

# **Joint Scheme Funding Agreement**

Wyong Shire Council

WSC

Gosford City Council

GCC

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**Schedule 1: Joint Scheme**

**Parties**

**Gosford City Council** of 49 Mann Street, Gosford, NSW 2250 (**GCC**)

**Wyong Shire Council** of 2 Hely Street, Wyong, NSW 2259 (**WSC**)

**Background**

- A. Central Coast Water Corporation has been established under section 4 of the Central Coast Water Corporation Act 2006 (NSW) (**Corporation**). GCC and WSC each own 50% of the issued shares in the Corporation.
- B. WSC and GCC are both water supply authorities for the purposes of the Water Management Act 2000 (NSW) and will continue to be responsible for the delivery of water and waste water services in their respective local government areas unless and until the Corporation becomes the water supply authority for those local government areas and assumes responsibility for those functions.
- C. Pursuant to section 292 of the Water Management Act 2000 (NSW), a water supply authority may construct, maintain and operate water management works and other associated works.
- D. WSC and GCC are parties to the Gosford/Wyong Water Authority Agreement which amongst things:
  - (a) established the Gosford/Wyong Councils' Water Authority (**Water Authority**) and sets out the role, functions and powers of the Water Authority; and
  - (b) sets out the basis on which GCC and WSC have agreed to jointly fund, operate and maintain the Joint Scheme.
- E. Against the background that the Corporation commenced operations on and from 14 December 2011 and will assume responsibility for performing the role and functions previously performed by the Water Authority on and from 1 July 2012, GCC and WSC have agreed to enter into this Agreement to:
  - (a) terminate the Gosford/Wyong Water Authority Agreement with effect on and from midnight on 30 June 2012;
  - (b) confirm the dissolution of the Water Authority with effect on and from midnight on 12 October 2011; and
  - (c) record the agreement of GCC and WSC to continue to jointly fund, operate and maintain the Joint Scheme on the terms of this Agreement.

## Operative provisions

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### 1. Definitions, interpretation and calculations

#### 1.1 Definitions

In this Agreement:

**Board** means the board of directors of the Corporation.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or a day on which banks are generally closed for business in New South Wales.

**CCWC Act** means the Central Coast Water Corporation Act 2006 (NSW) as amended.

**Capital Works** means either new works or those works, the execution of which, increase the existing design capacity of the facility upon which the works are carried out. If the existing design capacity of a works is increased during the execution of Maintenance Works, and the Councils cannot agree the proportioning of the total cost of the works between Capital Works and Maintenance Works, then the Councils shall request the Board to consider and make recommendations to the Councils in respect of the matter.

**Corporation** means Central Coast Water Corporation as constituted under section 4 of the CCWC Act.

**Confidential Information** means:

- (a) the terms of this Agreement; and
- (b) all information concerning the other party's finances, activities and operations including, without limitation, any trade secrets, operations know-how, or any information concerning the organisation, management and finance of the other party which is exchanged between the parties in connection with this Agreement.

**Consideration** has the meaning given in clause 15.

**Councils** means GCC and WSC.

**Dispute** has the meaning given in clause 13.1(a).

**Disputing Parties** has the meaning given in clause 13.1(a).

**Equivalent 20mm Connection** is to be interpreted in accordance with the following principles:

- (a) the number of equivalent 20mm connections is based on the approximate calculated hydraulic capacity of a water service when compared to the hydraulic capacity of a 20mm water service. It is to be calculated by dividing the nominal service diameter (mm) by 20 and raising the quotient to the power of 2.0;
- (b) unmetered fire services are not included in calculating the number of Equivalent 20mm Connections;

- (c) each parcel of unmetered vacant land which has a water charge levied on it is to be regarded as one Equivalent 20mm Connection; and
- (d) where single dwellings are served by a 25mm connection because of system characteristics and are charged by GCC or WSC as though served by a 20mm connection, such connection shall be deemed to be one Equivalent 20mm Connection.

**ET** means equivalent tenement and relates the size of a development to that of a single urban dwelling being one ET.

**GCC** means Gosford City Council.

**Government Agency** means any government or any governmental, semi-governmental or administrative department, entity, agency, authority, commission, corporation or body (including those constituted or formed under any statute) where the department, entity, agency, authority, commission, corporation or body is subject to the control or direction of any government.

**Joint Scheme** means:

- (a) the water management and associated works described in **Schedule 1**;
- (b) those works set out in clauses 7(a)(i) to (vi) if and when constructed; and
- (c) such other additional Capital Works as may be approved by the Councils pursuant to clause 7(a)(vii).

**Maintenance Works** means all works on the Joint Scheme not classified as Capital Works.

**Notice of Dispute** has the meaning given in clause 13.1(a).

**Notifying Council** has the meaning given in clause 11.

**Recipient Council** has the meaning given in clause 11.

**Second Level** has the meaning given in clause 13.3(b).

**TAG** means the Technical Advisory Group as established pursuant to clause 10.

**Third Party Contributions** means:

- (a) any subsidy received from Government;
- (b) any capital works contributions received from third parties; and
- (c) any other contributions received from third parties,

specifically for the funding of the relevant Capital Works.

**Water Authority** means the unincorporated body known as the "Gosford/Wyong Councils' Water Authority" established by the Councils under the Water Authority Agreement.

**Water Authority Agreement** means the Gosford/Wyong Councils' Water Authority Agreement between the Councils.

**WSC** means Wyong Shire Council.

**Year** means each 12 month period commencing 1 July and ending 30 June.

## 1.2 Interpretation

In this Agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) the expression "**person**" includes an individual, the estate of an individual, a corporation, an authority, a Council, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (d) a reference to any document (including this Agreement) is to that document as varied, notated, ratified or replaced from time to time;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) references to parties, clauses, Schedules or Annexures are references to parties, clauses, Schedules and Annexures to or of this Agreement, and a reference to this Agreement includes any Schedule or Annexure to this Agreement;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) the word "**includes**" in any form is not a word of limitation;
- (j) a reference to "\$" or "**dollar**" is to Australian currency;
- (k) references to payments to any party to this Agreement will be construed to include payments to another person upon the direction of such party;
- (l) all payments to be made under this Agreement must be made by unendorsed bank cheque or other immediately available funds;
- (m) if any day appointed or specified by this Agreement for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day;
- (n) a reference to writing includes any mode of representing or reproducing words, figures or symbols in a permanent and visible form; and
- (o) all measurements of volumes of water in this Agreement shall be measured in megalitres unless otherwise specified herein.



### 1.3 Good faith

Each of GCC and WSC must act in good faith in its dealings with the other party in connection with the matters dealt with under this Agreement and their relationship as joint funders of the Joint Scheme.

### 1.4 Calculation of water consumption in a Council's Area

- (a) Subject to clauses 1.4(b), (c), and (d), for the purposes of the provisions of this Agreement, water consumption in a Council's Area will be calculated as follows:

$C =$  Consumption of water for the Council's Area.

$C_{gos} = F1 + F3 + T3 + T5 - T2 - T4 - T6$   
(Consumption GCC)

$C_{wy} = F2 - T3 - T5 + T2 + T4 + T1 + T6$   
(Consumption WSC).

$F1 =$  Somersby Filtration Plant Water Production.

$F2 =$  Mardi Filtration Plant Water Production.

$F3 =$  Woy Woy Water Treatment Plant Production

$T1 =$  Water transferred from Hunter Water Corporation. Transfers to Hunter Water Corporation are –ve.

$T2 =$  Water transferred from GCC to WSC via the Wyong/Gosford Trunk main.

$T3 =$  Water transferred from WSC to GCC via the Wyong/Gosford Trunk main.

$T4 =$  Water transferred from GCC to WSC via the coastal connection.

$T5 =$  Water transferred from WSC to GCC via the coastal connection.

$T6 =$  Water supply to Ourimbah from the Wyong/Gosford trunk main.

$TC = F1 + F2 + F3 + T1.$

- (b) All flow volumes are to be recorded on flow meters or in the event of a failure of any meter, are to be based on agreed volumes as determined by the Board. The Councils will provide the Board with such data and other information as the Board may require in order to make such determination.
- (c) Backwash water is to be deducted from filter plant throughput where such water, after recovery, is deposited upstream of the inlet flow meter. No adjustment is to be made for water wasted in the process of sludge disposal.
- (d) Subject to clause 1.4(e), the peak demand utilised in any cost sharing formula is to be the sum of the highest five "average three day consumptions" where the "average three day consumption" is to be calculated for each day of the Year by averaging the daily water consumption over each three day period consisting of the day for which the assessment is being carried out and the two previous days.

- (e) The Board may exclude any daily water consumption figure from any calculation if, in its opinion, it is not representative of the true daily water consumption.

## **1.5 Measurements**

All measurements of volume of water in this Agreement shall be measured in megalitres unless otherwise specified herein.

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## **2. Term of this Agreement**

This Agreement will commence operation on and from 1 July 2012 and will continue until terminated by written agreement of the Councils.

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## **3. Dissolution of Water Authority**

With effect on and from midnight on 12 October 2011, the Water Authority was dissolved and ceased to carry on any functions. For the period from 13 October 2011 to 30 June 2012 the functions of the Water Authority have been jointly performed by the General Managers of GCC and WSC. From 1 July 2012, the Corporation will assume responsibility for the performance of those functions.

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## **4. Termination of Water Authority Agreement**

### **4.1 Termination**

With effect on and from midnight on 30 June 2012, the Water Authority Agreement is terminated and, subject to clause 4.2 of this Agreement, will cease to have any further force or effect.

### **4.2 Continuing Obligations**

- (a) The parties accrued rights and obligations under the Water Authority Agreement (including but not limited to, those in clauses 3, 4 and 5) survive termination of the Water Authority Agreement.
  - (b) Without limiting clause 4.2(a), any obligation of a Council to make a payment to the other Council under the Water Authority Agreement which remains outstanding as at midnight 30 June 2012 will be a continuing obligation and survive termination of the Water Authority Agreement.
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## **5. Funding obligations**

Notwithstanding the termination of the Water Authority Agreement, GCC and WSC will continue to jointly fund construction, operating and maintenance costs of the Joint Scheme on the terms set out in this Agreement.

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## 6. Sharing the cost of Capital Works

### 6.1 Upfront funding of Capital Works

WSC and GCC shall in each instance each fund fifty percent (50%) of the total cost of construction of approved new Capital Works of the Joint Scheme (after deducting from the combined share of costs of those approved Capital Works all Third Party Contributions).

### 6.2 Funding costs

WSC and GCC shall continue to have separate and several liability to make payments of principal and/or interest on loans raised by each Council for the purpose of funding Capital Works of the Joint Scheme.

### 6.3 Source of funds

Each Council shall have sole discretion to determine the source of monies to meet that Council's obligations under clause 6.1 of this Agreement.

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## 7. Funding of future Joint Works

- (a) If approved by WSC and GCC, endorsed by the Board and constructed, the following identified components shall be jointly funded in accordance with the provisions of this Agreement and as specifically set out in clause 6 of this Agreement:
- (i) gates on Mangrove Dam;
  - (ii) augmentation of Mardi Water Treatment Plant;
  - (iii) augmentation of Somersby Water Treatment Plant;
  - (iv) Tuggerah 3 Reservoir;
  - (v) 20 ML/d Desalination Plant and associated infrastructure (Adjacent Toukley Sewage Treatment Plant);
  - (vi) integration works associated with the Mardi High Lift Pump Station for water transfers between WSC and GCC; and
  - (vii) such other components as may from time to time be determined by the agreement of the Councils having regard to any advice provided by the TAG and in consultation with the Board.
- (b) A common level of joint works contributions by developers (hereinafter called "Developers' Contributions") shall be adopted by the Councils.
- (c) Any Developers' Contributions received by a Council related to Joint Works shall be deducted from the capital cost of Joint Works prior to the remaining commitment being shared in accordance with clause 6.1.
- (d) Each Council prior to bringing to account Developers' Contributions for the purposes of this Agreement shall annually capitalise investment income earned

upon Developers' Contributions received and invested. Each Council shall use its best endeavours to maximise the investment income so earned.

- (e) The level of Developers' Contributions for Joint Works shall be the capital component applicable to Joint Works as determined by the methodology approved by the Independent Pricing and Regulatory Tribunal.
- (f) The relationship between ET for a development and its annual demand is to be assessed based on a five year rolling average of annual demand per ET for both Council Areas.
- (g) Where occurrences including but not limited to development applications and rezonings involving a potential peak water demand of 2ML per day or greater are under consideration by either Council the relevant Council will consult with the other Council, the TAG and the Corporation in respect of the application.
- (h) The declared minimum Developers' Contribution for any development (subject to clause 7(f)) shall be calculated by multiplying the assessed ET for the development by the contribution rate per ET calculated in accordance with this Agreement.

## 8. Sharing of Operation and Maintenance Costs

- (a) The costs of operation and maintenance of the Joint Scheme (including management of the Joint Works) shall be shared between WSC and GCC on the basis of consumption of water in each respective Council's Area calculated in accordance with the following formula:

$$X\% = \frac{C}{TC}$$

$$X\% = \quad \% \text{ of total cost payable by each Council}$$

C & TC are as defined in clause 1.4 of this Agreement.

- (b) The works in respect of which these costs shall be shared are:
  - (i) the Joint Works listed in **Schedule 1**;
  - (ii) those works set out in clause 7(a) if and when constructed; and
  - (iii) any new Joint Works determined by the agreement of the Councils and endorsed by the Board (having regard to any advice provided by the TAG and in consultation with the Board) to be funded under clause 8(a) for operation and maintenance costs .
- (c) When calculating costs under clause 8(a):
  - (i) an agreed percentage on account of on-costs as agreed by the General Managers of GCC and WSC from time to time are to be applied to direct labour costs associated with Joint Works;
  - (ii) all expenditure other than labour costs are to be charged at actual cost; and

- (iii) administration costs associated with the Joint Works are not to be charged by either Council unless specifically listed by the Council as an annual budget item. These costs do not include salaried supervisor costs which are to be included, as appropriate, as part of operation, Maintenance Works or Capital Works costs.
- (d) Each year the Councils (or if requested by the Councils - the Corporation) shall prepare annual estimates of expenditure for operation and maintenance programmes, with each programme divided into expenditure which will be directly incurred by each Council. Each Council shall include in its own budgetary process that portion of the jointly funded expenditure included in the annual estimates of expenditure prepared under this clause 8(d) and which will be directly incurred by that Council and shall fund those expenditures pending adjustment in accordance with the formula set out in clause 8(a).
- (e) Each Council shall, no later than August 31 in each Year, provide to the other Council full details of all information for the previous Year necessary to enable a calculation of the total cost to be shared by each Council as calculated in accordance with clause 8(a) above.
- (f) Any amount so due by one Council to the other Council after the required calculation shall be notified to the debtor Council as soon as practicable after the supply of the information in clause 8(e) above but no later than September 30 and the debtor Council shall no later than October 31 in that Year pay to the other Council the amount so due in respect of the previous Year. If not paid by October 31 in the relevant year interest calculated on a daily basis at the notified Commonwealth Bank overdraft rate for advances in excess of one hundred thousand dollars (\$100,000.00) at October 31 in that Year shall be added to the outstanding amount and shall be paid by the debtor Council to the other Council.
- (g) The aggregate amounts provided for a Council in the annual estimate of expenditure prepared under clause 8(c) shall not be exceeded by either Council by more than 10% without the prior approval of the other Council. In the event that a Council exceeds its approved annual estimates of expenditure without the prior approval of the other Council, the other Council shall not be required (but may elect to) to meet or share such over-expenditure as may exceed the 10% tolerance.

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## 9. Correction of errors

- (a) Bona fide errors or omissions in the calculation of a payment or amount due under this Agreement may be corrected in the event that the error is discovered in either of the two Years immediately following the year in which the relevant payment or amount was due.
- (b) Following identification of an error or omission, the party identifying the error or omission must provide details to the other party as soon as practicable.
- (c) The Chief Financial Officers of WSC and GCC must meet within 30 days of receiving the details of the error to agree on the timing of any necessary payment to correct the error (which could include payment as part of the next annual equalisation).

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## 10. Technical Advisory Group

- (a) The Councils' shall continue to have in place a joint Technical Advisory Group (**TAG**) which shall comprise such membership as may be agreed between the General Managers of the Councils from time to time.
- (b) The functions to be performed by the TAG include:
  - (i) providing advice and recommendations on future Joint Works and other works and funding arrangements and operation and maintenance costs;
  - (ii) providing technical advice in respect of matters arising under clause 7(g);
  - (iii) liaising with Councils and communication on technical issues;
  - (iv) considering and reviewing recommended technical solutions proposed by Councils;
  - (v) recommending alternative technical solutions;
  - (vi) advising on necessary resources to implement technical solutions; and
  - (vii) advising on compliance strategies for technical issues.

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## 11. Exercise of rights by WSC and GCC

- (a) Each of WSC and GCC may, without limitation, make any appointment, exercise any right or give any consent, approval, requisition, authorisation or notice of that Council under this Agreement by a document:
  - (i) signed by the Mayor and the General Manager of that Council; or
  - (ii) to which the seal of the relevant Council has been affixed and attested in accordance with regulation 400(1) of the Local Government (General) Regulation 2005 (NSW),and given as relevant in accordance with clause 16.1.
- (b) Any document provided by one Council (**Notifying Council**) to the other Council (**Recipient Council**) in accordance with the requirements of clause 11(a) shall be deemed to have been duly issued by the Notifying Council and may be relied on by the Recipient Council as having been validly issued.

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## 12. Audit

Each Council authorises and will allow the duly appointed auditor of the other Council to access and inspect by itself or by its appointed representative or nominee any accounting or other record of either Council relating to the operation, maintenance and construction of Joint

Works, cost-sharing, Developers' Contributions or any other activity associated with its responsibilities and obligations under this Agreement.

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## 13. Dispute resolution

### 13.1 Notice of Dispute

(a) If a difference or dispute between GCC and WSC (**Disputing Parties**) arises in connection with:

- (i) the interpretation of this Agreement;
- (ii) any right or liability of any party under this Agreement; or
- (iii) whether or not a party has performed any obligation under this Agreement,

(each a **Dispute**) then either party may give the other party a written notice (**Notice of Dispute**) adequately identifying and providing details of the Dispute.

### 13.2 Procedure to settle Disputes

(a) The procedure that is to be followed to settle a Dispute is as follows:

- (i) first, negotiation under clause 13.3; and
- (ii) second, determination of the Dispute under clause 13.4.

(b) A party shall not commence Court proceedings in relation to a Dispute until it has exhausted the procedures in this clause 13, unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

(c) Each party must continue to perform any of its obligations under this Agreement relating to any issue in dispute or otherwise, despite and during any Dispute resolution being conducted under this clause 13.

### 13.3 Dispute Negotiation

(a) Within 10 Business Days of service of a Notice of Dispute, the General Managers of each party must confer at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.

(b) If the Dispute has not been resolved or the General Managers have not agreed on a method for resolving the Dispute by other means within 10 Business Days of the service of the Notice of Dispute, it will escalate to the second level (**Second Level**). For the Second Level, the Mayors of the parties must confer at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.

(c) If within 15 Business Days of commencement of the Second Level, the Dispute has not been resolved by the Mayors or the Mayors have not agreed on a method for resolving the Dispute by other means, a party in compliance with this clause 13 may by written notice to the other party refer the Dispute for expert determination under

clause 13.4 (such referral to be made no later than 40 Business Days following the date the Notice of Dispute was issued).

### 13.4 Independent Expert

- (a) If the Dispute has been referred for determination by an independent expert in accordance with clause 13.3(c), the parties will submit to the following procedure before any other course of action to resolve the Dispute:
- (i) the parties will choose and appoint an independent expert;
  - (ii) in the absence of agreement by the parties as to the independent expert within 10 Business Days after the referral under clause 13.3(c), the independent expert will be appointed on the application of either party by the President of the Institute of Arbitrators Australia;
  - (iii) the independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 15 Business Days, or such longer period as may be agreed between the parties;
  - (iv) the independent expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit;
  - (v) the independent expert's decision will be final and binding on the parties; and
  - (vi) the costs of the independent expert will be borne by the parties equally or as the independent expert may otherwise determine having regard to the merits of the Dispute and each Disputing Party will bear its own costs relating to the independent expert's decision.

## 14. Confidentiality

### 14.1 Confidential information not to be disclosed

Except as permitted under clause 14.2 or clause 14.3, each party:

- (a) must hold all Confidential Information in strict confidence and not disclose the Confidential Information, nor communicate any opinion regarding the Confidential Information, to any person (other than a party to this Agreement);
- (b) must not make use of any Confidential Information for any purpose other than the purposes for which it was provided by the relevant disclosing party to the recipient;
- (c) must not make or allow to be made copies of or extracts of all or any part of the Confidential Information except for the purposes of this Agreement.

### 14.2 Permitted disclosure

Confidential Information may be disclosed by a party, despite clause 14.1, where:

- (a) **(consent)**: the party who first provided the Confidential Information to the recipient consents to the disclosure of the information by the recipient;



- (b) **(already in lawful possession)**: the Confidential Information was at the time immediately before the first disclosure to or observation by the recipient already in the lawful possession of the recipient and not subject to any confidentiality obligations;
- (c) **(public domain)**: the Confidential Information is or becomes part of the public domain (other than by an act of the recipient);
- (d) **(employees, advisers, etc)**: the Confidential Information is disclosed to a councillor, employee, agent or adviser of the recipient who needs to know, but only where such councillors, employees, agents or advisers have been required to keep the information confidential;
- (e) **(court)**: the Confidential Information is disclosed in proceedings before any Court or tribunal arising out of, or in connection with, this Agreement;
- (f) **(regulatory body)**: the Confidential Information is disclosed to the extent required by lawful requirement of any Government Agency having jurisdiction over a party to this Agreement or its related entities;
- (g) **(law)**: the disclosure is required under any law, or administrative guidelines, directives, requirements or policies having force of law; or
- (h) **(financiers)**: the Confidential Information is disclosed to a financier of the recipient but only where such person has been required to keep the information confidential.

### 14.3 Procedure for making announcements

In the case of written announcements or other written publicity to be issued or made by the parties concerning the making or the contents of this Agreement or concerning the Corporation or its affairs, the party intending to make the announcement or to issue the publicity must:

- (a) first deliver a copy of the proposed announcement or publicity to the other party;
- (b) give the other party a reasonable opportunity to see and comment on the same before making the announcement or issuing the publicity; and
- (c) promptly after making the announcement or issuing the publicity give a written copy of the final version of the announcement of publicity to the other parties.

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## 15. GST

- (a) Any payment or other consideration referred to in any other provision of this Agreement for any supply that may be made under this Agreement (**Consideration**) is set out or calculated to be exclusive of GST.
- (b) Where any amounts that may be payable under this Agreement are calculated by reference to a cost, expense or other amount paid or incurred by a party, the amount so payable must be reduced by the amount of any input tax credits to which the party incurring such cost, expense or other amount is entitled in connection with any acquisition relating to such cost, expense or other amount.
- (c) If this Agreement states that Consideration is to be provided to a party for a taxable supply made under this Agreement, the party required to provide that Consideration

must, in addition, pay to the party making the taxable supply an additional amount equal to that Consideration multiplied by the applicable rate of GST. Any such additional amount must be provided at the same time as this Agreement requires the first part of the Consideration for the taxable supply to be provided and the party making the taxable supply must issue a tax invoice to the party providing the Consideration for any such taxable supply at or before such time.

- (d) In this clause 15, "GST", "supply", "tax invoice" and "taxable supply", have the meanings given in the A New Tax System (Goods and Services Tax) 1999.

## 16. Miscellaneous

### 16.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as shown below (or as otherwise notified by that party to each other party from time to time):

#### **Gosford City Council**

Address: 49 Mann Street, Gosford, NSW 2250

Fax no: 02 4323 2477

Attention: General Manager

#### **Wyang Shire Council**

Address: 2 Hely Street, Wyong, NSW 2259

Fax no: 02 4351 2098

Attention: General Manager

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with this clause; and
- (e) are taken to be received by the addressee:
- (i) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Australia, and on the seventh Business Day after the date of posting by airmail to an address outside Australia;
- (ii) (in the case of fax) at the local time (in the place that the fax is received) that then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety, unless that local time is after 5.00pm, when that communication is taken to be received at 9.00 am on the next Business Day; and

- (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in this clause, unless that delivery is made after 5.00pm, when that communication is taken to be received at 9.00 am on the next Business Day.

## **16.2 Governing law**

This Agreement is governed by and must be construed according to the law applying in New South Wales.

## **16.3 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 16.3(a).

## **16.4 Amendments**

This Agreement may only be varied by a document signed by or on behalf of each party.

## **16.5 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

## **16.6 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Agreement.

## **16.7 Consents**

A consent or approval required under this Agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this Agreement expressly provides otherwise.

## **16.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement or without the prior consent of each other party.

## **16.9 Counterparts**

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one agreement.

## **16.10 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- (b) Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Agreement.

## **16.11 Expenses**

Except as otherwise provided in this Agreement, each party must pay the costs and expenses that party incurs in connection with negotiating, preparing, executing and performing this Agreement.

## **16.12 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

## **16.13 Severance**

If any provision or part of a provision of this Agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

**Executed as an agreement**

**Executed by Gosford City Council** under seal in accordance with regulation 400(1) of the Local Government (General) Regulation 2005 (NSW):

\_\_\_\_\_  
Signature of Mayor

\_\_\_\_\_  
Signature of General Manager

\_\_\_\_\_  
Full name of Mayor

\_\_\_\_\_  
Full name of General Manager

**Executed by Wyong Shire Council** under seal in accordance with regulation 400(1) of the Local Government (General) Regulation 2005 (NSW):

\_\_\_\_\_  
Signature of Mayor

\_\_\_\_\_  
Signature of General Manager

\_\_\_\_\_  
Full name of Mayor

\_\_\_\_\_  
Full name of General Manager

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## Schedule 1 Joint Scheme

- (a) Mangrove Creek Dam;
- (b) Mangrove Creek Dam/Boomerang Creek to Bunning Creek Tunnel;
- (c) Lower Wyong River weir, pump stations and rising mains to Mardi Dam;
- (d) Mardi Dam and associated works;
- (e) Mardi Dam to Mardi Water Treatment Plant transfer system;
- (f) Lower Ourimbah Creek weir, upper Ourimbah Creek weir, pumping station and rising main to Mardi Dam;
- (g) Mardi Water Treatment Plant and associated works;
- (h) Transfer system between Mardi Dam and the Boomerang Creek to Bunning Creek Tunnel;
- (i) Mardi High Lift Pump Station and associated high voltage ring main;
- (j) Pipework linking Mardi Water Treatment Plant and Tuggerah 2 Reservoir;
- (k) Tuggerah 2 Reservoir;
- (l) Trunk Main between Tuggerah 2 and Kariong Reservoirs;
- (m) Ourimbah Pump Station and associated pipework for transfers between Wyong and Gosford;
- (n) Kariong 1 and 2 Reservoirs;
- (o) Pipework connecting Kariong Reservoirs and Somersby Water Treatment Plant;
- (p) Somersby Water Treatment Plant;
- (q) Woy Woy Water Treatment Plant;
- (r) Mooney Dam and associated works;
- (s) Lower Mooney Dam (not operational);
- (t) Pipework connecting Mooney Dam and Somersby Water Treatment Plant including balance tanks;
- (u) Pipework connecting Mangrove Creek Weir and Mooney Dam;
- (v) Mangrove Creek weir, pump station and rising main to Mooney Dam;
- (w) Wyong Water Pump Stations 2 and 4;
- (x) Forresters Beach Pump Station, coastal connection flow meter and pressure reducing valve;
- (y) Groundwater Systems including all associated works at the following locations:
  - (i) Woy Woy
  - (ii) Somersby

- (iii) Mangrove Weir
  - (iv) Narara
  - (v) Ourimbah
  - (vi) Braithwaite Park
  - (vii) Mardi
- (z) catchment management of Wyong River, Ourimbah Creek, Mangrove Creek and Mooney Creek catchments, including the river maintenance works associated with water supply.





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