

**Memorandum of
Understanding between
TENTERFIELD SHIRE COUNCIL
and
Transport for NSW
for
Project
Management &
Delivery of the
5 Bridges Replacement Projects**



<p>The Projects</p>	<p>1 Tenterfield Shire Council (TSC) and Transport for NSW (TfNSW) have agreed this Memorandum of Understanding (MOU) for TfNSW to project manage and deliver the upgrade of 5 bridges at various locations for and on behalf of TSC (Projects). Further particulars of each Project are set out in Annexure A.</p>
<p>MOU objectives</p>	<p>2 The intended benefits of this MOU, which will arise through a collaboration of resources and expertise, includes:</p> <ul style="list-style-type: none"> a leveraging TfNSW's and TSC's technical expertise to achieve synergies in delivering each Project; b incorporating learnings into the process arising from the undertaking the Dumaresq Bridge Upgrade project; c facilitating TSC access to the extensive resources possessed by the broader TfNSW organisation; d responding quickly and flexibly to issues arising in connection with each Project; e assessing risks and developing mitigation strategies so TfNSW and TSC are fully aware of, and well positioned to manage exposure to risks associated with each Project; f providing opportunities for professional development of TSC and TfNSW staff; and g fostering and encouraging the development of a mutually beneficial ongoing, cooperative relationship between TfNSW and TSC. <p>3 This MOU:</p> <ul style="list-style-type: none"> a sets out the basis on which TfNSW will manage and deliver each Project for and on behalf of TSC; b sets out the requirements and expectations of a collaborative approach to achieve the Project outcomes to: <ul style="list-style-type: none"> i ensure the works in connection with each Project are completed by the completion dates agreed between the parties, noting the overall completion requirements in paragraph 26; ii deliver each Project: <ul style="list-style-type: none"> A within budget; B in accordance with the criteria of 'Australian Government Disaster Recovery Funding Arrangements 2018', 'NSW Essential Public Asset Reconstruction Works Guidelines' and 'Fixing Country Bridges Guidelines' (Funding Requirements); C to minimise Project-related costs that are ineligible for cost recovery under the guidelines in paragraph B above;

	<p>D in accordance with AS5100 and SM1600 bridge design requirements and ensure that all departures are documented and agreed to by TSC, as the owner of the assets;</p> <p>E to any other standards, specifications or requirements accepted by the Project Steering Group (PSG) (see Annexure B below); and</p> <p>F to meet legislative requirements for environment and safety;</p> <p>G to provide a value for money, high-quality product;</p> <p>c defines and allocates responsibility for the financial costs and risks of the Project between the parties;</p> <p>d establishes a framework for governance to manage these matters;</p> <p>4 TSC and TfNSW will enter into separate funding deeds for each Project.</p> <p>5 TfNSW will develop and deliver each Project using its internal and contract resources and, where practicable, TSC resources.</p> <p>6 TSC will make monthly payments to TfNSW to cover TfNSW's costs of carrying out each Project. Payment requests will be supported by an invoice, financial ledger and Monthly Status Report (MSR) for each Project.</p> <p>7 This MOU is intended to manage each Project scope so that its total cost falls within approved funding amount set out in Annexure A (Approved Funding Amount) and each Project is delivered in accordance with the Funding Requirements.</p>
TfNSW involvement	<p>8 Section 55(3)(b) of the <i>Local Government Act 1993</i> (NSW) requires a competitive tender process in order to award a contract to carry out works. However this section does not apply to contracts entered into between a council and the Crown (whether in right of the Commonwealth, New South Wales or any other State or a Territory), a Minister of the Crown or a statutory body representing the Crown.</p> <p>9 TfNSW will competitively tender some the works required to deliver each Project, in accordance with its TfNSW's procurement requirements.</p>
Monitoring and project governance	<p>10 TfNSW and TSC will establish a PSG as set out in Annexure B and appoint officers who shall support the PSG.</p> <p>11 The PSG will ensure each Projects objectives are achieved as well as release the Project hold points described in Annexure B, allowing for each Project to progress through key scope and funding gateways in accordance with the Funding Requirements.</p> <p>12 The PSG will manage Project finances and project governance to:</p> <p>a manage and minimise cost overruns;</p>

	<ul style="list-style-type: none"> b use its best efforts to ensure the total cost of each Project is within the Approved Funding Amount and each Project is delivered within the relevant Funding Requirements; and c agree actions to avoid or mitigate cost over-runs. <p>13 Following completion of the Project scoping and design phase, and in accordance with the project governance, TfNSW will:</p> <ul style="list-style-type: none"> a provide construction cost estimates; b review the Approved Funding Amounts of each Project; and c advise if the Approved Funding Amounts are sufficient to deliver the Project. <p>If the Approved Funding Amount is insufficient for the delivery model outlined in this MOU, TfNSW will advise the PSG prior to proceeding into the delivery phase (including procurement).</p> <p>14 In the event a Project is not able to be delivered for the Approved Funding Amount allocated by the funding body, the Project may be descoped from this MOU or delayed until additional funding can be secured.</p>
<p>Funding</p>	<p>15 Each Project’s capital costs will be funded through (a) Essential Public Asset Reconstruction Works for AGRN1012 and (b) Fixing Country Bridges (FCB) program. Under these funding facilities, an Approved Funding Amount has been granted to TSC as follows:</p> <ul style="list-style-type: none"> a FCB – Approved funding: <ul style="list-style-type: none"> Project 1 Mole River bridge (Springfield Road) - \$1,308,221.00 Project 2 Acacia Creek bridge (Patersons Road) - \$767,229.00 Project 3 Acacia Creek bridge (Tooloom Street) - \$713,128.00 Project 4 Koreelah Creek bridge (White Swamp Road) - \$1,416,420.00 b Natural Disaster Funding – Approved upper limit <ul style="list-style-type: none"> Project 5 Billirimba Creek bridge (Billirimba Road) - \$485,754.67 <p>16 Annexure A further sets out the Approved Funding Amount for each Project, including the funding entity who makes the facility available to TSC.</p> <p>17 TSC is to give consideration, and agree on, the proportion of the approved funding available to TfNSW to cover the cost of designing and constructing each Project (Construction Budget). The Construction Budget will be determined upon completion of final design and estimate in compliance to ‘Guidance note 3B deterministic contingency estimation 2018’ P90 estimate as referenced in the DRFA 2018 Section 6.5.3 and relevant Funding Requirements for the remaining Projects.</p> <p>18 TfNSW shall provide monthly:</p>

	<ul style="list-style-type: none"> a forecasts to TSC of anticipated project expenditure throughout each Project; and b updates on each Project program against its milestones, and present these documents to the PSG via the MSR. <p>19 Separate funding deeds for each Project, as contemplated by this MOU, will set out the agreed arrangements for the payment of TfNSW's costs associated with managing and delivering each Project.</p> <p>20 TSC will make payment to the relevant WBS for that Project , which will include all costs incurred by TfNSW in the previous month including:</p> <ul style="list-style-type: none"> a amounts payable by TfNSW to contractors and suppliers TfNSW has engaged to carry out the works and/or supply materials and/or goods in connection with the works on each Project; and b TfNSW's internal and other costs incurred in connection with each Project. <p>21 TSC shall pay the amount of TfNSW's invoices as per the above payment terms, as may be further particularised in the funding deed for each Project.</p> <p>22 In addition to the separate funding deeds contemplated by this MOU, the parties will put in place the necessary arrangements (for example, a purchase order/s or similar arrangement) to facilitate payments by TSC to TfNSW for the design and construction of each Project.</p>
TfNSW obligations	<p>23 TfNSW must:</p> <ul style="list-style-type: none"> a provide all necessary technical support, planning and assistance to design and construct each Project; b subject to the terms of this MOU, provide all necessary approvals required for each Project; c engage contractors to carry out the works comprising each Project (adopting TfNSW's standard form contracts) and use its reasonable endeavours to ensure the appointed contractors complete each Project in accordance with their respective contractual requirements; d manage and deliver each Project in accordance with: <ul style="list-style-type: none"> i AS/NZS ISO9001 Quality Certification; ii ISO45001 Occupational health and Safety; and iii ISO14001 Environment Management Systems, and TfNSW's associated project plans and procedures e arrange for any defects identified by TSC to be rectified up until the end of the respective defect's liability period (12 months from each date of practical completion) of each Project;





	<ul style="list-style-type: none"> f prepare and submit to TSC all documents reasonably required by TSC to grant a consent or approval for the carrying out of the works associated with each Project, as required by the <i>Environmental Planning and Assessment Act 1979</i> (NSW); and g prepare and submit to TSC monthly reports (including an updated program) reasonably required by TSC to comply with reporting requirements of each funding grant.
TSC obligations	<p>24 TSC must:</p> <ul style="list-style-type: none"> a review and approve all application documents submitted to TSC in connection with any consent or approvals for the carrying out of the works as required by the <i>Environmental Planning and Assessment Act 1979</i> (NSW) and otherwise consider and assess any applications for an approval made to it in accordance with all applicable statutes and regulations and provide a response to any applications made to it within a reasonable time of the lodgement of that application. b accept responsibility for the long-term care and maintenance of each Project following practical completion (on the basis that TfNSW has further no responsibility, obligation and/or liability in connection with any Project other than in paragraph 23(e)); and c without limiting 24(b) above, manage the rectification of defects appearing in the works comprising the Project post-completion, including issuing notices to the contractors; and d report (as necessary) to the TfNSW Natural Disaster team and FCB team.
Timing	<p>25 Each party will use its best endeavours to procure that the works associated with each Project are completed, so that each Project is able to achieve practical completion by the following dates:</p> <ul style="list-style-type: none"> a Natural Disaster funded assets – June 2024; and b FCB funded assets – July 2025. <p>26 These dates have been provided to the relevant funding bodies however can be formally varied provided works are being completed within the relevant funding round obligations.</p>
Relationships	<p>27 Nothing in this MOU:</p> <ul style="list-style-type: none"> a creates any relationship of partnership, employment, agency, joint venture, or other similar relationship between TSC and TfNSW; or b shall be construed as fettering any discretions of TfNSW or TSC in dealing with any application made to them or approval sought from them and without limitation, nothing in this MOU shall be construed as limiting or fettering in any way the exercise of a statutory discretion or duty by TfNSW or TSC.

	<p>28 Neither party has the right or authority to:</p> <ul style="list-style-type: none"> a bind the other party by any representation, declaration, or admission; b make any contract or commitment on behalf of the other party; or c assume any obligation or responsibility on behalf of the other organisation.
Scope variations	<p>29 When delivering each Project, TfNSW must not undertake or permit any variation to the agreed scope of works or incur any costs in addition to those contemplated by the scope of works, without the PSG's prior approval.</p> <p>30 The PSG will have the flexibility to agree any scope adjustments required to ensure a Project best suits the objectives for that Project, including ensuring that the total cost falls within the approved budget and timings for that Project.</p>
Project finalisation	<p>31 All Project are currently designated "Local Roads".</p> <p>32 Accordingly, TSC is the roads authority for all of the Project assets.</p> <p>33 At practical completion of each Project:</p> <ul style="list-style-type: none"> a TfNSW will handover the Project to TSC; b TSC will accept the handover of the Project; and c TfNSW will arrange for the respective contractor to rectify all defects in the works listed in the notice of practical completion (or otherwise identified prior to practical completion but not remedied) as soon as possible after practical completion.
Insurance	<p>34 TfNSW agrees that it, or its contractors will, for the duration of the Works, have in place the following insurances:</p> <ul style="list-style-type: none"> a Workers' Compensation as per current <i>Workers Compensation Act 1987</i> (NSW); b Public Liability for an amount of \$20,000,000; c Professional Indemnity for an amount of \$20,000,000; d Product Liability for an amount of \$20,000,000; and e Motor Vehicle cover for loss of and/or property damage caused to or by a motor vehicle while being used for the purpose of or in connection with the TMF Agency's business. <p>35 Before TfNSW commences each Project, and whenever requested in writing by TSC, TfNSW agrees to provide satisfactory evidence of the above insurances being affected and maintained.</p>
Community engagement	<p>36 The PSG shall agree to a community engagement protocol governing communications, media engagement and external issues management for each Project or generally for the Projects.</p>

<p>Dispute resolution</p>	<p>37 Where there is any dispute between TSC and TfNSW in connection with this MOU (including in relation to undertaking the Project and any payment to TfNSW), either party may refer the dispute to the TfNSW Project Manager and the TSC Project Manager for resolution.</p> <p>38 If after a period of 5 Business Days the dispute remains unresolved either party may refer the dispute to the PSG for resolution, in which case the PSG must follow the process set out in section 4 of Annexure B.</p> <p>39 If the dispute cannot be resolved by the PSG within 5 Business Days from the date on which it was referred to the PSG, the PSG may refer the dispute to the Director Infrastructure, TSC and the Senior Manager, Bridge Maintenance North, TfNSW.</p> <p>40 If any dispute cannot be resolved by is the methods set out above within 20 Business Days of the date the dispute was first referred to the TfNSW Project Manager and the TSC Project Manager, either party may refer the dispute to the Chief Executive Officer, TSC and the Director, Maintenance and Delivery, TfNSW for determination. Any such determination shall be final and binding on the parties.</p>
<p>Documents forming this MOU</p>	<p>41 Documents forming the MOU include:</p> <ul style="list-style-type: none"> a This Memorandum of Understanding b Annexure A – Asset Information c Annexure B – Project Steering Group d Any documents referred to in this MOU as forming part of the MOU
<p>Term</p>	<p>42 This MOU operates from the MOU’s date of execution until expiry of the last 12 month defect’s liability period of any Project under this MOU.</p>
<p>No contract</p>	<p>43 The terms of this MOU are not intended to be legally binding on the parties, however the parties commit to:</p> <ul style="list-style-type: none"> a act in good faith; and b enter into agreements and any other arrangements when appropriate or necessary for undertaking each Project, whether or not contemplated by this MOU.


APPROVAL

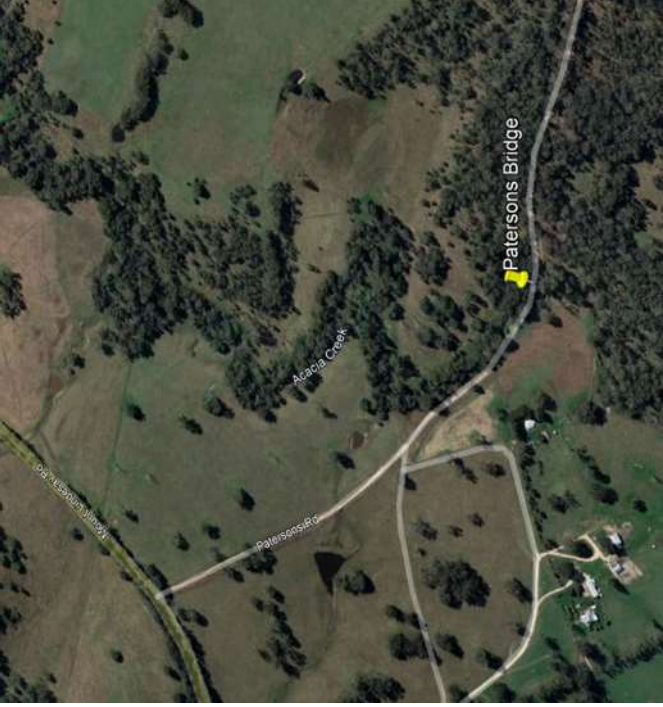
Aug 15, 2023


 <hr/> <p>Fiona Keneally Director Infrastructure For & on behalf of Tenterfield Shire Council</p>	 <hr/> <p>Nicholas McMullen Sam Agnew Senior Manager Bridge Maintenance North For & on behalf of Transport for NSW</p>
 <hr/> <p><small>Daryl Buckingham (Aug 14, 2023 10:41 GMT+10)</small> Daryl Buckingham Chief Executive For & on behalf of Tenterfield Shire Council</p>	 <hr/> <p>Stuart Baverstock Director Maintenance and Delivery North For & on behalf of Transport for NSW</p>


ANNEXURE A PROJECT INFORMATION

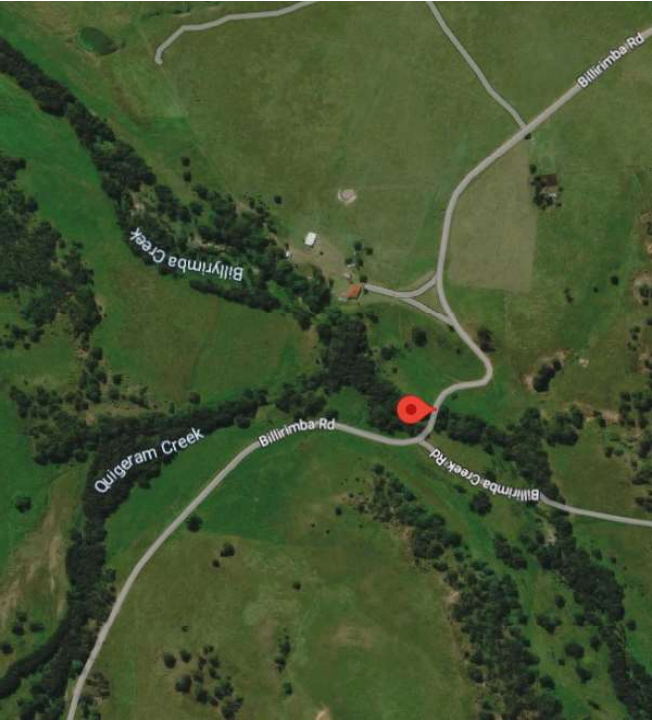
The 5 Projects included in this MOU are:

No	Project	Project location	Funding entity	Total Approved TSC Funding Amount	Target Project Milestones
1	Mole River Bridge	Springfield Road (60km west of Tenterfield) 	FCB	\$1,308,221.00	Mole River bridge - Springfield Road - environmental assessment determined - September 2023 - Gate 2 - detailed design approved - December 2023 - Gate 3 - commence construction (within 18 months) - June 2024 - Open to Traffic - September 2024 - Gate 4 - Post completion report - October 2024

No	Project	Project location	Funding entity	Total Approved TSC Funding Amount	Target Project Milestones
2	Acacia Creek Bridge	Patersons Road (approximately 20km south of Legume) 	FCB	\$767,229.00	Acacia Creek bridge - Patersons Road - environmental assessment determined - July 2023 - Gate 2 - detailed design approved - September 2023 - Gate 3 - commence construction (within 18 months) - October 2023 - Open to Traffic - June 2024 - Gate 4 - Post completion report - July 2024

No	Project	Project location	Funding entity	Total Approved TSC Funding Amount	Target Project Milestones
3	Acacia Creek Bridge	Tooloom Street, Legume 	FCB	\$713,128.00	Acacia Creek bridge - Tooloom Street - environmental assessment determined - September 2023 - Gate 2 - detailed design approved - December 2023 - Gate 3 - commence construction (within 18 months) - April 2024 - Open to Traffic - August 2024 - Gate 4 - Post completion report - September 2024

No	Project	Project location	Funding entity	Total Approved TSC Funding Amount	Target Project Milestones
4	Koreelah Creek Bridge	White Swamp Road, Old Koreelah 	FCB	\$1,416,420.00	Koreelah Creek bridge - White Swamp Road - environmental assessment determined - September 2023 - Gate 2 - detailed design approved - December 2023 - Gate 3 - commence construction (within 18 months) - March 2024 - Open to Traffic - August 2024 - Gate 4 - Post completion report - September 2024

No	5	Project	Billirimba Creek Bridge	Project location	Billirimba Road, Rocky River 	Funding entity	NDRRA	Total Approved TSC Funding Amount	\$485,754.67	Target Project Milestones	Market Response (Project Estimate_ - 31 st December 2023
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ANNEXURE B PROJECT STEERING GROUP

1 Membership

Tenterfield Shire Council	Director Infrastructure Project Manager
Transport for NSW	Senior Manager Bridge Maintenance North Works Manager

2 Objectives

The Project Steering Group (PSG) shall oversee each Project's delivery by:

- a reviewing and considering MSRs submitted by project manager for each Project to ensure they conform with the Funding Requirements;
- b recommending and agreeing to the scope and estimates for each Project as well as checking eligibility under the Funding Requirements and 'Regional Roads and Transport Repair Package Guidelines';
- c integrating TfNSW and TSC resources and ensuring the appropriate execution of work packages by both parties. Work packages may include community engagement, site investigations, environmental approvals, land acquisition, project design, tendering, project construction, project reporting, project finalisation;
- d recommending to TSC and TfNSW any significant variation to the approved scope and delivery of any Project;
- e certifying the cost of the works and facilitating Project handover and acceptance; and
- f releasing the "*Project Governance Hold points*" and any other agreed hold points, such as design, planning approval, construction and handover.

Notwithstanding PSG's oversight role, project development, delivery and finalisation including day to day conduct and contract administration remains TfNSW's responsibility.

3 Conduct of PSG meetings

- a PSG meetings shall be held at least monthly (or more often as the PSG decides) until practical completion is achieved for the final Project, at which time the PSG will dissolve.
- b Monthly meetings may be held by either tele- or videoconference, except for the quarterly face-to-face meeting.
- c Any face-to-face meetings shall be held at TSC offices or at a mutually agreed location or site.
- d The Chairperson shall be the Director Infrastructure, TSC.
- e In the absence of the Chairperson, the PSG's first item of business shall be the election of one of its number to preside over the PSG meeting.
- f Secretarial support to the PSG shall be provided by TSC. Minutes and any business papers shall be circulated to each member of the PSG at least 3 business days prior to each PSG meeting. Minutes shall be taken at each PSG meeting as a separate stand-alone document. Draft minutes shall be circulated to each member not more

than 10 business days after each PSG meeting. Minutes shall be formally adopted at the following PSG meeting.

- g A PSG meeting shall not proceed unless a quorum of at least 2 persons, not less than one from each of TSC and TfNSW, are present.
- h The PSG may choose to invite guests on an “as needs” basis. This could include, but is not limited to, the TfNSW, local government and relevant project funding teams.
- i MSRs for each project shall be prepared and submitted to TSC and TfNSW [following/prior to] each PSG meeting, updating:
 - i the status of that Project;
 - ii approved project scope and any approved variations to that scope;
 - iii approved budget;
 - iv current estimated project cost;
 - v approved completion date;
 - vi current estimated project completion date; and
 - vii current work packages, including contractor, scope, approved cost, current estimated cost, approved date of completion, estimated date of completion, brief overview of progress and any issues, and a brief summary of actions to address those issues.

4 Dispute resolution

The PSG shall collaboratively work together to complete each Project.

Should an issue be elevated to the PSG and appropriate action not be able to be agreed by the PSG, the issue will be elevated to the Chief Executive TSC and TfNSW Director of M&D North.

5 Project Governance Hold Points

The project governance hold points are to be submitted by TfNSW to TSC. The Hold points are to be released by TSC allowing TfNSW to commence work on the on the next project stage.

Project Stage	Hold Point	Guidance Docs	Supporting Documentation
Initiation	1. Initiation	<ul style="list-style-type: none"> MoU 	<ul style="list-style-type: none"> Project details Annexure A
Development	2. Commence Development	<ul style="list-style-type: none"> TfNSW Estimating Manual M&D Development Procedure 	<ul style="list-style-type: none"> Concept Estimate Concept Design Concept Program Project Plan
	3. Complete Development	<ul style="list-style-type: none"> TfNSW Estimating Manual M&D Development Procedure 	<ul style="list-style-type: none"> Delivery Estimate IFC Design Delivery program Environmental Approval M&D Development Documentation
Delivery	4. Start Construction	<ul style="list-style-type: none"> M&D Project Start Up procedure 	<ul style="list-style-type: none"> M&D Project Specific Plan (PSP)











[Execution version] TSC - Bridge upgrade - MOU 24.7.23


Final Audit Report


2023-08-15


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