

ITEM 5

ILLAWARRA DISTRICT WEEDS AUTHORITY DEED OF AGREEMENT - SEPTEMBER 2019

The purpose of the Illawarra District Weeds Authority (IDWA) is to administer the Biosecurity Act 2015 and control priority weeds within the three local government areas of Wollongong City, Shellharbour City and Kiama Municipality. The IDWA operates under the auspices of the Illawarra Shoalhaven Joint Organisation (ISJO) on behalf of Kiama Council who is the nominated manager. The purpose of this report is to request that Council resolve to continue to exercise their weed control functions under the Biosecurity Act 2015 jointly as the IDWA and enter into an Agreement in perpetuity for the management of the IDWA by the Illawarra Shoalhaven Joint Organisation.

RECOMMENDATION

- 1 In accordance with Section 377 of the Local Government Act, Council exercise their weed control functions as the Local Control Authority under the Biosecurity Act 2015 jointly as the Illawarra District Weeds Authority, under the auspices of the Illawarra Shoalhaven Joint Organisation.
- 2 Council delegate to the General Manager the authority to finalise and execute the Illawarra District Weeds Authority Agreement and any other documentation required to give effect to this resolution.
- 3 Council grant authority for the use of the Common Seal of Council on the agreement and any other documentation, should it be required to give effect to this resolution.

REPORT AUTHORISATIONS

Report of: Joanne Page, Manager Open Space & Environmental Services
Authorised by: Andrew Carfield, Director Infrastructure + Works

ATTACHMENTS

- 1 IW - Reporting - Council - Attachment 1 to Council Report IDWA Deed of Agreement

BACKGROUND

The IDWA came into existence in 1992 when the three Illawarra Councils decided to form a special purpose Council to administer and control their weeds. Each Council subsequently resolved to jointly exercise their functions under the previous Noxious Weeds Act as the Illawarra District Noxious Weeds Authority through a Council resolution at the following meetings -

- Kiama Municipal Council – 9/03/1993
- Shellharbour City Council – 5/09/1994
- Wollongong City Council – 28/01/1993.

Since then and on behalf of the nominated manager Kiama Municipal Council, the IDWA has been managed by the Southern Councils Group, then the Illawarra Pilot Joint Organisation and more recently the Illawarra Shoalhaven Joint Organisation.

Following the Illawarra Shoalhaven Joint Organisation (ISJO) being proclaimed a legislated local government entity on 11 May 2018, both ISJO and IDWA staff were transitioned from Kiama Municipal Council employees to the new ISJO entity in November 2018. To reflect these changes, an updated Agreement has been developed, in consultation with the IDWA Committee, which has technical staff and nominated Councillor representation from all three councils. Wollongong City Council is represented on this committee by Councillor Cath Blakey and the Environment and Conservation Services Manager Vanni De Luca.

The attached Agreement outlines the joint venture relationship and outlines the roles and responsibilities of all parties under the Biosecurity Act 2015 and relevant regulations. IDWA Officers currently hold appointment from the General Manager as an authorised officer pursuant to section 372 of the Biosecurity Act 2015.

Priority weeds are outlined in the adopted IDWA Biosecurity Weed Control Policy and Management Plan 2018-2023. Priority weeds are determined through the following mechanisms:

- State Priority Weeds – are subject to specific regulatory measures as details in the Biosecurity Act 2015 and supporting regulations
- Regional Priority Weeds - were determined by the South East Regional Weeds Committee in consultation with the community and stakeholders
- Local Priority Weeds - the Biosecurity Act allows for the flexibility to respond to the protection of local assets and IDWA undertakes local inspection and control programs on these weeds aimed at strategic asset protection.

The IDWA meets quarterly by rotation in each Council area and compiles an Annual report highlighting operational activities and audited financial position over the previous year. Quarterly progress is reported via Council's Quarterly Review process.

It is noted that during 2018-19 the proposed winter aerial spraying program of bitou bush was suspended pending a full review including the use of glyphosate in this procedure. This review is still being conducted.

PROPOSAL

Following participating IDWA council resolutions, the ISJO Board intends to resolve at the 19 September 2019 Board meeting to allow the three Illawarra Councils to delegate their weed control functions pursuant to section 377(3) of the LG Act. The Deed of Agreement is proposed to commence from September 2019 on an ongoing basis.

CONSULTATION AND COMMUNICATION

- Illawarra District Weeds Authority Committee
- Legal Counsel

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal "We Value and Protect our Environment". It specifically delivers on the following:

Community Strategic Plan	Delivery Program 2018-2021	Operational Plan 2019-20
Strategy	3 Year Action	Operational Plan Actions
1.1.2 Manage and effectively improve the cleanliness, health and biodiversity of creeks, lakes, waterways and oceans.	1.1.1.2 Projects and programs that achieve enhancement of the natural environment and escarpment are developed and implemented	Support the Illawarra District Weeds Authority to fulfil weed control obligations under the Biosecurity Act 2015, prioritising actions identified under relevant threat abatement plans and high priority natural areas

FINANCIAL IMPLICATIONS

Funds are provided for the operations of the IDWA by the NSW Government and constituent councils. Annual financial contributions are included in the adopted budget for 2019-20 and under the Agreement will be indexed to CPI on an annual basis. The 2019-20 financial contribution by Wollongong City Council to the IDWA is \$83,927.71 (inclusive of GST).

CONCLUSION

Council is best placed to effectively manage its Biosecurity duties in relation to priority weeds in collaboration with Shellharbour City Council and Kiama Council under the auspice of the Illawarra District Weeds Authority and managed by the Illawarra Shoalhaven Joint Organisation. This regional arrangement has worked effectively for many years and is well placed to manage our mutual biosecurity obligations into the future.

SEPTEMBER 2019

**ILLAWARRA DISTRICT WEEDS AUTHORITY
AGREEMENT**

ILLAWARRA SHOALHAVEN JOINT ORGANISATION

KIAMA MUNICIPAL COUNCIL

SHELLHARBOUR CITY COUNCIL

WOLLONGONG CITY COUNCIL

THIS AGREEMENT is made on 2019

1. PARTIES:

- 1.1 **ILLAWARRA SHOALHAVEN JOINT ORGANISATION** of 24 Terralong Street, Kiama ("ISJO")
- 1.2 **KIAMA MUNICIPAL COUNCIL** of 11 Manning Street, Kiama ("KMC").
- 1.3 **SHELLHARBOUR CITY COUNCIL** of Shellharbour Civic Centre, 76 Cygnet Avenue, Shellharbour City Centre, ("SCC").
- 1.4 **WOLLONGONG CITY COUNCIL** of 41 Burelli Street, Wollongong ("WCC").

2. RECITALS:

- 2.1 Each Council is the Local Control Authority with functions to control weeds within its local government area pursuant to section 370 of the Biosecurity Act.
- 2.2 Section 355(1) of the LG Act enables the Councils to exercise their functions jointly.
- 2.3 Section 374(1) of the Biosecurity Act enables each Council to make arrangements with another person or body to assist in the exercise of any of its functions under the Biosecurity Act.
- 2.4 Section 375(1) of the Biosecurity Act enables each Council to delegate any of its functions to any officer or employee of the Local Control Authority under the Biosecurity Act other than its power of delegation.
- 2.5 The Councils have each made a resolution to exercise their functions as the Local Control Authority for each of their local government areas under the Biosecurity Act jointly as the IDWA pursuant to section 377 of the LG Act.
- 2.6 ISJO has resolved to allow the Councils to delegate their functions as the Local Control Authority to it pursuant to section 377(3) of the LG Act.
- 2.7 The Councils enter into this Agreement for the purposes of implementing those resolutions.

3. DEFINITIONS:

In this Agreement:

"Agreement" means this Agreement as amended from time to time.

"Biosecurity Act" means the Biosecurity Act 2015 as amended from time to time.

"Commencement date" means 1st July 2019.

"Committee" means the Committee constituted under clause 8 of this Agreement.

"Council" means KMC, SCC, or WCC.

"Councils" means KMC, SCC and WCC jointly.

"Facilities" means those assets, including computers, office equipment, vehicles, communications equipment or other items required for the administration of the IDWA.

“Financial Year” means each period of 12 months beginning on 1 July and ending on 30 June.

“IDWA” means the authority constituted as Illawarra District Weeds Authority.

“LG Act” means the *Local Government Act 1993* (NSW) as amended.

“Local Control Authority” means the council of a local government area in accordance with clause 370 of the Biosecurity Act.

“Manager” means ISJO or any manager appointed in substitution under clause 9.1 of the Deed.

“Weeds” means a plant that is a pest in accordance with the definition contained in the Biosecurity Act.

4. JOINT VENTURE

- 4.1 The Councils agree to form and engage in a joint venture, as the IDWA, for the purpose of jointly carrying out their functions as the Local Control Authority for each of their local government areas under the Biosecurity Act.
- 4.2 The Councils agree that the purpose of the joint venture is limited to the contents and terms of this Agreement.
- 4.3 The Councils agree that:
 - 4.3.1 their functions under the Biosecurity Act are delegated to and are to be exercised by IDWA;
 - 4.3.2 the rights, duties, obligations and liabilities of the Councils in every case are several and not joint or joint and several;
 - 4.3.3 the relationship between the Councils is one of joint venturers and limited to carrying out their functions under the Biosecurity Act, so that nothing contained in this Agreement constitutes any of them as agent or partner of any other of them, or creates any agency or partnership for any purpose whatsoever; and
 - 4.3.4 except as otherwise specifically provided in this Agreement, a Council has no authority to act for, or to create or assume any responsibility or obligation on behalf of, any other Council.
- 4.4 Each Council must, within 30 days of the date of this Agreement, separately appoint an authorised officer pursuant to section 372 of the Biosecurity Act.

5. CONTRIBUTIONS

- 5.1 The Councils agree to make annual financial contributions to IDWA for the duration of this Agreement, based on the following percentage breakdown of the total council contribution:

WCC – 46%
KMC – 23%
SCC – 31%

Contributions will increase by CPI on an annual basis, commencing 2020/21 subject to clause 5.2
- 5.2 The Councils acknowledge that the annual contributions at clause 5.1 of this Agreement are subject to review and endorsement by the Committee and may be calculated on a risk basis.

- 5.3 The Councils acknowledge and agree that they own the assets of the IDWA as tenants in common in accordance with their percentage interest outlined at clause 5.1 of this Agreement above.

6. TERM AND TERMINATION:

- 6.1 This Agreement commences on the Commencement Date and terminates:
- 6.1.1 on the date the Councils and ISJO by resolution mutually agree to terminate the Agreement; or
 - 6.1.2 at the end of the Financial Year following service of a notice of intention to terminate by a Council or ISJO on the other parties.
- 6.2 On termination of this Agreement, all of the assets of the IDWA must be:
- 6.2.1 distributed to, or held for the benefit of, the Councils in whatever manner as the Councils mutually agree; or
 - 6.2.2 sold with the net proceeds of sale divided among the Councils on a pro rata basis in accordance with their proportionate interest in the asset.

7. RELEASE AND INDEMNITY

- 7.1 Each Council irrevocably and unconditionally indemnifies and agrees to keep indemnified each other Council and its representatives from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) that the Council suffers, incurs or sustains as a result of any act or omission of, or any purported assumption of any obligations or responsibility by, the Council or any of its Councillors, officers, employees, agents or representatives, done or omitted to be done, or undertaken, or apparently done or omitted to be done or undertaken, on behalf of the Indemnatee in connection with the joint venture and not authorised under this Agreement.
- 7.2 If at any time a Council incurs a liability for the purposes of the joint venture to an extent greater than its obligations by reason of its interest, then each other Council must indemnify and account to that Council so that all council's share that liability in the proportions of their respective interests.
- 7.3 If any Council becomes liable to any other person for any tort committed in the course of exercising functions under the Biosecurity Act or arising from the ownership of the IDWA assets, except when that liability arises due to negligence or default of that Council, each Council must promptly discharge its proportion of that liability according to its interests and must indemnify and account to each other Council to the extent that it does not do so.
- 7.4 The Manager is not responsible to the Councils for any liability, loss, harm, damage, cost or expense (including legal fees) that the Councils may suffer, incur or sustain and arising out of the activities of the Manager in performing its duties or obligations under this Agreement, except to the extent that such liability, loss, harm, damage, cost or expense arises directly from the Manager's willful misconduct.
- 7.5 The Councils irrevocably and unconditionally indemnify and undertake to keep indemnified and saved harmless the Manager from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) that the Manager suffers, incurs or sustains as a result of any suit, claim or demand brought or made against the Manager and arising out of the activities of the Manager in performing its duties or obligations under this Agreement, except to the extent that such liability, loss, harm, damage, cost or expense arises directly from the Manager's willful misconduct.

- 7.6 In this clause 7 references to the “Manager” include references to the servants, employees and sub-contractors of the Manager.
- 7.7 For the purposes of this clause 7, “wilful misconduct” includes a failure to obtain the Committee’s instructions prior to exercising any powers at clause 10.2
- 7.8 The Manager must effect professional indemnity insurance for an amount not less than the amount specified by the Committee from time to time and the premiums for such insurance are to be part of the IDWA’s expenses.

8. COMMITTEE

8.1 Formation

The parties agree to form a Committee for the management of IDWA.

8.2 Committee Membership

- 8.2.1 Each Council must appoint one (1) staff member as its representative on the Committee.
- 8.2.2 Each Council can appoint one (1) alternate staff member as its representative on the Committee from time to time as required.
- 8.2.3. Each Council must appoint a Councillor representative to the Committee.
- 8.2.4. The Manager must give notice to Councils of the appointment of Committee members.
- 8.2.5. An alternate Committee member can act only if the Committee member for whom they are appointed alternate is not present at a meeting of the Committee, in which event, he/she is for the purposes of this Agreement deemed to be that member and can exercise all powers of the member for whom they are appointed alternate to the extent that the member has not exercised them.
- 8.2.6. Each Council can change any of its Committee members and alternate Committee members at any time by notifying the Manager to that effect.

8.3 Chairperson

- 8.3.1 The Committee must from time to time appoint one of the Committee members to be Chairperson.
- 8.3.2 On appointment by the Committee, the Chairperson holds office for a term of one (1) year and can be reappointed.
- 8.3.3 In the event of an equality of votes, the Chairperson has a casting as well as a deliberative vote.
- 8.3.4 Any casual vacancy occurring in the position of Chairperson must be filled at the next meeting of the Committee, who holds office until the expiration of the term of the appointment of the Chairperson whom they replaced.
- 8.3.5 If at any meeting the Chairperson is not present at the time appointed for holding the meeting, the Committee members present can choose one of their number to preside at that meeting.

8.4 Secretary

- 8.4.1 The Manager must appoint a person, to act as Secretary of the Committee.
- 8.4.2 The Secretary must attend all meetings of the Committee.
- 8.4.3 The Secretary is not entitled to vote in the Committee unless they are a Committee member.
- 8.4.4 The Manager can at any time remove the Secretary from office and appoint another Secretary in their place.

8.5 Quorum

- 8.5.1 The quorum for each meeting of the Committee is two (2) Committee members from different councils and the Chairperson.
- 8.5.2 If a quorum is not present within one (1) hour after the arranged time for a meeting, the meeting must stand adjourned for one (1) week at the same place.
- 8.5.3 If at the time fixed for the commencement of the adjourned Committee meeting a quorum is not present, the meeting is to be abandoned.

8.6 Proceedings at Committee Meeting

- 8.6.1 The Committee has full and complete power and authority and the Councils empower and direct the Committee to give all approvals and to make all decisions and determinations required or permitted to be given or made by the Councils under this Agreement with respect to the exercise of their functions under the Biosecurity Act, including the power:
 - 8.6.1.1 to adopt (with or without amendment) or modify annual programs; and
 - 8.6.1.1 to supervise the activities of the Manager.
- 8.6.2 All approvals, decisions and determinations given or made by the Committee are to be binding on each of the Councils.
- 8.6.3 All approvals, decisions and determinations at a meeting of the Committee are to be made by a simple majority vote of the votes cast at the meeting.
- 8.6.4 The Committee must meet whenever called upon seven (7) days' written notice, or such lesser period as the Committee members may agree, to be given by the Secretary of the Committee whenever any member or the Manager request the Secretary to do so.
- 8.6.5 The Committee must meet at least once in each Financial Year to consider a proposed annual program for the following Financial Year.
- 8.6.6 Each notice convening a meeting must enclose the agenda for the meeting and must be sent by email.
- 8.6.7 Not less than three (3) days prior to the meeting, a Committee member can request that an item be included in the agenda and the agenda must be amended accordingly. A copy of the amended agenda must be given or sent to each Committee member not less than one day prior to the meeting in accordance with this sub-clause. Any matter not included in the agenda cannot be dealt with at the meeting unless all Committee members present agree.

- 8.6.8 A written record of decisions made at each meeting of the Committee must be kept by the Secretary of the Committee who must distribute copies of the record to each Council as soon as practicable following the meeting. If a Council has not commented on the written record within 14 days of receipt, it is deemed to have accepted that written record as an accurate recording of the decisions noted in the record.
- 8.6.9 On the written record being accepted by Councils under this sub-clause and being signed by the Chairperson, it becomes prima facie evidence of the decisions and proceedings of the meeting to which it relates.
- 8.6.10 An approval, decision or determination which the Committee is competent to give or make can be submitted to the Committee members for consideration and vote, without holding a meeting, and the vote is treated as a vote made at a meeting of the Committee, if:
 - 8.6.10.1 each Committee member is given written notice of such matter;
 - 8.6.10.2 each Committee member or their alternate has a period of a least five (5) days after receiving notice of the matter (or such other agreed period) to vote on the matter; and
 - 8.6.10.3 within that period, no Committee member requests that the matter be considered at a Committee meeting. Whenever a matter is so submitted, each Committee member can vote by giving written notice of his vote to the Secretary of the Committee and any matter which received unanimous approval of the votes so cast becomes binding on each Council as if the resolution had been passed at a meeting of the Committee. The written record of each decision made under this sub-clause must be kept by the Secretary and a copy of the record must be distributed to each Council as soon as practicable after the vote is taken.
- 8.7 The Committee can establish such sub-Committees as the Committee deems appropriate.
- 8.8 The functions (which are advisory only) of each sub-Committee must be determined by the Committee.
- 8.9 Meetings of the Committee are to be held at such place as the Committee from time to time decides.
- 8.10 The costs and expenses incurred by the Councils relating to the attendance of their respective members at meetings of the Committee must be borne by them and are not part of the IDWA's expenses.

9. APPOINTMENT AND DUTIES OF MANAGER

- 9.1 The Councils hereby appoint ISJO as the Manager to administer IDWA for an on behalf and account of the Councils for the term of this Agreement.
- 9.2 ISJO hereby accepts its appointment as Manager in accordance with clause 9.1 of this Deed.
- 9.3 Subject to the timely provision of funds by the Councils, the Manager must, either itself or through agents or employees it engages, do all things necessary or advisable for the efficient and economic administration of the IDWA.
- 9.4 ISJO agrees that it will carry out its duties and obligations as Manager in accordance with:
 - 9.4.1 this Agreement;
 - 9.4.2 the Councils legal requirements of the LG Act and Biosecurity Act; and

9.4.3 such instructions as it receives from the Committee.

10. POWERS OF MANAGER

- 10.1 The Manager is to have possession and control but not ownership of the IDWA's assets and have charge of, and responsibility for, the administration of the IDWA.
- 10.2 Subject to a prior resolution of the Committee, the Manager is to have the following powers, functions and authority from the Councils as are necessary to enable the Manager to carry out its duties and obligations set out in clause 9 including the power of:
- 10.2.1. employ, engage, appoint and contract with agronomists, engineers, solicitors, barristers and other professional or technical advisers, consultants, contractors and experts to do all things usual or desirable to be done for the purpose of exercising the IDWA's functions;
 - 10.2.2. negotiate and enter into (and renew, extend or vary) Agreements for the supply (by purchase or lease) of materials, equipment and services in connection with those functions;
 - 10.2.3. institute, prosecute, defend and compromise legal proceedings in the name of the Council or Councils in respect of which or to whose area those proceedings relates;
 - 10.2.4. dispose of the IDWA's assets whether by sale or otherwise; and
 - 10.2.5. do any other act or thing which may be required by the Manager by this Agreement or which the Councils may authorise or require.
- 10.3 The Manager has such power and authority to:
- 10.3.1. repair and maintain the IDWA's assets;
 - 10.3.2. in the case of any emergency or accident, take such action as is necessary for the protection of life and property;
- without first receiving instructions from the Committee, but must report all steps in relation to these powers and authority at the next available meeting of the Committee.
- 10.4 The grant of powers, functions and authority under sub-clause 10.2 and 10.3 is not revocable or variable without the resolution of the Councils and ISJO.
- 10.5 Except as authorised by a resolution of the Councils, the Manager must not encumber any of the IDWA's assets.

11. RESPONSIBILITIES OF MANAGER:

- 11.1 The Manager must deliver a quarterly progress report to the Committee:
- 11.1.1 outlining the work performed on behalf of the IDWA during the period of three (3) months immediately preceding the report;
 - 11.1.2 summarising all expenses incurred or accrued during that period;
 - 11.1.3 comparing the actual expenses recorded against the estimate made in any relevant annual program; and

11.1.4 outlining the plans for the further work to be performed in the current Financial Year.

11.2 The Manager must provide to the Committee such statements and other information relating to the IDWA as the Committee may reasonably request from time to time.

11.3 The Manager shall work within the financial limitations as approved by the Committee.

11.4 The Manager shall not incur reputational risk to the Councils.

12. RECORDS AND ACCOUNTS

12.1 The Manager must:

12.1.1 keep or cause to be kept comprehensive, true and accurate records and accounts of the IDWA and of the Manager's performance of its duties under this Agreement, and of all property belonging to, and of all transactions entered into by, or on behalf of, the Councils in connection with the IDWA (so far as is known to the Manager) and of the costs and expenses of those transactions;

12.1.2 maintain proper systems of internal control to enable the IDWA's assets to be adequately controlled and accounted for and to provide reasonable control of transactions;

12.1.3 ensure that all invoices and financial settlements, financial reports and billings rendered by the Manager to the Councils reflect properly the facts of all activities and transaction handled for the account of the Councils; and

12.1.4 keep all such records and accounts in accordance with generally accepted accounting principles in Australia, consistently applied, and in particular for Local Government.

12.2 Upon not less than 14 days' prior notice to the Manager, a Council can, by its servants or agents and at its sole cost, inspect and obtain copies of all documents, records and accounts under the control of the Manager relating to the IDWA.

12.3 The Manager must furnish to the Councils a statement of account audited by the Manager's auditor, reflecting for that Financial Year at the Annual General Meeting:

12.3.1 all transactions in connection with the IDWA during the Financial Year, as disclosed by the records and accounts kept or caused to be kept by the Manager under clause 11.1;

12.3.2 all expenses incurred or accrued by the IDWA during the Financial Year; and

12.3.3 all the IDWA assets in the custody or control of the Manager as at the end of the Financial Year.

13. REMUNERATION AND EXPENSES OF MANAGER

13.1 The Manager is not entitled to claim or receive any remuneration, management or other fee or other profit for, or in connection with, the administration of the IDWA and its services, and the payments referred to in sub-clauses 13.2 and 13.3 constitute full and complete compensation for the Manager's services under this Agreement.

13.2 The Councils must pay to the Manager for the Manager's services a fee as determined by the Committee.

13.3 The Councils must pay or reimburse the Manager for all expenses incurred on behalf of the IDWA.

14. EFFECT OR AGREEMENT

14.1 This Agreement:

14.1.1 comprises the entire Agreement between the Councils and no earlier representation or Agreement, whether oral or in writing, in relation to any matter dealt with in this Agreement has any effect from the date of this Agreement; and

14.1.2 cannot be varied in any way except with the resolution of the Councils and ISJO.

14.2 Each Council undertakes to each other to do or cause to be done or refrain from doing all such acts or things necessary to give effect to this Agreement.

14.3 This Agreement may be executed in any number of counterparts and those counterparts when executed and taken together constitute this Agreement.

14.4 None of the terms or conditions of this Agreement, or any act, matter or thing done under this Agreement or any other Agreement, instrument or document, or judgement or order of any court of judicial proceeding, operates as a merger of any of the rights and remedies under this Agreement, and these rights and remedies at all times continue in force.

14.5 If any provision of this Agreement is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and, it is capable of being read down, that provision is to be read down accordingly.

15. WAIVER

15.1 The failure, delay or omission by a Council to exercise any power or right conferred on that Council by this Agreement does not operate as a waiver of that power or right; nor does any single exercise of any such power or right preclude any other or future exercise of the power, or the exercise of any other power or right under this Agreement.

15.2 A waiver of any provision of this Agreement, or consent to any departure by a Council from any provision of this Agreement, must be in writing and executed by all Councils and is effective only to the extent for which it is given.

16. NOTICES

16.1 Any notice, request, consent or other communication ("Communication") to be given to a Council under this Agreement must be in writing addressed to the address of that Council appearing in this Agreement or to such other address for that Council as is notified in writing by that Council to the other Councils.

16.2 Each Communication must be delivered by hand, or sent by email provided that a Communication sent by email is immediately confirmed in writing by return email.

16.3 A Communication is deemed to be received:

16.3.1 if hand delivered, on the next following business day;

16.3.2 if posted, on the second business day after posting; and

16.3.3 if sent by email, on the next following business day unless the receiving Council has requested re-transmission before the end of that business day.

17. GOVERNING LAW AND INTERPRETATION

- 17.1 This Agreement is to be governed by and construed in accordance with the law for the time being in force in New South Wales and the Councils, by agreeing to enter into this Agreement, are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.
- 17.2 In this Agreement, except to the extent that the context otherwise requires:
- 17.2.1 any term defined in the statement of the names and descriptions of the participants has the meaning there defined;
 - 17.2.2 reference to any legislation or any provision of any legislation includes any modification or re-enactment of the legislation and statutory instruments and regulations issued under the legislation;
 - 17.2.3 words denoting the singular include the plural and vice versa;
 - 17.2.4 words denoting individuals or persons include bodies corporate and trusts and vice versa;
 - 17.2.5 headings are for convenience only and do not effect interpretation;
 - 17.2.6 reference to a clause or sub-clause is a reference to a clause or sub-clause in this Agreement;
 - 17.2.7 reference to any document or Agreement includes reference to that document or Agreement as amended, novated, supplemented, varied or replaced from time to time;
 - 17.2.8 words denoting any gender include all genders;
 - 17.2.9 where any word or phrase is given a definite meaning in this Agreement any part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - 17.2.10 where, by virtue of the provisions of the Agreement, the day on or by which any thing is to be done is a Saturday, a Sunday or a public holiday in the place in which that thing is to be done, then that thing must be done on the next succeeding day which is not a Saturday, a Sunday or a public holiday.

18. DISPUTE RESOLUTION:

- 18.1 If a dispute arises out of or relates to this Agreement, including any dispute as to breach or termination of this Agreement or as to any claim in tort, in equity or under any statute ("Dispute"), a Council or ISJO cannot commence any court or arbitration proceedings relating to the Dispute unless that Council or ISJO has complied with the following sub-clauses, except where that Council seek urgent interlocutory relief.
- 18.2 A Council or ISJO claiming that a Dispute has arisen must give notice to the other parties specifying the nature of the Dispute.
- 18.3 On receipt of that notice by those other parties, the parties together must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- 18.4 If the parties do not agree within seven (7) days of receipt of the notice or such further period

as agreed in writing by them, as to:

18.4.1 the dispute resolution technique and procedures to be adopted;

18.4.2 the timetable for all steps in those procedures; and

18.4.3 the selection and compensation of the independent person required for that technique;

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

EXECUTION

Signed for and on behalf of **WOLLONGONG CITY COUNCIL (ABN 63 139 525 939)** in accordance with authorities delegated under the *Local Government Act 1993* and not withdrawn pursuant to a resolution of Council on 2019:

Signature of authorised person

Signature of Witness

Name of authorised person:

Name of Witness:

Office Held:

EXECUTION

Signed for and on behalf of **SHELLHARBOUR CITY COUNCIL (ABN 78 392 627 134)** in accordance with authorities delegated under the *Local Government Act 1993* and not withdrawn pursuant to a resolution of Council on 2019:

Signature of authorised person

Signature of Witness

Name of authorised person:

Name of Witness:

Office Held:

EXECUTION

Signed for and on behalf of **KIAMA MUNICIPAL COUNCIL (ABN 22 379 679 108)** in accordance with authorities delegated under the *Local Government Act 1993* and not withdrawn pursuant to a resolution of Council on 2019:

Signature of authorised person

Signature of Witness

Name of authorised person:

Name of Witness:

Office Held:

EXECUTION

SIGNED for on behalf of **ILLAWARRA SHOALHAVEN JOINT ORGANISATION (ABN 69 340 886 426)** in accordance with authorities delegated, and not withdrawn:

Signature of authorised person

Signature of Witness

Name of authorised person:

Name of Witness:

Office Held: