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.....

*An alliance of environmental and community groups from Gosford, Wyong and Lake Macquarie*



IPART

17<sup>th</sup> November 2002

PO Box Q290  
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1230

## **Re: Submission on Metropolitan Water Price Determination**

Dear Sir,

Please find attached a copy of a draft discussion paper produced by CCCEN in December 2001. Since that time we have been in discussion with the Councils' Joint Water Authority on how to address the issues raised in the report.

Key issues in the submission from CCCEN are:

- Establishment of an Operating Licence;
- Avoiding the need for future augmentation;
- Demand management;
- Improved openness and accountability, and;
- Environmental flows.

A copy of the draft report is attached.

Yours sincerely,

John Asquith  
Chairman

Attach.

**Discussion Paper on  
Gosford-Wyong Joint Water Supply**

**DRAFT**

**December 2001**



*Commissioned by the  
Central Coast Community Environment Network*



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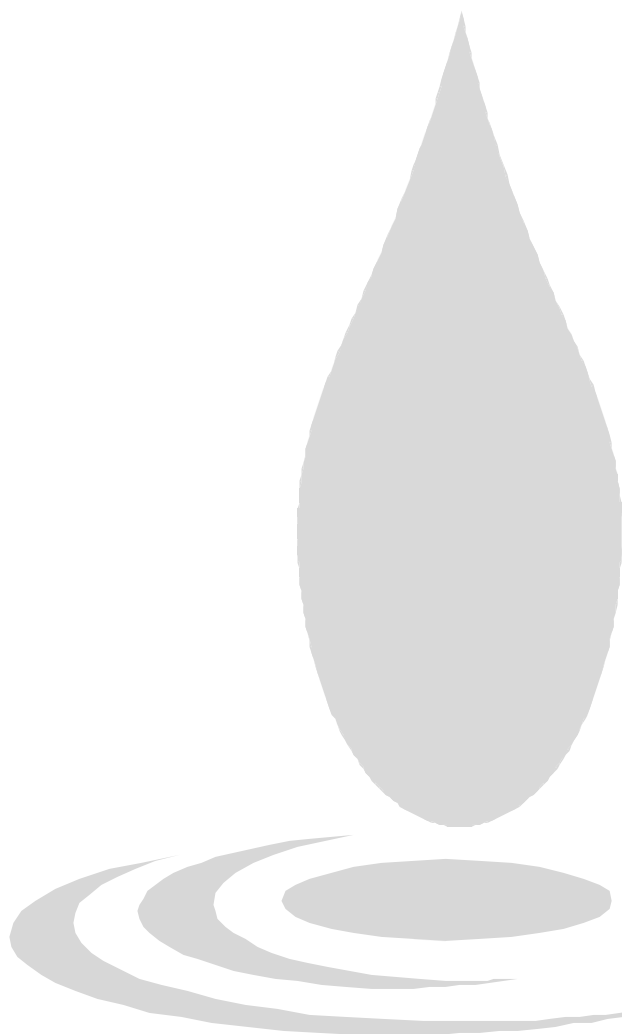
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### **Note:**

*This Discussion Paper contains a number of direct references to a wide range of materials that were reviewed in order to compile it. Every effort is made to ensure that references and quotations are faithful to their original context and should any reader seek further clarification, they are encouraged to consult the original source.*



## Executive Summary

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This Discussion Paper has been commissioned by the Central Coast Community Environment Network (CCCEN).

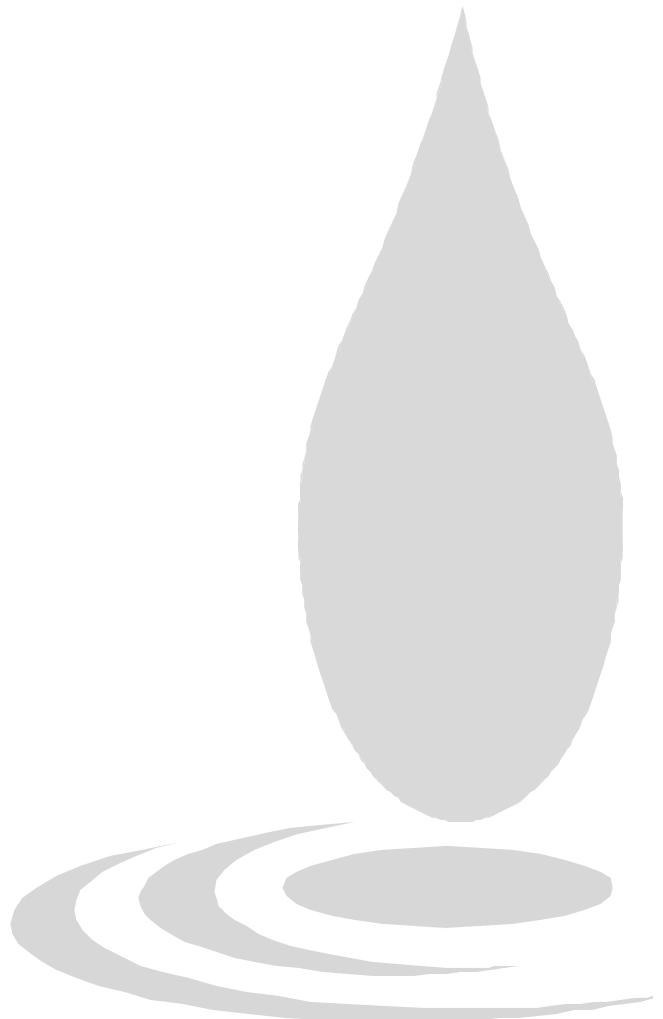
Its purpose is to clarify the powers and responsibilities of local government and various government departments and agencies associated with water management on the Central Coast of NSW. The impetus for the report stems from the desire to achieve optimum environmental outcomes from the NSW Water Reform Process. In particular, the CCCEN aims to ensure that environmental flows and trial flows are implemented in priority rivers and streams in the Central Coast catchments, and that any impediments, whether physical or political, be identified and addressed.

In recent years, successive governments at both State and Federal level have enacted legislation to specifically endorse ***Ecologically Sustainable Development*** as an objective of resource management. Similarly, community participation and public accountability have been recognised as integral to meeting such an objective. This Discussion Paper seeks to explore some of the concerns that have arisen in the practical implementation of the stated objectives and seeks to clarify community rights and expectations in relation to these issues.

The content of the Report is specific to catchments and waterways within the Gosford and Wyong Council areas. Gosford and Wyong Council are Water Authorities under the provisions of the *Water Management Act* 2000. The two councils have an agreement between them such that specific headworks and waters are managed jointly by the Gosford-Wyong Councils' Water Authority.

Feedback and comments on this CCCEN Position Paper or other water issues are welcome and should be forwarded to:

Executive Officer  
CCCEN,  
PO Box 149,  
OURIMBAH, 2258.



## **Section 1: What is the legislative basis of Gosford-Wyong Councils' Water Authority?**

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Historically, council water and sewerage activities were managed under the *Local Government Act 1919* (LGA). In 1987 Gosford and Wyong became water supply authorities under the *Water Supply Authorities Act (1987)* and it was this Act that provided the legislative basis upon which the water and sewerage arms of both councils were administered.

Prior to the 1987 Act, the councils executed a formal agreement known as the Gosford/ Wyong Joint Water Supply Agreement. The initial agreement was signed in 1977 and provided for the construction, operation, maintenance, use and cost sharing of the joint water supply system which provides water resources to the Central Coast. (KPMG, 1993). With the exception of headworks facilities, each council independently operated, maintained and constructed its water supply and sewerage infrastructure. As at 1993 the agreement was being renegotiated.

The *Local Government Act* of 1919 was replaced by that of 1993. Recently the *Water Supply Authorities Act 1987* was repealed by the *Water Management Act 2000* (WMA), although both Wyong and Gosford Councils retain their status as Water Authorities under the new Act (s 20 (1) of Schedule 9).

The dual status of the councils and the fact that the council is subject to the provisions of the *Water Management Act* (2000) while acting in the capacity of a Water Authority gives rise to some concerns regarding the requirements of the Councils to remain publicly accountable. These concerns are highlighted by a number of comments contained in the literature which was reviewed in order to compile this report. Such comments include:

- The Councils became Water Supply Authorities ...having accepted an invitation from the NSW State Government to become Authorities and “enjoy greater flexibility in operation than provided by the *Water Supply Authorities Act 1987*”. (KPMG, 1993).
- As Water Supply Authorities, the Councils “will have increased powers and flexibility, particularly of rating policy” (Interdepartmental Committee Report, 1987).
- A specific recommendation recorded in the above IDC Report is that “Gosford City Council and Wyong Shire Council should be provided with increased powers and more flexible arrangements by making them Water Supply Authorities under the *Water Supply Authorities Act*” (Interdepartmental Committee Report, 1987).

Further, distinctions are drawn between the responsibilities of a Council and a Water Authority. General Purpose Councils are said to have a “commercial and social focus” with a managerial authority “linked with community interests.” Water Supply Authorities are said to be “focused on commercial returns” with “absolute” authority within the terms of the Act. Perceived disadvantages of the Water Supply Authority model are identified as “reduced local community accountability” and “absence of general accountability measures as prescribed by the *Local Government Act*”. (KPMG May, 1994). In terms of common goals, both the *Water Management Act* (2000) and the *Local Government Act 1993* have ecologically sustainable development (ESD) as a stated objective.

Section 342 of the *Local Government Act* provides that the General Manager is to designate a member of staff as the public officer of the Council. Two of the functions the public officer is to perform include dealing with requests from the public concerning the Council's affairs and assisting people to gain access to public documents of the Council (s 343 LGA).

Chapter 13 also states that members of the general public are entitled to inspect a wide range of Council documents (s 12 LGA). Members of the general public are also entitled, under the *Freedom of Information Act 1989*, to access to certain other documents held by a Council. They are also entitled to require the correction of certain kinds of information in the event that the information is incomplete, incorrect, out of date or misleading.

The inspection provisions under the *Water Management Act* (2000) appear much more limited. Registers recording information about licence applications, transfers, cancellations and the like must be made available at the head office of the Department of Land and Water Conservation for inspection, free of charge, by members of the public. Similar access must be granted to registers recording information about Water Management Work approvals, suspensions, cancellations etc.

These distinctions in power and responsibility between a Council and a Water Authority leads to concerns that accountability may be compromised or reduced by constituting Councils as Water Authorities.

Legislatively, there are distinctions between Councils and Water Authorities. For example, a Water Supply Authority is subject to the direction and control of “the Minister” (s 293 (1) (b) WMA); the relevant Minister being the Minister for Land and Water Conservation. As such, a Council acting in the capacity of a Water Authority reports to a different Minister to when it is merely acting as a Council. Interestingly, section 293 (2) of the *Water Management Act* (2000) provides “If a function conferred or imposed on a Water Supply Authority by this Part is inconsistent with a function conferred or imposed on the Water Supply Authority by or under another Act, this Part prevails.”

Again, concern arises as to whether in some circumstances, either Gosford or Wyong (or both) Councils will be directed to act in a certain manner or to perform a certain function which is outside the general scope of Council actions conferred under the LGA.

It would appear that there are clear advantages, even if only in terms of “powers and flexibility” for Councils to act as Water Authorities rather than merely as Councils. CCCEN and NCC require assurance that the obligations relating to ESD and public accountability, of both Gosford and Wyong Councils under the *Local Government Act* are in no way reduced by the *Water Management Act* or by constituting the Councils as Water Authorities.

#### *Issues for further discussion:*

- 1.1 What benefits are envisaged by extending to Councils “greater powers and flexibility?”*
- 1.2 Clarification is required regarding the application of the public scrutiny provisions of the Local Government Act to the Water Supply Authorities.*
- 1.3 What situations can we anticipate will give rise to such inconsistencies between the LGA and WMA and what is the likely significance of the WMA prevailing?*



## **Section 2: The significance of the Healthy Rivers Commission Recommendations and the Establishment of a Statement Of Joint Intent**

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The Healthy Rivers Commission (HRC) is an independent Commission set up by the NSW Government in 1996. It forms just one aspect of the Government's Water Reform Program. The Commission was established to conduct public inquiries into selected NSW river systems, and to make recommendations to the Government on appropriate long-term approaches and strategies to achieve environmental, social and economic objectives for the systems (Healthy Rivers Commission 2000b).

Recommendations made include those relating to suitable objectives for water quality, flows and other goals central to achieving Ecologically Sustainable Development (ESD) in a realistic time frame. (Healthy Rivers Commission 2000a).

The 1998 Final Report of the Healthy Rivers Commission Independent Inquiry into the Hawkesbury-Nepean River System made a number of recommendations relating to flows and river health. Recommendation FL4 states that “a program of trial environmental flows should be conducted, under the guidance of independent experts, for those rivers affected by all components of Sydney Water, Gosford-Wyong Joint Water Supply, ...”. However, as noted in Section 3 of this report, Wyong Shire Council is not a party to the SOJI. Therefore, it would appear that Recommendation FL4 is impractical without the cooperation of Wyong Shire Council.

Certain recommendations of the Commission Inquiry into the Hawkesbury-Nepean River System were endorsed by State Government in February 2000. In its decision the NSW Government approved the development of a Statement of Joint Intent (SOJI) to record the commitments of State Agencies and Councils to implement the HRC recommendations.

Parties to the SOJI include the twenty-six local government authorities whose area falls within the Hawkesbury-Nepean River System. This includes Gosford City Council, but not Wyong Shire Council. Government Departments and Agencies that are parties to the SOJI include:

- Department of Urban Affairs and Planning;
- Environment Protection Authority;
- Department of Land and Water Conservation;
- NSW Agriculture;
- NSW Fisheries;
- National Parks and Wildlife Service;
- The Cabinet Office;
- Sydney Catchment Authority;
- Department of Mineral Resources;
- Department of Local Government;
- Sydney Water Corporation; and
- Hawkesbury Nepean Catchment Management Trust (now disbanded).

The Statement of Joint Intent reproduces some text from the HRC Report. However, the SOJI does not reproduce a significant part that states “The program of trials should be completed and new flow arrangements implemented by July 2000. Where this deadline is not met, action should be taken to protect all low flows less than or equal to the natural 95<sup>th</sup> percentile exceedance condition plus ten percent of all higher flows until such time as the outcomes of the trial program are implemented.” (p 143 Healthy Rivers Commission Report, August 1998).

The SOJI, being a record of the state agencies and relevant agencies to implement the endorsed recommendations of the HRC is government policy rather than legislation. There is a review of the progress of the SOJI every 6 months by the Water CEOs group within Cabinet or by the Healthy River Commission (both of which report to Government). This is to determine whether recommendations are being met within the agreed timeframes. There is to be a more formal review at the end of two years; however it is unclear

which department or agency will undertake this review. Under the SOJI various agencies were appointed the “Lead Responsibility” for certain actions to be undertaken. However, there appears to be no avenue for ensuring compliance by the various agencies.

*Issues for further discussion:*

- 2.1 *The SOJI refers to “rivers affected by all components of...Gosford-Wyong Joint Water Supply”. However as Wyong Shire Council is not a signatory to the SOJI how is its commitment recorded?*
- 2.2 *If discussions were had and/or undertakings given, where are these recorded?*
- 2.3 *Who is responsible for monitoring and implementing the SOJI?*
- 2.4 *Why was Recommendation FL 4 not adopted in full?*
- 2.5 *Is a timetable and progress report of the 6 monthly Water CEO reviews available?*
- 2.6 *Are minutes of meetings of the Water CEOs available for public inspection?*
- 2.7 *Who is to conduct the two-year formal review of the SOJI?*

### **Section 3: Impediments to achieving the recommendations made by the HRC**

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The recommendations of the HRC do not appear to be well monitored. Inquiries regarding the role of the Water CEOs and other bodies did not reveal any clearly documented or planned approach. There did not appear to be any public reporting or accountability regarding progress in implementing the HRC recommendations.

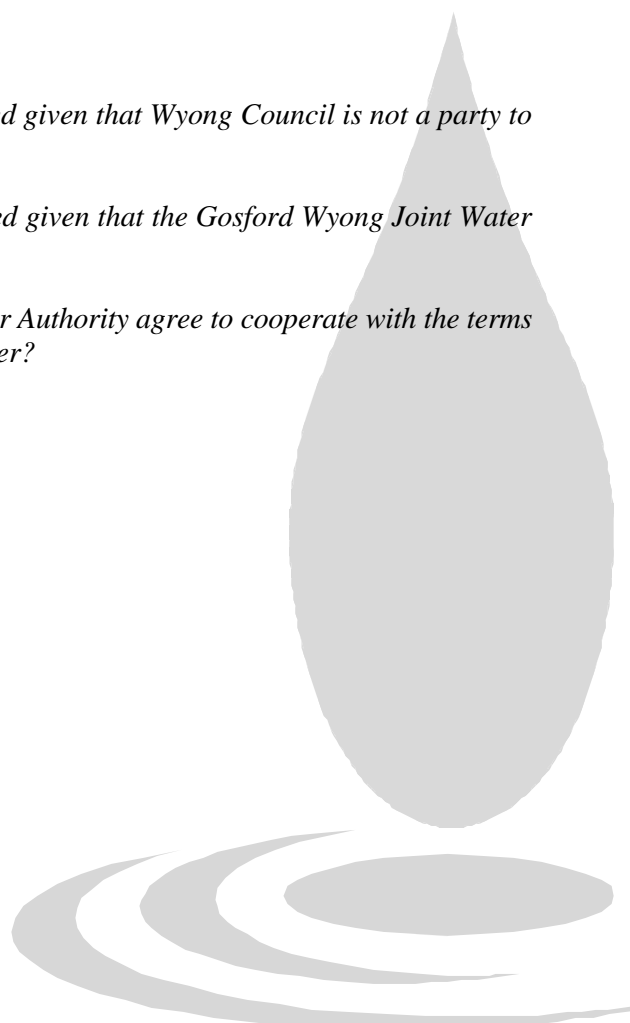
The greatest impediments to achieving ecological sustainability are firstly a lack of understanding on how to seek ESD and secondly, the desire by Government and business to promote economic growth. Other considerations include the organisational culture in the councils and patchy accountability for environmental outcomes.

There is a concern by government that the water supply may become a factor which inhibits economic growth on the Central Coast. This also aligns with the organisational culture of the JWA which seeks the opportunity to augment the water supply despite the generous margin that currently exists between demand and supply. It is worth noting that the proposed augmentation of the water supply primarily involves the construction of pumps and a weir pool on the Upper Wyong River (Wyong Shire) to allow pumping of high flows into Mangrove Creek Dam.

The SOJI was made by 12 government agencies and 26 councils but, as previously stated did not specifically include Wyong Shire Council or the entity known as the Gosford-Wyong Councils' Water Authority. This means that the joint water supply is not exempted from the recommendations made by the HRC, but rather, not a party to them. This is because Gosford City Council is a party to the SOJI but Wyong Shire Council is not.

#### *Issues for further discussion:*

- 3.1 *How and when are Environmental Flows to be achieved given that Wyong Council is not a party to the SOJI?*
- 3.2 *How and when are Environmental Flows to be achieved given that the Gosford Wyong Joint Water Authority is not a party to the SOJI?*
- 3.3 *Did Wyong Council and the Gosford Wyong Joint Water Authority agree to cooperate with the terms of the SOJI or were they directed to do so by the Minister?*



## **Section 4: Environmental flows in the Central Coast Catchment Area**

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Under the current water sharing planning process a great deal of emphasis has been placed on water allocation and the debate between different stakeholders about the right to access water. However in recent times, recognition has also been given to the need for “environmental flows”; that is, the need to sustain the health of rivers and the ecosystems that rely on them, by ensuring that adequate flows of water through river systems are maintained in a manner which more closely resembles that which occurs naturally.

The Healthy Rivers Commission, in its Final Report 1998, recommended that the Gosford-Wyong Joint Water Supply Scheme be exempted from a proposed cap on water users for a number of reasons. These included the observations that Mangrove Creek is not hydrologically linked to river flows in the impacted Nepean and Hawkesbury Rivers, it has limited opportunities to absorb further growth in water demand or access another source of water and it has potential to improve the creek through management of water storages and releases (p 89 HRC Report).

The HRC did however state the exemption from the cap be contingent on the Joint Water Supply Scheme maintaining a high level of demand management. It follows then, that the exemption would be forfeited if the high level of demand management was not maintained.

The Independent Pricing And Regulatory Tribunal (IPART) (2000a, 2000b) urged that the Councils continue their current initiatives in demand management and explore further mechanisms to reduce water. It is keen to see progress in water reuse projects over the next three years.

In regard to demand management strategy, the HRC noted in its 1998 Report that the GWJWSS advised that its residential consumption is about 215 kilolitres per tenement per year which compares favourably with Hunter Water Corporation’s achievements (HRC, p 126). It is noted elsewhere that “Gosford-Wyong operating costs and revenues present a better picture of a well managed organisation than either the Hunter Water Corporation or the [then] Sydney Water Board or other local or overseas water and sewerage suppliers” (KPMG, May 1994). Positive comment regarding the comparison of the councils’ performance with that of other authorities was found throughout an additional Report (KPMG 1994b).

However, despite this the consumption for Gosford City Council area in 2000 was 235 Kl per tenement per year (Water Services Association, 2000). It appears that per capita water consumption is increasing and that population is also increasing (Gosford Wyong Councils’ Water Authority 2001).

The HRC recommendation regarding a cap on water extraction in more stressed streams is contained in FL3b. The recommendation is that a cap should be introduced at the 1997 level of diversion on more stressed streams for five years pending the results of flow trials. Gosford-Wyong Joint Water Supply Scheme should be exempted from the cap pending the outcome of the program of trial environmental flow release and subject, as stated above, to it maintaining its current demand management achievements (p 143 HRC Report). In any event, GWJWSS indicated to the Commission that it had “commenced the initial planning stages to undertake the flow trials program” (p 127 HRC Report).

The Healthy Rivers Commission Report contains a number of Environmental Flow recommendations. These are contained in Chapter 1 of the report and include:

- Capping the growth in water extractions from highly developed streams (p11);
- Protecting critical periods of low flows by restricting existing access to water;
- Modifying the moratorium on low/ medium stressed streams to allow new users access to water in less critical periods of flow;
- Improving the measurement of water use;
- Establishing a market in water entitlements;
- Integrating management of flows and sewage effluent disposal; and

- Conducting a program of trial environmental flows to enable informed decisions to be made on longer term flow protection.

A number of riverine corridor issues were identified by the Commission including channel and bank stability, the status of riparian vegetation, the presence of native water animals, the extent of weed infestations, and overall aesthetic appeal. The Commission recommended that Councils be required and empowered to undertake land use planning, stormwater management, sewage management and management of aquatic weeds and extractive industries as an integrated approach to environmental planning, management and reporting (Ch 1).

The Commission classified the issue of environmental flow trials as a recommended medium term action. It noted (at pp 94-95), that the opportunity exists to conduct a limited number of trial releases of water to determine the possible range of ecological responses for various levels of flow protection (including Mangrove Ck and Mooney Mooney Ck).

Further, the Commission recommended that these trials be conducted under the guidance of a panel of experts that would develop, evaluate and report in an independent and transparent way. These processes and trials should be extended “to include the infrastructure operated on rivers adjoining the Hawkesbury-Nepean catchment, where this is necessary to establish the likely implications of flow protection on specific water supply schemes (ie the Gosford-Wyong Joint Water Supply Scheme), (p 95).

The Statement of Joint Intent 2001 recognised the firm proposal to implement trial environmental flows and committed to the establishment of a Hawkesbury-Nepean River Management Forum by October 2000. The lead agency for the implementation of this Forum was the Department of Land and Water Conservation. It was agreed that the Forum’s recommendations on environmental flow provisions be made to the Ministers for Land and Water Conservation and the Environment by October 2001(SOJI p 12).

In the meantime, Gosford and Wyong Councils’ Water Authority established an independent Expert Panel to evaluate the environmental health of Mooney Mooney Creek, Mangrove Creek, Ourimbah Creek and Wyong River. An Environmental Flows Expert Panel Report, dated January 2001, was prepared by Quality Environmental Management Pty Ltd.

Despite a dearth of empirical evidence relating to the streams, the Panel formed the view that “the four streams are at high risk of future degradation from impacts derived from existing or further developments within the four catchments.” The Panel also considered that “there are particular aspects of the current flow regime that could be causing progressive decline in river health” (p ii).

The Panel also considered that the JWS Authority should:

- “adopt (in principle) the preliminary water quality and river flow objectives that have been set for relevant sections of Lake Macquarie and Tuggerah Lakes catchments” (p iii);
- “introduce to Mangrove Creek increased flow variation as well as a pilot program of channel maintenance flows” (p iii); and
- “seek ways to mimic the natural flow variability as far as practical” (p iv).

In addition, the Panel identified the following issues as priority considerations:

- Reintroducing low flows in dry periods particularly in Mangrove Ck;
- Flows to ensure horizontal connectivity between stream and wetlands;
- Flows for channel maintenance downstream of Mangrove Dam;
- Flows to ensure that fishways operate effectively (p iv).

A number of comments in the Expert Panel Report gave rise to concerns similar to those detailed in Section 1 of this report.. Such concerns relate to the ambiguities that arise when councils are also Water Authorities. Comments in the Report include:

- “Most of the panel’s advice and recommendations to the Authority therefore focuses on the flow regime on the basis that flow is under the Authority’s direct control whereas the performance of the catchment is more a matter for the individual Councils.” (p 47);
- “The Expert Panel also considers that the Authority will be held partially accountable for river health and to that end it should develop a mechanism that demonstrates recognition of its responsibilities and objectives and its performance in relation to:
  - the actual current health of the riverine systems affected by its operation;
  - the future improvements that it is able to make to river health” (p 67);
- “The...panel members consider that it is likely that the primary impacts on riverine health for... [Mangrove Creek and Mooney Mooney Creek]...(as distinct from Ourimbah Creek and Wyong River) are derived from factors under the control of the Authority” (p 71);
- “The Expert Panel stressed that the health of the four streams cannot be assumed to be the sole responsibility of the Authority” and that “the river health management systems introduced by the Authority”... are effected by Councils ... “arrangements that manage landuse-based impacts (p 77).”

The Expert Panel Report also comments on water supply systems generally and Gosford-Wyong’s specifically. It notes that large water supply systems are generally designed with a long service life, of 20 to 30 years, before augmentation is required. Paraphrasing from the Report, it concludes that the scheme may be designed such that until it reaches its design level in say 20 years, it is under-utilised in all conditions other than extreme drought. Therefore, during all other climatic conditions the additional, or spare, water may be able to be provided to the environment without seriously prejudicing the security of supply from the scheme (p 58).

Information provided to CCCEN indicates that the water supply is designed for a safe yield of 47,000 ML/Year and that the current consumption is 33,500 ML/Year ( JWA 2001).

The Expert Panel then made certain recommendations for the review of water supply operations. In relation to flows, the recommendations included ensuring ongoing improvement to the information base related to actual hydrologic modelling of flows to provide a foundation for environmental programs, investigating feasibility of “translucency” into the operation of Mangrove Dam to increase day-to-day variation in flow, to introduce low flows and to investigate potential thermal pollution impacts associated with releases from the dam. (p 64-5).

A number of issues or problems associated with implementing flows were raised. These included the problem of limited flow data and therefore the limited use of modelling (pp 65, 66). There was also reference to potential difficulties presented by the issue of two systems; one being the western part (catchment of Mangrove Dam) and the eastern part (where demand is generated). However, the Report stresses the need for obtaining additional environmental data and knowledge. It suggests that there may be “merit in considering whether dividing the modelling into two interconnected models would provide a useful tool particularly if the Authority wishes to seriously address environmental issues within the river with the supply system” (p 66). This model would “enable testing of various environmental flow options and their impact on supply” (p 67).

A further consideration of the Panel is that the maintenance of river health “should ...be viewed as a long-term cost minimisation strategy both from the point of view of minimising water treatment costs and minimising environmental remediation works” (p 67). This is given as one reason why the Authority should seek ways to mimic the natural flow variability as far as practicable. In further reference to remediation, the Panel advises that a preliminary cost-benefit and impact analysis should precede any intervention (including flows, removal of Lower Mooney Dam and fishways). Such analyses should incorporate present worth and future benefit including the cost savings of avoiding costly and unnecessary future environmental remediations (p 72).

Finally, the Panel adopted a position in respect to a number of other issues including:

- it would not support any future transfer of water from Wyong River to and through Mangrove Creek where these flows are proposed specifically for environmental management; i.e benefits sought should come from within Mangrove Ck catchment (p 69);
- it believes there should be a channel maintenance flow to ensure appropriate seasonality for support of habitat management for downstream aquatic biota. This is envisaged as a single channel maintenance flow in around two out of every three years. Recommends 400ML / day over two days being 800 ML in total (p 70);
- it recommends the Authority develop a program that enables detection of long term trends in river health and satisfies the general public expectation that the Authority has an understanding of how the four streams are performing. The Panel suggests that the relevant data could be regularly reported through Councils' SoE Reports (p 74);
- it recommends a review of existing and potential threats to river health including users, nutrient inputs, chemical pollution and sediment input (p 78).

It is evident from the reviewed documentation that there is a lack of appropriate records, (particularly historical and scientific data), relating to the condition of the river systems. However the CCCEN endorses the application of the precautionary principle in such instances. That principle seems particularly well-suited to the issues at hand. Moreover, water management and particularly environmental flows, exemplify a classic situation that may well reflect the exact type of eventuality that was anticipated when the principle was legislated.

It is equally evident that considerable effort has been expended by local and state governments in reviewing information that is available and seeking independent opinion and recommendations from recognised experts. The CCCEN is anxious to ensure that the endorsed recommendations are undertaken in order to deliver the best outcomes for river health without compromising water supply. Where a decision is made to disregard any given recommendation, it is expected that full justification for this decision be made public. The community, as a concerned and responsible stakeholder, looks forward to working with government in order to best manage one of our most precious resources.

#### *Issues for further discussion:*

- 4.1 *Can the success of demand management be definitively attributed to factors other than meters, user pays and excess water charges? If so, the other factors should be identified with the proportion of cost saving attributable to them. How will the performance of the demand management scheme be assessed and made available for public scrutiny?*
- 4.2 *How is the demand management being monitored to establish whether the exemptions should still be extended the GWJWSS?*
- 4.3 *There is a need to clearly delineate the responsibilities of individual councils as well as the Water Supply Authority in light of comments such as:*
  - "Most of the panel's advice and recommendations to the Authority focuses on the flow regime on the basis that flow is under the Authority's direct control whereas the performance of the catchment is more a matter for the individual Councils." (p 47 ).
  - "The health of the streams cannot be assumed to be the sole responsibility of the Authority. The management systems introduced by the Authority are effected by the Councils management of landuse-based impacts." (p 77).
  - "The Expert Panel also considers that the Authority will be held partially accountable for river health and to that end it should develop a mechanism that demonstrates recognition of its responsibilities and objectives and its performance" (p 67).

- The Panel considers that the primary impacts on riverine health of Mangrove Ck and Mooney Mooney Ck (cf Ourimbah Ck and Wyong River) are derived from factors under the control of the Authority. (p 71)

- 4.4 *In relation to the last quotation, there is a need to identify what factors under the Authority's control could effect the riverine health of Mangrove Ck and Mooney Mooney Ck compared to factors under the control of Council or other Authority.*
- 4.5 *As with 4.4. above, there is a need to identify what factors under the Authority's control could effect the riverine health of Ourimbah Ck and Wyong River compared to factors under the control of Council or other Authority.*
- 4.6 *There is a need to clarify the statement that the system is under- utilised in all conditions except extreme drought and that it is not expected to reach its design level for 20 years (p 58 Expert Panel Report). Does "the system" refer to the existing infrastructure or to the adopted plans for augmentation or a mix of the two?*
- 4.7 *On the basis of the Expert Panel Report (p58) what guarantees are there that additional or spare water will not be sold and will instead be retained in the creek system for the environment?*



## Section 5: Conclusions

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The report raises many issues relating to the Joint Water Supply. However, for CCCEN these are best summarised by considering the Principles of Ecologically Sustainable Development (ESD) and the issues that follow from that approach.

**Ecologically Sustainable Development (ESD);** The environmental impacts of water extraction from streams and discharges into waterways have a very significant impact on the natural environment. Ecologically Sustainable Development requires that natural resources are 'used wisely' and with appropriate stewardship. Minimising the usage of water, maximising renewable energy usage and eliminating pollution of waterways are significant steps towards achieving ESD. An Operating Licence could be a significant tool for government to provide direction and incentives in achieving compliance with the principles of ESD.

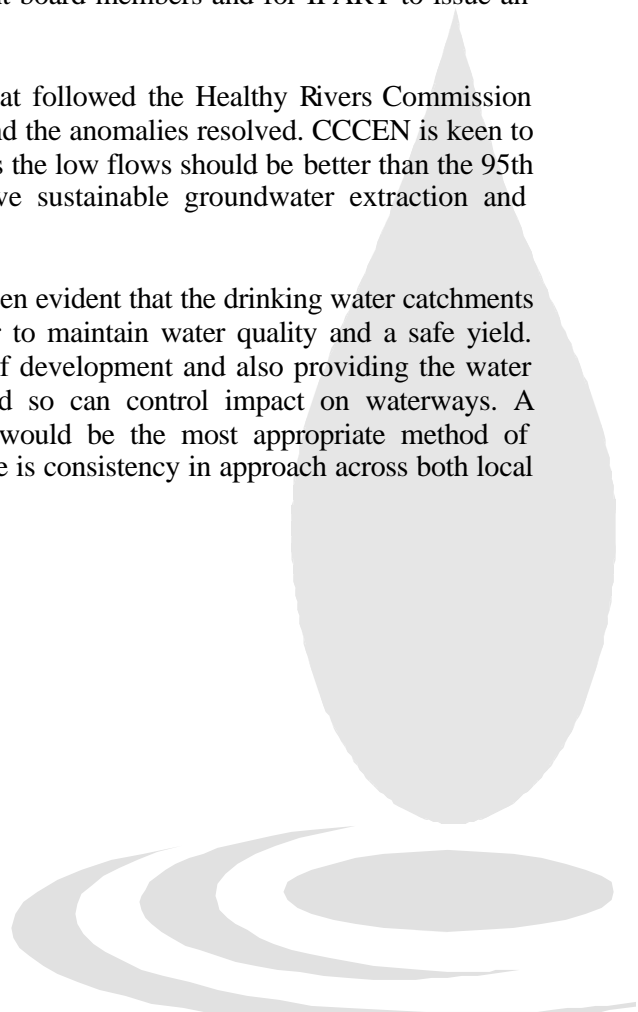
**Accountability and the Public Interest;** It is important that the Joint Water Authority remain under the control and management of councils. The reasons for this are several:

- income remains in the local economy,
- a proven record in economic management of the water supply
- councils have control of the rest of the water cycle, and;
- finally council have the powers through the EP&A Act to control development in the catchments so that water quality and yield is maintained.

However, there is a conflicting interest in councils operating the water supply, which also provides an economic benefit to council. This conflict of interest needs to be managed such that the public interest for a clean and healthy water supply is protected. For this reason and as water is such an important part of our lives some mechanism is needed to ensure the public interest is maintained. The way this has been achieved in the metropolitan areas is through appointment of independent board members and for IPART to issue an Operating Licence to the Water Supply Authority.

**Environmental Flows and Sustainable Yields;** The SOJI that followed the Healthy Rivers Commission Inquiry into the Hawkesbury Nepean needs to be reactivated and the anomalies resolved. CCCEN is keen to see the trial flows commence and to ensure that after extractions the low flows should be better than the 95th Percentile. For groundwater an adaptive approach to achieve sustainable groundwater extraction and monitoring is needed.

**Catchment Protection;** Since the Boake report (1991) it has been evident that the drinking water catchments need to be protected from inappropriate development in order to maintain water quality and a safe yield. Councils are in the fortunate position of being the regulator of development and also providing the water supply. Councils control development in the catchments and so can control impact on waterways. A Regional Environmental plan under the EP&A Act (1979) would be the most appropriate method of protecting the drinking water catchments and ensuring that there is consistency in approach across both local government areas.

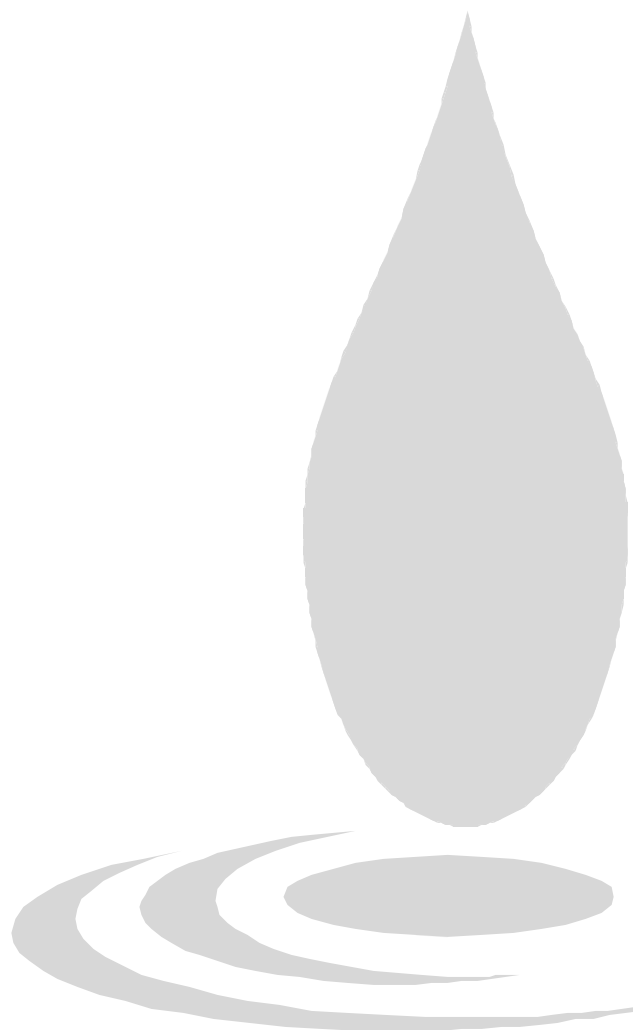


## Section 6: Recommendations

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The Gosford Wyong Joint water Authority (JWA) should:

1. Remain a single entity under the control of Gosford and Wyong councils for all water cycle matters with independent members on the Board. However, public accountability and conflicts of interest need to be improved by adopting an Operating Licence issues by IPART.
2. Operate under an Operating Licence, which includes accountabilities and public education for:
  - Implementing ESD
  - Demand Management Strategy
  - Water Conservation Strategy
  - Reporting on water quality to community;
3. Protect the drinking water catchments through the implementation of a Regional Environmental Plan under the EP&A Act..
4. Resolve anomalies with the SOJI and establish a program for Trial Environmental Flows in streams they utilise.
5. Not sell any surplus water allocation in the Water Sharing Plans that is not utilised.



## Appendix A: Issues for Discussion

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### Section 1

- 1.1 *What benefits are envisaged by extending to councils “greater powers and flexibility?”*
- 1.2 *Assurances are required that the Local Government Act obligations of both Gosford and Wyong Councils are in no way reduced by the Water Management Act or by constituting the councils as Water Authorities.*
- 1.3 *Clarification is required regarding the application of the public scrutiny provisions of the Local Government Act to the Water Supply Authorities.*
- 1.4 *What situations can we anticipate will give rise to such inconsistencies between the LGA and WMA and what is the likely significance of the Water Management Act prevailing?*

### Section 2

- 2.1 *The SOJI refers to “rivers affected by all components of...Gosford-Wyong Joint Water Supply”. However as Wyong Shire Council is not a signatory to the SOJI how is its commitment recorded?*
- 2.2 *If discussions were had and/or undertakings given where are these recorded?*
- 2.3 *Who is responsible for monitoring and implementing the SOJI?*
- 2.4 *Why wasn’t Recommendation FL 4 adopted in full?*
- 2.5 *Is a timetable and progress report of the 6 monthly Water CEO reviews available?*
- 2.6 *Are the reviews (or minutes of meetings of Water CEOs) available for public inspection?*
- 2.7 *Who is to conduct the two-year formal review of the SOJI?*

### Section 3

- 3.1 *How and when are Environmental Flows to be achieved given that Wyong Council is not a party to the SOJI?*
- 3.2 *How and when are Environmental Flows to be achieved given that the Gosford Wyong Joint Water Authority is not a party to the SOJI?*
- 3.3 *Did Wyong Council and the Gosford Wyong Joint Water Authority agree to cooperate with the terms of the SOJI or were they directed to do so by the Minister?*

### Section 4

- 4.1 *Can the success of demand management be definitively attributed to factors other than meters, user pays and excess water charges? If so, the other factors should be identified with the proportion of*

*cost saving attributable to them. How will the performance of the demand management scheme be assessed and made available for public scrutiny?*

- 4.2 *How is the demand management being monitored to establish whether the exemptions should still be extended the GWJWS?*
- 4.3 *There is a need to clearly delineate the responsibilities of individual councils as well as the Water Supply Authority in light of comments such as:*
- *“Most of the panel’s advice and recommendations to the Authority focuses on the flow regime on the basis that flow is under the Authority’s direct control whereas the performance of the catchment is more a matter for the individual Councils.” (p 47 ).*
  - *“The health of the streams cannot be assumed to be the sole responsibility of the Authority. The management systems introduced by the Authority are effected by the Councils management of landuse-based impacts.” (p 77).*
  - *“The Expert Panel also considers that the Authority will be held partially accountable for river health and to that end it should develop a mechanism that demonstrates recognition of its responsibilities and objectives and its performance” (p 67).*
  - *The Panel considers that the primary impacts on riverine health of Mangrove Ck and Mooney Mooney Ck (cf Ourimbah Ck and Wyong River) are derived from factors under the control of the Authority. (p 71)*
- 4.4 *In relation to the last quotation, there is a need to identify what factors under the Authority’s control could effect the riverine health of Mangrove Ck and Mooney Mooney Ck compared to factors under the control of Council or other Authority.*
- 4.5 *As with 4.4. above, there is a need to identify what factors under the Authority’s control could effect the riverine health of Ourimbah Ck and Wyong River compared to factors under the control of Council or other Authority.*
- 4.6 *There is a need to clarify the statement that the system is under- utilised in all conditions except extreme drought and that it is not expected to reach its design level for 20 years (p 58 Expert Panel Report). Does “the system” refer to the existing infrastructure or to the adopted plans for augmentation or a mix of the two?*
- 4.7 *On the basis of the Expert Panel Report (p58) what guarantees are there that additional or spare water will not be sold and will instead be retained in the creek system for the environment?*

## Appendix B: Documents Reviewed

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Boake M, 1991, *Report on condition of Wyong Shire's Water Supply Catchment*, Wyong Shire Council.

Cullen P, undated, *Rivers and fish in stress – The NSW Rivers survey*, Cooperative Research Centre for Freshwater Ecology.

Cullen P; J Harris; T Hillman; P Liston; R Norris and J Whittington J, 2000, *Scope of the Sustainable Rivers Audit*, CRC for Freshwater Ecology

Department of Land and Water Conservation, 2000a, *An Overview of the proposed new water legislation for NSW - the benefits for the environment, industry and the community*, DLWC.

Department of Land and Water Conservation, 2000b, *NSW Water Conservation Strategy*, DLWC.

Department of Water Resources, 1987, *Legislative and administrative arrangements for urban water supplies Gosford/ Wyong*, Report of the Interdepartmental Committee established by the Minister for Water Resources.

Environment Protection Authority of NSW, 1999a, *Water quality and river flow interim environmental objectives - Guidelines for River, Groundwater and Water Management Committees Lake Macquarie and Tuggerah Lakes Catchments*, EPA.

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Gosford-Wyong Councils' Water Authority, 2001, *Stream flow management strategy – an urban and environmental balance*.

Gosford-Wyong Councils' Water Authority, 2001, *letter to Central Coast Community Environment Network re Streamflow Management Strategy*, 24 August 2001.

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Healthy Rivers Commission of NSW, 2000b, [http://www.hrc.nsw.gov.au/site/about\\_frame.html](http://www.hrc.nsw.gov.au/site/about_frame.html)

Independent Pricing and Regulatory Tribunal of NSW, 1999, *Pricing Water Supply, Sewerage and Stormwater Services*, IPART.

Independent Pricing and Regulatory Tribunal of NSW, 2000a, *Prices of Water Supply, Sewerage and Drainage Services Gosford City Council*, IPART.

Independent Pricing and Regulatory Tribunal of NSW, 2000b, *Prices of Water Supply, Sewerage and Drainage Services Wyong Shire Council*, IPART.

KPMG Management Consulting, 1993, *Gosford and Wyong Councils' Water Supply and Sewerage Position Statement*, KPMG, Sydney.

KPMG Management Consulting, 1994a, *Gosford and Wyong and Councils opportunities to extend the operations of the current joint water supply committee*, KPMG, Sydney.

KPMG Management Consulting, 1994b, *A comparison of Gosford & Wyong Council's performance in the provision of water supply and sewerage services with that of other authorities*, KPMG, Sydney.

Markwort K (ed), 1997, *Watershed*, CRC for Freshwater Ecology, Univ of Canberra, ACT.

Quality Environmental Management Pty Ltd, 2001, *Gosford-Wyong Councils' Water Authority Environmental Flows Expert Panel Report*.

*Statement of joint intent for the Hawkesbury-Nepean River system Incorporating decisions of the NSW government on the reports of the Healthy Rivers Commission on the Hawkesbury-Nepean River system*, 12 March 2001.

Water Services Association of Australia Inc, 2000, *The Australian Urban Water Industry WSAAfacts 2000*, Water Services Association of Australia Inc, Melbourne.

### ***Legislation***

*Local Government Act 1993*

*Water Management Act 2000*

### ***Licences issued to Wyong Shire Council***

20SL019691

20SL028527

20SL033407

20SL039342

20SL039830

20SL050740

### ***Licences issued to Gosford City Council***

10SL5106

10SL13213

10SL23693

10SL39289

10SL45333

Licence No 10AW00075 has also been granted to Gosford Council but DLWC has indicated that difficulty in printing the document prevents them providing a copy.