

**MEMORANDUM OF
UNDERSTANDING**

**MEMORANDUM OF UNDERSTANDING IN RELATION TO THE
TOOWOOMBA SECOND RANGE CROSSING PROJECT IN QUEENSLAND**

The Commonwealth of Australia

State of Queensland

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING IN RELATION TO THE TOOWOOMBA SECOND RANGE CROSSING

Date

This Memorandum of Understanding is dated 27 May 2014.

Parties

This Memorandum of Understanding is made between the following parties:

1. **The Commonwealth of Australia
(Commonwealth)**
2. **The State of Queensland (Queensland)**

Context

This Memorandum of Understanding (MoU) is made in the following context:

- A. The Commonwealth and Queensland are jointly committed to delivering the Project.
- B. The Project comprises the design, construction, financing (where required) and operation and maintenance of a 41 kilometre tolled motorway that runs north of Toowoomba from the Warrego Highway in Helidon in the east to the Gore Highway at Athol in the west. The Project will improve the efficiency of freight movements, remove the abundance of heavy vehicle traffic travelling through Toowoomba and improve the standard of range crossing.
- C. This MoU outlines the Project and the relevant funding arrangements for the Project.
- D. Activities under this MoU will be conducted in accordance with the terms of the Relevant Legislation for the Commonwealth Infrastructure Investment Programme.
- E. An agreement will be entered into between Queensland and the private sector for the delivery of the Project.

Operative provisions

1. Interpretation

1.1. General

- 1.1.1. This MoU is not intended to be, and is not, a legally binding and enforceable document, and does not create or impose any additional legally binding enforceable obligations, duties or responsibilities on the parties. However the parties will act and cooperate in good faith in accordance with the terms of this MoU.

1.2. Definitions

- 1.2.1. Unless the contrary intention appears, a term in bold type has the meaning shown opposite it:

December 2012 Business Case	means the business case that was prepared by Queensland for the Project, dated December 2012;
EOI stage	means the calling for expressions of interest for the delivery of the Project and the shortlisting of parties who have demonstrated the technical and financial capacity to deliver the Project;
Formal Agreement	means an agreement entered into by the parties that sets out any conditions that will not be covered by the NPA and the respective commitments of the parties in relation to funding the Project;
NPA	means the National Partnership Agreement between the Commonwealth and Queensland, updated to include funding for this Project;
PPP	means an availability-based Public Private Partnership covering the design, construction, finance, operations and maintenance of the Project;
Project	means the Project, as described in clause 2.1;
Relevant Legislation	means the <i>Nation Building Program (National Land Transport) Act 2009</i> or amended legislation;
RFP stage	means the Request for Proposal stage which will involve inviting shortlisted bidders to submit a binding bid for the delivery of the Project;
ROI	means the registration of interest that was released to the private sector by Queensland in relation to the Project and closed on 7 March 2014; and
Traditional Delivery Model	means a contract with the private sector for the design, construction, operation and maintenance of the Project.

1.3. Interpretation

- 1.3.1. In this MoU, unless the contrary intention appears:
- words in the singular include the plural and words in the plural include the singular;
 - clause headings are for reference only and have no effect in limiting or extending the language of the clauses to which they refer;
 - a reference to dollars is a reference to Australian dollars;
 - a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;

- e. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- f. references to the words 'include' or 'including' are to be construed without limitation.

1.3.2. Any variation to this MoU must be in writing and signed by the parties.

1.4. Purpose and term of MoU

1.4.1. The purpose of this MoU is to set out the intention of the parties with respect to:

- a. the entering into of an NPA and the Formal Agreement; and
- b. the arrangement of funding for the Project.

1.4.2. This MoU will have effect until the Formal Agreement and NPA is signed by both of the parties, or cancelled in writing by both parties.

2. Purpose of the Project

2.1. The Project

2.1.1 The Project includes the construction in Queensland of a 41 kilometre motorway that runs north of Toowoomba from the Warrego Highway in Helidon in the east to the Gore Highway at Athol in the west.

2.1.1. The Project will involve the design and construction of the motorway, together with operation and maintenance of the motorway and collection of tolls over a 25 year period.

2.2. Objectives

2.2.1. The parties will seek to achieve the following objectives with respect to the Project:

- a. Address the recognised constraint in the National Land Transport Network, improve the efficiency of freight movements and encourage economic development.
- b. Improved safety on the network by providing an improved standard of range crossing with improved design features, delivering greater benefits for road users and reducing the number of heavy vehicles and through-traffic using urban arterial roads in central Toowoomba.
- c. Improved transport capacity over the range to meet future growth needs in the region.
- d. Improved community amenity, safety and liveability by redirecting heavy vehicle traffic away from the current range crossing and Toowoomba town centre.

- 2.2.2. The parties are committed to working cooperatively to implement the Project in support of the objectives identified above.

2.3. Scope of the Project

- 2.3.1. The parties acknowledge that all Commonwealth funding for the construction of the Project will be provided under the Relevant Legislation and the NPA, and that the Project is to be undertaken in accordance with the Relevant Legislation, the NPA and the Formal Agreement.

2.4. Implementation of the Project

- 2.4.1. The parties intend that implementation of the funding arrangements for the Project will be formalised in a Formal Agreement signed by both parties.
- 2.4.2. The parties acknowledge that agreeing funding (through entering into the NPA and the Formal Agreement) in a timely manner is critical to the success of the procurement process for the Project.

3. Funding arrangements for the Project

3.1. Funding objectives

- 3.1.1. Recognising the responsibility of both parties to maximise value for money for the taxpayer, the procurement process should maximise the opportunity for private sector competition and innovation on design, construct, finance, operate and maintain aspects, within the scope of the Project (as described in the December 2012 Business Case).
- 3.1.2. The estimated nominal cost of delivering the Project through a Traditional Delivery Model, set out in the December 2012 Business Case, was \$1.66 billion. This estimate was predicated on construction start in July 2014.
- 3.1.3. This estimate was revised in October 2013, assuming a construction start in January 2015 and applying a 6% construction escalation rate, resulting in an estimated nominal cost of \$1.709 billion. The Commonwealth has made a separate calculation, applying a 4% escalation rate, which results in an estimate of \$1.606 billion.
- 3.1.4. The parties acknowledge that the nominal costs of the payments associated with delivering the project by way of a PPP will be in excess of this amount.
- 3.1.5. The Australian Government is conducting a cost review assessment on the December 2012 Business Case, with input as required from the Queensland Government. This review is a high level review of the appropriateness and accuracy of the rates and quantities in the Base Estimate of the cost estimate, reviewing the correctness of the escalation calculations, and the appropriateness of the contingency figures used in the original cost estimation.
- 3.1.6. Queensland is currently conducting its own review and update of the December 2012 Business Case public sector comparator. This will be

completed and agreed prior to the RFP stage. This update will take account of any known changes since the December 2012 Business Case such as the updated construction start date, and may be informed by any agreed outcomes arising out of the Commonwealth cost review.

- 3.1.7. Based on the responses from the private sector, both governments will agree the best value for money approach for the delivery of the Project.
- 3.1.8. The actual cost of the Project will not be known until tenders have been received and evaluated. Provided that the costs of the Project, derived from the PPP tendering process, represent better value for money when compared with the public sector comparator under a Traditional Delivery Model on a net present cost basis, the Commonwealth has agreed to fund 80% of the actual PPP costs of the Project (excluding O&M costs). Queensland has committed to fund the remaining 20%.
- 3.1.9. The Commonwealth has committed \$1.285 billion in its budget forward estimates to reflect this agreement. Queensland has committed \$342 million in its budget forward estimates.
- 3.1.10. The parties acknowledge that if the Project is delivered via a PPP that a significant upfront funding contribution, to be paid in the construction period, is likely to be required.
- 3.1.11. The final funding agreement, to be documented in the NPA and Formal Agreement, will document the payments to be made by each party on an annual basis, having regard to the agreed delivery model.
- 3.1.12. All toll revenue generated from the Project will be applied by Queensland to O&M costs. Queensland will be responsible for 100% of O&M costs for the duration of the Project.

3.2. Process for Settling Funding

- 3.2.1. Queensland will undertake a multi-phased competitive tender process, involving the ROI, EOI and RFP stages, to select a preferred proponent to deliver the Project.
- 3.2.2. Expressions of interest and binding bids will be sought from the private sector on the basis that the Project will be delivered as a PPP, subject to a PPP delivery model demonstrating better value for money outcomes.
- 3.2.3. In accordance with the National PPP Policy and Guidelines, if a PPP delivery model does not demonstrate value for money, the Project will be delivered via a Traditional Delivery Model.
- 3.2.4. If the Project is delivered via a Traditional Delivery Model, both parties commit to funding the actual capital cost of the Project on an 80:20 basis over the construction period.
- 3.2.5. The ROI sets out the broad scope of works and objectives and invited the private sector to register their interest in participating in the EOI stage.

- 3.2.6. The formal EOI stage will open as soon as possible upon finalisation of this MoU, with binding bids to be subsequently sought from shortlisted bidders in the RFP phase. Construction of the Project is expected to commence by mid-2015.

4. Governance arrangements in relation to the Project

4.1. General

- 4.1.1. The parties will work together cooperatively in overseeing the Project and working towards entering into the NPA and the Formal Agreement.

4.2. Contact Officers

- 4.2.1. Communication between the parties for the purposes of this MoU will be directed to the following contact officers for each party:

a. Commonwealth

General Manager, North West Roads
Department of Infrastructure and Regional Development
GPO Box 594
Canberra ACT 2601

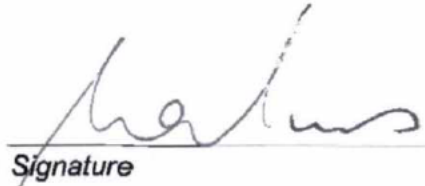
b. Queensland

Executive Director
Projects Queensland
GPO Box 611
Brisbane QLD 4001

Signatures

SIGNED for and on behalf of the)
Commonwealth of Australia by the)
Hon Warren Truss MP)
Deputy Prime Minister
Minister for Infrastructure and
Regional Development

The Hon Warren Truss MP


Signature

In the presence of:

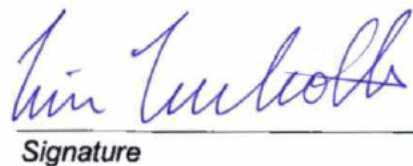
s.47F(1)

s.47F(1)

Signature or witness

SIGNED for and on behalf of the)
State of Queensland by the)
Hon Tim Nicholls MP)
Treasurer and Minister for Trade,
Queensland

The Hon Tim Nicholls MP


Signature

In the presence of:

s.47F(1)

s.47F(1)

Signature of witness /