

Phase 3 Confirmation Guidelines

For Supply and Constraint Measure Projects

[Updated February 2016]

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APPENDICES

- 1 –Surface Water SDL Adjustment Mechanism and constraints funding arrangements (s4.1-4.6 IGA)

ACRONYMS

The Basin Plan	The Murray-Darling Basin Plan adopted by the Commonwealth Minister under section 44 of the <i>Water Act 2007</i> (Cth) on 22 November 2012
BOC	Basin Officials Committee
CEWO	Commonwealth Environmental Water Office
Confirmation	The process of the proponent confirming project details to allow the project to be considered for inclusion in the proposed package of agreed measures. A key feature of Confirmation is that the proponent will be able to demonstrate that funding for the measure is agreed in principle, with final funding arrangements subject to confirmation of outcomes associated with the measure through operation of the SDL adjustment measure (cl. 30 IGA Protocol).
Consolidation	The process of BOC considering advice provided by MDBA, to agree a package of constraint, supply and efficiency measures before seeking Ministerial Council approval (cl. 31-33 IGA Protocol).
Department	Commonwealth Department of Agriculture and Water Resources
Guidelines	Phase 3 Confirmation Guidelines
IGA	Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin
IGA Protocol	Schedule 1 to the IGA (Protocol for consideration of surface water Sustainable Diversion Limit (SDL) adjustment measures)
MDBA	Murray-Darling Basin Authority
Notification	The process of BOC notifying MDBA of SDL adjustment measures, in accordance with the requirements of section 7.12 of the Basin Plan.
Phase 2 assessment guidelines	<i>Phase 2 Assessment Guidelines for Supply and Constraint Measure Business Cases</i> , approved by BOC.
SDL	Sustainable Diversion Limit
SDLAAC	Sustainable Diversion Limit Adjustment Assessment Committee
SDLATWG	Sustainable Diversion Limit Adjustment Technical Working Group.

1 Introduction

The *Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin* (the IGA) sets out three phases for the Sustainable Diversion Limit Adjustment Assessment Committee (SDLAAC) to evaluate supply and constraint measures: feasibility studies (Phase 1), business cases (Phase 2), and confirmation of projects (Phase 3). To guide the development of constraint and supply measure proposals and to ensure a consistent approach in assessing proposals, the IGA identifies the need for assessment guidelines to be developed for each of the three phases.

The purpose of *Phase 1* was to identify the measures that could deliver a Sustainable Diversion Limit (SDL) adjustment or improve the effectiveness of environmental water delivery, that warrant consideration for development of a business case for assessment under Phase 2.

The purpose of the *Phase 2 Assessment Guidelines for Supply and Constraint Measure Business Cases* (Phase 2 assessment guidelines) is to guide the development and assessment of business cases for proposed supply and constraint measures.

The *Phase 3 Confirmation Assessment Guidelines* (the Guidelines) cover the Confirmation Phase. The IGA Protocol assessment timeframes (updated following Murray-Darling Basin Ministerial Council agreement on 29 May 2015) describes Phase 3 as follows;

Phase 3 (Confirmation): *For all constraint, supply and efficiency measures, each project agreed to advance to Phase 3 will require confirmation by the proponent as described in [Table 1](#) to allow it to be considered for inclusion by BOC in the proposed package of agreed measures. A key feature of Phase 3 is that the proponent will be able to demonstrate that funding for the measure is agreed in principle, with final funding arrangements subject to confirmation of outcomes associated with the measure through operation of the SDL adjustment mechanism.*

When each project has been confirmed, the proponent will inform the MDBA of the necessary details as described in [Table 1](#).

Following an independent stocktake of the SDL adjustment mechanism in August 2015, Basin water Ministers agreed to develop a Finalisation Plan that introduced revised assessment timeframes to the extent possible to address the resolution of business case issues still outstanding at 30 June 2016 for a small number of complex and highly prospective projects. Amendments to the IGA Protocol, agreed at Murray-Darling Basin Ministerial Council meeting 14 on 27 November 2015, incorporate two revised assessment timelines to enable the inclusion of these complex and highly prospective projects in the SDL adjustment mechanism. These timelines are subject to a decision, by exception, of the Basin Officials Committee (BOC). The assessment timeframes (A, B or C class) will determine the order in which confirmation statements and notification statements are prepared and submitted by proponents. [Figure 2](#), taken from the IGA Protocol, outlines the timeframes for Class A, B or C projects including that notification may occur before confirmation for Class C projects.

Following Phase 3, the IGA sets out a Consolidation process before Phase 4 (Implementation) commences. Consolidation is the process which occurs following receipt of confirmation for proposed adjustment measures. BOC will consider advice provided by MDBA, and finalise the package of proposed adjustment measures before seeking Ministerial Council approval. The final package of proposed adjustment measures will then be submitted to MDBA by 30 June 2016 (cl. 31-33 IGA Protocol).

These Guidelines outline the process and timing by which project details are to be confirmed to enable projects to progress to the Consolidation process. It also provides information and guidance by which proponents may seek confirmation of Commonwealth Supply or Constraint Measure Funding.

An overview of the phased assessment process described in the IGA is outlined in [Figure 1](#).

The Guidelines apply to all constraint and supply projects that wish to be considered in the final package of measures and have been approved by the BOC to proceed to Confirmation Phase (Phase 3). It does not apply to efficiency measures, which will have separate programme guidelines established by the funding jurisdiction, as noted in the IGA Protocol (cl. 22).

Basin jurisdictions should endeavour to meet the timeframes for the assessment of constraints measures and supply measures set out in the IGA and Finalisation Plan. However, the confirmation process for proposals may need to be revised following further advice on the content and timing of business cases.

Figure 1 – Overview of the Phased Assessment Process described in the IGA Protocol

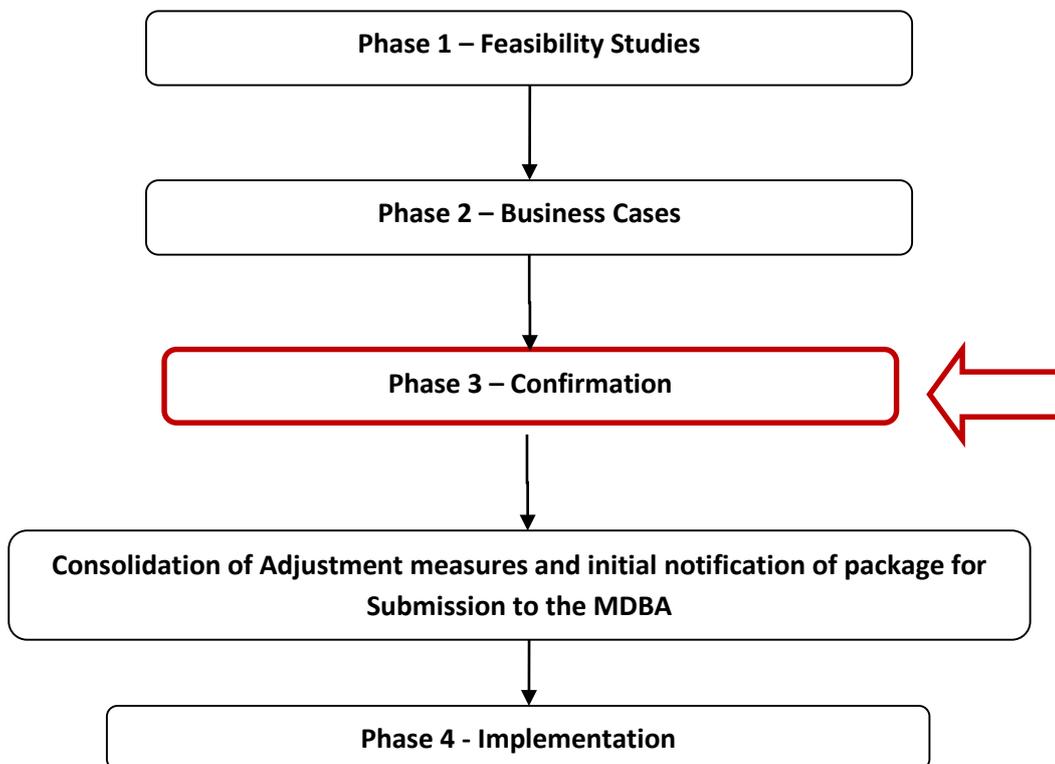
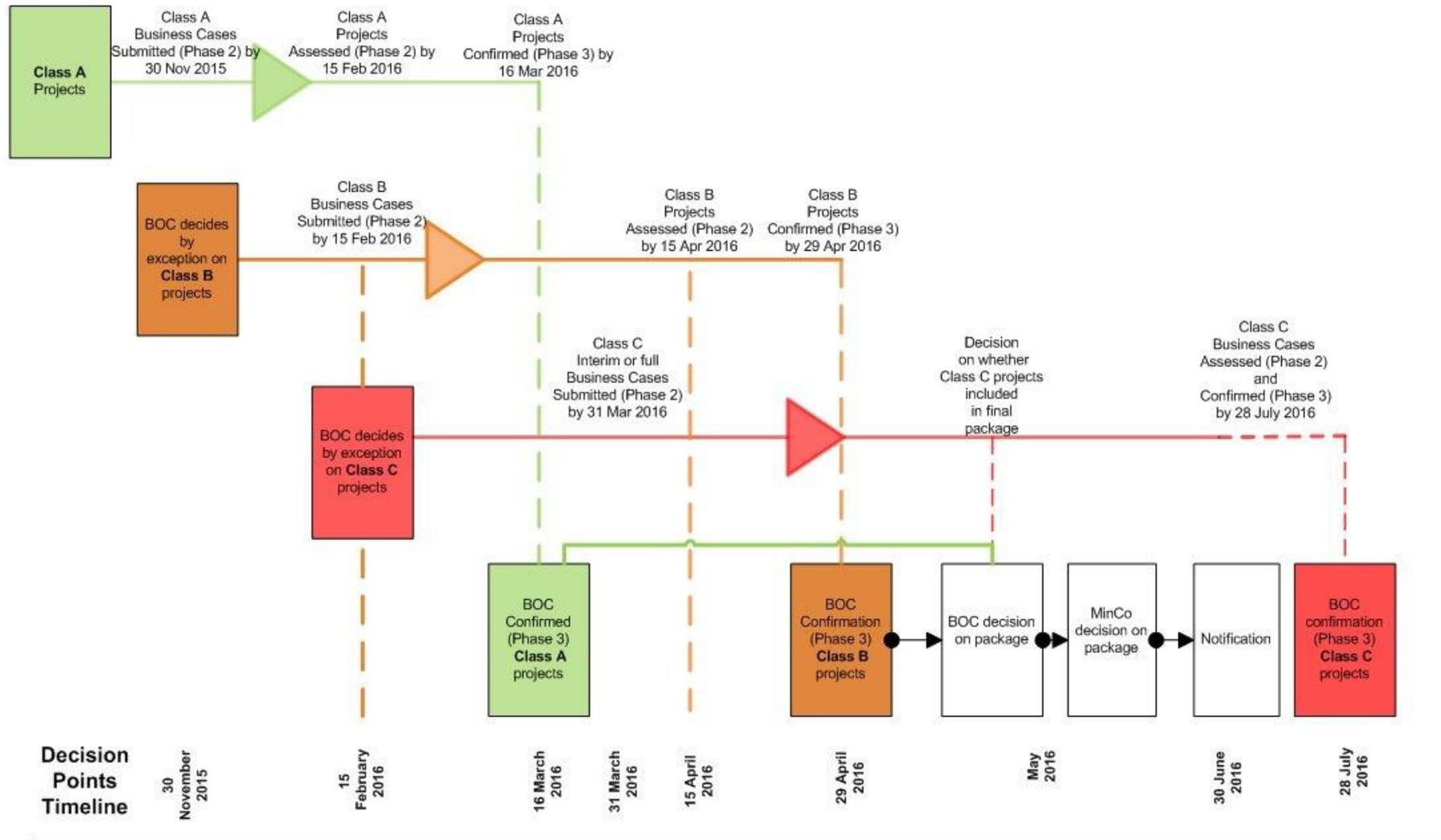


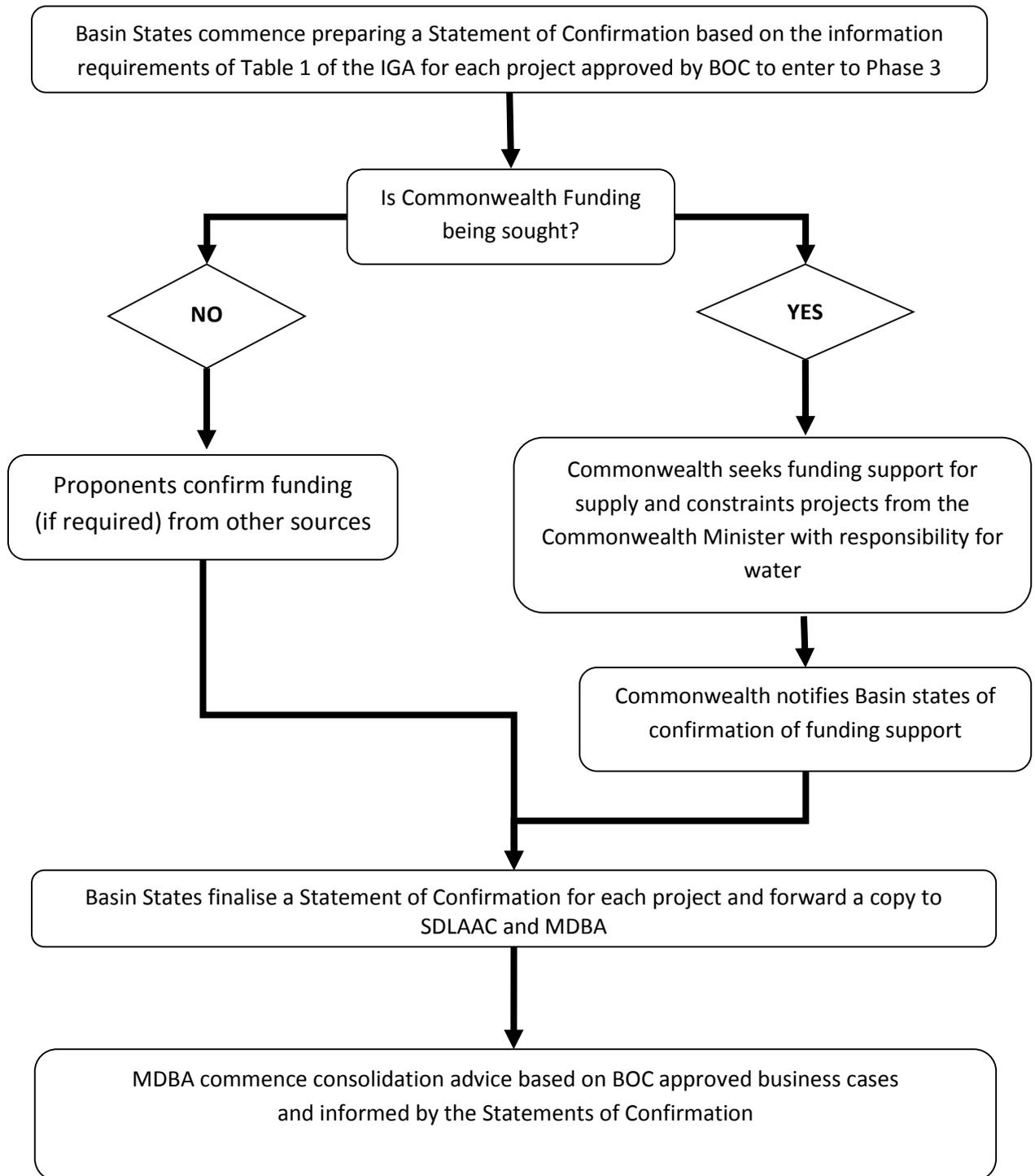
Figure 2 – SDL Assessment – revised procedure



2 Steps and timeframes to confirm project details and funding

Under the IGA Protocol, specific project details from the business case are to be confirmed to allow projects to be considered for inclusion by BOC in the proposed package of agreed measures. Key steps in the proposed process for the Confirmation Phase are outlined in [Figure 3](#).

Figure 3 – Expected steps to confirm supply and constraint projects (Phase 3)



3 Confirmation of Commonwealth funding support for Supply or Constraint Projects

Under the IGA, the Commonwealth has committed to fund supply measures that result in reducing the Basin wide SDL reduction amount by up to 650 GL, as agreed by Ministerial Council and determined through the operation of the SDL adjustment mechanism. Commonwealth funding for measures will be limited in aggregate to the lesser of the cost of recovering the same amount of water through water purchase, based on a single final reference value set in 2015, or the estimated total cost of the package of projects (IGA Clause 4.2 and Schedule 2).

Up to \$34.5 million of Commonwealth supply measure funding was made available to Basin jurisdictions for development of supply measure Phase 2 business cases under the National Partnership Agreement on Implementing Water Reform in the Murray Darling Basin. The total funding available for implementing approved supply measures is therefore reduced by \$34.5 million. The Commonwealth has also committed \$200 million from the Water for the Environment Special Account to address physical, institutional and operational constraints (IGA Clause 4.6). Up to \$5 million is available for development of Business Cases for Constraints projects. Therefore the remaining funding available for implementing approved constraints projects will be reduced by the total amount provided for business case development.

Supply and constraint projects seeking confirmation from the Commonwealth of funding support must have satisfied the requirements of the Phase 2 assessment and been approved by BOC to proceed to Phase 3.

3.1 Process for obtaining funding support from the Commonwealth Minister

Basin states will need to formally request funding for those projects requiring Commonwealth funding. At the completion of the Phase 2 assessment and approval of projects for inclusion in the package of measures by BOC, Basin states will provide to the Commonwealth a list of their proposed supply and constraint projects and identify the projects for which Commonwealth funding is required.

The Commonwealth Department of Agriculture and Water Resources (the Department) will seek confirmation of funding support from the Commonwealth Minister with responsibility for water (the Minister) for the projects seeking Commonwealth funding. In making the decision to provide funding support for these projects, consistent with the requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth), the Minister will consider:

- the outcome of the Phase 2 assessment process;
- the Commonwealth's due diligence assessment of eligible projects as part of the Phase 2 assessment; and
- the surface water SDL adjustment mechanism and constraints funding arrangements in the IGA (Appendix 1).

The Commonwealth will notify Basin states of the Minister's decision to provide Commonwealth funding support. The conditions of the Minister's decision for any Commonwealth funding may include but are not limited to:

- clarification of any outstanding issues identified during Phase 2 that are scheduled for resolution through preconstruction activities;
- signing of a new inter-governmental agreement (or schedule to the existing IGA as appropriate) setting out an agreed approach to implementation of the SDL adjustment mechanism;
- the SDL adjustment arising from the operation of the mechanism being confirmed through amendments to the Basin Plan and agreed by the Federal Parliament; and
- any required changes to the Murray-Darling Basin Agreement and operational rules are confirmed and a process in place to implement the changes.

4 Statement of Confirmation

Consistent with the IGA, Basin states are to prepare a Statement of Confirmation for proposed projects within their relevant jurisdiction.

The IGA Protocol Table 1 identifies criteria against which project details are to be confirmed. The Statement of Confirmation will indicate, for each project, progress against these criteria relative to the business case. A framework outlining expectations to confirm proposed constraint and supply measures is set out in Table 1 and 2 of these Guidelines respectively (see below). The first column in Table 1 and 2 below provides a summary of the IGA confirmation requirements. The second column in each table specifies the information that proponents are expected to provide to demonstrate they have met each IGA requirement. Submission of a written document (Statement of Confirmation) will be required for each project.

Basin states will forward each completed Statement of Confirmation to SDLAAC members as soon as possible once it has been agreed that the project will advance to Phase 3. Timing may be different for Class A, B and C projects, as outlined in [Figure 2](#). As part of Consolidation, BOC will use the information received in the Statement of Confirmation in preparing advice to the Ministerial Council to assist in reaching agreement to the package of proposed measures. Where a Statement of Confirmation has not been made before a decision on notification is required, BOC will consider the information available in a business case to decide whether a project will form part of the package of proposed measures.

A Statement of Confirmation can be finalised for Class C projects by 28 July 2016 following notification, as outlined in [Figure 2](#). The Commonwealth will be unable to provide in principle funding approval for any projects requesting funding until the business case assessment is successfully completed.

For any project nominated by two or more jurisdictions, a single Statement of Confirmation will be agreed between the jurisdictions and submitted by the lead proponent.

Table 1 – Expectations for confirmation of constraint measure projects

Summary of confirmation requirements (from Table 1 of the IGA Protocol)	Expectations to confirm project details (may refer to specific sections in Phase 2 assessment guidelines)
Evidence that funding has been secured in principle.	Statement by proponent with supporting documentation (e.g. letters or contracts).

Final advice that a process for dealing with any necessary landholder agreement is underway	Statement by proponent on progress or changes from the information provided on legal and regulatory requirements (section 4.11.2) in the business case.
Final advice of the changes to environmental water delivery made possible by project	Statement by proponent of changes (and the likely impact of those changes) to the advice on environmental water delivery in the business case.
Evidence that all works approvals, environmental approvals, cultural heritage management plans and other regulatory requirements are in train	Statement by proponent on progress or changes from the information provided on legal and regulatory requirements (section 4.11.2) in the business case.
Final advice that any necessary amendments to the MDB Agreement, the River Murray System Objectives and Outcomes Document, existing MDB or jurisdiction water sharing arrangements, policy, and/or legislation are in train	Statement by proponent on progress or changes from the information provided on legal and regulatory requirements (section 4.11.2) in the business case.

Table 2 – Expectations for confirmation of supply measure proposals

Summary of confirmation requirements (from Table 1 IGA Protocol)	Expectations to confirm project details (may refer to specific sections in Phase 2 assessment guidelines)
Evidence that funding has been secured in principle	Statement by proponent with supporting documentation which may include copies of funding agreements for existing projects and conditional funding advice from the Commonwealth for new projects.
Estimate on the proposed SDL adjustment	Statement by proponent if there is further information on SDL surface water SDL resource units affected by the project noting that the MDBA will provide a final estimate of the SDL adjustment at a later date.
Confirmation of links to other supply measures	Statement by proponent if there is further information on links to other supply measures, including whether the SDL adjustment volume of the measure is enhanced or reduced by other measures. Note that some links will have only become clear following MDBA analysis of the suite of proposed measures at the end of Phase 2 assessment.
Final advice of the changes to environmental water delivery made possible by the project	Statement by proponent of changes (and the likely impact of those changes) to the advice on environmental water delivery in the business case.
Evidence that all works approvals, environmental approvals, cultural heritage management plans and other regulatory requirements are in train	Statement by proponent on progress or changes from the information provided on legal and regulatory requirements (section 4.11.2) in the business case.
Final advice that any necessary amendments to the MDB Agreement, the River Murray System Objectives and Outcomes Document, existing MDB or jurisdiction water sharing arrangements, policy, and/or legislation are in train	Statement by proponent on progress or changes from the information provided on legal and regulatory requirements (section 4.11.2) in the business case.

<p>Final advice on risks including unintended environmental outcomes and any third party impacts and any risk management actions</p>	<p>Statement by proponent of any changes to the risks (including unintended environmental outcomes and any third party impacts) and the risk management strategy since the information provided on risk assessment of project development and delivery (section 4.11.4) in the business case. This should also address any risks identified in the MDBA's Phase 2 advice and assessment.</p> <p>This should also outline the further work that will be undertaken by the proponent to address issues raised in Phase 2 evaluations that can only be addressed in the detailed design and implementation stages of project development.</p>
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5 Roles and responsibilities for Phase 3

Basin States

Basin state officials participate as members on SDLAAC and BOC and are responsible for preparing Statements of Confirmation, including funding arrangements for each supply and constraint project approved by BOC in Phase 2.

SDLAAC/BOC

BOC will agree to the measures that enter the Phase 3 (Confirmation) process and agree a package of measures that enter the Consolidation and Notification phase. SDLAAC will receive and review a Statement of Confirmation for each proposed measure.

MDBA

The MDBA is a non-voting participant on SDLAAC. MDBA will continue to refine package modelling and SDL adjustment potential during the Confirmation, Consolidation and Notification phases, based on best available information from ongoing discussions with Jurisdictions.

Commonwealth Department of Agriculture and Water Resources

The Department represents the Commonwealth at SDLAAC and BOC. The Department calculates the final reference value for supply measure projects (Schedule 2 of the IGA). The Department is also responsible for assessing supply and constraint measures where Commonwealth Supply or Constraint Measure Funding is sought and making funding recommendations to the Commonwealth Minister with responsibility for water.

Commonwealth Environmental Water Office (CEWO)

The CEWO is a non-voting participant on SDLAAC. The CEWO will provide advice on the assessment of supply and constraint measure projects, based on the practical experience of delivering environmental water across the Murray-Darling Basin.

The CEWO will also contribute to the Commonwealth's assessment of supply and constraint measures where Commonwealth Supply or Constraint Measure Funding or Commonwealth environmental water is sought.

SDL Adjustment Technical Working Group (SDLATWG)

The SDLATWG will act as a forum for jurisdictions and the MDBA to work constructively and collaboratively to discuss progress with the development and technical analysis of SDL adjustment and constraint measures

Appendix 1: Surface Water SDL Adjustment Mechanism and constraints funding arrangements (cl.4.1-4.6 IGA)

- 4.1 The Commonwealth agrees to provide financial support for implementing measures under the SDL Adjustment Mechanism as set out in this Agreement.
- 4.2 The Commonwealth undertakes that supply measures that result in reducing the Basin wide SDL reduction amount by up to 650 GL, as agreed by the Murray-Darling Basin Ministerial Council and determined through the SDL adjustment mechanism, will be funded using funds originally allocated to water purchase, with total funding limited in aggregate to the cost of recovering the same amount of water through water purchase. For planning purposes, the total fund available for potential supply measures (including project development costs) will be based on a reference value of \$1900 per megalitre in long term average annual yield terms. The fund available to fund all approved supply measures will be based on a single final reference value set at the conclusion of 2014-15, in accordance with Schedule 2 of this Agreement.
- 4.3 Of the funding available under clause 4.2, the Parties note that the Commonwealth will provide funding over the years 2013-14 to 2015-16 to assist in the development of business cases for proposed supply measure projects. As set out in Clause 6 of Schedule 1, a total of \$34.5 million will be shared between New South Wales, Victoria and South Australia.
- 4.4 The Parties note that clause 4.2 does not preclude state-funded projects from being brought forward for assessment under the attached protocol at Schedule 1.
- 4.5 The Parties agree to take action to address physical, institutional and operational constraints, where approved through the inter-jurisdictional governance procedure for the SDL adjustment mechanism as set out in the attached protocol at Schedule 1, or where otherwise feasible and cost-effective to do so, to facilitate the delivery of environmental water.
- 4.6 The Commonwealth has committed a further \$1.58 billion to recover 450GL of environmental water with neutral or beneficial socio-economic impacts, and \$200 million to address physical, institutional and operational constraints, over ten years from 2014/15. The Commonwealth confirms that this financial commitment is in addition to the commitment to 'Bridge the Gap' to 2750GL of held environmental water (or supply measures) by 2019.