

Policy for RED Zone Completion:

This policy outlines the steps to be taken to ensure completion of Workplans in the RED Zone in order to trigger Disconnection Payments and a conclusion to the Red Zone Proponent Agreement.

What needs to Happen:	Evidence to be produced:
<p>1. Legal and WAE entitlements completed:</p> <p>All Water Access Entitlements that are required to be Assigned by the Proponent to the Organisation pursuant to the contract between the Organisation and that Proponent, have been Assigned to the Organisation and then Assigned by the Organisation to the Commonwealth under the Commonwealth Agreement; and</p> <ul style="list-style-type: none"> • TNIS Easements all completed. • Sign TNSDS constitution. • Any remaining Bank charges on WAL’s 13359 and 24004 are lifted. • Sign a document cancelling shareholding in TNCL, and relinquishing delivery requirement. • Sign Deed of Resignation for TNIS/TNCL. 	<p>All completed, as per Doug MacKay’s information.</p>
<p>2. Completion of all Activities as per Proponent Workplan</p> <p>The Organisation’s (Proponents) channels and irrigation infrastructure are Decommissioned so that they are no longer connected to the Scheme Landholding and no longer capable of being used to convey water to the Scheme Landholding for irrigation purposes, as per the definitions contained in Clause 49.9</p>	<p>Final claim for payment against all work plan milestones has been made, and all have been finalised.</p>
<p>3. Inspections:</p> <p>Inspection of decommissioning works is made by Proponent Coordinator and Proponent, and works are satisfactorily undertaken according to the Workplan and the definitions contained in Clause 49.9.</p> <p>Proponent coordinator completes a Decommissioning Report with photos and other evidence, to be signed by the Proponent coordinator and Proponent and accepted by the TNCL Board.</p>	<p>Decommissioning Report completed and signed by Proponent Coordinator and Proponent and accepted by TNCL Board.</p>
<p>4. Annexure D completed (Disconnection certificate)</p> <p>Proponent provides the Organisation with a statement in the form at Annexure D, duly signed by the Proponent</p>	<p>Disconnection certificate completed and accepted by TNCL Board</p>
<p>5. Proponent Audit:</p>	<p>Proponent’s accountant provides</p>

<p>Proponent to provide a Certificate of Audit of Income and Expenditure which covers all conditions in the Proponent Agreement under item 10.2, summarised as an “Audited financial statements of its income and expenditure” and a Certificate covering item 10.3 “Use of funds” statement.</p>	<p>unqualified audit certificate.</p>
<p>6. Invoicing: Disconnection Activity Payment</p> <p>Subject to the above, any remaining Proponent Funds to be invoiced to TNCL by the Proponent as follows:</p> <ol style="list-style-type: none"> I. All documentation in steps 1-5 above is completed by Proponent, to the satisfaction of TNCL Board. II. A Tax invoice for a Disconnection Activity Payment is issued by the Proponent, along with documents specified in clause 4.10 of the Proponent Agreement. III. The payment of any Disconnection Activity Payment is recommended by the TNCL Board and documented in meeting minutes. 	

Referenced documents are as follows:

49 AMENDMENT OF COMMONWEALTH AGREEMENT – RED ZONE

- 49.1 Prior to the Date of this Agreement, the Commonwealth and the Organisation have agreed to amend the Commonwealth Agreement. In accordance with Recital B and clause 27.4(f), the Parties agree that the provisions in this clause 49 are included in the general terms and conditions of the Agreement, to give effect to the variation to the Commonwealth Agreement.
- 49.2 The parties have elected to record all amendments to the terms and conditions of this Agreement in clause 49 for convenience only, and the inclusion of terms and conditions in this clause 49 rather than within the clause to which they apply does not in any way limit or otherwise affect the priority to be afforded to those terms and conditions in the event of any conflict or inconsistency as provided for in clause 41.3.

Performance of the Activity and Management of Funding

- 49.3 For the avoidance of doubt, the requirement in clause 5.4 includes a requirement that Funding be spent by the Proponent in accordance with the Budget.
- 49.4 Insert clause 5.4A, as follows:
- 5.4A The Proponent:
- (a) acknowledges and agrees that it is a condition in the Commonwealth Agreement that the Organisation can only release Funding to the Proponent for the Proponent's Project where the Proponent provides evidence that a Competitive Process has been applied to any item in the Proponent's Budget (extending to goods or services including an Asset) that exceeds \$5,000 inclusive of GST; and
 - (b) agrees that in respect of items in the Proponent's Budget (extending to goods or services including an Asset) that exceeds \$5,000 inclusive of GST, that the Proponent will provide evidence to the satisfaction of the Organisation that such Competitive Processes have been applied.

Records

- 49.5 With respect to the records and audit provisions in clauses 9.1 – 9.3, insert clause 9.4, as follows:
- 9.4 In addition to any other requirement in relation to the retention of records and reporting, the Proponent acknowledges that the Department may, at its discretion, conduct an independent audit of the finances of the Organisation or the Proponent for purposes associated with the Commonwealth Agreement or this Agreement or any review of performance under the Commonwealth Agreement or this Agreement. The Proponent agrees to do whatever is reasonably required by the Department must ensure that its contractual arrangements with Proponents and Subcontractors reflect the requirements of this clause 9.

Access to premises and records

49.6 With respect to the access to premises and records provisions in clauses 19.1 to 19.5, insert the following clauses:

19.6 In addition to any other obligation under this Agreement, the Proponent must give persons authorised by the Commonwealth access to, or arrange for access to be given to, locations where the Proponent will undertake, is undertaking or has undertaken the Activity. The Department may, at its absolute discretion, exercise rights under this clause for any reasonable purpose including to ascertain whether:

- (a) the Organisation and/ or the Proponent is aware of its obligations under clause 25 [Compliance with laws and Policies]; and/or
- (b) the Organisation and/ or the Proponent is completing:
 - (i) the work the subject of the Commonwealth Agreement; or
 - (ii) the Activity and/ or the Project (as the case may be) in accordance with the requirements of this Agreement (including any requirements in the Schedule or a Workplan),

but any such inspection or review by the Commonwealth pursuant to this clause will not place any obligation on the Commonwealth, the Organisation or otherwise diminish the Proponent's responsibilities for complying with the Proponent's obligations under this Agreement or otherwise at law.

19.7 The Proponent acknowledges and agrees that the provisions in clause 19.3 and 19.4 also apply to access required to be provided to the Department under clause 19.6.

Termination for default

49.7 Without limiting clause 22.1 and in addition to any other right of termination the Organisation has under this Agreement, the Organisation may immediately terminate this Agreement in whole or part in accordance with clause 22.1 where the Proponent repeatedly fails to undertake the Activity in accordance with the Schedule and any Workplan.

Subcontracting

49.8 Despite any approval given by the Organisation under clause 23.1, the Proponent is responsible for conducting its procurement processes for the procurement of goods and services (including in respect of Assets) in accordance with the following procurement principles:

- (a) obtain a value for money outcome;
- (b) encourage competition (encompassing non-discrimination and competitive procurement processes);
- (c) ensure an efficient, effective and ethical use of resources; and
- (d) ensure accountability and transparency of process.

Interpretation

49.9 For the purposes of this Agreement, unless the contrary intention appears:

‘Competitive Process’ means a tender or quote process that involves sourcing of goods or services that are either:

- (a) sourced from a panel of approved contractors and suppliers arranged and maintained by the Organisation pursuant to clause 23.1;
- (b) sourced by the Proponent at a cost that is below the lowest rates of the panel of approved contractors and suppliers arranged by the Organisation pursuant to clause 23.1; or
- (c) sourced by the Proponent using a process consistent with the following procurement principles :
 - (i) obtain a value for money outcome;
 - (ii) encourage competition (encompassing non-discrimination and competitive procurement processes);
 - (iii) ensure an efficient, effective and ethical use of resources; and
 - (iv) ensure accountability and transparency of process.

‘Decommissioning’ means all activities, tasks and work necessary to ensure that:

- (a) channels, tailwater infrastructure, storage infrastructure, tail drains, pumps, valves and water reticulation systems, located on the Scheme Landholding which at the Date of this Agreement were used for irrigation purposes are shut-down or otherwise made non-operational so that they can no longer be used for irrigation purposes; and
- (b) water is available for stock and domestic purposes on the Stock and Domestic Landholding,

and includes the following:

- (c) in the case of on-farm channel and tailwater infrastructure, that the site and surrounding area is leveled to the adjacent surface contours to a safe and practicable level;
- (d) in the case of irrigation storage infrastructure:
 - (i) the banks of the irrigation storage are no steeper than 4:1 (horizontal:vertical) so that the storage infrastructure is not capable of holding water for irrigation purposes, unless a slope of 4:1 (horizontal:vertical) results in a slope that is unsafe for farm vehicles and farm machinery;
 - (ii) all Structures connected to the storage infrastructure are removed; and
 - (ii) the remaining irrigation storage facility is only capable of being used to hold water for general farm purposes;
- (e) in the case of tail drains and roads in fields, the drains are filled in so that farm vehicles can safely drive over that part of the site above and surrounding where the drain was previously situated;

- (f) in the case of on-farm erosion stabilisation works, including re-vegetation, pasture and fencing, the work is completed to the satisfaction of the Proponent; and
- (g) in the case of stock and domestic infrastructure, the installation of tanks, troughs, pumps, valves and water supply reticulation for stock and domestic water supply in accordance with the Proponent's Workplan;

'Disconnection Completion' where it appears in the Schedule or a Workplan means the component of the Budget that is the balance of Funds available to the Proponent after the Decommissioning activities are completed in full. The value of the Proponent's farm rationalisation component of the Budget must not exceed \$[insert], and may include provision for payment by the Organisation to the Proponent in respect of Disconnection Completion.

The Proponent acknowledges and agrees that:

- (a) the value of Funding for the Proponent has been determined by the Organisation within the overall available funding for farm rationalisation as set out in the Commonwealth Agreement; and
- (b) the purpose of Disconnection Completion is to ensure that the Proponent permanently completes the disconnection of the Proponent's farm from the supply of irrigation water from the Organisation; and
- (c) payments for Disconnection Completion will only be made by the Organisation to the Proponent after:
 - (i) the Proponent has completed the Proponent's Activity (including all Decommissioning work) in accordance with this Agreement;
 - (ii) the Organisation's channels and irrigation infrastructure are Decommissioned so that they are no longer connected to the Scheme Landholding and no longer capable of being used to convey water to the Scheme Landholding for irrigation purposes;
 - (iii) all Water Access Entitlements that are required to be Assigned by the Proponent to the Organisation pursuant to the contract between the Organisation and that Proponent, have been Assigned to the Organisation and then Assigned by the Organisation to the Commonwealth under the Commonwealth Agreement; and
 - (iv) the Proponent provides the Organisation with a statement in the form at Annexure C, duly signed by the Proponent.

'Structures' means breaks in the Organisation's or a Proponent's water reticulation system, such as farm outlets, flow control mechanisms, and road crossings.

49.10 The parties acknowledge and agree that the 'Activity' includes Decommissioning.

FROM RED ZONE AGREEMENT:

9. RECORDS

- 9.1 The Proponent must keep full and accurate accounts and Records of:
- (a) the conduct of the Activity including, without limitation, the progress against the Milestones;
 - (b) the receipt and use of Funding, Proponent's Contributions (if any) and Other Contributions (if any);
 - (c) the acquisition of Assets, and must maintain an Asset register in the form provided for at Item 6.1 of the Schedule;
 - (d) the creation of Intellectual Property Rights in Activity Material;
 - (e) all invoices, receipts and payments issued to and received by the Proponent in respect of the Activity and this Agreement; and
 - (f) all correspondence and documents received by, or created by or on behalf of, the Proponent or by any third party in connection with the Activity and this Agreement.
- 9.2 Records and accounts specified in or referred to in subclause 9.1 must be retained by the Proponent for a period of no less than 7 years after the end of the Activity Period.
- 9.3 The operation of subclause 9.2 survives the expiration or earlier termination of this Agreement.

10. REPORTING

- 10.1 The Proponent agrees to provide the Organisation with written reports at the times and containing the information specified in Item 5 of the Schedule.
- 10.2 Within 40 Business Days after the expiry of the Activity Period, completion of the Activity or termination of this Agreement (whichever is the earliest), the Proponent agrees to provide the Organisation with:
- (a) audited financial statements of its income and expenditure in respect of the Funding, Proponent's Contributions (if any), Other Contributions (if any), and Project Generated Income that include:
 - (i) a definitive statement as to whether the financial information for the Activity is true and fair and is based on proper accounts and Records;
 - (ii) a definitive statement as to whether the Funding (and any Proponent's Contributions, Other Contributions and Project Generated Income) was spent for the Activity and in accordance with this Agreement; and
 - (iii) a detailed breakdown of expenditure of Funds (in accordance with any template provided by the Organisation, including any template provided by the Department to the Organisation under the Commonwealth Agreement) in each Financial Year in relation to each item of expenditure specified in the Budget in the Workplan for the relevant Financial Year;

- (b) a statement of financial position with respect to the Funding (listing assets and liabilities by class), which must include, under assets, the balance of the Proponent's account referred to in paragraph 5.5(a); and
- (c) a copy of a letter to the Proponent from its Approved Auditor, or a report from the Proponent's Approved Auditor, including:
 - (i) specific comment on the adequacy of financial controls being maintained by the Proponent; and
 - (ii) where there are any qualifications or limitations on the audit, an outline of the reason(s) for the qualifications or limitations and the remedial action recommended.

10.3 The information required to be provided under subclauses 10.1 and 10.2 must be accompanied by a certificate from the Proponent stating that:

- (a) all Funding received (and any Proponent's Contributions, Other Contributions and Project Generated Income) was spent for the purpose of the Activity and in accordance with this Agreement, and that the Proponent has complied with this Agreement;
- (b) salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law;
- (c) any financial information required is presented in accordance with any other financial reporting requirements which the Organisation may notify to the Proponent;
- (d) where an Asset has been created or acquired with the Funding, that the Proponent has complied with clause 7 in respect of those Assets; and
- (e) at the time the Report or financial statement is provided to the Organisation, the Proponent is able to pay all of its debts as and when they fall due.

10.4 The Proponent agrees that the financial statements referred to in subclause 10.2 will comply with Australian Accounting Standards and will be prepared by a Qualified Accountant.

10.5 The Proponent agrees that the audit referred to in subclause 10.2 will be carried out by an Approved Auditor and comply with the Australian Auditing Standards.

10.6 The Proponent is responsible for:

- (a) maintaining the separate bank account referred to in clause 5.5(a);
- (b) maintaining its financial statements and records in accordance with this clause 10;
- (c) consolidating its financial statements, where relevant;
- (d) arranging for those statements to be audited by an Approved Auditor; and
- (e) ensuring that the audit complies with the Australian Auditing Standards by requiring the Approved Auditor to provide a certificate to that effect.

10.7 The Proponent acknowledges and agrees that:

- (a) all records, financial statements and audited statements provided by the Proponent under this clause 10 will be used by the Organisation to assist in the preparation of

records, financial statements and audited statements that the Organisation is required to provide to the Commonwealth under the Commonwealth Agreement;

- (b) the Proponent consents to the provision of all such records, financial statements and audited statements for that purpose; and
 - (c) all records, financial statements, audited accounts and other information provided under this clause 10 will be true and correct in all respects and the Proponent will take all reasonable steps to verify and ensure the truth and accuracy of all such records, financial statements, audited accounts and other information provided by the Proponent under this clause 10.
- 10.8 The operation of this clause 10 survives the expiration or earlier termination of this Agreement.

ANNEXURE D: RED ZONE DECOMMISSIONING STATEMENT

Private Irrigation Infrastructure Operators Program in New South Wales

[Insert name of Water Access Entitlement Holder] (ABN [Insert]) (**WAE Holder**)

AND

[Insert name of Business Operator] (ABN [Insert]) (**Business Operator**)

AND

[Insert name of Landholder] (**Landholder**)

Each of the WAE Holder, Business Operator and Landholder represent, warrant and agree that:

1. they are party to an agreement with Trangie-Nevertire Co-operative Limited (ABN 87 517 177 968) (**TNCL**) dated [*insert date*] as part of the Private Irrigation Infrastructure Operators Program (**Proponent Agreement**);
2. the “Activity” detailed in, and the subject of, the Proponent Agreement has been completed in accordance with the terms of the Proponent Agreement;
3. the Activity includes the:
 - a. completion of Decommissioning on the Scheme Landholding;
 - b. completion of Stock and Domestic Works on the Stock and Domestic Landholding; and
 - c. Assignment of Water Access Entitlements to TNCL, which TNCL is required to assign to the Commonwealth of Australia under TNCL’s agreement with the Commonwealth dated 4 January 2011, as amended from time to time (**Funding Agreement**);
4. the property known as ‘[*insert name of property*]’ located in [*insert folio identifiers*] within the Trangie-Nevertire Irrigation Scheme (**TNIS** and **Scheme Landholding** respectively):
 - a. has been permanently disconnected from channels and all irrigation infrastructure owned by TNCL and TNIS; and
 - b. on and from the date of this statement is not capable of receiving water from TNCL and TNIS from any channels or irrigation infrastructure owned by TNCL or TNIS for irrigation purposes.
5. For the purposes of this statement:

‘**Decommissioning**’ means all activities, tasks and work necessary to ensure that:

- a. channels, tailwater infrastructure, storage infrastructure, tail drains, pumps, valves and water reticulation systems, located on the Scheme Landholding which at the date of the Proponent Agreement were used for irrigation purposes are shut-down or otherwise made non-operational so that they can no longer be used for irrigation purposes; and
- b. water is available for stock and domestic purposes on the Stock and Domestic Landholding,

and includes the following:

- c. in the case of on-farm channel and tailwater infrastructure, that the site and surrounding area is levelled to the adjacent surface contours to a safe and practicable level;
- d. in the case of irrigation storage infrastructure:
 - i. the banks of the irrigation storage are no steeper than 4:1 (horizontal: vertical) so that the storage infrastructure is not capable of holding water for irrigation purposes, unless a slope of 4:1 (horizontal:vertical) results in a slope that is unsafe for farm vehicles and farm machinery;
 - (iii)
 - ii. all Structures connected to the storage infrastructure are removed; and
 - (iv)
 - iii. the remaining irrigation storage facility is only capable of being used to hold water for general farm purposes;
 - (v)
- e. in the case of tail drains and roads in fields, the drains are filled in so that farm vehicles can safely drive over that part of the site above and surrounding where the drain was previously situated;
- f. in the case of on-farm erosion stabilisation works, including re-vegetation, pasture and fencing, the work is completed to the satisfaction of the Landholder; and
- g. in the case of stock and domestic infrastructure, the installation of tanks, troughs, pumps, valves and water supply reticulation for stock and domestic water supply in accordance with the Proponent Agreement;

'Stock and Domestic Works' means:

- a. the purchase and installation of stock and domestic reticulation system, troughs, tanks and associated infrastructure required for a new stock and domestic system; and
- b. undertaking all construction and other work associated with the new stock and domestic system,

on the Stock and Domestic Landholding, excluding the purchase and installation of stock and domestic infrastructure and performance of work that TNCL has, or a third party engaged by TNCL has, completed.

'Stock and Domestic Landholding' means the landholding:

- a. that is owned by or leased or licensed to the Landholder or the Business Operator; and
- b. that is located entirely within the Trangie-Nevertire Irrigation Scheme area of New South Wales,

and which is identified as such in the Proponent Agreement; and

'Structures' means breaks in the water reticulation system, such as farm outlets, flow control mechanisms, and road crossings, located on the Scheme Landholding.

Dated [day] day of [month] 20[XX]

SIGNED as a deed by **[Insert name of WAE Holder]** (ABN (insert)) (in the capacity of WAE Holder):

.....

sign here

in the presence of:
SIGNED as a deed by **[Insert name of Business Operator]** (ABN (insert)) (in the capacity of Business Operator):

.....

sign here

print name of witness

witness sign here

in the presence of:

SIGNED as a deed by **[Insert name of Landholder]** (ABN (insert)) (in the capacity of Landholder):
print name of witness

.....

.....

witness sign here
sign here

in the presence of:

.....

.....

print name of witness

witness sign here