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**Region 4 Meeting
4:00pm Friday, July 20, 2018
Midway Centre, Buronga**

MINUTES

Pre Meeting Briefing - Menindee Lakes Water Saving Project

Briefing from representatives of NSW Government departments to be attended prior to meeting proper, including (by telephone): Tegan Livingstone, Project Management Menindee Lakes SDL Project; Darren Blacker, DPI Water; Mitchell Isaacs, Intergovt; Rachell Connell, Executive Director Dept Primary Industries.

Rachel Connell addressed the meeting, thanking all for the opportunity to provide a presentation in relation to the Menindee Lakes Project. She said they had come from face to face meetings with the Lower Darling Horticulturalists' Group and the Menindee Community, as well as Barkandji Native Title elders.

She referred to the documents we had been provided and said that they would be meeting with Local Government, community groups and stakeholders in the next couple of months in relation to the 22 measures of the project, concept plan and the way forward and seek feedback.

In relation to all Sustainable Diversion Limit Adjustment Mechanism projects – the states are putting funding to the Commonwealth to progress stakeholder consultation, prepare Environmental Impact Statements (EIS) and business case up to October, when there will be detailed time on the ground.

She introduced Daniel Blacker to go through the five step approval process.

Chair, Mayor Hederics expressed disappointment at the lack of consultation and input provided to WSC thus far.

Rachel Connell asked how should we engage? Suggesting perhaps the Joint Organisations.

Mayor Eckel asked for verification that the Menindee Lakes Project has been approved already.

Rachel Connell suggested stepping through the process.

The question was repeated: What has been approved already?

Cr Modica asked Can our people derail this project and therefore alter the processes?

Rachel Connell wanted to step through the process.

The question was repeated: Can we cease this project from happening?

Daniel Blacker said he would try to keep it truncated, where we're at in our process and then can take questions. He spoke through the five steps.

Draft business case can start talking about funding proposal. Implementation to consultation in a more

rigorous way. NSW advice from IIAF re process. (Refer handouts). He said this was the first opportunity to sit down and have discussions. They would be coming back in a couple of months.

GM WSC asked You are working to a strategy, are you not?

Rachel Connell responded that it was not set in concrete.

GM WSC asked if the pipeline was part of the strategy.

Rachel Connell said the Wentworth to Broken Hill pipeline is going ahead and this project would not be possible without that.

GM WSC said you are working to a strategy – for example, the NSW government has spent \$500m on a pipeline and things like Native title are side issues.

Rachel Connell said there is a strategy, yes, that critical points (like a comprehensive EIS) would need to be done.

GM WSC asked: If there is concern about the strategy and its impacts and the case was put forward, would it make a difference?

Rachel Connell said Yes, if public submissions show there is a major rift and can't be mitigation under the provisions of the EP&A Act, community views of a range of measures and positive or negative perceptions.

GM WSC asked: If that is the case, would the sacrificial lamb then be passed on to someone else?

Rachel Connell said if there were key issues, then Infrastructure NSW would look at the feasibility of options.

Mitchell Isaacs said they are not yet at the yes/no point, that there would have to be significant improvement and benefits, if this project doesn't deliver what it's modelled to deliver.

Cr Modica made the point that this project and the way it is being done is "just wrong".

Emma Bradbury suggested that the frustration with the process is replicated across the system, especially in relation to the process uncertainty, suggested greater use of the MDA in advocacy and asked how do we relook at the process on form or work together as partners?

Rachel Connell said there are documented statutory processes and obligations and they want to start to build an engagement framework. In the next two to three months they would discuss the feasibility of the project.

Cr Modica suggested that we will give them processes about how we would like to engage.

Rachel Connell said they would be visiting Council by Council.

Cr MacAllister asked for a business case to be provided for our consideration, as well as the modelling used in the business case.

Rachel Connell said the business case is on the website.

Mitchell Isaacs said the modelling, as I understand, is done by the MDBA – we can get the links to you.

Darriea and Marion said that Rachel, Simon and others were due to address BHCC next week.

Mayor Hederics expressed concern that the consultation group may be attempting to divide Councils who were united in their dissatisfaction with the project and processes to date.

Emma Bradbury suggested work could be done within the MDA to turn consultation into collaboration.

Mayor Hederics reiterated that Region 4 wants to be involved, part of the decision making and feedback

processes.

It was agreed that on receipt of business case and modelling, Region 4 would advise the next step of the process of engagement

Rachel Connell, Mitchell Isaacs, Daniel Blacker, Teagan Livingstone and Emma Bradbury left the teleconference.

MDA Region 4 meeting opened at 5pm

1. ATTENDANCE

1.1 Present

In Attendance:

Mayor Melisa Hederics - Chair	Wentworth Shire Council
Mayor Mark Eckel	Mildura Rural City Council
Cr Jason Modica	Mildura Rural City Council
Cr Jane MacAllister	Wentworth Shire Council
Mr Peter Kozlowski	Wentworth Shire Council
Mr Gerard Jose	Mildura Rural City Council
By Telephone:	
Mayor Darriea Turley	Broken Hill City Council
Cr Marion Browne	Broken Hill City Council
Mr James Roncon	Broken Hill City Council
Ms Emma Bradbury	Murray Darling Association

1.2 Apologies

Cr Anthony Cirillo	Mildura Rural City Council
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Motion: That the apologies be accepted as a true and correct record.

J MacAllister/J Modica CARRIED

2. DECLARATIONS

Nil

3. REPORTS

Reports were given verbally and quickly, noting the amount of time taken up by presentation.

Motion: That Region 4 seek Balranald input regarding inclusion into Region 4 (from Region 3), and that if agreed, send a request to Balranald Shire Council and the MDA Board, seeking to formalize the inclusion.

J Modica/M Hederics CARRIED

4. GENERAL BUSINESS

A request was made to ensure Cr Marion Browne email be included in correspondence, as BHCC delegate.

5. NEXT MEETING

To be confirmed

6. CLOSE OF MEETING

The meeting closed at 5:05pm

The Menindee Lakes Water Saving Project presents an opportunity to save a substantial amount of water otherwise lost to evaporation while contributing to improvements in river operations and the environment. Expected benefits from the Project include: water savings, environmental benefits, flood protection, employment opportunities, and an alternate, secure water supply for Broken Hill.

The overall objectives, timeframes and cost constraints for the project are set out here:

https://www.industry.nsw.gov.au/_data/assets/pdf_file/0016/165130/Menindee-Lakes-Water-Savings-Project-business-case.pdf

Under the Murray-Darling Basin Plan and the Sustainable Diversion Limit Adjustment Mechanism, the project is required to be delivered by 2024.

Close consultation with the community will be required to design the project in a way which will maximize its benefits, and minimise its negative impacts.

The purpose of this document

This document outlines the five key approval processes which must be completed before the project can proceed. The steps and consultation requirements outlined represent the minimum statutory requirements. It is anticipated that some consultation periods will be longer to ensure consultation is effective.

Five separate assessment and approval processes

1. MDBA / Basin state assessment

- Determine if the project can be included in the SDL adjustment mechanism, and eligibility for Commonwealth funding

2. Infrastructure NSW 'Gateway' process

- identification of risks associated with investing in major programs and projects

3. NSW planning approval as State Significant Infrastructure under the *Environmental Planning and Assessment Act 1979*

- Ensure assessment, management and regulation of social, economic and environmental impacts and benefits, in a public and transparent way

4. Commonwealth Government approval under the *Environment Protection and Biodiversity Conservation Act (Cth)*

- Protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places

5. *Native Title Act 1993 (Cth)* requirements

- Ensure the project is carried out in way which does not invalidly affect native title rights and interest - under the Future act processes in the Act – recognising the Barkandji Traditional Owners' determined Native Title claim which covers a significant part of the project.

The MDBA / Basin state assessment process

Status: nearly complete

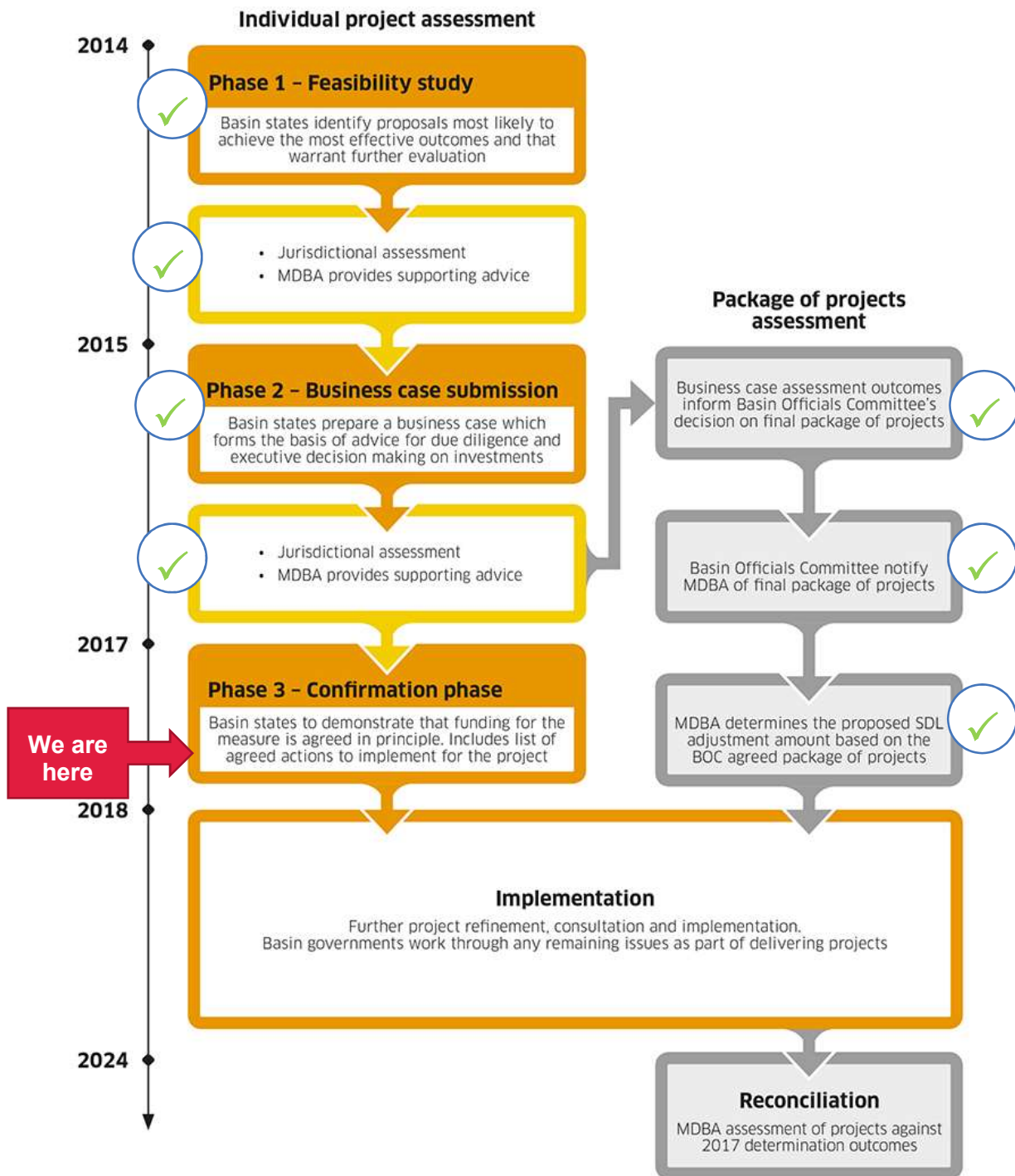


Figure 1: Assessment of SDL adjustment mechanism projects by the MDBA and basin states

See further:

MDBA - www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/sdlam

NSW Infrastructure Investor Assurance – the Gateway

Status: at initiation

To ensure better oversight of the state's infrastructure program, the NSW government implemented the Infrastructure Investor Assurance Framework (IIAF). IIAF applies to capital projects with a value of \$10 million and above, being developed or delivered by General Government agencies and Government Businesses.

The Framework consists of three pillars to check that projects are on track. These include:

- Project monitoring
- Regular project reporting
- Expert and independent Gateway Reviews and Health Checks

IIAF is a tiered, risk-based approach to evaluating the project. The process is confidential to each project, and advice is given to the NSW Government, as the investor, through regular reporting. The approach allows for "red flags" to be raised and interventions ordered in time to ensure projects are delivered on-time, on-budget, and in accordance with NSW Government's objectives.

The IIAF is the applicable Gateway Coordination Framework under NSW Gateway Policy, administered by NSW Treasury.

Gateway Reviews and Health Checks

Infrastructure NSW is the Gateway Coordination Agency (GCA) for the government's capital infrastructure projects and programs.

IIAF Gateway Review process provides for a series of short, focused, independent, expert reviews, held at key decision points in a project's lifecycle. Gateway reviews are appraisals of infrastructure projects, which highlight risks and issues, which if not addressed may threaten successful delivery. The reviews are supported by health checks, which assist in identifying issues which may emerge between decision points.

Gateway Review requirements for projects are proportionate to their Tier level:

- Tier 1 High Profile/ High Risk projects must pass through all Gates
- Tier 2 projects must pass through Gate 0 (Go/ No Go), Gate 1 (Strategic Options), and Gate 2 (Business Case) - a detailed business case with alternative options analysis needs to be prepared and submitted for Infrastructure NSW assessment
- Tier 3 projects must pass through Gate 0 (Go/ No Go)
- Tier 4 projects are lowest risk and do not require Gateway Reviews

DoI Water's initial estimate is that Menindee lakes SDL Project is likely to be a Tier 2 project; however Infrastructure NSW will review the Project when it is formally registered and allocate a Tier level.

More detail about Gates 0 – 2 is set out on the following page.

Gate 0

Service need – determine if the project aligns with Government & Agency priorities and whether the service need identified has merit and warrants further consideration. Are there sufficient governance processes and are resources available to support development of a preliminary business case?

INITIATION/JUSTIFICATION REVIEW: An Initiation/Justification Review occurs after a service need has been identified and at the earliest point in the development of the proposed service or service change and when appropriate analysis has been undertaken to allow the review to occur.

The Review should take place at the concept or project stage before any significant funds are expended and prior to developing a preliminary business case.

Gate 1

Business strategy – determine the need to be met and whether the procurement provides the optimal solution. Establish the key business objectives and outcomes. If a business need is identified – develop a program or project brief.

STRATEGIC REVIEW: The Strategic Review assesses whether the proposal is aligned with Government and the agency's strategic plans. It demonstrates the best value means of servicing community needs. The Strategic Review occurs after a service need has been identified (but prior to developing a detailed project definition in a business case) and preliminary justification for procurement has been developed.

Gate 2

*Develop options – determine the scope of the required project. **Identify and appraise the options.** Identify if affordability and value for money has been established.*

BUSINESS CASE REVIEW: The **Business Case Review assesses whether project options have been fully explored and assessed.** Before proceeding, it helps ensure that the recommended option provides the best value. The Business Case Review is undertaken after a project has been defined and its benefits and costs quantified. The Review will not be conducted unless accompanied by a financial/economic appraisal.

The review occurs before the Business Case for a project is submitted to the relevant funding authority to allow the project team to incorporate any recommendations from a review into the submission.

See further:

Infrastructure NSW - www.infrastructure.nsw.gov.au/project-assurance

NSW Treasury - www.treasury.nsw.gov.au/gateway-review-system-overview

Menindee Lakes Water Saving Project: The process

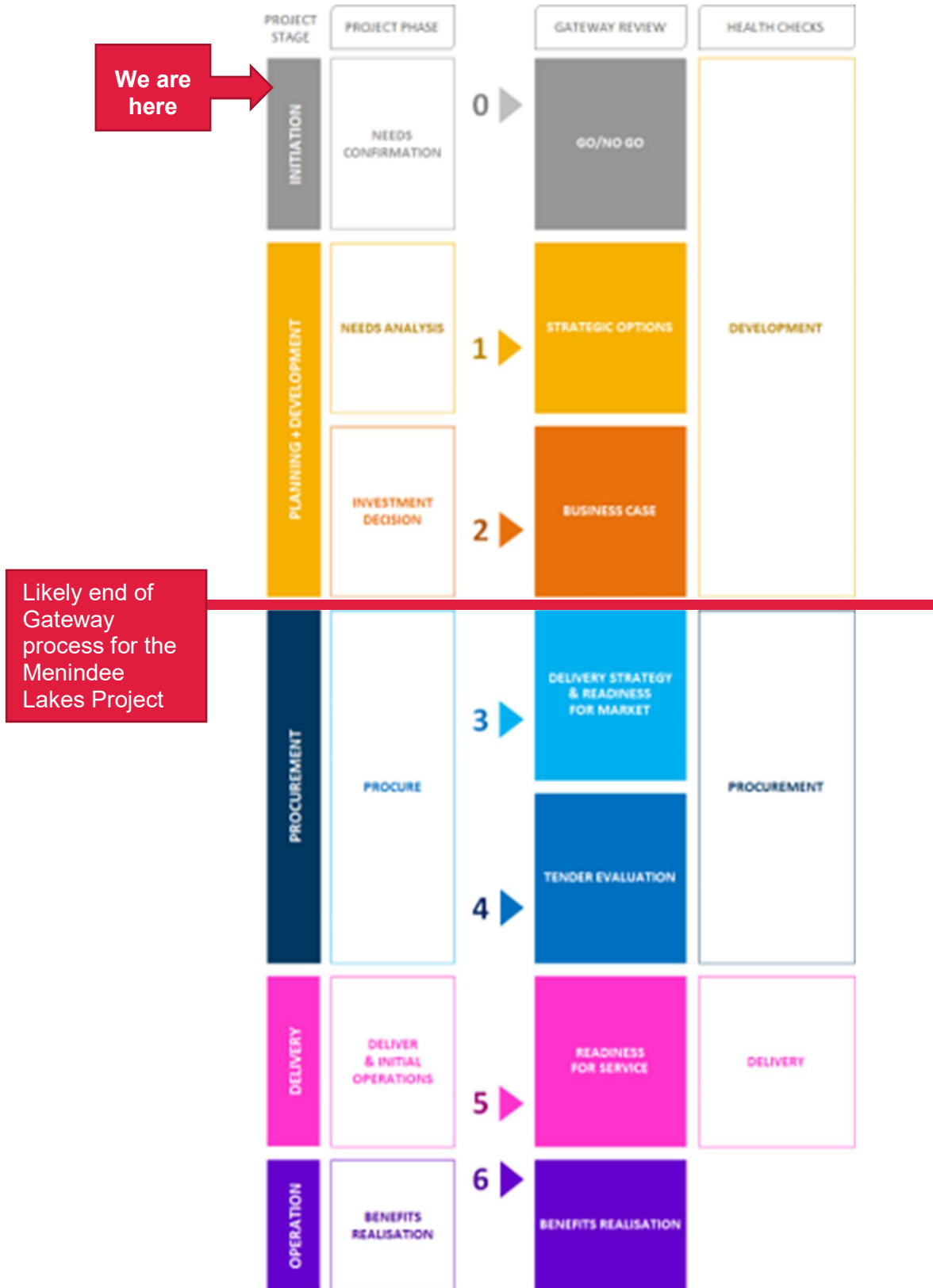


Figure 2: Gateway Review Process Gates

NSW Planning approval: State Significant Infrastructure


Status: at initiation

The Menindee Lakes Water Saving Project will likely be categorized as a State Significant Infrastructure (SSI) project under NSW planning approvals due to its size, economic value or potential impacts, and as it will have a wider significance and impact than on just the local area.

State Significant Infrastructure (SSI)

The Department of Planning and Environment is responsible for assessing SSI projects, and the Minister for Planning (or in some circumstances, his delegate) is required to approve the project.

SSI planning process are administered in the following stages:



Project Stage	Time	Responsibility
Prepare and lodge SSI application		Applicant (likely WaterNSW)
Issue Secretary's environmental assessment requirements (SEARs)	within 28 days of receiving SSI application	Department of Planning and Environment
Prepare Environmental Impact Statement (EIS)	Unknown (likely up to 12 months)	Applicant (likely WaterNSW)
Exhibit EIS	28 days minimum	Department of Planning and Environment
Request response to submissions	within 10 days of end of exhibition	Department of Planning and Environment
Prepare and submit response submissions, or a preferred infrastructure report if the proposal changes		Applicant (likely WaterNSW)
Prepare assessment of application for approving authority	75 days	Department of Planning and Environment
Final determination	10 days	Minister for Planning (or Department of Planning and Environment delegate)

Note: all days are calendar days (not business days)

Major Infrastructure projects which have multiple stages or components can be considered and assessed in a number of different ways in the planning system:

- 1. Single SSI application covering all stages** (requiring sufficient details of all stages as part of the single application)

2. Staged SSI application and subsequent detailed SSI applications

A staged SSI application which:

- a. Sets out a concept proposal for the overall proposed infrastructure
- b. Seeks approval for a detailed proposal for the first stage of infrastructure e.g. construction and/or operation (optional)
- c. Specifies which detailed proposals for separate parts of the infrastructure will follow in subsequent SSI applications

3. Separate SSI applications for each stage

4. Split of SSI application/s and Part 5 self-assessments (being where a stage does not meet the State Significant triggers)

The most suitable approach will vary depending on the nature of the project. For Menindee Lakes SDL project, the most suitable approach will be determined during the project initiation phase that is planned from July 2018 to early 2019.

Commonwealth approval: EPBC Act

Status: at initiation

NSW Department of Planning and Environment assesses impacts on matters of national environmental significance on behalf of the Commonwealth, and the Commonwealth retains responsibility for determining whether a project can proceed to impact on those matters.

The Environment Assessment Process can run concurrently with the SSI application to the Department of Planning and Environment, defined below:

Project Stage	Time	Responsibility	Commonwealth requirements
Prepare and lodge SSI application		Applicant (likely WaterNSW)	<ul style="list-style-type: none"> The project is referred to the commonwealth, requesting determination on whether a project is a 'controlled impact' under the EPBC Act on the basis that it may be likely to have significant impact on one or more matter/s of national environmental significance. Commonwealth publishes referral documents, and seeks comments from the public, and Department of Planning and Environment. Commonwealth determines if the project may impact on matter/s of national environmental significance, and if it requires further assessment (within 20 business days of receiving referral). Commonwealth advises if assessment is required. Department of Planning and Environment includes Commonwealth matters in environmental assessment requirements if the Commonwealth decision is made before they are issued
Issue Secretary's environmental assessment requirements (SEARs)	within 28 days of receiving SSI application	Department of Planning and Environment	
Prepare Environmental Impact Statement (EIS)		Applicant (likely WaterNSW)	<ul style="list-style-type: none"> Department of Planning and Environment revises environmental assessment requirements to include Commonwealth matters if the Commonwealth decision is made after they are issued
Exhibit EIS	28 days minimum	Department of Planning and Environment	
Request response to submissions	within 10 days of end of exhibition	Department of Planning and Environment	
Prepare and submit response submissions,		Applicant (likely WaterNSW)	

Menindee Lakes Water Saving Project: The process

Project Stage	Time	Responsibility	Commonwealth requirements
or a preferred infrastructure report if the proposal changes			
Prepare assessment of application for approving authority	75 days	Department of Planning and Environment	<ul style="list-style-type: none"> Department of Planning and Environment considers impacts on matter/s of national environmental significance in their assessment.
Final determination	10 days	Minister for Planning (or Department of Planning and Environment delegate)	<ul style="list-style-type: none"> Department of Planning and Environment formally notifies Commonwealth of determination.
Post determination		Commonwealth Minister for the Environment (or their delegate)	<ul style="list-style-type: none"> Commonwealth Minister for the Environment (or their delegate) makes a final determination on the project (within 30 business days of receiving notification of State determination).

Commonwealth Native Title Act (1993) requirements

The Native Title Act 1993 sets up processes to determine where native title exists, how future activity impacting upon native title may be undertaken, and to provide compensation where native title is impaired or extinguished. The Act gives Indigenous Australians who hold native title rights and interests or who have made a native title claim, the right to be consulted and, in some cases, to participate in decisions about activities proposed to be undertaken on the land.

Aboriginal people have occupied the Menindee region for at least 47,000 years (Balme and Hope, 1990); and in 2015, native title of the Barkandji people was recognised over lands and waters extending from Wilcannia to Wentworth. The Lakes and the Lower Darling and Darling Anabranch continue to be important to the wider Aboriginal community as resources and places of significance.

A significant part of the project area is subject to a determined Native Title claim which recognises the Barkandji Traditional Owners as the traditional owners of land.

Through the detailed design of the project, locations where the project may impact on native title rights and interests will be mapped out, and the specific process that may be required by law will be determined in consultation with the Barkandji Traditional Owners.

Regardless of whether or not native title rights apply to various parts of the project, the NSW Government recognises the significance of the land and water of the region to Aboriginal people and are committed to ensuring the Aboriginal community is consulted and included in the design and assessment of the project.

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