and, while it remains in existence, by the Lower Cotter Catchment Management Group referred to in Schedules 1 and 2.

This clause survives termination or expiry (for whatever reason) of the deed.

10 Environmental authorisation

10.1 Works to be undertaken in accordance with environmental authorisation

To the extent required by law, ACTEW must ensure that any works undertaken under or in connection with this deed are in accordance with the environmental authorisation issued to it by the Environment Protection Authority under the *Environment Protection Act 1997* (ACT). If at any stage the terms of such an environmental authorisation are not acceptable to ACTEW, it is not bound to proceed with the works to which that authorisation relates notwithstanding that it may previously have agreed to fund those works.

10.2 Liability for breach of environmental authorisation

Environment ACT will not be liable for any loss or damage caused by ACTEW breaching its environmental authorisation in the course of ACTEW carrying out its obligations under this deed, or any contracts entered into in connection with this deed, except to the extent that such breach has been caused or contributed to by the negligence or default of Environment ACT.

11 Rights in land and access

11.1 Rights in land not affected

Subject to the contrary intention appearing in this deed, nothing in this deed affects existing rights in land, or responsibilities for land management, in the Lower Cotter Catchment.

11.2 Environment ACT to organise access

Environment ACT agrees to organise all permissions, consents and approvals necessary or desirable for ACTEW and ACTEW's People to access land in the Lower Cotter Catchment for the purpose of restoration work under or in connection with this deed.

12 Confidentiality

12.1 Announcements and releases

A party may not make press or other announcements or releases relating to this deed and the transactions the subject of this deed without the approval of the other party as to the form and manner of the announcement or release unless and to the extent that the announcement or release is required to be made by the party by law.

12.2 No disclosure of terms of this deed

Except as otherwise agreed or duly required by:

- (a) law;
- (b) any regulatory authority;
- (c) the Australian Capital Territory Legislative Assembly or its committees; or
- (d) for a purpose reasonably necessary for the protection of public revenue,

no party will disclose the terms of this deed to any person other than its employees, accountants, auditors, financial advisers or legal advisers on a confidential basis. This clause survives termination or expiry (for whatever reason) of the deed.

13 Goods and services tax (GST)

13.1 Consideration does not include GST

The consideration specified in this agreement does not include any amount for GST.

13.2 Recovery of GST

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

13.3 Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

13.4 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

13.5 Reimbursement

If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

14 Liability and indemnity

14.1 General principle

Except to the extent expressly set out in this deed, this clause 14 will regulate the Liability of one party to the other party under and in relation to this deed.

14.2 General exclusion

Unless otherwise specified in this deed, to the extent permitted by law, a party ("**first party**") excludes all liability in tort (including negligence), contract, statute or otherwise for any Loss, incurred by the other party or a third party in connection with any act or omission by the first party under or in relation to this deed.

14.3 Exclusion of consequential damages, etc

Except as otherwise expressly provided in this clause 14, a party ("**first party**") has no Liability to the other party:

- (a) for or in respect of any consequential, special or indirect Loss arising from an act or omission of the first party; or
- (b) for or in relation to any act or omission of, or any matter arising from or consequential upon any act or omission of, any third person not under the direct control of the first party.

14.4 Death or injury

Each party indemnifies the other party against all Loss directly and reasonably incurred by the other party as a result of a claim against it arising

out of a death of or personal injury to the People of the Indemnified Party, to the extent that such Loss is caused by a negligent act or omission or an act or omission intended to cause death or personal injury, by the Indemnifying Party or any of the Indemnifying Party's People.

14.5 Intentional or negligent property damage

Each party indemnifies the other party against all Loss (including consequential, special or indirect Loss) arising from or relating to any damage to or loss of any equipment or other tangible property of the Indemnified Party or any third party to the extent that such Loss is caused by a negligent act or omission or an act or omission intended to cause Loss by the Indemnifying Party or any of its People.

14.6 Other property damage

Each party indemnifies the other party against all Loss directly and reasonably incurred in relation to making good any damage to or loss of equipment, facilities or other tangible property of the Indemnified Party to the extent that such damage or loss is caused by any act or omission of the Indemnifying Party or any of its People.

14.7 Negligence - third party claims

Each party indemnifies the other party against all Loss arising directly from or incurred in connection with a claim by a third party against the Indemnified Party to the extent that the claim relates to any negligent act or omission of the Indemnifying Party or any of its People in relation to this deed.

14.8 Mitigation

The Indemnified Party must take all reasonable steps to minimise the Loss it has suffered or is likely to suffer as a result of the Event giving rise to an indemnity under this clause 14. If the Indemnified Party does not take reasonable steps to minimise such Loss then the damages payable by the Indemnifying Party will be reduced as is appropriate in each case.

14.9 Apportionment - indemnity

The Indemnifying Party is not obliged to indemnify the Indemnified Party under this clause 14 to the extent that the Loss the subject of the indemnity claim is the direct result of a breach of this deed, or a negligent act or omission, by the Indemnified Party.

14.10 Contribution

A party's liability ("first party") to the other party for loss or damage of any kind arising out of this deed or in connection with the relationship established by it is reduced to the extent (if any) that the other party causes or contributes to the loss or damage. This reduction applies whether the first party's liability is in contract, tort (including negligence), under any statute or otherwise.

15 Insurance

15.1 ACTEW to have insurance

ACTEW will arrange and maintain with a reputable insurance company public liability insurance to a value of fifty million dollars that is:

- (a) effective from before works commence in the Lower Cotter Catchment until a time 7 years following completion of the works, or transfer of title to Environment ACT (whichever is the latter); and
- (b) covers any reasonably foreseeable risk or liability in relation to works being conducted in the Lower Cotter Catchment under or in connection with this deed.

15.2 ACTEW's contractors to have insurance

ACTEW will ensure that any contractor it engages to undertake work under or in connection with this deed will arrange and maintain with a reputable insurance company all relevant insurance, including the following types and amounts of insurance:

- (a) worker's compensation insurance to the extent required by any law of the Commonwealth or of the Territory;
- (b) unless otherwise agreed by ACTEW and Environment ACT, public liability insurance to a value of twenty million dollars; and
- (c) comprehensive insurance for vehicles and plant.

16 Dispute resolution

16.1 Procedures

The parties agree to use their best endeavours to resolve in good faith any dispute or claim concerning this deed. Each party must follow the procedures in this clause 16 before starting any legal proceedings (except for urgent injunctive or declaratory relief).

16.2 Dispute resolution at operational level and formal disputes

If a dispute or claim arises between the parties that cannot be resolved promptly between the people in each organisation responsible for the day-to-day management of activities under this deed, either party may notify the other party of a formal dispute. The parties must each nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute within 20 Business Days of receipt of the notice.

16.3 Mediation

If the dispute remains unresolved following the procedure in clause 16.2, either party may give the other party a written proposal to resolve the matter by mediation.

17 Termination

17.1 Right to terminate

Either party has the right to terminate this deed by notice in writing to the other party, whether immediately or at a later date specified therein, if:

- (a) the other party becomes Insolvent;
- (b) the other party commits a breach of this deed; and
 - (i) the breach is material and not capable of being cured; or
 - (ii) the breach is capable of being cured and the defaulting party fails to cure the breach within 20 Business Days of being notified in writing of the breach by the party giving the notice.
- (c) a statutory authority or other instrumentality is formed by the ACT Government for the purpose of, or is given the task of, managing all or part of the Lower Cotter Catchment.

17.2 Termination without cause

Either party may terminate this deed without cause on 3 months' written notice to the other party.

17.3 Notice

A notice given under clause 17.1 ("Right to terminate") must specify the event or events in relation to which the notice is given.

18 Change in current responsibilities for Catchment

The parties agree that, in the event that there is a change in the current arrangements for managing the Lower Cotter Catchment (including but not limited to the forming of a statutory authority or other instrumentality responsible for land or water management in the Catchment), the parties will meet within 20 Business Days and negotiate in good faith any necessary changes to, or termination of, this deed.

19 Contractors

The parties agree that the contract under which any contractor is engaged by either of them for the purpose of restoration work in the Lower Cotter Catchment will require the contractor to act consistently with this deed or with arrangements agreed between the parties under or in connection with this deed.

20 Audit

Subject to clause 12 ("Confidentiality"), each party agrees, at its own cost, to provide reasonable assistance to the other party to enable the other party to meet any audit obligations which it may have in connection with this deed. In this clause, "reasonable assistance" is limited to providing access to documents and personnel.

21 No partnership, etc

Nothing contained or implied in this deed constitutes a party the partner, agent, or legal representative of another party for any purpose or creates any partnership, agency or trust, and no party has any authority to bind another party in any way.

22 Notices and other communications

22.1 Form - all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

22.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 22.1 ("Form - all communications"). However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

22.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post to the address set out or referred to in the Details; or
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) sent by email to the address set out or referred to in the Details; or

- (e) given in any other way permitted by law.

However, if the intended recipient has notified a changed address, fax number or email address, then communications must be to that address, fax number or email address.

22.4 When effective

Communications take effect from the time they are received or taken to be received under clause 22.5 (“When taken to be received”) (whichever happens first) unless a later time is specified.

22.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting; or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

22.6 Receipt outside business hours

Despite clauses 22.4 (“When effective”) and 22.5 (“When taken to be received”), if communications are received or taken to be received under clause 22.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

23 Assignment and novation

A party may not assign, novate or otherwise deal with its rights under this deed or allow any interest in them to arise or be varied in each case, without the consent of the other party which consent must not be unreasonably withheld.

24 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

25 No representations or warranties

Each party acknowledges that in entering into this deed it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this deed.

26 General

26.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

26.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

26.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed.

26.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval beyond any warranty or representation otherwise required or implied at law.

26.5 Remedies cumulative

The rights and remedies provided in this deed are in addition to other rights and remedies given by law independently of this deed.

26.6 Rights and obligations are unaffected

Rights given to the parties under this deed and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

26.7 Variation and waiver

A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

26.8 Indemnities

The indemnities in this deed are continuing obligations, independent from the other obligations of the parties under this deed and continue after this deed ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this deed.

26.9 Further steps

Each party agrees, at its own expense, to do anything the other party reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this deed; and
- (b) to show whether the party is complying with this deed.

26.10 Prompt performance

If this deed specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

26.11 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

26.12 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this deed and other related documentation except for stamp duty.

26.13 Stamp duty

A party requiring this deed to be stamped agrees to:

- (a) pay all stamp duty (including fines and penalties) payable and assessed by legislation or by any revenue office on this deed, on any instruments entered into under this deed, and in respect of a transaction evidenced by this deed; and
- (b) on demand, indemnify the other party against any liability for that stamp duty (including fines and penalties).

27 Governing law

27.1 Governing law

This deed is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

27.2 Serving documents

Without preventing any other method of service, any document in an action may be served on a party by being delivered or left at that party's address in the Details.

28 Interpretation

28.1 Definitions

These meanings apply unless the contrary intention appears:

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

Authorised Officer means a person appointed by a party to act as an Authorised Officer for the purposes of this deed.

Business Day means a day other than a Saturday, Sunday or public holiday in the place or places set out in the Details under "Business Day place(s)".

Details means the section of this deed headed "Details".

Event means an act, omission or event relating to or arising out of this deed or part of this deed.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

GST has the meaning it has in the GST Act.

GST exclusive market value has the meaning it has in the GST Act.

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

ICRC means Independent Competition and Regulatory Commission, established under the *Independent Competition and Regulatory Commission Act 1997* (ACT).

Indemnified Party means the party receiving the benefit of an indemnity under this deed.

Indemnifying Party means the party giving an indemnity under this deed.

Input Tax Credit has the meaning it has in the GST Act.

Liability (of a party) means any liability of that party (whether in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) under or in relation to this deed, or part of this deed or in relation to any Event or series of related Events.

Loss means loss, Liability, award, charge, cost, damage, expense or judgement (including legal costs).

Lower Cotter Catchment means the water catchment of the Cotter Dam, downstream of Bendora Dam but excluding that area covered by the Namadgi National Park (see Schedule 3).

Note - see clause 28.4.

People of a party, means each of that party's directors, officers, employees, agents, contractors, advisers and representatives.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

Tax Invoice has the meaning it has in the GST Act.

Work Program is defined in Schedule 1 of this deed.

28.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) **(variations or replacement)** a document (including this deed) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

28.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

28.4 Notes

Notes (appearing in italics) in this deed are provided for explanatory and/or illustrative purposes only. They do not affect the interpretation of this deed.

EXECUTED as a deed

Lower Cotter Catchment Restoration Deed

Schedule 1 - ACTEW tasks

ACTEW agrees to undertake the following:

- (a) within 7 Business Days of execution of this deed, ACTEW will appoint an officer of an appropriate level of seniority, and with appropriate skills and experience, to a Lower Cotter Catchment Management Group (“**LCCMG**”) that will be constituted by:
 - (i) that officer,
 - (ii) an officer of Environment ACT appointed under Schedule 2,
 - (iii) an officer of an appropriate level of seniority and possessing appropriate skills and experience from the Environment Protection Authority (“**EPA**”),
 - (iv) an officer of an appropriate level of seniority and possessing appropriate skills and experience from the Emergency Services Authority (“**ESA**”); and
 - (v) other agency representatives as agreed by the parties;
- (b) through its membership of the LCCMG and in accordance with the rules of conduct set out in Item 1 Attachment A, ACTEW will cooperate with the other LCCMG members to:
 - (i) develop and approve those parts of the longer-term Lower Cotter Catchment Strategic Management Plan (“**Management Plan**”) developed by Environment ACT that deals with restoration work in the Lower Cotter Catchment;
 - (ii) develop, confirm and promote the overall objectives of restoration work in the Lower Cotter Catchment;
 - (iii) define levels of responsibility, accountability and contractual frameworks for restoration work under this deed;
 - (iv) consider and, as appropriate, approve annual Work Programs (“**Work Programs**”) developed by the Program Management Group (“**PMG**”);
 - (v) consider and, as appropriate, approve proposed changes to annual Work Programs;
 - (vi) consider and, as appropriate, approve the issuing of proposed tenders prepared by the PMG for undertaking restoration work;

- (vii) develop communication plans (including managing media and community events) in connection with work under this deed;
 - (viii) coordinate briefings, to be provided at least every 6 months, for key stakeholders (who are to be identified in conjunction with Environment ACT, but will include the Chief Minister's ACT Water Supply Catchment Management Group, or any group that replaces it or has responsibility for catchment management in the Lower Cotter Catchment);
 - (ix) as necessary, ensure that the appropriate procedures are in place to receive and account for funds and other resources allocated for restoration work under or in connection with this deed; and
 - (x) monthly reporting of progress to the parties;
- (c) within 7 Business Days of execution of this deed, ACTEW will appoint one officer or a nominated officer from Ecowise, of an appropriate level of seniority with appropriate skills and experience, to a PMG that will be constituted by:
- (i) that officer or nominated Ecowise officer,
 - (ii) an officer of Environment ACT appointed under Schedule 2,
 - (iii) such officers with the appropriate level of seniority and possessing appropriate skills from EPA or ESA as are agreed by the parties, and
 - (iv) other agency representatives as agreed by the parties;
- (d) through its membership of the PMG and in accordance with the rules of conduct set out in Item 2 Attachment A, ACTEW will cooperate with other PMG members to:
- (i) develop Work Programs which set out the restoration work that will be carried out in the Lower Cotter Catchment. Work Programs are to include, at a minimum:
 - (A) a detailed scope of work;
 - (B) details of responsibilities and costings for proposed work, including whether a particular element of work will be undertaken and/or funded by ACTEW, Environment ACT, jointly by both parties or in accordance with some other arrangement; and
 - (C) as required, allocation of areas of responsibility within the Lower Cotter Catchment where various parties, including ACTEW and Environment ACT, have primary responsibility for particular restoration works;
 - (ii) submit the Work Programs to the LCCMG for approval;

- (iii) implement LCCMG approved Work Programs including, but not limited, by:
 - (A) organising for ACTEW and/or Environment ACT staff to undertake restoration work;
 - (B) drafting, and submitting to LCCMG for approval, tenders for restoration work;
 - (C) issuing LCCMG approved requests for tender and considering responses; and/or
 - (D) negotiating works contracts with successful tenderers and, subject to LCCMG approval, awarding contracts;
- (iv) at the request of Environment ACT, consider, and as appropriate propose to LCCMG, changes to Work Programs;
- (v) monitor, and report monthly to LCCMG against the progress of restoration work under approved Work Programs;
- (e) ACTEW will not commence activities in the Lower Cotter Catchment without first checking to ensure that Environment ACT has confirmed (or otherwise) that all necessary consents and approvals have been obtained;
- (f) ACTEW will, in accordance with the deed, provide funding approved by ACTEW for restoration work in the Lower Cotter Catchment;
- (g) ACTEW will seek and gain ICRC approval (to ACTEW's reasonable satisfaction) for cost recovery of any funds that would be expended by ACTEW or its People as part of a Work Program, and may do so before agreeing to undertake (or commencing) any restoration work;
- (h) subject to this deed, and any other relevant obligations of confidence or privacy, ACTEW will share with LCCMG, the PMG and Environment ACT information that is reasonably necessary to enable restoration work in the Lower Cotter Catchment under or in connection with this deed;
- (i) ACTEW will cover any costs associated with the PMG seeking additional technical assistance which is considered to be necessary and approved by the LCCMG for it to carry out its obligations under this deed.

Lower Cotter Catchment Restoration Deed

Schedule 2 - Environment ACT tasks

Environment ACT agrees to undertake the following:

- (a) within 7 Business Days of execution of this deed, Environment ACT will appoint an officer of an appropriate level of seniority, with appropriate skills and experience, to a Lower Cotter Catchment Management Group (“**LCCMG**”), as constituted by the officers set out in Item (a) Schedule 1;
- (b) through its membership of the LCCMG and in accordance with the rules of conduct set out in Item 1 Attachment A, Environment ACT will cooperate with the other LCCMG members to:
 - (i) develop and approve those parts of the Management Plan developed by Environment ACT that deal with restoration work in the Lower Cotter Catchment;
 - (ii) develop, confirm and promote the overall objectives of restoration work in the Lower Cotter Catchment;
 - (iii) define levels of responsibility, accountability and contractual frameworks for restoration work under this deed;
 - (iv) consider and, as appropriate, approve Work Programs developed by the PMG;
 - (v) consider and, as appropriate, approve proposed changes to annual Work Programs;
 - (vi) consider and, as appropriate, approve the issuing of proposed tenders prepared by the PMG for undertaking restoration work;
 - (vii) approve communication plans (including managing media and community events) in connection with work under this deed;
 - (viii) coordinate briefings, to be provided at least every 6 months, for key stakeholders (who are to be identified in conjunction with ACTEW, but will include the Chief Minister’s ACT Water Supply Catchment Management Group, or any group that replaces it or has responsibility for catchment management in the Lower Cotter Catchment);
 - (ix) as necessary, ensure that the appropriate procedures are in place to receive and account for funds and other resources allocated for restoration work under or in connection with this deed; and
 - (x) monthly reporting of progress to the parties;
- (c) within 7 Business Days of execution of this deed, Environment ACT will appoint one officer of an appropriate level of seniority, with appropriate skills

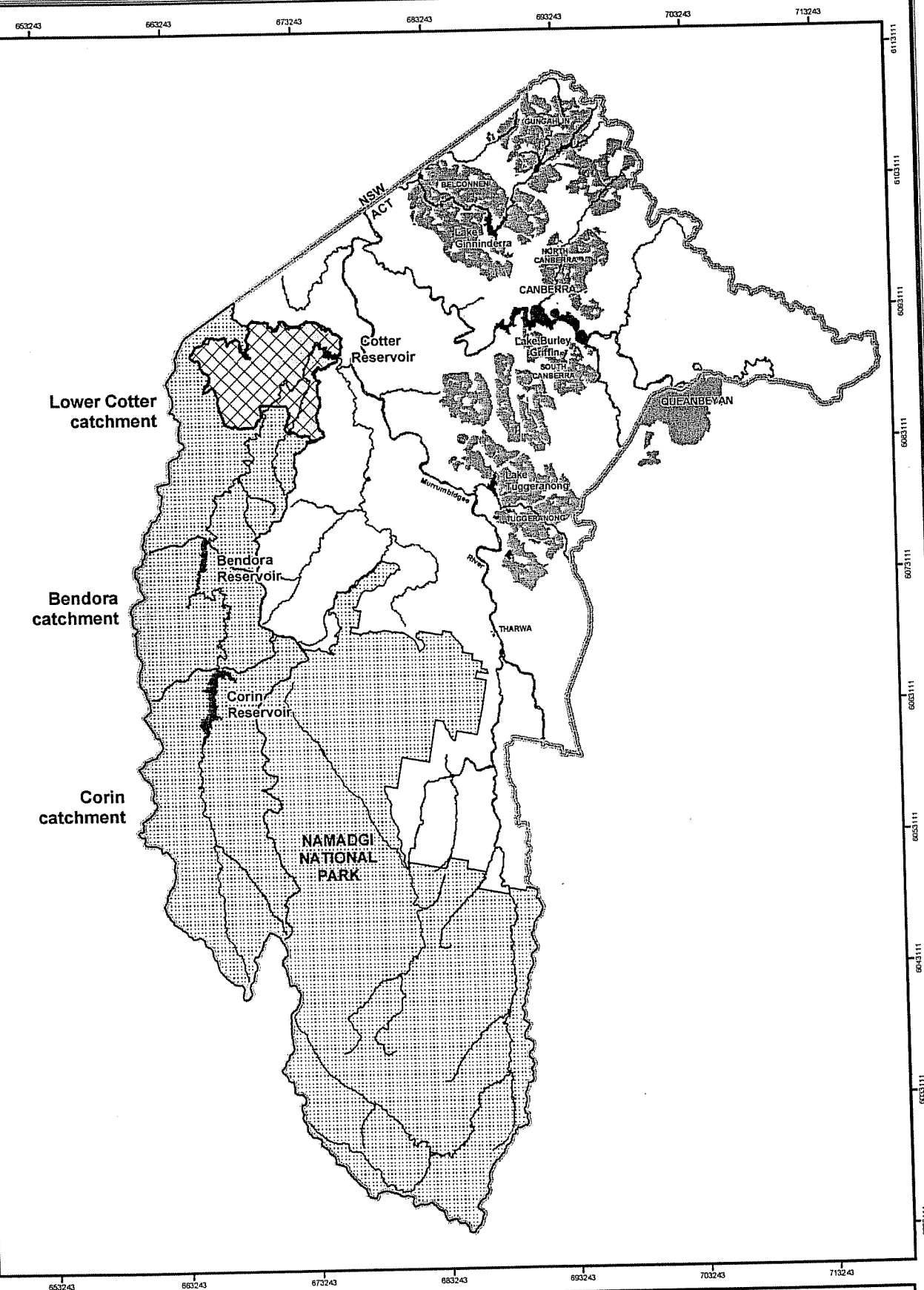
and experience, to a PMG that will be constituted by the officers set out in Item (c) Schedule 1;

- (d) through its membership of the PMG and in accordance with the rules of conduct set out in Item 2 Attachment A, Environment ACT will cooperate with other PMG members to:
 - (i) develop Work Programs which set out the restoration work that will be carried out in the Lower Cotter Catchment. Work Programs are to include, at a minimum:
 - (A) a detailed scope of work;
 - (B) details of responsibilities and costings for proposed work, including whether a particular element of work will be undertaken and/or funded by ACTEW, Environment ACT, jointly by both parties or in accordance with some other arrangement; and
 - (C) as required, allocation of areas of responsibility within the Lower Cotter Catchment where various parties, including ACTEW and Environment ACT, have primary responsibility for particular restoration works;
 - (ii) submit the Work Programs to the LCCMG for approval;
 - (iii) implement LCCMG approved Work Programs including, but not limited, by:
 - (A) organising for Environment ACT and/or ACTEW staff to undertake restoration work;
 - (B) drafting, and submitting to LCCMG for approval, tenders for restoration work;
 - (C) issuing LCCMG approved requests for tender and considering responses; and/or
 - (D) negotiating works contracts with successful tenderers and, subject to LCCMG approval, awarding contracts;
 - (iv) consider, at the request of ACTEW, and as appropriate propose to LCCMG, changes to Work Programs;
 - (v) monitor, and report monthly to LCCMG against, the progress of restoration work under approved Work Programs;
- (e) Environment ACT will organise, and confirm with ACTEW prior to ACTEW or its People commencing any activities in the Lower Cotter Catchment, that all necessary permits, consents and approvals have been obtained;
- (f) Environment ACT will, in accordance with this deed, provide funding for restoration work in the Lower Cotter Catchment;

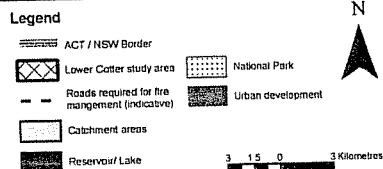
- (g) Environment ACT will fund the operation of LCCMG and PMG (other than staff costs and costs referred to in Schedule 1, item (i)), including the administrative, planning and management functions of those bodies under this deed ; and
- (h) subject to this deed, and any other relevant obligations of confidence or privacy, Environment ACT will share with LCCMG, the PMG and ACTEW information that is reasonably necessary to enable restoration work in the Lower Cotter Catchment under or in connection with this deed.

Lower Cotter Catchment Restoration Deed

Schedule 3 - Map of the Lower Cotter Catchment



Clean water Healthy landscapes **MAP 1 Cotter Catchment**



environment ACT

Ecowise Environmental

Contact Details
 Environment ACT, Macarthur House, 12 Wattle Street
 Lyneham ACT 2602
 PO Box 144 Lyneham ACT 2602
 Telephone 13 22 81
 Date: 10 May 2008
 Disclaimer: Environment ACT does not warrant that the data is free from errors.
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Lower Cotter Catchment Restoration Deed

Attachment A – Rules of conduct for LCCMG and PMG

Item 1. Rules of conduct for LCCMG

The parties acknowledge the following rules of conduct for the LCCMG:

- (1) the LCCMG will be jointly chaired by representatives from Environment ACT and ACTEW;
- (2) at least one member appointed by Environment ACT and one member appointed by ACTEW must be present at every meeting of the LCCMG;
- (3) the LCCMG will meet on a needs basis;
- (4) each member of the LCCMG is entitled to 1 vote in any decision required to be made by the LCCMG;
- (5) all decisions made by the LCCMG must be by unanimous agreement of its members; and
- (6) if the members of the LCCMG cannot reach a unanimous decision, the matter will be referred to the parties for resolution in accordance with the deed.

Item 2. Rules of conduct for PMG

The parties acknowledge the following rules of conduct for the PMG:

- (1) the PMG will be jointly chaired by representatives from Environment ACT and ACTEW, or its nominated representative from Ecowise;
- (2) at least one member appointed by Environment ACT and one member appointed by ACTEW must be present at every meeting of the PMG;
- (3) the PMG will meet on an as needed basis;
- (4) each member of the PMG is entitled to 1 vote in any decision required to be made by the PMG;
- (5) all decisions made by the PMG must be by unanimous agreement of its members;
- (6) if the members of the PMG cannot reach a unanimous decision, the matter will be referred to the LCCMG for its decision; and
- (7) the PMG may seek technical assistance from external consultants where the technical expertise of its members is not adequate but must obtain the LCCMG's agreement before entering into any negotiations or arrangements to obtain that assistance.

Lower Cotter Catchment Restoration Deed

Signing page

DATED: 9/6/2006

M. Coopers

Executive Director
Arts Heritage and Environment
ACT Government

DATED: 9/6/2006

Stephen Jaques

Managing Director
ACTEW Corporation Limited