

FOI 180602
Document 1

s22

PDR:

Copy to:
Hilton Taylor
CEWO
Directors

To: Commonwealth Environmental Water Holder [Mr David Papps] (for decision)

Through: Mark Taylor, Assistant Secretary, Wetland, Policy and Northern Water Use Branch

50004 - TAS

Timing: 12 January 2018

12/11/2018
I confirm the trade has been conducted fully consistently with the CEWH Trading Framework & Water Act requirements.

Recommendation/s:

- 1. Agree that the sale of 6,700 ML regulated allocation in the Gwydir is consistent with Section 106 (3) of the Water Act 2007.

Agreed / Not agreed

As Commonwealth Environmental Water Holder [Mr David Papps]:

- 2. I am not aware of a decision and/or water announcement that has not been made generally available that would have a material effect on a person's decision to trade with respect to the water allocations

Agreed / Not agreed

- 3. I Approve this Trade Approval Sell for 6,700 ML of Gwydir regulated water allocation.

Approved / Not approved

Commonwealth Environmental Water [s22] Papps]: Date: 12.1.18

Comments:

Clearing Officer: Sent 12.9.18	s22	Director, Portfolio Management Section	P: 6274 s22
		Contact Officer:	M: s22
		Portfolio Management	P: 6274 s22
			M: s22

Key Points

- 1. You approved the sale of 5,000 ML of Gwydir regulated allocation through an open tender process in the Approval to Approach Market minute AMS 50004, signed 5 January 2018. The tender to sell 5,000 ML of Gwydir regulated allocation opened at 10 am on 9 January 2018 and closed at 2 pm on 11 January 2018.

2. s47E(d) bids were received during the tender period and none were withdrawn during the tender. Therefore, s47E(d) bids were eligible for assessment. Of these, two bids were below the price limit of s47E(d) and will be rejected.
3. The tender was oversubscribed, with s47E(d) bids totalling s47E(d) above the price limit. Of these, one bid for a volume of 1,700 ML, was the highest ranked bid (\$452 per ML) within the available volume. The acceptance of next highest next price (\$422 per ML) would exceed the Sale Volume by 1,700 ML. These two bids have met the Eligibility Criteria in clause 5.3 and 5.4 of the Evaluation Plan.
4. In the event that there is insufficient remaining Sale Volume to accept all remaining bids the evaluation plan (refer to clause 5.20) provides you with the following discretion:
 - a. s47E(d)
 - b. s47E(d)
 - c. s47E(d)
5. Accepting the next highest next price bid and exceeding the sale volume would be consistent with clause 5.15(b) of the evaluation plan. However, going beyond this point and accepting bids at a lower price would be inconsistent with the evaluation plan.
6. Northern Basin section has confirmed that the sale of an additional 1,700 ML above the advertised volume of 5,000 ML (total volume of 6,700 ML) will have no material effect on the capacity of the holdings to meet environmental watering objectives. The Northern Basin section has provided an updated assessment supporting this recommendation as provided in **Attachment A**. This includes updated advice on potential for future allocations and environmental water demands in the Gwydir system within the current water year and in future years.
7. It is recommended that you approve the two highest ranked bids, for a total volume of 6,700 ML and total value of \$2,878,400.00. s47E(d)
8. Revenue of \$2,878,400.00 would provide significant scope for improving the capacity of the Commonwealth environmental water holdings to meet the objectives of the environmental watering plan. A sale price of \$429.61 per ML represents exceptional value for the water allocation, it is s47E(d) times higher than the 8-year average for the Gwydir of s47E(d) per ML and s47E(d) times higher than the 8-year southern-connected Basin average price of s47E(d) per ML. The 33 GL of Commonwealth environmental allocation previously sold was for an average weighted price of \$292.34 per ML.
9. This recommendation to trade is made because we are not are aware of a decision and/or water announcement that is not generally available and is not covered by a water trading strategy.
10. Key statistics relating to the bids received during the tender process is in **Attachment B**. A copy of the evaluation spreadsheet is provided at **Attachment C**, showing the price, volume and performance of each of the recommended bids against the evaluation criterion, with the final recommendation of acceptance.

11. Under the Terms of Offer agreed to by all bidders, your acceptance of bids will create a legal obligation to complete the trade, including: payment of the cost of the allocations and the trade lodgement.
12. If the payment is not received within the timeframe specified in the Terms of Offer (that is, 3 business days) we may serve a notice stating that the default must be remedied within 3 business days after which the Agreement will be terminated. If this situation occurs a recommendation to accept the next highest bids will be made.
13. The three next highest ranked bids meet the Eligibility Criteria in clause 5.3 and 5.4 of the Evaluation Plan and in the unlikely event that both the two best value for money bids default on the Terms of Offer, the cumulative volume of these bids would not breach the announced volume of the sale.
14. The sale process, including the tender, and the assessment of bids received through the tender, has been conducted in accordance with the Approval to Approach Market minute AMS 50004 (including the endorsed Probity Plan and Evaluation Plan).
15. The Sale Process has also been conducted in accordance with the CEWO staff commitments made through the Commonwealth environmental water trading framework (operating rules) and protocols.
16. All CEWO staff involved in the evaluation have signed a conflict of interest and confidentiality declaration, and no employees have disclosed any conflicts of interest pertinent to the trade of allocations in the Gwydir.
17. PGPA Act section 23(3) approval is not required as there are no upfront use fees payable prior to trade approval. The only fees that we will be paid for the trades are the water authority trade application fees, totalling \$102.84. These will be paid using the corporate credit card linked to the Portfolio Management cost centre. These fees will be reimbursed from funds received into the Special Account by the purchaser as part of the payment process.

Next steps

18. All bids approved by you through this trading action will be issued a Notice of Acceptance as soon as possible. The three next highest bids will be advised the outcome of their Bid once payment of the approved Bids is received. The [REDACTED] remaining bidders will be notified that their bid has been unsuccessful from 15 January 2018.
19. Once the Portfolio Management Section has confirmed receipt of payment from successful bidders, the trade form will be populated with seller information and executed by an authorised SES Band 1 (as per the Delegation Instrument for this trade executed by you in your Approach to Market approval). All successful bidders will have their water sourced from the Commonwealth's two Gwydir general security allocation accounts – 90AL810006 and 90AL811552.
20. Successful bidders will have Commonwealth environmental water allocation transferred to their accounts, and the trade will be considered complete, when approval from the water authority for the transaction is received.

21. Within 30 days of registration of the last trade made through this tender process, the outcomes from this trading action will be made publically available (CEWO OR 9).

Attachments

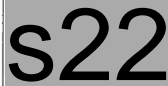

- A:** Justification for sale of 10 GL
- B:** Key Statistics
- C:** Evaluation spreadsheet

Pre-trade Approval Checklist

For completion by Project Sponsor	
Trade Name:	Sale of Commonwealth Environmental Water (AMS 50004)
Project Sponsor:	Mark Taylor
Project Manager:	s22 /
Trading Zone	Gwydir
Type	Allocation sale
Volume	10 GL.
Disposal of allocation is provided for under section 105 of the <i>Water Act 2007</i>	<p>Section 105 confers on the Commonwealth Environmental Water Holder (CEWH) the power to dispose of Commonwealth environmental water holdings which includes water allocations.</p> <p>The CEWH must perform this function for the purpose of protecting or restoring environmental assets of the MDB so as to give effect to international agreements (s.4 and s105(3)(a)); in accordance with the Murray Darling Basin Environmental Watering Plan (s.105(4)(a), any operating rules made by the Minister (s.105(4)(c) and s.109) and any relevant environmental water schedules (s.105(4)(d)).</p>
Limitation on disposal under section 106 of the <i>Water Act 2007</i>	<p>Disposal of allocations under Section 106(2) is satisfied if the water is not required in the current accounting period and the water cannot be carried over, or it is likely that a future allocation will be reduced if the disposal does not occur.</p> <p>It is likely that the allocations proposed for disposal in the Gwydir can be carried over; therefore trade under Section 106(2) is <u>not</u> satisfied.</p> <p>To dispose of allocations under Section 106(3), the proceeds of disposal need to be used for either or both of acquiring water or environmental activities. Section 106(3) also requires that the Commonwealth Environmental Water Holder reasonably believes, at the time of the disposal, that using the proceeds for future acquisitions of water or holdings or investments in environmental activities would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of one or more of the following:</p> <ul style="list-style-type: none"> (i) the environmental watering plan; (ii) a plan specified in the regulations in relation to an area outside the Murray-Darling Basin; (iii) protecting or restoring the environmental assets of an area outside the Murray-Darling Basin in relation to which those regulations do not specify a plan.

	<p>The opportunity to dispose of allocation in the Gwydir has been supported by Northern Basin Section's assessment against retaining the allocations for use in the current water year, or through the carryover of water for use in future water years.</p> <p>There is a high degree of certainty that the sale of allocations will have no material effect on the capacity of the holdings to be applied to meeting the environmental watering objectives. Therefore it is highly likely that the opportunity will arise to make purchases of water holdings or invest in environmental activities that will provide greater benefit than would be obtainable if the proposed sale did not occur.</p> <p>Use of the proceeds of a water sale for environmental activities under Section 106(3) is further subject to the long-term annual diversion limit condition being met in accordance with Section 106 (5) and Section 106 (6).</p> <p>Long-term average sustainable diversion limits come into effect on 1 July 2019. Accordingly, the MDBA has not yet published information indicating whether the long-term annual diversion limit has been complied with in the Gwydir (SW2) water resource plan area. Therefore, environmental activities would be an allowable use of the proceeds from the proposed sale of water allocations under Section 106 (6).</p>
<p>Trade opportunity identified consistent with the requirements of the Water Act 2007</p>	<p>An allocation sale in the Gwydir catchment is identified as being consistent with the requirements of Section 106(3) of the <i>Water Act 2007</i>.</p> <p>There is a high degree of certainty that the sale of allocations will have no material effect on the capacity of the holdings to be applied to meeting the environmental watering objectives. Therefore it is highly likely that the opportunity will arise to make purchases of water or holdings or invest in environmental activities that will provide greater benefit than would be obtainable if the proposed sale did not occur.</p> <p>Subject to completion of a trade in the Gwydir, the proceeds of disposals will be credited to the Environmental Water Holdings Special Account (s.111 and s.112) and retained in the account to make purchases of water or holdings or invest in environmental activities that improve the capacity of the portfolio to meet the objectives of the environmental watering plan.</p> <p>The full assessment supporting this recommendation is provided at <u>Attachment A.1</u>.</p>
<p>Consultation</p>	<p>The Northern Basin Section has provided input to the Portfolio Management section with the assessment supporting this recommendation as provided in <u>Attachment A.1</u>. This includes advice on environmental water demands in the Gwydir system within the current water year and in future years.</p>

<p>Potential Outcomes</p>	<p>The possible revenue from the disposal of 6,700 ML is \$2,878,400.00 with a volume-weighted average price of \$429.61/ML. This represents exceptional value for money and provide significant scope for improving the capacity the Commonwealth environmental water holdings to meet the objectives of the environmental watering plan. This tender was oversubscribed indicating additional demand for Commonwealth environmental water.</p> <p>Subject to future market conditions and environmental demands, a range of possible acquisitions and/or investments in environmental activities could be made that would strengthen the capacity of the Commonwealth environmental water holdings to meet the objectives of the environmental watering plan.</p> <p>A specific acquisition or environmental investment using the proceeds has not yet been identified. Future acquisitions or environmental activities that improve the capacity to meet environmental objectives will not necessarily be within the same year or catchment of disposal. It may be some time before a suitable opportunity arises.</p> <p>The Investment Framework is scheduled for finalisation in 2018. The Investment Framework will guide investment in environmental activities consistent with relevant legislative obligations. If approval is sought to use proceeds for any environmental activities before the Investment Framework is completed, the approval request will set out relevant legislative obligations, including that the environmental activities are expected to improve the capacity of the holdings to be applied to meet the relevant environmental objectives under section 106(3).</p>
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Project Sponsor:	Mark Taylor	Signature:	
Position:	Assistant Secretary		
Division:	CEWO	Date:	
<p>Approval documents will form part of the Quality Assurance and Audit process.</p>			

Justification for disposal of 10,000 ML of regulated allocations in the Gwydir catchment during 2017-18 water year

	Reason for recommended disposal	Justification	Supporting evidence
1	The water being disposed is not required within the water year to meet the objectives of the environmental water plan.	The annual environmental watering priorities of Gwydir allocation are expected to be met if a relatively small volume of allocations are sold.	<p>Environmental watering in the Gwydir aims to promote recovery of wetland vegetation, provide habitat for threatened species as well as survival and reproduction opportunities for a range of waterbird and native aquatic species (e.g. fish, frogs, turtles, invertebrates) by following a natural cycle of wetting and drying. Scientific monitoring consistently shows that environmental water delivered to the Gwydir is providing food, habitat and breeding opportunities for many of the region's unique native fish waterbirds, plants and wildlife.</p> <p>For watering during 2016-17, our long term intervention monitoring program finds that the current practice of using environmental water based on natural flow cues is working in the lower Gwydir river system, and more broadly that the long-term environmental watering strategy being employed in the Gwydir river system continues to be effective.</p> <p>Commonwealth environmental watering during 2017/18 continues the approach from previous years, so far delivering at 14,000 ML, with a further 2000 ML transferred for delivery soon. This water together with around 12 GL water from New South Wales, has been delivered to support native fish and longitudinal connectivity, and to promote the recovery of wetland vegetation in the Lower Gwydir and Gingham Wetlands. We work closely with the NSW Office of Environment and Heritage to deliver and plan for the use of environmental water.</p> <p>There are alternative Commonwealth environmental water allocations that can be used if a need arises in the Gwydir Wetlands that remain available in the catchment. The proposed trade is less than 10% of the total allocations of Commonwealth environmental water currently available in the catchment. Remaining allocations provide considerable flexibility if circumstances change.</p>
2	The Water Allocations can be carried over into next accounting period. (s106(2)(b)(i))		Agreed

	Reason for recommended disposal	Justification	Supporting evidence
3	The Water Allocations are likely to result in a reduced allocation (s106(2)(b)(ii))		Not Agreed
4	The MDBA has published information, that the catchment was compliant/not compliant with its sustainable diversion limit? (ss106(3)(b), 106(5) and 106(6))		<p>Long-term average sustainable diversion limits come into effect on 1 July 2019. Accordingly, the MDBA has not yet published information indicating whether the long-term annual diversion limit has been complied with in the Gwydir water resource plan area.</p> <p>Therefore, environmental activities would be an allowable use of the proceeds from the proposed sale of water allocations under Section 106 (6).</p>
3	Based on best information currently available the water being disposed is not required to be carried over to meet future environmental needs.	There is reasonable likelihood that sale will have no material impact on the ability to meet future environmental water requirements	<p>In the Gwydir catchment, inflows and allocations are highly variable. Where possible, retaining an account balance that will provide for environmental watering in future years under a range of climate scenarios is particularly important given the possibility of low to very low annual water allocation.</p> <p>If the sale of 10 GL of Commonwealth environmental water proceeded in full, at least 94,050 ML of regulated allocations will remain available for use in 2017/18, 2018/19 and 2019/20. This assumes three years of zero allocation to our general security accounts and a 100% allocation to our high security allocation.</p> <p>It is unlikely that there will not be additional allocations in the next three years, especially in the current context of the BOM predicting above average rainfall: on average, the Commonwealth would receive ~40 GL per year.</p> <p>In addition, environmental water would also be available to the NSW Environmental Contingency Allowance, and Commonwealth supplementary entitlements.</p> <p>Based on current planning, the sale of up to 10 GL in the Gwydir catchment is not expected to place environmental values in the system at risk, and the proceeds of trade could be used to purchase allocations in the Gwydir system if required. There is enough Commonwealth environmental water</p>

Reason for recommended disposal	Justification	Supporting evidence
		<p>set aside in the Gwydir system, when delivered in conjunction with NSW held environmental water and planned environmental water as per usual practice, to meet foreseeable environmental demands over the next three years, without:</p> <ul style="list-style-type: none"> • any substitution of supplementary allocations for regulated allocations; • any further allocation against general security entitlements; and • any re-acquisition of water allocations using funds from the special account; • each of which would increase regulated allocations remaining. <p>After taking account of 3-years planned use, there is a surplus of some additional Commonwealth environmental water in the Gwydir system (of the order of 15 GL) that is available for trade or unplanned environmental needs. These other environmental needs could include watering additional systems such as the Ballin Boora, or to contributing to flow events in the Barwon-Darling, or watering larger areas of the Gwydir floodplain should constraints be modified. These other environmental needs are emerging, and therefore it is not proposed that all of the ~15 GL is sold at this time, from an environmental perspective</p> <p>Any additional water that becomes available under general security entitlements in the Gwydir will provide additional flexibility to deal with demands that may arise from changes in circumstance and other emerging environmental needs, or could be used for future trade.</p>
4	Disposal of the water allocations will provide the opportunity for future acquisitions that will improve the capacity of the Commonwealth environmental water holdings to meet the objectives of the environmental watering plan.	The proceeds of the sale in the Gwydir will allow for the purchase of water and/or investment in environmental activities at another time, within either the Gwydir or elsewhere in the Murray-Darling Basin, which will provide greater environmental benefit. Where the opportunity arises, we will purchase allocations and/or invest in environmental activities that will provide greater environmental

	Reason for recommended disposal	Justification	Supporting evidence
			<p>benefit than those we are selling. The purchase may not be in the same location. We have to look at opportunities across the Murray-Darling Basin.</p> <p>Use of the proceeds from sale would be the subject of a separate decision.</p>
5	The proposed sale is in accordance with any operating rules made by the Minister (S105(4) (c) and s109) and	Not applicable.	The Minister has not made any operating rules
6	The proposed disposal is accordance with any relevant environmental water schedules (s105(4)(d)).	Not applicable	There are no environmental watering schedules relevant to this disposal

Key Bid statistics

No. of bids received	s47E(c)
No. of bids withdrawn	0
No. of bids rejected because they were received after tender close	0
No. of bids eligible for assessment	s47E(c)
No. of bids rejected for below price limit	s47E(c)
No. of bids above price limit	s47E(c)
No. of bids recommended for acceptance	2
Total volume of recommended acceptances (ML)	6,700
Volume-weighted average accepted bid price (\$)	s47E(d)
Range of accepted bid prices (\$/ML)	\$422-\$452
Gross/Net return from recommended acceptances (\$)	\$2,878,400.00
Trade application fees for accepted bids (reimbursed by purchaser) (\$)	\$102.84
No. of bids rejected due to insufficient volume available	s47E(c)
Volume of bids rejected due to insufficient volume available (ML)	s47E(d)
Value of bids rejected due to insufficient volume available (\$)	s47E(d)
% Bids above price limit accepted	s47E(c)
% Available volume sold	s47E(d)
TOTAL number of rejected bids	s47E(c)

s47E (d)

s22 5.1.18

Copy to:

Mr Hilton Taylor
CEWO
Directors

To: Commonwealth Environmental Water Holder [Mr David Papps] (for decision)

Through: Mark Taylor, Assistant Secretary, Wetland, Policy and Northern Water Use Branch

50004 - AMS

Timing: 5 January 2018

4/1/2018
I support the recommendations. The process has been thorough and meets the requirements of the CEWH Trading Framework. Note particularly par 3 & comments with at 4H I re: advice to Mo, be signed. ut

Recommendation/s:

- 1. Approve the proposal to conduct a trading action to sell 5 GL of Gwydir regulated water allocation through an open tender process from 9 -11 January 2018.

Approved / Not approved

- 2. Agree that the sale of regulated allocation in the Gwydir is consistent with Section 106 (3) of the Water Act 2007

Agreed / Not agreed

- 3. Approve the proposed lower price limit for the sale of s47E(d) per ML (Attachment B) and the Probity plan (Attachment C) and evaluation plan (Attachment D).

Approved / Not approved

- 4. Endorse the risk assessment (Attachment E), Instrument of Delegation (Attachment F) and the Approach to Market checklist (Attachment G)

Signed / Not signed

Commonwealth Environmental Water Holder [Mr David Papps]:

s22

Date: 5.1.18

Comments:

Note minor changes to media release.

Clearing Officer: Sent 4.1.2018	s22	Director, Portfolio Management Section	P: 6274 s22 3
		Contact Officer:	Portfolio Management

Key Points

- 1. Your publicly accessible trading intentions on the Department's website currently indicate that a possible sale of 5 GL Gwydir general security allocation is proposed for early January subject to favourable market conditions.

Requirements of the Water Act

2. The basis of this intention to trade was your endorsement of the detailed analysis that a sale of 5 GL regulated allocations is consistent with Section 106(3) of the *Water Act 2007*. A copy of this analysis is provided at Attachment A.
3. The analysis was completed in February 2017, but the use of environmental water within the Gwydir in 2017, together with further regulated allocations of 4,508 ML High Security and 15,371 ML General Security and a projected weak La Nina give you assurance that there are sufficient holdings available to meet current and future demands in the Gwydir.
4. Sale of allocations under Section 106(3) of the *Water Act 2007* allows for the proceeds of the disposal to be used, where the opportunity arises, for water purchases or investments in environmental activities that will provide greater benefit than would be obtainable if the proposed sale did not occur. At this time a specific use for the proceeds has not been identified.

Timing and volume available for sale

5. A report prepared by Marsden Jacob Associates (MJA) for the Commonwealth Environmental Water Office (CEWO) in November 2017 includes intelligence gathered from brokers and industry sources who were reporting a shortfall of water and favourable conditions for an allocation sale of 5 GL. MJA indicated that if the summer is hot and dry then demand for water to finish off the cotton crop may be high and prices could be between \$47E(d) and \$47E(d) per ML however irrigators buying for carryover won't pay above \$47E(d) per ML as global cotton future prices are well below \$47E(d) per bale.
6. This season conditions have been predominantly hot and dry over most of the cotton growing area. The Bureau of Meteorology (BOM) forecasting 50 to 100 mm of rain in the area this January which is above the median for Moree of 70 mm. The forecast is consistent with the weak La Nina pattern in the tropical Pacific. The BOM advises that weaker La Nina events '... tend to only slightly increase Australian summer rainfall.'
7. Advice from \$47E(d) (per comms.) is that irrigation demand is expected to total \$47E(d) this growing season indicating a shortfall in water available to irrigators of \$47E(d). Given this, and despite the long term outlook for above average rainfall, we expect a market for allocation water, and uptake of the 5 GL for sale is likely, with an estimated allocation price range of between \$47E(d) and \$47E(d) per ML.
8. The BOM 7-day Moree forecast issued on Thursday 4 January 2018 is for predominantly hot and dry conditions however during the tender period 9-11 January 2018 there is an 80 percent chance of 3-14 mm of rainfall. Rainfall during the tender period is undesirable however in the context of the extended hot conditions in the area this relatively small amount of rainfall is not anticipated to be a major deterrent to bids being submitted.
9. Should market conditions change between 5 January and 9 January you have the right to cancel, or amend, the approach to market.

Proposed mechanism, Price limit, Minimum Bid Volume

10. A competitive tender mechanism ('CEWO Tender') is recommended as the preferred mechanism for the sale. The CEWO Tender would encourage participation and competition, with the objective of obtaining the best value for money for the CEWO.

11. s47E(d)



12. A detailed analysis supporting the proposed price lower limit of s47E(d) per ML is provided at Attachment B. The proposed price limit of s47E(d) per ML: allows for a successful tender outcome should there be downward pressure on market prices caused by a significant change in climatic conditions; is reflective of the potential value of the proposed volume to be sold; and assists you in ensuring value for money is achieved from the sale.

13. We do not expect that a sale of 5 GL will have negative market impacts at the proposed price limit of s47E(d) per ML. We have set the proposed price limit conservatively to account for any possible change in conditions during the sale process, however, if conditions remain dry then it is expected that the average price of offers received will be higher than this and in the event the tender is oversubscribed, consideration could be given to selling more than 5 GL allocations without negative market impacts.

14. Specifying a minimum bid volume is consistent with the Commonwealth's historical approach to conducting water entitlement purchase tenders and is consistent with previous sales of allocation. A minimum bid volume of 10 ML for the trade, is recommended as a way to reduce the administrative burden of the tender process, while ensuring the sale is accessible to a broad range of market participants.

Probity Plan

15. A Probity Plan (at Attachment C) has been prepared for the proposed sale. In most instances probity issues will be brought to the attention of Mark Taylor, Assistant Secretary, Wetlands, Policy and Northern Water Use Branch who may consult with you and the probity adviser prior to responding to issues.

16. It is the role of the probity adviser to provide advice to CEWO where sought in the event any probity issues arise during the Sale Process. The probity adviser for this Sale Process is HWL Ebsworth Lawyers.

Evaluation Plan

17. Bids will be assessed in accordance with an evaluation plan (at Attachment D) which includes:

a. s47E(d)



b. s47E(d)



c. s47E(d)



s47E(d)

Risk assessment and mitigation strategies

18. A risk assessment and mitigation strategy has been prepared for this approach to market. It is provided for your endorsement at Attachment E.
19. Risk 2(a) of the attached risk assessment strategy identifies a potential risk of major consequence in the event you are unavailable to approve Trade Approval Minutes or sign trade forms resulting from bids accepted in response to this approach to market.
20. The treatment for this risk is for you to delegate your powers under section 105(1)(a) of the *Water Act 2007* to the SES Band 1 level personnel within the CEWO, limited to the scope and measures outlined in this approach to market minute. An Instrument of Delegation for this purpose is provided for your approval at Attachment F.

Compliance with the Basin Plan Trade Rules

21. The Basin Plan contains water trading rules that govern how persons or agencies are to behave.
22. The process to be used in developing and undertaking the approach to market is consistent with commitments made through the Operating Rules in the Commonwealth environmental water trading framework. Protocols were developed to assist you and CEWO staff manage water trade related information. These protocols were publicly released in January 2014.
23. A checklist for your endorsement is provided at Attachment G to ensure that:
 - a. you and CEWO staff have followed their obligations as a result of the protocols; and
 - b. the approach to market has been undertaken in a way that is consistent with both your and CEWO staff obligations as under the Trading Framework.

Payment of fees and charges associated with the trade

24. The allocation purchaser is liable to pay for any fees and charges associated with the trade. These include the application fees and any up-front water usage fees which the buyer is required to pay in NSW if they do not have a water use approval attached to their licence.
25. There will be no net outlay of Commonwealth funds as those fees and charges will be reimbursed by the purchaser before the CEWO submits the allocation trade forms to the trade approving Authority. Section 23(3) approval for trade fees paid by the Commonwealth on behalf of the buyer (but reimbursed) will be forwarded to your workflow for approval when the tender evaluation is complete and bid(s) are recommended for acceptance (via one or more Trade Approval Minutes).

Sale process Timing

26. Should you approve this minute, we recommend an announcement to trade is made on Friday 5 January 2018 and a formal approach to market is made on Tuesday 9 January 2018 (i.e. the tender opening date). The list of documents that have been cleared by

Assistant Secretary, Wetlands, Policy and Northern Water Use, and will be publicly released on our website when the tender is announced is provided at Attachment H. A draft media release is provided at Attachment I, together with Frequently Asked Questions to be available on our website, and internal guidance on responding to media and/or general enquiries.

27. From the time the tender is announced to the time the tender closes, potential bidders will have 4 business days to consider if a purchase is a sound investment, including meeting with banks and liaising with CEWO staff on any issues associated with submitting a bid.
28. Industry consultations have emphasised the importance of a timely assessment of offers. Following the Sale Close Time of 2 pm Thursday 11 January 2018 (AEDT), we will endeavour to notify most bidders of whether their Bid has been accepted within 2 business days (and no later than to 10 business days).
29. Tender documents state publicly that if bidders have not heard back from the CEWO by Wednesday 25 January 2018 they are able to withdraw their offer.

Advice to Minister and Secretary of your decision

30. We recommend you advise Minister Frydenberg's Office, the Secretary and A/g Deputy Secretary of your decision. We will prepare a one page note for you to pass on to them covering essential information.

Attachments

- A:** Gwydir Pre-trade approval
- B:** Price Limit
- C:** Probity Plan
- D:** Evaluation Plan
- E:** Risk Assessment
- F:** Delegation Instrument
- G** Approach to Market checklist
- H** List of documents made public
- I** Draft Media Release and Frequently Asked Questions

Pre-trade Approval Checklist

For completion by Project Sponsor	
Trade Name:	Sale of Commonwealth Environmental Water (AMS 50005)
Project Sponsor:	Mark Taylor
Project Manager:	s22
Trading Zone	Gwydir
Type	Allocation sale
Volume	The expected volume is 5 GL.
Disposal of allocation is provided for under section 105 of the <i>Water Act 2007</i>	<p>Section 105 confers on the Commonwealth Environmental Water Holder (CEWH) the power to dispose of Commonwealth environmental water holdings which includes water allocations.</p> <p>The CEWH must perform this function for the purpose of protecting or restoring environmental assets of the MDB so as to give effect to international agreements (s 4 and s 105(3)(a)); in accordance with the Murray Darling Basin Environmental Watering Plan (s 105(4)(a), any operating rules made by the Minister (s.105(4)(c) and s.109) and any relevant environmental water schedules (s 105(4)(d)).</p>
Limitation on disposal under section 106 of the <i>Water Act 2007</i>	<p>Disposal of allocations under Section 106(2) is satisfied if the water is not required in the current accounting period and the water cannot be carried over, or it is likely that a future allocation will be reduced if the disposal does not occur.</p> <p>It is likely that the allocations proposed for disposal in the Gwydir can be carried over; therefore trade under Section 106(2) is <u>not</u> satisfied</p> <p>To dispose of allocations under Section 106(3), the proceeds of disposal need to be used for either or both of acquiring water or environmental activities. Section 106(3) also requires that the Commonwealth Environmental Water Holder reasonably believes, at the time of the disposal, that using the proceeds for future acquisitions of water or holdings or investments in environmental activities would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of one or more of the following:</p> <ul style="list-style-type: none"> (i) the environmental watering plan; (ii) a plan specified in the regulations in relation to an area outside the Murray-Darling Basin; (iii) protecting or restoring the environmental assets of an area outside the Murray-Darling Basin in relation to which those regulations do not specify a plan. <p>The opportunity to dispose of allocation in the Gwydir has been supported by Northern Basin sections assessment against retaining the allocations for use in the current water year, or through the carryover of water for use in future water years. This assessment indicates that the sale of allocations will have no material effect on the capacity of the holdings to be applied to meeting the environmental watering objectives.</p> <p>Therefore it is highly likely that the opportunity will arise to make purchases of water holdings or invest in environmental activities that will</p>

	<p>provide greater benefit than would be obtainable if the proposed sale did not occur.</p> <p>Use of the proceeds of a water sale for environmental activities under Section 106(3) is further subject to the long-term annual diversion limit condition being met in accordance with Section 106 (5) and Section 106 (6).</p> <p>Long-term average sustainable diversion limits come into effect on 1 July 2019. Accordingly, the MDBA has not yet published information indicating whether the long-term annual diversion limit has been complied with in the Gwydir water resource plan area. Therefore, environmental activities would be an allowable use of the proceeds from the proposed sale of water allocations under Section 106 (6).</p>
<p>Trade opportunity identified consistent with the requirements of the Water Act 2007</p>	<p>An allocation sale in the Gwydir catchment has been identified by the Northern basin section as being consistent with the requirements of the <i>Water Act 2007</i>.</p> <p>Subject to completion of a trade in the Gwydir, the proceeds of disposals will be credited to the Environmental Water Holdings Special Account (s.111 and s.112) and retained in the account to make purchases of water or holdings or invest in environmental activities that improve the capacity of the portfolio to meet the objectives of the environmental watering plan.</p> <p>Subject to future market conditions and environmental demands, a range of possible acquisitions and/or investments in environmental activities could be made that would strengthen the capacity of the Commonwealth environmental water holdings to meet the objectives of the environmental watering plan.</p> <p>A specific acquisition using the proceeds has not yet been identified. Future acquisitions or environmental activities that improve the capacity to meet environmental objectives will not necessarily be within the same year or catchment of disposal. It may be some time before a suitable opportunity arises. The Northern Basin Section is developing a business case and operational and risk management arrangements to support event-based proposals. In the future, an opportunity to procure 'water held in on-farm storages' or 'event based no pumping obligations' may arise if these are supported.</p> <p>A project plan has been prepared for the development of an Investment Framework for environmental activities. The Investment Framework is scheduled for finalisation in mid 2017, following the release of a discussion paper and stakeholder, inter-agency and ministerial consultation. The Investment Framework will guide investment in environmental activities consistent with relevant legislative obligations. If approval is sought to use proceeds for any environmental activities before the Investment Framework is completed, the approval request will set out relevant legislative obligations, including that the environmental activities are expected to improve the capacity of the holdings to be applied to meet the relevant environmental objectives under section 106(3).</p> <p>The full assessment supporting this recommendation is provided at <u>Attachment B</u>.</p>

Consultation	The Northern Basin Section has provided an assessment supporting this recommendation as provided in Attachment B . This includes advice on environmental water demands in the Gwydir system within the current water year and in future years.
Potential Outcomes	<p>The purpose of the pre trade approval is to ensure compliance with the <i>Water Act 2007</i> is considered prior to work commencing on the approach to market. A decision to approve the pre-trade approval is not a decision to undertake an allocation trade in the Gwydir. A final decision on trade would be made after the CEWH has considered the Approach to Market proposal.</p> <p>A review of market conditions has been undertaken and allocation prices are now stable at s47E(d) per ML. Market activity is very thin with only 7 allocation trades in January 2017 compared to 85 allocation trades in January 2014 (of which the CEWH accounted for 16).</p> <p>With regard to timing Marsden Jacob's opinion is that the Commonwealth has a choice:</p> <ol style="list-style-type: none"> 1. Immediate sale: Allocation could be sold for around s47E(d) per ML, or 2. Delayed sale: Allocation could be sold early in the 2017-18 water year for between s47E(d) and s47E(d) per ML, if there are no significant dam filling rains. If there are significant rain events then prices could fall below s47E(d) per ML. <p>Demand for regulated allocation would be from cotton producers, some of whom would purchase the allocation for immediate use and others would be securing water for the s47E(d) water years</p>

Project Sponsor:	Mark Taylor	Signature:	s22
Position:	Assistant Secretary		
Division:	CEWO	Date:	5 February 2017
<i>Approval documents will form part of the Quality Assurance and Audit process.</i>			

For completion by Commonwealth Environmental Water Holder	
As Commonwealth Environmental Water Holder, I am satisfied:	Agree/Disagree
1. The water allocations being disposed of are not required within the water year to meet the objectives of the environmental water plan.	
2. The water allocations proposed for disposal are able to be carried over into the next accounting period.	
3. Based on best information currently available, the water allocations proposed for disposal are not required to be carried over to meet future environmental needs.	
4. Disposal of the water allocations will improve the capacity of the Commonwealth environmental water holdings to meet the objectives of the environmental watering plan.	
5. Disposal is in accordance with the operating rules made by the Minister.	Not applicable
6. Disposal is in accordance with any relevant environmental water schedules.	Not applicable
7. That work should commence on the preparation of an Approach to Market strategy for the disposal of allocation in the Gwydir from February 2017.	
8. The trading information on the website should indicate the CEWO is actively investigating trading opportunities with a focus on selling 5 GL in the Gwydir catchment this water year.	
9. That a decision to approve a water announcement has not been made.	
10. If a trade occurs, the proceeds of sale will be retained in the Environmental Water Holdings Special Account until a specific investment is identified which will improve the capacity of the Commonwealth environmental water holdings to meet the objectives of the environmental watering plan.	
11. Long-term average sustainable diversion limits come into effect on 1 July 2019. Therefore, environmental activities would be an allowable use of the proceeds from the proposed sale of water allocations under Section 106 (6)	

Please note: this table does not replace the need to obtain a PGPA Act section 23(3), forward year commitment, or section 23(1) approval if required.

If you disagree to any of the above, the following reason/s are provided:

CEWH:	David Papps	Signature:	s22
Division:	CEWO	Date:	9/2/17

SENSITIVE

Attachment A

Justification for disposal of up to 5,000 ML of regulated allocations and up to 2,000 ML of supplementary allocations in the Gwydir catchment during 2016-17 water year

Reason for recommended disposal	Justification	Supporting evidence
<p>1 The water being disposed is not required within the water year to meet the objectives of the environmental water plan</p>	<p>There has been strong inflows into the Gwydir Wetlands over winter and spring. Following advice from the Gwydir ECAGAC, an additional 30 GL of flows will be provided to the wetlands in 2016-17. The annual environmental watering priorities of Gwydir allocation will be expected to have been met. Remaining allocations (> 10 times the volume of water proposed to be traded) provide considerable flexibility if circumstances change.</p>	<p>1 As a result of very much above average rainfall across northern NSW in winter and spring 2016, there have been large flows of planned environmental water into the Gwydir Wetlands, as well as considerable local rainfall. These flows have resulted in inundation of areas on the floodplain that are relatively isolated and rarely receive inflows.</p> <p>2 Held and planned environmental water will continue to flow into the Gwydir Wetlands in coming months. There is no large scale colonial waterbird breeding event underway at present.</p> <p>3 There are alternative Commonwealth environmental water allocations that can be used if a need arises in the Gwydir Wetlands that remain available in the catchment. The proposed trade is less than 10% of the total allocations of Commonwealth environmental water currently available in the catchment.</p> <p>4 Based on consultations with the Long Term Intervention Monitoring provider (Eco Logical Australia), it is likely that the immediate needs of wetland vegetation in the Gwydir Wetlands have been met, or will be met following the existing planned watering. Additionally, there would have been significant flows to groundwater that helps sustain water in wetlands.</p>
<p>2 The Water Allocations cannot be carried over into next accounting period</p>	<p>Supplementary water cannot be carried over. Regulated allocations can be carried over.</p>	<p>The proposed trade is under Section 106(3) of the Water Act 2007 rather than Section 106(2); hence the potential of forfeit is not a pre-requisite of trade.</p>
<p>3 Based on best information currently available the water being disposed is not required to be carried over to meet future environmental needs</p>	<p>Supplementary water cannot be carried over. Regulated allocations can be carried over.</p>	<p>There is sufficient water available to meet expected environmental watering needs in 2017-18 and 2018-19 without</p> <ul style="list-style-type: none"> • any substitution of supplementary allocations for regulated allocations, • any further allocation against general security entitlements, and • any re-acquisition of water allocations using funds from the special account, <p>each of which would increase regulated allocations remaining. On 30 June 2019, there would be 25,150 ML available without any further allocation to general security entitlements within the next 2 ½ years.</p>

SENSITIVE

Reason for recommended disposal	Justification	Supporting evidence
4. Disposal of the water allocations will provide the opportunity for future acquisitions that will improve the capacity of the Commonwealth environmental water holdings to meet the objectives of the environmental watering plan.	Proceeds from the sale can be spent on environmental activities or to purchase water when and where required (subject to availability in the market).	Use of the proceeds from any trade (sale) would be the subject of a separate decision.
5. The proposed sale is in accordance with any operating rules made by the Minister (s.105(4) (c) and s.109) and	Not applicable	The Minister has not made any operating rules.
6. The proposed disposal is in accordance with any relevant environmental water schedules (s.105(4)(d)).	Not applicable	Water would remain available for the agreed water use in the Gwydir catchment in 2016-17.

Price Limit

Purpose

The purpose of this paper is to advise the Commonwealth Environmental Water Holder (CEWH) of a minimum price for sale of 5 gigalitres (GL) of allocations in the Gwydir catchment. This advice is based on a market analysis with the objective of achieving the best value for money for the Commonwealth. The analysis underpinning the recommended lower price limit will consider historical trade data; current commodity market and seasonal conditions; and the risks and indirect benefits associated with the Commonwealth entering this market.

Recommendation

The recommended lower-bound price limit is $\$47\text{E}(d)$. Allocation water is typically traded for between $\$47\text{E}(d)$ and $\$47\text{E}(d)$ per ML in the Gwydir. Trading within the Gwydir is sporadic; however there has been an increase in the number of trades in December with 7 trades totalling 1.7 GL at Volume Weighted Average price of \$307.

A price limit of $\$47\text{E}(d)$ per ML represents a value for which the CEWH could expect to reinvest in water purchases or environmental activities that improve the capacity of the water holdings to achieve the objectives of the Environmental Watering Plan. A sale of 5 GL at $\$47\text{E}(d)$ per ML could generate $\$47\text{E}(d)$ million of revenue.

In addition to recent and historical trade data and the environmental utility of the water proposed for sale, the price limit of $\$47\text{E}(d)$ per ML is informed by the following inputs:

- The Bureau of Meteorology's monthly and seasonal climate outlook, which predicts a wetter than average rainfall outlook for northeast NSW - although conditions are not expected to be significantly wetter than average, rainfall during January could put downward pressure on allocation prices.
- Advice (pers. comm) from $\$47\text{E}(d)$ indicating that a relatively large area has been planted to cotton in the Gwydir and that in the absence of rainfall, some irrigators will need to purchase additional water to finish their 2017-18 crop.
- Independent water market analysis and consultation with water market intermediaries by consultants Marsden Jacob Associates on behalf of the CEWO (see over page) that confirms the expected high demand for water in 2017-18, particularly in January 2018 given the hot and dry conditions that have eventuated since October 2017.

Memorandum	
Date:	13 November 2017
To:	s22 [REDACTED], Department of Environment and Energy
From:	s22 [REDACTED] s22 [REDACTED], Principal
Subject:	Gwydir Price Point – Regulated Allocation

Purpose

The Commonwealth Environmental Water Office in the Department of Environment and Energy has engaged Marsden Jacob to provide advice on the price point and timing at which strong demand for Gwydir allocation may occur. For the purpose of this analysis we were advised to assume a possible sale of 5 GL of general security allocation in the Gwydir from November 2017 onwards.

Background

The Gwydir catchment is located in inland northern New South Wales. It is separated from the Border Rivers catchment to the north by the Mastermans Range, and from the Namoi catchment to the south by the Nandewar Range.

Announced allocation for general security licence holders is 16.11% and for high security licence holders is 100%. In addition, general security licence holders carried over 60% of their entitlement volume on average from the 2016-17 season¹. Therefore, the overall availability of water is fairly high in the Gwydir.

Cotton is the major irrigated commodity in the Gwydir catchment. According to water market intermediaries, Gwydir irrigators have planted a significant cotton crop in the 2017-18 water year, underpinned by sufficient water availability. The intermediaries estimate that between 50-60% of the irrigated cotton area has been planted and the planting window has now effectively closed. Above average rainfall during October triggered more dryland cotton being planted as well.

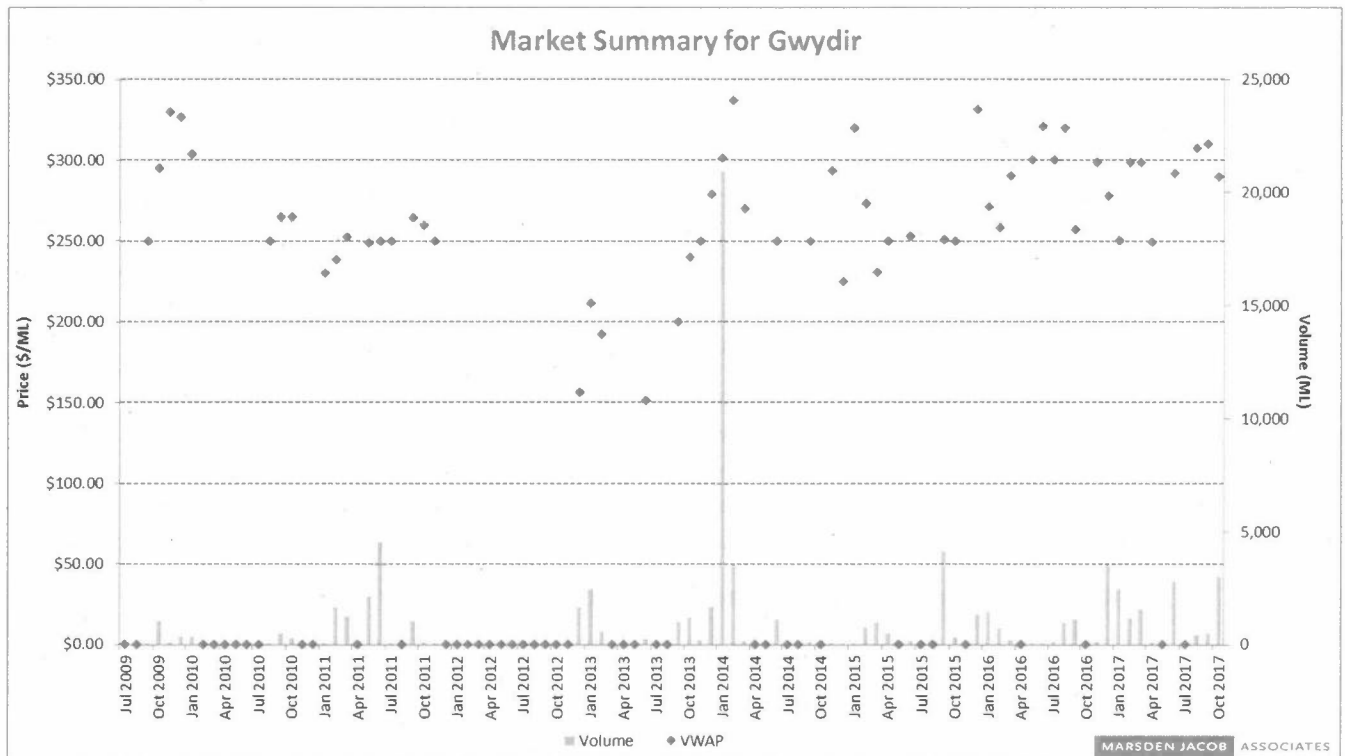
Characteristics of the market

Trading activity in the Gwydir allocation market is sporadic with trading peaks for both price and volume typically occurring early in the water year during the cotton planting period, and over the summer months to finish off the crop (Figure 1).

Many Gwydir market participants have in-depth knowledge about how their market operates, and they are often self-sufficient with their trading requirements, choosing not to engage with market intermediaries. They typically also have good long-term approaches to managing their water requirements, which has resulted in lower price volatility in these markets.

¹ http://www.waternsw.com.au/data/assets/pdf_file/0004/128857/Water-Availability-Report-06-November-2017.pdf

Figure 1: Allocation trading summary in the Gwydir 2009-2017



Recent market activity

Off the back of a wet 2016-17 and growers subsequently having plenty of carryover and high on-farm water availability, trading activity during the first third of 2017-18 has been very limited (Table 1). Above average rainfall in October and consequent supplementary events have also had a depressed impact on recent market activity.

Table 1: Recent allocation market activity in the Gwydir

	July 2017	August 2017	September 2017	October 2017
Trades	-	2	1	1
Volume (ML)	-	413	500	3,000
VWAP (\$/ML)	-	\$307	\$310	\$290
Value (\$)	-	\$126,980	\$155,000	\$870,000

Price analysis

Marsden Jacob has reviewed the historical data and consulted with three water brokers who trade in the Gwydir in the preparation of this advice. Based on this analysis we reach the following conclusions:

1. There is no immediate market demand for allocation water to support this year's plantings as this year's cotton is predominantly sown and irrigators have already secured enough water to meet immediate crop requirements. However, as Gwydir irrigators like to plan ahead and have a long-term view to their water requirements, underpinned by continuous accounting, we are confident that 5 GL could be readily sold. This view was supported by intermediaries, whose consensus was that there is always demand for allocation water in the Gwydir at the right price.
2. Allocation water is typically traded for between $\text{\$47E(d)}$ and $\text{\$47E(d)}$ per ML in the Gwydir. Trade data on the NSW Water Register reveals that so far this season prices peaked in September at $\text{\$47E(d)}$ per ML and have been softening since then as demand has fallen due to rainfall events according to discussions with intermediaries. Intermediaries indicated that before the recent rain events there was buyer demand for larger volumes at up to $\text{\$47E(d)}$ per ML. According to intermediaries current allocation price range is estimated to be between $\text{\$47E(d)}$ and $\text{\$47E(d)}$ per ML.
3. In Marsden Jacob's opinion the Commonwealth has two options:
 - a. Immediate sale: Allocation could be sold for around $\text{\$47E(d)}$ per ML, or
 - b. Delayed sale: Allocation could be sold in $\text{\$47E(d)}$ when demand for water to finish off the cotton crop may be high if the summer is hot and dry. In that scenario prices could be between $\text{\$47E(d)}$ and $\text{\$47E(d)}$ per ML. However, if average conditions prevail prices are anticipated to be from $\text{\$47E(d)}$ to $\text{\$47E(d)}$ per ML, implying that growers don't see financial sense in buying carryover water above that range as global cotton future prices are now well below $\text{\$47E(d)}$ AUD per bale.
4. Demand for allocation water would come from cotton growers. Whereas some of them might be looking to purchase water to top up this year's water requirements, most of them would already be securing carryover water for the 2018-19 water year. Intermediaries commented that generally speaking if the Commonwealth would be looking to support the current year's crop, they need to sell allocation during the first quarter of the season. After this time period most irrigators will most likely be securing water for the following water year.

Marsden Jacob notes that irrigators in the Gwydir are able to carry over water across water years without any dam spill reset risk because unlike in the Lachlan or Macquarie catchments there is no spill reset clause in the Gwydir Regulated River Water Source Water Sharing Plan. The only spill risk Gwydir irrigators are facing relates to account holding limits, which allows them to hold 150% of the entitlement volume at any one time on their allocation accounts for general security entitlements (100% for high security entitlements). Thus, if general security allocation is high, the irrigators often pump water into their on-farm storage as an account management method to avoid allocation forfeiture.

¹ <http://www.bom.gov.au/climate/outlooks/#/overview/summary>



Australian Government

Commonwealth Environmental Water Office

PROBITY PLAN

PROBITY PLAN IN RELATION TO THE SALE OF WATER ALLOCATIONS BY THE
COMMONWEALTH OF AUSTRALIA

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PROBITY PLAN

1. Probity framework

- 1.1. This Probity Plan (Plan) has been prepared for the Commonwealth Environmental Water Office (CEWO) for the purposes of its process for the sale of regulated water allocations (Sale Process).
- 1.2. It is important that the processes which are adopted for the Sale Process are appropriately structured, ensuring equity and fairness by employing a defensible methodology which provides a way to meet the requirements of financial management, corporate governance and accountability laws and policies. The objective is to create a flexible yet clearly defensible process.
- 1.3. This Plan deals with particular probity issues that are associated with the Sale Process. It does not deal specifically with processes around receiving and evaluating bids, which will be considered separately in the evaluation plan.
- 1.4. This Plan applies from the date of its approval until the later of:
 - a. the date that the last bid has been accepted; and
 - b. the last debriefing that may be required under section 13.
- 1.5. It is important to note that other Commonwealth policies and requirements will also be relevant to the conduct of the Sale Process and the personnel involved (both public servants and contractors). These include:
 - a. the *Public Service Act 1999*, the APS Values and the Code of Conduct;
 - b. the *Crimes Act 1914*, particularly section 70; and
 - c. the Lobbying Code of Conduct and APSC Circular 2008/4 Requirements relating to the Lobbying Code of Conduct and post separation contact with Government.
- 1.6. Schedule 1 to this Plan outlines the key actions to be undertaken to help preserve the probity of the Sale Process. If there is an inconsistency between the detail in Schedule 1 and a provision in paragraphs 1 to 18 of this Plan, the provision in this Plan will prevail.

2. Probity objectives and the probity adviser

- 2.1. From a probity viewpoint, the objectives of CEWO in conducting the Sale Process can be summarised as ensuring that:
 - a. there is compliance with applicable Commonwealth procurement policies;

- b. a transparent and fully defensible process is established and followed;
 - c. a clear audit trail is established and maintained;
 - d. all bidders participating in the Sale Process are treated fairly and equitably, consistent with the principles of procedural fairness and natural justice;
 - e. procedures are established and maintained so as to ensure that all confidential information is secured and protected; and
 - f. all conflicts of interests are identified and protocols for their management are developed and implemented.
- 2.2. It is the role of the probity adviser to assist CEWO in meeting these objectives and to provide advice to CEWO where sought in the event any probity issues arise during the Sale Process and to provide other assistance upon request by the Project Director or the Delegate.
- 2.3. The probity adviser for this Sale Process is HWL Ebsworth Lawyers. The probity adviser's contact details are:

George Marques
Partner
Phone: 6151 2182
Email: gmarques@hwle.com.au

Veena Bedekar
Special Counsel
Phone: 6151 2168
Email: vbedekar@hwle.com.au

- 2.4. It is also important to recognise that probity is relevant to the entire Sale Process - from the decision to undertake the sale, through to the preparation of the Sale Process documentation, to the conduct of the evaluation process and the acceptance of bids.

3. Distribution of plan and probity briefings

- 3.1. The Project Director for this Sale Process is Mark Taylor, Assistant Secretary, Wetlands, Policy and Northern Water Use
- 3.2. The Project Director will arrange for copies of this plan will be made available to all Evaluation Team Members and CEWO officers, advisors and consultants involved in the Sale Process (Participants).
- 3.3. The Project Director will arrange for all Participants to receive a probity briefing for a Sale Process promptly after their appointment, or in the

case of Evaluation Team Members, before the commencement of the evaluation process.

- 3.4. The probity briefing will be provided by the Project Director and explain the obligations applicable to the recipient.
- 3.5. The Assessor will arrange for records to be kept of all individuals who have received probity briefing. Such record will include details of the date of the briefing and the presenter.

4. Confidentiality

- 4.1. The protection of confidential and commercially sensitive information is an important probity requirement. The *Commonwealth Procurement Rules* (CPRs) provide that agencies should treat all bids as confidential before and after the award of a contract. The effective management and recording of confidential information is crucial to preserving confidentiality.
- 4.2. Procedures should be adopted to ensure that bids, the evaluation plan, evaluation materials (such as any score sheets, summary notes etc) and evaluation reports are stored in a way that protects their confidentiality and access to such documents should be restricted to personnel who have given appropriate confidentiality undertakings and require access to that information to perform their duties. It is important that procedures are adopted to oversee the protection of this information and to ensure that restricted access is maintained.
 - a. If confidential or commercially sensitive information is disclosed to the wrong person (for example, by inadvertently sending an email to the wrong addressee), then a Participant must as soon as possible after becoming aware of the disclosure, inform the recipient and request that the information is:
 - i. permanently deleted (if in electronic form); or
 - ii. returned(including any copies of the information that may have been made) and not further duplicated (if in physical form); and
 - b. notify the Project Director.
- 4.3. The Project Director will advise on any steps that need to be taken to manage the probity risk associated with the disclosure.
- 4.4. Participants should be aware of and comply with the requirements of the *Public Interest Disclosure Act 2013 (Cth)*.
- 4.5. The Project Director will monitor and advise as required on any issues referred under clause 4.3 and provide a copy of this advice to the probity adviser.

5. Record keeping

- 5.1. All key decisions in relation to the Sale Process, and the reasons for them must be recorded in writing in a way that someone unfamiliar with the Sale Process could understand: the relevant decision, the reasons underpinning it, and the approval received, for the purpose of accountability and to have a clear audit trail.
- 5.2. Records relating to the Sale Process will be retained in accordance with the CEWO usual requirements, including those under the *Archives Act 1983 (Cth)*.
- 5.3. Participants are responsible for ensuring appropriate records are kept and retained in relation to their duties for the Sale Process.

6. Conflicts of interest

- 6.1. It is important to ensure that during the Sale Process appropriate mechanisms exist for dealing with any conflicts of interest – actual, potential or perceived. Where competing interests and priorities exist, appropriate procedures must be adopted to minimise or avoid a situation where a conflict of interest could arise.
- 6.2. For the purposes of this Probity Plan, a 'conflict of interest' will arise where a person has a commercial, private or personal interest, or a duty to another organisation or entity, that influences or conflicts, or may influence or conflict with that person's objective exercise of their duties to the CEWO in relation to the Sale Process.
- 6.3. There is no exhaustive list of what would constitute an actual, potential or perceived conflict of interest and hence advice on all possible conflicts should be sought and obtained from the probity adviser without delay. Examples of conflicts of interest in the Sale Process include:
 - a. through any current or proposed future dealings, including with land holdings or water access licenses, or relationships with a bidder or potential bidder or any related body, an individual or their family stands or could stand to gain a benefit or advantage from the outcome of the evaluation process; or
 - b. there is any other reason why an individual might not deal with a bidder or potential bidder in an objective manner.
- 6.4. Prior to his or her involvement in the Sale Process, each Participant must complete a conflict of interest declaration using:
 - a. the form set out in Annex A (APS employees and SES officers);
 - b. the form set out in Annex B (Participants who are not APS employees or SES officers); or

- c. the form in use by CEWO for the declaration of SES interests for SES officers or statutory appointees who elect not to use the form specified in Annex A.

(the Conflict of Interest Declaration.)

- 6.5. The completed Conflict of Interest Declaration is to be returned to:
 - a. the Delegate where the declarant is the Assessor; and
 - b. the Project Director, where the declarant is a person other than an Assessor.
- 6.6. Any conflict of interest that arises at a later stage must also be brought promptly, in writing, to the attention of the Delegate or Project Director.
- 6.7. Participants must update their Conflict of Interest Declaration when requested by the Delegate.
- 6.8. Participants must immediately inform the Delegate during the Sale Process if they, or a family member, are offered employment by a bidder or potential bidder or intend to apply for such employment.
- 6.9. On receipt of a declaration of an actual or potential conflict of interest the Project Director (or where relevant, the Delegate) will decide on the course of action to be taken to resolve the matter and advise the relevant Participant. If, in the opinion of the Assessor (or where relevant, the Delegate) the conflict of interest is not able to be resolved or managed, the person in relation to whom the conflict of interest exists will be excluded from the Sale Process.
- 6.10. The Project Director will arrange for a conflicts of interest register to be established to record all completed Conflict of Interest Declarations, together with all steps taken to resolve any declared conflicts of interest, on that register. The Assessor will maintain the conflicts of interest register.
- 6.11. It is possible that conflict of interest declarations will contain personal information. It is therefore important that copies of all conflict of interest declarations are stored securely and that consideration is given to the requirements of the *Privacy Act* when dealing with the information contained in them.

7. Communication with Bidders

- 7.1. One of the key probity related principles is that all bidders and potential bidders in the Sale Process must be treated fairly and equitably and consistently with the rules of procedural fairness and natural justice. To achieve this end it is necessary to establish protocols for communicating with bidders and potential bidders leading up to and during the Sale Process to ensure that information will not be provided to any bidder

which gives, or has the potential to give, an unfair advantage to that bidder.

- 7.2. Any communication that a Participant has with bidders or potential bidders about the Sale Process should be documented, with the documentation maintained in accordance with the CEWO usual document management system.
- 7.3. All written correspondence with bidders or potential bidders about the Sale Process should be signed by a CEWO officer with the appropriate internal authority to sign (and not signed with a generic signature from the CEWO team or section). Email correspondence should be sent by an authorised CEWO officer or from the CEWO section email address.
- 7.4. Where any party in an unrelated business dealing, meeting, conference or social situation seeks to raise issues in respect of the Sale Process, Participants should indicate that it is not appropriate to discuss such matters and should advise the enquirer to direct their query to the nominated contact email in the Sale Process guidelines, or if there is no such person, to the Project Director.

8. Business as usual dealings

- 8.1. Routine business dealings with bidders and potential bidders may continue as usual. However Participants involved in business as usual dealings should exercise caution in discussions with bidders and potential bidders.
- 8.2. Participants should not discuss matters that could affect, or are connected to, the Sale Process in the presence of any bidder or potential bidder.

9. Gifts, hospitality and other contact with bidders

- 9.1. During the Sale Process, Participants, in their business as usual dealings, may be placed in situations where bidders or potential bidders offer (or provide) hospitality, gifts or other benefits. Light refreshments can be accepted as part of a business as usual dealing.
- 9.2. In circumstances other than in paragraph 9.1, Participants must follow the provisions in this section 9 where they are offered gifts or hospitality during a Sale Process.
- 9.3. Participants must not accept social invitations from bidders or potential bidders without obtaining the prior approval from the Project Director.
- 9.4. CEWO staff must follow the CEWO usual gifts and hospitality policies in relation to any gifts or hospitality offered by bidder or potential bidder. CEWO staff must also notify the Project Director if they are offered gifts

or hospitality by a bidder or potential bidder, and follow the directions given by the Project Director.

- 9.5. Participants who are not CEWO staff must inform the Project Director if they are offered gifts or hospitality by a bidder or potential bidder during the Sale Process. The Project Director may request that the individual decline the offer.
- 9.6. If with the approval of the Project Director it is decided that the Participant should accept and offer of hospitality or an invitation to a function from a bidder or potential bidder, the individual must:
- a. not discuss the Sale Process or matters related to the Sale Process with the bidder or potential bidder;
 - b. consider whether it is appropriate, when accepting the invitation, to include a statement that the person will not be able to discuss the Sale Process generally at the function or conference;
 - c. not give any speech or present any paper at the function or conference that refers to any aspect of the Sale Process unless this has been formally approved by the Project Director
 - d. where possible, arrange for at least one other Participant to be in attendance to ensure that each person is able to corroborate that the Sale Process was not discussed;
 - e. immediately following the hospitality or contact, the Participant should send to the Project Director a file note of the attendance, including confirmation that the Sale Process was not discussed.

10. Sale Process Documentation

- 10.1. The Application Form, Guidelines and the Terms of Offer (Sale Process Documentation) must set out a defensible sale process consistent with CEWO's objectives. It is fundamental to the Sale Process that all documents and other information provided to participants are consistent and sufficiently comprehensive to permit bidders and potential bidders to be able to make informed decisions about whether to participate in the Sale Process and to be given the best opportunity to comply with CEWO's requirements.
- 10.2. If it becomes necessary to change the Sale Process Documentation,, these changes should be communicated to all potential bidders (before the closing time) or all bidders that remain in the Sale Process (after the closing time) so as to minimise any potential detrimental outcomes for them.

11. Bid Evaluation

- 11.1. An evaluation plan containing the procedures in respect of the receipt of bids and providing a clearly defined methodology for the evaluation of

bids will be established and must be adhered to during the Sale Process.

- 11.2. Appropriate reporting processes should be established to confirm that compliance with the agreed evaluation methodology in the evaluation plan has been achieved and that the appropriate sign offs have been obtained in relation to compliance with these agreed processes.
- 11.3. The role of the probity adviser during the evaluation process will be set out in the evaluation plan.

12. BAFO negotiations

- 12.1. In the event that CEWO proceeds to best and final offer (BAFO) negotiations with certain bidders, CEWO should follow the guidelines set out in the Evaluation Plan. All negotiations should be fully documented.

13. Debriefings

Bidders will be provided the opportunity to request a debriefing. Debriefings will be provided after all successful bids have been accepted. The probity adviser may be consulted in relation to the format, content for the debriefing and may attend any debriefing that the Delegate considers is to be provided.

14. Probity advice

- 14.1. The probity adviser can be called upon at any time during the Sale Process to provide advice on probity issues.

15. Fraud

- 15.1. All suspected incidents of fraud must be immediately reported to the Fraud Liaison Advisor.

Phone: 1800 075 152

Email: Fraudliaison@environment.gov.au

Postal address:

Fraud Liaison Advisor

Department of the Environment

GPO Box 787

Canberra ACT 2601

- 15.2. Incidents will be investigated and handled in accordance with CEWO's usual policies and procedures.

16. Complaints

- 16.1. Any complaints about the Sale Process should be referred to the Project Director. Participants who receive a complaint verbally should also ask the complainant to provide the complaint in writing to the Project Director.
- 16.2. Upon receipt of a complaint, the Project Director may consult with the probity adviser, legal adviser and relevant departmental executive before responding to a complaint.
- 16.3. A complaint involving the Project Director should be referred to the probity adviser for consideration and advice.
- 16.4. Any responses to complaints received are to be in writing. A copy of the complaint and response are to be provided to the probity adviser, legal adviser and relevant departmental executive and kept on the probity file.

17. Public Interest Disclosures

- 17.1. A complaint about the probity of the Sale Process may be a disclosure under the *Public Interest Disclosure Act 2013 (Cth)* (the PID Act) depending on the nature of the complaint and how it is made. The person receiving the complaint may seek legal advice as to whether the processes of the PID Act are triggered.
- 17.2. An authorised officer under the PID Act (Authorised Officer) may seek legal advice and consult any other relevant person, such as the Probity Adviser, to assist in the investigation of a complaint and to determine whether there are any issues arising out of the PID Act disclosure or its investigation that may require remedial action in the Sale Process.
- 17.3. Public interest disclosures under the PID Act are confidential. The Authorised Officer must ensure that any disclosure of information that may identify the person making the public interest disclosure is confined and is made only for the purpose of ensuring the compliance by the Secretary and other officials in the department with their obligations under the PGPA Act or other law of the Commonwealth.

18. Queries about this Probity Plan

Any queries about this Probity Plan should be directed to the Project Director. The Project Director may, consult with the probity adviser prior to responding to the query.

SCHEDULE 1 KEY ACTION PLAN

Event	Objectives	Action/Responsibility	Action Approved by	Documents Prepared by	Legislation
Ongoing					
Establish Probity Plan and monitor compliance	Finalise Probity Plan for the Sale Process Ensure Probity Plan is adhered to during the Sale Process	Probity adviser to develop Probity Plan for consideration and approval by the Assessor (as defined in the Evaluation Plan).	CEWO	Probity advisor / Assessor	
Provide Sign-offs	Provide confirmation to the Assessor regarding the conduct of the Sale Process	Probity adviser to provide Assessor with sign offs at milestones as requested by CEWO.	Probity advisor	Probity advisor	
Confidentiality	Ensure the protection of confidential information	CEWO to establish secure areas and security cabinets/containers and other facilities for the storage of confidential information. CEWO to confirm terms of engagement of advisers and obtain deeds of confidentiality as appropriate.	CEWO	CEWO	
Conflict of interest	Ensure all participants briefed on conflicts of interest Ensure Conflict of Interest Declarations provided by all personnel involved in the Sale Process Manage all conflicts of interest during the Sale Process	CEWO to establish conflicts register to record all identified conflicts and their treatment. Any potential conflicts declared by team members to be escalated to the Project Director, or where the conflict involves the Assessor, to the Delegate, for consideration. The Assessor/Delegate may engage the probity adviser for advice on compliance with conflict guidelines.	CEWO	Assessor	

Event	Objectives	Action/Responsibility	Action Approved by	Documents Prepared by	Legislation
Prior to Approach to Market					
Justification for sale of water allocations	Justify sale of water allocations as a precondition of commencing the Sale Process. Meet limitations set out in s 106 of the Water Act	CEWH or his delegated official under instrument to provide a written justification for the sale of water allocations	CEWH/Delegated	CEWO	Sections 106 and 117 of the <i>Water Act</i>
Preparation of Sale Process Documentation	Ensure that the development Sale Process Documentation is conducted appropriately	s42 Probity advisor to review and advise on drafts of the Guidelines and Terms of Offer, the Evaluation Plan and evaluation criteria and recommend changes for consistency across the documents.	CEWO	Legal CEWO	
Bid Price Limit	Set appropriate price limit for bids or determine methodology to apply to set the bid price limit	CEWO to determine price limit	Delegate	CEWO	
Volume Price Limit (where applicable)	Set appropriate volume price limit or determine methodology to apply to set the volume price limit	CEWO to determine volume limit	Delegate	CEWO	
Online application form	Prepare application form for bidders to submit application	CEWO to prepare form (in consultation with the legal advisor if necessary) and publish online	CEWO	CEWO	
Announcement strategy	Prepare strategy for announcement of Sale Process and publication of guidelines	CEWO to prepare strategy and publish announcement	CEWO	CEWO	

Event	Objectives	Action/Responsibility	Action Approved by	Documents Prepared by	Legislation
Receipt of Applications	Ensure document management systems are implemented for the handling of bid documents	CEWO to ensure an appropriate document management procedure is adopted for receipt of bids (noting that bids may be received electronically from the Sale Open Time so the systems and procedures must be in place from the Sale Open Time).	CEWO	CEWO	
Prior to Sale Close Time					
Evaluation Team	Establish Evaluation Team	CEWO to establish an Evaluation Team for evaluating bids. Probity advisor may be engaged to review evaluation team if necessary. Evaluation Plan should be finalised and adopted.	Delegate	CEWO	
Bid Assessment					
Evaluation of bids	Ensure evaluation process is properly conducted and documented and that it establishes a clear and defensible basis for the evaluation of bids Ensure clearly defined evaluation methodology is followed Ensure security of documentation and protection of confidential information	CEWO to conduct evaluation of bids, ensuring it follows the defined methodology in the Evaluation Plan. CEWO to prepare draft Evaluation Report. If requested, the Probity advisor will brief members of Evaluation Team, review document management systems to be implemented to record, store, handle and distribute bids and monitor whether evaluation is undertaken in accordance with the Evaluation Plan. The Probity advisor will, upon request, advise on clarification questions and give ad hoc advice on any other issues during the evaluation.	CEWO	CEWO	

Event	Objectives	Action/Responsibility	Action Approved by	Documents Prepared by	Legislation
Assessment spreadsheet	Prepare spreadsheet analysing bids received	CEWO to prepare in accordance with evaluation plan	CEWO	CEWO	
Bid Price Limit (if based on methodology)	Set bid price limit for bids based on approved methodology	CEWO to determine	CEWO	CEWO	
Volume Price Limit (if based on methodology)	Set volume price limit for bids based on approved methodology	CEWO to determine	CEWO	CEWO	
Tender Outcomes minute	Prepare minute outlining outcome of evaluation process	CEWH or CEWH-delegated AS to prepare	CEWH/Delegated	CEWO	Section 117 of the Water Act Sections 15 and 23 of the PGPA Act
Following Assessment					
Acceptance or Decline Notice to bidder and invoice	Issue acceptance notice and invoice to successful bidders and decline notice to unsuccessful bidders	CEWO to issue notices to bidders according to tender outcomes minute	CEWO	Legal CEWO	
Issue Receipt	Issue receipt to successful bidders	Accounts receivable team to issue receipts to bidders who have paid their invoice		CEWO	
Submit Trade Forms	Submit trade forms to allow transactions to proceed. Trade form is either online (VIC) or sent in hardcopy (NSW and SA)	CEWO to complete as per tender outcomes minute, once payment received.		CEWO	

Event	Objectives	Action/Responsibility	Action Approved by	Documents Prepared by	Legislation
Termination for non-payment	Terminate sale where payment not received within specified time period	CEWO to determine whether payment not received within deadline and issue termination notices. s42	CEWO	CEWO	
Termination for other reasons	Terminate sale for other reasons	CEWO to determine whether to terminate sale whether because of default (issue default notice) or termination by agreement s42	CEWO	CEWO	
Debriefing process	Ensure that unsuccessful bidders who request additional feedback are provided with appropriate feedback Ensure debriefs are conducted properly and that confidentiality and probity is maintained	CEWO to ensure both the successful and unsuccessful bidders are provided with an opportunity to be debriefed, if requested. If requested, probity advisor may brief personnel to be involved in debriefing regarding purpose and content of debriefing (in particular, the importance of keeping other bidders' information confidential, including the preferred bidders).	CEWO	Legal CEWO (specific documents)	

**ANNEX A – NON-DISCLOSURE AND CONFLICT OF INTEREST DECLARATION – FOR USE BY
APS EMPLOYEES AND SES OFFICERS**

Sale Process: Sale of Water Allocations Process Number #*[Insert unique reference number]*# (the Sale Process)

Defined terms in the probity plan have the same meaning in this declaration

1. I am assisting the Commonwealth Environmental Water Office with the Sale Process.
2. I have received and read the probity plan and I understand my obligations in relation to probity in connection with the Sale Process.
3. I have been asked to disclose any interest that may conflict, or be perceived to conflict with my role participating in the Sale Process.
4. I declare that to the best of my knowledge and belief neither myself nor members of my immediate family have any actual, potential or perceived conflicts of interests, except for the interests described on the following page.
5. I am aware of the Commonwealth Environmental Water Office's requirement for strict probity in the Sale Process and if I subsequently discover that there is a relationship of a kind mentioned in paragraph 4 of this Declaration, I will immediately report it to the Delegate.
6. I will also immediately report to the Delegate if, during the Sale Process, I or a family member are offered employment by a bidder or potential bidder or intend to apply for such employment.
7. I acknowledge that through my role, I will receive confidential information, such as information included in any Bid or associated with the evaluation. I will keep the confidentiality of that information.
8. I confirm I understand that my obligations of confidentiality apply indefinitely.
9. I will comply with any reasonable direction given to me by the Project Director or a Delegate (or if I am the Assessor, by the Delegate) in relation to an actual or potential conflict of interest or confidentiality.
10. I acknowledge that if a conflict of interest cannot be resolved or otherwise dealt with, my role in the assessment/evaluation process may be limited or I may be excluded from the assessment/evaluation process (at the discretion of the Department).

Dated the day of 2017

Signed:

Name:

Role:

Address:

Personal, Financial and Business Interests

Please set out any circumstances which could reasonably raise an expectation of a conflict of interest with the Sale Process

ANNEX B – NON-DISCLOSURE AND CONFLICT OF INTEREST DECLARATION – SALE PROCESS (FOR USE BY PARTICIPANTS WHO ARE NOT APS EMPLOYEES OR SES OFFICERS)

Sale Process: Sale of Water Allocations Process Number #[*Insert unique reference number*]# (the Sale Process)

This Deed Poll is made on the day of 2017

By: (print name) of

(print address)

For the benefit of the Commonwealth of Australia represented by the Commonwealth Environment Water Office (CEWO)

Defined terms in the probity plan have the corresponding meaning in this deed poll.

1. I am assisting the CEWO with the Sale Process by performing the following role:

(print)

2. I have been asked to disclose any interest that I have that conflicts, or may conflict, with my ability to undertake my role in the Sale Process impartially and fairly.
3. I declare that to the best of my knowledge and belief, no conflict of interest exists, except for the relationships or interests described on the following page and I am aware of nothing that would reasonably be perceived as preventing or hindering me from acting fairly and impartially and in the best interests of CEWO.
4. I am aware of the Commonwealth Environmental Water Office's requirement for strict probity in the Sale Process and if I subsequently discover that there is a relationship of a kind mentioned in paragraph 3 of this Deed Poll, I will immediately report it to the Delegate.
5. I will also:
 - a. avoid seeking gifts or hospitality from Bidders or potential Bidders;
 - b. promptly update my Deed Poll if my circumstances change that could lead to a conflict of interest arising or if I am requested to update the Deed Poll by the Delegate or an Assessor; and
 - c. immediately notify to the Delegate if I am or a member of my family is offered employment with a Bidder or potential Bidder or applies for such a position.
6. I acknowledge that in performing my duties, I may receive confidential information, such as information included in any Bid.
7. I will not (without CEWO's prior written consent), disclose confidential information to any person unless that person is a Participant and has a need to know the information.

8. I will not use, copy or reproduce any confidential information other than for the purposes of the Sale Process.
9. I will take all reasonable precautions to prevent individuals who are not Participants accessing materials in my possession or control that contain confidential information.
10. I will immediately notify the CEWO if I become aware of any unauthorised access to or disclosure of confidential information.
11. I acknowledge that my obligations relating to confidential information apply indefinitely.
12. I have received and read the probity plan and understand my obligations in relation to probity in connection with the Sale Process.
13. I will comply with any reasonable direction from an Assessor or the Delegate (or if I am an Assessor, by the Delegate) in relation to an actual, perceived or potential conflict of interest or a breach of confidentiality.
14. I acknowledge that if a conflict of interest cannot be resolved or otherwise dealt with, my role in the Sale Process or in preparing for the Sale Process may be limited or I may be excluded from the Sale Process or preparing for the Sale Process (at the discretion of the CEWO).

<p><u>Personal, Financial and Business Interests</u></p> <p>Please set out any circumstances which could reasonably raise an expectation of a conflict of interest with the Sale Process</p>	
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**Signed, sealed and
delivered by the declarant**
in the presence of:

Signature of witness

Signature of the declarant

Full name of witness (print)

Address of witness (print)



Australian Government

Commonwealth Environmental Water Office

Sale of Water Allocation Evaluation Plan

Last Updated: 4 January 2018

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1. Purpose of Evaluation Plan

- 1.1. The Evaluation Plan provides the framework for assessing Bids received in response to approaches to market by the Commonwealth Environmental Water Holder (**CEWH**) to sell water allocations (**Sale Process**). It applies to each Sale Process. It guides Commonwealth Environmental Water Office (**CEWO**) personnel and other personnel (including contractors) that are involved in the evaluation.
- 1.2. Information specific to an individual Sale Process is contained in the Approval to Approach Market minute (that initiates the Sale Process following delegate approval), the Sale Guidelines, the Bid Form and the Terms of Offer for the Sale Process.
- 1.3. Once information relating to a Sale Process has been released to market, amendment of the Evaluation Plan should be avoided. If amendments are required (including any adjustment of Sale Volume), they will require delegate approval.

2. Guiding Principles

Ethics and Fair Dealing

- 2.1. It is essential that a climate of ethics and fair dealing is established from the start of the evaluation process. A specific aspect of ethical behaviour relevant to the evaluation process is an overarching obligation to treat all Bids fairly and equitably. The following considerations are critical to ensuring that this is achieved and should be observed by all participants during the process:
 - a. recognising and dealing with any conflicts of interest, including perceived or potential conflicts of interest;
 - b. dealing with all Bids in a fair and consistent way;
 - c. seeking appropriate advice where probity issues arise;
 - d. not accepting gifts, hospitality or other inducements;
 - e. being scrupulous in the use of public property; and
 - f. complying with all applicable duties and obligations in:
 - i. the Department's Accountable Authority Instructions;
 - ii. the *Public Governance, Performance and Accountability Act 2014*;
 - iii. the Commonwealth Procurement Rules and relevant procurement connected policies;
 - iv. the Australian Privacy Principles of the *Privacy Act 1988*;
 - v. the security provisions of the *Crimes Act 1914*; and
 - vi. the Australian Public Service's Code of Conduct as set out in the *Public Service Act 1999*.

Disposal of Commonwealth property

- 2.2. In disposing of Commonwealth property, the Commonwealth has a responsibility to achieve the most effective, efficient, economical, and ethical outcome for the delivery of the Government's objectives and to ensure that the disposal is conducted in a practical and economical manner. Within this framework, the Commonwealth's objective is to minimise cost and maximise returns for the Commonwealth.
- 2.3. The Commonwealth also operates within the parameters established by the *Water Act 2007* and so decisions about the disposal of Commonwealth environmental water holdings must be made consistently with the requirements of that Act.

Accountability and Transparency

- 2.4. All participants involved in the evaluation process have a responsibility to ensure that the Sale Process is conducted in a fair, consistent and transparent manner and that actions are documented, defensible and substantiated in accordance with legislation and Government policy.
- 2.5. The evaluation process will provide a clear audit trail to:
- a. ensure that the Sale Process is fully documented;
 - b. demonstrate that the Assessor has acted objectively and in accordance with this Evaluation Plan; and
 - c. substantiate the basis for the recommendations in relation to the Sale Process.

3. Participants in the evaluation

Assessor

- 3.1. The Director, Portfolio Management Section is the assessor (**Assessor**). The Director may delegate his or her role responsibility as the Assessor to the Assistant Director of the Portfolio Management Section where the Director is unavailable.
- 3.2. The Assessor is responsible for overseeing the evaluation process and making recommendations to the delegate on whether Bids received should be accepted or rejected.
- 3.3. Where matters are referred to the Assessor they may discuss with the Delegate and or seek probity advice.
- 3.4. The Assessor must give a conflicts of interest declaration to the delegate in accordance with section 7.
- 3.5. As part of overseeing the evaluation process, the Assessor will confirm that the Bid process and evaluation have been conducted in accordance with:
- a. the Probity Plan;
 - b. this Evaluation Plan;
 - c. Approval to Approach Market minute; and
 - d. Sale Guidelines, Terms of Offer and associated documentation.

Probity Adviser

- 3.6. The Commonwealth has appointed HWL Ebsworth Lawyers as its probity advisers.
- 3.7. The probity advisers can be called on to provide advice to the Assessor on probity matters to facilitate the evaluation process being conducted in a manner that provides evidence of ethical behaviour, which includes impartiality, accountability and transparency. This may include:
 - a. advising the Assessor on managing probity issues that arise during the course of the evaluations;
 - b. advising on the resolution of complaints or other concerns raised by Bidders or an Account Holder regarding fairness throughout the evaluations; or
 - c. providing advice on conflicts of interest.

s42

Evaluation Team

- 3.10. The Evaluation Team will comprise:
 - a. s47E(d) [redacted]
 - b. s22 [redacted]
 - c. s22 [redacted]
 - d. s22 [redacted]
 - e. s22 [redacted]If required, additional support maybe provided by:
 - f. s22 [redacted]
 - g. s22 [redacted]
 - h. s22 [redacted]

3.11. The Evaluation Team's responsibilities will cover the conduct of the evaluation process in accordance with this evaluation plan, under the direction of the Assessor.

Additional Support

3.12. The Assessor may call upon advisory organisations for additional specialist support. Any person engaged in providing specialist support must declare any actual or potential conflicts of interest beforehand.

Individuals identified prior to the Sale Process as available for providing additional support include:

4. Receipt and Registration of Bids

- 4.1. The Sale Guidelines require Bids to be submitted online using the Bid 'smartform'. The smartform requires declarations to be made and certain information to be completed prior to submission.
- 4.2. Attachments to the Bid Form which are not submitted as part of the smartform will only be accepted if CEWO has given prior approval for submission by email or facsimile in accordance with paragraph 4.12 of the Sale Guidelines. Attachments submitted by email or facsimile which are received after the Sale Close Time will be dealt with in accordance with paragraph 5.11.
- 4.3. Bid 'smart forms' will receive a system-generated time and date stamp when received. Attachments received by email or fax will have the time and date of receipt recorded.

5. Evaluation of Bids

- 5.1. The object of evaluation is to determine which Bid will comprise the best return to the Commonwealth while minimising costs .

Minor Errors

- 5.2. The Commonwealth may seek to clarify any minor errors of form on the Bid Form (including any errors in Allocation Account reference, email address or the trade form(s) or evidence of authority or the non-submission of trade form(s) or evidence of authority) with the bidder, but is under no obligation to do so.
- 5.3. The Evaluation Team members will keep written records of all communications with Bidders or Account Holders and update the evaluation spreadsheet with any corrections that are made through the clarification of minor errors process.

Reconciliation of Bids received

- 5.4. The Evaluation Team members will import into the evaluation spreadsheet all Bids that have been received through the online 'smart form' along with their unique identifier number. Bids that have been withdrawn will be removed from the dataset.
- 5.5. For clarity, a reference to 'Bid' in the remainder of the Plan refers to Bids which have not been withdrawn.

Eligibility Criteria

- 5.6. **Step 1:** Bids will be reviewed to determine whether they meet the Eligibility Criteria. To meet the Eligibility Criteria, a Bid must:
 - a. be submitted electronically using a Bid Form via the CEWO Website in accordance with the **Bid Form Requirements** of paragraph 4.8 of the Guidelines; and

- b. be received by the CEWO after the Sale Open Time and before the Sale Close Time, unless it was late solely due to mishandling by the Commonwealth; and
 - c. offer a Bid Price which is equal to or greater than the Bid Price Limit for the Sale Volume and
 - d. nominates a valid Allocation Account into which the Water Allocation can be transferred; and
 - e. nominates a valid email address via which CEWO can communicate with the Bidder.
- 5.7. Compliance with the Eligibility Criteria will be deemed to be met in the Evaluation Spreadsheet if a Bid has:
- a. been received through the online 'smart form',
 - b. s47E(d)
 - c. a Bid Price which is equal to or greater than the Bid Price Limit; and
 - d. no errors or omissions that are unresolved through the minor error process or would materially affect the Bid's competitiveness.

Lodgement outside of relevant period

- 5.8. All Bid 'smart forms' that have s47E(d) will be assumed to pass the screening stage.
- 5.9. A Bid received before the Sale Open Time will not be accepted for any reason.
- 5.10. A Bid received after the Sale Close Time will not be accepted unless the delay is solely attributable due to mishandling by the Commonwealth or is otherwise provided for in this Evaluation Plan.
- 5.11. An attachment which is submitted through an alternate method pursuant to paragraph 4.2 that is received after the Sale Close Time may be accepted at the CEWO's discretion if:
- a. the delay is solely attributable due to mishandling by the Commonwealth; or
 - b. acceptance does not give the Bidder or Account Holder an unfair advantage .

Bid Price Limit

- 5.12. s47E(d)
- 5.13. s47E(d)

Conditions for participation

- 5.14. The conditions for participation are specified in section 1.1 of the Sale Guidelines. Subject to paragraph 5.27.a, compliance with these conditions for participation will rely on the closing declaration submitted as part of a Bid.
- 5.15. At the conclusion of Step 1, the Evaluation Team members will update the on the evaluation spreadsheet by removing any Bids that do not meet the conditions for participation.

Prioritisation of Potentially Acceptable Bids

s47E (d)

s47E (d)

Additional discretions to exclude

s47E (d)

s47E(d)

6. Recommendations Minute

- 6.1. Following the evaluation, the Assessor will provide the delegate with a recommendations minute for approval.
- 6.2. The recommendations minute will include:
 - a. a summary of the outcomes of the Sale Process, including s47E(d)
 - b. an estimate of the total s47E(d) in finalising the Bids recommended for acceptance;
 - c. a copy of the evaluation spreadsheet, showing the price, volume, performance of each Bid against the evaluation criterion and a recommendation on acceptance and rejection and those Bids which are to be held and only rejected if the accepted Bids are completed;
 - d. a summary of the evaluation process, noting:

s47E(d)
 - e. a statement from the Assessor on whether the Sale Process, including the application of any methodology determined prior to the Sale Process and evaluation process, has been conducted in accordance with the Sale Guidelines, Terms of Offer, Evaluation Plan, Approval to Approach Market minute, and associated documentation.
- 6.3. If the delegate approves the recommendations, the Commonwealth will issue an email to Bidders notifying them of the outcome of the evaluation.
- 6.4. Where an 'Acceptance of Bid' notice is issued by email to successful Bidders, this creates a contractual arrangement for the sale of the nominated volume (referred to as the Agreed Volume) at the time the Acceptance of Bid notice is sent. Once payment is received (including purchase price and transaction costs as relevant), the Commonwealth will complete and lodge the trade approval form(s) with the relevant Authority.
- 6.5. After the Sale Volume is transferred, the Commonwealth will notify all Bidders whose Bids were not been accepted, and offer those Bidders the opportunity to request a debrief. The debrief will be provided in accordance with the Probity Plan.

7. Probity

Conflicts of Interest

- 7.1. Prior to their involvement in the evaluation process, the Assessor, Evaluation Team members and any individual who provides Additional

Support must read this evaluation plan and the Probity Plan and complete and return a conflict of interest form in accordance with the Probity Plan.

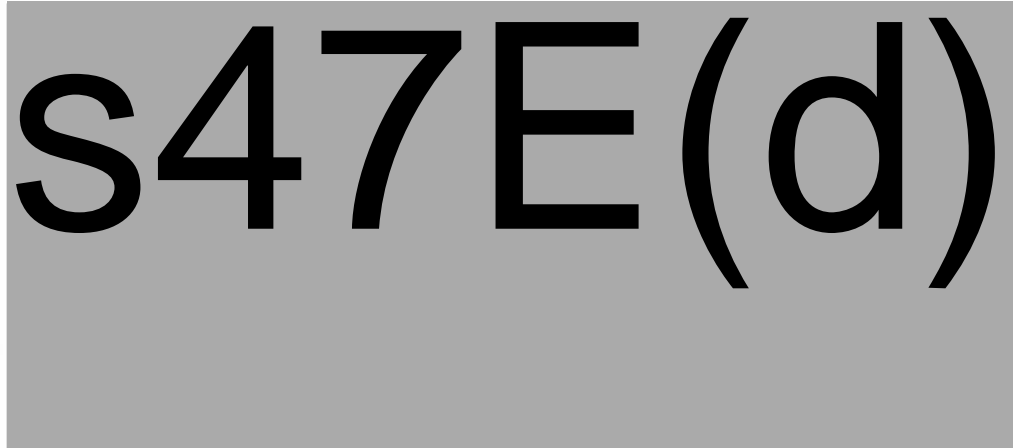
- 7.2. On receipt of a declared conflict, advice will be sought and the conflict managed in accordance with the Probity Plan.

Communication

- 7.3. The Assessor, Evaluation Team members and individuals who provide Additional Support should not communicate with Bidders during the evaluation process without the prior approval of the Delegate or unless this plan permits such communication, such as in the case of clarifying minor errors.
- 7.4. Where clarification is required, the Evaluation Team will arrange for that communication.
- 7.5. Written records of all communications with Bidders during the evaluation process will be made and will be retained.

Extensions

- 7.6.



- 7.7.

Confidentiality

- 7.8. Bids will be treated as confidential. Bids will be kept secure and not be used so as to prejudice a fair, open and effective competition.
- 7.9. No discussion will occur with any person other than those participating in the evaluation process regarding any aspect of the Bids or the evaluation process prior to the completion of the evaluation, without the approval of the Assessor.

Security

- 7.10. All Bids received will be received either electronically via the smart form, or in part received by secure fax or email at the Commonwealth's discretion, and treated and stored securely. Access will be provided only to the Assessor, Evaluation Team members, individuals providing Additional Support, the Delegate, the probity advisor and where necessary legal advisors and advisory organisations.
- 7.11. "D" Class cabinets located within the Portfolio Management Section's work area will be used to store sale related documentation.

- 7.12. Following completion of the Sale Process, records of Bids will be kept in accordance with the requirements of relevant laws including the *Privacy Act 1988* (Cth) and the *Archives Act 1983* (Cth) and any applicable Commonwealth or Department privacy policies. These records may be used to support the CEWO's ongoing functions including as a source of data to analyse and report on historical water markets.

Complaints Handling

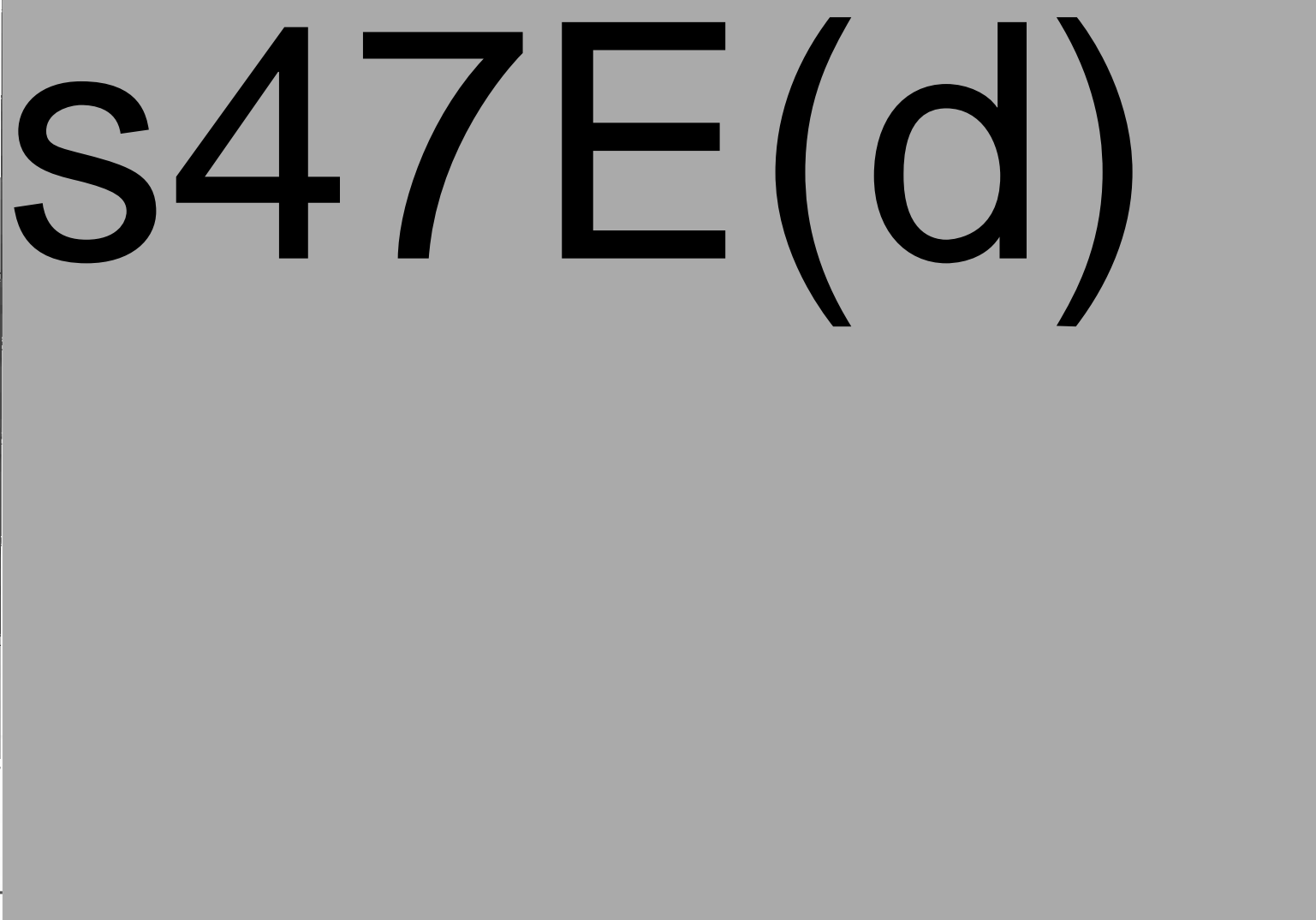
- 7.13. If any Bidder raises a complaint about the outcome or some other aspect of the evaluation process, they will be referred to the CEWO Complaints Officer.

Part 1: Activity Identification and Context Analysis

Activity Name	Commonwealth Environmental Water Office - Allocation trade (Gwydir)		
Type of activity	Function		
Date of risk analysis	Jan-18	Duration of risk analysis	Duration of trade
Activity Objective and main outcomes	To establish and implement a sale of Commonwealth water allocations, consistent with good public sector governance, which will improve the capacity of the CEWO port basin. Main outcomes would include the buying and selling of water allocations and entitlements. Key outputs will be trading terms of offer; evaluation plan; guidelines; bid form; letters to bidders and internal process documents. Receipt of acceptable bids and sale of a		
External Environment Context	Sale of water allocations by CEWO is governed by the <i>Water Act 2007</i> , in particular the need to manage the portfolio of environmental water holdings to meet the object		

Part 2: Risk Assessment and Treatment Plan (Please refer to the Risk Assessment Matrix to complete this section)

1 #	2 Risk (Briefly describe the risk that could affect whether the objective	3 Impact (Briefly describe the potential impacts on the activity if the event happens. Use this information to rate the consequence of the impacts)	4 Sources of the risk (Briefly describe the potential causes or sources of the event happening)	5 Category (Select from the drop down menu the type of source of the risk)	6			Co (Briefly describe the existing controls, i.e. of each potential
					6A Consequence	6B Likelihood	6C Rating	



1 #	2 Risk <small>(Briefly describe the risk that could affect whether the objective</small>	3 Impact <small>(Briefly describe the potential impacts on the activity if the event happens. Use this information to rate the consequence of the impacts)</small>	4 Sources of the risk <small>(Briefly describe the potential causes or sources of the event happening)</small>	5 Category <small>(Select from the drop down menu the type of source of the risk)</small>	6			C <small>(Briefly describe the existing controls, i.e. of each potential</small>
					6A Consequence	6B Likelihood	6C Rating	

S47E (d)

Major	Possible	High
OVERALL INHERENT RISK OF THE ACTIVITY		

COMMONWEALTH OF AUSTRALIA

Water Act 2007

Instrument of Delegation

COMMONWEALTH ENVIRONMENTAL WATER HOLDER'S POWERS
UNDER SECTION 105(1)(a) OF THE WATER ACT 2007

- (1) I, DAVID PAPPS, Commonwealth Environmental Water Holder, pursuant to section 117 of the *Water Act 2007* (the **Act**), delegate my powers under section 105(1)(a) of the Act:
- (a) to the persons from time to time holding, occupying, or performing the duties of the positions in the Department of the Environment (the **Department**) identified in column one of the table below; and
 - (b) subject to the limitations identified in column two of the table below.
- (2) Delegations made previously under section 117 of the Act continue to have effect.

COLUMN ONE Section 105 delegate(s)	COLUMN TWO Limitation on exercise of power
SES Band 1 level personnel within the Commonwealth Environmental Water Office	A delegate may only exercise those powers under section 105(1)(a) of the Act which are necessary to effect the disposal of water that is the subject of Approach to Market Minute AMS50004 and any variations to this minute.

Dated: 5.1.18

s22

DAVID PAPPS
Commonwealth Environmental Water Holder

Checklist – Trading Framework and Basin Plan Water Trading Rules

For completion by Director, Portfolio Management	
<u>Trade Name:</u>	Gwydir Allocation sale (50004)
<u>Project Director:</u>	s22
<u>Project Manager:</u>	s22
<u>Trading Zone</u>	Gwydir
<u>Trading product</u>	Regulated Allocation disposal
Consistency with Trading Framework (Operating Rules)	
<u>Basin Plan Trading Rules</u>	The CEWH and CEWO staff have followed their obligations as a result of the Basin Plan water trading rules [OR1]
<u>Market Mechanism proposed</u>	Use of a tender mechanism is consistent with the requirement in the Commonwealth environmental water trading framework that all trades will be undertaken using a competitive process [OR2].
<u>Market Assessment</u>	The decision to trade has been informed by a market assessment undertaken on behalf of the CEWO by Marsden Jacob Associates in November 2017, discussions with River Operators and review of allocation trade data on the NSW water register. This work includes an assessment of recent market conditions and information from brokers [OR3].
<u>Price Limit</u>	A price limit has been set for this trading action supported by information in the market assessment and informed by the most recent market conditions [OR4].
<u>Assessment of Offers</u>	An evaluation plan has been developed that sets out how trade offers will be assessed in a consistent, equitable and transparent manner [OR5].
<u>Trade announcement</u>	Announcing the tender is consistent with our obligation to provide guidance on trade intentions (OR 6) and to make an announcement of our intention to trade (OR 7). The announcement to trade will include relevant information regarding the proposed trade (OR 7) as well as market information (OR 8). Within 30 days of registration of the last trade made through a given action information regarding the outcomes of the trade action will be publicly released (OR 9).
Consistency with Basin Plan trading rules ss 12.49 to 12.51	
As Director of the Portfolio Management Section, I am not aware of:	
<ul style="list-style-type: none"> - a decision made by the CEWH, the Department of the Environment or any other agency of the Commonwealth or a Basin State that is to be announced and has yet to be announced which could reasonably be expected if made generally available to have a material effect on the price or value of the water access right being traded; or - a water announcement by the CEWH, the Department of the Environment or any other agency of the Commonwealth or a Basin State that is not generally available. 	
AND	
As Director of the Portfolio Management Section, I have ensured that:	
<ul style="list-style-type: none"> • all CEWO staff have signed a conflict of interest and confidentiality declaration with the exception of: <ul style="list-style-type: none"> - s22 who is presently on leave until 15 January 2018 (3 days after the tender is concluded); and 	

- I have verified that, with the exception of s22, no employees have disclosed any conflicts of interest pertinent to the trade of allocations / entitlements in the Murray Darling Basin.

Please note: A recommendation to trade must not be made to the CEWH if CEWO staff are aware of a decision or water announcement that is not generally available and is not covered by a water trading strategy.

Portfolio Management:	s22	Signature:	s22
Position:	Director		
Division:	CEWO	Date:	4 January 2018
Approval documents will form part of the Quality Assurance and Audit process.			

For completion by Commonwealth Environmental Water Holder

<u>As Commonwealth Environmental Water Holder, I am satisfied:</u>	<u>Yes/No</u>
1. the proposed trading action has met the CEWH and staff of the CEWO's obligations as set out in the trading framework (operating rules)	Yes
2. the proposed action is in accordance with announced intentions	Yes
3. the trading action proposed has given reasonable consideration to market conditions and potential market impacts	Yes
4. the trading action as proposed will encourage wide participation and promote competition within the water market	Yes
5. the recommended price limit will provide value for money	Yes
6. the evaluation plan will provide for the consistent, equitable and transparent assessment of trade offers	Yes
7. risks have been assessed, and, with the proposed mitigation strategies in place, are acceptable	Yes

Please note: this table does not replace the need to obtain Financial approval

If you answered No to any of the above, explain your reasons for approval / rejection of this potential trade opportunity:

As Commonwealth Environmental Water Holder, I am not aware of a decision / water announcement that has not been made generally available that would have a material effect on a person's decision to trade with respect to the water allocations being traded.

CEWH:		Signature:	s22
Division:		Date:	5.1.18

List of Tender Documentation

Documents to be made public through our website

- Announcement media release
- Guidelines
- Terms of Offer
- Market information
- FAQs for Bidders
- Sample application form
- Bid form
- Post trade outcomes
- Citizen space survey
- Survey outcomes

Internal documents

- Web and email trade text
- Internal FAQ
- Trade Project Checklist
- Risk Assessment
- Evaluation Plan
- Probity Plan
- Enquiry register
- Withdrawn Bids register
- Evaluation checklist
- Assessment spreadsheet
- Customer creation spreadsheet
- Invoice creation spreadsheet
- Assessment outcomes minute
- Acceptance of Bid
- Trade forms
- Email of decline

Draft MEDIA RELEASE

5 January 2018

COMMONWEALTH ENVIRONMENTAL WATER ALLOCATION FOR SALE IN THE GWYDIR

Commonwealth Environmental Water Holder

The Commonwealth Environmental Water Holder today announced the sale of 5 GL of temporary water from the Gwydir.

Use same terminology throughout - I prefer "allocation"

The sale is ~~being administered~~ through a competitive tender process, which will open at 10 am Tuesday 9 January 2018 and will close at 2 pm Thursday 11 January 2018 (AEDT).

Commonwealth Environmental Water Holder, David Papps, said the trade in the Gwydir followed detailed consideration of the environmental conditions locally and across the Murray-Darling Basin, as well as implications for irrigators and their communities.

"Trading temporary water is a particularly useful management tool because it provides the flexibility to buy and sell according to environmental circumstances, so that I can use environmental water to its best effect in the locations where it is most needed," Mr Papps said.

"I have decided to trade 5 GL of water allocations because there is enough environmental water available to continue to build environmental resilience in the Gwydir."

a new act in the new future

This decision has been made following an analysis of the availability of environmental water to meet current and future environmental needs in the Gwydir catchment. The sale will enable the CEWH to achieve better environmental outcomes through a more flexible use of the Commonwealth's portfolio of water holdings.

The proceeds of the trade can be used to purchase water in the future to meet higher priority environmental needs in another catchment, or ^{it} can be invested in environmental activities that will improve the capacity of the Commonwealth Environmental Water Holder to achieve environmental objectives.

[This is the fourth sale of allocation water by the C E Water Holder.]

There will be a minimum bid size of 10 ML. This will ensure our process is efficient and still allow small irrigation enterprises to access the trade. A purpose designed smart form will be available on the Commonwealth Environmental Water Office web site

<http://www.environment.gov.au/water/cewo/trade> when the tender process opens at

10 am Tuesday 9 January 2018 (AEDT).

For further information, please visit our web site

<http://www.environment.gov.au/water/cewo/trade>

For media inquiries please contact the Department's media team on T: 02 6275 9880 or E: ewater@environment.gov.au

