

## **10.6 ESTABLISHMENT OF ADELONG FLOOD RISK MANAGEMENT COMMITTEE - ATTACHMENTS**

### Attachment Titles:

1. Terms of Reference (SVC-TofR-0000) - Adelong Flood Risk Management Committee
2. Floodplain Management Program - 2024-2025 (DOC ID:3368784) - Funding Agreement

**Attachment 1 - Terms of Reference (SVC-TofR-0000) -Adelong Flood Risk Management Committee****Adelong Flood Risk Management Committee  
Terms of Reference****ToR No: SVC-TofR-0000****1. NAME**

The name of the committee is the Adelong Flood Risk Management Committee.

**2. LEGAL STATUS**

Council delegates its authority to the committee to act on its behalf in line with the Committee's *Terms of Reference*. As a result, legally, the committee is part of "Council" and any action the committee undertakes is conducted under Council's authority. Committees do not act in their own right and their actions are not legally independent of Council. Council delegates its authority to the committee to act on behalf of the Council and can withdraw this delegation at its discretion.

The committee cannot change this name and/or title without advising the Council of the intention to adopt a new name and/or title, nor can a committee merge with another party/committee without prior notice and input from Council.

Committee members must act in the interests of Council. This includes not:

- Acting contrary to any direction from Council, which includes a direction from the General Manager,
- Director, Manager or appointed delegate
- Acting contrary to Council's policies
- Advising any person that they may have a legal right or action against Council or any
- Councillors, Council employee or Council contractor exercising a function of Council
- Making any admission of liability or accepting liability on behalf of Council or the committee
- Acting contrary to Council's *Code of Conduct*
- Acting outside the limits of the committee's delegation
- Acting or presenting the committee as independent of Council.

**3. DELEGATION**

The Adelong Flood Risk Management Committee will provide advice, feedback, and support to Council in developing, implementing, and monitoring flood studies and flood risk management studies and plans and associated projects for Adelong and its environs.

**4. PURPOSE**

The purpose of the committee is to:

- Assist Council to develop a Flood Study and a Flood Risk Management Study and Plan for Adelong in accordance with the NSW Flood Risk Management Manual 2023 and adopted guidelines.
- Monitor and evaluate the implementation of the Adelong Flood Risk Management Plan.

SVC-TofR-0000

Adelong Flood Risk Management Committee

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Adopted:  
Reviewed:

- Assist in the development of suitable strategies to address floodplain management issues, communication and access to flood information and education by community members.
- Develop a better understanding of floodplains and identify issues that may be required to be addressed through development of strategies, studies, plans or works.

## **5. OBJECTIVES**

The objective of the Adelong Flood Risk Management Committee is to support the completion of the Flood Risk Studies including the implementation and review of these studies where appropriate for catchments within the Snowy Valleys Local Government Area.

## **6. MANAGEMENT AND OPERATION OF THE COMMITTEE**

### **a) MEETINGS**

The committee should meet on a regular basis quarterly as required. Meetings shall be held within the Local Government Area of the Snowy Valleys Council. To ensure ongoing accountability and accessibility meetings can be in person or via video link.

### **b) MEMBERSHIP**

The membership shall consist of:

- A maximum of two (2) Councillors, one of which will be elected as the Chair by the elected Council.
- Council staff from engineering / planning / environmental disciplines to service the committee and oversee the technical requirements of the study.
- Representatives from State Government Departments and Agencies including the Department of Climate Change, Energy, the Environment and Water (DCCEEW), NSW State Emergency Service (NSW SES), WaterNSW, Transport for NSW and the Department of Planning, Housing and Infrastructure (DPHI).
- One (1) Representative from the community with knowledge of historical flood behaviour in the catchment.
- One (1) representative from flood action groups or neighbourhood forum groups.

Guest are deemed necessary to:

- Provide specialist advice outside of the capabilities of the committee members (for example the Bureau of Meteorology).
- Sharing of experiences of flood impacts (for example local residents or businesses that have been impacted by floods).

A quorum will normally consist of members equal to the number that is half the committee plus one. If a quorum is not present within half an hour after the appointed starting time, the meeting will be adjourned and rescheduled to a later date.

Voting rights should only be for Councillors and local community representatives on the committee. Council staff and external agencies are in attendance only in a technical/advisory capacity.

**c) CHAIRPERSON**

The elected Council shall resolve to appoint a chairperson to the committee being one of the two Councillors appointed to the committee. In the absence of the Chairperson, the other Councillor on the committee shall be the acting Chairperson for the duration of the absence of the Chair.

**d) SECRETARIAT**

A staff member from the Snowy Valleys Council shall perform the Secretariat duties for the committee.

**e) PECUNIARY INTERESTS AND CONFLICTS OF INTEREST**

Members of the Committee when becoming aware of a conflict of interest can arise when a member of the committee has other involvements or interests, which make it difficult for them to always remain impartial when involved in discussions and decision-making. If a conflict of interest arises, the Chairperson and staff delegate must be notified. In addition to the Code of Conduct there is the *'At a Glance' guide for Council Committee Members and Delegates* guide published by the Office of Local Government that can be used as a reference.

Members of the Adelong Flood Risk Management Committee in performing their duties shall:

- Act honestly and in good faith
- Declare all actual and perceived conflicts of interest
- Perform their duties in a manner that ensures public trust in the integrity, objectivity and impartiality of the committee.
- Comply with Council's code of conduct

**f) ATTENDANCE OF NON-MEMBERS**

Staff and other professionals / members of the community may be invited to attend and participate at meetings as required.

**g) CONFIDENTIALITY**

Members of the Committee should appreciate that the working group may, from time to time, deal with sensitive matters of a confidential nature. The confidentiality of such information should be respected by all members.

**7. AMENDING THE TERMS OF REFERENCE**

Recommendations for amendments to the Terms of Reference can be made at any time. Any amendments to the Terms of Reference must be adopted by Council.

**8. HISTORY TABLE**

Version No	Approval Date	Resolution Number	Date to be Reviewed

DRAFT

**Attachment 2 - Floodplain Management Program - 2024-2025 (DOC ID 3368784 ) - Funding Agreement**

**From:** "Sue Small" <Sue.Small@environment.nsw.gov.au>  
**Sent:** Thu, 24 Oct 2024 10:52:00 +1100  
**To:** "Snowy Valleys Council" <Info@svc.nsw.gov.au>; "Mark Kirton" <mkirton@svc.nsw.gov.au>  
**Cc:** "Steve Manwaring" <Steve.Manwaring@environment.nsw.gov.au>  
**Subject:** Successful application: 2024-25 Floodplain Management Program | 2024/FMP/0024  
**Attachments:** 2024-FMP-0024 Funding Agreement - Snowy Valleys.pdf, 2024-FMP-0024 Funding Agreement cover letter - Snowy Valleys.pdf

Good morning

**RE: Application for funding under the 2024-25 Floodplain Management Program**  
**Project Title: Adelong flood study review**  
**Grant reference number: 2024/FMP/0024**

I am pleased to advise that Council's application for funding under the 2024-25 Floodplain Management Program was successful, please see the attached letter and funding agreement for further detail.

Please note the requirement under clause 3.2, which states that Council must not publicise receiving grant funding for this project in any way until the Minister announces the successful applicants. This requirement does not prevent commencing tendering for the work.

*The department has transitioned to a new process for project milestone payments. To ensuring we have the correct banking details, when returning the executed funding agreement for this project, could you please include a screenshot of the bank account details council require milestone payments to be paid into. The screenshot must include council's name; BSB and account number. Should council change its nominated bank account during the project duration, please notify Grants and provide updated details.*

Kind regards,

Sue

**Sue Small** *(she/her)*  
Project Officer, Contestable Grants  
Office of the Secretary

**Department of Climate Change,  
Energy, the Environment and Water**

T (02) 8837 6038 E [sue.small@environment.nsw.gov.au](mailto:sue.small@environment.nsw.gov.au)

<https://www.environment.nsw.gov.au/topics/water/floodplains/floodplain-management-grants>

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[dcceew.nsw.gov.au](http://dcceew.nsw.gov.au)

4 Parramatta Square  
12 Darcy Street  
Parramatta NSW 2150

*The Department of Climate Change, Energy, the Environment and Water acknowledges that it stands on Aboriginal land.*

*We acknowledge the traditional custodians of the land and we show our respect for elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.*



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DEPARTMENT OF CLIMATE CHANGE, ENERGY, THE  
ENVIRONMENT AND WATER

## Funding Agreement for Financial Assistance

under the 2024-25 NSW Floodplain Management Program

### Grant Details

**Program** Floodplain Management Program

**Grant number:** 2024/FMP/0024

**Recipient:** Snowy Valleys Council

**Project:** Adelong flood study review

**Maximum funding amount:** \$112,000.00

**Funding ratio:** 4:1

**Funding term completion date:** 10 August 2026

### Acceptance of conditions:

On behalf of **Snowy Valleys Council**, I accept the following conditions of this Funding Agreement. This Funding Agreement commences on the signing of this document by both parties.

\_\_\_\_\_  
Nick Wilton (signature)  
\_\_\_\_\_  
Nick Wilton (name)  
\_\_\_\_\_  
Executive Manager Growth and Development (position)

**Date:** 21 November 2024

**Note:** This agreement must be signed by the General Manager or officer delegated with authority to bind the Recipient

### Approval of Agreement between Department of Climate Change, Energy, the Environment and Water and Snowy Valleys Council

Signed for and on behalf of the Department of Climate  
Change, Energy, the Environment and Water )  
representing the Crown in right of New South Wales by )  
Kym Bilham – A/Manager, Contestable Grants - Flood )

\_\_\_\_\_  
(signature)

Date: 22 October 2024

Please return the signed Agreement by **Friday, 11 December 2024** to: [coastalestuary.floodgrants@environment.nsw.gov.au](mailto:coastalestuary.floodgrants@environment.nsw.gov.au)

If the signed Agreement is **not** returned by this date, the offer of funding will automatically lapse.

## Conditions

### 1 Definitions and Interpretation

Defined terms and aids to interpretation of this Agreement are set out in the Dictionary at the end of this Agreement.

### 2 The Department of Climate Change, Energy, the Environment and Water obligations

- 2.1 The Department of Climate Change, Energy, the Environment and Water (DCCEEW) will pay the Recipient, in accordance with the terms of this Agreement, an amount up to the Maximum Funding Amount towards the Recipient's performance of the Project.
- 2.2 DCCEEW will not pay the Recipient for anything that is part of the Recipient's Core Activities.
- 2.3 DCCEEW may arrange the provision of additional services to the Recipient, including:
  - support with the administration of financial assistance
  - participation in meetings of the Recipient's Flood Risk Management Committee
  - meeting with the Recipient's staff frequently, particularly at critical stages in the Project
  - assistance with the preparation of briefs and review of proposals for studies
  - technical review of plans, studies and designs for compliance with Government objectives and Project aims and requirements
  - assistance with the preparation and review of specifications for works
  - assistance with the review of tenders for works, and
  - assistance with the management of consultants and contractors.
- 2.4 DCCEEW Grants Branch will approve the workplan referred to in clause 3.1.

### 3 Recipient's obligations

- 3.1 By **26 March 2025**, and following compliance with clauses 3.13, 17.3 or 18.4 and 17.4 or 18.5 the Recipient will submit a workplan using the variation process in DCCEEW's Grants Management System (<https://gms.environment.nsw.gov.au/>), based on the recommended tender. Before awarding the contract for this project, the Recipient must receive written advice from DCCEEW Grants Branch indicating the workplan has been approved.
- 3.2 The Recipient must not publicise receiving grant funding for this project in any way until the relevant Minister(s) announces the successful applicants.
- 3.3 The Recipient will carry out the Project as outlined in its Application and in accordance with the workplan.
- 3.4 The Recipient will advise DCCEEW immediately if it has sought, is offered, or intends to accept funding from any other source(s) for this Project at any time during the Funding Term.
- 3.5 The Recipient contribution must not include funds received from any other NSW or Commonwealth program for the agreed contribution.
- 3.6 The Recipient must ensure that all funds provided by DCCEEW under this Agreement are applied only to the actual cost of the Project.
- 3.7 The Recipient will ensure that all activities undertaken under the Project are consistent with the objectives of the Floodplain Management Program, the *NSW Flood Prone Land Policy*, the *NSW Flood risk management manual (2023)* and the NSW State Emergency Service requirements from the *Flood Risk Management Process Guidelines*. If necessary, the Recipient may seek clarification of this obligation from DCCEEW.
- 3.8 The Recipient will undertake or oversee all technical, environmental, heritage and risk assessments, and obtain the necessary consents in relation to the Project in accordance with NSW legislative requirements and accepted best practice guidelines.

- 3.9 The Recipient will, in conjunction with DCCEEW, monitor and evaluate the Project against the agreed project outcomes as described in the Application or any subsequent written agreement between the parties.
- 3.10 The Recipient will keep DCCEEW informed of the progress of the Project in relation to the workplan and will highlight any significant technical issues.
- 3.11 The Recipient will report on or explain any aspect of the Project requested by DCCEEW, and give due consideration to all comments issued by DCCEEW in relation to the Project.
- 3.12 The Recipient's Representative will be responsible for managing the Recipient's obligations under this Agreement. The recipient must notify DCCEEW immediately of any change to the Recipient's Representative at any time during the funding term.
- 3.13 The Recipient will provide DCCEEW with a copy of the proposed technical specification and related contract conditions for comment before tendering. The Recipient is to advise DCCEEW in writing how DCCEEW's comments are incorporated into final documentation before tendering.
- 3.14 At the completion of the Project, the Recipient will provide to DCCEEW copies of all project deliverables, including but not limited to final reports, model data files, damage calculation files and reports final works designs and specifications, manuals, and work as executed documentation. Project deliverables are to be uploaded electronically through the NSW flood data portal, unless otherwise advised. A hard copy of project deliverables is to be provided to DCCEEW.

#### 4 Record keeping

- 4.1 The Recipient must:
  - (a) Maintain financial receipts and expenditure details and other correspondence and materials related to the Project until the grant is formally acquitted
  - (b) Permit DCCEEW to inspect (and if necessary be supplied with copies of) all the Recipient's accounts and any other documents, including any application documents, relating to the Project, and
  - (c) Comply with all reasonable requests by DCCEEW for other information and particulars concerning the Project within 14 days of such request.
  - (d) Retain the records referred to in this clause 4 (**Record keeping**) throughout the Funding Term and for seven (7) years after the date that is the earlier of the date of expiry of the Funding Term or termination of this Agreement.

#### 5 Reports

- 5.1 The Recipient must prepare and submit to DCCEEW:
  - (a) a Milestone Report and Expenditure information for each Milestone achieved, and
  - (b) a Final Report (including financial acquittal) for the Project within two months of the project completion date.
- 5.2 The reports must be prepared using the **relevant templates provided by DCCEEW in the online Grants Management System**.

#### 6 Claiming a payment

- 6.1 DCCEEW will make Milestone Payments to the Recipient under this Agreement up to a total amount not exceeding the Maximum Funding Amount.
- 6.2 DCCEEW will make a Milestone Payment to the Recipient in response to the successful delivery and completion of a Milestone and the submission of a satisfactory Milestone Report and Expenditure information in accordance with clause 5.1.

- 6.3 The Milestone Payment for a Milestone will be the proportion, set as the Funding Ratio, of the Recipient's **Actual Expenditure** in delivering the Milestone, as detailed in the relevant Milestone Report, subject to clause 6.4.
- 6.4 If a Milestone Payment determined under clause 6.3 would mean that the total amount DCCEEW pays under this Agreement would exceed the Maximum Funding Amount, that Milestone Payment will be reduced by the amount by which the Maximum Funding Amount would be exceeded.
- 6.5 If the total amount of all the Milestone Payments DCCEEW makes for the Project is less than the Maximum Funding Amount, DCCEEW will not be liable to make additional payments to the Recipient.
- 6.6 Payments will not be made until the Recipient provides DCCEEW with a valid Australian Business Number.

## **7 Goods and Services Tax (GST)**

- 7.1 In this clause, the expressions 'Australian law', 'consideration', 'GST' and 'input tax credit', have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.
- 7.2 Funding made under this Agreement is a payment specifically covered by an appropriation under Australian law, which is not the provision of consideration for GST purposes.
- 7.3 DCCEEW's financial assistance to the Recipient under this Agreement will be based upon a Project's actual costs, less any input tax credits the Recipient is entitled to.

## **8 Variation**

- 8.1 The Recipient must obtain prior approval using the variation process **in the online Grants Management System** for any variation to the:
  - (a) Agreement (including the Funding Term)
  - (b) workplan
  - (c) budget (including any changes to funding sources), or
  - (d) scope of a Project (to that outlined in the Application).

## **9 Breach of conditions**

- 9.1 If the Recipient breaches any of the Recipient's obligations under this Agreement, or is otherwise not undertaking or is unable to carry out the Project in accordance with the workplan, DCCEEW may make a written request to the Recipient to rectify the breach or resume carrying out the Project in accordance with the workplan.
- 9.2 DCCEEW may suspend or withhold any payments under this Agreement or part thereof until the Recipient has taken action to comply with a request under clause 9.1.
- 9.3 If the Recipient cannot rectify a breach or complete the Project to the satisfaction of DCCEEW after receiving a request under clause 9.1, DCCEEW may terminate this Agreement.
- 9.4 If DCCEEW terminates the Agreement:
  - (a) DCCEEW will only be liable to pay the Recipient in respect of Milestones that the Recipient has satisfactorily delivered at the date of termination and for which the Recipient has submitted a Milestone Report and Expenditure information, and
  - (b) The Recipient must repay to DCCEEW any monies DCCEEW paid to the Recipient under this Agreement that is in excess of DCCEEW's liability at the date of termination.
- 9.5 If the Recipient fails to repay any excess payments, DCCEEW may recover them in any appropriate court as a debt due to the Crown.

**10 Publicity**

- 10.1 The Recipient must acknowledge the NSW Government's contribution in any public statements or written material in relation to the Project.
- 10.2 The Recipient must also use the current NSW Government logo in any publicity provisions related to the Project (including brochures, signage, advertising, invitations etc., but excluding those documents referred to in clause 17.15), and ensure compliance with any accompanying logo style guides.
- 10.3 The Recipient must extend an invitation to a government representative to any launch or public event associated with the Project, and where they are able to attend, acknowledge them as an official guest. Where practicable, the Recipient should also afford the government representative the courtesy of publicly addressing the event.
- 10.4 DCCEEW may publicise the awarding of the funding at any time after it is awarded, including:
  - (a) the Recipient's name
  - (b) the amount of financial assistance
  - (c) the title and description of the Project, and
  - (d) the outcomes of the Project.

**11 Intellectual property**

- 11.1 In this clause, Intellectual Property includes all statutory, legal, equitable and other proprietary rights and interests, including without limit, in copyright, patents, registered and unregistered trademarks, registered designs, circuit layouts, trade secrets, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after this agreement.
- 11.2 The Recipient warrants that:
  - (a) in carrying out the Project, it will not infringe any Intellectual Property rights, and
  - (b) any report by the Recipient will not contain anything that, to its knowledge, is libellous or defamatory.
- 11.3 The Recipient indemnifies DCCEEW and their employees and agents against any action, costs, expenses, losses or damages suffered or incurred by all, or any more of them, arising out of, or in any way in connection with:
  - (a) any breach by the Recipient or its employees or its agents of the Recipient's obligations under clause 11.2, and
  - (b) any infringements by DCCEEW of third-party Intellectual Property rights in its use of the Project Materials.
- 11.4 Subject to clause 11.5:
  - (a) The Recipient grants to the State, at no cost, a perpetual, irrevocable, worldwide, royalty-free non-exclusive licence, including the right to sub-licence, to use, reproduce, modify, adapt, publish and communicate to the public, the Project Materials (to avoid doubt, including for the purpose of making the Project Materials freely available to the public or any section of it, whether in hard copy or on-line and including use and modification of any models and copying photographs), and
  - (b) To ensure compliance by the Recipient with clause 11.4(a), if the Recipient engages a third party to create the Project Materials the Recipient must ensure that the terms of its engagement provide that the third party:
    - i. assigns Intellectual Property in such materials to the Recipient immediately on creation of materials; and

- ii. warrants that it has the legal authority to comply with the obligation referred to in clause 11.4(b)i.
- 11.5 To the extent that the Recipient cannot take ownership of Intellectual Property in any Incorporated Existing Materials:
  - (a) the Recipient must ensure that relevant third parties grant to the State, at no cost, a perpetual, irrevocable, worldwide, royalty-free, non-exclusive licence, including the right to sub-licence, to use, reproduce, modify, adapt, publish and communicate to the public, the Incorporated Existing Materials for any Non-Commercial Purpose (to avoid doubt, including for the purpose of making the Incorporated Existing Materials freely available to the public or to any section of it, whether in hard copy or on-line and including use and modification of any models and copying of photographs); and
  - (b) if any of the Incorporated Existing Materials are included in the materials referred to in clause 17.14(a), the Recipient must ensure that relevant third parties make those Incorporated Existing Materials available to the public under a Creative Commons Attribution 4.0 licence.
- 11.6 To the extent that the State owns Intellectual Property in the Project Materials, the State grants to the Recipient, at no cost, a perpetual, irrevocable, worldwide, royalty-free non-exclusive licence, including the right to sub-licence, to use, reproduce, modify, adapt, publish and communicate to the public, the Project Materials.

## **12 Indemnity and release**

- 12.1 The Project shall be performed at the Recipient's risk. The Recipient accepts full responsibility for the performance of the Project and for the consequences of implementing any of the Project's findings and recommendations.
- 12.2 The Recipient indemnifies and keeps indemnified the Secretary of DCCEEW and their employees and agents, the Minister and the Crown in right of NSW from and against all actions, claims, demands and other proceedings that may be made or recovered against the Secretary of DCCEEW and their employees and agents, the Minister and the Crown in right of NSW, in respect of any damage to property, personal injury or death where the damage, injury or death was caused by any wilful, unlawful or negligent act or omission of the Recipient or its employees or agents in relation to the carrying out of the Project. DCCEEW will inform the Recipient as soon as it becomes aware of any such action, claim, demand or proceeding.
- 12.3 The Recipient will release the Secretary of the DCCEEW and their employees and agents, the Minister and the Crown in right of NSW from and against all actions, claims, demands and other proceedings that the Recipient may make or recover against the Secretary of the DCCEEW and their employees and agents, the Minister and the Crown in right of NSW, in respect of any damage to property, personal injury or death suffered by the Recipient, its employees or agents in relation to the carrying out of the Project.
- 12.4 The indemnity and release provided by the Recipient in clauses 12.2 and 12.3 is reduced proportionately to the extent that the relevant damage to property, personal injury or death is caused or contributed to by any wilful, unlawful or negligent act or omission by DCCEEW or its employees or agents.

## **13 Insurance**

- 13.1 The Recipient shall be responsible for effecting and maintaining all insurances required under workers' compensation legislation and for taking all other actions requisite as employer of person engaged to carry out all or any part of the Project. The Recipient shall also be responsible for ensuring volunteers carrying out any part of the Project are covered by volunteer personal accident insurance.
- 13.2 The Recipient must effect and maintain public liability insurance in relation to all premises and sites on which the Project is carried out for all works and activities undertaken for this

Project. The insurance shall be for an amount of at least \$20,000,000. The policies or a certificate of currency shall be made available to DCCEEW for inspection on request.

#### **14 Confidentiality**

- 14.1 DCCEEW will not disclose any information that is contained in the reports, documents and materials that you have indicated is confidential and that the DCCEEW has agreed not to disclose.
- 14.2 DCCEEW undertakes not to disclose any personal information (in accordance with the definition of personal information contained in the Privacy and Personal Information Protection Act 1998), that is contained in the reports, documents and materials that you have submitted without your written consent, with the exception of the purpose outlined in 14.4.
- 14.3 DCCEEW will not use any personal information for purposes other than the original purposes for which that personal information was supplied without your written consent, with the exception of the purpose outlined in 14.4.
- 14.4 DCCEEW may disclose information contained in reports, documents and materials you have submitted to a third party for the sole purpose of evaluation of its grants programs. DCCEEW will ensure that any third party agrees to keep all information acquired, material prepared or collected and any findings of the Project confidential.
- 14.5 Clauses 14.1 and 14.2 are subject to any legal obligation on DCCEEW to disclose information.

#### **15 Survival of obligation**

- 15.1 The Recipient's obligations under clauses 4, 5, 10, 11, 12 and DCCEEW's obligations under clause 14 survive the termination or expiry of this Agreement.

#### **16 Miscellaneous**

- 16.1 Any written notice or demand provided for in the Agreement may be served on the Recipient by ordinary prepaid post or email.
- 16.2 Neither the Recipient nor any person engaged by the Recipient shall be in the service or employment of DCCEEW by virtue of this Agreement.
- 16.3 Any court proceedings arising out of or relating to this Agreement must not be heard or started in any court other than a court in NSW. The Agreement will be governed by and construed in accordance with the law for the time being in force in NSW.
- 16.4 The invalidity or unenforceability of any one or more of the conditions of the Agreement shall not invalidate or render unenforceable the remaining conditions of the Agreement. Any invalid or unenforceable condition shall be severable and all other conditions shall remain in full force and effect.
- 16.5 All project activities need to be consistent with relevant current Government policy.

### **Specific conditions**

#### **17 Studies and survey, investigations and design, monitoring and documentation projects**

- 17.1 The following conditions apply to studies and survey, investigations and design, monitoring and documentation projects only.
- 17.2 The Recipient will arrange for all work in the project to be undertaken by an external consultant selected through competitive tendering, unless DCCEEW approves otherwise under clauses 17.16 and 17.17.
- 17.3 The Recipient will submit the project brief to be used in the call for tenders to DCCEEW and will consider all DCCEEW comments on the brief prior to releasing the call for tenders.

- 17.4 The Recipient will seek comments from DCCEEW on all proposals received in response to the call for tenders and consider DCCEEW's comments before awarding the contract for the work.
- 17.5 If the project captures or generates geospatial data, all data will be supplied by the Recipient at, or before, the completion of the project to DCCEEW. Data must be compatible with the ESRI software, unless prior written approval is given by DCCEEW.
- 17.6 The recipient shall provide digital metadata files for all geospatial data produced under this agreement. The digital metadata files shall be provided to DCCEEW along with each final product deliverable. The metadata file shall meet ISO 19139 standards and NSW metadata portal requirements.
- 17.7 If the Project involves the collection of any geospatial data (including LiDAR, digital elevation or monitoring data) the Recipient must do all things necessary to ensure that the Whole-of-Government is granted a permanent, irrevocable royalty-free, non-exclusive licence to make such Project Materials publicly available and to otherwise communicate, reproduce, adapt or publicise them on a non-profit basis.
- 17.8 If the Project involves the collection of any LiDAR or digital elevation data, the Recipient will ensure that the data is collected and classified in accordance with the "ICSM LiDAR Acquisition Specifications and Tender Template" and/or the most recent version of the Land and Property Information "Standard LiDAR Product Specifications".
- 17.9 If the project involves collecting raw data, such as LiDAR data, the Recipient will ensure that all collected data is supplied in addition to derived data for the project. For LiDAR, this would include supplying the full LAS files.
- 17.10 Geospatial data includes those generated in a: Geographic Information System (GIS); Land Information System (LIS); Remote Sensing or Image Processing system; Computer-Aided Design and Drafting (CADD) system; Automated Mapping/Facilities Management (AM/FM) system; and other computer system that employs or references data using either absolute, relative, or assumed coordinates.
- 17.11 The Recipient will supply progress reports, draft reports and working papers on investigations and associated model data files to DCCEEW for technical review. The Recipient will submit all comments provided by DCCEEW following such review to the selected consultant for consideration.
- 17.12 The Recipient will seek comments from DCCEEW and consider all DCCEEW comments prior to finalisation of any draft reports or working papers or designs and asset management plans and operations and maintenance manuals.
- 17.13 The Recipient will place a copy of all current public consultation drafts and final flood management plans and studies on its internet website within one month of completion of these documents.
- 17.14 The parties agree that:
- (a) The Recipient will make the Project report and associated figures (excluding any sections highlighted as confidential by the Recipient), spatial flood extent layers for key events and other data and tools the Recipient agrees (via correspondence with DCCEEW) available to the public under a Creative Commons Attribution 4.0 licence
  - (b) All other inputs, outputs, tools and material associated with the project not specifically identified in clause 17.14(a) need not be made available to the public under a Creative Commons licence or otherwise, other than as is required by law.
- 17.15 The Recipient will ensure that draft and final flood management plans and studies **do not** include the NSW Government or DCCEEW name or logo on the cover or title page.
- The Recipient will ensure that these documents include the following acknowledgement:
- "[the Recipient's name] has prepared this document with financial assistance from the NSW Government through its Floodplain Management Program. This document does

not necessarily represent the opinions of the NSW Government or the Department of Climate Change, Energy, the Environment and Water.”

- 17.16 If the Recipient proposes to undertake the work in the Project itself:
- (a) The Recipient must provide a detailed cost estimate (including those costs directly incurred in undertaking the Project and on-costs to a maximum of 10% of salaries) to DCCEEW and seek approval from DCCEEW
  - (b) The cost estimate is to be accompanied by detailed justification for the work to be done by the Recipient together with full details of the key staff to be involved demonstrating that they have the expertise, skills, qualifications and experience to undertake the work
  - (c) The Recipient must show it can and will commit the key staff and other resources required to the project to ensure that work is completed within the time period specified in the approved workplan. The Recipient must not change the nominated key staff without DCCEEW's approval, and
  - (d) The Recipient will not commence work until DCCEEW gives written approval.
- 17.17 If DCCEEW gives approval for the Recipient to undertake the work itself:
- (a) The Recipient must effect and maintain appropriate professional indemnity insurance in relation to carrying out all works and activities undertaken for the Project. The insurance shall be for an amount of at least \$20,000,000. The policies or a certificate of currency shall be made available to DCCEEW for inspection on request
  - (b) Clauses 17.12 to 17.16 above apply, as appropriate, to the Recipient's undertaking of the work, and
  - (c) Despite clause 2.2, DCCEEW will pay, under the Agreement, for the Recipient's costs as outlined in the detailed cost estimate provided under clause 17.16 (a). DCCEEW will not pay for other Recipient's Core Activities.

## **18 Construction and specified maintenance projects**

- 18.1 The following conditions apply to construction and specified maintenance projects only.
- 18.2 The Recipient will arrange for all construction work to be carried out by an external contractor selected through competitive tendering, unless DCCEEW approves otherwise under clauses 18.8 and 18.9.
- 18.3 The Recipient will arrange for full-time supervision of construction work to be undertaken by an external contractor selected by competitive tendering, unless DCCEEW approves otherwise under clauses 18.8 and 18.9.
- 18.4 The Recipient will seek and obtain DCCEEW's comments in writing of the draft plans, designs, estimates and asset management plan or operations and maintenance manual for the works and consider DCCEEW's comments before calling for tenders for the construction work.
- 18.5 The Recipient will submit a written report on tenders to DCCEEW, seek comments on the recommended tender and consider all DCCEEW comments before awarding the contract for the construction work.
- 18.6 The Recipient will ensure that the works are constructed strictly in accordance with the agreed plans and specifications. No variations are to be undertaken without DCCEEW's prior written agreement.
- 18.7 The Recipient is to maintain the works constructed in good order and condition at the Recipient's expense by including the required funding for such maintenance in its asset management plan within its annual Plan of Management. In relation to flood warning systems, maintenance is considered to include the regular servicing of the gauging stations and any other hardware and the operational aspects of the system to ensure that it is fit for its intended purpose.

- 18.8 If the Recipient proposes to carry out day labour or other work or undertake supervision, the Recipient must provide to DCCEEW sound economic or practical reasons and a detailed cost estimate and obtain written approval from DCCEEW prior to commencing work.
- 18.9 If DCCEEW gives approval to the Recipient to undertake day labour, or other work or supervision, then:
- (a) The Recipient must effect and maintain appropriate professional indemnity insurance in relation to carrying out for all works and activities undertaken for the Project. The insurance shall be for an amount of at least \$20,000,000. The policies or a certificate of currency shall be made available to DCCEEW for inspection on request
  - (b) For full-time supervision of contract works, the Recipient must provide full details of the key staff to be involved demonstrating that they have the expertise, skills, qualifications and experience to undertake the work and that it can and will commit these staff and the other resources required to the project to ensure that work is completed within the time period specified in the approved workplan. The Recipient must not change the nominated key staff without DCCEEW's approval
  - (c) Clauses 18.4, 18.6 and 18.7 apply as appropriate to the Recipient's undertaking of the work, and
  - (d) Despite clause 2.2, DCCEEW will pay under the Agreement for the Recipient's costs as outlined in the cost estimate provided under clause 18.8.

## Dictionary

**“Actual Expenditure”** means the actual monetary amount expended on the project and cannot include in-kind contributions.

**“Agreement”** means this funding agreement and includes the Grant Details, the Conditions, the workplan (as agreed to by both parties), any Schedules, attachments or Appendices.

**“Applicants Contribution”** means the funding portion to be paid by the applicant, this contribution cannot include funds received under any other NSW or Commonwealth programs unless agreed to at the time of application.

**“Application”** means the recipient's application for funding.

**“Confidential Information”** means any information that:

- (a) is by its nature confidential
- (a) is designated, or marked, or stipulated as confidential, or
- (b) you know or ought to know is confidential

But does not include information which:

- (c) is or becomes public knowledge other than by breach of this Agreement;

**“DCCEEW”** means the Department of Climate Change, Energy, the Environment and Water representing the Crown in right of New South Wales.

**“Expenditure information”** means the form that details actual project expenditure to date and is lodged with a Milestone Report to generate a Milestone Payment.

**“Final Report”** means the report outlining the achievements of the project, including project acquittal.

**“Funding Ratio”** means the agreed proportion of funding contributed by the Floodplain Management Program relative to the funds provided by Council (from its own revenue, not from other funding sources), to the overall cost of the Project, without exceeding the Maximum Funding Amount., as set out in the Grant Details.

**“Funding Term”** means the duration of this Agreement as set out in the Grant Details or until the date on which this Agreement is terminated, whichever comes first.

**“Incorporated Existing Materials”** means any materials existing at the commencement of the Project which are incorporated into the Project Materials.

**“Maximum Funding Amount”** means the maximum amount of funding that DCCEEW will provide under this Agreement, as set out in the Grant Details.

**“Milestone Date”** means the date by which each Milestone must be completed as specified in the workplan.

**“Milestone Payment”** means a payment made on the successful delivery of a Milestone.

**“Milestone Report”** means the report, which provides details of the activities carried out to achieve a Milestone.

**“Milestone”** is a significant event in the Project that signals the commencement and/or completion of some part of that Project, or a stage at which agreed parts of the Project will be completed as specified in the workplan.

**“Online Grants Management System”** means the online portal provided for the management of the grant project.

**“Non-Commercial Purpose”** means any purpose other than the purpose of generating a profit.

**“Project Materials”** means anything brought or required to be brought into existence as part of, or for the purpose of, carrying out, or in connection with, the Project, including all reports, documents, computer models, data files and field data.

**“Recipient’s Core Activities”** means core activities undertaken by the Recipient, including preparation of study briefs, review of proposals and tenders, researching and copying the Recipient’s records, attending meetings, contract administration, accounting costs, and liaising with the public and government agencies.

**“Recipient’s Representative”** means the representative nominated by the Recipient to oversee the Project.

**“State”** means the Crown in right of the State of New South Wales.

**“Workplan”** means the plan that outlines the Project’s planned activities, budget, timeline, outputs and Milestones as agreed to by both parties.

The following words have the meaning ascribed to them in the Grant Details: **“Commencement Date”, “Completion Date”, “Grant Number”, “Project”, “Recipient”**.



## Department of Climate Change, Energy, the Environment and Water

Mr Steven Pinnuck  
General Manager  
Snowy Valleys Council  
Email: [info@svc.nsw.gov.au](mailto:info@svc.nsw.gov.au)

DOC24/796288

Attention: Mark Kirton

Dear Mr Pinnuck

I refer to Council's application for funding under the 2024-25 Floodplain Management Program for the following project:

**Adelong flood study review**  
**Grant funding amount: \$112,000**  
**Grant reference no. 2024/FMP/0024**

I am pleased to advise that Council's application to the program has been successful. The offer is subject to Council agreeing to the terms set out in the attached *Funding Agreement for Financial Assistance* (the Agreement) and meeting the balance of funds for the project as outlined in the application.

Council may accept this offer by signing the enclosed Agreement and returning it via email by **11 December 2024**. Please note that if the Agreement is not returned by this date the offer of funding may lapse.

I would like to draw Council's attention to condition 3.1 of the Agreement, which outlines the requirement to submit a work plan for this project after Council has tendered for the work, but prior to awarding the contract and commencing work on the project. The work plan must be submitted electronically using the variation process in the Grants Management System by **26 March 2025**. Please note that Council is required to contact the department's contact for this project, **Steve Manwaring**, for assistance with the tendering.

Please note the requirement under clause 3.2, which states that Council must not publicise receiving grant funding for this project in any way until the Minister announces the successful applicants. This requirement does not prevent commencing tendering for the work.

*The department has transitioned to a new process for project milestone payments. To ensuring we have the correct banking details, when returning the executed funding agreement for this project, could you please include a screenshot of the bank account details council require milestone payments to be paid into. The screenshot must include council's name; BSB and account number.*

*Should council change its nominated bank account during the project duration, please notify Grants and provide updated details.*

If Council has any questions in relation to this grant offer, please contact me on 02 9895 6494 or at [coastalestuary.floodgrants@environment.nsw.gov.au](mailto:coastalestuary.floodgrants@environment.nsw.gov.au)

Yours sincerely



Kym Bilham  
A/Manager Contestable Grants - Flood  
Grants Branch, Office of the Secretary

22.10.2024

cc. Steve Manwaring - [Steve.Manwaring@environment.nsw.gov.au](mailto:Steve.Manwaring@environment.nsw.gov.au)  
Mark Kirton - [mkirton@svc.nsw.gov.au](mailto:mkirton@svc.nsw.gov.au)