



Wyong and Gosford Councils' recently took residents on a tour of our water supply system as part of Local Government Week. Pictured is a staff member at the Mardi Water Treatment Plant explaining how it all works.

# EXTRAORDINARY MEETING

19 August 2009



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# MEETING NOTICE

The **EXTRAORDINARY MEETING**  
of **Wyong Shire Council**  
will be held in  
the **Council Chamber**,  
**Caroline Bay Function Centre, East Gosford** on  
**WEDNESDAY 19 AUGUST 2009** at **7.00 pm**,  
for the transaction of the business listed below:

**OPENING PRAYER**

**ACKNOWLEDGEMENT OF COUNTRY**

**RECEIPT OF APOLOGIES**

## **1 PROCEDURAL ITEMS**

1.1 Disclosures of Interest ..... 4

## **2 GENERAL MANAGER'S REPORT**

2.1 Central Coast Water Corporation - Expert Advisor's report ..... 5

2.2 Joint Bid to Host the NSW Surf Lifesaving Championships ..... 59

Kerry Yates

**GENERAL MANAGER**

## 1.1 Disclosures of Interest

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TRIM REFERENCE: F2009/00008 - D01984489

AUTHOR: ED; 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 Central Coast Water Corporation - Expert Advisor's report**

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TRIM REFERENCE: F2004/08792 - D01986045

AUTHOR: GM

### **SUMMARY**

Reporting to Council on the report from the expert advisor, Simon Brady, regarding the formation of the Central Coast Water Corporation.

In response to a request from the Gosford City and Wyong Shire Councils, Clayton Utz, as Expert Advisors, were invited on 14 May 2009 to assist with the establishment of the Central Coast Water Corporation (the Corporation). The two Councils had previously identified a number of concerns and issues with the legislation. The role of the Expert Advisor was to consider the major issues identified by Councils (discussed further below) regarding the current drafting of the *Central Coast Water Corporation Act 2006* and to advise whether or not these issues can be adequately addressed by means other than amending the Act. The Expert Advisor was also requested to prepare a plan and timetable for the formation of the Corporation (assuming that the major issues identified by the Councils are resolved to the satisfaction of both Councils).

A copy of the Report prepared by the Expert Adviser forms Attachment 1 to this Report. A summary of the major findings of the Expert Advisor is set out below.

### **RECOMMENDATION**

- 1 That Wyong and Gosford Councils approach the Minister for Water 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:**
  - 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.**

## **2.1 Central Coast Water Corporation - Expert Advisor's report (contd)**

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### **BACKGROUND**

Council resolved (22 April 2009) on the motion of Councillor Wynn and seconded by Councillor Webster:

*"That Council concur with the process to engage an expert advisor to assist both Wyong Shire and Gosford City Councils to undertake a due diligence analysis to determine and assess any risks or issues in the formation of a Central Coast Water Corporation and to identify potential actions to address these.*

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

AGAINST: COUNCILLOR EATON."

To date the working committee consisting of representatives from the Department of Water and Energy (DWE), Wyong Shire Council, Gosford City Council, and Simon Brady (the expert advisor) have met on a number of occasions to progress this matter and the expert advisor has prepared a report for Council's consideration which forms Attachment 1 to this report.

Much of the history of this matter and the proposed models that were proposed by Price Waterhouse Coopers (PWC) following PWC's joint engagement by Wyong Shire Council and Gosford City Council is addressed in Attachment 2.

### **Major issues identified**

Three primary issues were considered by the Expert Advisor:

#### *Issue 1: "water supply authority" status*

Under the current drafting of the CCWC Act, the Corporation will automatically become the "water supply authority" (WSA) for the local government areas of Gosford City and Wyong Shire Councils 12 months after the establishment of the Corporation. At that time the Councils would cease to be Water Supply Authorities and could not deliver water and sewerage and certain drainage functions under either the Water Management Act or the Local Government Act. It is possible under section 2 of the CCWC Act for this 12 month period to be extended to two years by proclamation but not beyond this period.

At the point in time at which the Corporation becomes the WSA, it would then assume from the Councils statutory responsibility for the construction, maintenance and operation of water supply works, drainage works, sewerage works and flood works in the combined Gosford City and Wyong Shire Councils' local government areas. On becoming the WSA, the Corporation would have statutory responsibility for water, sewerage and drainage functions and services and would be the entity required to levy service fees and charges from residents and businesses for the delivery of these services.

Councils are concerned to ensure that the Corporation does not become the WSA unless and until both Councils have agreed, by resolution of both Councils, for that to occur. The current drafting of the CCWC Act does not provide for this, ie the Corporation will automatically become the WSA 12 months (or up to two years if extended by proclamation) after its establishment without the Councils having any legal right to determine whether or not and when this occurs. Previously the Councils have expressed concern to the Minister that, legally, they should be able to determine when the Corporation becomes the responsible WSA and the Councils cease to be WSAs. The Councils wish to maintain legal control over this process and not be subject to the automatic and irrevocable 12/24 month process currently provided for in the CCWC Act.

## **2.1 Central Coast Water Corporation - Expert Advisor's report (contd)**

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### *Issue 1: Expert Advisor Findings*

The Expert Adviser's view is that it will be necessary to amend the CCWC Act to provide the Councils with the level of legal certainty they require on this issue. More specific details of the Expert Adviser's recommended amendments to the CCWC Act are set out in section 6 of the Expert Adviser's Report.

### *Issue 2: Transfer of assets, rights and liabilities of the Councils to CCWC*

Section 32 of the CCWC Act authorises the Minister to unilaterally transfer assets, rights and liabilities of either Council to the Corporation without the consent of the relevant Council if such transfers are made three years or more after the establishment of the Corporation. Whilst it is possible under section 32(4)(b) and 32(5) of the CCWC Act for the Minister to extend this three year period to five years, fundamentally the Councils are concerned to ensure that it is the Councils who have legal power to transfer the assets, rights and liabilities of the Councils to the Corporation (whatever the timeframe) and that the Minister does not have the power to unilaterally effect such transfers without Council consent.

### *Issue 2: Expert Advisor Findings*

In order to address the Councils' concerns, the CCWC Act will need to be amended in the manner set out in section 6 of the Expert Advisor's Report. These amendments provide for the Councils to determine what assets, rights and liabilities of the Councils are to be transferred to the Corporation and when.

### *Issue 3: Composition of the CCWC Board*

Currently the CCWC Act gives each Council the right to appoint one member each to the Board of the Corporation, with the majority (ie the other three directors) to be independent of Council (ie not Councillors or employees of Council). The Councils have previously indicated to the Minister their acceptance of the provisions in the CCWC Act which provide for the majority of the directors of the Corporation to be comprised of independent directors, however the Councils indicated to the Minister that they were seeking that Council representation on the Board be increased to two representatives of each Council (so as to cater for the appointment of one staff director to provide technical expertise). In order to maintain the Board of the Corporation with a majority of independent directors, this would mean that the minimum number of directors would need to be increased to nine (currently the Act provides for a minimum number of directors of five).

### *Issue 3: Expert Advisor's findings*

The Expert Adviser has found that this issue should be able to be adequately addressed in the manner set out in section 5.3 of the Expert Advisor Report without the need for the CCWC Act to be amended to provide for additional Council appointed directors on the CCWC Board. This will ensure that the board can not make decisions on certain significant matters unless the Council representatives agree.

### **Key steps and timetable for the establishment of the Corporation**

Section 7 of the Expert Advisor's Report sets out the key steps which need to be undertaken to establish the Corporation, together with a proposed timetable for the implementation of these steps. The steps and timetable are based on the assumption that initially the Councils will remain as the water supply authorities for their respective local government areas and will delegate to the Corporation strategic and planning functions akin to the current functions performed by the Joint Water Authority. The amendments proposed to the CCWC Act will provide the Councils with flexibility to delegate further functions to the Corporation, or for the Corporation to become the WSA if and when the Councils determine to do so.

## **2.1 Central Coast Water Corporation - Expert Advisor's report (contd)**

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The proposed timetable for the establishment of the Corporation is shown in Annexure A to Attachment 1 to this Report.

### **FINANCIAL IMPACT STATEMENT**

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

### **ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | Expert Advisor's Report                        | D01992802 |
| 2 | Report to Wyong council dated 12 December 2007 | D01042414 |



CLAYTON UTZ

Central Coast Water Corporation

Legal Expert Advisor Report

11 August 2009

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Our reference 101/80092576

## Contents

<b>1.</b>	<b><u>Background</u></b> .....	<b>2</b>
	1.1 <u>Appointment of Expert Advisor</u> .....	2
	1.2 <u>This Report</u> .....	2
<b>2.</b>	<b><u>Stakeholder consultation</u></b> .....	<b>3</b>
<b>3.</b>	<b><u>Central Coast Water Corporation Act</u></b> .....	<b>6</b>
	3.1 <u>Commencement of operation of the CCWC Act</u> .....	6
	3.2 <u>Ownership of the Corporation</u> .....	6
	3.3 <u>Objectives of the Corporation</u> .....	6
	3.4 <u>Water Supply Authority status</u> .....	7
	3.5 <u>Board of directors</u> .....	7
	3.6 <u>Chief Executive Officer</u> .....	8
	3.7 <u>Employees of the Corporation</u> .....	8
	3.8 <u>Transfer of Council assets and employees to the Corporation</u> .....	8
	3.9 <u>Statement of Corporate Intent</u> .....	9
	3.10 <u>Power of Councils to issue directions to the Corporation</u> .....	9
	3.11 <u>Dividends and tax equivalents</u> .....	10
	3.12 <u>Operating licence</u> .....	10
<b>4.</b>	<b><u>Key issues raised by Councils with drafting of CCWC Act</u></b> .....	<b>11</b>
<b>5.</b>	<b><u>Possible solutions</u></b> .....	<b>13</b>
	5.1 <u>Water Supply Authority status</u> .....	13
	5.2 <u>Transfer of Council assets, rights and liabilities to the Corporation</u> .....	16
	5.3 <u>Council representation on the Board</u> .....	16
<b>6.</b>	<b><u>Proposed amendments to the CCWC Act</u></b> .....	<b>19</b>
	6.1 <u>WSA status</u> .....	19
	6.2 <u>Transfer of Council assets, rights and liabilities</u> .....	19
	6.3 <u>Ministerial power of direction in section 293(1)(b) of the Water Management Act</u> .....	20
<b>7.</b>	<b><u>Formation of the Corporation (including key steps and timetable)</u></b> .....	<b>21</b>
	7.1 <u>Overview</u> .....	21
	7.2 <u>Steps and timetable to establish the Corporation</u> .....	22
	<b><u>Annexure A - Possible CCWC Implementation Timetable</u></b> .....	<b>26</b>

## Glossary

<b>the Board</b>	Board of directors of the Corporation
<b>CCWC Act</b>	Central Coast Water Corporation Act 2006 (NSW)
<b>CEO</b>	Chief Executive Officer of the Corporation
<b>constituent councils</b>	Gosford City Council and Wyong Shire Council
<b>Corporation</b>	Central Coast Water Corporation to be established under section 4 of the CCWC Act
<b>EEO</b>	Equal Employment Opportunity
<b>Expert Advisor</b>	Mr Simon Brady of Clayton Utz
<b>Minister</b>	Minister for Water (NSW)
<b>Review</b>	the review undertaken by the Expert Advisor and documented in this Report
<b>USU</b>	United Services Union
<b>Working Group</b>	the Working Group formed to facilitate the Review as detailed in section 1.2 of this Report
<b>WSA</b>	"water supply authority" under the Water Management Act 2000 (NSW)
<b>WS&amp;D</b>	water sewerage and drainage

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## 1. Background

### 1.1 Appointment of Expert Advisor

Simon Brady, a partner of the legal firm Clayton Utz (**Expert Advisor**), has been jointly retained by Gosford City Council and Wyong Shire Council to undertake a review of the Central Coast Water Corporation Act 2006 (NSW) (**CCWC Act**) to consider the major issues raised by the Councils regarding the current drafting of the CCWC Act and, specifically, to advise whether or not the issues raised by the Councils can be adequately addressed by means other than amending the CCWC Act. The Expert Advisor was also asked to consider if there were any other amendments necessary to be made to the CCWC Act to establish the Corporation in accordance with the steps and timetable set out in section 7 of this Report.

The Expert Advisor has also been requested to include in this Report a plan and timetable for the establishment of the Central Coast Water Corporation (**Corporation**), assuming that the major issues raised by the Councils are resolved to the satisfaction of both Councils.

A copy of this Report has been provided to the General Manager, Gosford City Council; the General Manager, Wyong Shire Council; and the Department of Water and Energy.

### 1.2 This Report

This Report comprises the following sections:

**Section 1 (Background)**

**Section 2 (Stakeholder consultation):** details relevant stakeholder consultation undertaken as part of the Review.

**Section 3 (Central Coast Water Corporation Act):** provides an overview of key relevant provisions in the CCWC Act.

**Section 4 ( Key issues raised by Councils with drafting of CCWC Act):** summarises the key issues raised by the Councils in terms of the current drafting of the CCWC Act.

**Section 5 (Possible solutions):** considers the options available to address the key issues raised by the Councils.

**Section 6 (Proposed amendments to the CCWC Act):** identifies the amendments to be made to the CCWC Act.

**Section 7 (Formation of the Corporation (including key steps and timetable):** identifies the key steps required to be undertaken to form the Corporation and a possible Timetable for completing those steps.

### 1.1

## 2. Stakeholder consultation

### Working Group

A Working Group was formed for the purposes of the Review to facilitate information gathering and provide a conduit to Council senior management for decision making purposes. The Working Group comprised:

- Mr Rod Williams, Director Water & Sewerage, Gosford City Council;
- Mr Brett Koizumi-Smith, Manager -Regulatory Services, Gosford City Council;
- Mr Greg McDonald, Manager -Water and Waste Services, Wyong Shire Council;
- Mr Hans Wesseling, Department of Water & Energy; and
- Mr Simon Brady, Expert Advisor, Partner, Clayton Utz.

The Working Group met regularly throughout the Review both in person and by telephone on the following dates:

Date	Meeting/Telephone conference
4 June 2009	Meeting at Clayton Utz, Sydney
22 June 2009	Meeting at Clayton Utz, Sydney
30 June 2009	Telephone conference call
2 July 2009	Telephone conference call
9 July 2009	Meeting at Clayton Utz, Sydney
16 July 2009	Telephone conference call
21 July 2009	Meeting at Clayton Utz, Sydney

### Consultation with Unions and Staff Representatives

At the request of the General Manager of Gosford City Council and the General Manager of Wyong Shire Council, the Expert Advisor was requested to engage with representative trade unions and staff representatives of each Council to inform them of the purpose and progress of the Review and to identify and consider any issues raised by those unions and staff representatives regarding the proposed formation of the Corporation.

The following meetings were held with these representative groups:

Date	Meeting
1 July 2009	Meeting held at Gosford City Council with trade union and staff representatives of Gosford City Council
1 July 2009	Meeting held at Wyong Shire Council with trade union and staff representatives of Wyong Shire

	Council
30 July 2009	Joint meeting held at meeting rooms at Erina Fair, Erina with trade union and staff representatives of Wyong Shire Council and Gosford City Council

In summary, the key points raised by union and staff representatives at the 1 July and 30 July meetings were as follows:

- the unions' primary concern with the establishment of the Corporation is to ensure that the terms and conditions of employment of Council employees whose employment is transferred to the Corporation are no less favourable to the employees than their current terms of employment with the Councils. In particular, the unions are concerned to ensure that employees of the Corporation remain subject to the NSW state industrial system, not the Commonwealth (Fair Work) system;
- the unions will support the formation of the Corporation provided that employees are no worse off and the industrial relations jurisdictional issue is definitively settled before the establishment of the Corporation through the enactment of Federal legislation to excise councils and council associated entities (such as the Corporation) from the federal industrial relations system. The unions' are not in favour of implementing alternative arrangements to deal with this issue, such as secondments of Council employees to the Corporation, in the event that Federal legislation is not forthcoming;
- the USU and other unions are continuing to engage with Federal and NSW government Ministers to obtain the necessary support for the enactment of Federal legislation before the end of this calendar year (i.e. by 31 December 2009);
- the Unions are supportive of the Councils being the ultimate decision maker regarding when the Corporation becomes the WSA and what assets and undertaking of Councils are to transfer to the Corporation;
- the Unions are seeking a more active role in the implementation process for the establishment of the Corporation.

### **Meetings with Councillors**

On 1 July 2009, the Expert Advisor met with Cr Chris Holstein the Mayor of Gosford City Council, and Mr Rod Williams, Director of Water and Sewerage, Gosford City Council, to advise on the progress of the Review and relevant issues raised by representative unions and staff members.

On 1 July 2009, the Expert Advisor also conducted a briefing session for Councillors of Wyong Shire Council to update them on the progress of the review, including providing feedback on issues raised by representative unions and staff members.

### **Council General Managers**

On 3 June 2009, the Expert Advisor participated in a telephone conference call with the General Manager of Gosford City Council and the General Manager of Wyong Shire Council for the purposes of being briefed on the purpose and deliverables arising from the Review and relevant stakeholder consultation to be undertaken as part of the Review.

On 1 July 2009, the Expert Advisor met with the General Manager, Wyong Shire Council to advise him of the progress of the Review and to consider relevant issues raised by union and staff representatives<sup>1</sup>.

Both Council General Managers were regularly briefed on the progress of the Review by their respective Council representatives on the Working Group.

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<sup>1</sup> The General Manager, Gosford City Council, was not available to meet on 1 July 2009 but has been kept fully apprised of the progress of the review through the Gosford City Council representatives on the Working Group

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### 3. Central Coast Water Corporation Act

Set out below is summary of key relevant provisions of the CCWC Act in its current form. Section 4 of this Report details the key issues previously raised by the Councils with the current drafting of the Act.

#### 3.1 Commencement of operation of the CCWC Act

The CCWC Act was assented to on 27 November 2006, however the Act has still not yet commenced operation.

Section 2(1) of the CCWC Act provides that the Act commences operation on a day or days to be appointed by proclamation of the Governor. As at the date of this Report, the Governor has not made any proclamation to commence the CCWC Act. Relevantly however, section 2(2) of the CCWC Act provides that the proclamation to commence section 4 of the Act (being the section which establishes the Corporation) cannot be made except on the Minister's recommendation. Furthermore, section 2(3) provides that the Minister's recommendation for the proclamation constituting the Corporation cannot be given unless each of the Councils has by resolution of the Council:

- approved a Constitution for the Corporation<sup>2</sup>;
- entered into a voting shareholders agreement with the other Council<sup>3</sup>; and
- requested the making of the Minister's recommendation.

The combined effect of these provisions is that the Corporation will not be able to be established unless each of the Minister and each Council (by resolution of the Council) agree to the formation of the Corporation.

#### 3.2 Ownership of the Corporation

When established under section 4 of the CCWC Act, the Corporation will become a statutory corporation (i.e. a separate legal entity from the Councils) wholly owned by each of the Councils on a 50/50 basis. It is important to note that section 7 of the CCWC Act provides that only the Councils may be shareholders of the Corporation and each Council must at all times hold an equal numbers of shares in the Corporation. Accordingly, it is not possible for a third party (including the State) to hold shares in the Corporation and the Councils must at all times own the Corporation on a 50/50 basis.

#### 3.3 Objectives of the Corporation

Section 5 of the CCWC Act sets out the principle objectives of the Corporation, which in summary are as follows:

- to promote the efficient delivery of water supply, sewerage and drainage services for the long-term interests of consumers with respect to price, quality, safety, reliability and security of supply,
- to maximise water conservation, demand management and use of recycled water,
- to be a successful business and, to this end:

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<sup>2</sup> The Constitution of the Corporation is equivalent to the Constitution of a Company and governs the internal workings and governance of the Corporation.

<sup>3</sup> This is a legally binding agreement to be entered into by the Councils in their capacity as shareholders in the Corporation which will set out the basis on which they will hold their respective shareholdings in the Corporation.



- to operate at least as efficiently as any comparable business; and
- to maximise the net worth of the constituent Councils' investment in the Corporation,
- to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
- where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development as set out in the Protection of the Environment Administration Act 1991 (NSW).

Each of the principle objectives of the Corporation is of equal importance (section 5(2)).

### 3.4 Water Supply Authority status

The effect of the current drafting of the CCWC Act is that, absent any contrary proclamation, the Corporation will automatically become the Water Supply Authority (**WSA**) for the local government areas of Gosford City Council and Wyong Shire Council 12 months after the establishment of the Corporation. It is possible under section 2 of the CCWC Act for this 12 month period to be extended to 2 years.

At the point in time at which the Corporation becomes the WSA, it would then, pursuant to section 292 of the Water Management Act 2000 (NSW) (**Water Management Act**) assume from the Councils statutory responsibility for the construction, maintenance and operation of water supply works, drainage works, sewerage works and flood works in the combined Gosford and Wyong Councils' local government areas.<sup>4</sup>

Accordingly, on becoming the WSA, the Corporation would have statutory responsibility for water, sewerage and some drainage functions and would be the entity levy service fees and charges from residents and businesses for the delivery of these services.

### 3.5 Board of directors

Like most corporations and companies, the Corporation is to have a board of directors (**the Board**) which will be responsible for making decisions relating to the operation and management of the Corporation and will ultimately be accountable to the Councils as shareholders/owners of the Corporation.

Section 12 of the CCWC Act sets out the requirements for the composition of the Board, as follows:

- the Board is to consist of at least 3, but no more than 7 directors;
- the directors are to be appointed by the Governor on the recommendation of the Councils;
- each person recommended for appointment as a director must be a person who, in the opinion of the Councils, will assist the Corporation to achieve its principal objectives;
- no more than 2 directors may be appointed from the councillors and employees of the Councils (ie. 1 from each Council);

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<sup>4</sup> It is possible to limit the functions of a WSA pursuant to regulations made under section 289(2) of the Water Management Act. Refer to section 5.1 of this Report for further discussion of this issue.

- if 2 of the directors are employees or councillors of the Councils, the minimum number of directors must be 5, not 3.

The effect of section 12 is that the majority of the members of the Board must be people who are not employees or councillors of Gosford City Council or Wyong Shire Council.

### **3.6 Chief Executive Officer**

Section 13 provides that the Board is to appoint a Chief Executive Officer (**CEO**) of the Corporation after consultation with the Councils. The CEO is to be responsible for the day-to-day management and the operation of the Corporation in accordance with the general policies and specific directions of the Board.

### **3.7 Employees of the Corporation**

The CCWC Act contains a number of provisions to protect the terms and conditions of employment of any Council employees whose employment is to be transferred to the Corporation. These provisions include:

- section 15, which allows regulations to be made under the CCWC Act to deal with the terms and conditions of employment, subject to the inclusion of provisions consistent with Part 4 of Chapter 11 and sections 348-350 of the Local Government Act 1993 (which deal with EEO and merit appointment);
- Part 2 of Schedule 5, which:
  - requires the employment of transferred staff to be on the same terms and conditions of employment that they would have been employed under with the Councils;
  - preserves various forms of leave rights of transferred staff;
  - provides transferred staff with protection from redundancy for a period of 3 years from the date of transfer;
  - allows transferred staff to apply for positions within the respective Councils as if the employee was still an employee of that Council; and
- Part 2 of Schedule 8, which provides all staff of the Councils who do not transfer to the Corporation with protection from redundancy arising from the exercise (and/or proposed exercise) of functions by CCWC that were formally undertaken by the Councils, for a period of 3 years from the establishment of CCWC.

### **3.8 Transfer of Council assets and employees to the Corporation**

Section 32 of the CCWC Act provides that the Minister may, by order in writing, transfer to the Corporation such of Wyong or Gosford Council's assets, rights and liabilities as are specified or referred to in the order. However, the Minister cannot make such orders to transfer assets, rights or liabilities of the Councils to the Corporation within 3 years of the establishment of the Corporation unless the relevant Council has consented to the transfer. However, if the Minister's order is to be made 3 or more years after the establishment of the Corporation, the order can be made without the consent of the relevant Council (see section 32(4)). This 3 year period may be extended to 5 years by the Minister by written order.

Section 32(1) of the CCWC Act permits a Council, by order in writing, to transfer to the Corporation such of its employees as are specified in the order. Any such transfer would, however, be subject to the statutory protections afforded to those employees as referred to in section 3.7 above.

### 3.9 Statement of Corporate Intent

Section 42 of the CCWC Act requires the Board to prepare annually a "Statement of Corporate Intent". The Statement of Corporate Intent is required to specify for the Corporation and each of its subsidiaries for the financial year to which it relates and each of the two following financial years:

- the objectives of the Corporation and its subsidiaries;
- the main undertakings of the Corporation and of its subsidiaries;
- the nature and scope of the activities to be undertaken;
- the accounting policies to be applied in the financial reports of the Corporation and its subsidiaries;
- the performance targets and other measures by which performance of the Corporation and its subsidiaries will be judged by the Councils;
- the kind of information to be provided to the Councils by the Corporation; and
- such other matters as may be agreed by the Councils and the Board.

The Board is responsible for preparing the Statement of Corporate Intent, however the Councils may by written notice to the Board direct the Board to include in, or omit from, the Statement of Corporate Intent any specified matters and the Corporation is required to comply with any such direction. Furthermore, the CCWC Act provides that the Board is accountable to the voting shareholders (ie. the Councils) in accordance with the Statement of Corporate Intent.

Section 29(2) of the CCWC Act provides that the powers of the Corporation are subject to any restrictions expressly imposed by the Statement of Corporate Intent of the Corporation or any relevant directions, notifications or approvals given to the Corporation by the Councils (see section 3.10 below).

### 3.10 Power of Councils to issue directions to the Corporation

Sections 16, 17 and 18 of the CCWC Act allow the Councils to give certain directions to the Corporation which must be complied with by the Corporation.

Section 16 provides that if the Councils wish the Corporation to perform activities in circumstances where the Board considers that it is not in the commercial interests of the Corporation to do so, the Councils may direct the Corporation to do so and the Corporation is required to comply with that direction. The Corporation is entitled to be reimbursed by the Councils for the net cost of performing such activities.

Section 17 of the CCWC Act allows the Councils to notify the Board of any policy adopted by the Councils that is to apply to the Corporation (if the Councils are satisfied that it is necessary to give the notification in the public interest). The Board must then ensure that the policy is carried out by the Corporation. Again, the Corporation is entitled to be reimbursed the net cost of complying with such notification.

Finally, section 18 of the CCWC Act allows the Councils to give the Board a written direction in relation to the Corporation if the Councils are satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest. The Board must then ensure that the direction is carried out in relation to the Corporation and the Corporation is entitled to be compensated by the Councils for the net cost of complying with the direction.

### **3.11 Dividends and tax equivalents**

The Corporation is required to have a share dividend scheme specified in its Constitution in a form approved by the Councils. All dividends declared by the Corporation must be paid to the Councils. Accordingly, like a company, the profits of the Corporation can be distributed to the Councils via the payment of dividends.

Section 20 also requires the Corporation to pay "tax equivalent payments" to the Councils being such amounts as the Tax Assessor determines to be equivalent to the amounts that would be payable by the Corporation if it were liable to pay taxes under Commonwealth taxation laws. The Minister may nominate any person or persons to be the Tax Assessor for the Corporation.

### **3.12 Operating licence**

Section 33 of the CCWC Act provides that the Minister may grant an operating licence to the Corporation to enable the Corporation to carry out its functions (including any functions as are delegated to it by the constituent Councils). The operating licence is to be subject to the terms and conditions determined by the Minister. The initial term of the Corporation's operating licence is to be for a maximum of 2 years as determined by the Minister. After the initial term, the Minister may renew the Corporation's operating licence from a maximum of 5 years at a time. The Minister may, as a condition of the Corporation's operating licence, require the Corporation to pay to the Minister, for payment into the Consolidated Fund, such annual licence fee as may be determined by the Minister.

#### 4. Key issues raised by Councils with drafting of CCWC Act

The Councils have raised three material issues with the current drafting of the CCWC Act. The Expert Advisor has been requested to consider whether or not there are any available and appropriate means to address these issues other than by enacting amendments to the CCWC Act. The three issues are as follows:

##### **First issue: "Water Supply Authority" status**

As noted in section 3.4 of this Report, the effect of the current drafting of the CCWC Act is that, absent any contrary proclamation, the Corporation will automatically become the WSA for the local government areas of Gosford City and Wyong Shire Councils 12 months after the establishment of the Corporation. It is possible under section 2 of the CCWC Act for this 12 month period to be extended to 2 years by proclamation. Further, the CCWC Act does not provide the Councils with legal control over if and when the Councils will cease to be WSAs. Under the CCWC Act, the Councils will cease to be WSAs when Schedule 7.2[2] of the CCWC Act commences operation. The commencement of Schedule 7.2[2] is determined by proclamation made by the Governor under section 2(1) of the Act. There is no requirement under the CCWC Act for Councils' to consent to the making of such proclamation.

At the point in time at which the Corporation becomes the WSA and Councils cease to be WSAs, the Corporation would then, pursuant to section 292 of the Water Management Act, assume from the Councils statutory responsibility for the construction, maintenance and operation of water supply works, drainage works, sewerage works and flood works in the combined Gosford City and Wyong Shire Councils' local government areas. On becoming the WSA, the Corporation would have statutory responsibility for water, sewerage and drainage functions and services and would be the entity required to levy service fees and charges from residents and businesses for the delivery of these services.<sup>5</sup>

Councils are concerned to ensure that the Corporation does not become the WSA unless and until both Councils have agreed, by resolution of both Councils, for that to occur. Fundamentally, the Councils are concerned to ensure that, legally, they are able to determine when the Corporation becomes the responsible WSA and the Councils cease to be WSAs. As noted above, the change-over of WSA status from the Councils to the Corporation will result in the transfer to the Corporation of statutory responsibility for the delivery of water, sewerage and drainage functions and services in the Councils' local government area. Councils wish to maintain legal control over this process and not be subject to the automatic and irrevocable 12/24 month process currently provided for in the CCWC Act.

##### **Second issue: transfer of Council assets**

As noted in section 3.8 of this Report, the current drafting of section 32 of the CCWC Act would allow the Minister to unilaterally transfer assets, rights and liabilities of either Council to the Corporation without the consent of the relevant Council if such transfers are made 3 years or more (or possibly 5 years if extended by Ministerial order) after the establishment of the Corporation. In the 3 year period following the establishment of the Corporation, the Minister can only make such transfers with the consent of the relevant Council.

Fundamentally, Councils are concerned to ensure that they maintain legal control over what Council assets are transferred to the Corporation (and when) and that the Minister cannot unilaterally transfer assets, rights and liabilities of the Councils to the Corporation without the prior consent of the relevant Council (whether such transfers are made in the 3 year period before or after establishment of the Corporation).

<sup>5</sup> Section 292 of the Water Management Act does permit a WSA to delegate any of its functions to another person. Accordingly, it would be possible under the Water Management Act for the Corporation to delegate some of its functions back to Councils to perform.

### Third issue: Composition of the Board

Section 12 of the CCWC Act sets out the requirements for the composition of the Board. In summary, section 12 provides as follows:

- the Board must consist of at least 3, but no more than 7 directors;
- the directors are to be appointed by the Governor on the recommendation of the Councils;
- each person recommended for appointment as a director must be a person who, in the opinion of the Councils, will assist the Corporation to achieve its principal objectives;
- no more than 2 directors may be appointed from the councillors and employees of the Councils (ie. 1 from each Council); and
- if 2 of the directors are employees or councillors of the Councils, the minimum number of directors must be 5.

The effect of section 12 is that the majority of the members of the Board must be people who are not employees or councillors of Gosford City Council or Wyong Shire Council.

By joint letter of the Mayors of Gosford City and Wyong Shire Councils dated 15 November 2007 to the then Minister for Water Utilities, The Hon Nathan Rees MP, the Councils articulated their concerns with section 12 as follows:

*"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 if they are not 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 1 Councillor and 1 staff member for each Council on the Board, with the balance of power still held by the independent representatives."*

Based on this correspondence with the Minister, Councils have indicated their acceptance of the provisions in the Act which provide that the majority of the Board is to be comprised of independent directors (ie. not Councillors or employees of Council), however Councils were seeking that section 12 be amended to enable Councils to appoint 2 directors each (so as to cater for the appointment of 1 staff director and 1 Councillor from each Council). In order to maintain the Board with a majority of independent directors, this would also mean that the minimum number of directors would need to be increased to 9 in the event both Councils appointed 2 directors each.

## 5. Possible solutions

The Expert Advisor was requested by the Councils to consider, in consultation with the Working Group, whether or not there are any available and appropriate means to address the 3 material issues identified by the Councils without enacting amendments to the CCWC Act. Our observations and conclusions in respect of each issue is addressed in turn below.

### 5.1 Water Supply Authority status

The CCWC Act is tightly drafted in terms of the timing and mechanism by which the Corporation will become the WSA for the Gosford and Wyong local government areas. In summary, on the current drafting of the CCWC Act, the Corporation will automatically become a WSA 12 months after its establishment (section 2(5)(a)). The only exception to this position is that the 12 month period can be extended to up to 2 years by proclamation made pursuant to section 2(5)(b) of the CCWC Act.

Whilst both Councils must approve by resolution the establishment of the Corporation, once the Corporation has been established there are no provisions in the CCWC Act which require the Councils to consent to the Corporation becoming the WSA (i.e. that will occur automatically 12 months (or 24 months if a proclamation is passed) after the establishment of the Corporation. Further, the CCWC Act does not provide the Councils with legal control over if and when the Councils will cease to be WSAs. Under the CCWC Act, the Councils will cease to be WSAs when Schedule 7.2[2] of the CCWC Act commences operation. The commencement of Schedule 7.2[2] is determined by proclamation made by the Governor under section 2(1) of the Act. There is no requirement under the CCWC Act for Councils' to consent to the making of such proclamation.

Fundamentally, the Councils are concerned to ensure that legally they are able to determine if and when the Councils cease to be WSAs and the Corporation becomes the responsible WSA.

#### Addressing through regulations made under the CCWC Act

It is not possible to satisfactorily address this issue through regulations made under the CCWC Act. Section 60 of the CCWC Act contains the regulations making power. Section 60(1) provides that:

"(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act."

To enact a regulation which overrides the operation of section 2 of the CCWC Act and gives the Councils the effective right to control when and if the Corporation becomes a WSA would constitute a regulation which is inconsistent with the CCWC Act and accordingly not constitute a valid regulation made under section 60 (1).

#### Addressing through regulations made under the Water Management Act

Two further potential options were considered by the Working Group which involve making regulations under the Water Management Act. Both options involve the Councils retaining their WSA status after the Corporation becomes a WSA<sup>6</sup>.

<sup>6</sup> The current drafting of the CCWC Act does not necessarily require that the Councils cease to be WSAs at the same time as the Corporation becomes a WSA. That is to say it would be possible for the Councils and the Corporation to simultaneously be WSAs. This is because currently Gosford City Council and Wyong Shire Council are the WSA for their respective local government areas pursuant to section 285(1) of the Water Management Act. Section 285(1) provides that the Corporations listed in Schedule 3 of that Act are WSAs. Both Gosford City Council and Wyong Shire Council are listed in Schedule 3 of the Water Management Act and are therefore WSAs. Paragraph 7.2[2] of Schedule 7 of the CCWC Act provides for the removal of the names of both Councils from Schedule 3 of the Water Management Act (and accordingly is the mechanism pursuant to which the Councils would cease to be WSAs). Section 2(1) of the CCWC Act is the general "commencement" provision for the CCWC Act and provides that the CCWC Act commences on a day or days to be appointed by proclamation. Accordingly it would be possible under section 2(1) of the CCWC Act for proclamations to be made to commence some parts of the CCWC Act but not other parts (i.e. staggered commencement). It would be possible under section 2(1) to delay the commencement of paragraph 7.2[2] of

There are then 2 potential ways of using dual WSA status under the Water Management Act. The first involves geographical separation; the second involves functional separation.

#### *Geographical separation*

Section 289 of the Water Management Act provides that the geographic area of operations of a WSA is as may be prescribed by the regulations to the Water Management Act. Presently, regulations made under the Water Management Act specify the WSA area of operations of the Councils to be their respective local government areas. It would be possible under section 289 to pass new regulations under the Water Management Act to geographically divide (or segment) the physical area of WSA operations of the Corporation and each Council. For example, it would be possible as a matter of law to specify in those regulations the area of operations:

- for the Corporation to be those parcels of land in the Gosford and Wyong local government areas which contain water head works and sewerage treatment plants;
- for Gosford City Council to be those areas within the Gosford local government area which are not allocated to the Corporation; and
- for Wyong Shire Council to be those areas within the Wyong local government area which are not allocated to the Corporation.

Having discussed this option with the Working Group, it does not seem appropriate or workable for several practical reasons, including:

- it would be extremely difficult, perhaps not possible, to define with precision those geographic areas for which the Corporation is to be the WSA;
- the model would create three WSAs with differing statutory functions and responsibilities;
- the model is necessarily limited to an inflexible geographic segmentation of operations which may not be efficient or appropriate; and
- the Corporation and each Council would need to levy separate fees and charges for the provision of their respective services which would seem to be confusing and inefficient.

Finally, this model relies upon regulations made by the Governor (which by convention are made on the recommendation of the Minister) and may not provide the Councils with the level of legal certainty they require.

#### *Functional separation*

The second option which could possibly be implemented using regulations made under the Water Management Act is based on functional separation and would involve:

- Gosford City Council being a WSA for the Gosford local government area; and
- Wyong Shire Council being a WSA for the Wyong local government area;

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Schedule 7 of the CCWC Act (being the provision which would result in the Councils ceasing to be WSAs) for an extended period of time or indefinitely. Accordingly, if the commencement of paragraph 7.2[2] of Schedule 7 was delayed beyond 12 months after the establishment of the Corporation (or 24 months if this 12 month period has been extended by proclamation), the Councils would continue to be WSAs at the same point in time as the Corporation becomes a WSA.



- the Corporation being a WSA for the combined Gosford and Wyong local government areas; and
- passing regulations under the Water Management Act to allocate relevant water, sewerage and drainage functions as between the three WSAs.

Under section 289(2) of the Water Management Act, regulations made under that Act may provide that a WSA has, and may exercise, in its area of operations or a specified part of its area of operations:

- (i) only such of the functions of a water supply authority as are specified in the regulation; or
- (ii) all functions of a water supply authority other than functions specified in the regulations.

Using regulations made under section 289(2), it may be possible to allocate relevant water, sewerage and drainage functions as between the relevant Council and the Corporation in respect of their local government area. For example, regulations could allocate strategic and operational planning functions to the Corporation, with the balance of water, sewerage and drainage functions to remain with the Councils.

Whilst this functional separation model is in our view preferable to the geographic separation model, from the Councils' perspective there remain several issues with this option:

- like the geographic separation model, this model would involve 3 entities with statutory responsibility for WSA functions and it may be difficult to delineate with precision the relevant functions of each WSA and therefore ultimate statutory responsibility or statutory liability for a relevant issue;
- the Corporation and each Council would need to levy separate fees and charges for the provision of their respective services. It may be possible, however, for this issue to be dealt with at a practical level by the Corporation, pursuant to section 291 of the Water Management Act, delegating to the Councils the task of billing customers on behalf of the Corporation for functions/services performed by the Corporation, collecting those monies and then passing the relevant collected monies onto the Corporation; and
- ultimately this model relies upon regulations made by the Governor (on the recommendation of the Minister) and may not provide the Councils with the level of legal certainty they require.

## Conclusion

For the reasons set out above, we do not consider that the alternative options identified above provide the Councils with the level of legal certainty and flexibility they are seeking. Accordingly, in our view it will be necessary to amend the CCWC Act to provide the Councils with the level of legal certainty and flexibility they require on this issue. More specific details of our recommended amendments to the CCWC Act are set out in section 6 of this Report.

## 5.2 Transfer of Council assets, rights and liabilities to the Corporation

Section 32 of the CCWC Act authorises the Minister to unilaterally transfer assets, rights and liabilities of either Council to the Corporation without the consent of the relevant Council if such transfers are made 3 years or more after the establishment of the Corporation. Whilst we note that it is possible under section 32(4)(b) and 32(5) of the CCWC Act for the Minister to extend this 3 year period to 5 years, fundamentally Councils are concerned to ensure that it is the Councils who have legal power to transfer the assets, rights and liabilities of the Councils

and that the Minister does not have the power to unilaterally effect such transfers without Council consent.

### **Addressing through regulations made under the CCWC Act**

It is not possible to satisfactorily address this issue through regulations made under the CCWC Act. As noted above, under section 60(1) of the CCWC Act, the Governor cannot make regulations which are inconsistent with the provisions of the CCWC Act. To enact a regulation which overrides the operation of section 32 of the CCWC Act and removes the unilateral power of the Minister to effect the transfer of Council assets, rights and liabilities to the Corporation after 3 years would constitute a regulation which is inconsistent with section 32(4) of the CCWC Act and accordingly not constitute a valid regulation made under section 60.

### **Other alternatives**

We are not aware of any legal alternatives, other than enacting amendments to the CCWC Act, to implement Councils' requirements regarding transfer of assets, rights and liabilities to the Corporation.

### **Conclusion**

In order to address Councils' concerns, we recommend that the CCWC Act be amended in the manner set out in section 6 of this Report.

## **5.3 Council representation on the Board**

As noted in section 3.3 of this Report, in the joint letter dated 15 November 2007 from the Mayor of Gosford City Council and the Mayor of Wyong Shire Council to the then Minister for Water Utilities, Councils indicated their acceptance of the provisions in the CCWC Act which provide that the majority of the directors of the Corporation are to be comprised of independent directors. However Councils indicated that they would like to see Council representation on the Board increased to 2 representatives of each Council (so as to cater for the appointment of 1 staff director and 1 Councillor of each Council). In order to maintain the Board of the Corporation with a majority of independent directors, this would mean that the minimum number of directors would need to be increased to 9 (in the event both Councils opted to appoint 2 nominee directors each).

As we understand it, Councils were seeking these changes on the basis 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 if they are not 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."<sup>7</sup>

In our view there are a number of ways in which this issue could be satisfactorily addressed without amending the CCWC Act.

First, the CCWC Act does not prescribe whether the relevant Council appointed nominee to the Board should be a member of Council or an employee of the Council (e.g. a senior manager). Accordingly, each Council can make its own decision as to the credentials or position of the person it nominates to be its nominee director. If Council was particularly concerned to ensure that its nominee director was possessed of necessary technical skills, it would be open for the Council to appoint an appropriately qualified Council senior manager as its nominee director.

Secondly, and perhaps more importantly, it would be possible to include provisions in the Constitution of the Corporation and Voting Shareholders Agreement of the Corporation which

<sup>7</sup> This is an extract from the Mayors' 15 November 2007 letter to the Minister.

would either require the Board (subject to limited exceptions such as conflict of interest) to allow an additional nominee of each Council to be in attendance in an advisory capacity (**Advisory Nominee**) at any meetings of the Board and to be provided with copies of any Board papers. Whilst the Advisory Nominee would not be a member of the Board (and would not be entitled to vote on Board resolutions), the Board would have the benefit of any advice provided by the Advisory Nominee. The Board would be legally bound to comply with these provisions if included in the Constitution of the Corporation.

Thirdly, it would also be possible to include provisions in the Constitution and Voting Shareholders Agreement requiring the Board to establish and consult with an advisory panel consisting of relevant Council staff members to provide technical and operations advice to the Board.

In order to provide the Councils with further comfort regarding the make-up of the Board, it would also be possible to include provisions in the Voting Shareholders Agreement and Constitution of the Corporation to provide that the Board of the Corporation cannot pass resolutions (ie make binding decisions) in respect certain specified critical matters unless the Board member nominated by each Council votes in favour of the resolution.

### **Conclusion**

We consider that this issue should be able to be adequately addressed in the manner set out above without the need for the CCWC Act to be amended to provide for additional Council appointed directors on the Board.

## 6. Proposed amendments to the CCWC Act

Section 5 of this Report recommends that amendments be made to the CCWC Act to address concerns raised by the Councils in respect of the following matters:

- the procedure and timing for the Corporation becoming the WSA; and
- the Ministers' power to unilaterally transfer assets, rights and liabilities of the Councils' to the Corporation.

Set out below are our recommended amendments to the CCWC Act which, if accepted by the Government, will need to be drafted by NSW Parliamentary Counsel in an amending bill and passed by both Houses of the NSW Parliament. When passed by the Parliament, the bill will require royal assent (through the Governor) before becoming law.

### 6.1 WSA status

We recommend the following amendments to the CCWC Act:

1. Delete subsection 2(5) and replace it with following:

"(5) A proclamation to commence Schedule 7.2[2] or Schedule 7.2 [4] must not be made unless each of the constituent councils has, by resolution of the council, requested the making of the proclamation."

2. Delete subsections 2(6), (7) and (8) as they will be redundant having regard to the amendment to subsection 2(5).

3. Insert new subsection 2(6) as follows:

"(6) The constituent councils are not subject to the control and direction of the Minister under subsection 293(1)(b) of the Water Management Act 2000 as regards passing any resolution of the council under section 2 or making any order under section 32 or paragraph 12 of Schedule 5. "

Refer to section 6.3 below for further background regarding the proposed new subsection 2(6).

### 6.2 Transfer of Council assets, rights and liabilities

We recommend the following amendments to the CCWC Act:

1. Delete subsections 32(2), (3), (4) and (5) and insert new subsections 32(2) and (3) as follows:

(2) A constituent council may, by order in writing, transfer to the Corporation such of the constituent council's assets, rights and liabilities as are specified or referred to in the order.

(3) A constituent council may not make an order under subsection (2) or paragraph 12 of Schedule 5 unless and until the other constituent council has approved the making and form of the order.

2. In paragraph 12 of Schedule 5, delete "The Minister" and insert in its place "The constituent council making a transfer order under subsection 32(2)".

### 6.3 Ministerial power of direction in section 293(1)(b) of the Water Management Act

Whilst not strictly the subject of the Review, Councils should note that section 293(1)(b) of the Water Management Act provides that a water supply authority *"in the exercise of its functions*

*... is subject to the control and direction of the Minister".* This section currently applies to Gosford and Wyong Councils in their capacity as WSAs. Section 321(2) of the Water Management Act then goes on to provide that if a WSA refuses to comply with a direction of the Minister, the Minister may (with the consent of the Minister which administers the Local Government Act) appoint an administrator to exercise all the functions, or specified functions, of the water supply authority.

Whilst we consider that there would be legal doubt as to the ability of the Minister to use this power in section 293(1)(b) to issue directions to the Councils, in their capacity as WSAs, to resolve to commence Schedule 7.2[2] and 7.2[4] of the CCWC Act (which would result in the Corporation becoming the sole WSA) and to make orders to transfer assets of the Councils to the Corporation, proposed new subsection 2 (6) seeks to put the issue beyond doubt by providing that the Minister cannot exercise the power of direction for this purpose.

It also appears anomalous to the Expert Advisor and inconsistent with corporatisation principles that if and when the Corporation becomes the WSA it will also be subject to this power of direction (whereas the State owned corporations which are WSAs are not). The Councils may wish to discuss this issue further with the Government. This issue was raised in an email from the Expert Advisor to the Department dated 10 July 2009.

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## **7. Formation of the Corporation (including key steps and timetable)**

### **7.1 Overview**

Councils have requested the Expert Advisor to include in this Report a plan and timetable for the establishment of the Corporation (assuming that the amendments to the CCWC Act referred to in section 6 of this Report are made to the satisfaction of both Councils).

The key steps and timetable set out below have been prepared on the assumption that, at least for the initial phase of the operations of the Corporation, the Councils will remain as the WSAs for their respective local government areas and use section 291 of the Water Management Act to delegate agreed functions to the Corporation. Based on our discussions with the General Managers and Council representatives on the Working Group, we understand that Councils would initially be seeking to delegate to the Corporation strategic and operational functions that are presently considered by the Board of the Joint Water Authority.

Further work will need to be undertaken in the next phase of the process to identify with greater precision the functions to be performed by the Corporation in its initial operating phase.

Both Councils would undertake in the Voting Shareholders Agreement to implement decisions made by the Corporation in respect of the functions delegated to the Corporation.

Under this model, given that each Council remain as the WSA for its local government area, the Council will remain responsible for day to day service delivery to its constituents and would maintain the legal right under the Water Management Act (as the WSA) to impose and collect all fees, charges and levies for water, sewerage and drainage services (including the functions delegated to the Corporation). That is to say, all revenues from water, sewerage and drainage functions would continue to be collected by and be the property of the respective Councils. The Corporation and the respective Councils would enter into service agreements pursuant to which each Council agrees to fund in their respective proportions the operating costs and expenses of the Corporation in performing the functions delegated to the Corporation.

Under this model there should not be a need to transfer any material assets or contracts of the Councils to the Corporation given the high level nature of the functions to be delegated to the Corporation. Also, whilst Councils will need to consider a staffing plan for the Corporation having regard to the functions delegated to it, the Corporation would seem to require, at least initially, only senior/management employees and perhaps some support staff.

The amendments proposed to the CCWC Act in section 6 of this Report will provide the Councils with flexibility to move to more advanced stages of corporatising their water, sewerage and drainage functions as and when the Councils determine it appropriate to do so. These more advanced stage of corporatisation could take the form of the Councils remaining as the WSA and delegating further functions to the Corporation as time goes on and, ultimately, the Councils resolving that the Corporation become the WSA for the combined Gosford and Wyong local government areas. It is relevant to note that if in the future the Corporation did become the WSA, it would be possible for the Corporation to delegate certain WSA functions back to the Councils use section 291 of the Water Management Act.

### **7.2 Steps and timetable to establish the Corporation**

The essential legal steps required to be undertaken to establish the Corporation, assuming the model referred to in section 7.1 above is adopted as a starting point for the Corporation, are identified below.

In our view, it should be possible, if all parties work together and cooperatively, to complete these steps in an orderly and considered manner in a 6 month timeframe following the

enactment of the recommended amendments to the CCWC Act. Following the establishment of the Corporation, there would need to be a period of time (perhaps another month) for the Corporation to undertake the necessary "house keeping" to place its affairs in order before commencing operations.

**Annexure A** to this Report sets out a possible timetable for the establishment of the Corporation based on the above timeframes.

(a) **Second a Project Manager**

We recommend that Councils' consider seconding a senior Council employee to perform the role of Project Manager to oversee the establishment of the Corporation and the necessary implementation steps. The Project Manager could work closely with the legal advisor to draft the necessary legal documentation and finalise legal due diligence.

(b) **Agree and enact amendments to CCWC Act**

The first step is to agree with the Government the amendments to be made to the CCWC Act (preferably in accordance with the draft amendments set out in section 6 of this Report).

We note, in this regard, that a copy of this Report has been provided to the Department.

In the timetable we have made provision for the relevant amendments to be made to the CCWC Act in the last 2 weeks of October 2010 (both Houses of Parliament are scheduled to sit on 20-22 October and 27-29 October 2009. The drafting and scheduling of any amending legislation will be a matter for the Government (through the responsible Department) to manage.

(c) **Confirm the functions to be delegated to the Corporation**

This is an important step and involves defining with precision the functions to be delegated by the Councils' to the Corporation. This would involve fleshing out in greater detail the precise functions and role to be performed by the Corporation.

(d) **Identify staffing, support, resourcing and premises requirements for the Corporation**

Based on the agreed starting functions and role of the Corporation, this step involves developing:

- an employee/staffing plan for the Corporation, including identifying an organisational structure for the Corporation and the positions, roles and responsibilities and terms and conditions of employment of relevant managers and other employees;
- identifying support and resourcing requirements for the Corporation (including premises, IT, administrative support);
- developing a budget and funding plan for the Corporation.

The staffing and resourcing requirements of the Corporation will necessarily be tied to the functions to be performed by the Corporation. Assuming that the Corporation is to initially perform high level strategic planning and coordination functions, the Working Group envisages that the initial staffing requirements for the Corporation would not be significant (perhaps in the order of 10-15 employees). It may also be that, at least initially, the Corporation could sub-let office space from

one or both of the Councils and enter into shared service arrangements (for the provision administrative support, IT, payroll services etc) by the Councils.

(e) **Further engagement with key stakeholders**

The Councils are committed to engaging with relevant stakeholders leading up to the formation of the Corporation. This should include continuing the constructive dialog which the Expert Advisor has had with representative unions and employee representatives of both Councils to keep them fully apprised of the status of the implementation process and to consider and address issues raised by those stakeholders through the establishment of a working party for this purpose. Section 2 of the Report details key issues raised by the unions and employee representatives in our earlier consultation meetings, including the jurisdictional issue regarding the application of the State or Federal industrial regime to employee of the Corporation. The unions have advised in this regard that their support for the creation of the Corporation is conditional on the enactment of Federal legislation to ensure that employees of the Corporation will remain subject to the NSW State industrial regime.

We recommend that the Councils also engage with the community to ensure that the community is kept up to date with the implementation process and understands the role and functions to be performed by the Corporation. In this regard, it is recommended that the Councils develop an appropriate communications plan.

(f) **Draft and settle key legal implementation documentation**

There will be a range of legal documents which will need to be considered and carefully drafted to establish the Corporation and implement Councils preferred starting model for the Corporation. In summary, the key legal documentation to be prepared is:

**Voting Shareholders Agreement:** the CCWC Act requires the Councils, in their capacity as the shareholders of the Corporation, to enter into a Voting Shareholders Agreement. The purpose of this agreement is to set out the basis on which the Councils' rights as the owners of the Corporation are to be exercised and will also impose obligations on the Councils with respect to matters such as the ongoing funding of the Corporation.

**Constitution of the Corporation:** the CCWC Act requires the Corporation to have a Constitution. The Constitution of the Corporation will have similar operation and effect in relation to the Corporation as the Constitution of a company has in relation to a company. The Constitution would primarily deal with the internal governance and operation of the Corporation.

**Written delegations to the Corporation:** as mentioned above, Councils will delegate certain of their WSA functions to the Corporation pursuant to section 291 of the Water Management Act. These delegations should be made in writing by resolution of each Council and would incorporate the agreed starting functions/role of the Corporation (refer to paragraph (c) above).

**Service Agreements between the Councils and the Corporation:** this would be a formal legal agreement between the Corporation and each Council which would set out the respective rights and obligations of each party with respect to the functions to be performed by the Corporation.



**Statutory Vesting Orders:** the CCWC Act contains provisions which enable orders to be made to effect the transfer of relevant Council employees, assets, rights and liabilities to the Corporation. To the extent necessary (having regard to the starting functions to be performed by the Corporation) written orders could be made to transfer the employment of relevant employees<sup>8</sup>, assets and undertaking of the Councils as necessary. Any transfer of employees would be subject to the statutory protections referred to in section 3.7 of this Report and would need to be considered in the context of the State/Federal industrial relations jurisdictional issues which have been raised by representative unions.

**Operating Licence:** the CCWC Act provides that the Minister may grant an operating licence to the Corporation to enable the Corporation to carry out its functions including those delegated to it by the constituent Councils. Further dialog will need to be entered into with the Department concerning the terms of any such licence.

**Council Resolutions:** the CCWC Act requires that resolutions of both Councils be passed to:

- approve the Constitution for the Corporation;
- enter into the Voting Shareholders Agreement;
- request the Minister to recommend to the Governor that the proclamation be made to establish the Corporation.

**Minister's recommendation to establish the Corporation:** the CCWC Act requires that the proclamation to commence section 4 of the CCWC Act (which would establish the Corporation) only be made on the Minister's recommendation.

**Proclamation to commence section 4 and other relevant sections:** finally, a proclamation will need to be made by the Governor to commence section 4 of the CCWC Act (which will establish the Corporation) and other relevant sections of the CCWC Act (excluding paragraphs 7.2[2] and [4] of Schedule 7).

(g) **Identify appropriate Board members**

As noted in section 3.5 of this Report, the board of the Corporation is appointed by the Governor, on the recommendation of the Councils. The Councils will need to consider appropriate candidates for board positions (noting that if the Councils each decide to appoint a nominee director, there will need to be at least 3 other independent directors). Such independent directors must be persons "who, in the opinion of the voting shareholders, will assist the Corporation to achieve its principal objectives.

(h) **Dissolution of Joint Water Authority**

On the commencement of operations of the Corporation, the role of the Gosford/Wyong Councils' Joint Water Authority will be redundant and it will be necessary to disband the Authority. The cost sharing arrangements in the Water Authority Agreement will need to be preserved by either incorporating those arrangements into the Voting Shareholders Agreement to be entered into by the Councils or preserving the relevant provisions in the current agreement.

<sup>8</sup> Refer to section 2 of this Report for details of issues raised by unions.

As noted above, **Annexure A** of this Report contains a possible implementation timetable which addresses the steps referred to above.

Annexure A - Possible CCWC Implementation Timetable

Possible CCWC Implementation Timetable

	Sep/Oct 09	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	CCWC established
<b>Steps/Action</b>								
Agree amendments to CCWC Act	■							
Draft amendments to CCWC Act		■						
Enact amendments to the CCWC Act		■						
Second Project Manager from Councils		■	■	■	■	■	■	
Confirm functions to be delegated to Corporation		■	■	■				
Further legal, financial and operational due diligence			■	■	■	■		
Further engagement with key stakeholders		■	■	■	■			
Draft and settle key legal documents (Constitution, Shareholders Agreement, Delegations, licence)			■	■	■	■		
Confirm staffing, asset, premises and resource requirements			■	■	■	■		
Identify Board members elect					■	■	■	
Council resolutions to approve establishment of Corporation						■	■	
Ministers recommendation to establish Corporation							■	■
Proclamations to establish Corporation and commence CCWC Act (except Sch 7.2[2] & [4]) effective 1/1/2010							■	
Corporation established								■
Governor appoints Directors on Council's recommendation								■
Transfer relevant staff and undertaking to Corporation								■
Board to prepare draft Statement of Corporate Intent								■
Board to appoint CEO								■
Dissolve JWA (but preserve joint funding arrangements)								■
Minister grants operating licence								■
Corporation commences operations								■

**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.*

**ORDINARY MEETING HELD ON 12 DECEMBER 2007**

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

***That the matter be deferred for consultation with stakeholders in particular, the unions, the community and Gosford City Council.***

**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.*

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

**Central Coast Water Corporation (contd)**

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- 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.*
- 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)***

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## **Central Coast Water Corporation (Attachment 1)**

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### **WYONG SHIRE COUNCIL**

31 October 2007  
To the Ordinary Meeting of Council

## **439 Mayoral Minute – Central Coast Water Corporation**

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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.

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

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**Central Coast Water Corporation (Attachment 1) (contd)**

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31 October 2007  
To the Ordinary Meeting of Council

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**Mayoral Minute – Central Coast Water Corporation (contd)**

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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.

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

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**Central Coast Water Corporation (Attachment 1) (contd)**

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31 October 2007  
To the Ordinary Meeting of Council

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**Mayoral Minute – Central Coast Water Corporation (contd)**

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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.



12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

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**Central Coast Water Corporation (Attachment 1) (contd)**

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31 October 2007  
To the Ordinary Meeting of Council

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**Mayoral Minute – Central Coast Water Corporation (contd)**

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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.

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

### **Central Coast Water Corporation (Attachment 1) (contd)**

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31 October 2007  
To the Ordinary Meeting of Council

### **Mayoral Minute – Central Coast Water Corporation (contd)**

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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.*

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

### **Central Coast Water Corporation (Attachment 1) (contd)**

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31 October 2007  
To the Ordinary Meeting of Council

### **Mayoral Minute – Central Coast Water Corporation (contd)**

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- 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.*
- 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.*

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

### **Central Coast Water Corporation (Attachment 1) (contd)**

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31 October 2007  
To the Ordinary Meeting of Council

### **Mayoral Minute – 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.*

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.*

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

### **Central Coast Water Corporation (Attachment 1) (contd)**

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31 October 2007  
To the Ordinary Meeting of Council

#### **Mayoral Minute – Central Coast Water Corporation (contd)**

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*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.**

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

**Central Coast Water Corporation (Attachment 1) (contd)**

---

31 October 2007  
To the Ordinary Meeting of Council

**Mayoral Minute – Central Coast Water Corporation (contd)**

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- 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.*
- 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.

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## 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

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## **Central Coast Water Corporation (Attachment 2) (contd)**

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Page: 2  
CC Water Corporation

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



12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## **Central Coast Water Corporation (Attachment 2) (contd)**

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Page: 3  
CC Water Corporation

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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12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

**Central Coast Water Corporation (Attachment 2) (contd)**

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Page: 4  
CC Water Corporation

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

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## Central Coast Water Corporation (Attachment 2) (contd)

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Message

Page 1 of 1

**Schijvens, Lisa**

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**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

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## **Central Coast Water Corporation (Attachment 2) (contd)**

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*DRAFT – IN CONFIDENCE – WITHOUT PREJUDICE*

### **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.

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## **Central Coast Water Corporation (Attachment 2) (contd)**

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*DRAFT – IN CONFIDENCE – WITHOUT PREJUDICE*

- 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 revokable 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*

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## **Central Coast Water Corporation (Attachment 2) (contd)**

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### *DRAFT – IN CONFIDENCE – WITHOUT PREJUDICE*

*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.

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

## **Central Coast Water Corporation (Attachment 2) (contd)**

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### *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

12 December 2007  
To the Ordinary Meeting of Council

General Manager's Report

**Central Coast Water Corporation (Attachment 2) (contd)**

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*DRAFT – IN CONFIDENCE – WITHOUT PREJUDICE*

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)

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**The Hon. Nathan Rees MP**

Minister for Water Utilities  
Minister for Emergency Services

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7 December 2007

Councillor Warren Welham  
Mayor  
Wyong Shire Council  
PO Box 20  
Wyong 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)**

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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

## **2.2 Joint Bid to Host the NSW Surf Lifesaving Championships**

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TRIM REFERENCE: f2006/00977 - D01988142

AUTHOR: GM

### **SUMMARY**

Surf Life Saving New South Wales has called for Expressions of Interest to host the 2011 to 2013 State Surf Lifesaving Championships. Both Gosford City and Wyong Shire Councils have considered specific reports on this matter and have resolved independently to support a bid to secure these Championships.

### **RECOMMENDATION**

***That Council receive the report on the Joint Bid to Host the NSW Surf Lifesaving Championships.***

### **BACKGROUND**

Council resolved (10 June 2009) on the motion of Councillor Best and seconded by Councillor Mathews:

- “1 That Council support Surf Lifesaving Central Coast's bid to host the 2011, 2012 and 2013 NSW Surf Lifesaving Championships.*
- 2 That Council seek the support and partnership of Gosford City Council to afford the event regional status.*
- 3 That Council provide a comprehensive report to Council's meeting on 22 July 2009 with a view to submitting a joint expression of interest from the two Councils in conjunction with Surf Lifesaving Central Coast in accordance with the bid's August deadline.*
- 4 That subject to a Joint Meeting of Gosford/Wyong Councils being convened prior to the bid deadline this matter be included as an agenda item:*

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

AGAINST: NIL.”

Council resolved (22 July 2009) on the motion of Councillor Symington and seconded by Councillor Mathews:

*“That Council prepare a joint submission with Gosford City Council to seek the 2011, 2012, 2013 State Surf Life Saving Championships.*

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

AGAINST: NIL. “

## 2.2 Joint Bid to Host the NSW Surf Lifesaving Championships (contd)

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Gosford City resolved (7 July 2009) in part, as follows:

- "A Gosford City Council, in conjunction with Wyong Shire Council, support in principle the hosting of the NSW Surf Life Saving Championships at a Central Coast location, pending a further report to Council on the full logistical and cost implications.*
- B Council Officers liaise with Wyong Shire Council, Surf Lifesaving Central Coast and Surf Life Saving New South Wales regarding all logistical and financial implications associated with hosting the event.*
- C Council Officers report back to Council on 4 August 2009 prior to an EOI being submitted."*

Gosford City resolved (4 August 2009) as follows:

- "A Council Officers liaise with Wyong Shire Council and SLSCC Officers to prepare and submit a joint submission to host the 2011, 2012 and 2013 NSW Surf Life Saving Championships.*
- B If the Expression of Interest is successful, a further report be brought back to Council outlining the funding split between Gosford City and Wyong Shire Councils and options to fund the hosting fee of \$60,000."*

### **DISCUSSION**

The previous reports submitted to each Council have indicated the economic and social benefits associated with this iconic Australian event and there is no doubt that should the Central Coast bid be successful there will be many opportunities to further showcase our region to a larger audience across a wide range of media outlets.

The bid will be made on behalf of both Councils by Surf Lifesaving Central Coast who will also assist with the workforce required and certain logistical requirements associated with the event. Staff from both Councils have met with representatives of both Surf Lifesaving Central Coast and New South Wales Surf Lifesaving to consider what would satisfy the criteria set out in the bid document. The outcome of these meetings and site visits is for the 2011 Championship to be held at Shelly Beach and the 2012 Championship at Ocean Beach /Umina, with the venue for the 2013 Championships being determined by both Councils at a later date.

The two Councils in association with Surf Lifesaving Central Coast are currently preparing the bid document which will be lodged later this month. The successful bid will be formally announced at the 2010 Championships but the successful bidder would be contacted in late 2009.

### **COST OF STAGING THE NSW SURF LIFE SAVING CHAMPIONSHIPS**

Surf Life Saving New South Wales has identified a minimum hosting fee of \$60,000 per season plus GST and CPI. In addition there will be in-kind support required which will include:

- Equipment such as tractors and drivers, flat top four-wheel-drive utilities and quad bikes and beach cleaning equipment.
- Daily waste removal services.

- Road message boards.
- Electricity and plumbing upgrades as required (three-phase power).
- Beach access mats for access purposes.
- Temporary fencing.
- Traffic management plan and support.
- Beach access upgrades where necessary.
- General and beach restoration works at the completion of the event where necessary.
- Other works as identified.

Should the Central Coast bid be successful discussions will be conducted between both Gosford and Wyong Councils to determine the best approach of delivering the in-kind works. It should be noted that discussions held among staff have indicated that there is a strong possibility that sponsorship may be found for some in-kind works, particularly in areas such as waste removal and supplier of barrier fencing, which would reduce the cost of the in-kind support required.

## **CONCLUSION**

Early discussions with several state and community organisations indicate strong community support for this event. In addition the private sector have displayed a willingness to become involved and in some cases are willing to provide financial assistance.

This iconic Australian sporting event that will attract many thousands of people both competitors and spectators to the Central Coast region is an event that both Councils should actively seek as it will inject a significant amount of money into the Central Coast economy and showcase the area to a wider audience.

## **ATTACHMENTS**

Nil