

ADDITIONAL ITEM

WYONG SHIRE COUNCIL

12 December 2007
To the Ordinary Meeting of Council

General Manager's Report

548A Central Coast Water Corporation

F2004/08792 KY:LS

SUMMARY

Reporting on the Minister for Water Utilities' response to Council's resolution in regard to the formation of a Central Coast Water Corporation.

RECOMMENDATION

Submitted for consideration.

BACKGROUND

As a result of a Mayoral Minute submitted by Mayor Welham (copy attached) on 31 October 2007, Council resolved as follows:

- "1 That Council, in association with Gosford City Council, make a formal submission to the Minister for Water Utilities to amend the Central Coast Water Corporation Act as outlined in this report:*

 - a To vary the provisions in the Act whereby the two Councils automatically cease to be water authorities after a set period and provide for this to be decided by joint agreement of the two Councils.*
 - b To vary the provisions in the Act whereby the Minister has the sole power to transfer assets and liabilities after a set period and provide for decisions on transfer of assets and liabilities to be retained by the two Councils.*
 - c To vary the provisions in the Act in regard to membership of the board to provide for one Councillor and one staff member from each Council to be members, with the balance of power held by the independent representatives on the board.*
- 2 That the Minister be advised that, in consultation with the relevant unions, Council will consider common law deeds of agreement for employment purposes.*
- 3 That the membership of the steering committee be expanded to include relevant union representation and that sub-committees, including union representation be established as required to address specific issues.*
- 4 That Council indicate to the Minister that provided the amendments are made, as above, Wyong Council is prepared to move forward with the formation of the Central Coast Water Corporation as soon as possible.*

Central Coast Water Corporation (contd)

- 5 *That the Minister be further advised that these resolutions should not be taken as a resolution under Part 1, Section 2 of the Central Coast Water Corporation Act.*
- 6 *That the Mayor and General Manager seek a further meeting with the Minister for Water Utilities to present the submission and expand on it.*
- 7 *That the Council get an independent report on the financial implications to this Council and its ratepayers and that this information be provided to the Minister supporting the arguments outlined above."*

Following the consideration of the rescission motion the two Mayors made a joint submission to the Minister for Water Utilities, the Honourable Nathan Rees MP.

On 6 December 2007 the Mayors and General Managers of Wyong Shire and Gosford City Councils met with the Minister and the Minister has outlined his response in the attached letter.

He indicated at the meeting that he wished the Councils to further consider the matter as a matter of urgency before the end of the year.

- Attachment 1** **31 October 2007 Ordinary Meeting Mayoral Minute 439 – Central Coast Water Corporation (9 pages)**
- Attachment 2** **Letter to Minister for Water Utilities from the Mayors of Gosford City and Wyong Shire Council including email and key features of Proposed Central Coast Water Corporation from the Deputy Director General, Department of Energy, Utilities and Sustainability (10 pages)**
- Attachment 3** **Letter from Minister for Water Utilities (2 pages)**

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439 Mayoral Minute – Central Coast Water Corporation

F2004/08792

In 2004 the then Minister for Water Utilities, Frank Sartor, instructed Wyong and Gosford Councils to examine the issue of combining their water and sewerage functions into a single body. In further meetings with Minister Sartor in 2005, he indicated that he would leave the final decision to the two Councils and that he was prepared to accept whatever decision that might be.

The two Councils jointly commissioned consultants, Price Waterhouse Coopers, to examine a number of options ranging from enhancing the current arrangements (Model 1) through to a separate entity with full asset ownership and employment of all staff (Model 5). A joint meeting of the two Councils supported Model 2, which provided for a separate legal entity taking over the strategic role currently performed by the Joint Water Supply Authority. The key difference from the current arrangement would be that the new entity would make the final decision on strategic issues, such as bulk water supply, without having to go to the two Councils for a decision. The joint meeting decided to propose the following model to Minister Sartor:

- “1 *The Joint Services Entity (JSE) (based on Model 2) recognising the following:*
- a *The JSE be established with shareholding restricted to local government authorities.*
 - b *Retention of Councils' direct ownership and control of water, sewage and drainage services infrastructure.*
 - c *Councillors, Council officers and non-councillors able to be members of the Board of Directors of the JSE and appointed by the two Councils.*
 - d *Retention of job security and career opportunities for existing staff.*
 - e *Operational responsibility for the water functions to remain with Gosford and Wyong Councils*
 - f *Councils continue to be the water authority under the Water Management Act and, if appropriate, the licensed operator.*
 - g *Councils be responsible to the community for the delivery of water, sewerage and drainage services.”*

This decision was conveyed to Minister Sartor in a meeting with the two Mayors and General Managers in July 2005 and he instructed his relevant officers to proceed with drawing up the necessary legislation in consultation with the two Councils.

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Central Coast Water Corporation (Attachment 1) (contd)

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Mayoral Minute – Central Coast Water Corporation (contd)

In early 2006 Council officers worked with the Deputy Director General of the then Department of Energy, Utilities and Sustainability (DEUS) to agree on the framework for legislation to implement Option 2 and by July 2006 agreement had been reached and documented. It was agreed that the two Councils would be further consulted as the actual legislation was being drawn up.

In the later part of 2006 the State Government introduced the Central Coast Water Corporation Bill into the parliament without any further discussion with the two Councils and with some substantial changes from the model that had been agreed to by the State Government at a senior officer level.

The Act provides for the formation by the Minister of a separate entity to cover water, sewerage and drainage functions. However, the entity cannot be formed by the Minister unless the two Councils each formally resolve to proceed with it and make a recommendation to the Minister to proceed. Once the Corporation is proclaimed then certain timeframes in the legislation are triggered. Key points of difference in the legislation include:

- a After one year the two Councils cease to be water supply authorities and the corporation becomes the authority. The two Councils cannot then exercise any water and sewerage functions either as a water supply authority or as a local government body. The Minister can shorten this period or lengthen it up to a maximum of two years.
- b During the first three years, the Minister can only transfer assets, rights and liabilities from the Councils to the Corporation with the consent of the relevant Council. After this initial period the Minister may transfer any assets, rights and liabilities without seeking the consent of the Council. The Minister can lengthen this initial period to a maximum of five years.
- c Each Council can transfer such staff as it sees fit to the Corporation. The Act seeks to provide some protection to transferred staff (ensuring no forced redundancy for three years, transfer of leave entitlements, etc). Legal advice obtained by Council in late 2006 from Mr Tim Robertson SC pointed out that the effect of such provisions is questionable in the light of federal government employment provisions that override such State Government provisions.
- d Board members are appointed by the Governor on the Minister's recommendation. The two Councils make recommendations to the Minister on board members and there can be no more than one Councillor or employee from each Council on the board. An independent chair is appointed by the Minister after consultation with the Council. The number of board members is to be at least three and no more than seven. If there are Council representatives on the board then there is to be a minimum of five board members.

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Central Coast Water Corporation (Attachment 1) (contd)

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Mayoral Minute – Central Coast Water Corporation (contd)

Wyong Council was only prepared to pursue the legislation in respect of water headworks (ie supply of bulk water) as it believed that the transfer of all water, sewerage and drainage functions into a separate body could significantly disadvantage the residents of the Central Coast by way of increased costs, difficulty for ratepayers and residents in dealing with separate organisations, lower service levels as experienced in some other corporatised service areas. In addition, a fully corporatised body holding all staff and assets facilitates a future transfer of ownership and privatisation as has happened in the electricity industry around Australia and with the water industry in the United Kingdom.

Earlier this year, the two Councils agreed to form a joint steering committee to examine ways of moving forward in regard to the matter. The membership from each Council consisted of the Mayor and another Councillor, the General Manager and the relevant Director covering water and sewerage functions. This steering committee commissioned lawyers Corrs Chambers Westgarth to do a comparison between the current legislation and the model that had previously been agreed to by DEUS and the two Councils. The steering committee reviewed this comparison and unanimously agreed to approach the State Government to seek some changes to the legislation as follows:

- a Provisions of the legislation whereby the Councils automatically cease to be water supply authorities after one year to be changed so that the timing of any such change would not be automatic and would be decided by joint agreement of the two Councils (as per the previous agreement with DEUS).
- b Provisions of the legislation whereby the Minister has the sole power to transfer assets after three years to be changed so that decisions on transfer of assets be retained by the two Councils (as per the previous agreement with DEUS).
- c A change in provisions relating to membership of the board to permit one Councillor and one staff member from each Council to be on the board. The chair should still be an independent and the voting power of the independents (including the chair's casting vote, if necessary) should exceed that of the Council representatives.

On 8 October 2007, the Mayor of Gosford, Jim MacFadyen and I, together with the two General Managers, met with the Minister for Water Utilities, The Honourable Nathan Rees, to outline the above proposal to him. The Minister indicated that he was prepared to consider any proposals from the Councils but he wanted them to be backed by formal resolutions of the Council. He also indicated that he wanted the formation of the Corporation to proceed as soon as possible and that he would need "powerful arguments" from the Councils concerning the need to make changes to the legislation in order to convince Cabinet and the Parliament.

While the various unions had been consulted as part of the process outlined above, the Minister indicated that he wanted them to be part of the steering committee. A further meeting of the steering committee was held on 18 October and representatives from all unions from both Councils were present.

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Central Coast Water Corporation (Attachment 1) (contd)

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Mayoral Minute – Central Coast Water Corporation (contd)

The union representatives tabled a common law deed of agreement for employment of staff that had been entered into by two other Councils and suggested that this was a model that could be used here. The two Councils indicated that they were prepared to examine this deed but would need to seek advice on it. The meeting endorsed the recommendations at the end of this Mayoral Minute.

On 19 October, we met with the Minister for the Central Coast, The Honourable John Della Bosca, to discuss the proposed changes with him. The Minister was briefed on the changes outlined in this Mayoral minute and at the end of the meeting indicated that he was prepared to support the changes proposed.

I believe we now have an opportunity to persuade the State Government to make some changes to the legislation provided we can demonstrate that these changes are in the best interests of the ratepayers and residents of the Central Coast and that there is a commitment to move forward quickly on the matter.

The changes in regard to timing of transfer of functions as a water supply authority and the transfer of assets are necessary as the timetables set in the legislation are arbitrary and are not able to be achieved, may need to occur at inappropriate times or are not desirable at all.

In regard to the transfer of water supply authority status, I would question whether a new corporation could be properly established and fully operational in the timeframes set in the Act. It is not just a question of establishing all of the legal and governance framework such as constitution, shareholder agreements, etc and forming a board. It involves establishing a whole operational framework for the new corporation covering water, sewerage and drainage functions across the whole of the Central Coast, including engineering, accounting and billing functions. While some work can be done by the two Councils' to establish a framework for the corporation before any corporation is proclaimed, the new board would need to decide on and establish the detailed structure and operations.

In late 2006 Council obtained legal advice from Mr Tim Robertson S.C. as to whether Council could still provide one bill to the ratepayers covering local government rates and the Water Corporation's fees and charges after the new Corporation became the water authority. The clear advice was that Council could not do this once it ceased to be a water supply authority. This means that the ratepayers will receive two separate bills (one for water, sewerage and drainage and another for local government rates) and they will have to contact two separate organisations in regard to matters. In addition, there must be an increase in overall costs to the ratepayers if this type of separation and duplication happens. The best outcome for the residents and ratepayers would be if the Councils continue to provide the retail services to them so that they get one bill and one point of day to day contact.

In regard to the issue of assets, there are a number of reasons why the decision on transfers to the Corporation should be left with the Councils. Like the issue of change of water supply authority status, the timeframes in the legislation are arbitrary and it is not desirable to make the transfers in the timeframes envisaged.

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Mayoral Minute – Central Coast Water Corporation (contd)

If the Councils were to retain certain functions relating to frontline delivery of services to the ratepayers and residents, then there will be some assets that shouldn't be transferred at all, eg if the Council retains rating, charging and billing functions then it should also retain water meter reading. It might then be sensible for Councils to retain the functions relating to the provision and maintenance of the water services to the residents. This would provide a sensible "one stop shop" to the residents for all of their billing and service issues.

In regard to make up of the board of the corporation, I fully support the intention to have significant independent representation. I also agree that the independent representatives should have the balance of power on the board. However, I also believe that there is considerable merit in having both elected Councillors and staff members with technical expertise on the board. The staff members would bring a level of technical expertise that is necessary to support the elected officials and while it has been said that staff members could attend meetings even if they aren't board members, there is nothing in the legislation to ensure this can actually happen and a future board might decide to exclude them. Also, their opinions are better heard if they are actual board members. I would propose no more than one Councillor and one staff member from each Council on the board, with the balance of power still held by the independent representatives.

I formally MOVE:

- 1 *That Council, in association with Gosford City Council, make a formal submission to the Minister for Water Utilities to amend the Central Coast Water Corporation Act as outlined in this report:*
 - a *To vary the provisions in the Act whereby the two Councils automatically cease to be water authorities after a set period and provide for this to be decided by joint agreement of the two Councils.*
 - b *To vary the provisions in the Act whereby the Minister has the sole power to transfer assets after a set period and provide for decisions on transfer of assets to be retained by the two Councils.*
 - c *To vary the provisions in the Act in regard to membership of the board to provide for one Councillor and one staff member from each Council to be members, with the balance of power held by the independent representatives on the board.*
- 2 *That the Minister be advised that, in consultation with the relevant unions, Council will consider common law deeds of agreement for employment purposes.*
- 3 *That the membership of the steering committee be expanded to include relevant union representation and that sub-committees, including union representation be established as required to address specific issues.*

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Central Coast Water Corporation (Attachment 1) (contd)

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Mayoral Minute – Central Coast Water Corporation (contd)

- 4 *That Council indicate to the Minister that provided the amendments are made, as above, Wyong Council is prepared to move forward with the formation of the Central Coast Water Corporation as soon as possible.*
- 5 *That the Minister be further advised that these resolutions should not be taken as a resolution under Part 1, Section 2 of the Central Coast Water Corporation Act.*
- 6 *That the Mayor and General Manager seek a further meeting with the Minister for Water Utilities to present the submission and expand on it.*

ORDINARY MEETING HELD ON 31 OCTOBER 2007

COUNCILLOR PAVIER LEFT THE CHAMBER AT 10.07 PM AND RETURNED TO THE CHAMBER AT 10.09 PM DURING CONSIDERATION OF THIS ITEM.

It was MOVED by Councillor WELHAM:

- 1 *That Council, in association with Gosford City Council, make a formal submission to the Minister for Water Utilities to amend the Central Coast Water Corporation Act as outlined in this report:*
 - a *To vary the provisions in the Act whereby the two Councils automatically cease to be water authorities after a set period and provide for this to be decided by joint agreement of the two Councils.*
 - b *To vary the provisions in the Act whereby the Minister has the sole power to transfer assets and liabilities after a set period and provide for decisions on transfer of assets and liabilities to be retained by the two Councils.*
 - c *To vary the provisions in the Act in regard to membership of the board to provide for one Councillor and one staff member from each Council to be members, with the balance of power held by the independent representatives on the board.*
- 2 *That the Minister be advised that, in consultation with the relevant unions, Council will consider common law deeds of agreement for employment purposes.*
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- 5 *That the Minister be further advised that these resolutions should not be taken as a resolution under Part 1, Section 2 of the Central Coast Water Corporation Act.*
- 6 *That the Mayor and General Manager seek a further meeting with the Minister for Water Utilities to present the submission and expand on it.*
- 7 *That the Council get an independent report on the financial implications to this Council and its ratepayers and that this information be provided to the Minister supporting the arguments outlined above.*

COUNCILLOR EATON RAISED A POINT OF ORDER AS HE CLAIMED THAT THE MAYOR HAD A CONFLICT OF INTEREST IN THE MATTER. THE MAYOR ADVISED THAT HE DID NOT HAVE A CONFLICT OF INTEREST IN THE MATTER AND RULED THAT THE POINT OF ORDER BE DISMISSED.

COUNCILLOR EATON RAISED A POINT OF ORDER AS HE CLAIMED THAT THE MOTION OF COUNCIL REFERED TO IN THE MAYORAL MINUTE REQUIRES A RESCISSION MOTION AND THAT THE MAYORAL MINUTE IS NOT A MOTION OF COUNCIL. THE MAYOR RULED THAT THE MAYORAL MINUTE IS A MOTION, THAT A RESCISSION MOTION WAS NOT REQUIRED AND RULED THAT THE POINT OF ORDER BE DISMISSED.

MOTION OF DISSENT

It was MOVED by Councillor EATON and seconded by Councillor BEST:

"I MOVE dissent from the Chairperson's ruling that a Rescission Motion is not needed for this matter".

The MOTION OF DISSENT was put to the vote and declared LOST

FOR: COUNCILLORS BEST AND EATON.

AGAINST: COUNCILLORS FORSTER, GRAHAM, PAVIER, ROSE, STEVENS, STEWART AND WELHAM.

An AMENDMENT was MOVED by Councillor BEST and SECONDED by Councillor EATON:

That further to the professional advice given tonight by Council's external auditor that Council not proceed with any recommendations on this important issue without considering a thorough impact analysis on jobs, Council's assets/liabilities and the likely costs to ratepayers.

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Mayoral Minute – Central Coast Water Corporation (contd)

It was MOVED by Councillor BEST that the MOTION be put.

The MOTION was put to the vote and declared LOST

FOR: COUNCILLORS BEST AND EATON.

AGAINST: COUNCILLORS FORSTER, GRAHAM, PAVIER, ROSE, STEVENS, STEWART AND WELHAM.

The AMENDMENT was put to the vote and declared LOST

FOR: COUNCILLORS BEST AND EATON.

AGAINST: COUNCILLORS FORSTER, GRAHAM, PAVIER, ROSE, STEVENS, STEWART AND WELHAM.

RESOLVED on the motion of Councillor WELHAM:

- 1 That Council, in association with Gosford City Council, make a formal submission to the Minister for Water Utilities to amend the Central Coast Water Corporation Act as outlined in this report:***
 - a To vary the provisions in the Act whereby the two Councils automatically cease to be water authorities after a set period and provide for this to be decided by joint agreement of the two Councils.***
 - b To vary the provisions in the Act whereby the Minister has the sole power to transfer assets and liabilities after a set period and provide for decisions on transfer of assets and liabilities to be retained by the two Councils.***
 - c To vary the provisions in the Act in regard to membership of the board to provide for one Councillor and one staff member from each Council to be members, with the balance of power held by the independent representatives on the board.***
- 2 That the Minister be advised that, in consultation with the relevant unions, Council will consider common law deeds of agreement for employment purposes.***
- 3 That the membership of the steering committee be expanded to include relevant union representation and that sub-committees, including union representation be established as required to address specific issues.***

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Mayoral Minute – Central Coast Water Corporation (contd)

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- 5** *That the Minister be further advised that these resolutions should not be taken as a resolution under Part 1, Section 2 of the Central Coast Water Corporation Act.*
- 6** *That the Mayor and General Manager seek a further meeting with the Minister for Water Utilities to present the submission and expand on it.*
- 7** *That the Council get an independent report on the financial implications to this Council and its ratepayers and that this information be provided to the Minister supporting the arguments outlined above.*

FOR: COUNCILLORS FORSTER, GRAHAM, PAVIER, ROSE, STEVENS, STEWART AND WELHAM.

AGAINST: COUNCILLORS BEST AND EATON.

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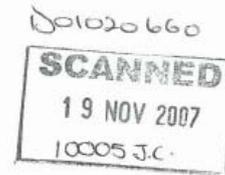
Central Coast Water Corporation (Attachment 2)



F2004/08792

15 November 2007

The Hon Nathan Rees MP
Minister for Water Utilities
Level 25
9 Castlereagh Street
SYDNEY NSW 2000



Dear Minister

Central Coast Water Corporation

Following our meeting with you on 8 October 2007 the two Councils have moved forward on this matter as we agreed at that meeting.

The Steering Committee meeting on 18 October included representatives from all unions from both Councils and this was a very productive meeting. Both Councils have now formally resolved to expand the Steering Committee to include union representation and to establish sub-committees, including union representation, as required to address specific issues.

The Steering Committee meeting on 18 October endorsed the proposed amendments to the Central Coast Water Corporation Act as outlined in this submission. Also, at that meeting, the United Services Union tabled a common law deed of agreement for employment of staff that had been entered into by Blacktown Council and suggested that this was a model that could be used here. The two Councils have indicated that they are prepared to examine the deed but will need to seek advice on it. This advice is now being sought.

We have each presented Mayoral Minutes to our respective Councils. Both Councils have formally resolved to make this submission to you to request you amend the Central Coast Water Corporation Act:

- a) *To vary the provisions in the Act whereby the two Councils automatically cease to be water authorities after a set period and instead provide for this to be decided by joint agreement of the two Councils.*
- b) *To vary the provisions in the Act whereby the Minister has the sole power to transfer assets after a set period and instead provide for decisions on transfer of assets to be retained by the two Councils.*
- c) *To vary the provisions in the Act in regard to membership of the board to provide for one Councillor and one staff member from each Council to be members, with the balance of power held by the independent representatives on the board.*

Gosford-Wyong Councils' Water Authority

PO Box 20, WYONG NSW 2259
Telephone: (02) 4350 5377

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Central Coast Water Corporation (Attachment 2) (contd)

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As outlined at our meeting on 8 October the Councils were not consulted in the formulation of the legislation last year, although you indicated you had been told otherwise. We enclose a copy of an email and attached position document sent in July 2006 by the then Deputy Director General of Department of Energy, Utilities and Sustainability, Simon Miller confirming the position, as agreed between the two Councils and the department. Despite undertakings from the then Minister and the Deputy Director General, there was no further contact with the Councils until the bill was introduced into the parliament.

A comparison between the position as agreed with DEUS and the current legislation shows significant differences in regard to the issues outlined above and the two Councils were never consulted in regard to these substantial changes. We believe that this lack of consultation on such major changes is, in itself, a powerful argument for Cabinet and the Parliament to consider the Councils' proposed amendments. However there are additional reasons, as outlined below.

In regard to the transfer of water supply authority status, we question whether a new corporation could be properly established and fully operational in the timeframes set in the Act. It is not just a question of establishing all of the legal and governance frameworks such as constitution, shareholder agreements, etc and forming a board. It involves establishing a whole operational framework for the new corporation covering water, sewerage and drainage functions across the whole of the Central Coast, including engineering, accounting and billing functions. While some work can be done by the two Councils to establish a framework for the corporation before any corporation is proclaimed, the new board itself would need to decide on, and establish detailed structures and operations on the ground and this will take considerable time.

However, there are some more fundamental issues in relation to the two Councils ceasing to be Water Supply Authorities. In late 2006 Council obtained legal advice from Mr Tim Robertson S.C. as to whether Council could still provide one bill to the ratepayers covering local government rates and the Water Corporation's fees and charges after the new Corporation became the water authority. The clear advice was that Council could not do this once it ceased to be a water supply authority. We are happy to provide a copy of this legal advice to your officers, if needed. This means that the ratepayers will receive two separate bills (one for water, sewerage and drainage and another for local government rates) and they will have to contact two separate organisations in regard to matters. In addition, there must be an increase in overall costs to the ratepayers if this type of separation and duplication happens.

The best outcome for the residents and ratepayers would be if the Councils continue to provide the retail services to them so that they get one bill and one point of day to day contact. To do this, the two Councils need to retain their Water Supply Authority status for some functions related to retail services while the new Corporation would exercise authority for other functions.

Gosford-Wyong Councils' Water Authority

PO Box 20, WYONG NSW 2259
Telephone: (02) 4350 5377

Central Coast Water Corporation (Attachment 2) (contd)

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Another reason for having a more logical split up of functions and activities is the added cost to the ratepayer of running three separate organisations to carry out the roles currently performed by two organisations. Under the current legislation it is inevitable that in the medium – long term there will be three completely separate organisations, with three large administrations, three offices, etc. This dis-economy of scale must lead to added cost particularly for the remaining local government authorities who will have to absorb all fixed costs that are currently shared across the local government functions and the water and sewerage functions. These extra costs could be substantial and would eventually be reflected as an increased cost to the ratepayers or a lower level of service, or both.

We are currently seeking a detailed assessment of these costs but a more logical split of functions between the Councils and the Water Corporation, as outlined above, would minimise this impact.

In regard to the issue of assets, there are a number of reasons why the decision on transfers to the Corporation should be left with the Councils. Like the issue of change of water supply authority status, the timeframes in the legislation are arbitrary and it is not desirable to make the transfers in the timeframes envisaged.

If the Councils were to retain certain functions relating to frontline delivery of services to the ratepayers and residents, then there will be some assets that shouldn't be transferred at all; for example, if the Councils retain rating, charging and billing functions then it should also retain water meter reading. It might then be sensible for Councils to retain the functions relating to the provision and maintenance of the water services to the residents. This would provide a sensible "one stop shop" to the residents for all of their billing and local service issues.

In regard to the make up of the board of the corporation, we fully support the intention to have significant independent representation. We also agree that the independent representatives should have the balance of power on the board. However, we also believe that there is considerable merit in having both elected Councillors and staff members with technical expertise on the board. The staff members would bring a level of technical expertise that is necessary to support the elected officials and, while it has been said that staff members could attend meetings even if they aren't board members, there is nothing in the legislation to ensure this can actually happen and a future board might well decide to exclude them. Also, their opinions are better heard if they are actual board members. We would propose no more than one Councillor and one staff member from each Council on the board, with the balance of power still held by the independent representatives.

As part of their recent formal resolutions, both Councils wish to indicate to you that these current resolutions should not be taken as a resolution under Part 1, Section 2 of the Central Coast Water Corporation Act. However, both Councils resolved that, provided the amendments outlined above are made, both Councils are prepared to move forward with the formation of the Central Coast Water Corporation as soon as possible.

Gosford-Wyong Councils' Water Authority

PO Box 20, WYONG NSW 2259
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We would like to have a meeting with you in order to discuss the matter further and to expand on this submission, if necessary, and therefore request that your staff organise this at your earliest convenience.



Jim Macfadyen
Mayor
GOSFORD CITY COUNCIL



Warren Welham
Mayor
WYONG SHIRE COUNCIL

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Central Coast Water Corporation (Attachment 2) (contd)

Message

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Schijvens, Lisa

From: Yates, Kerry
Sent: Friday, 21 July 2006 5:13 PM
To: Duncan, Evelyn
Subject: FW: JSE
Attachments: Proposed Central Coast Water Corporation.pdf

E, please file email and attachment. Kerry

-----Original Message-----

From: Simon Miller [mailto:simon.miller@deus.nsw.gov.au]
Sent: Wednesday, 19 July 2006 6:56 PM
To: peter.wilson@gosford.nsw.gov.au; Yates, Kerry
Subject: JSE

Dear Peter and Kerry

First, my deepest apologies for not getting this to you sooner – I had hoped to get something to you before the weekend.

I trust the attached document faithfully represents the discussion we had last week.

There is one addition I made unilaterally which was to try and work out whether in some very limited circumstances there might be a role for the Minister in dissolving a corporation – I added one dot point which is basically saying he could only do so where the corporation was insolvent, there was an administrator appointed to the underlying WSA or the corporation was left as a shell (i.e. with no delegated powers). I would anticipate such powers would be extremely unlikely to be used in reality but it is prudent to foresee the need for their inclusion. Your comments on this point would be appreciated.

Please note this document hasn't received any Ministerial endorsement at this stage and as such should be treated as a "Without Prejudice Draft". As discussed, I'd appreciate it if you could share with your respective Mayors but not more widely until the Mayors and the Minister have met and discussed.

Kind regards, SM

Simon Miller
Deputy Director-General
Department of Energy, Utilities and Sustainability

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16/11/2007

Central Coast Water Corporation (Attachment 2) (contd)

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KEY FEATURES OF PROPOSED CENTRAL COAST WATER CORPORATION

The Department of Energy, Utilities and Sustainability (DEUS) has been meeting with Gosford City Council and Wyong Shire Council to discuss the Councils' proposed Joint Service Entity.

Following a series of negotiations, this proposal attempts to faithfully represent a sound and acceptable approach for the creation of a "Central Coast Water Corporation" (a working title for the purposes of this document) which would perform the functions of Gosford and Wyong Councils' proposed Joint Service Entity.

Summary:

- The Central Coast Water Corporation (hereafter "CCWC" or "the Corporation") will be a commercially focused corporate entity established by legislation to deliver water, wastewater and drainage services across more than one local government area.
- The creation of CCWC by the Councils will be entirely voluntary.
- The Corporation will be jointly owned by Gosford and Wyong Councils. Transfer of assets and staff will only be initiated by Councils and may take place at any time.
- The Corporation will maximise efficiency gains to be derived from:
 - economies of scale (by operating across the two local government areas); and
 - governance reform (by adopting a commercially focused board with legal, financial and engineering expertise).

Establishment and dissolution:

- The enabling statutory provisions for establishing CCWC will be by way of a new chapter in the *Water Management Act 2000* (WMA) or the *Local Government Act 1993*.
- The provisions will be triggered by a Council-initiated request to the Minister for Water Utilities. Both Councils must concur with the request to the Minister.
- CCWC may be dissolved by the Governor upon a request from the voting shareholders with the concurrence of the Minister (which may not be unreasonably withheld). Such requests must be in accordance with any relevant dissolution procedures set out in the constitution.

Central Coast Water Corporation (Attachment 2) (contd)

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- The Minister may advise the Governor to dissolve a CCWC if it becomes insolvent, if an Administrator is appointed to one or more of the underlying water supply authorities (using the existing provisions of the WMA) or (where the Corporation is operating under delegation from water supply authorities) if a period of six months passes where the corporation holds no delegated powers.

Objectives:

- The principle objectives of the Corporation will be to:
 - Promote the efficient delivery of water, wastewater and drainage services for the long term interests of consumers with respect to price, quality, safety, reliability and security of supply.
 - Be a successful business by operating at least as efficiently as any other comparable business and maximising the net worth of the Councils' investment in it;
 - Exhibit a sense of social responsibility by having regard to the interests of the community in which it operates;
 - Where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*.

Functions:

- CCWC will initially have such functions as are delegated to it by its constituent water supply authorities under the *Water Management Act 2000*.
- A delegation of a power will only be revocable with the agreement of all voting shareholders and the concurrence of the Minister. The Minister's concurrence cannot be unreasonably refused.
- Within 90 days of a delegation being made, the water supply authorities must make reasonable and binding arrangements as are necessary for the Corporation to perform the delegated function without hindrance. Such arrangements may include contractual arrangements concerning the use of staff, assets or powers. If these arrangements are not made within 90 days, the delegation will lapse.
- On the recommendation of the voting shareholders, the Governor may proclaim CCWC as a water supply authority under the *Water Management*

Central Coast Water Corporation (Attachment 2) (contd)

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Act 2000. Such proclamation would also remove the Gosford and Wyong as water supply authorities.

- The Corporation may employ staff and enter into arrangements with Gosford and Wyong Councils for the secondment of staff.
- The area of operations of the Corporation will be the area of operations of Gosford and Wyong local government areas.

Ownership:

- The Corporation will be owned by Gosford and Wyong Councils. It will have share capital and shares as provided in its constitution.
- Each Council will be a voting shareholder with equal voting rights.
- Shareholders may not sell or transfer their shares.

Constitution of the Local Water Corporation:

- CCWC is to have a constitution, which must be approved by the voting shareholders with the concurrence of the Minister. The Minister's concurrence cannot be unreasonably withheld.
- The constitution *must* make provision for:
 - The manner for alteration or replacement of the constitution
 - A dispute resolution procedure for resolving disputes between the corporation and the voting shareholders and between the voting shareholders (with each other)
 - A dissolution procedure
 - Any other matters prescribed by regulation
- The constitution *may* make provision for, *inter alia*:
 - Any matters found in the *Corporations Act 2001 of the Commonwealth*
- Any alterations or amendments to the constitution of the Corporation must be approved by the voting shareholders with the concurrence of the Minister (which may not be unreasonably refused).

Governance:

- CCWC will have a board of directors, consisting of not fewer than four (where there are no councillors on the board) or six (where there are councillors on the board) and not more than eight directors in total.

Central Coast Water Corporation (Attachment 2) (contd)

DRAFT – IN CONFIDENCE – WITHOUT PREJUDICE

- Not more than two directors may be councillors and not fewer than three directors must be independent (that is, not councillors, officials or other employees of the constituent councils). The Chairman is to be elected from among the independent directors.
- The persons appointed as directors must have (between them) the necessary expertise, skills and knowledge (including legal, financial and engineering skills) to enable the local water corporation to meet its objectives.
- The CEO/Executive Officer is to be appointed by the board after consultation with the voting shareholders (ie the Councils). The CEO/Executive Officer will be an ex officio member of the board.
- The CEO/Executive Officer will be responsible for the day to day management of the operations of the Corporation, in accordance with the general policies and specific directions of the board.
- CCWC must prepare a statement of corporate intent to be approved by the voting shareholders and submitted to the Minister for Water Utilities.
- The voting shareholders may request the Minister for Water Utilities to transfer by order staff, assets, rights and liabilities of the Councils to the Corporation. The Minister may not act without a request from the voting shareholders.
- The availability of Ministerial vesting orders will not prevent the Councils and the Corporation from entering into contractual arrangements regarding staff, assets, rights and liabilities.
- The Minister for Water Utilities may arrange an efficiency review of the Corporation in the same manner as for a water supply authority.

Appointment of Board members:

- Board members will only be able to be appointed on the recommendation of the voting shareholders (ie the Councils), although formal appointment will be made by the Governor.
- Consistent with the principles of responsible government, the Governor (or a Minister of the Crown) usually makes appointments to statutory bodies. The Governor is responsible for appointments to boards of State Owned Corporations and in relation to statutory bodies under the *Local Government Act 1993* (see for example the Local Government Grants Commission).
- Appointment by the Governor on the recommendation of the voting shareholders will ensure that only persons put forward by the Councils may

Central Coast Water Corporation (Attachment 2) (contd)

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be appointed to the Board, while at the same time ensuring compliance with the principles of responsible government.

- Compliance with the principles of responsible government in this manner distinguishes local water corporations from entities established by councils under the *Local Government Act 1993*. This may facilitate seeking an exemption for the Corporation from the obligations imposed by the *Local Government Act 1993* on entities established by councils (eg tendering obligations in s55 of the *Local Government Act 1993*).
- For similar reasons, board members will be able to be removed from office by the Governor on the recommendation of the voting shareholders. It is noted that the Governor has powers of dismissal in relation to the mayor and councillors under the *Local Government Act 1993*.

12 December 2007
To the Ordinary Meeting of Council

General Manager's Report

Central Coast Water Corporation (Attachment 3)



The Hon. Nathan Rees MP

Minister for Water Utilities
Minister for Emergency Services

7 December 2007

Councillor Warren Welham
Mayor
Wyang Shire Council
PO Box 20
Wyang NSW 2259

Dear Councillor Welham,

Thank you for your time in taking me through the issues you raised in your letter of 1 November regarding Central Coast Water Corporation. You have presented some compelling arguments.

As per our discussions, I would request that you ask your respective Councils – Gosford City and Wyong Shire – to consider the following points as my response:

- Your letter of 1 November fails to give employees the certainty they sought through Councils agreeing to a Common Law Deed of Agreement. I need a clear indication from both Councils that employee wages and conditions will be protected through a Common Law Deed of Agreement or Award.
- Your Councils have requested that there be staff members on the Corporation's Board. A relevant technical expert who is an employee of council may be appointed in place of a councillor at any time. I note that the Act does not prevent directors being accompanied and assisted by non-directors in board meetings. Councils will maintain significant influence on the Board as the shareholders of the Corporation. Directors on the Board are appointed and removed on the recommendation of the shareholders.
- With regard to concerns expressed about the transfer of assets provisions of the Act and when Councils cease to be Water Authorities, I would like to highlight the situation in Victoria. The procedure established by the Victorian Government involves the preparation of a due diligence report and a plan to completely integrate assets and business systems within 100 days. The "100 day" process was used in 2005 to merge South West Water, Portland Coast Water and Glenelg Water into a single water authority, Wannon Region Water Authority. The merger was announced in May 2005 and became effective in July 2005. In view of the Victorian experience, I would seek your views as to why your councils could not move in a similar timeframe.

12 December 2007
To the Ordinary Meeting of Council

General Manager's Report

Central Coast Water Corporation (Attachment 3) (contd)

I believe the next step in the process of forming the Central Coast Water Corporation is the development of a project plan for the establishment of the Corporation and its operation, agreed to by both Councils, and a draft constitution and shareholders agreement.

I appreciate the complexities involved in working this issue through. I commend you for your leadership on a difficult subject, and hope that your respective Councils are able to accommodate my proposal.

I would appreciate your Councils' consideration of these points, and response back to me, at the earliest possible time.

Yours Sincerely,



Nathan Rees MP
Minister for Water Utilities
Minister for Emergency Services

cc: Councillor Jim Macfadyen, Mayor, Gosford City Council