

Voting Shareholders' Agreement

Gosford City Council

Wyong Shire Council

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Voting Shareholders' Agreement made on**2012****Parties****Gosford City Council** of 49 Mann Street, Gosford, NSW 2250 (**GCC**)**Wyong Shire Council** of 2 Hely Street, Wyong, NSW 2259 (**WSC**)**Background**

- A. Central Coast Water Corporation has been established under section 4 of the Central Coast Water Corporation Act 2006 (NSW) (**Corporation**).
- B. Gosford City Council and Wyong Shire Council hold the following Shares and equity proportions in the Corporation:

Shareholder	Number of Shares	Equity Proportion
Gosford City Council	1 Share	50%
Wyong Shire Council	1 Share	50%

- C. GCC and WSC have agreed to terminate the February 2011 Voting Shareholders' Agreement entered into by GCC and WSC and replace it with this Agreement.
- D. This Agreement is the voting shareholders agreement for the purposes of section 10 of the Central Coast Water Corporation Act 2006 (NSW).

Operative provisions**1. Definitions, interpretation and other matters****1.1 Definitions**

In this Agreement:

50/50 Sharing Principle has the meaning given in clause 4(a).

Board means the board of Directors of the Corporation.

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

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

Chairperson means the person from time to time appointed to, or acting in the capacity of, the position of chairperson of the Board.

Constitution means the Constitution of the Corporation (as altered or added to from time to time) presently in the form of **Schedule 1**.

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

Confidential Information means:

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

Councils means GCC and WSC.

Councils' Local Government Area means the combined area of:

- (a) WSC's local government area under the Local Government Act 1993 (NSW); and
- (b) GCC's local government area under the Local Government Act 1993 (NSW).

Deputy Director has the same meaning as in the Constitution.

Director means a person appointed to the office of director of the Corporation (and includes as the context requires any Deputy Director appointed for the Director).

Dispose in relation to a person and any property means:

- (a) to sell, offer for sale, transfer, assign, surrender, gift, create an Encumbrance or option over, declare oneself a trustee of or part with the benefit of or otherwise dispose of that property (or any interest in it or any part of it);
- (b) to do anything which has the effect of placing a person in substantially the same position as if the person had done any of the things specified in paragraph (a); or
- (c) to attempt to do any of the things specified in paragraph (a),

and **Disposal** has a corresponding meaning.

Dispute has the meaning given in clause 15.1(a).

Disputing Parties has the meaning given in clause 15.1.

Encumbrance includes any mortgage, charge, pledge, lien, assignment, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person by way of security for the payment of a debt or any other monetary obligation.

Establishment Date means the date section 4 of the CCWC Act commenced operation.

February 2011 Voting Shareholders' Agreement has the meaning given in clause 1.5(a).

Financial Year has the same meaning as in the Constitution.

GCC means Gosford City Council.

Gosford Director means the Director referred to in clauses 9.1(b)(i) and 9.1(c)(i) and (ii).

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

Implementation Workplan means the document entitled "*Central Coast Water Corporation and Joint Services Business Implementation Workplan*" (as amended from time to time), the most recent version of which (as at the date of this Agreement) forms **Schedule 2**.

Independent Director means any Director referred to in clauses 9.1(b)(iii) and 9.1(c)(v).

independent nominees has the meaning given in clause 9.1(b)(iii).

Joint Services Business means the Joint Services Business referred to in clause 8.3(g).

JSB Services has the meaning given in clause 8.3(g).

Long Term Asset Leases means the circa 40 year asset leases of the Councils' water and waste water assets to be granted by the Councils to the Corporation as contemplated by clause 8.3(a).

Minister has the same meaning as in the CCWC Act.

MOU means the Memorandum of Understanding dated 9 August 2010 entered into between GCC, WSC and the Minister.

Net Profit means the Corporation's total profit for the Financial Year after:

- (a) providing for income tax or its equivalent under section 20 of the CCWC Act;
- (b) excluding any unrealised capital gains from upwards revaluation of non-current assets; and
- (c) excluding any non cash donated assets (such as in-kind developer contributions).

Notice of Proposed Direction has the meaning given in clause 13(b).

Notice of Dispute has the meaning given in clause 15.1.

Notified Matter has the meaning given in clause 4(b)

Notifying Council has the meaning given in clause 1.4(b).

Project Control Group means a joint committee of 9 members, comprising:

- (a) the General Manager of GCC and 2 other employees or councillors of GCC as may be nominated by the General Manager of GCC;
- (b) the General Manager of WSC and 2 other employees or councillors of WSC as may be nominated by the General Manager of WSC;
- (c) 1 person nominated by the Corporation; and
- (d) 2 persons nominated by Unions.

Recipient Council has the meaning given in clause 1.4(b).

Relevant Financial Year has the meaning given in clause 10.2(a).

Second Level has the meaning given in clause 15.3(b).

Selection Committee has the meaning given in clause 9.1(d).

Share means a share in the capital of the Corporation.

transfer values has the meaning given in clause 11.1(c).

WSC means Wyong Shire Council.

Wyong Director means the Director referred to in clauses 9.1(b)(ii) and 9.1(c)(iii) and (iv).

1.2 Interpretation

In this Agreement:

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

- (p) a reference to writing includes any mode of representing or reproducing words, figures or symbols in a permanent and visible form; and
- (q) if any calculations relating to the issue or transfer of Shares under this Agreement result in a number that is, or includes, a fraction, that fraction will be rounded upwards to the nearest whole number.

1.3 Parties to observe and implement Agreement

Each of WSC and GCC undertakes to:

- (a) exercise all its votes, powers and rights under the Constitution to give full effect to this Agreement; and
- (b) perform and observe:
 - (i) all of the terms and conditions to be performed or observed on its part under this Agreement;
 - (ii) the MOU;
 - (iii) the Constitution;
 - (iv) all other agreements and arrangements entered into by that party with the Corporation or for the benefit of the Corporation; and
- (c) otherwise do all things necessary and desirable to give effect to this Agreement.

1.4 Exercise of rights by GCC and WSC

- (a) Each of WSC and GCC may, without limitation, make any appointment, exercise any right or give any consent, approval, requisition, authorisation or notice of that Council under this Agreement by a document:
 - (i) signed by the Mayor and the General Manager of that Council; or
 - (ii) to which the seal of the relevant Council has been affixed and attested in accordance with regulation 400(1) of the Local Government (General) Regulation 2005 (NSW),and given as relevant in accordance with clause 17.1.
- (b) Any document provided by one Council (**Notifying Council**) to the other Council (**Recipient Council**) in accordance with the requirements of clause 1.4(a) shall be deemed to have been duly issued by the Notifying Council and may be relied on by the Recipient Council as having been validly issued.

1.5 Termination of February 2011 Voting Shareholders' Agreement

- (a) The Voting Shareholders' Agreement entered into by GCC and WSC in February 2011 is, subject to clause 1.5(b), hereby terminated with immediate effect and replaced by this Agreement (**February 2011 Voting Shareholders' Agreement**).
- (b) The accrued rights and obligations of any party under the February 2011 Voting Shareholders' Agreement in respect of any breach of the February 2011 Voting Shareholders' Agreement by the other party prior to the date of this Agreement survive termination of the February 2011 Voting Shareholders' Agreement.

1.6 Termination of the MOU

The Councils wish to terminate the MOU and will, through their respective Mayors and/or General Managers approach the Minister with a view to obtaining the Minister's consent to the termination of the MOU and, if appropriate, entry into a replacement document.

2. Council approvals and resolutions

2.1 Approval of this Agreement

- (a) GCC has by resolution of the Council:
 - (i) approved this Agreement to be the voting shareholders' agreement for the purposes of section 10 of the CCWC Act; and
 - (ii) authorised GCC to enter into this Agreement.
- (b) WSC has by resolution of the Council:
 - (i) approved this Agreement to be the voting shareholders' agreement for the purposes of section 10 of the CCWC Act; and
 - (ii) authorised WSC to enter into this Agreement.

2.2 Approval of the Constitution of the Corporation

- (a) GCC has by resolution of the Council approved the document which forms **Schedule 1** to this Agreement to be the constitution of the Corporation (**Constitution**).
- (b) WSC has by resolution of the Council approved the Constitution to be the initial constitution of the Corporation.

2.3 Request to Minister to recommend the establishment of the Corporation

- (a) GCC by resolution of the Council made on 17 February 2011 authorised GCC to request the Minister to recommend (pursuant to section 2(2)(a) of the CCWC Act) that the proclamation to commence section 4 of the CCWC Act be made.
- (b) WSC by resolution of the Council made on 17 February 2011 authorised WSC to request the Minister to recommend (pursuant to section 2(2)(a) of the CCWC Act) that the proclamation to commence section 4 of the CCWC Act be made.
- (c) GCC and WSC jointly executed and delivered to the Minister a letter requesting the Minister to recommend to the Governor that the proclamation to commence section 4 of the CCWC Act be made.
- (d) The proclamation to commence section 4 of the CCWC Act was made on 25 February 2011.

2.4 Selection of directors

WSC and GCC will follow the procedures set out in clause 9.1 of this Agreement as regard the selection of any person for appointment as a director of the Corporation (**Recommended Director**).

3. Ownership of the Corporation

- (a) Only WSC and GCC may hold Shares in the Corporation.
- (b) WSC and GCC must at all times hold an equal number of Shares in the Corporation and be in a position to cast an equal number of votes.
- (c) The initial share capital of the Corporation is to be 2 Shares to be held as to one share by GCC and as to one share by WSC.

4. 50/50 Sharing Principle

- (a) It is the intention of GCC and WSC that the Corporation and the Joint Services Businesses constitute a 50/50 venture between the Councils in terms of the sharing matters such as costs, benefits, incomes, expenditure and risk (**50/50 Sharing Principle**).
- (b) If either Council considers that the application of the 50/50 Sharing Principle will give rise to any material inequity as between the Councils or material detriment to that Council having regard to the venture as a whole, the General Manager or Mayor of that Council may give written notice to the other Council of the matter (**Notified Matter**) and request a meeting be held between the Mayors and General Managers of each Council within 14 days of issue of the notice.
- (c) If the Councils are unable to resolve the Notified Matter within 45 days of the issue of the meeting notice, the Councils shall jointly appoint and pay for an appropriately qualified specialist or professional to assist them to resolve the Notified Matter.
- (d) Clause 6 will, without limitation, apply in respect of any Notified Matters and the associated discussions between the Councils.

5. No disposal of shares

- (a) WSC must not sell or otherwise Dispose of any Shares held by WSC in the Corporation.
- (b) GCC must not sell or otherwise Dispose of any Shares held by GCC in the Corporation.

6. Good faith dealings

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

7. Principal Objectives

- (a) The principal objectives of the Corporation are as prescribed in section 5 of the CCWC Act.
- (b) Each of the principal objectives of the Corporation are of equal importance.

8. Implementation

8.1 Principal place of business

The principal place of business of the Corporation is to be situated in the Councils' Local Government Area.

8.2 Implementation Workplan for the Corporation and the Joint Services Business

- (a) CCWC and WSC have each approved the Implementation Workplan which sets out the agreed work plan for the establishment of the Corporation and the Joint Services Business. The Implementation Workplan contains details of what needs to be done and how the program should be delivered.
- (b) It is intended that the Implementation Workplan is adapted over time as the program changes and the proposed approach, activities, steps and timeframes set out in the Implementation Workplan are to be used as a guide to help develop further detailed plans.
- (c) GCC and WSC agree to co-operate in good faith and use reasonable endeavours to progress the Implementation Workplan (as adapted from time to time) in accordance with the timeframes set out in that document (as adapted from time to time).

8.3 High level overview of structure and timelines

As at the date of this Agreement, GCC and WSC have agreed in principle (subject to the conduct of further detailed due diligence in accordance with the Implementation Workplan) that:

Long Term Asset Leases

- (a) each Council will grant a long term lease (circa 40 years) of its water and wastewater assets to the Corporation (on terms to be agreed), such leases commencing on or around 1 July 2017;
- (b) assets will be leased on an "as is basis";
- (c) the Corporation will become a "water supply authority" under the Water Management Act 2000 (NSW) in respect of water and wastewater functions (but not drainage functions) for the Councils' Local Government Areas on or around commencement of the Long Term Asset Leases;
- (d) each Council will:
 - (i) cease to be a water supply authority under the Water Management Act 2000 (NSW) in respect of water and wastewater functions for the Councils' Local Government Areas on the date the Corporation becomes the water supply authority in respect of those functions as contemplated by clause 8.3(c);
 - (ii) remain a water supply authority under the Water Management Act 2000 (NSW) in respect of drainage functions for their respective Councils' Local Government Areas;

- (e) asset management and regulatory services staff of each Council will be transferred, in accordance with the employees and Councils' respective rights and obligations under the CCWC Act, to the Corporation with effect from or around 1 July 2014;
- (f) the remaining water and wastewater employees of each Council will be transferred, in accordance with the employees and Councils' respective rights and obligations under the CCWC Act, to the Corporation with effect from or around 1 July 2017;

Joint Services Business

- (g) a Joint Services Business will be established (in accordance with a legal structure and other terms to be agreed between the Councils) to exclusively provide human resources (HR), information technology (IT), finance, plant/fleet (and such other services as may be agreed by the Councils) to each Council and the Corporation (**JSB Services**);
- (h) the Joint Services Business is to be established on or around 1 July 2014 and will commence, on or around that date, to progressively provide the JSB Services on an exclusive basis to each Council and the Corporation with a view to being fully operational and providing all JSB Services to the Councils and the Corporation on an exclusive basis from 1 July 2017;
- (i) employees of each Council necessary for the Joint Services Business to supply the JSB Services will be progressively transferred from the Councils to the Joint Services Business;
- (j) it is the intention of both Councils that Council employees transferred to the JSB shall enjoy and be entitled to equivalent employment protections as those protections provided under the CCWC Act to Council employees transferred to the Corporation.

8.4 Employees - protection from forced redundancy

GCC and WSC have agreed that relevant permanent award employees of the Councils should be treated consistently, fairly and equitably and to this end permanent award employees:

- (a) transferred to the Corporation or the Joint Services Business; or
- (b) who remain as employees of the Councils and are employed in respect of functions transferred to the Corporation or the Joint Services Business,

should have the benefit of protections from redundancy based on the principle that those employees should be protected from forced redundancy until 3 years after the commencement of the Long Term Asset Leases, irrespective of the date on which the relevant employee was transferred to the Corporation or the Joint Services Business.

9. Selection, appointment and removal of Directors

9.1 Selection of Directors

- (a) GCC and WSC agree that, for the purposes of the CCWC Act, they will make joint recommendations in regard to all persons to be appointed as Directors of the Corporation.
- (b) For such period as the CCWC Act requires that no more than 2 Directors be appointed from the councillors and employees of the Councils (one from each)

GCC and WSC will jointly procure that 5 persons be appointed as the initial Directors of the Corporation as follows:

- (i) one of those persons will be the person who holds the office of General Manager of GCC or another employee of GCC nominated by the General Manager of GCC;
 - (ii) one of those persons will be the person who holds the office of General Manager of WSC or another employee of WSC nominated by the General Manager of WSC; and
 - (iii) the remaining 3 persons will be selected in accordance with the selection process and criteria set out in clause 9.1(d) (**independent nominees**).
- (c) If the CCWC Act is amended to allow no more than 4 directors to be appointed from the councillors and employees of the Councils (two from each) GCC and WSC will jointly procure that 7 persons are appointed as the Directors of the Corporation as follows:
- (i) one of those persons will be the person who holds the office of General Manager of GCC or another employee of GCC nominated by the General Manager of GCC;
 - (ii) one of those persons will be an employee or Councillor of GCC (in addition to any employee nominated under clause 9.1(c)(i)) nominated by the General Manager of GCC;
 - (iii) one of those persons will be the person who holds the office of General Manager of WSC or another employee of WSC nominated by the General Manager of WSC;
 - (iv) one of those persons will be an employee or Councillor of WSC (in addition to any employee nominated under clause 9.1(c)(iii)) nominated by the General Manager of WSC; and
 - (v) the remaining 3 persons will be selected in accordance with the selection process and criteria set out in clause 9.1(d) (**independent nominees**).
- (d) The criteria and selection process for an independent nominee will be as follows:
- (i) WSC and GCC will form a selection committee comprising up to 4 members nominated by WSC (which nominees shall include the General Manager of WSC and at least one Councillor of WSC) and up to 4 members nominated by GCC (which nominees shall include the General Manager of GCC and at least one Councillor of GCC) (**Selection Committee**);
 - (ii) the Selection Committee will prepare a shortlist of candidates for consideration at a joint meeting of the Councils. The Selection Committee shall include with the shortlist a summary of the credentials of each shortlisted candidate. The Selection Committee may also rank the shortlisted candidates as against each other (however such rankings will not be binding on the Councils) and make recommendations as to who should be the Chairperson (should the CCWC Act require that the Chairperson be one of the independent nominees). Each shortlisted candidate:

- A. must not be an employee or councillor of WSC or GCC or have been an employee or councillor of WSC or GCC in the 12 months immediately preceding that person being shortlisted;
 - B. must be a person who in the opinion of the Selection Committee will assist the Corporation to achieve its principal objectives as specified in the CCWC Act; and
 - C. must be approved by a majority of members of the Selection Committee.
- (e) GCC and WSC will procure that a joint meeting of the Councils is convened and held to consider the candidates proposed by the Selection Committee and to select the relevant number of independent nominees (**First Joint Meeting**). If the Councils cannot reach agreement at the First Joint Meeting regarding the identity of any or all of the independent nominees, a further joint meeting of the Councils will be held within 10 days of the First Joint Meeting to consider the outstanding nominations.
 - (f) When the identity of the relevant number of independent nominees has been determined under clause 9.1(e), GCC and WSC will jointly procure the appointment of the agreed independent nominees as Directors of the Corporation.
 - (g) The terms of appointment of each Director shall be as set out in the instrument of appointment for the relevant Director.

9.2 Chairperson

- (a) In accordance with article 8.12 of the Constitution, GCC and WSC shall recommend one of the Independent Directors for appointment as Chairperson of the Board (including any replacement Chairperson from time to time).
- (b) If either GCC or WSC wishes to remove a Director from the office of Chairperson, that party shall provide the other party with written notice of the same including the party's reasons for seeking to remove the Director as Chairperson. If the other party agrees to the removal of the Director as the Chairperson, GCC and WSC will jointly procure removal of that Director from the office of Chairperson.

9.3 Removal of Directors

- (a) If either GCC or WSC wishes to remove a Director from office pursuant to article 8.2 of the Constitution, that party shall provide the other party with written notice of the same including the party's reasons for seeking to remove the Director. If the other party agrees to the removal of the Director the subject of the notice, GCC and WSC will jointly procure the removal of that Director.
- (b) GCC will support any proposal by WSC to remove and replace a Wyong Director.
- (c) WSC will support any proposal by GCC to remove and replace a Gosford Director.

9.4 Deputy Directors

If any Director wishes to have a Deputy Director appointed for that Director, GCC and WSC may request the Selection Committee to consider and make recommendations to the Councils with respect to the appointment. WSC will support the appointment of any Deputy Director for the Gosford Director proposed for appointment by the Gosford Director or GCC. GCC will

support the appointment of any Deputy Director for the Wyong Director proposed for appointment by the Wyong Director or WSC.

10. Funding and supporting the Corporation

10.1 Funding for period up to 30 June 2017

- (a) GCC and WSC acknowledge that:
 - (i) in the period up to 30 June 2017, the Corporation may be earning insufficient revenue to meet all of the costs, expenses and liabilities of the Corporation; and
 - (ii) accordingly the Corporation may require financial and other support from GCC and WSC during this period to perform its functions and remain solvent.
- (b) GCC and WSC have jointly determined an initial funding budget for the Corporation for the periods from:
 - (i) the Establishment Date until 30 June 2012; and
 - (ii) 1 July 2012 to 30 June 2013.
- (c) For each of the 12 month periods:
 - (i) 1 July 2013 to 30 June 2014;
 - (ii) 1 July 2014 to 30 June 2015;
 - (iii) 1 July 2015 to 30 June 2016; and
 - (iv) 1 July 2016 to 30 June 2017,
 GCC and WSC will, in consultation with the Corporation:
 - (v) agree a funding budget for the Corporation for that relevant period; and
 - (vi) agree the nature and extent of any services to be provided by either or any of GCC, WSC or the Joint Services Business to the Corporation and the Councils during that period and the terms on which any such services will be provided.
- (d) GCC and WSC agree that all funding of the Corporation to be provided by the Councils pursuant to this clause 10.1 will be contributed equally by GCC and WSC.

10.2 Dividends

- (a) If for the purposes of article 13.1(d) of the Constitution, the Voting Shareholders cannot reach agreement as between themselves as to the amount, time for payment or method of payment of any dividend of the Corporation for a relevant Financial Year (**Relevant Financial Year**) within 30 days of receipt of the audited financial statements of the Corporation for the Relevant Financial Year, the Voting Shareholders will, subject always to article 13.1(a) of the Constitution, agree with the Directors or make a determination under article 13.1(d) of the Constitution that a cash dividend equal to "A" or "B" (whichever is the greater amount) be declared and paid within 30 days of the date agreement is reached with the directors or the determination is made (as the case may be):

- (i) **where "A" is** an amount equal to the aggregate amount of all dividends declared and paid by the Corporation in respect of the Financial Year immediately preceding the Relevant Financial Year (**Prior Financial Year**) multiplied by 1.10; and
 - (ii) **where "B" is** an amount equal to 50% of the Net Profit of the Corporation for the Relevant Financial Year as disclosed in the audited financial statements of the Corporation for the Relevant Financial Year.
- (b) The Voting Shareholders will do all things necessary to give effect to this clause.
 - (c) If the application of this clause 10.2 would result in a contravention of article 13.1(a) of the Constitution, the amount of the dividend for the Relevant Financial Year will be reduced to the extent necessary to comply with article 13.1(a).

10.3 Senior Manager

Prior to the appointment of a Chief Executive Officer of the Corporation it is the intention of GCC and WSC that the Corporation appoint a Senior Manager of suitable experience and expertise who may be seconded from GCC or WSC.

11. Transfer of Council assets, rights, liabilities and employees to the Corporation or the Joint Services Business

11.1 Transfers to the Corporation

- (a) GCC and WSC may from time to time request the Project Control Group to consider and identify (having regard to the Implementation Workplan) details of any employees, assets, rights or liabilities of either GCC or WSC which should be transferred to the Corporation to enable it to perform its functions and the proposed date or dates for such transfers.
- (b) For each employee, asset, right or liability of GCC or WSC identified by the Project Control Group for transfer to the Corporation, on or before the relevant proposed transfer date nominated by the Project Control Group:
 - (i) GCC shall, if it is in agreement with the relevant recommendation of the Project Control Group, procure that a transfer order (which complies with the requirements of the CCWC Act and this clause 11) is made by GCC to effect the transfer to the Corporation with effect from the proposed transfer date of those employees, assets, rights or liabilities of GCC to be transferred; and
 - (ii) WSC shall, if it is in agreement with the relevant recommendation of the Project Control Group, procure that a transfer order (which complies with the requirements of the CCWC Act and this clause 11) is made by WSC to effect the transfer to the Corporation with effect from the proposed transfer date of those employees, assets, rights or liabilities of WSC to be transferred.
- (c) The value or values at which any asset, right or liability is to be transferred to the Corporation will be determined in accordance with the requirements of the CCWC Act (**transfer values**).
- (d) The consideration payable by or to the Corporation:

- (i) in respect of any assets, rights or liabilities transferred to the Corporation by GCC will be as agreed between GCC and WSC; and
- (ii) in respect of any assets, rights or liabilities transferred to the Corporation by WSC will be as agreed between GCC and WSC.

11.2 Transfers to the Joint Services Business

- (a) GCC and WSC may from time to time request the Project Control Group to consider and identify (having regard to the Implementation Workplan) details of any employees, assets, rights or liabilities of either GCC or WSC which should be transferred to the Joint Services Business to enable it to perform its functions and the proposed date or dates for such transfers.
- (b) For each employee, asset, right or liability of GCC or WSC identified by the Project Control Group for transfer to the Joint Services Business, on or before the relevant proposed transfer date nominated by the Project Control Group:
 - (i) GCC shall, if it is in agreement with the relevant recommendation of the Project Control Group, procure that the transfer is made by GCC to the Joint Services Business in accordance with the terms of any applicable legislation and otherwise on terms agreed with WSC; and
 - (ii) WSC shall, if it is in agreement with the relevant recommendation of the Project Control Group, procure that the transfer is made by WSC to the Joint Services Business in accordance with the terms of any applicable legislation and otherwise on terms agreed with GCC.
- (c) The value or values at which any asset, right or liability is to be transferred to the Joint Services Business will be determined in accordance with the requirements of any applicable legislation and otherwise on terms to be agreed between WSC and GCC.
- (d) The consideration payable to or by the Joint Services Business:
 - (i) in respect of any assets, rights or liabilities transferred to the Joint Services Business by GCC will be as agreed between GCC and WSC; and
 - (ii) in respect of any assets, rights or liabilities transferred to the Joint Services Business by WSC will be as agreed between WSC and GCC.

12. Dissolution of Gosford/Wyong Councils' Water Authority

- (a) The Gosford/Wyong Councils' Water Authority (**Water Authority**) ceased operations and was dissolved with effect from midnight 12 October 2011. With effect from 13 October 2011 the role and functions performed by the Water Authority are to be performed:
 - (i) up to 30 June 2012, jointly by the General Managers of GCC and WSC; and
 - (ii) from 1 July 2012, by the Corporation.
- (b) The Gosford/Wyong Councils' Water Authority Agreement between GCC and WSC will be terminated with effect from midnight on 30 June 2012. GCC and WSC will enter into a new Joint Scheme Funding Agreement on or before 1 July

2012 and such agreement will take effect on and from 1 July 2012. The new Joint Scheme Funding Agreement will be in the form of **Schedule 3**.

- (c) GCC and WSC will procure that all steps necessary to effect the efficient transfer of the Water Authority's functions and operations to the Corporation are undertaken before 1 July 2012.

13. Issuing voting shareholder directions to the Corporation

- (a) Neither GCC or WSC shall issue a voting shareholder direction to the Board or the Corporation unless and until it first complies with clauses 13(b) to 13(e) below.
- (b) If either GCC or WSC wishes to issue a direction to the Board or the Corporation under:
- (i) article 7.1 of the Constitution/section 16 of the CCWC Act (non-commercial activities);
 - (ii) article 7.2 of the Constitution/section 17 of the CCWC Act (council policies);
 - (iii) article 7.3 of the Constitution/section 18 of the CCWC Act (public interest); or
 - (iv) article 7.4(b) of the Constitution/section 42(7) of the CCWC Act (statement of corporate intent),

that party (**Notifying Council**) shall provide the other party (**Recipient Council**) with written notice of the same including the Notifying Council's reasons for seeking to issue the direction and the relevant provisions of the CCWC Act and/or the Corporation's Constitution pursuant to which the direction is proposed to be issued (**Notice of Proposed Direction**).

- (c) Within 7 days of the issue of the Notice of Proposed Direction, the Mayors and General Managers of each Council will meet to discuss the Notice in good faith, including the financial and other implications of issuing the direction.
- (d) The Recipient Council will provide the Notifying Council with written notice of whether or not it supports the giving of the proposed direction within 14 days of the meeting referred to in clause 13(c).
- (e) If the Recipient Council agrees to issue the direction, GCC and WSC will provide joint written notice of the direction to the Corporation. If the Recipient Council does not agree to issue the direction, the Notifying Council shall not issue the direction.

14. Water Management Act

14.1 Water supply authority status

- (a) Pursuant to section 2 of the CCWC Act, GCC and WSC will not cease to be, and the Corporation will not become, a water supply authority under the Water Management Act 2000 (NSW) unless and until:
- (i) each of GCC and WSC has, pursuant to a resolution of the Council, requested the Minister to recommend the proclamation of the relevant sections of the CCWC Act to effect those changes; and

- (ii) following the passing of the Council resolutions and the Minister making the recommendation referred to in paragraph (i), the Governor proclaims the commencement of the relevant sections of the CCWC Act to effect the change.
- (b) Subject to clause 14.1(c), each of WSC and GCC will, at least 30 days before the commencement of the Long Term Asset Leases, resolve by resolution of the Council to request the Minister to recommend the proclamation of Schedule 7.2[4] of the CCWC Act with effect on and from the commencement of the Long Term Asset Leases.
- (c) GCC and WSC will not be required to pass the resolutions referred to in clause 14.1(b) unless and until relevant regulations have been made under the Water Management Act 2000 (NSW) to provide for (with effect from the date of commencement of the Long Term Asset Leases):
 - (i) the Corporation to exercise all functions of a water supply authority under the Water Management Act 2000 (NSW) in the Councils' Local Government Areas other than drainage functions;
 - (ii) each Council to exercise the drainage functions only of a water supply authority under the Water Management Act 2000 (NSW) in their respective Councils' Local Government Areas.

14.2 Delegation of water supply authority functions

Until such time as the Corporation becomes a water supply authority under the Water Management Act 2000 (NSW), GCC and WSC each, in their capacities as water supply authorities, hereby delegate to the Corporation, pursuant to section 291 of the Water Management Act 2000 (NSW), the exercise of such of their respective functions as water supply authorities as may be necessary or desirable for the Corporation to perform its functions in the relevant phase of operations in which the Corporation is operating.

15. Dispute resolution

15.1 Notice of Dispute

- (a) If a difference or dispute between GCC and WSC (**Disputing Parties**) arises in connection with:
 - (i) the interpretation of this Agreement;
 - (ii) any right or liability of any party under this Agreement; or
 - (iii) whether or not a party has performed any obligation under this Agreement,

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

15.2 Procedure to settle Disputes

- (a) The procedure that is to be followed to settle a Dispute is as follows:
 - (i) first, negotiation under clause 15.3; and
 - (ii) second, determination of the Dispute under clause 15.4.

- (b) A party shall not commence Court proceedings in relation to a Dispute until it has exhausted the procedures in this clause 15, unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.
- (c) Each party must continue to perform any of its obligations under this Agreement relating to any issue in dispute or otherwise, despite and during any Dispute resolution being conducted under this clause 15.

15.3 Dispute Negotiation

- (a) Within 10 Business Days of service of a Notice of Dispute, the General Managers of each party must confer at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.
- (b) If the Dispute has not been resolved or the General Managers have not agreed on a method for resolving the Dispute by other means within 10 Business Days of the service of the Notice of Dispute, it will escalate to the second level (**Second Level**). For the Second Level, the Mayors of the parties must confer at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.
- (c) If within 15 Business Days of commencement of the Second Level, the Dispute has not been resolved by the Mayors or the Mayors have not agreed on a method for resolving the Dispute by other means, a party in compliance with this clause 15 may by written notice to the other party refer the Dispute for expert determination under clause 15.4 (such referral to be made no later than 40 Business Days following the date the Notice of Dispute was issued).

15.4 Independent Expert

- (a) If the Dispute has been referred for determination by an independent expert in accordance with clause 15.3(c), the parties will submit to the following procedure before any other course of action to resolve the Dispute:
 - (i) the parties will choose and appoint an independent expert;
 - (ii) in the absence of agreement by the parties as to the independent expert within 10 Business Days after the referral under clause 15.3(c), the independent expert will be appointed on the application of either party by the President of the Institute of Arbitrators Australia;
 - (iii) the independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 15 Business Days, or such longer period as may be agreed between the parties;
 - (iv) the independent expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit;
 - (v) the independent expert's decision will be final and binding on the parties; and
 - (vi) the costs of the independent expert will be borne by the parties equally or as the independent expert may otherwise determine having regard to the merits of the Dispute and each Disputing Party will bear its own costs relating to the independent expert's decision.

16. Confidentiality

16.1 Confidential Information not to be disclosed

Except as permitted under clause 16.2 or clause 16.3, each party:

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

16.2 Permitted disclosure

Confidential Information may be disclosed by a party, despite clause 16.1, where:

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

16.3 Procedure for making announcements

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

- (a) first deliver a copy of the proposed announcement or publicity to the other party;

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

17. Miscellaneous

17.1 Notices

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

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

Gosford City Council

Address: 49 Mann Street, Gosford, NSW 2250
 Fax no: 02 4323 2477
 Attention: General Manager

Wyong Shire Council

Address: 2 Hely Street, Wyong, NSW 2259
 Fax no: 02 4351 2098
 Attention: General Manager

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

17.2 Governing law

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

17.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.3(a).

17.4 Amendments

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

17.5 Waiver

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

17.6 Further acts and documents

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

17.7 Consents

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

17.8 Assignment

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

17.9 Counterparts

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

17.10 No representation or reliance

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

17.11 Expenses

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

17.12 Entire agreement

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

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

17.13 GST

- (a) Any payment or other consideration referred to in any other provision of this Agreement for any supply that may be made under this Agreement (**Consideration**) is set out or calculated to be exclusive of GST.
- (b) Where any amounts that may be payable under this Agreement are calculated by reference to a cost, expense or other amount paid or incurred by a party, the amount so payable must be reduced by the amount of any input tax credits to which the party incurring such cost, expense or other amount is entitled in connection with any acquisition relating to such cost, expense or other amount.
- (c) If this Agreement states that Consideration is to be provided to a party for a taxable supply made under this Agreement, the party required to provide that Consideration must, in addition, pay to the party making the taxable supply an additional amount equal to that Consideration multiplied by the applicable rate of GST. Any such additional amount must be provided at the same time as this Agreement requires the first part of the Consideration for the taxable supply to be provided and the party making the taxable supply must issue a tax invoice to the party providing the Consideration for any such taxable supply at or before such time.
- (d) In this clause 17.13, "**GST**", "**supply**", "**tax invoice**" and "**taxable supply**", have the meanings given in the A New Tax System (Goods and Services Tax) Act 1999.

17.14 Severance

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

Schedule 1 Constitution of the Corporation

Schedule 2 Implementation Workplan

Schedule 3 Joint Scheme Funding Agreement

Executed as an agreement

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

Signature of Mayor

Full name of Mayor

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

Signature of Mayor

Full name of Mayor

Signature of General Manager

Full name of General Manager

Signature of General Manager

Full name of General Manager