

# Business Paper

EXTRAORDINARY MEETING

18 March 2010



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# MEETING NOTICE

The **EXTRAORDINARY MEETING**  
of **Wyong Shire Council**  
will be held in the **Council Chamber,**  
**Wyong Civic Centre, Hely Street, Wyong on**  
**THURSDAY 18 MARCH 2010 at 7.00 pm,**  
for the transaction of the business listed below:

**OPENING PRAYER**

**ACKNOWLEDGEMENT OF COUNTRY**

**RECEIPT OF APOLOGIES**

## **1 PROCEDURAL ITEMS**

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Kerry Yates  
**GENERAL MANAGER**

## 1.1 Disclosures of Interest

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TRIM REFERENCE: F2010/00009 - D02180811

AUTHOR: MR

The provisions of Chapter 14 of the *Local Government Act, 1993* regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest must be disclosed as soon as practicable after the start of the meeting and the reasons for declaring such interest.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions, voting on that matter, and require that member to vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

### RECOMMENDATION

***That Councillors now disclose any conflicts of interest in matters under consideration by Council at this meeting.***

## 2.1 Amendments to the Central Coast Water Corporation Act 2006; Signing of a Memorandum of Understanding Between the Two Councils and the Minister for Water (IR 6829499)

TRIM REFERENCE: F2004/08792 - D02181055

AUTHOR: GM

### SUMMARY

Amendments to the Central Coast Water Corporation Act 2006 and signing of the memorandum of Understanding between the two Councils and the Minister for Water.

### RECOMMENDATION

***That Council authorise the Mayor to sign the Memorandum of Understanding.***

### BACKGROUND

On the 19 August 2009 a joint workshop was held between Gosford City and Wyong Shire Councils and discussed amongst other matters issues in relation to the formation of a water corporation under the *Central Coast Water Corporation (CCWC) Act 2006*. The Council's each held extraordinary meetings following the workshop and resolved that the CCWC Act be amended to:

- give the power to the Councils as to what assets would be transferred and when,
- that the Councils' status as water supply authorities should continue after the Water Corporation became a water authority under the Water Management Act 2000 for transitional arrangements: and
- that the decision as to the status of the Councils as water authorities and their ceasing to be same be a decision made by the Councils.

The Resolution of 19 August 2009 Council Meeting is as follows:

*“RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor MATTHEWS:*

- 1 *That Wyong and Gosford Councils approach the Minister for Water, The Hon Phillip Costa MP, with a request to make amendments to the Central Coast Water Corporation Act to provide for the proposed amendments in the Expert Advisor's report.*
- 2 *That subject to suitable amendments being made, the Councils proceed to take the necessary steps (as identified in section 7 of the Expert Advisor's Report) to establish the Central Coast Water Corporation as per the following:*

**2.1 Amendments to the Central Coast Water Corporation Act 2006; Signing of a Memorandum of Understanding Between the Two Councils and the Minister for Water (IR 6829499) (contd)**

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- a *That Wyong and Gosford Councils develop with the assistance of the Department of Water and Energy and appropriate expert advisors, a detailed work program and milestones for the formation of the Corporation, the execution of the necessary due diligence investigations and the documentation for the formation of the Corporation including; Statements of Corporate Intent, Constitution, Shareholders agreement, Delegations from the Councils to the Corporation and any other documentation required to facilitate its establishment.*
  - b *That the Councils second a suitable officer to manage the work program for the establishment and formation of the Corporation.*
  - c *That the Mayors and General Managers of the two Councils meet with the Minister as soon as practicable to convey the decisions of the two Councils.*
- 3 *In regard to the resolution of the United Services Union, the Mayors and General Managers take the issue to the meeting with State Minister for Water, The Hon Phillip Costa MP, and suggest that the Minister meet with the Unions.*

FOR: COUNCILLORS BEST, EATON, GRAHAM, McBRIDE, McNAMARA, MATTHEWS, SYMINGTON, VINCENT, WEBSTER AND WYNN.

AGAINST: NIL"

On 20 August 2009 the Councils' Mayors met with the Minister for Water Utilities, the Hon David Campbell MP to outline the Council's resolution and negotiate a process for the formation of the Central Coast Water Corporation. At the meeting the Minister proposed that these decisions be made by the Board.

*"The Minister wished to discuss several scenarios, accepting the principle of the need for amendments to the legislation. The Minister put forward a number of scenarios. The first was that the transfer of assets should be at the discretion of the Board, rather than the Minister, and requested the working party to look at this.*

*In providing this power to the Board it was noted that if the board acted in the interest of the Councils this may result in a conflict with the independence and duties of the Directors.*

*The Minister reiterated that he wanted to keep a timetable in the legislation and expressed his concern if the Councils at some point did not wish to transfer assets within a timeframe.*

*The meeting also discussed the water supply authority status of the Corporation and the two Councils. For the Councils and the Corporation to be both water supply authorities during a transition phase, which was the desire of the two councils then this could only occur if they had different functions or operated in different geographical areas. Separate geographical responsibilities would not be practical".*

## 2.1 Amendments to the Central Coast Water Corporation Act 2006; Signing of a Memorandum of Understanding Between the Two Councils and the Minister for Water (IR 6829499) (contd)

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The Mayors and Minister agreed that a **Steering Committee** be established comprising the Councils' General Managers and the Commissioner of Water, David Harris, and that a **working group** convene to resolve the details of the changes required to the legislation and the implications of the Minister's proposal.

### REPORT

A Memorandum of Understanding (MOU) has been prepared by the working group and agreed by the Steering Committee. The MOU gives an undertaking by the Minister in regard to the two issues of concern to the two Councils; namely the transfer of the timing of what assets are to be transferred to the Corporation and the water authority status of the Corporation and the two Councils.

The MOU to take effect requires the resolution of the two Councils.

The MOU provides specifically for the Minister to use his best endeavours to amend the *Central Coast Water Corporation Act 2006* to:

- a) Give the Councils the power to, and responsibility for, transferring their respective water supply authority related staff, assets, rights and liabilities to the Corporation in accordance with the Constitution of the Corporation.
- b) Give the Councils power to determine the date on which the Corporation is constituted as a water supply authority and the date on which the Councils cease being water supply authorities.
- c) Provide that the value of Councils' assets, rights and liabilities transferred to the Corporation are at a fair value agreed between the Board of the Corporation and the Councils and if agreement cannot be reached the valuation is referred to an independent party.
- d) Provides for the Constitution to provide for a phased transition over five **Phases** where the proceeding to the next Phase would be subject to a cost benefit analysis that would need to be undertaken within 15 months of the establishment of the previous Phase.

The Councils would undertake to use their best endeavours to, within 90 days of the amending Bill receiving assent, to approve the Corporation's Constitution and to enter into a voting shareholders agreement as defined in section 10 of the Act.

The implementation of **Phase 1** would be the current arrangements under the Gosford Wyong Councils' Joint Water Authority Agreement being;

- a) strategic planning
- b) strategic operational protocols
- c) auditing and strategic monitoring

The Mayors and the Minister intend to meet on the morning of 18 March 2010 to consider the Memorandum of Understanding.

**2.1 Amendments to the Central Coast Water Corporation Act 2006; Signing of a Memorandum of Understanding Between the Two Councils and the Minister for Water (IR 6829499) (contd)**

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**FINANCIAL IMPACT**

The recommendation does not impact on Council's financial position.

**ATTACHMENTS**

- 1 Memorandum of Understanding Water Supply - March 2010 D02183584



## Memorandum of Understanding

**DATE**                    **March 2010**

### **PARTIES**

**Minister for Water** (“*the Minister*”)  
**Gosford City Council**  
**Wyong Shire Council**  
(Jointly referred to as “*the Councils*”)

### **RECITALS**

- A. The Councils are currently water supply authorities under the *Water Management Act 2000*.
- B. In 1977 to facilitate joint management of certain water infrastructure (dams, weirs and water treatment plants) the Councils established a joint committee, the Gosford Wyong Councils' Joint Water Authority.
- C. Functions cannot be formally delegated to the joint committee which means all its decisions must be ratified by each council.
- D. To improve the management framework, the NSW Government enacted the Central Coast Water Corporation Act 2006 (Act). This Act provided for, among other things, the creation of the Central Coast Water Corporation (Corporation) and the transfer of relevant assets from the Councils to the Corporation.
- E. The Corporation can only be constituted if the Councils approve the Constitution and the voting shareholders agreement of the Corporation.
- F. To facilitate commencement of the Act and establishment of the Corporation it is proposed to seek to amend the legislation as set out in this Memorandum.

### **OPERATIVE PROVISIONS**

#### **The Minister's Undertakings**

- 1.1 The Minister undertakes to use his best endeavours to amend the *Central Coast Water Corporation Act 2006* to:
  - a) Give the Councils power to, and responsibility for, transferring their respective water supply authority related staff, assets, rights and liabilities to the Central Coast Water Corporation in accordance with the Constitution of the Corporation.
  - b) Give the Councils power to determine the date on which the Corporation is constituted as a water supply authority and the date on which the Councils cease being water supply authorities.
  - c) Provide that the value of Councils' assets, rights and liabilities transferred to the Corporation are at a fair value agreed between the Board of the Corporation and the Councils and if agreement cannot be reached the valuation is referred to an independent party
  - d) Require the Corporation's Constitution to provide for the matters set out in clauses 2.2 to 2.13.
  - e) Incorporate in the amending legislation a section similar to the Local Government Act 1993, Section 59A.

- 1.2 The Minister undertakes to use his best endeavours to amend section 293 of the *Water Management Act 2000* to disapply the Minister's existing power of control and direction in relation to the matters listed in 1.1(a) to (c) but not so as to remove his ability to require compliance with this MOU.
- 1.3 The Minister will use best endeavours to procure that:
  - a) (i) an order is made under section 9A of the Industrial Relations Act to declare CCWC "not to be a national system employer" and
  - b) (ii) for the Commonwealth Minister for Employment and Workplace Relations to endorse the declaration under the State law.
- 1.4 If the proposal is approved by Cabinet the Minister undertakes to consult with the Councils in the drafting of the legislative amendments.

### The Councils' Undertakings

- 2.1 If the amending Bill is enacted in accordance with the requirements of clauses 1.1 and 1.2, the Councils undertake to use their best endeavours to, within 90 days of the amending Bill receiving assent:
  - a) approve the Corporation's Constitution;
  - b) enter into a voting shareholders agreement as defined in section 10 of the Act; and
  - c) provide the Minister with a copy of the Councils' resolutions in relation to subclauses 2.1(a) and 2.1(b).
    - a) Determine a workplan for implementing the next Phase and provide this to the Corporation within 60 days of the completion of the cost benefit analysis;
    - d) Implement the next Phase in accordance with the workplan
- 2.2 On commencement of the Act the Councils agree to implement **Phase 1** of a phased transfer of functions being the current arrangements under the Gosford Wyong Councils' Joint Water Authority Agreement, specifically.
  - a) strategic planning;
  - b) strategic operational protocols, and
  - c) auditing and strategic monitoring
- 2.3 The Councils agree to implement **Phase 1** on commencement of the Act.
- 2.4 Subject to clause 2.5, the Councils agree to implement subsequent phases as set out below:
  - a) **Phase 2:**
  - b) **Phase 3:**
  - c) **Phase 4:**
  - d) **Phase 5:**

These phases will be developed by the two Councils as each preceding phase is implemented in accordance with the Constitution. The final phase is the transfer of all agreed assets and staff as may be agreed by the Councils.
- 2.5 The Councils must prepare and provide to the Minister and the Corporation a cost-benefit analysis of implementing the next Phase no later than 15 months after the commencement of the current Phase.
- 2.6 A cost benefit analysis must compare the implications of implementing the next Phase and the implications of not implementing the next Phase and in particular must consider:

- a) The financial implications for the Corporation, the Councils and for customers;
  - b) Any constraints on the Corporation's ability to implement the next phase;
  - c) The implications for employees and associated implications for the community;
  - d) The implications for security of supply;
  - e) Service Level impacts on customers;
  - f) Whether or not any impacts of the next phase can be adequately managed.
  - g) Any other risks and benefits
- 2.7 Subject to clause 2.12 if the cost benefit analysis identifies that there is a net benefit to implementing the next Phase, then the Councils in consultation with the Corporation must:
- a) Determine a workplan for implementing the next Phase and provide this to the Corporation and the Minister within 60 days of the completion of the cost benefit analysis;
  - b) Implement the next Phase in accordance with the workplan.
- 2.8 Subject to clause 2.13 no action is required if a cost benefit analysis indicates that there is currently no net benefit to implementing the next Phase.

#### **Independent assessment of cost benefit analysis**

- 2.9 If either Council disagrees with the conclusion of a cost benefit analysis it must:
- a) within 30 days of receiving the analysis, notify the other Council in writing, the Corporation and the Minister of the disagreement and the reasons for the disagreement;
  - b) the Councils must commission an independent assessment of either part or all of the cost benefit analysis.
- 2.10 The Councils must:
- a) within 30 days of notification of the disagreement determine who will undertake the independent assessment and the process for the independent assessment;
  - b) if no agreement has been reached after 30 days the Minister may appoint an independent assessment at Council's expense.
- 2.11 The independent assessment must:
- a) determine whether there is a net benefit to implementing the next Phase; and
  - b) the Councils must provide a copy of the independent assessment to the Corporation and the Minister within 14 days of its receipt.
- 2.12 No action is required if the independent assessment determines that there is currently no net benefit to implementing the next Phase.
- 2.13 If the independent assessment determines that there is a net benefit to implementing the next phase then the Councils in consultation with the Corporation must:
- a) Determine a workplan for implementing the next Phase and provide this to the Corporation and the Minister within 60 days of the completion of the cost benefit analysis;
  - b) Implement the next Phase in accordance with the workplan.

## OTHER MATTERS

- 3.1 The Minister and the Councils undertake to use their best endeavours to have the Central Coast Water Corporation inserted under **Part 4 Subsidiaries etc of Councils** of the *Fair Work (State Referral and Consequential and other Amendments) Act 2009*
- 3.2 This Memorandum does not:
- a) restrict the Councils' statutory discretions nor authorise a public authority to do anything inconsistent with its statutory or other legal obligations; or
  - b) create any legal relation between the parties.
- 3.3 The Memorandum of Understanding becomes effective upon the resolution of the two Councils and the approval of Cabinet.

**[Signature blocks]**

## **2.2 Future of the Central Coast Regional Organisation of Councils**

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TRIM REFERENCE: f2004/06390 - D02181075

AUTHOR: KY

### **SUMMARY**

Reporting on the outcome of discussions between Gosford and Wyong Councils on the future of the Central Coast Regional Organisation of Councils.

### **RECOMMENDATION**

***That Council agree to amend the constitution of the Central Coast Regional Organisation of Councils as outlined in the body of the report.***

### **BACKGROUND**

At the meeting of the Central Coast Regional Organisation of Councils (CCROC) held on 16 September 2009 the future of CCROC was discussed and it was recommended to Gosford and Wyong Councils that:

*"The two Mayors or Council representatives and General Managers review the operation of CCROC including suggestions such as:*

- *Greater use of the Joint Meetings of Councils.*
- *Reporting on joint activities of the two Councils.*
- *Reporting directly to individual Councils when appropriate."*

This recommendation was adopted by both Gosford and Wyong Councils with Gosford Council also including the following suggestions:

- The significance and relevance of the role of CCROC given that the Central Coast plays a strategic role in NSW since the announcement of Gosford as one of NSW's regional capitals.
- The comparative roles of other ROCs, particularly those covering the regions which are deemed to be "state regions" and those with a similar resident population.
- The financial impact of increasing the role of CCROC, including the need for increased staffing.
- The need for CCROC to play a more dynamic role in representing Gosford and Wyong Councils through supporting an extensive range of regional issues which affect the region rather than individual councils, and through presenting a public face via the media and a web site.

### **THE PROPOSAL**

A number of meetings have been held between the Mayors and General Managers of Gosford and Wyong Councils which have included a review of the current CCROC Constitution, a review of the Local Government Directory on Regional Organisation of

## **2.2 Future of the Central Coast Regional Organisation of Councils (contd)**

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Councils and consideration of a number of reports and web sites relating to some of the 17 ROCs across New South Wales.

CCROC is unique in that it is the only ROC representing only two local government authorities and it appears the only ROC that does not employ staff, the General Manager of Gosford Council performing in the role of Honorary Secretary.

However the Constitution of CCROC is similar to that of other ROCs with comparable organisation objectives. This is to be expanded as the last review of CCROC's Constitution in 1996 was based on that of other NSW ROCs.

Although the Constitution does allow for the organisation to take on greater responsibility than it has in recent years the opportunity exists for greater involvement of the Councillors in dealing with issues of a regional significance and hence lifting the organisation's profile and effectiveness.

This report, as a first stage, seeks the Councillors' agreement to amending the CCROC Constitution (attached) to allow the following:

- a Representation: Each member Council be represented by 10 Councillors all of whom are entitled to vote.
- b CCROC meetings: The CCROC to meet at least every six months.
- c Executive Group meetings: The Executive Group is to comprise of the Mayors, Deputy Mayors and General Managers of each member Council who will meet at least every six months and generally between CCROC meetings.

The CCROC meetings would take the place of the current joint meetings of the two Councils currently held at different times during the year.

### **FINANCIAL IMPACT**

The recommendation does not impact on Council's financial position.

### **ATTACHMENTS**

- 1 Central Coast Regional Organisation of Councils Constitution D02181078

## CENTRAL COAST REGIONAL ORGANISATION OF COUNCILS CONSTITUTION

### 1.0 THE ASSOCIATION

The name of the Association is the Central Coast Regional Organisation of Councils. This Constitution of the Association is in force from 4 December 1996.

### 2.0 OBJECTIVES OF THE ORGANISATION

- 2.1 To identify the needs of the local government areas and of the people of the Central Coast Region and make known those needs to the Commonwealth and New South Wales Governments.
- 2.2 To submit to such governments requests for financial assistance, policy changes and additional resources for the region or member councils.
- 2.3 To encourage closer co-ordination among Local, State and Commonwealth Governments for the promotion and benefit of the region.
- 2.4 To encourage the Councils of the region to work together and co-operate on problems and projects of joint interest.
- 2.5 To initiate resource sharing and regional research projects to advance services and encourage cost effectiveness.
- 2.6 To overview the planning of major facilities and services and maximise their use and development with a view to avoiding duplication.
- 2.7 To provide the opportunity for the exchange of information and knowledge to enhance the role of Local Government in the region.
- 2.8 To facilitate a forum for advocacy on behalf of the region.
- 2.9 To develop a strategic plan for the Association, in accordance with these objectives.

### 3.0 MEMBERS

The Association shall consist of the following Councils:-  
The Council of the City of Gosford  
The Council of the Shire of Wyong.

### 4.0 REPRESENTATION

- 4.1 Each member Council will be represented by four delegates entitled to vote.
- 4.2 Delegates to the Association will be the Mayor and two other Councillors of each member Council, and the General Manager of each member Council.
- 4.3 The office of delegate shall become vacant if a delegate:
  - 4.3.1 Ceases to hold office as a member of a member Council of the Association.
  - 4.3.2 Resigns by letter addressed to the Council of which a delegate is a member or is employed.
  - 4.3.3 Is absent from three consecutive meetings of the Association without having obtained leave of absence from the Association.
  - 4.3.4 Is removed by resolution of the Council which the delegate represents.
- 4.4 Where the office of a delegate becomes vacant the Council concerned at the first convenient meeting held after such vacancy occurs shall appoint another member to the office.
- 4.5 Where a delegate of a Council is unable to attend a meeting of the Association, the Council may be represented by the alternate delegate or another nominated representative of Council appointed for the purpose. Such a representative may, during the absence of a delegate of Council, act in the delegate's place and be subject to vacation of office in the same way as a delegate.

## 5.0 OFFICIALS OF THE ASSOCIATION

- 5.1 The official of the Association shall be the Chairperson.
- 5.2 The Chairperson is to be elected for a period of 12 months.
- 5.3 The role of the Chairperson is to alternate between Gosford and Wyong Councils on an annual basis.
- 5.4 The election of the Chairperson is to be undertaken at the first meeting of the Association following the Mayoral Elections in September with each Council nominating its Chairperson for the relevant year.

## 6.0 STAFF

- 6.1 The Association will have an honorary secretary who will be one of the General Managers of the member Councils as appointed by the Association.
- 6.2 In the event that the Association decides to appoint permanent staff, they will be deemed to be employees of at least one member Council as determined by the Association, the continued employment of all staff of the Association being conditional on available funding sufficient to support their employment.

## 7.0 ADVISORY SUB-COMMITTEES

The Association may, from time to time, appoint any number of sub-committees in connection with any work, activity or object of the Association.

## 8.0 MEETINGS

- 8.1 The delegates shall hold meetings of the Association at least every three (3) months. The Chairperson may convene a special meeting of the Association..
- 8.2 The place for meetings shall be alternated between the offices of Gosford and Wyong Councils.
- 8.3 The times for meetings shall be determined by the Association from time to time.
- 8.4 The honorary secretary shall notify each member Council and delegates of meetings not less than seven (7) days before each meeting and the nature of the business to be dealt with at the meeting.
- 8.5 The honorary secretary shall forward the minutes of each meeting to each delegate not more than one fortnight after the meeting.
- 8.6 At every meeting of the Association the Chairperson shall preside, but if he/she is not present or is unwilling to act the Mayor of the other Council shall preside and if he/she is not present or is unwilling to act the members shall elect a chairperson to preside at that meeting, subject to a quorum being present.
- 8.7 Any other member of a Member Council may attend and speak at meetings of the Association. Any senior officer of a Council which is a member may also attend and speak at meetings of the Association with the permission of the General Manager of that Council.

## 9.0 QUORUM

A quorum shall consist of a majority of delegates. A delegate cannot be represented by a proxy, except in accordance with Clause 4.5, nor a single delegate hold the right of two votes.



## **10.0 BUSINESS OF MEETINGS**

- 10.1 The business conducted at a meeting of the Association shall consist of:
  - 10.1.1 Matters of which notice has been given by a member Council or delegate.
  - 10.1.2 Matters which the Chairperson thinks fit to submit to the meeting.
  - 10.1.3 Consideration of reports by any staff of the Association.
  - 10.1.4 Consideration of any recommendation or report by any sub-committee.
- 10.2 It will be a primary endeavour of the Association to achieve consensus of all decisions of the Organisation., The Association considers that consensus is paramount.
- 10.3 Meetings shall be conducted in accordance with the provisions of the Meeting Regulation of the Local Government Act where such do not conflict with this Constitution, except in so far as the exercising of a casting vote. The Chairperson shall not have a casting vote. A tied vote shall be deemed to be a vote in the negative to the question.
- 10.4 Any member Council has the right to voluntarily withdraw from any particular issue, on which the other member Council wishes to proceed.

## **11.0 POWERS OF THE ASSOCIATION**

- 11.1 The Association shall for the mutual benefit of the areas of the member Councils have power, in accordance with the Constitution to:
  - 11.1.1. Make submissions to the Australian and New South Wales Governments, any department of those governments or any statutory bodies in respect of the areas of the member Councils.
  - 11.1.2 Carry out the objects of the Association.
- 11.2 The above shall not affect the right of an individual Council acting in its own right on these matters.
- 11.3 The control, regulation, maintenance of the exercise of these powers is vested in the meeting of delegates in accordance with this Constitution.

## **12.0 OFFICE**

The office of the Association shall be at such place as the Association may from time to time appoint.

## **13.0 YEAR**

The Association's year shall commence on 1 July and terminate on 30 June of the following year.

## **14.0 CO-OPERATION**

- 14.1 For the purpose of performing any powers, duties or functions, the Association may use the services of an employee of a member Council if prior approval of the Council is obtained.
- 14.2 The member Councils shall deal with any matters referred to them by the Association for decision as far as practicable within two (2) months of such reference and shall make and communicate to the Association a decision thereon as soon as possible thereafter.

## **15.0 TERMINATION OF MEMBERSHIP**

A Council may withdraw from membership of the Association on giving notice to the Association. When such termination takes effect the Association shall terminate.

## **16.0 ALTERATIONS TO THE CONSTITUTION**

Alterations or amendments may only be made to this Constitution by the agreement of the said Councils.