

AMENDED ITEM

26 June 2013
To the Ordinary Council Meeting

Director's Report
Development and Building Department

5.6 The Entrance, Toukley and Wyong Town Centres Funding Agreements Extensions

TRIM REFERENCE: F2004/07414 - D03399891
MANAGER: Paul Bowditch, Manager Place Management
AUTHOR: Stephen Ashton; Senior Strategic Planner

SUMMARY

This report describes the outcomes of negotiations regarding the extension of funding agreements with each management entity responsible for the management of The Entrance, Wyong and Toukley Town Centres.

RECOMMENDATION

- 1 ***That Council endorse the suite of funding agreements for The Entrance, Toukley and Wyong Town Centres, appended to this report.***
- 2 ***That Council authorise the General Manager to make minor amendments and execute the agreements with the town centre entities.***
- 3 ***That Council decide to resolve that a satisfactory result would not be achieved by inviting tenders for entities to undertake the management of the three town centres due to the extenuating circumstances, discussed in this report.***

BACKGROUND

At its meeting held on 12 December 2012, Council considered a report on the funding agreements for the town centre entities of The Entrance, Toukley and Wyong. The report discussed the tasks carried out under each of the funding agreements with Council and noted that the agreements were due to expire on 30 June 2013. These tasks generally involved arranging and managing events, marketing, promoting and maintaining the respective town centres.

Each of the town centre management entities have been evaluated by Council staff as achieving the deliverables, reporting and insurance requirements listed in the funding agreements.

Following consideration of the report on 12 December 2012, Council resolved;

“RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor VINCENT:

655/12 That Council extend the funding agreements with each of the town centre management entities for The Entrance, Toukley and Wyong Town Centres for a further four years commencing 1 July 2013.

5.6 The Entrance, Toukley and Wyong Town Centres Funding Agreements Extensions (contd)

656/12 That Council direct the General Manager to review and negotiate the terms of each extended agreement with each town centre management entity and report back to Council on the results by 30 June 2013.

FOR: COUNCILLORS EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL"

OUTCOMES OF NEGOTIATIONS AND RECOMMENDATIONS

Over the past six (6) months staff have consulted with various Council officers and town centre management authority staff to discuss what arrangements and terms ought to be included in the future funding agreements and what form the agreements should take.

It has been concluded that each town centre should have a suite of three (3) agreements, one each for:

1. Marketing, promotion and maintenance.
2. Event arrangement and management.
3. Third party engagement arrangements.

This arrangement will result in improved clarity, management, performance evaluation, fairness and probity in implementing and administering the agreements.

Attachment 1 includes copies of the suite of agreements for each town centre.

The terms of the agreements have also been amended, with the most significant changes being:

- a) A slight increase in maintenance funding for The Entrance Town Centre Management Corporation of \$5,168.80 to cover the extra cost of cleaning the Coral Street Carparking facility. This facility was previously cleaned once per day by Council. The cleaning responsibilities have now been taken over by The Entrance Town Centre Management Corporation and are now cleaned up to 4 times per day to provide the level of service expected by patrons and town centre users, the extra presence also providing a potential deterrent to vandalism and other anti-social behavior in the vicinity of this facility.
- b) A requirement that The Entrance Town Centre Management Corporation review its 'Rules of The Entrance Town Centre Management Corporation' by 31 December 2013, to include the General Manager or his delegate on its Board.
- c) Additional responsibilities for minor maintenance within the town centres for Greater Toukley Vision and Wyong Regional Chamber of Commerce. Under the current funding agreements, both these town centre management entities do not have any responsibility for maintenance. It is considered beneficial for them to take over some maintenance responsibilities due to their presence in their town centre, proximity to the local community and potential and capability to quickly address minor maintenance issues as they occur. As a consequence, additional funding of \$23,000 has been allocated from the Place Management Unit budget.

5.6 The Entrance, Toukley and Wyong Town Centres Funding Agreements Extensions (contd)

- d) The delineation of responsibility of the various maintenance tasks between the town centre management entities and Council has been clarified. This has involved simplifying the language used in the delineation of works schedule and including definitions for what constitutes 'replacement', 'maintenance', 'operation' and 'major tree' in the context of the funding agreements. This has been done to remove current uncertainty as to which authority has responsibility for various tasks listed, Council or the relevant town centre management entity.
- e) The boundaries of The Entrance Town Centre Management Corporation's responsibilities have been expanded. The main additions are the waterfront area west of The Entrance Bridge and the Picnic Point recreation area along with some other parts of the town centre. These changes can be seen by comparing the new boundaries on the map in the attached agreements with Attachment 2, which shows the previous extent of responsibilities for The Entrance Town Centre Management.
- f) A map showing the extent of the Toukley and Wyong Town Centre entity's responsibilities has also been incorporated into their funding agreements. There are no such maps included in the existing funding agreements making it virtually impossible to determine where the town centre management entities responsibilities reside.
- g) A new agreement regarding third party engagement arrangements has been included in the suite of agreements for all town centre management entities. The purpose of this document is to clarify the arrangements for engaging third parties to undertake works by both Council and the town centre management entities to ensure fairness and probity in the engagement of contractors.
- h) An additional requirement for the town centre entities to provide support to businesses in their respective town centres has been included in the new agreements along with clarification around what is expected of each of the town centre management entities in working with Central Coast Tourism.
- i) Clarification on the split of event funding between nominated events for the Toukley and Wyong Town Centres has been included in the agreements. Previously this information sat outside the funding agreement documents.
- j) The opportunity/ability to amend the agreements during the operating period of the agreements has been added. This is an important element as it encourages/allows for new events to be included, which is important to retain interest and growth in each of the town centres.
- k) Reporting requirements for each of the town centre entities has been clarified.

TENDER CONSIDERATIONS

Under the Local Government Act 1993 (LGA), Council is normally required to call for tenders for any contract involving an estimated expenditure of \$150,000 or more.

However, this section of the LGA does not apply to contracts where extenuating circumstances exist, such as is considered in the case of The Entrance, Toukley and Wyong Town Centre Management entities.

5.6 The Entrance, Toukley and Wyong Town Centres Funding Agreements Extensions (contd)

All of these town centre entities have the following qualities. They are well established, have built rapport and relationships with stakeholders, established economies of scale, combined intimate knowledge, experience and efficiencies in managing their respective town centres and have performed exceptionally well over the periods for which they have been responsible.

To introduce new entities to manage these town centres, which would operate with the same efficiencies and economies of scale, would involve re-establishing rapport and relationships with stakeholders and obtaining at least the same levels of knowledge, experience, efficiencies, economies of scale and performance that have been realised by the current town centre management entities over the years.

Consequently, it is considered that a satisfactory result would not be achieved by inviting tenders as it would not be possible, in the short-term, to achieve the abovementioned qualities, which would be detrimental and not in the best interests of all stakeholders (including the communities that rely on the efficient operation of these town centres).

CONCLUSION

The revised terms included in the agreements contained in Attachment 1 are considered to represent a good outcome for both the town centre entities and Council. It is therefore recommended that endorse the suite of funding agreements for The Entrance, Toukley and Wyong Town Centres.

ATTACHMENTS

1	The Entrance Town Centre Management Corporation - Funding Agreement - Marketing Promotion Maintenance - 26 June 2013 - Final	D03437748
2	The Entrance Town Centre Management Corporation - Funding Agreement - Events - 26 June 2013- Final	D03437759
3	The Entrance Town Centre Management Corporation - Process Procedure Agreement - Third Party Arrangements - 26 June 2013 - Final	D03437764
4	Greater Toukley Vision - Funding Agreement - Marketing Promotion Maintenance - 26 June 2013 - Draft	D03437910
5	Greater Toukley Vision - Funding Agreement - Events -26 June 2013 - Final Draft	D03437920
6	The Greater Toukley Vision Inc - Third Party Arrangements - 26 June 2013 - Final Draft	D03437928
7	Wyong - Funding Agreement - Marketing Promotion Maintenance - 26 June 2013 - Final Draft	D03438024
8	Wyong - Funding Agreement - Events -26 June 2013 - Final Draft	D03438045
9	Wyong - Third Party Arrangements - 26 June 2013 - Final Draft	D03438055



FUNDING AGREEMENT
Between
THE ENTRANCE TOWN CENTRE MANAGEMENT CORPORATION
INCORPORATED
&
WYONG SHIRE COUNCIL

MARKETING, PROMOTION AND MAINTENANCE

1 Background

WSC is a body politic established under the *Local Government Act 1993*. WSC levies a special rate under that Act on certain land within the Town Centre, and has a number of functions including the following:

- The management and maintenance of various assets within the Town Centre; and
- The management and occupation of land within the Town Centre, which includes the management and occupation of the Crown Reserve pursuant to the Crown Licence; and
- Undertaking works and activities to promote economic and social growth within the Town Centre; and
- Undertaking works and activities to improve the amenity and environment within the Town Centre.

The Grant Funds are public monies, and WSC is accountable for the proper and lawful use of those Grant Funds.

WSC will provide the Grant Funds to TETCM, and TETCM agrees to accept those Grant Funds, on the terms set out in this Agreement.

2 Definitions

The following terms have the following meanings in this Agreement:

Agreement means this agreement, including the Schedules to this agreement;

Clause means a clause in this Agreement;

Crown Reserves means the Memorial Park and The Entrance Waterfront Plaza Area (Reserve 71875), the Picnic Point Recreation Area (Reserve 85574) and The Boardwalk Recreation Area (Reserve 50058), each being a Crown Reserve for the purpose of the *Crown Lands Act 1993*;

Grant Funds means the funds referred to in Clause 7 of this Agreement;

Ministerial Approval means the approval of the Minister administering the *Local Government Act 1993* to the special rate levied on certain land within the Town Centre being applied to marketing, promotional and maintenance activities within the Town Centre;

Parties means WSC and TETCM;

TETCM means The Entrance Town Centre Management Incorporated, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at 46 Marine Parade, The Entrance, NSW;

Third Party Agreement means the Agreement between the Parties, a copy of which is Annexure "A" to this Agreement;

Town Centre means the area of land identified on the map in Schedule 1 by a red coloured border;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminate on 30 June 2017, unless terminated earlier pursuant to Clause 13 or extended pursuant to Clause 12.

4 Agreement is the sole funding agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole funding agreement between the Parties in relation to marketing, promoting and maintenance activities within the Town Centre, and that this Agreement terminates all previous funding arrangements between the Parties relating to marketing, promoting and maintenance activities within the Town Centre.

5 Warrants

TETCM warrants that:

- a TETCM will apply the Grant Funds only for the purposes provided for in this Agreement and in strict compliance with the terms and conditions set out in this Agreement; and
- b All documents (including but not limited to audited financial statements and business plans) supplied, or to be supplied, to WSC by TETCM pursuant to this Agreement are, or will be, true and accurate; and
- c TETCM will comply with the Third Party Agreement when contracting for the supply of goods and services for the purpose of meeting its obligations under this Agreement; and
- d TETCM must use its best endeavours to maximise the marketing exposure of the Wyong Shire at every available opportunity.

6 Legislation

The Parties each acknowledge that:

- WSC is required to comply with the *Local Government Act 1993* and other relevant legislation;
- Changes to legislation may cause this Agreement to be unfair or ineffective ; and
- The Parties will negotiate in good faith to modify this Agreement if changes in legislation render parts of this Agreement unfair or ineffective.

7 Funding

WSC will, in accordance with Clause 8 and subject to the continuation of the Ministerial Approval, provide Grant Funding of up to \$1,517,168.80 (excluding GST) per annum to TETCM.

TETCM agrees that it will use that Grant Funding for the sole purpose of providing the deliverables set out in Clause 9, in the manner set out in Clause 9.

TETCM agrees that it will comply with the Accountability Requirements in Clause 10.

8 Payment Schedule

The Grant Funding is to be paid to TETCM by way of four equal instalments, with an instalment to be paid to TETCM within 14 days of WSC receiving a Tax Invoice from TETCM, which TETCM is entitled to give to WSC only within 14 days of each of the following dates:

- 1 1 July 2013
- 2 1 October 2013
- 3 1 January 2014
- 4 1 April 2014
- 5 1 July 2014
- 6 1 October 2014
- 7 1 January 2015
- 8 1 April 2015
- 9 1 July 2015
- 10 1 October 2015
- 11 1 January 2016
- 12 1 April 2016
- 13 1 July 2016
- 14 1 October 2016
- 15 1 January 2017
- 16 1 April 2017

Nothing in this Clause 8 requires WSC to pay more than \$1,517,168.80 (excluding GST) to TETCM in any financial year.

9 Deliverables:

- 9.1 TETCM shall undertake the following marketing activities to promote tourism in the Town Centre, which includes that TETCM:

- (a) undertake research on tourism within the Town Centre, such research to include reviewing results from any relevant market studies and data collected about day trip visitation, bookings and overnight stays in the Town Centre; and
- (b) liaise with WSC and Central Coast Tourism not less than once every 6 months during the term of this Agreement to consider the research that TETCM has undertaken pursuant to Clause 10.1(a) and to discuss strategies for promoting tourism within the Town Centre;
- (c) ensure that the Town Centre is not used for advertising (other than for public events) spruiking (unless a permit has been issued) busking (unless a permit has been issued) or for political or religious purposes;
- (d) provide support to businesses in The Entrance Town Centre;
- (e) issue contracts, licences, permits and authorities and determine the terms and conditions for such contracts, licences, permits and authorities to contractors, licensees and other users of the Town Centre, for such purposes that have been agreed upon between the parties through the powers delegated by WSC to TETCM, pursuant to the Third Party Agreement;
- (f) ensure that WSC funding of TETCM is recognised by the presence of WSCs logo and name on all relevant publications and promotions; and
- (g) provide WSC with assistance and support in strategic changes introduced to the Town Centre, as reasonably required by WSC.

9.2 TETCM shall operate The Entrance Visitor Information Centre in the Town Centre.

9.3 TETCM shall undertake maintenance activities within the Town Centre, which includes:

- (a) Ensuring that all WSC assets, under the care, control and management of TETCM, as described in Schedule 2 – Delineation of Works, are maintained in good order and condition to the quality standards and requirements of the WSC;
- (b) Promptly repairing and/or replacing any WSC assets for which the TETCM is responsible to maintain under Schedule 2; and
- (c) Promptly reporting to WSC where the Town Centre, or any part thereof, falls into disrepair, or becomes, or is likely to become, a danger, or potential danger, to users of the Town Centre; and
- (d) Comply with the requirement of any licences granted under the *Crown Lands Act* in respect to the Crown Reserves.

9.4 TETCM shall apply the annual Grant Funding of \$1,517,168.80 (excluding GST) per annum in the following manner:

- (a) \$796,000.00 (excluding GST) shall be applied to the marketing activities in Clause 9.1;
- (b) \$98,500 (excluding GST) shall be applied to the operation of The Entrance Visitor Information Centre required by Clause 9.2; and
- (c) \$622,668.80 (excluding GST) shall be applied to the maintenance activities in Clause 9.3.

10 Accountability Requirements

10.1 TETCM must provide the following reports to WSC by the following Due Dates:

Due Date each year	Reporting on
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31 May	TETCM shall provide WSC with a copy of its annual budget.
30 September	TETCM shall provide WSC with a copy of its annual business plan. The business plan shall contain a written scheme of operations to be undertaken by TETCM including a promotional and marketing plan for events and identified performance measures and goals.
30 November	TETCM shall provide WSC with a copy of its final report of TETCM activities for the previous financial year, including the deliverables in this agreement and an audited financial statement in respect of TETCM income, expenditure, assets and liabilities for the previous financial year.
Throughout year	TETCM shall notify the WSC, in writing, of any issues that may place WSC at risk including, but not restricted to, legal actions and insurance claims against TETCM.
Throughout year	TETCM make available, on request by WSC, any documentation relating to meeting agendas and minutes.

- 10.2 TETCM must deposit all Grant Funds it receives from Council pursuant to this Agreement into an account held by TETCM in a reputable financial institution acceptable to WSC. TETCM must inform WSC of the name of that financial institution and the account details for that account.
- 10.3 TETCM must, if directed to do so by WSC, give all necessary directions and authorities to the financial institution referred to in Clause 10.2 so as to permit WSC to request and receive such information from that institution as WSC considers necessary to monitor TETCM's compliance with this Agreement.
- 10.4 In the event WSC receives a complaint about TETCM in respect to the exercise of TETCM's responsibilities under this Agreement, TETCM will provide WSC with records and assistance as reasonably requested of it by WSC so as to permit WSC to investigate and respond to that complaint.

11 Insurance

TETCM must, during the term of this Agreement, maintain a contract of insurance between the TETCM and an insurer, acceptable to Council, which provides an indemnity to WSC in respect to:

- All actions, proceedings and claims in respect of any damage or liability caused by, or arising from, the wilful act, neglect or default of the TETCM or any of its members, employees, contractors, servants, agents or invitees in respect to entry or use of the public areas of the Town Centre, with the quantum of the indemnity to be not less than \$20,000,000.00; and
- Workers compensation covering all workers with a common law extension or endorsement in an amount approved by WSC.

All contracts of insurance must:

- Be produced to the WSC within two (2) business days of demand;
- Be placed with a reputable and solvent insurer;
- Record TETCM as the insured party; and
- Contain the provision that the policy will not be amended, or cancelled, without fourteen (14) days prior notice, in writing, from the insurer to the insured.

TETCM shall ensure that all traders, licensees, concessionaires, permit holders, contractors and other persons, under the control of TETCM, its members or its agents, utilising the public areas of the Town Centre area for TETCM, have enforced appropriate policies of insurance as detailed above.

12 Extension

TETCM may seek to extend the term of this Agreement by one additional period not exceeding 4 years by giving notice in writing to WSC not less than 9 months prior 30 June 2017. If TETCM gives such notice WSC must determine, in its absolute discretion, whether to extend the term of this Agreement for the period sought by TETCM or such other period (of not more than 4 years) as WSC considers appropriate. WSC must give notice to TETCM of WSC's determination of any such request no later than 31 December 2016.

13 Termination

Either party may terminate this agreement at any time by giving the other party at least ninety (90) days prior written notice setting forth the reason for termination being:

- TETCM breaches, or fails to meet, its obligations and deliverables under this agreement;
- The cessation of the Ministerial Approval;
- Unsatisfactory performance by the TETCM, or its engaging in, or being associated with activities which, in the opinion of the WSC, are detrimental to the management, reputation or promotion of Wyong Shire, or part thereof; and/or
- TETCM has entered into any composition, or arrangement with its creditors, or has a receiver appointed over any of its assets, or is the subject of any resolution of petition for winding up, or judicial management.

On the termination (for any reason) of this agreement, WSC will have no obligation to pay any payments not due at the date of termination.

The termination of this agreement shall not relieve the TETCM of any obligation to account to WSC for monies given by the WSC to the TETCM.

A party will not be liable for any failure to perform its obligations under this Agreement to the extent the failure is due to factors outside its reasonable control, including, but not limited to, acts of God, war, fire, electrical failure or third party industrial action. If that failure, or delay, exceeds 60 days, the other party may terminate this Agreement with immediate effect by giving notice to the party which is unable to perform its obligations.

Any termination under this clause will not prejudice the rights or remedies of either party in respect of any other event.

14 Grievance Procedures & Dispute Resolution

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

15**Membership of the Committee of the TETCM**

During the Term this Agreement the Committee of TETCM must include the General Manager of WSC or such other person as nominated by the General Manager of WSC. In addition to any right to terminate under Clause 13, WSC may terminate this Agreement if TETCM fails to comply with its obligation under this Clause.

Executed by both parties as an Agreement:

Executed by **The Entrance Town Centre**)
Management Corporation Inc (ABN 58 079298108))
pursuant to s. 22 of the *Associations Incorporation*) Philip Martin
Act 2009 by its authorised signatories) Chairman

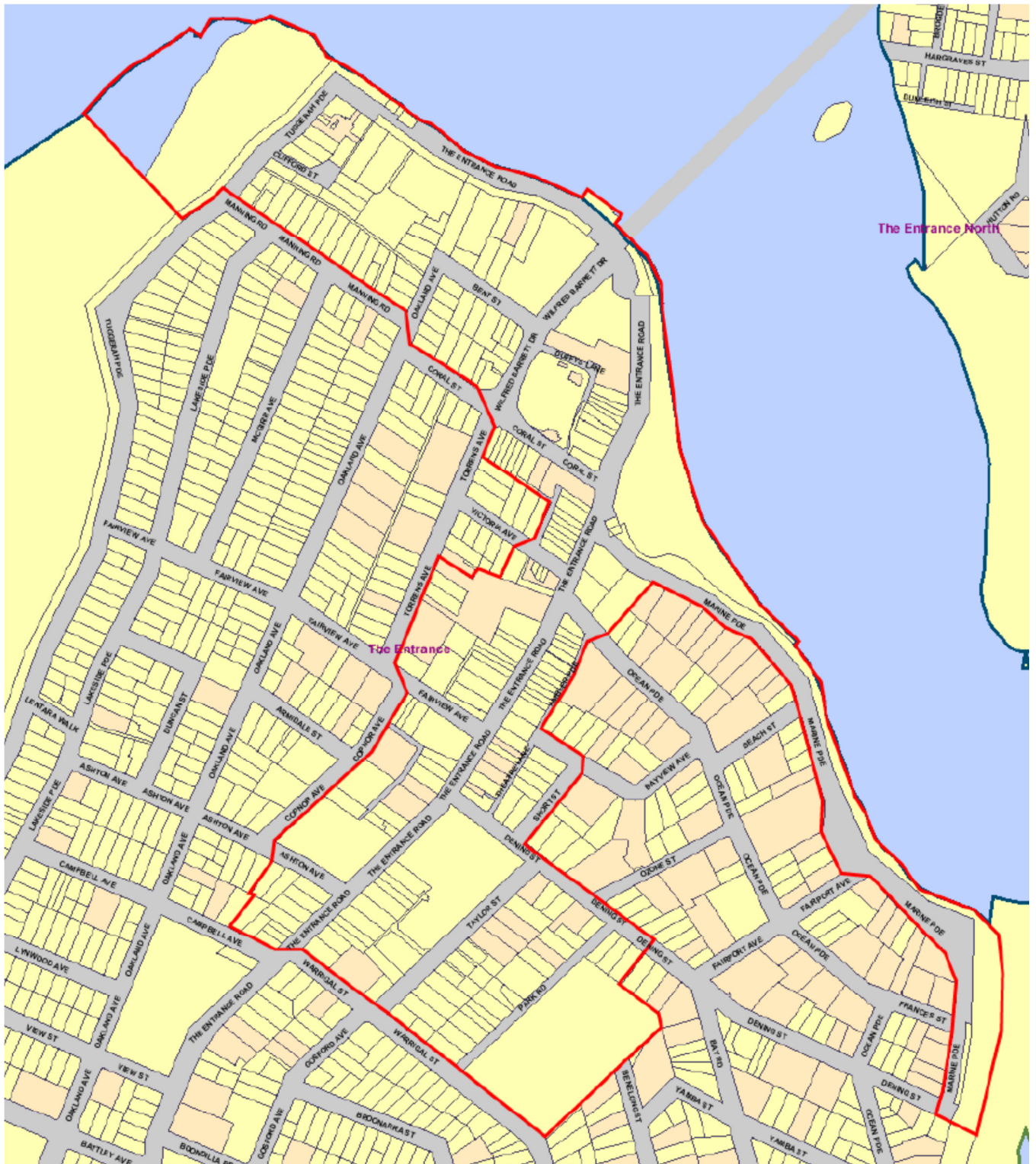
.....
Name:
Position:

Executed by **Wyong Shire Council** pursuant)
To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:) Jari Ihalainen

.....
Witness

.....
Date

Schedule 1 - Map of The Entrance Town Centre and environs



Schedule 2

Delineation of Works

Asset	Works for which Council is Responsible	Works for which the TETCM is Responsible
ROADS	<ul style="list-style-type: none"> ▪ Rehabilitation (reseals, heavy patching, reconstruction). ▪ Maintenance (pothole patching, line marking). ▪ Street Sweeping (by machine where possible). 	<ul style="list-style-type: none"> ▪ Street cleaning (by machine where possible). ▪ Litter pickup where not heavy patching, able to be accessed by street sweeper.
CARPARKS	<ul style="list-style-type: none"> ▪ Rehabilitation (reseals, heavy patching, reconstruction). ▪ Maintenance (Pothole patching, line marking). 	<ul style="list-style-type: none"> ▪ Street Sweeping (by machine where possible). ▪ Litter pickup where not able to be accessed by street sweeper.
GARDENS	<ul style="list-style-type: none"> ▪ <i>Major Tree</i> replacement. ▪ Irrigation replacement. 	<ul style="list-style-type: none"> ▪ Plant (other than <i>Major Tree</i>) Replacement. ▪ Maintenance. ▪ Operation. ▪ Litter pickup.
DECKS AND ASSOCIATED ASSETS	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance and Operation.</i>
STREET FURNITURE	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance and Operation.</i>
DECORATIVE LIGHTING	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance.</i> ▪ Decorative light electricity costs.
CONCRETE & SANDSTONE BLOCK SEA WALLS	<ul style="list-style-type: none"> ▪ <i>Replacement and Maintenance.</i> 	<ul style="list-style-type: none"> ▪ Nil.
GARDEN WALLS	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance.</i>
STORMWATER DRAINAGE	<ul style="list-style-type: none"> ▪ <i>Replacement and Maintenance.</i> 	<ul style="list-style-type: none"> ▪ Nil.
STORMWATER GROSS POLLUTANT TRAP	<ul style="list-style-type: none"> ▪ <i>Operation and Machine Monitoring.</i> ▪ <i>Replacement and Maintenance.</i> 	<ul style="list-style-type: none"> ▪ Nil.
TILED AREA	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance.</i>
WATER & SEWERAGE (All infrastructure up to including the meter and junction)	<ul style="list-style-type: none"> ▪ <i>Replacement, Operation and Maintenance.</i> 	<ul style="list-style-type: none"> ▪ Nil.
WATER GARDEN & FOUNTAINS	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Operation and Maintenance.</i>

Asset	Works for which Council is Responsible	Works for which the TETCM is Responsible
CHILDREN'S PLAYGROUND, CHESS SET	▪ Replacement.	▪ Operation and Maintenance.
BOARDWALK	▪ Replacement.	▪ Maintenance and Litter pick up.
PELICAN FEEDING AREA	▪ Replacement.	▪ Maintenance and litter pick up. ▪ Operation.
PAVED WALKWAYS/AREA & NATURE STRIPS	▪ Replacement.	▪ Maintenance and litter pick up.
WATERFRONT STAGE & SAILS	▪ Replacement.	▪ Operation and Maintenance.
TOILETS	▪ Replacement.	▪ Operation and Maintenance.
LAKE IMMEDIATELY IN FRONT OF CONCRETE & SANDSTONE BLOCK SEAWALLS	▪ Nil.	▪ Litter pick up.
RESERVE 71875 AS PER THE DEED OF LICENCE	▪ Replacement.	▪ Operation and Maintenance.
SIGNAGE	▪ Replacement.	▪ Maintenance.
STREET LIGHTS	▪ Replacement and Maintenance.	▪ Nil.
FLAG/BANNER POLES	▪ Replacement.	▪ Operation and Maintenance.
FLAGS / BANNERS	▪ Nil.	▪ Replacement, Maintenance and Operation.
CHRISTMAS TREE	▪ Replacement.	▪ Maintenance and Operation.
CCTV	▪ Nil.	▪ Replacement, Maintenance and Operation.

DEFINITIONS:

Replacement means:	Construct/install an entire new asset/structure in place of an old asset/structure which has reached the end of its useful life. Does not include the replacement of components which combined with other components make up a whole asset/structure.
Maintenance means:	Carrying out of works to preserve an existing asset in a safe, operational and/or functional condition. It includes the replacement of components of whole assets/structures, cleaning of assets, graffiti removal, painting/varnishing/oiling of assets, rust minimisation / mitigation treatments of assets.
Operation means:	Carrying out of activities relating to the functioning of an asset for the purposes of that asset.
Major Tree means:	A tree that is more than 2 metres high.



FUNDING AGREEMENT

Between

THE ENTRANCE TOWN CENTRE MANAGEMENT CORPORATION INCORPORATED

&

WYONG SHIRE COUNCIL

EVENTS

1 Background

WSC is a body politic established under the *Local Government Act 1993*. WSC levies a special rate under that Act on certain land within the Town Centre, and has a number of functions including the following:

- Undertaking activities to promote economic and social growth within the Town Centre; and
- Undertaking activities to improve the amenity and environment within the Town Centre.

The Grant Funds are public monies, and WSC is accountable for the proper and lawful use of those Grant Funds.

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TETCM means The Entrance Town Centre Management Incorporated, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at 46 Marine Parade, The Entrance, NSW;

Third Party Agreement means the Agreement between the Parties, a copy of which is Annexure "A" to this Agreement;

Town Centre means the area of land identified on the map in Schedule 1 by a red coloured border;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminate on 30 June 2017, unless terminated earlier pursuant to Clause 13 or extended pursuant to Clause 12.

4 Agreement is the sole funding agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole funding agreement between the Parties in relation to marketing, promoting and management of events within the Town Centre, and that this Agreement terminates all previous funding arrangements between the Parties relating to the marketing, promoting and management of events within the Town Centre.

5 Warrants

TETCM warrants that:

- a TETCM will apply the Grant Funds only for the purposes provided for in this Agreement and in strict compliance with the terms and conditions set out in this Agreement; and
- b All documents (including but not limited to audited financial statements and business plans) supplied, or to be supplied, to WSC by TETCM pursuant to this Agreement are, or will be, true and accurate; and
- c TETCM will comply with the Third Party Agreement when contracting for the supply of goods and services for the purpose of meeting its obligations under this Agreement; and
- d TETCM must use its best endeavours to maximise the marketing exposure of the Wyong Shire at every available opportunity.

6 Legislation

The Parties each acknowledge that:

- WSC is required to comply with the *Local Government Act 1993* and other relevant legislation;
- Changes to legislation may cause this Agreement to be unfair or ineffective; and
- The Parties will negotiate in good faith to modify this Agreement if changes in legislation render parts of this Agreement unfair or ineffective.

7 Funding

WSC will, in accordance with Clause 8 and subject to the continuation of the Ministerial Approval, provide Grant Funding of up to \$100,000 (excluding GST) per annum to TETCM.

TETCM agrees that it will use that Grant Funding for the sole purpose of providing the deliverables set out in Clause 9, in the manner set out in Clause 9.

TETCM agrees that it will comply with the Accountability Requirements in Clause 10.

8 Payment Schedule

The Grant Funding is to be paid to TETCM by way of the instalments set out in Schedule 2, with each instalment to be paid to TETCM within 14 days of WSC receiving a Tax Invoice

from TETCM, which TETCM is entitled to give to WSC within 14 days of each of dates set out in Schedule 2.

Nothing in this Clause 8 requires WSC to pay more than \$100,000 (excluding GST) in total by way of Grant Funds.

9 Deliverables

TETCM will apply the Grant Funds for the purpose of providing the following deliverables:

- TETCM shall arrange, manage and/or promote events in the Town Centre, including those detailed in Schedule 2. The events listed in Schedule 2 may be varied during the term of this Agreement, where the Parties agree in writing.
- TETCM may issue contracts, permits and authorities to contractors, licensees, permit holders and other users of the Town Centre for the purposes of events in the Town Centre, pursuant to the Third Party Arrangements Agreement.
- TETCM agrees to ensure that WSC funding of TETCM is recognised by the presence of WSCs logo and name on all relevant publications and promotions.
- TETCM shall provide signage at events that will recognise and promote WSC sponsorship.
- TETCM shall provide WSC with assistance and support in strategic changes introduced to the Town Centre.
- TETCM must, when undertaking any action pursuant to this Agreement, comply with any Licence issued under the Crown Lands Act in respect to the Crown Reserves.
- In the event WSC receives a complaint about TETCM in respect to the exercise of TETCM's responsibilities under this Agreement, TETCM will provide WSC with records and assistance as reasonably requested of it by WSC so as to permit WSC to investigate and respond to that complaint.

10 Accountability Requirements

10.1 TETCM must provide the following reports to WSC by the following Due Dates:

Due Date each year	Reporting on
31 May	TETCM shall provide WSC with a copy of its annual budget.
30 September	TETCM shall provide WSC with a copy of its annual business plan. The business plan shall contain a written scheme of operations to be undertaken by TETCM, including a promotional and marketing plan for events and identified performance measures and goals.
30 November	TETCM shall provide WSC with a copy of its final report of TETCM activities for the previous financial year including the deliverables in this agreement and an audited financial statement in respect of TETCM income, expenditure, assets and liabilities for the previous financial year.
Due Date each year	Reporting on
Throughout year	TETCM shall notify the WSC, in writing, of any issues that may place WSC at risk including, but not restricted to, legal actions and insurance claims against the TETCM.
Throughout year	TETCM make available, on request by WSC Councillors and/or senior staff, any documentation relating to meeting agendas and minutes.

- 10.2 TETCM must deposit all Grant Funds it receives from Council pursuant to this Agreement into an account held by TETCM in a reputable financial institution acceptable to WSC. TETCM must inform WSC of the name of that financial institution and the account details for that account.
- 10.3 TETCM must, if directed to do so by WSC, give all necessary directions and authorities to the financial institution referred to in Clause 10.2 so as to permit WSC to request and receive such information from that institution as WSC considers necessary to monitor TETCM's compliance with this Agreement.
- 10.4 In the event WSC receives a complaint about TETCM in respect to the exercise of TETCM's responsibilities under this Agreement, TETCM will provide WSC with records and assistance as reasonably requested of it by WSC so as to permit WSC to investigate and respond to that complaint.

11 Insurance

TETCM must, during the currency of this agreement, maintain a contract of insurance between the TETCM and an insurer, acceptable to WSC, that provides an indemnity to WSC in relation to:

- All actions, proceedings and claims in respect of any damage or liability caused by, or arising from, the wilful act, neglect or default of the TETCM or any of its members, employees, contractors, servants, agents or invitees in respect to entry or use of the public areas of The Entrance Town Centre, with the quantum of the indemnity to be not less than \$20,000,000.00; and
- Workers compensation covering all workers with a common law extension or endorsement for an amount approved by WSC.

All contracts of insurance must:

- Be produced to the WSC within two (2) business days of demand;
- Be placed with a reputable and solvent insurer;
- Record the TETCM as the insured party; and
- Contain the provision that the policy will not be amended, or cancelled, without fourteen (14) days prior notice, in writing, from the insurer to the insured.

TETCM shall ensure that all traders, licensees, concessionaires, permit holders, contractors and other persons under the control of TETCM, its members or its agents, utilising the public areas of the Entrance Town Centre area for TETCM run events, have enforced appropriate policies of insurance as detailed above.

12 Extension

TETCM may seek to extend the term of this Agreement by one additional period not exceeding 4 years by giving notice in writing to WSC not less than 9 months prior 30 June 2017. If TETCM gives such notice WSC must determine, in its absolute discretion, whether to extend the term of this Agreement for the period sought by TETCM or such other period (of not more than 4 years) as WSC considers appropriate. WSC must give notice to TETCM of WSC's determination of any such request no later than 31 December 2016.

13 Termination

Either party may terminate this agreement at any time by giving the other party at least ninety (90) days prior written notice setting forth the reason for termination being:

- TETCM breaches, or fails to meet, its obligations and deliverables under this agreement;
- The cessation of the Ministerial Approval;
- Unsatisfactory performance by the TETCM, or its engaging in, or being associated with activities which, in the opinion of the WSC, are detrimental to the management, reputation or promotion of Wyong Shire, or part thereof; and/or
- TETCM has entered into any composition, or arrangement with its creditors, or has a receiver appointed over any of its assets, or is the subject of any resolution of petition for winding up, or judicial management.

On the termination (for any reason) of this agreement, WSC will have no obligation to pay any payments not due at the date of termination.

The termination of this agreement shall not relieve the TETCM of any obligation to account to WSC for monies given by the WSC to the TETCM.

A party will not be liable for any failure to perform its obligations under this Agreement to the extent the failure is due to factors outside its reasonable control, including, but not limited to, acts of God, war, fire, electrical failure or third party industrial action. If that failure, or delay, exceeds 60 days, the other party may terminate this Agreement with immediate effect by giving notice to the party which is unable to perform its obligations.

Any termination under this clause will not prejudice the rights or remedies of either party in respect of any other event.

14 Grievance Procedures & Dispute Resolution

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

15 Membership of the Committee of the TETCM

During the Term this Agreement the Committee of TETCM must include the General Manager of WSC or such other person as nominated by the General Manager of WSC. In addition to any right to terminate under Clause 13, WSC may terminate this Agreement if TETCM fails to comply with its obligation under this Clause.

Executed by both parties as an Agreement:

Executed by **The Entrance Town Centre**)
Management Corporation Inc (ABN 58 079298108))
pursuant to s. 22 of the *Associations Incorporation*) Philip Martin
Act 2009 by its authorised signatories) Chairman

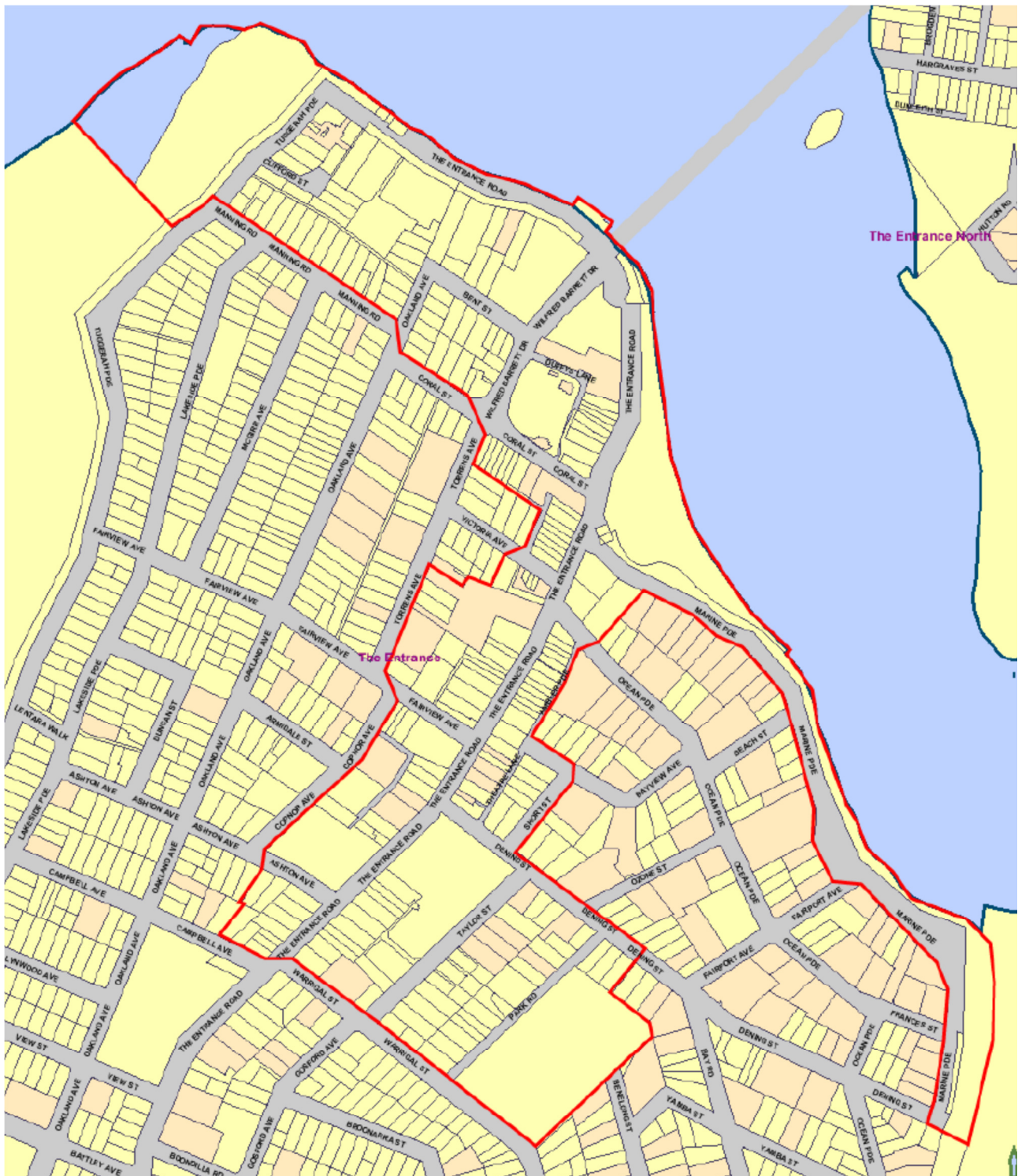
.....
Name:
Position:

Executed by **Wyang Shire Council** pursuant)
To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:) Jari Ihalainen

.....
Witness

.....
Date

Schedule 1 - Map of The Entrance Town Centre Area



Schedule 2

Events to be promoted by The Entrance Town Centre Management Corporation

Event funding provided by WSC is to be divided nominally to the total value of up to \$100,000.00 (exclusive of GST). Final events costs are to be reported to Council on a per event bases.

January	Australia Day	\$10,000
March	Central Coast Country Music Festival	\$29,000
April	The Morris Minor Club Car Show	\$1,500
May	All American Muscle Car Show	\$1,500
	The CMC Heritage Car Show	\$1,500
	The Studebaker Owners' Car Show	\$1,500
June	Cococino Festival	\$2,000
July	Film Festival	\$5,000
August	Paws and Claws for a Cause	\$8,000
October	Chromefest	\$15,000
December	Mardi Gras	\$13,000
	Carols by Candlelight	\$4,000
	New Year's Eve	\$8,000

Other events include:

The Entrance Farmers' Markets	\$0
Triathlon	\$0
Outdoor Boating and Caravan Show	\$0



PROCESS PROCEDURE AGREEMENT

Between

**THE ENTRANCE TOWN CENTRE MANAGEMENT CORPORATION
INCORPORATED**

&

WYONG SHIRE COUNCIL

THIRD PARTY ENGAGEMENT ARRANGEMENTS

1 Background

WSC is a body politic established under the *Local Government Act 1993* and is required to follow strict procedures and process when it engages Third Parties to provide it with goods and services.

WSC and TETCM have entered in to the Funding Agreements, by which WSC provides public monies to TETCM and TETCM agrees to undertake specific activities. The Funding Agreements impose an obligation to comply with this Agreement so as to ensure that processes by which TETCM contracts with Third Parties to provide goods or services to TETCM for the purpose of TETCM meeting its obligations under the Funding Agreements permits WSC to comply with its procurement obligations.

2 Definitions

The following terms have the following meanings in this Agreement:

Agreement means this agreement, including the Schedules to this agreement;

Clause means a clause in this Agreement;

Funding Agreements means the Agreements between the Parties in respect to Events, and in respect to marketing, promotion and maintenance activities, within the Town Centre;

Parties means WSC and TETCM;

TETCM means The Entrance Town Centre Management Incorporated, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at 46 Marine Parade, The Entrance, NSW;

Third Parties means any person or entity other than WSC and TETCM;

Town Centre means the area of land identified on the map in Schedule 1 by a red coloured border;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminates when both of the Funding Agreements have terminated.

4 Agreement is the sole agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole agreement between the Parties in relation to the engagement of Third Parties for the purposes of the Funding Agreements, and that this Agreement terminates all previous arrangements between the Parties relating to such engagement.

5 Third Party Engagement Arrangements

Unless the Parties otherwise agree in writing TETCM must follow WSC's procurement and contract policies and procedures (including but not limited to any policy of WSC concerning preferences to be given to local suppliers), when engaging Third Parties to provide goods or services to enable TETCM to meet its obligations under the Funding Agreements.

TETCM acknowledges that WSC's procurement and contract policies and procedures include the following thresholds and requirements for quotes:

ESTIMATED VALUE (INCL GST)	STANDARD RANGE OF INVITATIONS
Up to \$3,000	Restricted Invitation (1 to 5 firms)
\$3,000 - \$50,000	Restricted Invitation (2 to 6 firms)
\$50,000 - \$150,000	Restricted Invitation (3 to 8 firms) <i>or</i> Public Tender Invitation
\$150,000 and above	Public Tender Invitation

6 Reporting

TETCM must provide an annual report, no later than 1 November in each year during the term of this Agreement to WSC that provides the following particulars in respect to each contract or agreement that TETCM has entered in to with any Third Party during the preceding 12 months of this Agreement for the purposes of TETCM meeting its obligations under the Funding Agreement:

- The name of each Third Party.
- The goods or services provided by the Third Party.
- The value of the goods or services provided
- The process followed by TETCM to procure the engagement of that Third Party.

7 Grievance Procedures & Dispute Resolution

If any of the parties to this Agreement has a grievance with either, or all, of the other parties, any dispute arising shall be administered by the Australian Commercial Disputes Centre Limited ("ACDC") conducted and held in accordance with the conciliation rules of ACDC in force at the date of this Agreement.

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the ACDC, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast.

The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

Executed by both parties as an Agreement:

Executed by **The Entrance Town Centre**)
Management Corporation Inc (ABN 58 079298108))
pursuant to s. 22 of the *Associations Incorporation*) Philip Martin
Act 2009 by its authorised signatories) Chairman

.....
Name:
Position:

Executed by **Wyang Shire Council** pursuant)
To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:) Jari Ihalainen

.....
Witness

.....
Date



FUNDING AGREEMENT
Between
THE GREATER TOUKLEY VISION INCORPORATED
&
WYONG SHIRE COUNCIL

MARKETING, PROMOTION AND MAINTENANCE

1 Background

WSC is a body politic established under the *Local Government Act 1993*. WSC levies a special rate under that Act on certain land within the Town Centre, and has a number of functions including the following:

- The management and maintenance of various assets within the Town Centre; and
- The management and occupation of land within the Town Centre; and
- Undertaking works and activities to promote economic and social growth within the Town Centre; and
- Undertaking works and activities to improve the amenity and environment within the Town Centre.

The Grant Funds are public monies, and WSC is accountable for the proper and lawful use of those Grant Funds.

WSC will provide the Grant Funds to TGTV, and TGTV agrees to accept those Grant Funds, on the terms set out in this Agreement.

2 Definitions

The following terms have the following meanings in this Agreement:

Agreement means this agreement, including the Schedules to this agreement;

Clause means a clause in this Agreement;

Grant Funds means the funds referred to in clause 7 of this Agreement;

Ministerial Approval means the approval of the Minister administering the *Local Government Act 1993* to the special rate levied on certain land within the Town Centre being applied to marketing, promotional and maintenance activities within the Town Centre;

Parties means WSC and TGTV;

TGTV means The Greater Toukley Vision Incorporated, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at 250 Main Road, Toukley, NSW 2263;

Third Party Agreement means the Agreement between the Parties, a copy of which is Annexure "A" to this Agreement;

Town Centre means the area of land identified on the map in Schedule 1 by a red coloured border;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminate on 30 June 2017, unless terminated earlier pursuant to Clause 13 or extended pursuant to Clause 12.

4 Agreement is the sole funding agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole funding agreement between the Parties in relation to marketing, promoting and maintenance activities within the Town Centre, and that this Agreement terminates all previous funding arrangements between the Parties relating to marketing, promoting and maintenance activities within the Town Centre.

5 Warrants

TGTV warrants that:

- a TGTV will apply the Grant Funds only for the purposes provided for in this Agreement and in strict compliance with the terms and conditions set out in this Agreement; and
- b All documents (including but not limited to audited financial statements and business plans) supplied, or to be supplied, to WSC by TGTV pursuant to this Agreement are, or will be, true and accurate; and
- c TGTV will comply with the Third Party Agreement when contracting for the supply of goods and services for the purpose of meeting its obligations under this Agreement; and
- d TGTV must use its best endeavours to maximise the marketing exposure of the Wyong Shire at every available opportunity.

6 Legislation

The Parties each acknowledge that:

- WSC is required to comply with the *Local Government Act 1993* and other relevant legislation;
- Changes to legislation may cause this Agreement to be unfair or ineffective ; and
- The Parties will negotiate in good faith to modify this Agreement if changes in legislation render parts of this Agreement unfair or ineffective.

7 Funding

WSC will, in accordance with Clause 8 and subject to the continuation of the Ministerial Approval, provide Grant Funding of up to \$170,000 (excluding GST) per annum to TGTV.

TGTV agrees that it will use that Grant Funding for the sole purpose of providing the deliverables set out in Clause 9, in the manner set out in Clause 9.

TGTV agrees that it will comply with the Accountability Requirements in Clause 10.

8 Payment Schedule

The Grant Funding is to be paid to TGTV by way of four equal instalments, with an instalment to be paid to TGTV within 14 days of WSC receiving a Tax Invoice from TGTV, which TGTV is entitled to give to WSC only within 14 days of each of the following dates:

- 1 1 July 2013
- 2 1 October 2013
- 3 1 January 2014
- 4 1 April 2014
- 5 1 July 2014
- 6 1 October 2014
- 7 1 January 2015
- 8 1 April 2015
- 9 1 July 2015
- 10 1 October 2015
- 11 1 January 2016
- 12 1 April 2016
- 13 1 July 2016
- 14 1 October 2016
- 15 1 January 2017
- 16 1 April 2017

Nothing in this Clause 8 requires WSC to pay more than \$170,000 (excluding GST) to TGTV in any financial year.

Deliverables:

TGTV shall undertake the following marketing activities to promote tourism in the Town Centre, which includes that TGTV:

- GTV shall promote tourism in the Toukley Town Centre and environs in conjunction with Central Coast Tourism via all parties liaising every six (6) months and GTV providing research information on results from any market studies, day trip visitation, bookings and overnight stays in the Toukley Town Centre and environs.
- GTV shall maintain WSC assets, as defined in Schedule 2 – Works Delineation, within the Toukley Town Centre to the quality standards and requirements of WSC. The parties acknowledge that Schedule 2 may be amended, from time to time, to ensure the schedule is complete and clear, with the written agreement of both parties.
- GTV shall maintain Toukley Town Centre by:
 - a Ensuring that all WSC assets, under the care, control and management of GTV, as described in Schedule 2-Delineation of Works, are maintained in good order and condition.
 - b GTV promptly repairing and/or replacing any WSC assets for which the GTV is responsible to maintain.
 - c GTV promptly reporting to WSC where the Toukley Town Centre, or any part thereof, falls into disrepair, or becomes, or is likely to become, a danger, or potential danger, to users of the Toukley Town Centre.
- GTV shall deposit all moneys granted by the WSC, or otherwise received by GTV into an account of the GTV and shall be treated and accounted for by GTV. All moneys granted by WSC shall be used for the specific purpose for which it is granted, unless a written agreement to vary the purpose is obtained from WSC.
- GTV shall issue contracts, licences, permits and authorities and determine the terms and conditions for such contracts, licences, permits and authorities to contractors, licensees and other users of the Toukley Town Centre, for such purposes that have been agreed upon between the parties through the powers delegated by WSC to GTV, pursuant to the Third Party Arrangements Agreement.
- GTV shall ensure that the Toukley Town Centre is not used for advertising (other than for public events) spruiking (unless a permit has been issued) busking (unless a permit has been issued) political or religious purposes.
- GTV shall provide support to businesses in the Toukley Town Centre.
- GTV agrees to ensure that Council funding of GTV is recognised by the presence of WSC's logo and name on all relevant publications and promotions.
- GTV shall provide WSC with assistance and support in strategic changes introduced to the Toukley Town Centre area and environs.

TGTV shall apply the annual Grant Funding of \$170,000.00 (excluding GST) per annum in the following manner:

- (a) \$147,000.00 (excluding GST) shall be applied to the marketing and promotion activities within the Town Centre; and
- (b) \$23,000.00 (excluding GST) shall be applied to the maintenance activities that TGTV is required to undertake, as set out in Schedule 2.

10.1 TGTV must provide the following reports to WSC by the following Due Dates:

Due Date each year	Reporting on
31 May	TGTV shall provide WSC with a copy of its annual budget.
30 September	TGTV shall provide WSC with a copy of its annual business plan. The business plan shall contain a written scheme of operations to be undertaken by TGTV including a promotional and marketing plan for events and identified performance measures and goals.
30 November	TGTV shall provide WSC with a copy of its final report of TGTV activities for the previous financial year, including the deliverables in this agreement and an audited financial statement in respect of TGTV income, expenditure, assets and liabilities for the previous financial year.
Throughout year	TGTV shall notify the WSC, in writing, of any issues that may place WSC at risk including, but not restricted to, legal actions and insurance claims against TGTV.
Throughout year	TGTV make available, on request by WSC, any documentation relating to meeting agendas and minutes.

10.2 TGTV must deposit all Grant Funds it receives from Council pursuant to this Agreement into an account held by TGTV in a reputable financial institution acceptable to WSC. TGTV must inform WSC of the name of that financial institution and the account details for that account.

10.3 TGTV must, if directed to do so by WSC, give all necessary directions and authorities to the financial institution referred to in Clause 10.2 so as to permit WSC to request and receive such information from that institution as WSC considers necessary to monitor TGTV's compliance with this Agreement.

10.4 In the event WSC receives a complaint about TGTV in respect to the exercise of TGTV's responsibilities under this Agreement, TGTV will provide WSC with records and assistance as reasonably requested of it by WSC so as to permit WSC to investigate and respond to that complaint.

11 Insurance

TGTV must, during the term of this Agreement, maintain a contract of insurance between the TGTV and an insurer, acceptable to Council, which provides an indemnity to WSC in respect to:

- All actions, proceedings and claims in respect of any damage or liability caused by, or arising from, the wilful act, neglect or default of the TGTV or any of its members, employees, contractors, servants, agents or invitees in respect to entry or use of the public areas of the Town Centre, with the quantum of the indemnity to be not less than \$20,000,000.00; and
- Workers compensation covering all workers with a common law extension or endorsement in an amount approved by WSC.

All contracts of insurance must:

- Be produced to the WSC within two (2) business days of demand;
- Be placed with a reputable and solvent insurer;

- Record TGTV as the insured party; and
- Contain the provision that the policy will not be amended, or cancelled, without fourteen (14) days prior notice, in writing, from the insurer to the insured.

TGTV shall ensure that all traders, licensees, concessionaires, permit holders, contractors and other persons, under the control of TGTV, its members or its agents, utilising the public areas of the Town Centre area for TGTV, have enforced appropriate policies of insurance as detailed above.

12 Extension

TGTV may seek to extend the term of this Agreement by one additional period not exceeding 4 years by giving notice in writing to WSC not less than 9 months prior 30 June 2017. If TGTV gives such notice WSC must determine, in its absolute discretion, whether to extend the term of this Agreement for the period sought by TGTV or such other period (of not more than 4 years) as WSC considers appropriate. WSC must give notice to TGTV of WSC's determination of any such request no later than 31 December 2016.

13 Termination

Either party may terminate this agreement at any time by giving the other party at least ninety (90) days prior written notice setting forth the reason for termination being:

- TGTV breaches, or fails to meet, its obligations and deliverables under this agreement;
- The cessation of the Ministerial Approval;
- Unsatisfactory performance by the TGTV, or its engaging in, or being associated with activities which, in the opinion of the WSC, are detrimental to the management, reputation or promotion of Wyong Shire, or part thereof; and/or
- TGTV has entered into any composition, or arrangement with its creditors, or has a receiver appointed over any of its assets, or is the subject of any resolution of petition for winding up, or judicial management.

On the termination (for any reason) of this agreement, WSC will have no obligation to pay any payments not due at the date of termination.

The termination of this agreement shall not relieve the TGTV of any obligation to account to WSC for monies given by the WSC to the TGTV.

A party will not be liable for any failure to perform its obligations under this Agreement to the extent the failure is due to factors outside its reasonable control, including, but not limited to, acts of God, war, fire, electrical failure or third party industrial action. If that failure, or delay, exceeds 60 days, the other party may terminate this Agreement with immediate effect by giving notice to the party which is unable to perform its obligations.

Any termination under this clause will not prejudice the rights or remedies of either party in respect of any other event.

14 Grievance Procedures & Dispute Resolution

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre

Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

15 Membership of the Committee of the TGTV

Further, at the annual general meeting of TGTV that follows the commencement of this Agreement TGTV must do all acts to ensure that the number of WSC councillors that are on the Committee of TGTV is increased to 2.

In addition to any right to terminate under Clause 13, WSC may terminate this Agreement if TGTV fails to comply with its obligation under this Clause.

Executed by both parties as an Agreement:

Executed by **The Greater Toukley Vision**)
Incorporated (ABN 74 294 853 404))
pursuant to s. 22 of the *Associations Incorporation*) Name:
Act 2009 by its authorised signatories) Position:

.....
Name:
Position:

Executed by **Wyong Shire Council** pursuant)
To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:) Jari Ihalainen

.....
Witness

.....
Date

Schedule 1 - Map of Toukley Town Centre



Schedule 2

Delineation of Works

Asset	Works for which Council is Responsible	Works for which the GTV is Responsible
ROADS	<ul style="list-style-type: none"> ▪ Rehabilitation (reseals, heavy patching, reconstruction). ▪ Maintenance (pothole patching, line marking). ▪ Street Sweeping (by machine where possible). 	<ul style="list-style-type: none"> ▪ Litter pickup, where not able to be accessed by street sweeper.
CARPARKS	<ul style="list-style-type: none"> ▪ Rehabilitation (reseals, heavy patching, reconstruction). ▪ Maintenance (Pothole patching, line marking). ▪ Street Sweeping (by machine where possible). 	<ul style="list-style-type: none"> ▪ Litter pickup, where not able to be accessed by street sweeper.
GARDENS	<ul style="list-style-type: none"> ▪ <i>Major Tree</i> replacement. ▪ <i>Irrigation Replacement</i>. 	<ul style="list-style-type: none"> ▪ Plant (other than <i>Major Tree Replacement</i>). ▪ <i>Maintenance</i>. ▪ <i>Operation</i>. ▪ Litter pickup.
DECKS AND ASSOCIATED ASSETS	<ul style="list-style-type: none"> ▪ <i>Replacement</i>. 	<ul style="list-style-type: none"> ▪ <i>Maintenance and Operation</i>.
STREET FURNITURE	<ul style="list-style-type: none"> ▪ <i>Replacement</i>. 	<ul style="list-style-type: none"> ▪ <i>Maintenance and Operation</i>.
DECORATIVE LIGHTING	<ul style="list-style-type: none"> ▪ <i>Replacement</i>. 	<ul style="list-style-type: none"> ▪ <i>Maintenance</i>.
GARDEN WALLS	<ul style="list-style-type: none"> ▪ <i>Replacement</i>. 	<ul style="list-style-type: none"> ▪ <i>Maintenance</i>.
STORMWATER DRAINAGE	<ul style="list-style-type: none"> ▪ <i>Replacement and Maintenance</i>. 	<ul style="list-style-type: none"> ▪ Nil.
STORMWATER GROSS POLLUTANT TRAPS	<ul style="list-style-type: none"> ▪ <i>Operation and Machine Monitoring</i>. ▪ <i>Replacement and Maintenance</i>. 	<ul style="list-style-type: none"> ▪ Nil.
WATER & SEWERAGE (All infrastructure up to including the meter and junction)	<ul style="list-style-type: none"> ▪ <i>Replacement, Operation and Maintenance</i>. 	<ul style="list-style-type: none"> ▪ Nil.

Asset	Works for which Council is Responsible	Works for which the GTV is Responsible
PAVED WALKWAYS/AREA & NATURE STRIPS	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> ▪ <i>Maintenance</i> ▪ <i>Litter pick up</i> 	<ul style="list-style-type: none"> ▪ <i>Litter pick up.</i>
TOILETS	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Operation and Maintenance.</i>
SIGNAGE	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance.</i>
STREET LIGHTS	<ul style="list-style-type: none"> ▪ <i>Replacement and Maintenance.</i> 	<ul style="list-style-type: none"> ▪ <i>Nil.</i>
FLAG/BANNER POLES	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Operation and Maintenance.</i>
FLAGS / BANNERS	<ul style="list-style-type: none"> ▪ <i>Nil.</i> 	<ul style="list-style-type: none"> ▪ <i>Replacement, Maintenance and Operation.</i>
CHRISTMAS TREE	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance and Operation.</i>
CCTV	<ul style="list-style-type: none"> ▪ <i>Nil.</i> 	<ul style="list-style-type: none"> ▪ <i>Replacement, Maintenance and Operation.</i>

DEFINITIONS:

<i>Replacement means:</i>	Construct/install an entire new asset/structure in place of an old asset/structure which has reached the end of its useful life. Does not include the replacement of components which combined with other components make up a whole asset/structure.
<i>Maintenance means:</i>	Carrying out of works to preserve an existing asset in a safe, operational and/or functional condition. It includes the replacement of components of whole assets/structures, cleaning of assets, graffiti removal, painting/varnishing/oiling of assets, rust minimisation / mitigation treatments of assets.
<i>Operation means:</i>	Carrying out of activities relating to the functioning of an asset for the purposes of that asset.
<i>Major Tree means:</i>	A tree that is greater than 2 metres high.



FUNDING AGREEMENT
Between
THE GREATER TOUKLEY VISION INCORPORATED
&
WYONG SHIRE COUNCIL

EVENTS

1 Background

WSC is a body politic established under the *Local Government Act 1993*. WSC levies a special rate under that Act on certain land within the Town Centre, and has a number of functions including the following:

- The management and maintenance of various assets within the Town Centre; and
- The management and occupation of land within the Town Centre; and
- Undertaking works and activities to promote economic and social growth within the Town Centre; and
- Undertaking works and activities to improve the amenity and environment within the Town Centre.

The Grant Funds are public monies, and WSC is accountable for the proper and lawful use of those Grant Funds.

WSC will provide the Grant Funds to TGTV, and TGTV agrees to accept those Grant Funds, on the terms set out in this Agreement.

2 Definitions

The following terms have the following meanings in this Agreement:

Agreement means this agreement, including the Schedules to this agreement;

Clause means a clause in this Agreement;

Grant Funds means the funds referred to in clause 7 of this Agreement;

Ministerial Approval means the approval of the Minister administering the *Local Government Act 1993* to the special rate levied on certain land within the Town Centre being applied to marketing, promotional and maintenance activities within the Town Centre;

Parties means WSC and TGTV;

TGTV means The Greater Toukley Vision Incorporated, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at 250 Main Road, Toukley, NSW 2263;

Third Party Agreement means the Agreement between the Parties, a copy of which is Annexure "A" to this Agreement;

Town Centre means the area of land identified on the map in Schedule 1 by a red coloured border;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminate on 30 June 2017, unless terminated earlier pursuant to Clause 13 or extended pursuant to Clause 12.

4 Agreement is the sole funding agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole funding agreement between the Parties in relation to marketing, promoting and management of events within the Town Centre, and that this Agreement terminates all previous funding arrangements between the Parties relating to the marketing, promoting and management of events within the Town Centre.

5 Warrants

TGTV warrants that:

- a TGTV will apply the Grant Funds only for the purposes provided for in this Agreement and in strict compliance with the terms and conditions set out in this Agreement; and
- b All documents (including but not limited to audited financial statements and business plans) supplied, or to be supplied, to WSC by TGTV pursuant to this Agreement are, or will be, true and accurate; and
- c TGTV will comply with the Third Party Agreement when contracting for the supply of goods and services for the purpose of meeting its obligations under this Agreement; and
- d TGTV must use its best endeavours to maximise the marketing exposure of the Wyong Shire at every available opportunity.

6 Legislation

The Parties each acknowledge that:

- WSC is required to comply with the *Local Government Act 1993* and other relevant legislation;
- Changes to legislation may cause this Agreement to be unfair or ineffective ; and
- The Parties will negotiate in good faith to modify this Agreement if changes in legislation render parts of this Agreement unfair or ineffective.

7 Funding

WSC will, in accordance with Clause 8 and subject to the continuation of the Ministerial Approval, provide Grant Funding of up to \$50,000 (excluding GST) per annum to TGTV.

TGTV agrees that it will use that Grant Funding for the sole purpose of providing the deliverables set out in Clause 9, in the manner set out in Clause 9.

TGTV agrees that it will comply with the Accountability Requirements in Clause 10.

8 Payment Schedule

The Grant Funding is to be paid to TGTV by way of the instalments set out in Schedule 2, with each instalment to be paid to TGTV within 14 days of WSC receiving a Tax Invoice from TGTV, which TGTV is entitled to give to WSC within 14 days of each of dates set out in Schedule 2.

Nothing in this Clause 8 requires WSC to pay more than \$50,000 (excluding GST) in total by way of Grant Funds.

9 Deliverables:

TGTV shall undertake the following marketing activities to promote tourism in the Town Centre, which includes that TGTV:

- GTV shall arrange, manage and/or promote events in the Toukley Town Centre and environs, including those detailed in Schedule 2. The events listed in Schedule 2 may be varied during the term of this agreement, where the parties agree in writing.
- GTV shall promote tourism in the Toukley Town Centre and environs in conjunction with Central Coast Tourism via all parties (GTV, WSC and Central Coast Tourism) liaising every six (6) months and GTV providing research information on results from any market studies, day trip visitation, bookings and overnight stays in the Toukley Town Centre and environs.
- GTV shall deposit all moneys granted by the WSC, or otherwise received by GTV into an account of the GTV and shall be treated and accounted for by GTV. All moneys granted by WSC shall be used for the specific purpose for which it is granted, unless a written agreement to vary the purpose is obtained from WSC.
- GTV shall issue contracts, licences, permits and authorities and determine the terms and conditions for such contracts, licences, permits and authorities to contractors, licensees and other users of the Toukley Town Centre, for such purposes that have been agreed upon between the parties through the powers delegated by WSC to GTV, pursuant to the Third Party Agreement.
- GTV agrees to ensure that Council funding of GTV is recognised by the presence of WSC's logo and name on all relevant publications and promotions.
- GTV shall provide WSC with assistance and support in strategic changes introduced to the Toukley Town Centre area and environs.

10 Accountability Requirements

10.1 TGTV must provide the following reports to WSC by the following Due Dates:

Due Date each year	Reporting on
31 May	TGTV shall provide WSC with a copy of its annual budget.
30 September	TGTV shall provide WSC with a copy of its annual business plan. The business plan shall contain a written scheme of operations to be undertaken by TGTV including a promotional and marketing plan for events and identified performance measures and goals.
30 November	TGTV shall provide WSC with a copy of its final report of TGTV activities for the previous financial year, including the deliverables in this agreement and an audited financial statement in respect of TGTV income, expenditure, assets and liabilities for the previous financial year.
Throughout year	TGTV shall notify the WSC, in writing, of any issues that may place WSC at risk including, but not restricted to, legal actions and insurance claims against TGTV.
Throughout year	TGTV make available, on request by WSC, any documentation relating to meeting agendas and minutes.

- 10.2 TGTV must deposit all Grant Funds it receives from Council pursuant to this Agreement into an account held by TGTV in a reputable financial institution acceptable to WSC. TGTV must inform WSC of the name of that financial institution and the account details for that account.
- 10.3 TGTV must, if directed to do so by WSC, give all necessary directions and authorities to the financial institution referred to in Clause 10.2 so as to permit WSC to request and receive such information from that institution as WSC considers necessary to monitor TGTV's compliance with this Agreement.
- 10.4 In the event WSC receives a complaint about TGTV in respect to the exercise of TGTV's responsibilities under this Agreement, TGTV will provide WSC with records and assistance as reasonably requested of it by WSC so as to permit WSC to investigate and respond to that complaint.

11 Insurance

TGTV must, during the term of this Agreement, maintain a contract of insurance between the TGTV and an insurer, acceptable to Council, which provides an indemnity to WSC in respect to:

- All actions, proceedings and claims in respect of any damage or liability caused by, or arising from, the wilful act, neglect or default of the TGTV or any of its members, employees, contractors, servants, agents or invitees in respect to entry or use of the public areas of the Town Centre, with the quantum of the indemnity to be not less than \$20,000,000.00; and
- Workers compensation covering all workers with a common law extension or endorsement in an amount approved by WSC.

All contracts of insurance must:

- Be produced to the WSC within two (2) business days of demand;
- Be placed with a reputable and solvent insurer;
- Record TGTV as the insured party; and

- Contain the provision that the policy will not be amended, or cancelled, without fourteen (14) days prior notice, in writing, from the insurer to the insured.

TGTV shall ensure that all traders, licensees, concessionaires, permit holders, contractors and other persons, under the control of TGTV, its members or its agents, utilising the public areas of the Town Centre area for TGTV, have enforced appropriate policies of insurance as detailed above.

12 Extension

TGTV may seek to extend the term of this Agreement by one additional period not exceeding 4 years by giving notice in writing to WSC not less than 9 months prior 30 June 2017. If TGTV gives such notice WSC must determine, in its absolute discretion, whether to extend the term of this Agreement for the period sought by TGTV or such other period (of not more than 4 years) as WSC considers appropriate. WSC must give notice to TGTV of WSC's determination of any such request no later than 31 December 2016.

13 Termination

Either party may terminate this agreement at any time by giving the other party at least ninety (90) days prior written notice setting forth the reason for termination being:

- TGTV breaches, or fails to meet, its obligations and deliverables under this agreement;
- The cessation of the Ministerial Approval;
- Unsatisfactory performance by the TGTV, or its engaging in, or being associated with activities which, in the opinion of the WSC, are detrimental to the management, reputation or promotion of Wyong Shire, or part thereof; and/or
- TGTV has entered into any composition, or arrangement with its creditors, or has a receiver appointed over any of its assets, or is the subject of any resolution of petition for winding up, or judicial management.

On the termination (for any reason) of this agreement, WSC will have no obligation to pay any payments not due at the date of termination.

The termination of this agreement shall not relieve the TGTV of any obligation to account to WSC for monies given by the WSC to the TGTV.

A party will not be liable for any failure to perform its obligations under this Agreement to the extent the failure is due to factors outside its reasonable control, including, but not limited to, acts of God, war, fire, electrical failure or third party industrial action. If that failure, or delay, exceeds 60 days, the other party may terminate this Agreement with immediate effect by giving notice to the party which is unable to perform its obligations.

Any termination under this clause will not prejudice the rights or remedies of either party in respect of any other event.

14 Grievance Procedures & Dispute Resolution

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

15 Membership of the Committee of the TGTV

Further, at the annual general meeting of TGTV that follows the commencement of this Agreement TGTV must do all acts to ensure that the number of WSC councillors that are on the Committee of TGTV is increased to 2.

In addition to any right to terminate under Clause 13, WSC may terminate this Agreement if TGTV fails to comply with its obligation under this Clause.

Executed by both parties as an Agreement:

Executed by **The Greater Toukley Vision**)
Incorporated (ABN 74 294 853 404))
pursuant to s. 22 of the *Associations Incorporation*) Name:
Act 2009 by its authorised signatories) Position:

.....
Name:
Position:

Executed by **Wyong Shire Council** pursuant)
To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:) Jari Ihalainen

.....
Witness

.....
Date

Schedule 1 - Map of Toukley Town Centre



Schedule 2**Events to be promoted by the Greater Toukley Vision**

Event funding provided by WSC is to be divided nominally to the total value of up to \$50,000.00 (exclusive of GST).

Final events costs are to be reported to Council on a per event bases.

January	Australia Day Eve Celebrations at Canton Beach	\$5,500
February/March	Wet Wild and Rhythm	\$4,000
April	Soldiers Beach Body Boarding Pro	\$12,000
June	Food, Fun and Music Festival	\$12,000
August	Gathering of the Clans	\$12,500
November	Lighting of the Christmas Tree	\$4,000



PROCESS PROCEDURE AGREEMENT
Between
THE GREATER TOUKLEY VISION INCORPORATED
&
WYONG SHIRE COUNCIL

THIRD PARTY ENGAGEMENT ARRANGEMENTS

1 Background

WSC is a body politic established under the *Local Government Act 1993* and is required to follow strict procedures and process when it engages Third Parties to provide it with goods and services.

WSC and TGTV have entered in to the Funding Agreements, by which WSC provides public monies to TGTV and TGTV agrees to undertake specific activities. The Funding Agreements impose an obligation to comply with this Agreement so as to ensure that processes by which TGTV contracts with Third Parties to provide goods or services to TGTV for the purpose of TGTV meeting its obligations under the Funding Agreements permits WSC to comply with its procurement obligations.

2 Definitions

The following terms have the following meanings in this Agreement:

Agreement means this agreement, including the Schedules to this agreement;

Clause means a clause in this Agreement;

Funding Agreements means the Agreements between the Parties in respect to Events, and in respect to marketing, promotion and maintenance activities, within the Town Centre;

Parties means WSC and TGTV;

TGTV means The Greater Toukley Vision Incorporated, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at 250 Main Road, Toukley, NSW 2263;

Third Parties means any person or entity other than WSC and TGTV;

Town Centre has the same meaning as in the Funding Agreements;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminates when both of the Funding Agreements have terminated.

4 Agreement is the sole agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole agreement between the Parties in relation to the engagement of Third Parties for the purposes of the Funding Agreements, and that this Agreement terminates all previous arrangements between the Parties relating to such engagement.

5 Third Party Engagement Arrangements

Unless the Parties otherwise agree in writing TGTV must follow WSC's procurement and contract policies and procedures (including but not limited to any policy of WSC concerning preferences to be given to local suppliers), when engaging Third Parties to provide goods or services to enable TGTV to meet its obligations under the Funding Agreements.

TGTV acknowledges that WSC's procurement and contract policies and procedures include the following thresholds and requirements for quotes:

ESTIMATED VALUE (INCL GST)	STANDARD RANGE OF INVITATIONS
Up to \$3,000	Restricted Invitation (1 to 5 firms)
\$3,000 - \$50,000	Restricted Invitation (2 to 6 firms)
\$50,000 - \$150,000	Restricted Invitation (3 to 8 firms) <i>or</i> Public Tender Invitation
\$150,000 and above	Public Tender Invitation

6 Reporting

TGTV must provide an annual report, no later than 1 November in each year during the term of this Agreement to WSC that provides the following particulars in respect to each contract or agreement that TGTV has entered in to with any Third Party during the preceding 12 months of this Agreement for the purposes of TGTV meeting its obligations under the Funding Agreement:

- The name of each Third Party.
- The goods or services provided by the Third Party.
- The value of the goods or services provided
- The process followed by TGTV to procure the engagement of that Third Party.

7 Grievance Procedures & Dispute Resolution

If any of the parties to this Agreement has a grievance with either, or all, of the other parties, any dispute arising shall be administered by the Australian Commercial Disputes Centre Limited ("ACDC") conducted and held in accordance with the conciliation rules of ACDC in force at the date of this Agreement.

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the ACDC, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast.

The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

Executed by both parties as an Agreement:

Executed by **The Greater Toukley Vision**)
Incorporated (ABN 74 294 853 404))
pursuant to s. 22 of the *Associations Incorporation*) Name:
Act 2009 by its authorised signatories) Position:

.....
Name:
Position:

Executed by **Wyong Shire Council** pursuant)
To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:) Jari Ihalainen

.....
Witness Date



FUNDING AGREEMENT
Between
WYONG REGIONAL CHAMBER OF COMMERCE
&
WYONG SHIRE COUNCIL

MARKETING, PROMOTION AND MAINTENANCE

1 Background

WSC is a body politic established under the *Local Government Act 1993*. WSC levies a special rate under that Act on certain land within the Town Centre, and has a number of functions including the following:

- The management and maintenance of various assets within the Town Centre; and
- The management and occupation of land within the Town Centre; and
- Undertaking works and activities to promote economic and social growth within the Town Centre; and
- Undertaking works and activities to improve the amenity and environment within the Town Centre.

The Grant Funds are public monies, and WSC is accountable for the proper and lawful use of those Grant Funds.

WSC will provide the Grant Funds to WRCC, and WRCC agrees to accept those Grant Funds, on the terms set out in this Agreement.

2 Definitions

The following terms have the following meanings in this Agreement:

Agreement means this agreement, including the Schedules to this agreement;

Clause means a clause in this Agreement;

Grant Funds means the funds referred to in clause 7 of this Agreement;

Ministerial Approval means the approval of the Minister administering the *Local Government Act 1993* to the special rate levied on certain land within the Town Centre being applied to marketing, promotional and maintenance activities within the Town Centre;

Parties means WSC and WRCC;

Third Party Agreement means the Agreement between the Parties, a copy of which is Annexure "A" to this Agreement;

Town Centre means the area of land identified on the map in Schedule 1 by a red coloured border;

WRCC means the Wyong Regional Chamber of Commerce, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at 21 Rankens Court, Wyong NSW 2259;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminate on 30 June 2017, unless terminated earlier pursuant to Clause 13 or extended pursuant to Clause 12.

4 Agreement is the sole funding agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole funding agreement between the Parties in relation to marketing, promoting and maintenance activities within the Town Centre, and that this Agreement terminates all previous funding arrangements between the Parties relating to marketing, promoting and maintenance activities within the Town Centre.

5 Warrants

WRCC warrants that:

- a WRCC will apply the Grant Funds only for the purposes provided for in this Agreement and in strict compliance with the terms and conditions set out in this Agreement; and
- b All documents (including but not limited to audited financial statements and business plans) supplied, or to be supplied, to WSC by WRCC pursuant to this Agreement are, or will be, true and accurate; and
- c WRCC will comply with the Third Party Agreement when contracting for the supply of goods and services for the purpose of meeting its obligations under this Agreement; and
- d WRCC must use its best endeavours to maximise the marketing exposure of the Wyong Shire at every available opportunity.

6 Legislation

The Parties each acknowledge that:

- WSC is required to comply with the *Local Government Act 1993* and other relevant legislation;
- Changes to legislation may cause this Agreement to be unfair or ineffective ; and
- The Parties will negotiate in good faith to modify this Agreement if changes in legislation render parts of this Agreement unfair or ineffective.

7 Funding

WSC will, in accordance with Clause 8 and subject to the continuation of the Ministerial Approval, provide Grant Funding of up to \$89,000 (excluding GST) per annum to WRCC.

WRCC agrees that it will use that Grant Funding for the sole purpose of providing the deliverables set out in Clause 9, in the manner set out in Clause 9.

WRCC agrees that it will comply with the Accountability Requirements in Clause 10.

8 Payment Schedule

The Grant Funding is to be paid to WRCC by way of four equal instalments, with an instalment to be paid to WRCC within 14 days of WSC receiving a Tax Invoice from WRCC, which WRCC is entitled to give to WSC only within 14 days of each of the following dates:

- 1 1 July 2013
- 2 1 October 2013
- 3 1 January 2014
- 4 1 April 2014
- 5 1 July 2014
- 6 1 October 2014
- 7 1 January 2015
- 8 1 April 2015
- 9 1 July 2015
- 10 1 October 2015
- 11 1 January 2016
- 12 1 April 2016
- 13 1 July 2016
- 14 1 October 2016
- 15 1 January 2017
- 16 1 April 2017

Nothing in this Clause 8 requires WSC to pay more than \$89,000 (excluding GST) to WRCC in any financial year.

9

Deliverables:

- WRCC shall promote tourism in the Wyong Town Centre and environs in conjunction with Central Coast Tourism via all parties liaising every six (6) months and WRCC providing research information on results from any market studies, day trip visitation, bookings and overnight stays in the Wyong Town Centre and environs.
- WRCC shall maintain WSC assets, as defined in Schedule 2 – Works Delineation, within the Wyong Town Centre to the quality standards and requirements of WSC. The parties acknowledge that Schedule 2 may be amended, from time to time, to ensure the schedule is complete and clear, with the written agreement of both parties.
- WRCC shall maintain the Wyong Town Centre by:
 - a Ensuring that all WSC assets, under the care, control and management of WRCC, as described in Schedule 2 – Delineation of Works, are maintained in good order and condition.
 - b WRCC promptly repairing and/or replacing any WSC assets for which the WRCC is responsible to maintain.
 - c WRCC promptly reporting to WSC where the Wyong Town Centre, or any part thereof, falls into disrepair, or becomes, or is likely to become, a danger, or potential danger, to users of Wyong Town Centre.
- WSC will maintain the public infrastructure within Wyong Town Centre in accordance with its responsibilities described in Schedule 2 - Delineation of Works.
- WRCC shall deposit all moneys granted by the WSC, or otherwise received by WRCC, into an account of the WRCC and shall be treated and accounted for by WRCC. All moneys granted by WSC shall be used for the specific purpose for which it is granted, unless a written agreement to vary the purpose is obtained from WSC.
- WRCC shall issue contracts, licences, permits and authorities and determine the terms and conditions for such contracts, licences, permits and authorities to contractors, licensees and other users of the Wyong Town Centre, for such purposes that have been agreed upon between the parties through the powers delegated by WSC to WRCC, pursuant to the Third Party Agreement.
- WRCC shall ensure that the Wyong Town Centre is not used for advertising (other than for public events) spruiking (unless a permit has been issued) busking (unless a permit has been issued) political or religious purposes.
- WRCC shall provide support to businesses in the Wyong Town Centre.
- WRCC agrees to ensure that Council funding of WRCC is recognised by the presence of WSC's logo and name on all relevant publications and promotions.
- WRCC shall provide WSC with assistance and support in strategic changes introduced to the Wyong Town Centre area and environs.

WRCC shall apply the annual Grant Funding of \$89,000.00 (excluding GST) per annum in the following manner:

- (a) \$66,000.00 (excluding GST) shall be applied to the marketing and promotion activities within the Town Centre; and
- (b) \$23,000.00 (excluding GST) shall be applied to the maintenance activities that WRCC is required to undertake, as set out in Schedule 2.

10.1 WRCC must provide the following reports to WSC by the following Due Dates:

Due Date each year	Reporting on
31 May	WRCC shall provide WSC with a copy of its annual budget.
30 September	WRCC shall provide WSC with a copy of its annual business plan. The business plan shall contain a written scheme of operations to be undertaken by WRCC including a promotional and marketing plan for events and identified performance measures and goals.
30 November	WRCC shall provide WSC with a copy of its final report of WRCC activities for the previous financial year, including the deliverables in this agreement and an audited financial statement in respect of WRCC income, expenditure, assets and liabilities for the previous financial year.
Throughout year	WRCC shall notify the WSC, in writing, of any issues that may place WSC at risk including, but not restricted to, legal actions and insurance claims against WRCC.
Throughout year	WRCC make available, on request by WSC, any documentation relating to meeting agendas and minutes.

10.2 WRCC must deposit all Grant Funds it receives from Council pursuant to this Agreement into an account held by WRCC in a reputable financial institution acceptable to WSC. WRCC must inform WSC of the name of that financial institution and the account details for that account.

10.3 WRCC must, if directed to do so by WSC, give all necessary directions and authorities to the financial institution referred to in Clause 10.2 so as to permit WSC to request and receive such information from that institution as WSC considers necessary to monitor WRCC's compliance with this Agreement.

10.4 In the event WSC receives a complaint about WRCC in respect to the exercise of WRCC's responsibilities under this Agreement, WRCC will provide WSC with records and assistance as reasonably requested of it by WSC so as to permit WSC to investigate and respond to that complaint.

11 Insurance

WRCC must, during the term of this Agreement, maintain a contract of insurance between the WRCC and an insurer, acceptable to Council, which provides an indemnity to WSC in respect to:

- All actions, proceedings and claims in respect of any damage or liability caused by, or arising from, the wilful act, neglect or default of the WRCC or any of its members, employees, contractors, servants, agents or invitees in respect to entry or use of the public areas of the Town Centre, with the quantum of the indemnity to be not less than \$20,000,000.00; and
- Workers compensation covering all workers with a common law extension or endorsement in an amount approved by WSC.

All contracts of insurance must:

- Be produced to the WSC within two (2) business days of demand;
- Be placed with a reputable and solvent insurer;

- Record WRCC as the insured party; and
- Contain the provision that the policy will not be amended, or cancelled, without fourteen (14) days prior notice, in writing, from the insurer to the insured.

WRCC shall ensure that all traders, licensees, concessionaires, permit holders, contractors and other persons, under the control of WRCC, its members or its agents, utilising the public areas of the Town Centre area for WRCC, have enforced appropriate policies of insurance as detailed above.

12 Extension

WRCC may seek to extend the term of this Agreement by one additional period not exceeding 4 years by giving notice in writing to WSC not less than 9 months prior 30 June 2017. If WRCC gives such notice WSC must determine, in its absolute discretion, whether to extend the term of this Agreement for the period sought by WRCC or such other period (of not more than 4 years) as WSC considers appropriate. WSC must give notice to WRCC of WSC's determination of any such request no later than 31 December 2016.

13 Termination

Either party may terminate this agreement at any time by giving the other party at least ninety (90) days prior written notice setting forth the reason for termination being:

- WRCC breaches, or fails to meet, its obligations and deliverables under this agreement;
- The cessation of the Ministerial Approval;
- Unsatisfactory performance by the WRCC, or its engaging in, or being associated with activities which, in the opinion of the WSC, are detrimental to the management, reputation or promotion of Wyong Shire, or part thereof; and/or
- WRCC has entered into any composition, or arrangement with its creditors, or has a receiver appointed over any of its assets, or is the subject of any resolution of petition for winding up, or judicial management.

On the termination (for any reason) of this agreement, WSC will have no obligation to pay any payments not due at the date of termination.

The termination of this agreement shall not relieve the WRCC of any obligation to account to WSC for monies given by the WSC to the WRCC.

A party will not be liable for any failure to perform its obligations under this Agreement to the extent the failure is due to factors outside its reasonable control, including, but not limited to, acts of God, war, fire, electrical failure or third party industrial action. If that failure, or delay, exceeds 60 days, the other party may terminate this Agreement with immediate effect by giving notice to the party which is unable to perform its obligations.

Any termination under this clause will not prejudice the rights or remedies of either party in respect of any other event.

14 Grievance Procedures & Dispute Resolution

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre

Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administrated by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

Executed by both parties as an Agreement:

Executed by **Wyong Regional Chamber of Commerce** ABN 87 161 546 135)
 pursuant to s. 22 of the *Associations Incorporation Act 2009* by its authorised signatories)

.....

Name:

Position:

.....

Name:

Position:

Executed by **Wyong Shire Council** pursuant)
 To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:)

.....

Jari Ihalainen

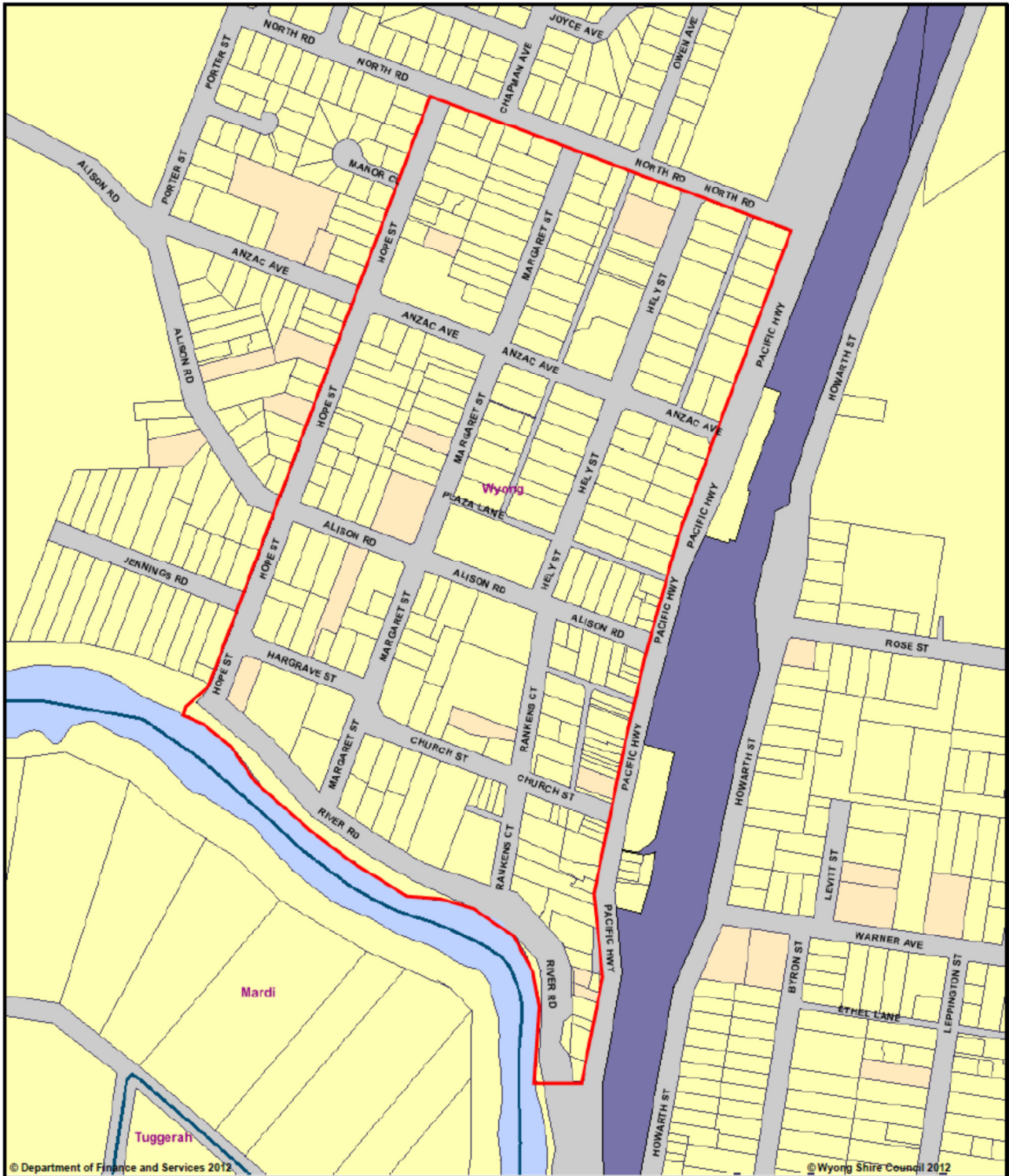
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Witness

.....

Date

Schedule 1 - Map of Wyong Town Centre



Schedule 2

Delineation of Works

Asset	Works for which Council is Responsible	Works for which the WRCC is Responsible
ROADS	<ul style="list-style-type: none"> ▪ Rehabilitation (reseals, heavy patching, reconstruction). ▪ Maintenance (pothole patching, line marking). ▪ Street Sweeping (by machine where possible). 	<ul style="list-style-type: none"> ▪ Litter pickup, where not able to be accessed by street sweeper.
CARPARKS	<ul style="list-style-type: none"> ▪ Rehabilitation (reseals, heavy patching, reconstruction). ▪ Maintenance (Pothole patching, line marking). ▪ Street Sweeping (by machine where possible). 	<ul style="list-style-type: none"> ▪ Litter pickup, where not able to be accessed by street sweeper.
GARDENS	<ul style="list-style-type: none"> ▪ <i>Major Tree</i> replacement. ▪ <i>Irrigation Replacement</i>. 	<ul style="list-style-type: none"> ▪ Plant (other than <i>Major Tree Replacement</i>). ▪ <i>Maintenance</i>. ▪ <i>Operation</i>. ▪ Litter pickup.
DECKS AND ASSOCIATED ASSETS	<ul style="list-style-type: none"> ▪ <i>Replacement</i>. 	<ul style="list-style-type: none"> ▪ <i>Maintenance and Operation</i>.
STREET FURNITURE	<ul style="list-style-type: none"> ▪ <i>Replacement</i>. 	<ul style="list-style-type: none"> ▪ <i>Maintenance and Operation</i>.
DECORATIVE LIGHTING	<ul style="list-style-type: none"> ▪ <i>Replacement</i>. 	<ul style="list-style-type: none"> ▪ <i>Maintenance</i>.
GARDEN WALLS	<ul style="list-style-type: none"> ▪ <i>Replacement</i>. 	<ul style="list-style-type: none"> ▪ <i>Maintenance</i>.
STORMWATER DRAINAGE	<ul style="list-style-type: none"> ▪ <i>Replacement and Maintenance</i>. 	<ul style="list-style-type: none"> ▪ Nil.
STORMWATER GROSS POLLUTANT TRAPS	<ul style="list-style-type: none"> ▪ <i>Operation and Machine Monitoring</i>. ▪ <i>Replacement and Maintenance</i>. 	<ul style="list-style-type: none"> ▪ Nil.
WATER & SEWERAGE (All infrastructure up to including the meter and junction)	<ul style="list-style-type: none"> ▪ <i>Replacement, Operation and Maintenance</i>. 	<ul style="list-style-type: none"> ▪ Nil.

Asset	Works for which Council is Responsible	Works for which the WRCC is Responsible
PAVED WALKWAYS/AREA & NATURE STRIPS	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> ▪ <i>Maintenance</i> ▪ <i>Litter pick up</i> 	<ul style="list-style-type: none"> ▪ <i>Litter pick up.</i>
TOILETS	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Operation and Maintenance.</i>
SIGNAGE	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance.</i>
STREET LIGHTS	<ul style="list-style-type: none"> ▪ <i>Replacement and Maintenance.</i> 	<ul style="list-style-type: none"> ▪ <i>Nil.</i>
FLAG/BANNER POLES	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Operation and Maintenance.</i>
FLAGS / BANNERS	<ul style="list-style-type: none"> ▪ <i>Nil.</i> 	<ul style="list-style-type: none"> ▪ <i>Replacement, Maintenance and Operation.</i>
CHRISTMAS TREE	<ul style="list-style-type: none"> ▪ <i>Replacement.</i> 	<ul style="list-style-type: none"> ▪ <i>Maintenance and Operation.</i>
CCTV	<ul style="list-style-type: none"> ▪ <i>Nil.</i> 	<ul style="list-style-type: none"> ▪ <i>Replacement, Maintenance and Operation.</i>

DEFINITIONS:

<i>Replacement means:</i>	Construct/install an entire new asset/structure in place of an old asset/structure which has reached the end of its useful life. Does not include the replacement of components which combined with other components make up a whole asset/structure.
<i>Maintenance means:</i>	Carrying out of works to preserve an existing asset in a safe, operational and/or functional condition. It includes the replacement of components of whole assets/structures, cleaning of assets, graffiti removal, painting/varnishing/oiling of assets, rust minimisation / mitigation treatments of assets
<i>Operation means:</i>	Carrying out of activities relating to the functioning of an asset for the purposes of that asset.
<i>Major Tree means:</i>	A tree that is greater than 2 metres high.



FUNDING AGREEMENT
Between
WYONG REGIONAL CHAMBER OF COMMERCE
&
WYONG SHIRE COUNCIL

EVENTS

1 Background

WSC is a body politic established under the *Local Government Act 1993*. WSC levies a special rate under that Act on certain land within the Town Centre, and has a number of functions including the following:

- The management and maintenance of various assets within the Town Centre; and
- The management and occupation of land within the Town Centre; and
- Undertaking works and activities to promote economic and social growth within the Town Centre; and
- Undertaking works and activities to improve the amenity and environment within the Town Centre.

The Grant Funds are public monies, and WSC is accountable for the proper and lawful use of those Grant Funds.

WSC will provide the Grant Funds to WRCC, and WRCC agrees to accept those Grant Funds, on the terms set out in this Agreement.

2 Definitions

The following terms have the following meanings in this Agreement:

Agreement means this agreement, including the Schedules to this agreement;

Clause means a clause in this Agreement;

Grant Funds means the funds referred to in clause 7 of this Agreement;

Ministerial Approval means the approval of the Minister administering the *Local Government Act 1993* to the special rate levied on certain land within the Town Centre being applied to marketing, promotional and maintenance activities within the Town Centre;

Parties means WSC and WRCC;

Third Party Agreement means the Agreement between the Parties, a copy of which is Annexure "A" to this Agreement;

Town Centre means the area of land identified on the map in Schedule 1 by a red coloured border;

WRCC means the Wyong Regional Chamber of Commerce, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at **21** Rankens Court, Wyong NSW 2259;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminate on 30 June 2017, unless terminated earlier pursuant to Clause 13 or extended pursuant to Clause 12.

4 Agreement is the sole funding agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole funding agreement between the Parties in relation to marketing, promoting and management of events within the Town Centre, and that this Agreement terminates all previous funding arrangements between the Parties relating to the marketing, promoting and management of events within the Town Centre.

5 Warrants

WRCC warrants that:

- a WRCC will apply the Grant Funds only for the purposes provided for in this Agreement and in strict compliance with the terms and conditions set out in this Agreement; and
- b All documents (including but not limited to audited financial statements and business plans) supplied, or to be supplied, to WSC by WRCC pursuant to this Agreement are, or will be, true and accurate; and
- c WRCC will comply with the Third Party Agreement when contracting for the supply of goods and services for the purpose of meeting its obligations under this Agreement; and
- d WRCC must use its best endeavours to maximise the marketing exposure of the Wyong Shire at every available opportunity.

6 Legislation

The Parties each acknowledge that:

- WSC is required to comply with the *Local Government Act 1993* and other relevant legislation;
- Changes to legislation may cause this Agreement to be unfair or ineffective ; and
- The Parties will negotiate in good faith to modify this Agreement if changes in legislation render parts of this Agreement unfair or ineffective.

7 Funding

WSC will, in accordance with Clause 8 and subject to the continuation of the Ministerial Approval, provide Grant Funding of up to \$25,000 (excluding GST) per annum to WRCC.

WRCC agrees that it will use that Grant Funding for the sole purpose of providing the deliverables set out in Clause 9, in the manner set out in Clause 9.

WRCC agrees that it will comply with the Accountability Requirements in Clause 10.

8 Payment Schedule

The Grant Funding is to be paid to WRCC by way of the instalments set out in Schedule 2, with each instalment to be paid to WRCC within 14 days of WSC receiving a Tax Invoice from WRCC, which WRCC is entitled to give to WSC within 14 days of each of dates set out in Schedule 2.

Nothing in this Clause 8 requires WSC to pay more than \$25,000 (excluding GST) in total by way of Grant Funds.

9 Deliverables:

WRCC shall undertake the following marketing activities to promote tourism in the Town Centre, which includes that WRCC:

- WRCC shall arrange, manage and/or promote events in the Wyong Town Centre area, including those detailed in Schedule 2. The events listed in Schedule 21 may be varied during the term of this agreement, where the parties agree in writing.
- WRCC shall promote tourism in the Wyong Town Centre area in conjunction with Central Coast Tourism via all parties (WRR, WSC and Central Coast Tourism) liaising every six (6) months and WRCC providing research information on results from any market studies, day trip visitation, bookings and overnight stays in the Wyong Town Centre and environs.
- WRCC shall deposit all moneys granted by the WSC, or otherwise received by WRCC, into an account of the WRCC and shall be treated and accounted for by WRCC. All moneys granted by WSC shall be used for the specific purpose for which it is granted, unless a written agreement to vary the purpose is obtained from WSC.
- WRCC shall issue contracts, licences, permits and authorities to contractors, licensees, permit holders and other users of the Wyong Town Centre for such purposes that have been agreed upon between the parties, through the powers delegated by the WSC to the WRCC, pursuant to the Third Party Arrangements Agreement.
- WRCC agrees to ensure that WSC funding of WRCC is recognised by the presence of WSCs logo and name on all relevant publications and promotions.
- WRCC shall provide signage at events that will recognise and promote WSC sponsorship.
- WRCC shall provide WSC with assistance and support in strategic changes introduced to the Wyong Town Centre and environs.

10 Accountability Requirements

10.1 WRCC must provide the following reports to WSC by the following Due Dates:

Due Date each year	Reporting on
-----------------------	--------------

31 May	WRCC shall provide WSC with a copy of its annual budget.
30 September	WRCC shall provide WSC with a copy of its annual business plan. The business plan shall contain a written scheme of operations to be undertaken by WRCC including a promotional and marketing plan for events and identified performance measures and goals.
30 November	WRCC shall provide WSC with a copy of its final report of WRCC activities for the previous financial year, including the deliverables in this agreement and an audited financial statement in respect of WRCC income, expenditure, assets and liabilities for the previous financial year.
Throughout year	WRCC shall notify the WSC, in writing, of any issues that may place WSC at risk including, but not restricted to, legal actions and insurance claims against WRCC.
Throughout year	WRCC make available, on request by WSC, any documentation relating to meeting agendas and minutes.

- 10.2 WRCC must deposit all Grant Funds it receives from Council pursuant to this Agreement into an account held by WRCC in a reputable financial institution acceptable to WSC. WRCC must inform WSC of the name of that financial institution and the account details for that account.
- 10.3 WRCC must, if directed to do so by WSC, give all necessary directions and authorities to the financial institution referred to in Clause 10.2 so as to permit WSC to request and receive such information from that institution as WSC considers necessary to monitor WRCC's compliance with this Agreement.
- 10.4 In the event WSC receives a complaint about WRCC in respect to the exercise of WRCC's responsibilities under this Agreement, WRCC will provide WSC with records and assistance as reasonably requested of it by WSC so as to permit WSC to investigate and respond to that complaint.

11 Insurance

WRCC must, during the term of this Agreement, maintain a contract of insurance between the WRCC and an insurer, acceptable to Council, which provides an indemnity to WSC in respect to:

- All actions, proceedings and claims in respect of any damage or liability caused by, or arising from, the wilful act, neglect or default of the WRCC or any of its members, employees, contractors, servants, agents or invitees in respect to entry or use of the public areas of the Town Centre, with the quantum of the indemnity to be not less than \$20,000,000.00; and
- Workers compensation covering all workers with a common law extension or endorsement in an amount approved by WSC.

All contracts of insurance must:

- Be produced to the WSC within two (2) business days of demand;
- Be placed with a reputable and solvent insurer;
- Record WRCC as the insured party; and
- Contain the provision that the policy will not be amended, or cancelled, without fourteen (14) days prior notice, in writing, from the insurer to the insured.

WRCC shall ensure that all traders, licensees, concessionaires, permit holders, contractors and other persons, under the control of WRCC, its members or its agents, utilising the public

areas of the Town Centre area for WRCC, have enforced appropriate policies of insurance as detailed above.

12 Extension

WRCC may seek to extend the term of this Agreement by one additional period not exceeding 4 years by giving notice in writing to WSC not less than 9 months prior 30 June 2017. If WRCC gives such notice WSC must determine, in its absolute discretion, whether to extend the term of this Agreement for the period sought by WRCC or such other period (of not more than 4 years) as WSC considers appropriate. WSC must give notice to WRCC of WSC's determination of any such request no later than 31 December 2016.

13 Termination

Either party may terminate this agreement at any time by giving the other party at least ninety (90) days prior written notice setting forth the reason for termination being:

- WRCC breaches, or fails to meet, its obligations and deliverables under this agreement;
- The cessation of the Ministerial Approval;
- Unsatisfactory performance by the WRCC, or its engaging in, or being associated with activities which, in the opinion of the WSC, are detrimental to the management, reputation or promotion of Wyong Shire, or part thereof; and/or
- WRCC has entered into any composition, or arrangement with its creditors, or has a receiver appointed over any of its assets, or is the subject of any resolution of petition for winding up, or judicial management.

On the termination (for any reason) of this agreement, WSC will have no obligation to pay any payments not due at the date of termination.

The termination of this agreement shall not relieve the WRCC of any obligation to account to WSC for monies given by the WSC to the WRCC.

A party will not be liable for any failure to perform its obligations under this Agreement to the extent the failure is due to factors outside its reasonable control, including, but not limited to, acts of God, war, fire, electrical failure or third party industrial action. If that failure, or delay, exceeds 60 days, the other party may terminate this Agreement with immediate effect by giving notice to the party which is unable to perform its obligations.

Any termination under this clause will not prejudice the rights or remedies of either party in respect of any other event.

14 Grievance Procedures & Dispute Resolution

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the Parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the Australian Commercial Disputes Centre Limited, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast. The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

Executed by both parties as an Agreement:

Executed by **Wyong Regional Chamber of Commerce** ABN 87 161 546 135)
 pursuant to s. 22 of the *Associations Incorporation Act 2009* by its authorised signatories)

.....
 Name:
 Position:

.....
 Name:
 Position:

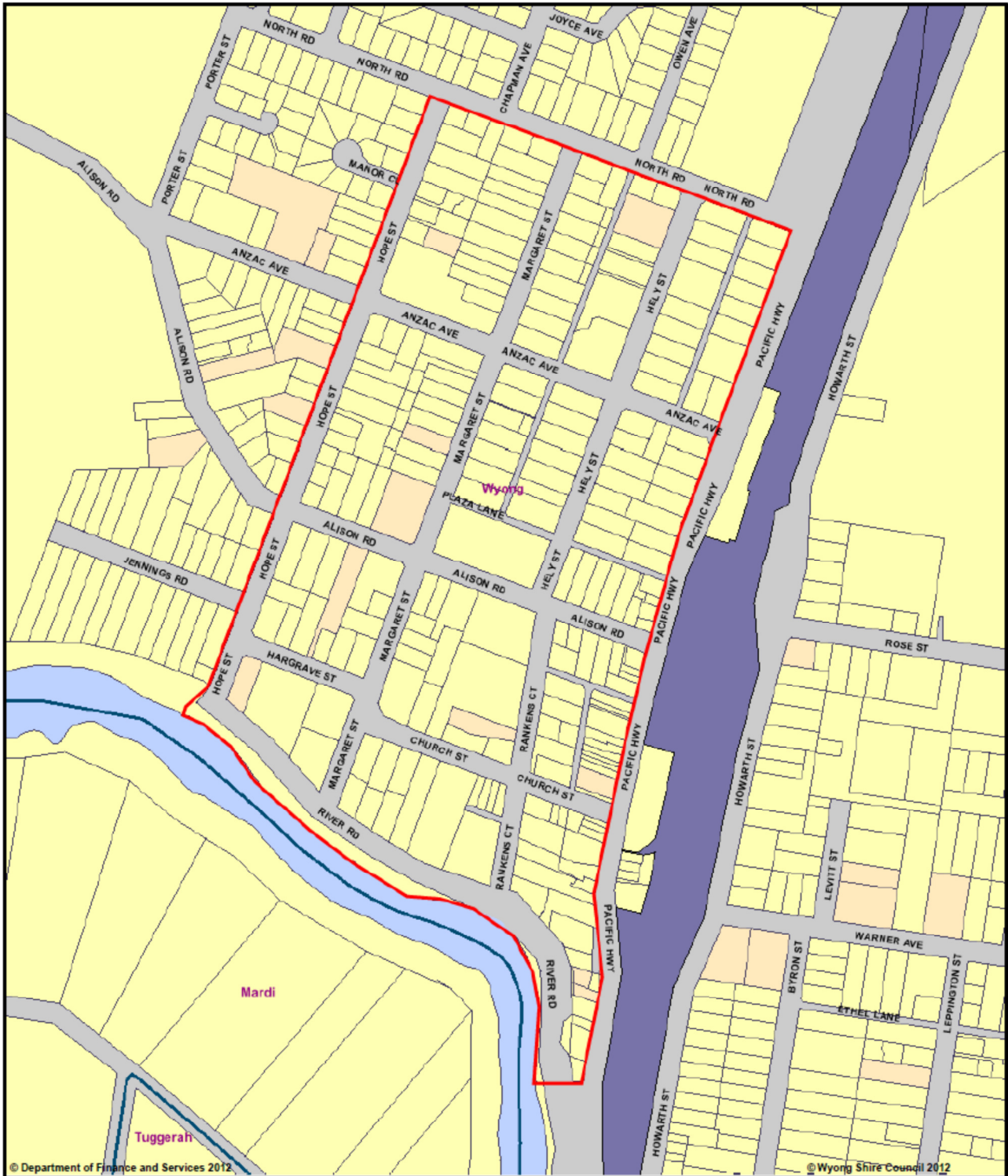
Executed by **Wyong Shire Council** pursuant)
 To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:)

.....
 Jari Ihalainen

.....
 Witness

.....
 Date

Schedule 1 - Map of the Wyong Town Centre Area



Schedule 2

Events to be promoted by the Wyong Regional Chamber of Commerce

Event funding provided by WSC is to be divided nominally to the total value of up to \$25,000.00 (exclusive of GST). Final events costs are to be reported to Council on a per event bases.

January	Australia Day Celebrations	\$5,500
March	Central Coast Country Music Festival	\$7,500
	River Event	\$2,000
April	Welcome to Wyong Community Forum: Graffiti Squad Projects	\$2,500
July	WRCC Business Awards	\$2,500
August	Welcome to Wyong Community Forum: Graffiti Squad Projects	\$1,000
September	Spring Festival	\$1,000
December	Carols by Candlelight	\$3,000



PROCESS PROCEDURE AGREEMENT
Between
WYONG REGIONAL CHAMBER OF COMMERCE
&
WYONG SHIRE COUNCIL

THIRD PARTY ENGAGEMENT ARRANGEMENTS

1 Background

WSC is a body politic established under the *Local Government Act 1993* and is required to follow strict procedures and process when it engages Third Parties to provide it with goods and services.

WSC and WRCC have entered in to the Funding Agreements, by which WSC provides public monies to WRCC and WRCC agrees to undertake specific activities. The Funding Agreements impose an obligation to comply with this Agreement so as to ensure that processes by which WRCC contracts with Third Parties to provide goods or services to WRCC for the purpose of WRCC meeting its obligations under the Funding Agreements permits WSC to comply with its procurement obligations.

2 Definitions

The following terms have the following meanings in this Agreement:

Agreement means this agreement, including the Schedules to this agreement;

Clause means a clause in this Agreement;

Funding Agreements means the Agreements between the Parties in respect to Events, and in respect to marketing, promotion and maintenance activities, within the Town Centre;

Parties means WSC and WRCC;

Third Parties means any person or entity other than WSC and WRCC;

Town Centre has the same meaning as in the Funding Agreements;

WRCC means the Wyong Regional Chamber of Commerce, an incorporated association pursuant to the *Associations Incorporation Act 2009* having its place of business at 21 Rankens Court, Wyong NSW 2259;

WSC means Wyong Shire Council, a body politic established by the *Local Government Act 1993* having its primary place of business at 2 Hely Street, Wyong NSW.

3 Term

This Agreement shall commence on 1 July 2013 and terminates when both of the Funding Agreements have terminated.

4 Agreement is the sole agreement

The Parties agree, and they each acknowledge, that from 1 July 2013 this Agreement will be the sole agreement between the Parties in relation to the engagement of Third Parties for the purposes of the Funding Agreements, and that this Agreement terminates all previous arrangements between the Parties relating to such engagement.

5 Third Party Engagement Arrangements

Unless the Parties otherwise agree in writing WRCC must follow WSC's procurement and contract policies and procedures (including but not limited to any policy of WSC concerning preferences to be given to local suppliers), when engaging Third Parties to provide goods or services to enable WRCC to meet its obligations under the Funding Agreements.

WRCC acknowledges that WSC's procurement and contract policies and procedures include the following thresholds and requirements for quotes:

ESTIMATED VALUE (INCL GST)	STANDARD RANGE OF INVITATIONS
Up to \$3,000	Restricted Invitation (1 to 5 firms)
\$3,000 - \$50,000	Restricted Invitation (2 to 6 firms)
\$50,000 - \$150,000	Restricted Invitation (3 to 8 firms) <i>or</i> Public Tender Invitation
\$150,000 and above	Public Tender Invitation

6 Reporting

WRCC must provide an annual report, no later than 1 November in each year during the term of this Agreement to WSC that provides the following particulars in respect to each contract or agreement that WRCC has entered in to with any Third Party during the preceding 12 months of this Agreement for the purposes of WRCC meeting its obligations under the Funding Agreement:

- The name of each Third Party.
- The goods or services provided by the Third Party.
- The value of the goods or services provided
- The process followed by WRCC to procure the engagement of that Third Party.

7 Grievance Procedures & Dispute Resolution

If any of the parties to this Agreement has a grievance with either, or all, of the other parties, any dispute arising shall be administered by the Australian Commercial Disputes Centre Limited ("ACDC") conducted and held in accordance with the conciliation rules of ACDC in force at the date of this Agreement.

In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the parties) after the appointment of the conciliator by the parties, the dispute, controversy or claim shall be submitted to arbitration, administered by the ACDC, conducted and held in accordance with, and subject to the law of the State of New South Wales.

Any conciliation or arbitration meetings and proceedings shall be held on the Central Coast.

The mediation will be conducted in a spirit of goodwill and cooperation, the cost of which will be borne by the party engaging the conciliator.

Executed by both parties as an Agreement:

Executed by **Wyong Regional Chamber of**)
Commerce ABN 87 161 546 135)
pursuant to s. 22 of the *Associations Incorporation*) Name:
Act 2009 by its authorised signatories) Position:

.....
Name:
Position:

Executed by **Wyong Shire Council** pursuant)
To delegations under ss. 377 and 378 of the)
Local Government Act 1993, witnessed by:) Jari Ihalainen

.....
Witness

.....
Date