

## Service Level and Funding Agreement

Central Coast Water Corporation  
Corporation

Wyong Shire Council  
WSC

Gosford City Council  
GCC

Clayton Utz  
Lawyers  
Level 15 1 Bligh Street Sydney NSW 2000 Australia  
PO Box H3 Australia Square Sydney NSW 1215  
T +61 2 9353 4000 F +61 2 8220 6700

**[www.claytonutz.com](http://www.claytonutz.com)**

Our reference 101/17076/80092576

Legal\303999619.11

## Contents

<b>1.</b>	<b>Definitions and Interpretation .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation.....	4
<b>2.</b>	<b>Role and functions to be performed by the Corporation until 30 June 2017.....</b>	<b>5</b>
<b>3.</b>	<b>Implementation Workplan.....</b>	<b>5</b>
3.1	Implementation Workplan for the Corporation and the JSB.....	5
3.2	High level overview of structure and timelines.....	5
3.3	Employee entitlements .....	7
<b>4.</b>	<b>Funding .....</b>	<b>7</b>
4.1	Funding for period up to 30 June 2017 .....	7
4.2	Budgets up to 30 June 2013 .....	7
4.3	Approved Budgets .....	7
4.4	Funding commitments by Councils .....	8
4.5	Payment of funds.....	8
4.6	Obligation to advise budget overruns .....	8
4.7	Set off .....	9
4.8	Repayment of unused funds .....	9
<b>5.</b>	<b>Exercise of rights by Councils .....</b>	<b>9</b>
<b>6.</b>	<b>Interim Supply of Support Services by the Councils.....</b>	<b>10</b>
6.1	Service Request Notice .....	10
6.2	Cost recovery and open book principles.....	10
6.3	Level of Service .....	11
6.4	Variation of Services.....	11
6.5	Good faith and co-operation .....	11
6.6	Independent Contractor .....	11
6.7	Limitation of Council's liability .....	11
6.8	Recharge for director services.....	11
<b>7.</b>	<b>Provision of Support Services by the Joint Services Business .....</b>	<b>12</b>
<b>8.</b>	<b>Obligations of the Parties .....</b>	<b>12</b>
8.1	The Corporation's Obligations .....	12
8.2	The Council's Obligation .....	12
<b>9.</b>	<b>Secondees.....</b>	<b>13</b>
<b>10.</b>	<b>Invoices for Support Services and Secondees. ....</b>	<b>13</b>
10.1	Invoices.....	13
10.2	Invoices.....	13
10.3	Disputed invoice .....	14
<b>11.</b>	<b>Confidentiality.....</b>	<b>14</b>
11.1	Treatment of Confidential Information .....	14
11.2	Use of Confidential Information .....	14
11.3	Disclosure of Confidential Information .....	14
11.4	Disclosure by Recipient .....	14
11.5	Delivery Up of Confidential Information .....	14

11.6	Exceptions .....	15
<b>12.</b>	<b>Intellectual Property .....</b>	<b>15</b>
12.1	Ownership and use of Intellectual Property .....	15
12.2	Corporation's Intellectual Property .....	15
12.3	Council's Intellectual Property .....	15
12.4	Shared use of Intellectual Property .....	15
<b>13.</b>	<b>Force Majeure .....</b>	<b>16</b>
13.1	Suspension of obligations .....	16
13.2	Actions to be taken .....	16
13.3	Termination due to Force Majeure .....	16
<b>14.</b>	<b>Dispute Resolution .....</b>	<b>16</b>
14.1	Notice of Dispute .....	16
14.2	Procedure to settle Disputes .....	16
14.3	Dispute Negotiation .....	17
14.4	Independent Expert .....	17
<b>15.</b>	<b>GST .....</b>	<b>18</b>
<b>16.</b>	<b>General .....</b>	<b>18</b>
16.1	Notices .....	18
16.2	Governing law .....	19
16.3	Jurisdiction .....	19
16.4	Amendments .....	19
16.5	Waiver .....	19
16.6	Further acts and documents .....	20
16.7	Consents .....	20
16.8	Assignment .....	20
16.9	Counterparts .....	20
16.10	No representation or reliance .....	20
16.11	Expenses .....	20
16.12	Entire agreement .....	20
	<b>Schedule 1 : Role and functions of Corporation .....</b>	<b>21</b>
	<b>Schedule 2 : Implementation Workplan .....</b>	<b>23</b>
	<b>Signed as an agreement .....</b>	<b>24</b>

**Service Level and Funding Agreement** dated 2012

**Parties**

**Central Coast Water Corporation** of 2 Hely Street, Wyong, NSW, 2259  
(Corporation)

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

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

## Background

- A. Central Coast Water Corporation has been established under section 4 of the Central Coast Water Corporation Act 2006 (NSW) (**Corporation**). GCC and WSC each own 50% of the issued shares in the Corporation.
- B. CCWC and WSC have each approved the Implementation Workplan which sets out the work plan for the establishment of the Corporation and the Joint Services Business.
- C. The Implementation Workplan contemplates, amongst other things, that:
- 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 to commence on or around 1 July 2017; and
  - 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 the Councils and the Corporation.
- D. The parties have entered into this Agreement to set out amongst other things:
- (a) the role and functions to be performed by the Corporation for the period to 30 June 2017;
  - (b) the basis on which the Councils and the Joint Services Business will provide Services to the Corporation; and
  - (c) the terms on which the Councils will provide funding to the Corporation for the period to 30 June 2017.

## Operative provisions

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Agreement:

**Approved Budget** means, for each Financial Year, the operating and capital expenditure budget for that Financial Year approved in accordance with the Constitution.

**Additional Funding** has the meaning given in clause 4.6(b).

**Approved Funding** has the meaning given in clause 4.4(c).

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

**Business Day** means a day other than a Saturday, Sunday or public holiday or a day on which the banks are generally closed for business in New South Wales.

**Commencement Date** means 14 December 2011.

**Confidential Information** means information (whether or not owned by a party) that:

- (a) is by its nature confidential; or
- (b) the receiving party knows or ought to know is confidential,

but does not include information which:

- (c) is or becomes public knowledge other than by breach of this Agreement;
- (d) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- (e) has been independently developed or acquired by the receiving party.

**Constitution** means the Constitution of the Corporation (as altered or added to from time to time).

**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).

**Directors** means the directors for the time being of the Corporation or the directors assembled as the Board.

**Director Service Fee** means an amount equal to the highest annual fee paid to a director of the Corporation who is not an employee or Councillor of either Council and who is not the Chairperson of Directors.

**Discloser** has the meaning given in clause 11.2.

**Dispute** has the meaning given in clause 14.1.

**Dispute Discussion** has the meaning given in clause 14.3(a).

**Dispute Representative** has the meaning given in clause 14.3(a).

**Disputing Parties** has the meaning given in clause 14.1.

**Excess Funds** has the meaning given in clause 4.8.

**Financial Year** has the meaning given in the Constitution.

**Force Majeure** means any occurrence which is not within the reasonable control of the party affected or could not be reasonably prevented by that party including an act of God, terrorism, fire, lightning, explosion, flood, subsidence, strikes, war or lockouts or other industrial disputes of any kind not relating solely to the party affected.

**Funding Share** means 50% for GCC and 50% for WSC (subject to any adjustment agreed between GCC and WSC in writing pursuant to clause 4.4(f)).

**GCC** means Gosford City Council.

**Gosford Director** has the meaning it has in the Constitution.

**GST** has the meaning it has in the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST law** has the meaning given to that term in the GST Act or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**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**.

**Initial Period** has the meaning given in clause 4.4(a).

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Interim Period** has the meaning given in clause 6.1(a).

**Joint Scheme Funding Agreement** means the Joint Scheme Funding Agreement to be entered into between GCC and WSC.

**JSB Services** has the meaning given in clause 3.2(g).

**Joint Services Business** means the Joint Services Business proposed to be established by the Councils as contemplated in clause 3.2(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 3.2(a) of this Agreement.

**Nominated Service** means those Support Services a relevant Council has agreed to provide to the Corporation pursuant to clause 6.1(c).

**Notice of Dispute** has the meaning given in clause 14.1.

**Notifying Council** has the meaning given in clause 5(b).

**On Costs** mean the following additional direct costs (above annual salary) incurred in employing an employee: superannuation, long service leave, workers compensation and pay roll tax.

**Operating and Capital Expenditure Budget** has the meaning given in article 10 of the Constitution.

**Payment Schedule** has the meaning given in clause 4.5(a).

**Recipient** has the meaning given in clause 11.2.

**Recipient Council** has the meaning given in clause 5(b).

**Representative** of a party includes an employee, agent, or officer of that party.

**Second Period** has the meaning given in clause 4.4(b).

**Secondee Request** means a request in writing by the Corporation for a secondee to be provided by a Council to the Corporation.

**Service Council** has the meaning given in clause 6.1(c).

**Service Fee** means the aggregate of the amounts payable by the Corporation to the relevant Council for the supply of Nominated Services or secondees by that Council.

**Service Level Performance Standard** means any relevant service level performance standards as may be agreed from time to time between the Corporation and the relevant Council providing a Support Service.

**Special Majority of Directors** has the meaning given in the Constitution.

**Support Services** has the meaning given in the Constitution.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties, but excluding GST) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the net income of Corporation.

**WSC** means Wyong Shire Council.

**Wyong Director** has the meaning given in the Constitution.

## 1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) the expression "**person**" includes an individual, the estate of an individual, a corporation, an authority, a Council, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (c) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
  - (d) a reference to any document (including this Agreement) is to that document as varied, notated, ratified or replaced from time to time;
  - (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
  - (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

- (g) references to parties, clauses, Schedules or Annexures are references to parties, clauses, Schedules and Annexures to or of this Agreement, and a reference to this Agreement includes any Schedule or Annexure to this Agreement;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) the word "**includes**" in any form is not a word of limitation;
- (j) a reference to "\$" or "**dollar**" is to Australian currency;
- (k) references to payments to any party to this Agreement will be construed to include payments to another person upon the direction of such party;
- (l) all payments to be made under this Agreement must be made by unendorsed bank cheque or other immediately available funds;
- (m) if any day appointed or specified by this Agreement for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day; and
- (n) a reference to writing includes any mode of representing or reproducing words, figures or symbols in a permanent and visible form.

---

## **2. Role and functions to be performed by the Corporation until 30 June 2017**

The role and functions to be performed by the Corporation until 30 June 2017 (being the anticipated commencement date of the Long Term Asset Leases) is as set out in **Schedule 1**.

---

## **3. Implementation Workplan**

### **3.1 Implementation Workplan for the Corporation and the JSB**

- (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 guide to help develop further detailed plans.
- (c) The parties agree to co-operate in good faith and use reasonable endeavours to progress the Implementation Workplan (as adapted from time to time).

### **3.2 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:

#### **The Corporation**



- (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 3.2(c);
  - (ii) remain a water supply authority under the Water Management Act 2000 (NSW) in respect of drainage functions only for their respective Councils' Local Government Areas;
- (e) asset management and regulatory management 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 Businesses**

- (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 the Councils and the Corporation (**JSB Services**);
- (h) the Joint Services Business is to be established on or before 1 July 2017 and will commence 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 Joint Services Business shall enjoy and be entitled to equivalent employment protections as those protections provided under the CCWC Act to Council employees transferred to the Corporation.

### 3.3 Employee entitlements

As and when employees of either Council are transferred to the Corporation or the Joint Services Business, it is the intention of the parties that any compensation paid or credited by the Councils to the Corporation or the Joint Services Business in respect of accrued employee entitlements assumed by the Corporation or the Joint Services Business not be paid upfront by the Councils to the Corporation or the Joint Services Business as a lump sum payment. Rather, any such compensation paid would be structured on an amortised basis such that compensation is paid or credited over time as and when the relevant entitlements are exercised by the relevant transferred employees.

---

## 4. Funding

### 4.1 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 will be earning insufficient revenue to meet all of the costs, expenses and liabilities of the Corporation; and
  - (ii) accordingly, the Corporation will require financial support from GCC and WSC during this period to perform its functions and remain solvent.
- (b) GCC and WSC each undertake to provide funds necessary for the Corporation to perform its functions and remain solvent subject to the terms of this clause 3.

### 4.2 Budgets up to 30 June 2013

- (a) The Councils and the Corporation have agreed initial budgets for the Corporation for the following periods and amounts:
  - (i) for the period from establishment of the Corporation to 30 June 2012: \$250,000; and
  - (ii) for the period from 1 July 2012 to 30 June 2013: \$250,000.
- (b) The Corporation will not be required to prepare an Operating and Capital Expenditure Budget for the Corporation for the periods from the creation of the Corporation to 30 June 2013.
- (c) GCC and WSC, in their capacity as the sole shareholders in the Corporation, waive the requirement for the Corporation to prepare an Operating and Capital Expenditure Budget for the periods from the creation of the Corporation to 30 June 2013.

### 4.3 Approved Budgets

- (a) Pursuant to article 10 of the Constitution, the Corporation will:
  - (i) prepare an Operating and Capital Expenditure Budget for the Corporation for each Financial Year in the period 1 July 2013 to 30 June 2017 for approval by the Voting Shareholders in accordance with article 6.10 of the Constitution (**Approved Budget**); and
  - (ii) consult with WSC and GCC in their capacity as voting shareholders when preparing each draft Operating and Capital Expenditure Budget

and submit a draft to WSC and GCC not later than 30 November in the calendar year immediately before the commencement of the relevant Financial Year.

#### 4.4 Funding commitments by Councils

- (a) In the period from establishment of the Corporation up until 30 June 2012 (**Initial Period**), each of GCC and WSC will provide funding to the Corporation on an as required basis in accordance with their respective Funding Shares to meet costs and expenses incurred by the Corporation during this Initial Period. The maximum aggregate amount of funding GCC and WSC will be required to provide to the Corporation during the Initial Period is \$250,000.
- (b) In the period from 1 July 2012 to 30 June 2013 (**Second Period**), each of GCC and WSC will provide funding to the Corporation on an as required basis in accordance with their respective Funding Shares to meet costs and expenses incurred by the Corporation during this Second Period. The maximum aggregate amount of funding GCC and WSC will be required to provide to the Corporation during the Second Period is \$250,000.
- (c) For subsequent periods the subject of an Approved Budget, the Councils will provide funding to the Corporation in accordance with the Approved Budget for the relevant Financial Year in their respective Funding Shares (**Approved Funding**).
- (d) Except as provided for in clause 4.6(c) or otherwise agreed by the Councils, the Councils are not obliged to provide funding to the Corporation in respect of a relevant Financial Year to the extent the relevant expenditure has not been provided for in clauses 4.4(a), 4.4(b) or in an Approved Budget.
- (e) For the avoidance of doubt, the Councils' undertakings to provide funding to the Corporation under this clause 3 will be reduced to the extent that the Corporation receives any funding or revenue from a third party which has not been taken into account in an Approved Budget.
- (f) The General Managers of GCC and WSC will meet in the 30 day period following each anniversary of this Agreement to discuss in good faith if the Funding Share needs to be adjusted having regard to the role and function of the Corporation in the previous 12 month period and the proposed role and function of the Corporation for the remainder of the Term. Failing agreement between the Councils (within 30 days after such meeting) as to any adjustment to the Funding Share, the Funding Share shall remain as is. For the avoidance of doubt, clause 4 of the Voting Shareholders' Agreement entered into by GCC and WSC will apply in respect of such discussions.

#### 4.5 Payment of funds

- (a) As part of the process for preparing each Approved Budget for a relevant Financial Year, the Councils and the Corporation will agree a payment schedule which will set out a schedule of payments to be made by each Council in accordance with the relevant Council's Funding Share (**Payment Schedule**).
- (b) Each Council will remit funds to the Corporation in their Funding Shares in accordance with the Payment Schedule.

#### 4.6 Obligation to advise budget overruns

- (a) The Corporation must advise the Councils in writing as soon as reasonably practical if the Corporation considers there may be a cost overrun:

- (i) for the period up to 30 June 2012, such that the costs and expenses of the Corporation will or are likely to exceed the \$250,000 cap in clause 4.4(a) by more than \$50,000;
  - (ii) for the period 1 July 2012 to 30 June 2013, such that the costs and expenses of the Corporation will or are likely to exceed the \$250,000 cap in clause 4.4(b) by more than \$50,000; or
  - (iii) for any Financial Year commencing on or after 1 July 2013, the Approved Budget in total by more than 10%.
- (b) The Corporation may request the Councils to provide additional funding to cover any overruns notified under clause 4.6(a) (**Additional Funding**).
  - (c) WSC and GCC will fund in their respective Funding Shares, any cost overruns which falls within the tolerances identified in clause 4.6(a)(i),
  - (d) WSC and GCC will not be required to provide any Additional Funding in excess of the tolerances identified in clause 4.6(a) unless both Councils agree to provide the Additional Funding in accordance with each Council's Funding Share for that Financial Year.
  - (e) The Corporation will invoice each Council for any further funding under clause 4.6(c) or any agreed Additional Funding in the manner set out in clause 10.

#### 4.7 Set off

A Council is permitted to set off any amount due and payable by the Corporation to the Council under this Agreement against any funding payment due and payable by the Council to the Corporation under this clause 3.

#### 4.8 Repayment of unused funds

In the event that as at 30 June in any year, the Corporation has any accumulated cash amounts provided by the Councils to the Corporation pursuant to the funding arrangements set out in this clause 4 in excess of the legal liabilities of the Corporation (**Excess Funds**), the Councils may by written notice to the Corporation require the Corporation to refund to the Councils (in their respective Funding Shares) such amount of the Excess Funds as may be specified in the written notice. The Corporation must comply with any such written notice issued by the Councils in accordance with this clause 4.8 and refund to the Councils in their respective Funding Shares the amount specified in the notice within 30 days of receipt of the notice.

---

### 5. Exercise of rights by Councils

- (a) Each of WSC and GCC may, without limitation, make any appointment, exercise any right or give any consent, approval, requisition, authorisation or notice of that Council under this Agreement by a document:
  - (i) signed by the Mayor and the General Manager of that Council; or
  - (ii) to which the seal of the relevant Council has been affixed and attested in accordance with regulation 400(1) of the Local Government (General) Regulation 2005 (NSW),
 and given as relevant in accordance with clause 16.1.

- (b) Any document provided by one Council (**Notifying Council**) to the other Council (**Recipient Council**) or to the Corporation in accordance with the requirements of clause 5(a) shall be deemed to have been duly issued by the Notifying Council and may be relied on by the Recipient Council and the Corporation as having been validly issued.

---

## 6. Interim Supply of Support Services by the Councils

### 6.1 Service Request Notice

- (a) For the period from the Commencement Date to 30 June 2017 (**Interim Period**), the Councils will exclusively provide the Support Services to the Corporation, except to the extent that both Councils have notified the Corporation in writing that it may obtain any nominated Support Services from a third party other than the Councils. .
- (b) As and when the Corporation requires any Support Services during the Interim Period which are not contemplated in the Implementation Workplan to be provided by the Councils, the Corporation will issue a written service request notice (SRN) to GCC and WSC for the provision of the relevant Support Services to the Corporation.
- (c) On receipt of the SRN, the General Managers of GCC and WSC will consult and promptly determine if the Support Services requested can be most efficiently provided by GCC or by WSC. Upon such determination, if a Council is to provide nominated Support Services, the Council determined to provide the relevant Support Services (**Service Council**) will notify the Corporation of the same and provide written details of the proposed Service Fee for the requested Support Services (calculated in accordance with clause 6.2) to the Corporation (**Nominated Service**).
- (d) On reaching agreement on the Service Fee for the provision of the Nominated Services:
- (i) the Service Council will provide the Nominated Service in accordance with the terms of this Agreement; and
  - (ii) the Corporation will promptly notify the other Council of the details of the Nominated Services to be provided by the Service Council, including the Service Fee.
- (e) If the Council's advise the Corporation in writing that neither Council will provide any particular Nominated Service and that the Corporation is authorised to procure the Nominated Service from a third party, the Corporation may obtain the Nominated Service from a third party.

### 6.2 Cost recovery and open book principles

- (a) All Service Fees to be paid by the Corporation to a Council for the provision of Nominated Services by the Council are to be calculated on a cost recovery basis for the Council and shall not include any profit or margin for the Council.
- (b) A party will on reasonable notice from another party provide that other party with access to its relevant books and accounts on an "open book basis" for the purposes of verifying that the cost recovery principles in clause 6.2 have been complied with and to ensure transparency of the calculation of the Service Fee.

**6.3 Level of Service**

A Council must provide the Nominated Services to the performance standards (if any) as may be agreed between the Corporation and the Council.

**6.4 Variation of Services**

After consultation between the Corporation and the relevant Council providing a Support Service, the Corporation and the Council may agree to vary the Support Services including the terms on which such Support Services are provided and provided that:

- (a) such variations are in writing executed by the Council and the Corporation;
- (b) following the variation the Service Fees for those Services remain on a cost recovery basis consistent with clause 6.2(a); and
- (c) the other Council is notified promptly by the Corporation of any material agreed variation.

**6.5 Good faith and co-operation**

Each party must:

- (a) act in good faith towards each other; and
- (b) co-operate with reasonable requests of the other party,

to ensure that the Support Services are provided in accordance with the manner and to the standards contemplated by this Agreement.

**6.6 Independent Contractor**

In providing the Support Services, the Councils are independent and separate contractors to the Corporation. Nothing in this Agreement will be construed as creating a partnership, trust or agency between the parties or as imposing any fiduciary duties on the respective Councils in relation to the Corporation.

**6.7 Limitation of Council's liability**

To the maximum extent permitted by law, the liability of a Council to the Corporation or to the other Council for failing to provide any Support Services in accordance with this Agreement is limited to:

- (a) supplying the relevant Support Services again; or
- (b) the payment of the cost of having the relevant Support Services provided again,

and the Corporation and the other Council each release the Council from any other claim or liability in respect of such failure or breach.

**6.8 Recharge for director services**

As consideration for services provided to the Corporation by the Gosford Director and Wyong Director, the Corporation will pay a Director Service Fee to each Council to be paid by quarterly instalments.

---

**7. Provision of Support Services by the Joint Services Business**

- (a) As noted in clause 3.2(g), the Councils propose to establish a Joint Services Business to exclusively provide the Support Services to the Councils and to the Corporation with effect from 1 July 2017.
- (b) In the period from 1 July 2017, the Joint Services Business will exclusively provide the Support Services to the Corporation and the Corporation shall not obtain such Support Services from a third party, except to the extent that both Councils have notified the Corporation in writing that it may obtain any nominated Support Services from a third party other than the Councils or the Joint Services Business.

---

**8. Obligations of the Parties****8.1 The Corporation's Obligations**

- (a) The Corporation will:
  - (i) ensure that it supplies the Councils with sufficient information and access to assets to enable the Councils and/or the Joint Services Business to supply the Support Services; and
  - (ii) notify the Councils as soon as practicable of any material concerns or issues relating to the supply of the Support Services by the Councils or the Joint Services Business.
- (b) Where a Support Service provided by either of the Councils under this Agreement involves the use by a Council or the Joint Services Business of any hardware, software, material or other items provided by the Corporation, the Corporation will ensure that:
  - (i) it has all necessary permissions, express or otherwise, to enable such items to be moved, used, copied or distributed during the course of this Agreement without infringing any third party Intellectual Property Rights;
  - (ii) the relevant Council or the Joint Services Business will not be infringing the Intellectual Property Rights of any third party in performing the Support Services; and
  - (iii) the disclosure or use of such items during the course of this Agreement will not involve a breach of any confidential or contractual obligations.

**8.2 The Council's Obligation**

In performing any Support Services, the relevant Council providing a Support Service must use reasonable endeavours to:

- (a) apply appropriately trained and skilled staff to the provision of the Support Services;
- (b) make available suitably qualified and available labour and resources to provide the Support Services;
- (c) perform the Support Services in accordance with the relevant Service Level Performance Standard;

- (d) provide the Support Services in a timely manner;
- (e) comply with all laws and with all regulatory requirements and standards applicable to the Council and to the performance of the Support Services;
- (f) not infringe the Intellectual Property Rights of any person in providing the Support Services or otherwise performing the Agreement;
- (g) if requested by the Corporation, inform and consult with the Corporation about all aspects of the Support Services including providing reports, recommendations and advice in relation to the performance of the Support Services; and
- (h) if it fails to meet a Service Level Performance Standard, promptly:
  - (i) report the failure to the Corporation;
  - (ii) take corrective action to remedy the failure; and
  - (iii) investigate the cause of the failure and report to the Corporation on the cause and the steps being taken to remedy that failure.

---

## 9. **Secondees**

- (a) The Corporation may, from time to time, issue to a Council a Secondee Request setting out details of:
  - (i) the role and function to be performed by the relevant secondee;
  - (ii) the duration of the secondment;
  - (iii) the fee the Corporation has budgeted for the secondees services; and
  - (iv) any other relevant matters.
- (b) The relevant Council will consider the Secondee Request in good faith and, if agreed by the Council, provide an appropriate secondee on terms to be agreed between the relevant Council and the Corporation.
- (c) The working assumption of the parties is that the fee to be paid by the Corporation for a Council secondee will be salary plus On Costs.

---

## 10. **Invoices for Support Services and Secondees.**

### 10.1 **Invoices**

- (a) The Councils will each, in respect of any Support Services provided by the Council, invoice the Corporation the Service Fee plus GST (as applicable) and any other applicable taxes on a monthly basis.
- (b) The Corporation will pay to the Councils all undisputed Service Fees in each correctly rendered invoice within 30 days of the end of the calendar month in which it receives that invoice.

### 10.2 **Invoices**

For the purposes of this Agreement, an invoice is correctly rendered if:



- (a) the invoice is a "tax invoice" as defined in the GST law;
- (b) the amount claimed in the invoice is due for payment;
- (c) the amount specified in the invoice is correctly calculated in accordance with this Agreement; and
- (d) the invoice identifies the Services which the invoice covers.

### 10.3 Disputed invoice

- (a) If the Corporation disputes the amount or part of the amount of an invoice submitted by a Council, then the Corporation is not obliged to pay the disputed portion of the invoice until the dispute is resolved in accordance with clause 14.
- (b) The affected Council may not suspend, cancel or withdraw the provision of the Services in whole or in part as a result of a disputed invoice.

---

## 11. Confidentiality

### 11.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

### 11.2 Use of Confidential Information

A party receiving Confidential Information (**Recipient**) may only use the Confidential Information of the party disclosing Confidential Information (**Discloser**) for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Agreement.

### 11.3 Disclosure of Confidential Information

A Recipient may not disclose Confidential Information of the Discloser to any person except:

- (a) Representatives, legal advisers, auditors and other consultants of the Recipient who require it for the purposes of the Recipient performing its obligations or exercising its rights under this Agreement and then only on a need to know basis; or
- (b) with the prior written consent of the Discloser; or
- (c) if the Recipient is required to do so by law; or
- (d) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement.

### 11.4 Disclosure by Recipient

A Recipient disclosing information under clause 11.3(a) or clause 11.3(b) must ensure that persons receiving Confidential Information from it are aware it is the other party's Confidential Information.

### 11.5 Delivery Up of Confidential Information

Subject to clause 11.6, on the Discloser's request, the Recipient must immediately deliver to the Discloser all documents or other materials containing or referring to the Discloser's Confidential Information which are:

- (a) in the Recipient's possession, power or control; or
- (b) in the possession, power or control of persons who have received Confidential Information from the Recipient under clauses 11.3(a) or 11.3(b).

### **11.6 Exceptions**

The obligation in clause 11.5 does not apply to Confidential Information of the Discloser that the Recipient requires in order to exercise its rights or perform its obligations under this Agreement or which the Recipient is otherwise entitled to retain.

---

## **12. Intellectual Property**

### **12.1 Ownership and use of Intellectual Property**

The parties agree that other than as provided in this clause 12, nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.

### **12.2 Corporation's Intellectual Property**

If the Corporation provides any material to either Council or the Joint Services Business that contains any of Corporation's Intellectual Property, then the Corporation grants to that party a non-transferable, non-exclusive, royalty-free licence to use the Corporation's Intellectual Property solely for the purpose of and only as necessary for that party to meet its obligations to the Corporation under this Agreement.

### **12.3 Council's Intellectual Property**

If a Council provides any material to the Corporation that contains any of that Council's Intellectual Property, then that Council grants to the Corporation a non-transferable, non-exclusive, royalty-free licence to use its Intellectual Property solely for the purpose of and only as necessary for the Corporation to utilise the Services provided by the Councils under this Agreement.

### **12.4 Shared use of Intellectual Property**

- (a) In respect of any Intellectual Property that is transferred to the Corporation by a Council and which Intellectual Property is not covered by clause 12.4(b), the Corporation grants to that Council a perpetual, non-transferable, non-exclusive, royalty-free licence to use that Intellectual Property.
- (b) In respect of any Intellectual Property that is transferred to the Corporation by a Council and which was jointly used by the Councils prior to the date of transfer, the Corporation grants to each Council a perpetual, non-transferable, non-exclusive, royalty-free licence to use that Intellectual Property.
- (c) In respect of any Intellectual Property created, developed, acquired by or vested in the Corporation (other than any Intellectual Property referred to in clauses 12.4(a) or 12.4(b)), if requested by either Council the Corporation shall grant that Council, the other Council and the Joint Services Business a perpetual, non-transferable, non-exclusive, royalty-free licence to use that Intellectual Property.
- (d) Any Council granted or entitled to the grant of a licence in respect of Intellectual Property under this clause 12.4 may also request that the Corporation grant an equivalent licence to the Joint Services Business, in which event the Corporation must grant such licence.

- (e) Nothing in the clause 12.4 requires the Corporation to grant a licence if to do so would breach the Intellectual Property of a third party.

---

## 13. Force Majeure

### 13.1 Suspension of obligations

If a party is unable, by reason of Force Majeure, to carry out any of its obligations under this Agreement (other than an obligation to pay money):

- (a) those obligations will be suspended to the extent that, and only for so long as, it is prevented by such Force Majeure from performing those obligations; and
- (b) no party will be liable to any other party for any additional costs or expenses incurred in connection with the Force Majeure.

### 13.2 Actions to be taken

A party affected by Force Majeure will:

- (a) give the other party written notice of the Force Majeure. The notice must contain particulars of the Force Majeure and, insofar as is reasonably known, the likely extent to which it will be unable to perform or be delayed in performing its obligations under the Agreement;
- (b) use all reasonable endeavours to remove such Force Majeure and the effect of such Force Majeure on the performance of its obligations under the Agreement.

### 13.3 Termination due to Force Majeure

In the event that a Force Majeure persists for 60 days or more, then either party may terminate the supply of the particular Service affected by the Force Majeure by written notice to the other party.

---

## 14. Dispute Resolution

### 14.1 Notice of Dispute

If a difference or dispute between 2 or more parties (**Disputing Parties**) arises in connection with:

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

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

### 14.2 Procedure to settle Disputes

- (a) A party shall not commence Court proceedings in relation to a Dispute until it has exhausted the procedures in this clause 14, 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.

- (b) 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 14.

### 14.3 Dispute Negotiation

- (a) Within 10 Business Days of service of a Notice of Dispute:
  - (i) the Mayor of WSC (if WSC is a Disputing Party); and/or
  - (ii) the Mayor of GCC (if GCC is a Disputing Party); and/or
  - (iii) the Chairperson of the Board (if the Corporation is a Disputing Party)(each a **Dispute Representative**)

must confer (**Dispute Discussion**) at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.
- (b) If within 15 Business Days of commencement of the Dispute Discussion, the Dispute has not been resolved by the Dispute Representatives or the Dispute Representatives have not agreed on a method for resolving the Dispute by other means, a party in compliance with this clause 14 may by written notice to the other Disputing Parties refer the Dispute for expert determination under clause 14.4 (such referral to be made no later than 30 Business Days following the date the Notice of Dispute was issued).

### 14.4 Independent Expert

- (a) If the Dispute has been referred for determination by an independent expert in accordance with clause 14.3(b), the Disputing Parties will submit to the following procedure before any other course of action to resolve the Dispute:
  - (i) the Disputing 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 14.3(b), 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 Disputing 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.

---

**15. GST**

- (a) Despite the definition of consideration in the GST law, and unless otherwise expressly stated in this Agreement, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- (b) If a party makes a taxable supply under or in connection with this Agreement, the other party must pay to that party at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply.
- (c) The party making the taxable supply must, as a precondition to the payment of GST, give the other party a tax invoice.
- (d) If an adjustment event arises in connection with a supply made under this Agreement, the party making the taxable supply must give the other party an adjustment note in accordance with the GST law.
- (e) If this Agreement requires one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

---

**16. General****16.1 Notices**

- (a) All notices, requests or other communication required or permitted to be given by one party to another under this agreement must be in writing, addressed to the other party and:
  - (i) delivered at that party's address;
  - (ii) sent by pre-paid mail to that party's address; or
  - (iii) transmitted by facsimile to that party's address.
- (b) The address of a party is the address set out below or any another address notified to the other party:

**Corporation**

Name: Central Coast Water Corporation  
Address: 2 Hely Street, Wyong, NSW 2259  
Fax: 02 4351 2098  
For the attention of: Chairperson