

Important Reader Note: This is a copy of the standard NVIRP Rationalisation Agreement template. The Agreement should be fully read and understood, however please note that it does not include completed **Schedule 1** of the Agreement. **Schedule 1** is a crucial part of the Agreement and will vary significantly between individual business cases depending on works to be carried out by the landowner and NVIRP. Thus a proper insight into any NVIRP Rationalisation Agreement will include completed individual business case information in Schedule 1.

RATIONALISATION AGREEMENT

between

GOULBURN-MURRAY RURAL WATER CORPORATION

and

STATE OWNED ENTERPRISE FOR IRRIGATION MODERNISATION IN NORTHERN VICTORIA

and

THE OWNERS DESCRIBED IN ITEM 1 OF THE SCHEDULE



Northern Victoria Irrigation Renewal Project
461 Wyndham Street, Shepparton Victoria 3630

Reference: __/__/__

THIS AGREEMENT is made the..... of 2011

BETWEEN

GOULBURN-MURRAY RURAL WATER CORPORATION, of 40 Casey Street, Tatura, Victoria, 3616, ABN 46 761 336 846 ("the Corporation").

And

STATE OWNED ENTERPRISE FOR IRRIGATION MODERNISATION IN NORTHERN VICTORIA trading as Northern Victoria Irrigation Renewal Project of Suite 1, 465 Wyndham Street, Shepparton, 3630 ("NVIRP")

And

THE OWNERS DESCRIBED IN ITEM 1 OF THE SCHEDULE ("the Owners")

WHEREAS

- A. The Owners are the registered proprietors of all that piece of land described in **Item 2** ("the Property");
- B. The Corporation is the owner of the assets described in **Item 3** ("the Assets");
- C. The Corporation agrees for NVIRP to deal with the Corporation's Assets and the Owners as detailed in this Agreement;
- D. The Assets are located on the Property and the land described in **Item 4**.
- E. The parties desire to Rationalise the Assets in accordance with **Item 5**.

DEFINITIONS

In this Agreement the following words have these meanings unless the contrary intention appears.

"**Act**" means the *Water Act 1989*;

"**Agreement**" means this Deed and the agreement evidenced by this Deed;

"**Decommission**" means the removal from service of the Assets as specified in **Item 5**;

"**Delivery Share**" means an entitlement to the service of having water delivered under s222(1)(a) of the Act, at specified volumes during specified periods as determined under section 223 of the Act;

"**Item**" means the Item in Schedule 1;

"**Landowner Environmental Checklist**" means the checklist in Schedule 2;

"**Make good**" means to reinstate any banks and / or level the ground to the natural surface level;

“**Privatise**” means the transfer of the Assets as specified in **Item 5**;

“**Rationalise**” means to Decommission and or Privatise the Assets;

“**Road Authority**” has the meaning given to it in the *Road Management Act 2004*;

“**Schedule**” means a schedule to this Agreement;

“**Serviced Property**” has the same meaning as in the Act;

“**Sum**” means the amount set out in **Item 15** but does not include any other moneys payable by the Corporation or NVIRP to the Owners or any fees or charges waived by the Corporation in accordance with this Agreement;

“**Water Shares**” has the same meaning as in the Act;

“**WUL**” means a Water Use Licence issued in accordance with:-
Schedule 15 of the Act in respect to the Property; or
Section 64L of the Act in respect to the Property, or as the case may be, the Property and any other land which in accordance with this Agreement, is to be transferred to the Owners and amalgamated with the Property or the Property and any other land; and

“**WUR**” means a Water Use Registration issued in accordance with:-
Schedule 15 of the Act in respect to the Property; or
Section 64AP of the Act in respect to the Property, or as the case may be, the Property and any other land which in accordance with this Agreement, is to be transferred to the Owners and amalgamated with the Property or the Property and any other land.

Other grammatical forms of defined words or expressions have corresponding meanings.

The singular includes the plural and vice versa.

Headings are used for convenience only and do not affect the interpretation of this Agreement.

This Agreement is governed by the laws of the State of Victoria.

THE PARTIES HEREBY AGREE:

1A. Condition Precedent

This Agreement does not commence until the Owners have been advised in writing by NVIRP that the parties listed in **Item 23** have executed the documents listed in **Item 24**.

1B. Agreement with Road Authority

In any case where Assets are to be transferred from the Corporation to the Owners or to a syndicate of which the Owners are members and those Assets are located within a road within the meaning of the *Road Management Act 2004*, the following will apply:

- a) the Owners will be obliged to enter into an agreement with the relevant Road Authority, to obtain the consent for the relevant Assets to be owned by the Owners

or where the Assets are owned by the Syndicate, the Syndicate, and located within the relevant road;

- b) the Owners acknowledge the relevant agreement with the Road Authority (namely a municipal council or VicRoads) may include requirements for the:
 - i) initial upgrade of the Assets;
 - ii) future maintenance and liability in respect of the Assets;
 - iii) obligation to transfer ownership of the Assets to any future owners of the Property; or to be retained in the ownership of the syndicate of which the future owner shall be a member; and
 - iv) relevant agreement to be an agreement pursuant to section 121 of the *Road Management Act 2004* and section 173 of the *Planning and Environment Act 1987* and be registered on the titles making up the Property, thus binding future owners of the Property.

1. General:

The Owners acknowledge the following:

- a) If, prior to the completion of all matters listed in Clauses 3, 4, 5 and 7 of this Agreement, the Owners enter into a contract to sell or transfer all or part of the Property, the Owners must give the purchaser or the transferee a copy of this Agreement and require the purchaser or the transferee to enter into a Deed in a form approved by the Corporation which requires the purchaser or the transferee to ensure that this Agreement binds the purchaser or transferee.
- b) The Property is a serviced property within the Corporation's irrigation district, at the time of execution of the Agreement, and the Corporation is required to provide the service of delivering water to the owner or occupier of each serviced property in its irrigation district.
- c) Following the Assets being dealt with in accordance with **Item 5**, all delivery shares that apply to the Property will be dealt with in accordance with **Item 6**.

2. The Owners warrant that:

- a) They are the legal and beneficial owners and occupiers of the Property.
- b) No one other than the Owners and any person with a registered interest as shown on the title of the Property has any rights over the Property including possessory rights.
- c) They have been advised by NVIRP on its own behalf and on behalf of the Corporation that they should seek consent to enter into this Agreement from any person who has a registered interest in the Property.
- d) They have been advised by NVIRP on its own behalf and on behalf of the Corporation that they should seek consent to enter into this Agreement from any person who owns or occupies land where that land is either being operated as a single entity with the

Property or forms part of the same Delivery Share entity as the Property. For the avoidance of doubt the Delivery Share entity is described in **Item 5A**.

- e) They have been advised by NVIRP on its own behalf and on behalf of the Corporation to seek legal advice prior to entering into this Agreement.
- f) They have been advised by NVIRP on its own behalf and on behalf of the Corporation to seek professional advice prior to entering into this Agreement regarding any potential tax implications arising from any payments made to the Owners under this Agreement.
- g) They have been advised by NVIRP on its own behalf and on behalf of the Corporation to seek planning and heritage advice to determine that all on-farm works undertaken as a result of this Agreement will comply with planning and heritage requirements.
- h) Should they be required to enter an agreement with the Road Authority in accordance with clause 1B of this Agreement, they will use their best endeavours to ensure that such agreement is executed.
- i) They have received, read and understand the Connections Environmental Guidelines provided to them by NVIRP.
- j) They have received, signed and returned to NVIRP, the Landowner Environmental Checklist.

3. The Owners acknowledge that:

- a) In event that there is a Delivery Share remaining with the Property after the completion of the Rationalisation, the Delivery Share may need to be re-apportioned to the remaining service outlet positions.
- b) In the event that there is a requirement to change the Property's Delivery Share as set out in **Item 6** the Owners will, within the timeframe set out in **Item 7**, lodge the appropriate applications with the Corporation to facilitate such changes.
- c) In the event that the Owners wish to apply for a further apportionment or transfer of the Delivery Share, the Owners will attach this Agreement to any application to change that Delivery Share if such application is made prior to NVIRP completing all matters listed in clause 4 and the Corporation completing all matters listed in clause 5 and the Corporation may at its sole discretion reject or approve further apportionment of the Delivery Share.
- d) The Property remains a Serviced Property pursuant to the Act for the purpose of the Corporation imposing fees and charges.
- e) Any land that is transferred to the Owners or Crown land that is alienated to the Owners as a consequence of this Agreement shall be consolidated by the Owners with the Property, within the timeframe set out in **Item 8**.
- f) In the event that there is a requirement for the Owners to lodge applications for either cancelling and or issuing a WUL or WUR for the Property or any land which forms part of a non-contiguous WUL or WUR, the Owners will, within the timeframe set out in **Item 9**, lodge the appropriate applications with the Corporation to facilitate such changes.

- g) The WUL or WUR that may be issued as a consequence of the applications referred to in clause 3(f) above may result in the volume of water that the Owners is entitled to use on the Property or other land that was associated with the original WUL or WUR being reduced.
- h) In the event that there is a change to the WUL or WUR, the owner/s of the water share(s) associated with the WUL or WUR will lodge the appropriate applications, within the timeframe set out in **Item 10** with the Corporation to vary the water share to reflect the change in the WUL or WUR or to divide and transfer their water share(s) to comply with the provisions of the Act.
- i) The Owners have obtained the consent of the owner/s of the Water Share to enter into this Agreement and obtained an undertaking from the owner/s of the Water Share that that owner/s will sign the applications required to vary the Water Share in the event that the WUL or WUR is changed to comply with the provisions of the Act.
- j) In the event that there is a change to the area of the Property or the WUL or WUR is changed to comply with the provisions of the Act, there may be a change to the drainage rating for the Property, and this may affect the fees and charges imposed by the Corporation.
- k) In the event that there is a change to the area of the Property, the Owners or a third party may have to lodge applications to cancel, vary or apply for new licences or agreements with the Corporation in relation to but not limited to groundwater licences, private works agreements and drainage diversion agreements. The applications that may be required to be lodged with the Corporation will be lodged in accordance with the timeframe set out in **Item 11**.
- l) The Owners have obtained consent from the relevant party referred to in clause 3(k) above to enter into this Agreement and obtained an undertaking from the relevant party that that party will sign the application required to vary, cancel or apply for any new licence or agreement required as a result of the Owners entering into this Agreement.
- m) In the event that this Agreement results in a third party being unable to access the Corporation's works, the Owners agree to do what is reasonably necessary and execute all documents that are required to provide either an appropriate easement or access over the Property in accordance with Part 12 of the Act to the third party referred to in **Item 12** to enable the named party to access the Corporations works. The parties shall bear their own costs of complying with this subclause except for easement creation and registration costs which shall be borne by NVIRP.
- n) In the event that this Agreement results in a third party being unable to access the Corporation's works but that third party is not identified in this Agreement, the Owners agree to act in good faith and do what is reasonably necessary and execute all documents that are required to provide either an appropriate easement or access over the Property in accordance with Part 12 of the Act to the third party to enable the third party to access the Corporations works. The costs and any compensation payable to the Owners will be assessed in accordance with the principles of s235 of Act.
- o) In the event that land that is not currently in the Corporation's irrigation district is transferred to the Owners, the Owners will within the timeframe set out in **Item 13** lodge the appropriate application/s with the Corporation to facilitate the inclusion of the land transferred to the Owners. The Owners will consolidate this land with the

Property and make the necessary application in relation to Water Shares, WUL or WUR and Delivery Shares.

- p) In the event that the Agreement requires removal of existing, or construction of new, private works the Owners will, within the timeframe set out in **Item 14**, lodge the appropriate application/s with the Corporation to facilitate the removal or construction, as appropriate, of the private works. Where construction of new private works is required, the Owners shall submit design drawings for the approval of the Corporation and shall not commence construction until the drawings are approved with or without amendment.
- q) Until the latter of the physical removal of an Asset or the elapse of 12 months from the commencement of this Agreement, the Owners will be responsible for all fees and charges raised by the Corporation arising from the continued existence of that Asset.
- r) That the Sum includes compensation for the annual service point fee for all affected outlets located on the Property ("Service Fees") and that following payment of the Sum, the Owners will not be entitled to any further payment in relation to the Service Fees.
- s) Where NVIRP has installed a pipe outlet complete with a filter/strainer under **Item 18**, the Corporation does not warrant that flow through the works will not be reduced or prevented at any time due to the inability of the filter/strainer to permit sufficient or any flow resulting from the presence of vegetable or other matter.

4. NVIRP shall:

- a) Pay the Owners the Sum in **Item 15** ("the Sum") (GST inclusive if applicable) in full and final satisfaction of all claims of the Owners in connection with the matters contemplated by this Agreement and to assist with on farm works and loss of benefit as a consequence of Rationalisation and, if applicable, the purchase of the freehold of the land described in **Item 16** and the costs involved in consolidating any freehold land or Crown land described in **Item 16** or **Item 4** respectively with the Property.
- b) Pay the Sum to the Owners in accordance with the terms described in **Item 17**.
- c) Arrange for and meet the cost of performing the works described in **Item 18** in the timeframe set out in **Item 19** and make good the property if applicable.
- d) In consideration of \$1.00 (GST inclusive) payable by the Owners to NVIRP (if and when demanded), arrange for and meet the cost of removing the easement described in **Item 20** ("the Easement") in favour of the Corporation over the Property.

5. The Corporation:

- a) Agrees to the manner in which the Assets are being dealt with.
- b) Shall forego or waive all fees associated with licensing the Assets as a private works structure in the event that such a licence is required.
- c) Shall apportion the Property's Delivery Share to its service points as required by the Owners, subject to the available channel capacity and taking into account delivery requirements to all the Corporation's customers.

- d) Shall forego or waive any fees in relation to any applications lodged by the Owners in accordance with clause 3 of this Agreement.
- e) Notwithstanding the Owners relinquishing all irrigation service points on the Property, shall permit the installation of new service points by the current or future landowners but such installations shall be at the landowner's expense and subject to the landowner having a secure legal access between the service point and the Property.
- f) In the event that the land described in **Item 4** is owned by the Corporation, at NVIRP's cost shall take such steps as are necessary, including but not limited to subdivision of the land, transfer the land, at nil cost, to the Owners.
- g) In the event that the land described in **Item 4** is Crown land vested in the Corporation by virtue of provisions of the Act hereby grants a licence to the Owners to enter the land for any purpose contemplated by this Agreement and will, at NVIRP's cost, use its best endeavours to negotiate the alienation of the Crown land to the ownership of the Owners.
- h) In the event that any land where NVIRP has installed a pipe outlet complete with a filter/strainer under **Item 18** remains land under the control of the Corporation, hereby grants a licence to the Owners to enter the land at any and all times that it is necessary to remove vegetable or other matter that is preventing the filter/strainer from passing the ordered flow of water.
- i) In the event that the land described in **Item 4** is owned by another party, shall, at NVIRP's cost, take such steps as are necessary to arrange for the removal of the easement described in **Item 20** ("the Easement") over that party's property and upon which the Assets are located and facilitate the creation of access rights in favour of the Property over that other person's property.

For the purpose of this subclause access rights may constitute an easement registered under the *Transfer of Land Act* 1958, an easement set aside under a Plan of Consolidation or Plan of Subdivision or an Agreement to grant rights of access for water supply or drainage (as the case may be) in accordance with Part 12 of the Act.

- j) Arrange for the Corporation's Asset Register and Stakeholder Account Management system to be updated accordingly.
- k) Investigate the implication of the rationalisation to the Owners and or the Property, but limited to Water Shares, WUL or WUR, Delivery Shares, drainage ratings and other aspects referred to in clause 3(k) and will advise the Owners accordingly.

6. Covenant to Charge

- a) In consideration of the Corporation and NVIRP entering into this Agreement, including where appropriate the payment of the Sum by NVIRP, the Owners agree to charge all of their right, title and interest in the Property and all of their right, title and interest in all fittings and fixtures on the Property in favour of the Corporation and NVIRP as security for the performance of the Owners' obligations under this Agreement; and
- b) The Owners acknowledge that either the Corporation or NVIRP may lodge a caveat against the Property after the date of this Agreement to give notice of its rights under this Agreement.

- c) If a caveat is lodged under this clause 6, the Corporation or NVIRP (as applicable) agree to:
 - i) promptly consent to any dealing which relates to the Property which does not adversely affect its interest in the Property; and
 - ii) arrange for and meet the cost of the removal of such a caveat upon completion of the Agreement and removal of the easement described in **Item 20**.

7. The Owners:

- a) Agree to the manner in which the Assets are being dealt with, including consolidation of any land formerly owned by the Corporation and dealt with in accordance with clause 5(f) or Crown land alienated to the Owner in accordance with clause 5(g).
- b) Accept payment of the Sum in full and final satisfaction of all claims of the Owners in connection with the matters contemplated by this Agreement and to assist with any on farm works and loss of benefit as a consequence of Rationalisation and, if applicable, the purchase of the freehold of the land described in **Item 16**.
- c) Agree for NVIRP to carry out all works as set out in **Item 18** and for such purposes, permit NVIRP and its employees and contractors to access the Property.
- d) Agree to carry out all works as set out in **Item 21**.
- e) In the event that the Assets are transferred to the Owners, the Owners agree to the terms as set out in **Item 22**.
- f) Agree at their cost to carry out all works required by this Agreement that are not listed in clauses 4 or 5.

8. Indemnity and Release

The Owners indemnify the Corporation and NVIRP:

- i) Against any claims or demands for compensation or damages made by any person claiming to be entitled to an interest in the Property;
- ii) Against any loss or damage, cost, expenses or charges which the Corporation or NVIRP may suffer or incur and any claims or demands made against the Corporation or NVIRP resulting or arising from the payment of the Sum to the Owners;
- iii) And the Corporation's and NVIRP's servants, agents, successors and assigns from any or all liability or responsibility whatsoever in relation to the Assets or property once transferred to the Owners.
- iv) Against any claims or costs arising from the misalignment with title boundaries of currently existing boundary fences of any Crown land or freehold land of the Corporation alienated or transferred to the Owners pursuant to this Agreement.

The Owners release and forever discharge the Corporation and NVIRP from any and all claims and rights for any cost, loss, liability, damage, compensation or expense arising out of or in connection with the Rationalisation or the matters contemplated by this Agreement.

9. Goods & Services Tax:

A) In the event that the Owners are registered for GST:

- a) NVIRP will issue a tax invoice on behalf of the Owners that reflects the Sum paid to the Owners inclusive of GST, in respect of this Agreement;
- b) The Owners will not issue a further tax invoice in respect of this Agreement;
- c) The Owners will meet their GST obligations;
- d) The Owners acknowledge that they are registered for GST when they enter into this Agreement and that they will notify NVIRP if they cease to be registered.

B) In the event that the Owners are not registered for GST:

- a) NVIRP will issue a tax invoice on behalf of the Owners that reflects the Sum paid exclusive of GST, in respect of this Agreement;
- b) The Owners will not issue a further tax invoice in respect of this Agreement;
- c) In this event there will be no GST payable by NVIRP in respect of this Agreement.

10. Entire Agreement

This Agreement contains the entire understanding between the parties in relation to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or oral, in relation to this Agreement other than those expressly stated in it or necessarily implied by law.

11. Co-operation between the parties

- a) Each party agrees to co-operate and liaise fully with the other parties, in order to ensure that this Agreement is implemented effectively.
- b) The parties acknowledge that, due to amendments to the Act, it may require the parties to amend or to add to the provisions of this Agreement, in order for the Agreement to be implemented effectively.

12. Stamp Duty

NVIRP will be liable for the payment (if any) of stamp duty levied in respect of this Agreement.

13. Further Actions

Each party shall, at its own expense, do all things and execute all documents necessary to give full effect to this Agreement and the transactions contemplated by it.

Executed by the parties as a Deed at the date set out at the commencement of this Agreement.

**Signed for and on behalf of the
GOULBURN-MURRAY RURAL WATER CORPORATION**

.....
Delegated Officer

.....
Name of Delegated Officer (print)

.....
Witness

.....
Name of Witness (print)

**Signed for and on behalf of the
STATE OWNED ENTERPRISE FOR IRRIGATION MODERNISATION IN NORTHERN VICTORIA
trading as Northern Victoria Irrigation Renewal Project**

.....
Delegated Officer

.....
Name of Delegated Officer (print)

.....
Witness

.....
Name of Witness (print)

Executed byPty Ltd in accordance with section 127(1) of the Corporations Act 2001 by being signed by those persons duly authorised to sign on behalf of the company:

.....
Director

.....
Director / Secretary

.....
Witness

.....
Name of Witness (print)

or

Executed by the Owner/s

.....
[Landowner Name 1]

.....
[Landowner Name 2]

.....
Witness

.....
Witness

.....
Name of Witness (print)

.....
Name of Witness (print)

.....
[Landowner Name 3]

.....
[Landowner Name 4]

.....
Witness

.....
Witness

.....
Name of Witness (print)

.....
Name of Witness (print)

SCHEDULE 1

Item 1	Description of Owners ("the Owners")	
Item 2	The Property (description of the Owners Property)	
Item 3	Description of the Corporation's Assets (shown in red on the attached plan)	
Item 4	Land on which the Assets are located	
Item 5	Description of the manner in which the Assets are to be rationalised	
Item 5A	Delivery Share Entity	
Item 6	Manner in which the Delivery Share to the Property will be dealt with	
Item 7	Timeframe to lodge the relevant applications to deal with the Delivery Share	
Item 8	Timeframe to consolidate the land	
Item 9	Timeframe to lodge the relevant applications in relation the WUL/ WUR	
Item 10	Timeframe to lodge the relevant applications in relation to the Water Share/s	
Item 11	Timeframe to lodge the relevant applications in relation to licences or agreements with the Corporation	
Item 12	The third party granted an easement	
Item 13	Timeframe to lodge the relevant applications to include the land into the	

	Corporation's irrigation district	
Item 14	Timeframe to lodge the relevant applications to undertake private works	
Item 15	Sum paid by NVIRP to the Owners	
Item 16	Description of the freehold land purchased	
Item 17	Payment Terms	
Item 18	Description of the works to be completed by NVIRP	
Item 19	Timeframe of the dealings with the Assets	
Item 20	Description of the Easement in favour of the Corporation	
Item 21	Description of the works to be completed by the Owners	
Item 22	Agreed terms if the Assets are transferred to the Owners	
Item 23	Other parties that must execute agreements prior to clause 1A (Condition Precedent) being satisfied	
Item 24	Documents that must be executed by Item 23 parties	

SCHEDULE 2

Landowner Environmental Checklist