

Queanbeyan Water Supply Agreement

Dated *16th September 2008*

Commonwealth of Australia ("Commonwealth")

State of New South Wales ("NSW")

Australian Capital Territory ("Territory")

Queanbeyan Water Supply Agreement

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Queanbeyan Water Supply Agreement

Details

Parties	Commonwealth, NSW and Territory	
Commonwealth	Name	Commonwealth of Australia
NSW	Name	State of New South Wales
Territory	Name	Australian Capital Territory
Recitals	A	By virtue of section 12(1) of the Googong Dam Act, water stored in the Googong Dam Area by means of the works constructed under that Act shall be supplied primarily and principally for use in the Australian Capital Territory.
	B	Section 12(2) of the Googong Dam Act allows the Commonwealth to enter into an agreement with NSW (subject to section 12(1)) in relation to the supply of water from the Googong Dam Area for use in a place other than the Australian Capital Territory.
	C	The Water Memorandum establishes a framework within which the parties are able to agree to the supply of ACT water to areas other than the Australian Capital Territory.
	D	On or about the date of this deed, the Commonwealth will grant or has granted the Territory a 150 year lease over the Googong Dam Leased Area.
	E	As part of the negotiations for the Googong Dam Lease and in the context of the Googong Dam Act and the Water Memorandum, it was agreed the Territory would enter into an agreement for the supply of water to the Queanbeyan City Local Government Area.
	F	This deed sets out the Territory's obligations to supply water to the Queanbeyan City Local Government Area. It also constitutes an agreement between the Commonwealth and NSW under section 12(2) of the Googong Dam Act in relation to the supply of water from the Googong Dam Area to the Queanbeyan City Local Government Area.
Governing law	Australian Capital Territory	
Date of deed	See Signing page	

Queanbeyan Water Supply Agreement

General terms

1 Definitions and Interpretation

1.1 Definitions

In this deed:

ACTEW means ACTEW Corporation Limited or any successor body with responsibility for water supply to consumers in the Australian Capital Territory.

ACT Water is defined in the Water Memorandum.

Business Day means a day other than Saturday, Sunday or a public holiday in the place where an action is to take place under this deed.

Executive has the meaning given in the *Legislation Act 2001 (ACT)*.

Existing Urban Area means the area identified on the map in Schedule 2.

Future Development means any residential, commercial or industrial development in the Queanbeyan City Local Government Area that is outside the Existing Urban Area, whether it be a new development or the extension of an existing development.

Googong Dam means the dam located in the Googong Dam Leased Area.

Googong Dam Act means the *Canberra Water Supply (Googong Dam) Act 1974 (Cth)*.

Googong Dam Area is defined in the Googong Dam Act.

Googong Dam Lease means the lease from the Commonwealth to the Territory of the Googong Dam Leased Area dated on or about the date of this deed.

Googong Dam Leased Area is the land referred to in certificate of title folio identifiers 7/592796, 1/255492 and any other land included in the Googong Dam Lease under clause 1.8 of that Lease.

Minister means the Commonwealth Minister with responsibility for the Googong Dam Act.

Murray-Darling Basin Agreement has the same meaning as "Agreement" in the *Water Act 2007 (Cth)*.

Points of Supply means the points of supply shown on the map in Schedule 3, identified as "1st QUEANBEYAN OFFTAKE" and "2nd QUEANBEYAN OFFTAKE".

Queanbeyan City Council means Queanbeyan City Council, a local council established under the *Local Government Act 1993* (NSW), or any successor body with responsibility for water supply to consumers in the Queanbeyan City Local Government Area.

Queanbeyan City Local Government Area is the area proclaimed under the *Local Government Act 1993* (NSW) as "Queanbeyan City", as at the date of this deed, and includes the areas known as the Ridgeway and Weetalabah Estates. An indicative map of the Queanbeyan City Local Government Area is set out in Schedule 1.

Service Level Agreement means an agreement entered into between ACTEW and Queanbeyan City Council for the supply of water to the Queanbeyan City Local Government Area.

Significant Development means a new industrial or commercial development, within or outside the Existing Urban Area.

water means potable water.

Water Memorandum means the Memorandum of Understanding between the parties entitled "*Australian Capital Territory and New South Wales Cross Border Water Resources 2006*".

1.2 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), replacements and assigns;

- (h) **(positions)** a particular position (including a Minister) is a reference to the person holding that position from time to time, to any re-named or successor position. If there is no successor position, the reference is to another position nominated by the relevant party;
- (i) **(calculation of time)** a period of time dating from a given day or the day of an act or event is to be calculated exclusive of that day;
- (j) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (k) **(reference to a year)** a year is to be interpreted as a calendar year;
- (l) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the *Corporations Act 2001* (Cth) or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (m) **(meaning not limited)** the words "include", "including", "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (n) **(time of day)** time is a reference to Canberra time.

1.3 Next Business Day

If an event under this deed must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.4 Headings

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

1.5 "Best Endeavours"

To avoid any doubt, any requirement in this deed that a party use its best endeavours does not require the party to introduce or have passed and commenced legislation or to make any legislative instrument.

2 Commencement and Term

2.1 Commencement and term

This deed is for a term of 150 years commencing on the date of this deed, unless terminated earlier by agreement.

This deed ends if the Googong Dam Lease ends.

If this deed ends, provision of water to the Queanbeyan City Local Government Area by the Territory will then be governed by the Water Memorandum.

2.2 Updating references

On the fifth anniversary of the date of this deed, and each subsequent 5 year period from that date, the parties will review the terms of this deed to update references to laws and documents referred to in this deed or governmental administrative arrangements affecting the operation of this deed.

Following any review undertaken in accordance with this clause, the parties will negotiate in good faith any variation to this deed to incorporate any changes required under that review.

3 Interaction with other legislation and existing agreements

3.1 Googong Dam Act

The supply of water under this deed is subject to section 12(1) of the Googong Dam Act, which provides that water stored in the Googong Dam Area by means of the works constructed under that Act shall be supplied primarily and principally for use in the Australian Capital Territory.

3.2 Agreement between Commonwealth and NSW

For the purposes of section 12(2) of the Googong Dam Act, this deed is an agreement between the Commonwealth and NSW for the supply of water from the Googong Dam Area for use in a place other than the Australian Capital Territory.

3.3 Commonwealth authorisation under Googong Dam Act

Pursuant to section 12(3) of the Googong Dam Act, the Minister authorises the Executive to exercise the Commonwealth's rights under this deed, other than the Commonwealth's rights to vary or terminate this deed under clauses 2 and 11.2.

3.4 Murray-Darling Basin allocations

The parties agree that water supplied under this deed is to be attributed against the Territory cap under the Murray-Darling Basin Agreement and *Water Act 2007* (Cth), or against any future cap on, or allocation of water to, the Territory from the Murray-Darling Basin and not from any NSW cap or allocation.

The parties will use their best endeavours to give effect to this clause.

3.5 Water Memorandum

Clause 5 of the Water Memorandum ("Existing supply of ACT water to New South Wales") ceases to have effect during the term of this deed.

If there is any inconsistency between this deed and clauses 6 and 8 of the Water Memorandum (“Additional supply of ACT water to NSW”), this deed prevails to the extent of the inconsistency.

3.6 Service Level Agreements

ACTEW and Queanbeyan City Council have entered into a Service Level Agreement dated 8 January 2002 for the supply of water to the Queanbeyan City Council.

The Territory will use its best endeavours to have ACTEW enter into new Service Level Agreements with Queanbeyan City Council over the life of this deed, that are consistent with this deed.

NSW will use its best endeavours to have Queanbeyan City Council enter into new Service Level Agreements with ACTEW over the life of this deed, that are consistent with this deed.

The Territory and NSW will use their best endeavours to have ACTEW and Queanbeyan City Council respectively agree a dispute resolution process to apply if they are having difficulty agreeing the prices to be paid under the Service Level Agreement, and incorporate that process into the Service Level Agreement. The Territory and NSW will use their best endeavours to have ACTEW and Queanbeyan City Council respectively comply with that procedure.

The parties acknowledge that Significant Developments may trigger requirements under the Murray-Darling Basin Agreement or the *Water Act 2007* (Cth) (“**Cap Requirements**”). Accordingly, the Territory may decide that ACTEW will purchase water from outside the Australian Capital Territory to supply a Significant Development. In that case, the price charged to the Queanbeyan City Council will include the price paid for that water.

NSW will use its best endeavours to ensure the Territory is notified of any proposed Significant Development early in the process, to enable appropriate arrangements to be made consistent with the Cap Requirements. The parties will agree the arrangements for the provision of water to any Significant Development, before proceeding with that development.

4 Supply of water for the Existing Urban Area

4.1 Territory agrees to supply water

The Territory agrees to supply water for the Existing Urban Area.

Water will be supplied:

- (a) for the needs of the current and future population of the Existing Urban Area;
- (b) from water sources in the Australian Capital Territory, Googong Dam or other water sources, as determined by the Territory from time to time;

- (c) pursuant to a Service Level Agreement between ACTEW and Queanbeyan City Council as described in clause 3.6; and
- (d) otherwise on the terms of this deed.

5 Supply of water for Future Developments

5.1 Territory agrees to supply water

Subject to clause 5.2, the Territory agrees to supply water for Future Developments in the Queanbeyan City Council Local Government Area in accordance with clauses 4.1(b), (c) and (d), if the Future Development is approved by the NSW Minister for Planning or Queanbeyan City Council, as appropriate, and that the relevant consent authority determines that each Future Development is consistent with the Sydney-Canberra Corridor Regional Strategy and the Memorandum of Understanding on ACT and NSW Cross Border Region Settlement.

Supply of water is subject to the parties obtaining any necessary approvals for the proposed water supply arrangements and infrastructure (such as environmental approvals).

5.2 Increased costs

The Territory and ACTEW will not be responsible for increased capital or operating costs to supply water for Future Developments, including the cost of augmentation of existing facilities or networks.

These costs will be borne by the Queanbeyan City Council or the developer.

6 Commonwealth agreement and costs

6.1 Agreement

The Commonwealth agrees to the supply of water from the Googong Dam Area for use in the Queanbeyan City Local Government Area in accordance with this deed.

6.2 Costs

The Commonwealth is not responsible for any costs arising out of this deed, including capital or operating costs, and any increases in those costs as a result of this deed.

7 Water supply pipes and infrastructure

7.1 Water supply to border

The parties acknowledge that the Territory will supply water to the Points of Supply near the New South Wales border. It is the responsibility of NSW and the Queanbeyan City Council to deliver the water to consumers in the Queanbeyan City Local Government Area.

7.2 Responsibility for infrastructure

The Territory and/or ACTEW own or lease, and are responsible for the maintenance, repair and security of:

- (a) the infrastructure at Googong Dam (including the Googong pump station and water treatment plant) and each Point of Supply;
- (b) the pipes (and related infrastructure) from Googong Dam to each Point of Supply; and
- (c) the pipes (and related infrastructure) from each Point of Supply to ACTEW's network across the border,

as indicated on the map in Schedule 3.

Subject to the balance of this clause, NSW and/or the Queanbeyan City Council own and are responsible for all pipes and related infrastructure on the other side of each Point of Supply (past the offtake valves on each Point of Supply).

7.3 Co-operation on infrastructure for Future Developments

The parties will co-operate in good faith to facilitate approval and construction, operation and maintenance of any new water infrastructure required to secure future water supplies.

8 Water restrictions and other requirements

The supply of water under this deed by the Territory will be subject to:

- (a) Queanbeyan City Council imposing in the Queanbeyan City Local Government Area:
 - (i) the same water restrictions on consumers of water in force in the Australian Capital Territory from time to time, in accordance with the Service Level Agreement; and
 - (ii) any other requirements on consumers of water (including permanent water conservation measures) that apply in the Australian Capital Territory and are notified by the Territory to Queanbeyan City Council from time to time;
- (b) Queanbeyan City Council introducing comparable water demand management initiatives as are in force in the Australian Capital Territory from time to time;
- (c) Queanbeyan City Council taking reasonable steps to enforce the water restrictions, other requirements and initiatives referred to in clauses 8(a) and (b); and
- (d) Queanbeyan City Council paying ACTEW in accordance with the Service Level Agreement or as otherwise contemplated by this deed.

The Territory will liaise with NSW and the Queanbeyan City Council to assist NSW and the Queanbeyan City Council to implement water restrictions (and any other requirements) in compliance with this clause.

9 Payment for water supply

The price for water supply will be agreed between ACTEW and Queanbeyan City Council as part of the negotiation of the Service Level Agreements as described in clause 3.6.

10 Dispute resolution

10.1 Dispute notice

A party may give another party or parties notice that a dispute has arisen under or in connection with this deed ("**Dispute Notice**").

10.2 Escalation

The dispute must be referred initially to the following representatives of the relevant parties involved in the dispute:

- (a) in the case of the Commonwealth - the First Assistant Secretary, Territories and Native Title Division of the Attorney-General's Department;
- (b) in the case of NSW - the Director General of the NSW Department of Water and Energy; and
- (c) in the case of the Territory - the Chief Executive of the Chief Minister's Department,

who will endeavour to resolve the matter within 15 Business Days of receipt of the Dispute Notice or any other agreed period.

If the relevant parties do not resolve the dispute within that time, the dispute must be referred to the following representatives of the relevant parties involved in the dispute:

- (d) in the case of the Commonwealth - the Minister for Home Affairs;
- (e) in the case of NSW - the Minister for Water; and
- (f) in the case of the Territory - the Chief Minister,

who will endeavour to resolve the dispute within a further 15 Business Days or any other agreed period.

10.3 Referral to mediation

If the relevant parties have not resolved the dispute within 30 Business Days after receipt of a Dispute Notice (or other agreed period), any of the relevant parties may, within a further 10 Business Days by notice to the other relevant

parties, refer the matter to mediation in accordance with clause 10.5 ("Referral Notice").

10.4 Legal proceedings

A party may not commence legal proceedings (except proceedings seeking urgent injunctive or similar interim relief) in respect of a dispute under or in connection with this deed unless:

- (a) the further 10 Business Day period referred to in clause 10.3 has expired; and
- (b) either:
 - (i) none of the relevant parties has referred to the matter to mediation in accordance with clause 10.3; or
 - (ii) a relevant party has referred the matter to mediation in accordance with clause 10.3 and the mediation has been completed, or has been terminated by a relevant party in accordance with clause 10.5.

No party will oppose an application for a stay of any legal proceedings concerning the subject of a dispute whilst there has been a failure to comply with this clause.

10.5 Mediation

A dispute referred to mediation under clause 10.3 will be mediated in accordance with the Mediation and Conciliation Rules published by the Institute of Arbitrators and Mediators Australia ("IAMA") November 2001 version ("**Mediation Rules**") with the following changes:

- (a) (**appointment directly by IAMA**) rule A1 does not apply, and a relevant party may request the IAMA to appoint a mediator appropriate to the dispute in accordance with rules A2 and A3;
- (b) (**qualifications of mediator**) the mediator must have at least 5 years experience in mediation and practical experience relevant to the matters in dispute, and have no interest or duty which conflicts with his or her role as the mediator;
- (c) (**location**) the mediation will be held in Canberra (at a place nominated by the mediator), unless the relevant parties agree otherwise; and
- (d) (**termination of mediation**) rule 8(1) does not apply, and a relevant party may terminate the mediation by written notice to the other relevant parties and the mediator if the mediation has not been completed within 30 days of receipt of the Referral Notice.

11 General

11.1 Application to the Commonwealth

The following clauses of this deed do not apply to the Commonwealth:

- (a) clause 3.6 (“Service Level Agreements”);
- (b) clause 7 (“Water supply pipes and infrastructure”);
- (c) clause 8 (“Water restrictions and other requirements”); and
- (d) clause 9 (“Payment for water supply”).

11.2 Variation

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.

11.3 Essential clauses

Clauses 8 (“Water restrictions and other requirements”) and 9 (“Payment for water supply”) are essential clauses of this deed.

11.4 Force majeure

The Territory is relieved from its obligation to supply water under this deed to the extent it is unable to do so due to a cause beyond its reasonable control, including:

- (a) natural disaster, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; or
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority (other than the Territory).

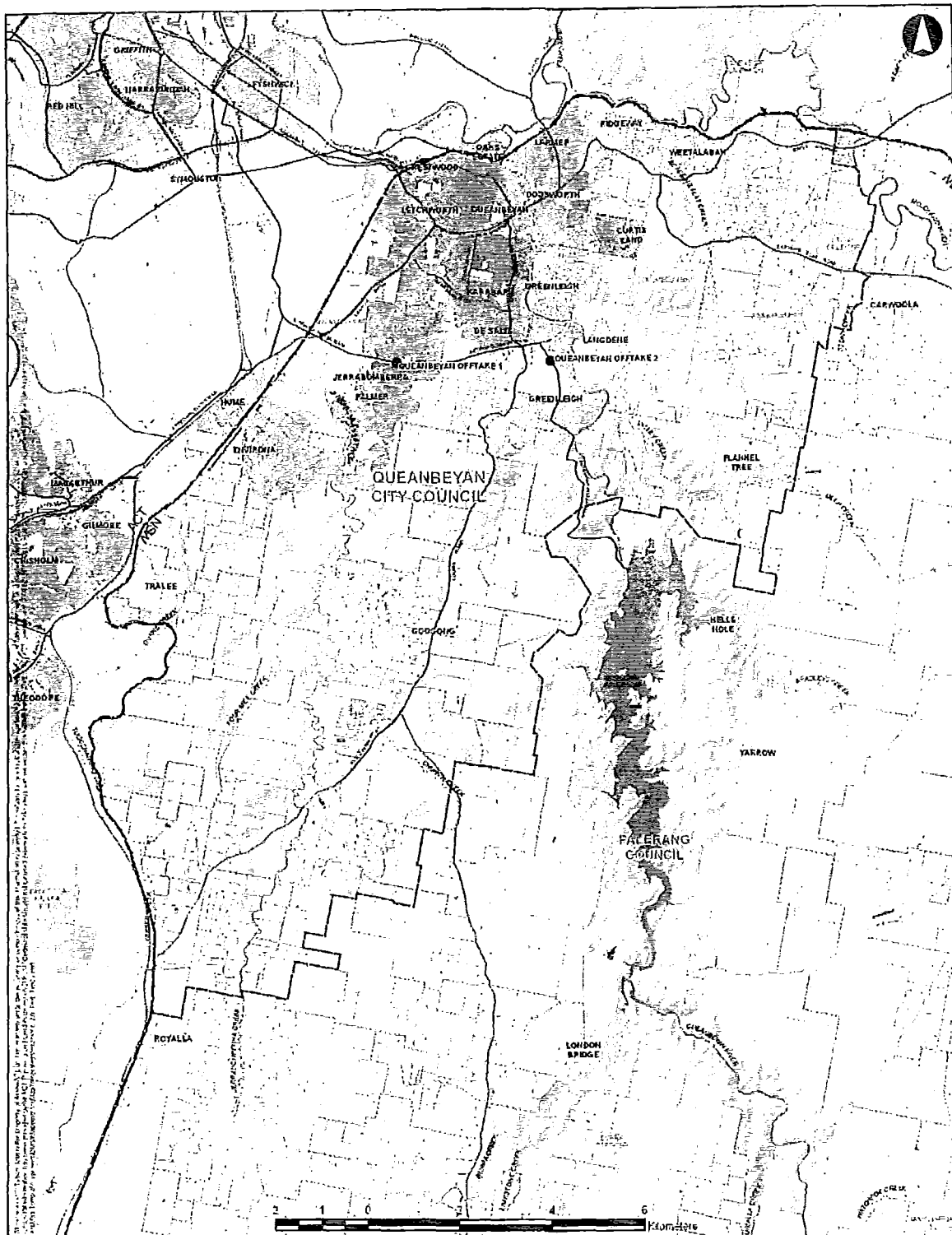
11.5 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

EXECUTED as a deed

Queanbeyan Water Supply Agreement

Schedule 1 - Queanbeyan City Local Government Area

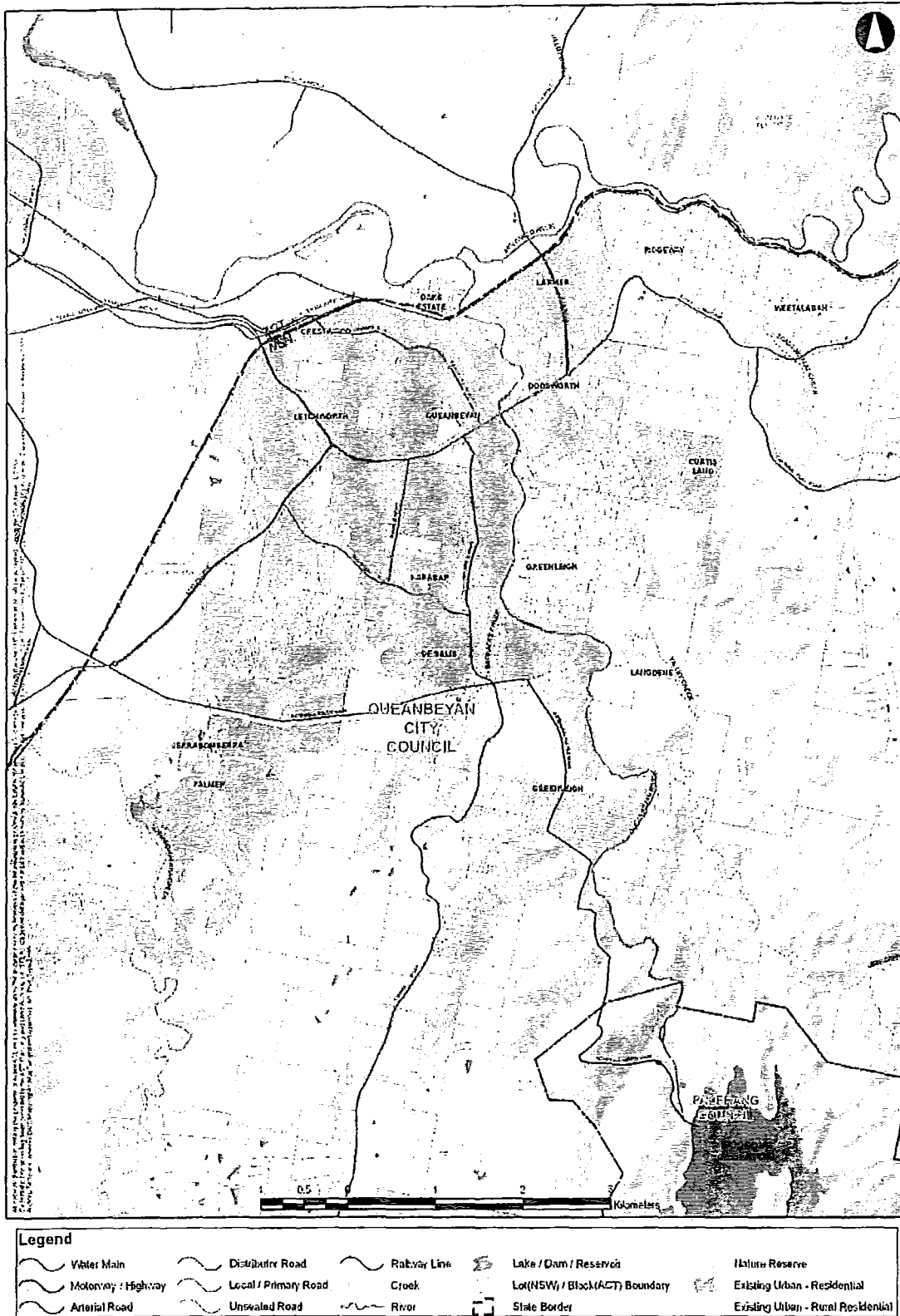


Legend				

GOOGONG DAM, QUEANBEYAN CITY COUNCIL BOUNDARY AND RELATED FEATURES

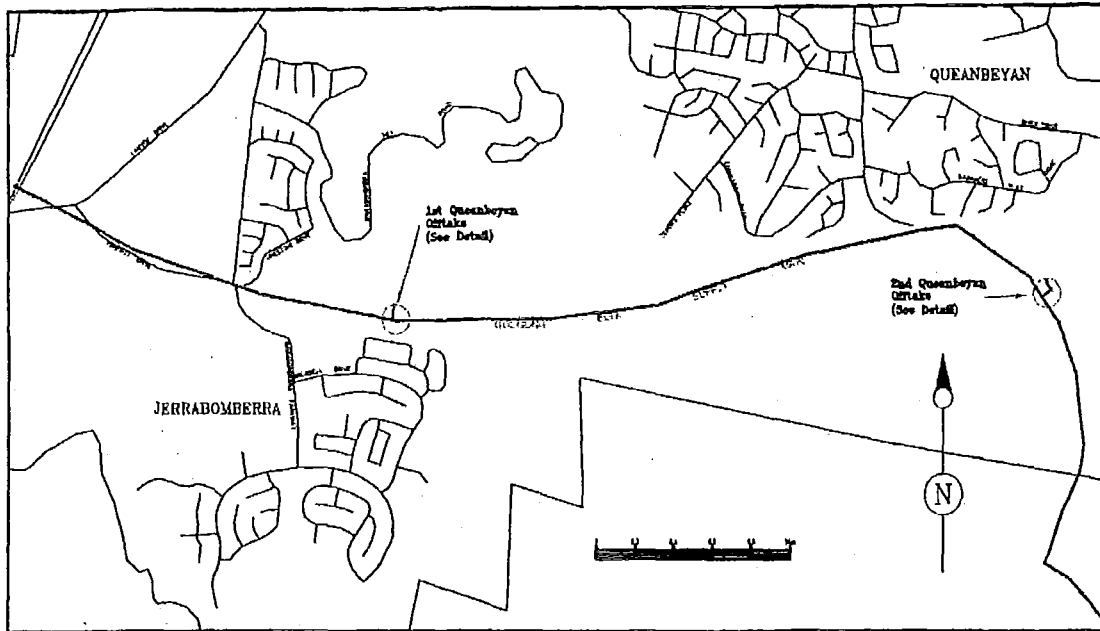
Queanbeyan Water Supply Agreement

Schedule 2 - Existing Urban Area

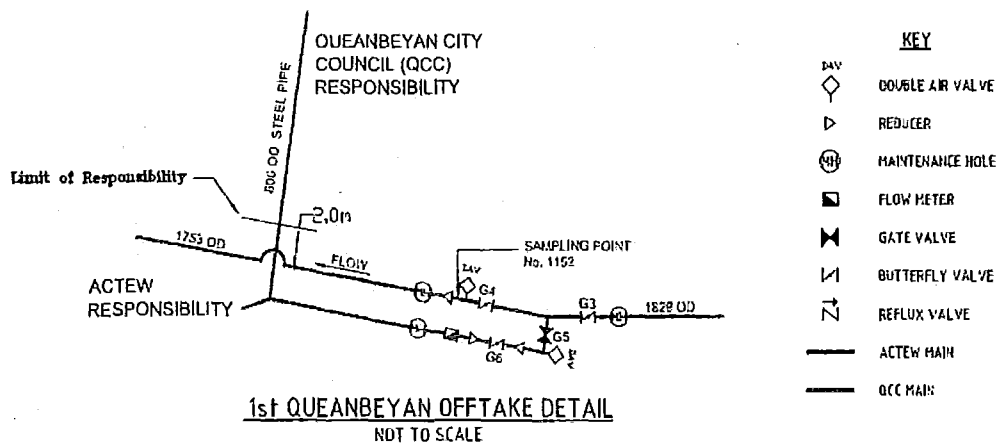


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Schedule 3 - Map of infrastructure



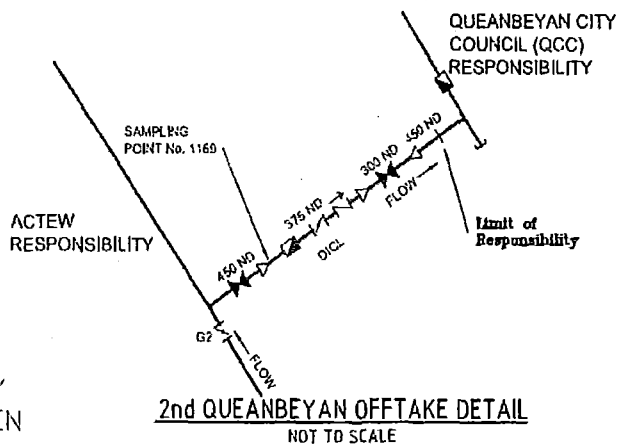
LOCATION PLAN



1st QUEANBEYAN OFFTAKE DETAIL
NOT TO SCALE

KEY

- DAV
- ◇ DOUBLE AIR VALVE
- ▷ REDUCER
- ⊕ MAINTENANCE HOLE
- ◻ FLOW METER
- ⊗ GATE VALVE
- ∨ BUTTERFLY VALVE
- ↗ REFLUX VALVE
- ACTEW MAIN
- QCC MAIN



2nd QUEANBEYAN OFFTAKE DETAIL
NOT TO SCALE

WATER QUALITY & SUPPLY
GOOGONG BULK SUPPLY MAIN
QUEANBEYAN OFFTAKE
LOCATION PLAN & DETAILS

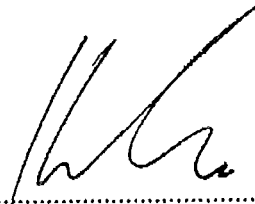
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Queanbeyan Water Supply Agreement

Signing page

DATED: 16 September 2008

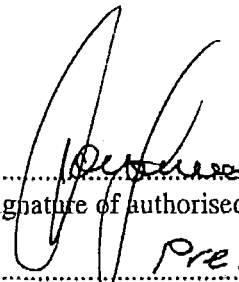
SIGNED, SEALED AND)
DELIVERED BY THE)
HONOURABLE BOB DEBUS MP,)
MINISTER FOR HOME)
AFFAIRS ON BEHALF OF THE)
COMMONWEALTH OF)
AUSTRALIA AND IN HIS)
CAPACITY AS MINISTER WITH)
RESPONSIBILITY FOR THE)
GOOGONG DAM ACT FOR THE)
PURPOSES OF CLAUSE 3.3:)

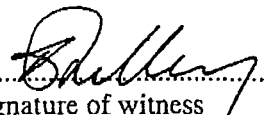

.....
Signature of Minister


.....
Signature of witness

MELANIE BROCKLEHURST
.....
Name of witness (block letters)

SIGNED, SEALED AND)
DELIVERED BY THE STATE OF)
NEW SOUTH WALES BY ITS)
DULY AUTHORISED)
REPRESENTATIVE:)


.....
Signature of authorised representative
Premier
.....
Office held


.....
Signature of witness

Kirsten Mullen
.....
Name of witness (block letters)

Morris Lemma
.....
Name of authorised representative
(block letters)

DATE OF SIGNATURE:

4 SEPTEMBER 2008

SIGNED, SEALED AND)
DELIVERED BY THE)
AUSTRALIAN CAPITAL)
TERRITORY BY ITS DULY)
AUTHORISED
REPRESENTATIVE:

[Handwritten signature]

.....
Signature of authorised representative

CHIEF MINISTER

.....
Office held

TOWNSHIP

.....
Name of authorised representative
(block letters)

[Handwritten signature]

.....
Signature of witness

Sharon SCRIVENER

.....
Name of witness (block letters)