

The Menindee Lakes Water Saving Project presents an opportunity to save a substantial amount of water otherwise lost to evaporation while contributing to improvements in river operations and the environment. Expected benefits from the project include: water savings, environmental benefits, flood protection, employment opportunities, and an alternate, secure water supply for Broken Hill.

The overall objectives, timeframes and cost constraints for the project are set out in the business case document available from:

[industry.nsw.gov.au/water/basins-catchments/murray-darling/supply-efficiency-measures](https://industry.nsw.gov.au/water/basins-catchments/murray-darling/supply-efficiency-measures)

Under the Murray–Darling Basin Plan and the sustainable diversion limit adjustment mechanism, the project must be delivered by 2024.

This is a complex task, which will require a close relationship between Government and the community, and appropriate Government investment. Provided that the overall objectives, timeframes and cost constraints can be met, the NSW Government will work with the community to design the project in a way that will maximise its benefits.

## Purpose of this document

This document outlines the five key approval processes that must be completed before the project can proceed. The steps and consultation requirements outlined represent the minimum statutory requirements. We anticipate that some consultation periods will be longer to ensure engagement is effective.

## Five separate assessment and approval processes

- 1. Murray–Darling Basin Authority (MDBA)/Basin state assessment**
  - Determine if the project can be included in the SDL adjustment mechanism, and eligibility for Commonwealth funding
- 2. Infrastructure NSW ‘Gateway’ process**
  - Identify risks associated with investing in major programs and projects
- 3. NSW planning approval as state significant infrastructure under the *Environmental Planning and Assessment Act 1979***
  - Ensure assessment, management and regulation of social, economic and environmental impacts and benefits, in a public and transparent way
- 4. Commonwealth Government approval under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)***
  - Protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places
- 5. *Native Title Act 1993 (Cth)* requirements**
  - Ensure the project is carried out in way which does not invalidly affect native title rights and interest—under the Future act processes in the Act—recognising the Barkandji Traditional Owners’ determined native title claim, which covers a significant part of the project.

## The MDBA/Basin state assessment process

Status: nearly complete

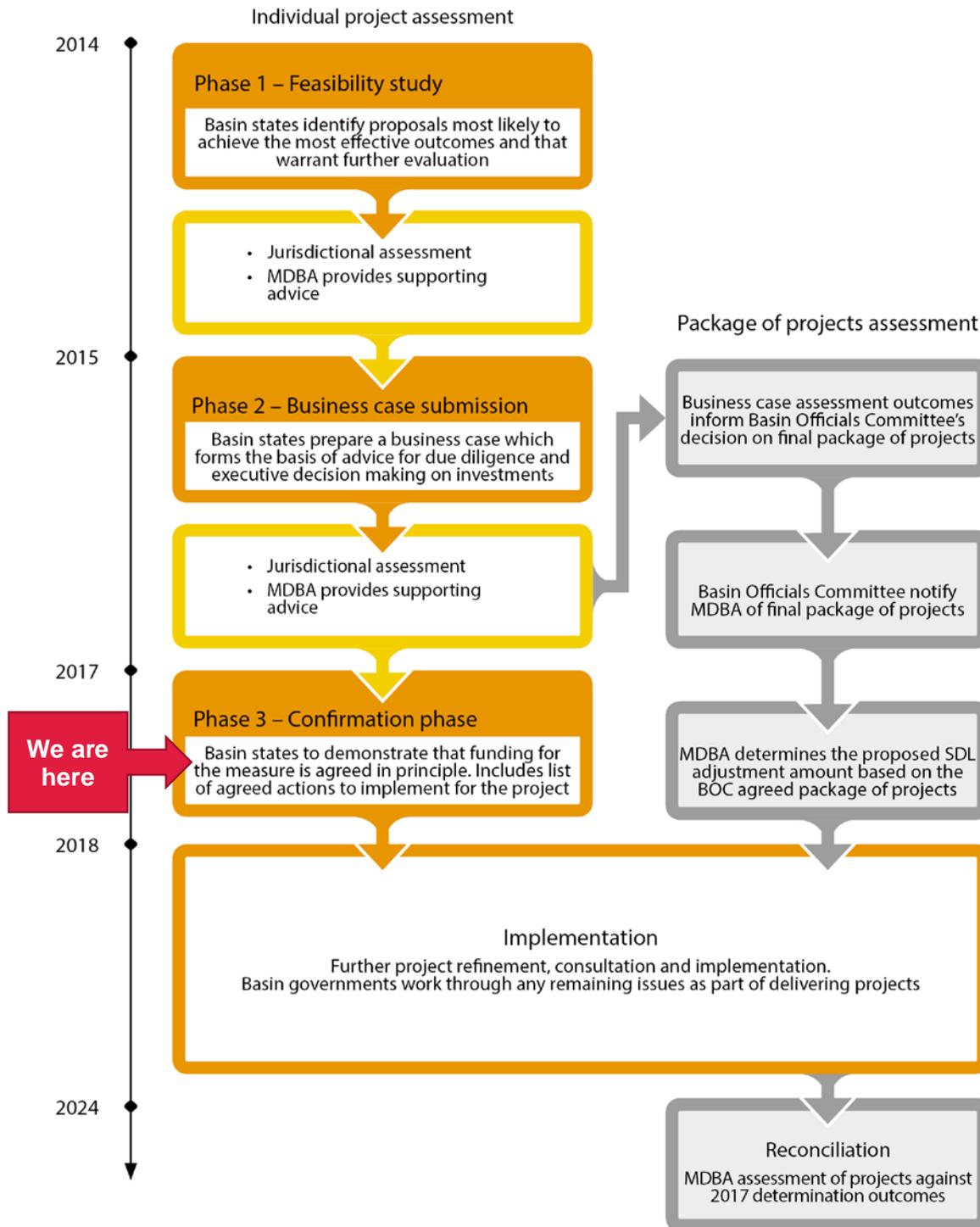


Figure 1 Assessment of SDL adjustment mechanism projects by the MDBA and basin states

More information: MDBA—[www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/sdlam](http://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/sdlam)

## NSW Infrastructure Investor Assurance: the gateway

### Status: at initiation

To ensure better oversight of the state's infrastructure program, the NSW government implemented the Infrastructure Investor Assurance Framework (IIAF). IIAF applies to capital projects with a value of \$10 million and above being developed or delivered by general government agencies and government businesses.

The framework consists of three pillars to check that projects are on track. These include:

- project monitoring
- regular project reporting
- expert and independent gateway reviews and health checks

IIAF is a tiered, risk-based approach to evaluating the project. The process is confidential to each project, and advice is given to the NSW Government, as the investor, through regular reporting. The approach allows for 'red flags' to be raised and interventions ordered in time to ensure projects are delivered on time, on budget, and in accordance with NSW Government's objectives.

The IIAF is the applicable gateway coordination framework under NSW Gateway Policy, administered by NSW Treasury.

### Gateway reviews and health checks

Infrastructure NSW is the gateway coordination agency (GCA) for the government's capital infrastructure projects and programs.

IIAF gateway review process provides for a series of short, focused, independent, expert reviews, held at key decision points in a project's lifecycle. Gateway reviews are appraisals of infrastructure projects that highlight risks and issues, which, if not addressed, may threaten successful delivery. The reviews are supported by health checks, which assist in identifying issues which may emerge between decision points.

Gateway review requirements for projects are proportionate to their tier level:

- Tier 1 high profile/high-risk projects must pass through all gates.
- Tier 2 projects must pass through Gate 0 (go/no go), Gate 1 (strategic options), and Gate 2 (business case)—a detailed business case with alternative options analysis needs to be prepared and submitted for Infrastructure NSW assessment.
- Tier 3 projects must pass through Gate 0 (go/no go).
- Tier 4 projects are lowest risk and do not require gateway reviews.

NSW Department of Industry's initial estimate is that Menindee lakes SDL Project is likely to be a Tier 2 project; however Infrastructure NSW will review the project when it is formally registered and allocate a Tier level.

## Gate 0

*Service need—determine if the project aligns with government and agency priorities and whether the service need identified has merit and warrants further consideration. Are there sufficient governance processes and are resources available to support development of a preliminary business case?*

**INITIATION/JUSTIFICATION REVIEW:** An Initiation/justification review occurs after a service need has been identified and at the earliest point in the development of the proposed service or service change and when appropriate analysis has been undertaken to allow the review to occur.

The review should take place at the concept or project stage before any significant funds are expended and prior to developing a preliminary business case.

## Gate 1

*Business strategy—determine the need to be met and whether the procurement provides the optimal solution. Establish the key business objectives and outcomes. If a business need is identified, develop a program or project brief.*

**STRATEGIC REVIEW:** The strategic review assesses whether the proposal is aligned with government and the agency's strategic plans. It demonstrates the best value means of servicing community needs. The strategic review occurs after a service need has been identified (but prior to developing a detailed project definition in a business case) and preliminary justification for procurement has been developed.

## Gate 2

*Develop options—determine the scope of the required project. Identify and appraise the options. Identify if affordability and value for money has been established.*

**BUSINESS CASE REVIEW:** The business case review assesses whether project options have been fully explored and assessed. Before proceeding, it helps ensure that the recommended option provides the best value. The business case review is undertaken after a project has been defined and its benefits and costs quantified. The review will not be conducted unless accompanied by a financial/economic appraisal. The review occurs before the business case for a project is submitted to the relevant funding authority to allow the project team to incorporate any recommendations from a review into the submission.

More information:

- Infrastructure NSW—[www.infrastructure.nsw.gov.au/project-assurance](http://www.infrastructure.nsw.gov.au/project-assurance)
- NSW Treasury—[www.treasury.nsw.gov.au/gateway-review-system-overview](http://www.treasury.nsw.gov.au/gateway-review-system-overview)

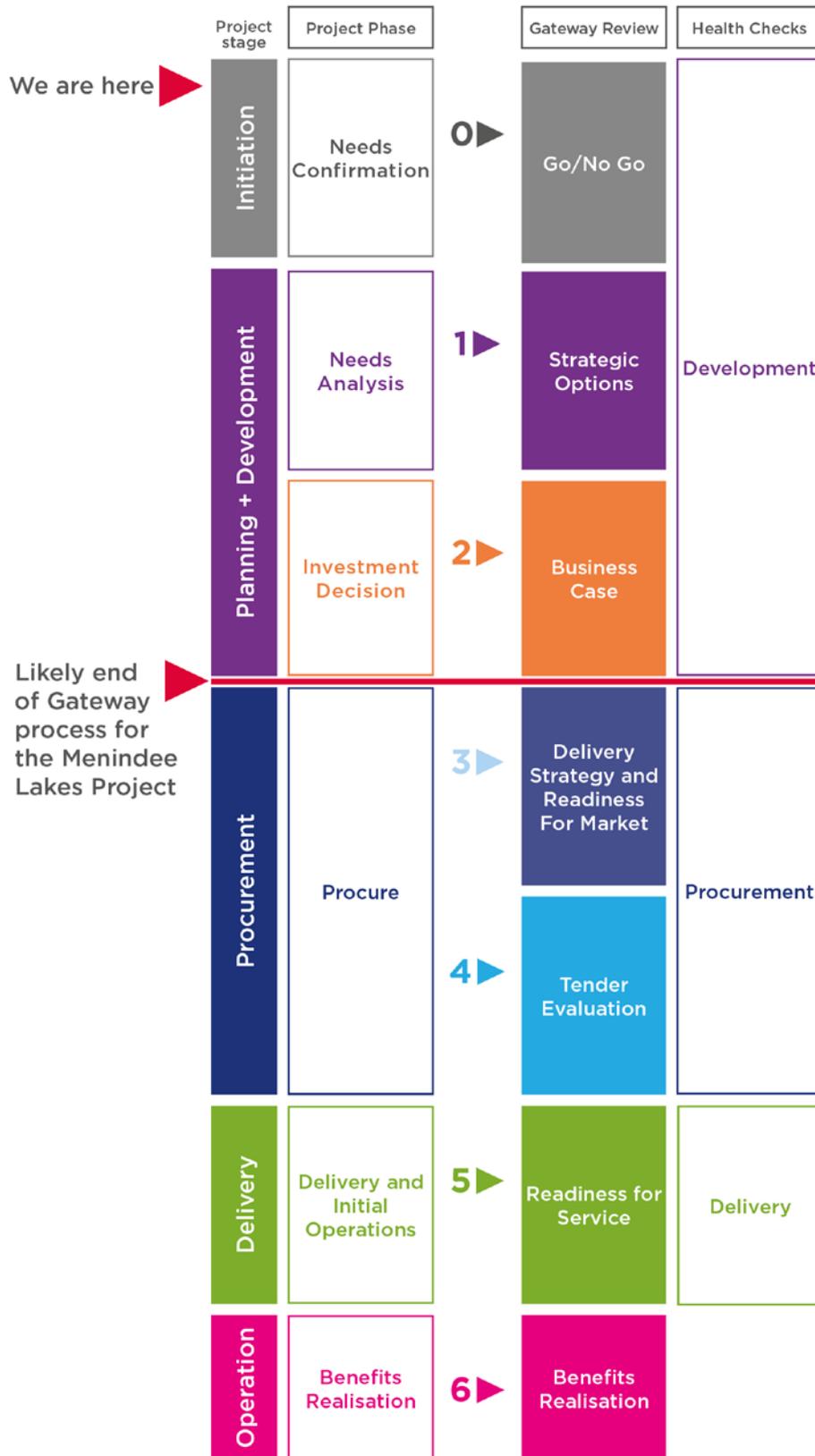


Figure 2 Gateway Review Process Gates

## NSW Planning approval: state significant infrastructure

### Status: at initiation

The Menindee Lakes Water Saving Project will likely be categorized as a state significant infrastructure (SSI) project under NSW planning approvals due to its size, economic value or potential impacts, and as it will have a wider significance and impact than on just the local area.

The NSW Department of Planning and Environment is responsible for assessing SSI projects, and the Minister for Planning (or in some circumstances, his delegate) is required to approve the project.

SSI planning process are administered as show in Table 1.

**Table 1 State significant infrastructure administration**



Project stage	Time	Responsibility
Prepare and lodge SSI application		Applicant (likely WaterNSW)
Issue Secretary's environmental assessment requirements (SEARs)	Within 28 days of receiving SSI application	Department of Planning and Environment
Prepare environmental impact statement (EIS)	Unknown (likely up to 12 months)	Applicant (likely WaterNSW)
Exhibit EIS	28 days minimum	Department of Planning and Environment
Request response to submissions	within 10 days of end of exhibition	Department of Planning and Environment
Prepare and submit response submissions, or a preferred infrastructure report if the proposal changes		Applicant (likely WaterNSW)
Prepare assessment of application for approving authority	75 days	Department of Planning and Environment
Final determination	10 days	Minister for Planning (or Department of Planning and Environment delegate)

*NOTE: all days are calendar days (not business days)*

Major Infrastructure projects that have multiple stages or components can be considered and assessed in a number of different ways in the planning system:

- **single SSI application covering all stages**—requiring sufficient details of all stages as part of the single application
- **Staged SSI application and subsequent detailed SSI applications**—a staged SSI application which:
  - Sets out a concept proposal for the overall proposed infrastructure
  - Seeks approval for a detailed proposal for the first stage of infrastructure e.g. construction and/or operation (optional)
  - Specifies which detailed proposals for separate parts of the infrastructure will follow in subsequent SSI applications
- **Separate SSI applications for each stage**
- **Split of SSI application/s and Part 5 self-assessments**—being where a stage does not meet the state significance triggers

The most suitable approach will vary depending on the nature of the project. For Menindee Lakes SDL project, the most suitable approach will be determined during the project initiation phase that is planned from July 2018 to early 2019.

## Commonwealth approval: *Environment Protection and Biodiversity Conservation Act 1999*

### Status: at initiation

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is Australia's key environment and heritage legislation. NSW Department of Planning and Environment assesses impacts on matters of national environmental significance on behalf of the Commonwealth, and the Commonwealth retains responsibility for determining whether a project can proceed to impact on those matters.

The environment assessment process can run concurrently with the SSI application to the NSW Department of Planning and Environment, defined in Table 2.

**Table 2 Environmental assessment process**

	Project stage	Time	Responsibility	Commonwealth requirements
	Prepare and lodge SSI application		Applicant (likely WaterNSW)	<ul style="list-style-type: none"> <li>The project is referred to the commonwealth, requesting determination on whether a project is a 'controlled impact' under the EPBC Act on the basis that it may be likely to have significant impact on one or more matter/s of national environmental significance.</li> <li>Commonwealth publishes referral documents, and seeks comment from the public, and Department of Planning and Environment.</li> <li>Commonwealth determines if the project may impact on matter/s of national environmental significance, and if it requires further assessment (within 20 business days of receiving referral).</li> <li>Commonwealth advises if assessment is required.</li> <li>Department of Planning and Environment includes Commonwealth matters in environmental assessment requirements if the Commonwealth decision is made <b>before</b> they are issued.</li> </ul>
	Issue Secretary's environmental assessment requirements (SEARs)	Within 28 days of receiving SSI application	Department of Planning and Environment	
	Prepare environmental impact statement (EIS)	Unknown (likely up to 12 months)	Applicant (likely WaterNSW)	<ul style="list-style-type: none"> <li>Department of Planning and Environment revises environmental assessment requirements to include Commonwealth matters if the Commonwealth decision is made <b>after</b> they are issued</li> </ul>

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Project stage	Time	Responsibility	Commonwealth requirements
Exhibit EIS	28 days minimum	Department of Planning and Environment	
Request response to submissions	Within 10 days of end of exhibition	Department of Planning and Environment	
Prepare and submit response submissions, or a preferred infrastructure report if the proposal changes		Applicant (likely WaterNSW)	
Prepare assessment of application for approving authority	75 days	Department of Planning and Environment	<ul style="list-style-type: none"> <li>Department of Planning and Environment considers impacts on matter/s of national environmental significance in their assessment.</li> </ul>
Final determination	10 days	Minister for Planning (or Department of Planning and Environment delegate)	<ul style="list-style-type: none"> <li>Department of Planning and Environment formally notifies Commonwealth of determination.</li> </ul>
Post determination		Commonwealth Minister for the Environment (or their delegate)	<ul style="list-style-type: none"> <li>Commonwealth Minister for the Environment (or their delegate) makes a final determination on the project (within 30 business days of receiving notification of state determination).</li> </ul>

## Commonwealth *Native Title Act 1993* requirements

The *Native Title Act 1993* (Native Title Act) sets up processes to determine where native title exists, how future activity impacting upon native title may be undertaken, and to provide compensation where native title is impaired or extinguished. The Native Title Act gives Indigenous Australians who hold native title rights and interests or who have made a native title claim, the right to be consulted and, in some cases, to participate in decisions about activities proposed to be undertaken on the land.

Aboriginal people have occupied the Menindee region for at least 47,000 years (Balme and Hope, 1990); and in 2015, native title of the Barkandji people was recognised over lands and waters extending from Wilcannia to Wentworth. The Menindee Lakes and the Lower Darling and Darling Anabranch continue to be important to the wider Aboriginal community as resources and places of significance.

A significant part of the project area is subject to a determined native title claim that recognises the Barkandji Traditional Owners as the traditional owners of land.

Through the detailed design of the project, locations where the project may impact on native title rights and interests will be mapped out, and the specific process that may be required by law will be determined in consultation with the Barkandji Traditional Owners.

Regardless of whether or not native title rights apply to various parts of the project, the NSW Government recognises the significance of the land and water of the region to Aboriginal people and are committed to ensuring the Aboriginal community is consulted and included in the design and assessment of the project.