

s22 email

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Deed of Variation and Termination [SEC=UNCLASSIFIED]

to: s22

25/07/2013 16:23

cc: s22

UNCLASSIFIED

Hello s22

Please find enclosed a copy of a letter sent to s47F Director, Centre for Aboriginal Health, including a Deed of Variation and Termination regarding the redirection of Commonwealth funds for a new health clinic in Narooma to upgrade an existing clinic facility in Broken Hill, NSW.

The original documents have been placed in the mail directly to s47F

Should have any further questions regarding this documentation, please don't hesitate to contact me on s22

Regards

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2013_07_23_NSW Health_Letter DoV and Termination (D13-1110447).PDF



2013_07_25_NSW Health DoV and Termination (D13-1110492).PDF

s22

Assistant Director
Capital Works Section
OATSIH (MDP: 652)
PH: s22

@health.gov.au

(my hours are part-time - I'm not in the office on Wednesday's)

UNCLASSIFIED



Minute

Garry Fisk
Assistant Secretary
Capacity Development Branch
OATSIH

REGULATION 9 APPROVAL TO ENTER INTO A VARIATION AND TERMINATION TO THE CAPITAL WORKS FUNDING AGREEMENT WITH HEALTH ADMINISTRATION CORPORATION (NSW HEALTH)

1. PURPOSE

That, under Regulation 9 of the *FMA Act 1997*, you:

- a) **APPROVE** to enter into a variation and termination to the Funding Agreement with Health Administration Corporation (NSW Health) at **Attachment A** to:
 - redirect funding of \$2 million (GST exclusive) previously provided to NSW Health for a new health clinic in Narooma to Broken Hill, New South Wales (NSW);
 - extend the project period to 30 June 2015; and
- b) **SIGN** the letter to NSW Health at **Attachment B**;

2. BACKGROUND

On 30 June 2010 an OATSIH Capital Works Funding Agreement was executed with NSW Health to provide a funding contribution of \$2 million (GST exclusive) towards the construction of a new primary health care facility in Narooma, NSW. Following completion of construction of the new facility in Narooma, it was intended to be owned and operated by Katungul Aboriginal Corporation Community & Medical Services (Katungul).

The initial progress of the health clinic was slow due to the lack of suitable sites in and around Narooma and complexities negotiating land tenure with the local land council. Due to subsequent concerns with Katungul's governance and financial administration practices a special administrator was appointed by the Office of the Registrar of Indigenous Corporations (ORIC) to Katungul in December 2011. The capital works project was subsequently put on hold to mitigate further risk. The period of special administration ceased in September 2012, and while services from the existing property are currently being provided, both NSW Health and OATSIH do not consider the organisation currently has the capacity to proceed with managing a significant capital works project.

NSW Health wrote to OATSIH seeking agreement to the redirection of \$2 million from the Narooma project towards a capital works project in Broken Hill (refer to **Attachment C**).^{s22}

On 19 June 2013, Minister Snowdon agreed to redirect funds of \$2 million from the Narooma project towards the development of a new primary health care facility in Broken Hill, NSW (Refer to **Attachment D**).

3. FUNDING AVAILABILITY AND FINANCIAL DELEGATION

No additional funds are required for this project as funding has already been paid to NSW Health. The total value of this Deed is \$2 million (GST exclusive) and is within your delegation limit under Section 44 of the *Financial Management and Accountability Act 1997*. According to the *Act* you have the delegation to approve spending of public money relating to Administered expenditure of up to \$50 million.

The Deed of Variation and Termination has been drafted with assistance from Legal Services Branch.

RECOMMENDATIONS

That, under Regulation 9 of the *FMA Act 1997*, you:

- R.1. APPROVE** to enter into a variation and termination to the Funding Agreement with NSW Health at **Attachment A** to:
 - redirect funding of \$2 million (GST exclusive) from Narooma to Broken Hill, NSW as previously provided to NSW Health for the provision of a new primary health care facility;
 - extend the project period to 30 June 2015;
- R.2. SIGN** the letter to NSW Health at **Attachment B**; and
- R.3. NOTE** once signed by the recipient, the variation and termination to the Funding Agreement will be provided to you for execution

s47F

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Director
Capital Works Section
23 July 2013

s47F

Garry Fisk
Assistant Secretary
Capacity Development Branch
OATSIH

23 July 2013

- R1. Approved / ~~Discuss~~**
- R2. Sign / ~~Discuss~~**
- R3. Noted / ~~Discuss~~**

- C. The Commonwealth and the State are parties to an agreement relating to the provision of a Health Clinic in the Narooma NSW region dated 30 June 2010 (Narooma Funding Agreement). The Commonwealth and the State have agreed to terminate the Narooma Funding Agreement and for the funds provided under that Agreement to be used for the purposes set out in this Agreement on the terms contained in this Agreement.

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36. TERMINATION OF NAROOMA FUNDING AGREEMENT

36.1 In this clause:

- (a) **Claims** includes:
 - (i) all liability, damage and loss;
 - (ii) actions, applications, causes of action, arbitrations, claims, demands, orders, judgements; and
 - (iii) debts, damages, penalties, payments and costs (including legal costs calculated on a solicitor and own client basis);
- (b) **Commonwealth's Obligations** means the obligations of the Commonwealth set out in the Narooma Funding Agreement;
- (c) **Effective Date** means the date of this Agreement;
- (d) **Narooma Funding Agreement** means the agreement relating to the provision of a Health Clinic in the Narooma NSW region dated 30 June 2010; and
- (e) **State's Obligations** means the obligations of the State set out in the Funding Agreement to the extent that such obligations relate to the Project.

36.2 The Parties agree that the Narooma Funding Agreement is terminated with effect from the Effective Date.

36.3 On the Effective Date:

- (a) the Commonwealth releases the State from any Claim relating to the State's Obligations; and
- (b) the State releases the Commonwealth from any Claim relating to the Commonwealth's Obligations.

36.4 The State warrants that on the Effective Date no person has a Claim against the State regarding the performance of the project described in the Narooma Funding Agreement.

36.5 The Parties acknowledge that all funds provided to the State by the Commonwealth pursuant to the Narooma Funding Agreement are to be treated as Funds provided by the Commonwealth pursuant to this Agreement.



Australian Government
Department of Health and Ageing

s47F

Director
Centre for Aboriginal Health
NSW Ministry of Health
Locked Mail Bag 961
NORTH SYDNEY NSW 2059



Dear s47F

**Deed of Variation and Termination
OATSIH Capital Works Project (0910N511)**

In response to your letter to s22 Director, Capital Works Section, dated 30 April 2013, I am pleased to advise the Department of Health and Ageing has considered your request and agree to redirect the Commonwealth contribution of funding of \$2 million (GST exclusive) for a new health clinic in Narooma to upgrade an existing health clinic facility in Broken Hill, New South Wales. This agreement is subject to agreement to enter into the Deed of Variation and Termination referenced below.

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Yours sincerely

s47F

Garry Fisk
Assistant Secretary
Capacity Development
Office for Aboriginal and Torres Strait Islander Health
23 July 2013

Encl

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Director
Capital Works Section
Office for Aboriginal and Torres Strait Islander Health
Department of Health & Ageing
Mail Delivery Point 750
GPO Box 9848
CANBERRA ACT 2601



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I write in regard to the reallocation of \$2 million provided to the NSW Ministry of Health from the Commonwealth Department of Health and Ageing on 30 June 2010 as a contribution towards a new health facility for the Katungul Aboriginal Corporation Community & Medical Services (Katungul) in Narooma, NSW.

As you are aware, since the provision of those funds, Katungul went through a period as a "Service of Concern" and the planned capital works project could not proceed. Whilst Katungul now appears to be operating effectively, neither the Centre for Aboriginal Health (CAH) or the NSW Office of Aboriginal and Torres Strait Islander Health (OATSIM) believe the organisation will be in a position to proceed with a significant capital works project for some time yet.

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The CAH is seeking permission from OATSIH to redirect the \$2 million previously provided for the Katungul project to the ongoing capital works project at Maari Ma. The CAH believes that this would be an extremely worthwhile investment of Commonwealth funds and would be happy to negotiate a new funding agreement centred on this current project.

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Yours sincerely

s47F

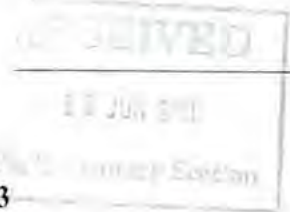
Director
Centre for Aboriginal Health

30/4/13

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cc: Ms Halton
Mr Learmonth
s22
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MINUTE TO THE MINISTER

MINISTER SNOWDON

Critical Date: 5 June 2013

FUNDING FOR NEW HEALTH INFRASTRUCTURE – BROKEN HILL, NSW

PURPOSE:

To seek your approval to redirect \$2 million of Commonwealth funding, previously provided to NSW Health, towards the provision of a new primary health care facility in Broken Hill, NSW.

ISSUE:

2. Due to concerns with the capacity of Katungul Aboriginal Corporation Community & Medical Services (Katungul) to manage a capital works project, NSW Health has sought agreement to redirect funding of \$2 million provided by the Commonwealth for a new primary health care facility in Narooma, NSW towards a new facility in Broken Hill, NSW.

REASON FOR CRITICAL DATE (including consequences if not met)

3. To allow sufficient time for NSW Health to negotiate a capital works funding agreement with Maari Ma Health Aboriginal Corporation (Maari Ma) prior to 30 June 2013.

BACKGROUND:

4. In June 2010 the Commonwealth entered into a funding agreement with NSW Health to provide funding of \$2 million as a contribution towards the provision of a primary health care facility in Narooma, NSW. The initial progress of the health clinic was slow due to the lack of suitable sites in and around Narooma and complexities negotiating land tenure with the local land council. Due to subsequent concerns with Katungul's governance and financial administration practices a special administrator was appointed by the Office of the Registrar of Indigenous Corporations to Katungul in December 2011. The capital works project was subsequently put on hold to mitigate further risk.

5. The period of special administration ceased in September 2012, and while services are currently being provided, both NSW Health and OATSIH do not consider the organisation currently has the capacity to proceed with managing a significant capital works project.

6. NSW Health has written to OATSIH seeking agreement to the redirection of \$2 million from the Narooma project towards a capital works project in Broken Hill. s22

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. A source for the remaining funding required is yet to be finalised however preliminary advice indicates that NSW Health may be able to contribute the remaining balance.

evidence was included to substantiate the project's objective. However, the project was included on the Work Plan for future consideration should additional funding become available to progress it.

8. Category 1 and 2 projects are progressed as funding becomes available, and to date, all high priority projects (Categories 1 and 2) identified on the Forward Work Plan have been completed or are under way.

RELEVANCE TO ELECTION COMMITMENTS/GOVERNMENT POLICY/COAG REFORM AGENDA:

9. The provision and maintenance of Indigenous health infrastructure is essential to support the effective delivery of primary health care services. Health infrastructure is a key element in contributing to the Government's objectives in *Closing the Gap in Indigenous Health Outcomes*.

COMMENT:

10. Subsequent to the Forward Work Plan assessment process, Maari Ma has proceeded with the purchase of a building adjoining their current facility and identified a suitably qualified project manager to oversight the construction works. NSW Health intend to progress the project once a source for the remaining funds has been confirmed.

11. Due to the delay with progress regarding the Narooma project, the redirection of funding towards the Broken Hill project will provide the opportunity to improve access to health services for Aboriginal and Torres Strait Islander people in remote NSW.

12. As the funding has already been paid to NSW Health it can only be used for jointly funded projects. Accordingly, should you disagree with the redirection of funding from the Narooma project to the Broken Hill project, OATSIH will be unable to redirect the funding to an alternative project in the short term. In this event OATSIH would seek to terminate the funding agreement with NSW Health and have the funding of \$2 million returned to the Consolidated Revenue Fund.

Sensitivity:

13. Community expectations may need to be managed regarding the delay to the health facility in Narooma. Subject to continued improved capacity of the current service provider, a new facility in Narooma could be considered under a future OATSIH Capital Works Strategy assessment process and progressed should funding become available.

Financial Implications:

14. No additional funding is required for this project as all funds have previously been paid to NSW Health.

Compliance with Commonwealth Grant Guidelines:

15. This process complies with the Commonwealth Grant Guidelines.

Legislation/Timing of Proposed Legislative Changes:

16. Not applicable.

Timing/Handling:

17. The Department will advise you on the progress of the proposed project for Maari Ma along with regular reporting for all OATSIH infrastructure projects.

Consultations:

18. The Deputy Secretary was consulted on the approach of this Minute.

COMMUNICATION ACTIVITIES

19. Subject to your approval, there will be an opportunity to announce the funding contribution towards a new primary health care facility in Broken Hill.

RECOMMENDATION

R1. That you AGREE to redirect funds of \$2 million from the Narooma project towards the development of a new primary health care facility in Broken Hill, New South Wales.

R2. That you NOTE, if redirection is not granted at Recommendation 1, the Department would pursue the return of unspent funds from NSW Health and receipt into the Consolidated Revenue Fund.

R3. That you NOTE a new health facility for Narooma, New South Wales, can be considered and assessed under the OATSIH Capital Works Strategy if future funding becomes available under Outcome 8.

s47F

Garry (Fisk)
 Assistant Secretary
 CDB/OATSIH
 22 May 2013
 Outcome: 8: Indigenous Health

Contact Officer:
 s22
 Capacity Development Branch

WARREN SNOWDON
 19 JUN 2013

R1. AGREE/DISAGREE
 R2. NOTED
 R3. NOTED

MINISTER'S COMMENTS:

Advice Rating	1	2	3	4	5	Comments
Timeliness						
Presentation						
Quality of Advice						
	Poor		Satisfactory		Excellent	

ATTACHMENTS: Minute No. N12001413 Capital Works Funding Strategy – Forward Work Plan