

# Northern SEQ Distributor-Retailer Authority Participation Agreement

Northern SEQ Distributor-Retailer Authority

Sunshine Coast Regional Council

Moreton Bay Regional Council

Noosa Shire Council

**Contents**

**Background ..... 3**

**Operative Provisions..... 4**

- 1. Definitions and Interpretations..... 4
- 2. Enforcement and Effect..... 7
- 3. Objectives ..... 7
- 4. Amendment of Participation Agreement ..... 8
- 5. Participants and Participation Rights ..... 8
- 6. Participant Decisions.....10
- 7. Internal Management .....10
- 8. Corporate Planning .....15
- 9. Reporting to Participants .....16
- 10. Participation Return.....16
- 11. Tax Equivalents .....18
- 12. Obligations of the Parties .....18
- 13. Notices .....18
- 14. Auditor .....20
- 15. Mediation .....20

**Attached Schedules:**

- Schedule 1 – Statement of Obligations
- Schedule 2 – Regulated Asset Base Principles
- Schedule 3 – Register of Participation Rights

**Participation Agreement** first made 25 June 2010, and changed to include Noosa Shire Council as a Participant from 1 January 2014.

- Parties**
- Northern SEQ Distributor-Retailer Authority** of Level 4, 33 King Street, Caboolture in the State of Queensland
  - Sunshine Coast Regional Council** of the corner of Bury Street and Currie Street, Nambour in the State of Queensland
  - Moreton Bay Regional Council** of 222 Gympie Road, Strathpine in the State of Queensland
  - Noosa Shire Council** of Level 3, 9 Pelican Street, Tewantin in the State of Queensland

## Background

- A. The Northern SEQ Distributor-Retailer Authority was established under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (Restructuring Act)*.
- B. Section 20 of the Restructuring Act requires the parties to enter into a participation agreement.
- C. Pursuant to section 23 of the Restructuring Act, the Minister first made the Participation Agreement of the Northern SEQ Distributor-Retailer Authority on 25 June 2010.
- D. On 30 May 2011, the Minister determined the accuracy of the Regulated Asset Base Calculation in accordance with clause 5.4(e).
- E. Accordingly:
  - a) the allocation of Participation Rights granted to each Initial Participating Local Government was set out in the Initial Register of Participation Rights;
  - b) the Participation Agreement, as amended following the determination of the Regulated Asset Base Calculation, took effect from the day the Minister gave the Authority a notice in accordance with section 29(1)(b) of the Restructuring Act.
- F. On 11 September 2013, the Restructuring Act was amended to include Noosa Shire Council as Participating Local Government for the Northern SEQ Distributor-Retailer Authority commencing 1 January 2014.
- G. In October and November 2013, the Initial Participants approved amendments to the Participation Agreement, including the addition of Noosa Shire Council as a participant under the Participation Agreement, noting that changes to restricted matters under the Restructuring Act require approval of the Minister before the changes take effect.
- H. Pursuant to section 29 of the Restructuring Act, the Minister approved the changes to the restricted matters in the Participation Agreement for the Northern SEQ Distributor-Retailer Authority on 19 December 2013, to take effect from 1 January 2014.

- I. In March 2017, clauses 7.4, 7.5 and 9.1 were amended by agreement of all of the Participating Local Governments in accordance with section 28 of the Restructuring Act.

## Operative Provisions

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### 1. Definitions and Interpretations

#### 1.1 Definitions

In this agreement:

**Authority** means the Northern SEQ Distributor-Retailer Authority established under the Restructuring Act.

**Board** means the Board Members of the Authority from time to time.

**Board Member** means a person who is, for the time being, a member of the Board of the Authority.

**Chief Executive Officer** means the chief executive officer of the Authority.

**Corporations Act** means the *Corporations Act 2001* (Commonwealth).

**Financial Benefit** includes:

- a) giving or providing finance or property;
- b) buying an asset or selling an asset
- c) taking a lease or granting a lease;
- d) supplying services or receiving services;
- e) issuing Participation Rights or rights to Participation Rights;
- f) taking up or releasing an obligation.

Independent Member has the meaning given to that phrase under the Restructuring Act.

Initial Participating Local Government means Sunshine Coast Regional Council and Moreton Bay Regional Council as at 1 July 2010.

**Legal Costs** means all legal costs incurred in defending, resisting, responding to or otherwise in connection with any proceedings or investigations (whether criminal, civil, administrative or judicial, actual or threatened) where that proceeding, appearance or response relates to a Liability of that person.

**Liability** means any liability to any person including negligence (except a liability for Legal Costs) incurred by that person in or arising out of the discharge of duties as a Board Member or in or arising out of the conduct of the business of the Authority, including as result of appointment or nomination by the Authority or a subsidiary as a trustee or as a Board Member, of another body corporate.

**Minister** means the Minister administering the Restructuring Act.

**Net profit** means the Authority's total profit for the financial year after;

- a) providing for income tax or its equivalent; and
- b) excluding any unrealised capital gains from upwards revaluation of non-current assets.

**Notice** means a notice given pursuant to, or for the purposes of, this agreement.

**Participant** means an entity that is the holder of a Participation Right and is recorded in the Register of Participation Rights as Participant.

**Participating Local Government** has the meaning given to that phrase under the Restructuring Act.

**Participation Return** means a return to Participants based on Participation Rights determined by the Board in accordance with clause 10.

**Participation Return Policy** means the Unitywater Participation Return Policy as approved from time to time.

**Participation Right** has the meaning given to that term set out in clause 5.2(a).

**Profit** has the meaning given by the accounting standards that apply to the Authority under the Financial Accountability Act 2009.

**Register of Participation Rights** means the register maintained by the Board in accordance with clause 5.7(a).

**Regulated Asset Base** means the opening regulated asset base as at 1 July 2010 as determined in accordance with clause 5.4.

**Regulated Asset Base Calculation** has the meaning given in clause 5.4(a).

**Related Party of the Authority** means:

- a) a Participant;
- b) a Wholly owned Entity;
- c) a Participating Local Government;
- d) councillors and senior executives of persons referred to in (a), (b) and (c) above;
- e) Board Members; and
- f) spouses, defacto spouses, parents and children of persons referred to in (e) above.

**Restructuring Act** means the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

**Review Year** means the year in which the Participants review the Statement of Obligations given to the Authority under clause 7.1 of this agreement.

**Secretary** means a person appointed as, or to perform the duties of, secretary of the Authority for the time being.

**Special Majority of the Participants** means Moreton Bay Regional Council and Sunshine Coast Regional Council acting jointly in their capacity as Participants.

**Statement of Obligations** means the document forming Schedule 1 to this agreement, as amended from time to time in accordance with this agreement, the purpose of which is to impose obligations on the Authority in relation to its strategic planning process, its functions and the manner in which it performs its functions.

**Tax Equivalents**, to be paid by the Authority to the Participants, means amounts representing the value of benefits the Authority derives because it is not liable to pay a government tax that it would be liable to pay if it were not a distributor-retailer as that term is defined under the Restructuring Act.

**Tax Equivalents Manual** means a manual issued by the Treasurer in accordance with section 100 of the Restructuring Act.

**Term** means the period for which a Board Member holds office in accordance with clause 7.4.

**Wholly owned Entity** in relation to Sunshine Coast Regional Council means a body corporate none of whose members is a person other than Sunshine Coast Regional Council or a nominee of Sunshine Coast Regional Council.

**Wholly owned Entity** in relation to Moreton Bay Regional Council means a body corporate none of whose members is a person other than Moreton Bay Regional Council or a nominee of Moreton Bay Regional Council.

**Wholly owned Entity** in relation to Noosa Shire Council means a body corporate none of whose members is a person other than Noosa Shire Council or a nominee of Noosa Shire Council.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this agreement:

- a) a word importing the singular includes the plural (and vice versa);
- b) a word indicating a gender includes every other gender;
- c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- d) the word "includes" in any form is not a word of limitation;
- e) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- f) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- g) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form; and
- h) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements.

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## **2. Enforcement and Effect**

### **2.1 Enforcement**

- a) The parties submit to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this agreement.
- b) If at any time any provision of this agreement is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
  - i. the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or
  - ii. the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this agreement

### **2.2 Takes Effect**

- a) In accordance with section 24 of the Restructuring Act, this agreement, as amended to include Noosa Shire Council as a Participating Local Government, takes effect on the latest of the following days:
  - i. the day the Minister gives the parties to this agreement a notice that the Minister has approved it; or
  - ii. 1 January 2014.

### **2.3 Restructuring Act prevails over agreement**

If a provision of this agreement is inconsistent with a provision of the Restructuring Act, the provision of the Restructuring Act prevails to the extent of the inconsistency.

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## **3. Objectives**

### **3.1 Objectives of the business**

The Authority must carry out its functions in a way that is consistent with the following objectives:

- a) to perform its geographic area functions under the Restructuring Act;
- b) to operate on a sustainable basis;
- c) to provide commercial returns to Participants;
- d) to be an efficient, innovative and responsive organisation that engages with the communities it serves; and
- e) to ensure continuity of service, maintenance and improvement, of existing customer service standards and focus.

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## 4. Amendment of Participation Agreement

This agreement may be amended in accordance with sections 28, 29 and 30 of the Restructuring Act. This agreement does not provide for amendment in any other way.

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## 5. Participants and Participation Rights

### 5.1 Participants

- a) No entity, other than the entities mentioned in clause 5.1(b), (c) or (d) below shall be eligible to be Participants in the Authority without the prior written approval of the Minister.
- b) Sunshine Coast Regional Council.
- c) Moreton Bay Regional Council.
- d) Noosa Shire Council.

### 5.2 Participation Rights

- a) Participation Rights are rights held by a Participant to share in a distribution of profits and/or other returns of the Authority in proportion to the percentage set out next to the Participants name in the Register of Participation Rights, and in accordance with the Participation Returns Policy.
- b) Only a Participant may hold a Participation Right.
- c) The Participation Rights of a Participant shall not, without the approval of the Minister, fall below 1%.

### 5.3 Issue of Participation Rights in connection with Transfer Scheme

The Board will, in consideration of the transfer of assets, employees, instruments or liabilities of a Participating Local Government under a transfer scheme entered into in accordance with Chapter 3 of the Restructuring Act, grant the relevant Initial Participating Local Government an amount of Participation Rights determined in accordance with clause 5.4.

### 5.4 Quantum of Participation Rights

- a) The Chief Executive Officer must calculate and have independently validated each Initial Participating Local Government's Regulated Asset Base based on the information available to the Authority using the principles set out in schedule 2 (**Regulated Asset Base Calculation**).
- b) A copy of the Regulated Asset Base Calculation must be provided to the Board and each Initial Participating Local Government by no later than 31 December 2010.
- c) Any Board Member or Initial Participating Local Government may, within 30 days after receipt of the Regulated Asset Base Calculation, provide written comments to the Chief Executive Officer on the Regulated Asset Base Calculation.



- d) The Chief Executive Officer must provide the Regulated Asset Base Calculation and any comments received under clause 5.4(c) to the Minister for final determination.
- e) Once the Minister has determined that the Regulated Asset Base Calculation is correct, the number of Participation Rights equal to the dollar value of each Initial Participating Local Government's Regulated Asset Base will be granted to each Participating Local Government.

## **5.5 Adjustments to Participation Rights**

- a) Subject to clause 5.2(c) of this agreement and Ministerial approval in accordance with section 29 of the Restructuring Act:
  - i. the Authority will adjust the Participation Rights granted to a Participating Local Government under clause 5.3 if the Authority is given written notification signed by each Participating Local Governments that the Participating Local Governments have, by resolution, agreed to the adjustment.
  - ii. the Authority may, by resolution of the Board and with the written approval of all Participating Local Governments adjust the Participation Rights granted to a Participating Local Government under clause 5.3 if:
    - A. a Participating Local Government makes a monetary or in-kind contribution to the Authority; or
    - B. an unidentified or undisclosed liability is discovered by the Authority.

## **5.6 Transfer of Participation Rights**

- a) Subject to clause 5.2(c), a Participant may transfer, by written agreement, Participation Rights of the Participant to another Participant.
- b) The agreement to transfer the Participation Rights must be delivered to the Authority, at the place where the Register of Participation Rights is kept, together with any evidence that the Board may require to prove the proper execution of the agreement to transfer by the parties.
- c) A Participant transferring Participation Rights remains in the Register as entitled to those Participation Rights until the agreement to transfer has been registered by the Board and the Register of Participation Rights has been adjusted.
- d) The Board may refuse to register an agreement to transfer Participation Rights where the registration of the transfer may result in a breach of the Restructuring Act or this agreement.

## **5.7 Register of Participation Rights**

- a) The Board must maintain a Register of Participation Rights.
- b) The Register of Participation Rights must contain the following information:
  - i. Participants
    - A. the name and address of each Participant; and

- B. the date the Participant became a Participant; and
- ii. Participation Rights
  - A. the Participation Rights of each Participant; and
  - B. the date the Participant became entitled to the Participation Rights.
- c) The Register of Participation Rights must be kept at the main business office of the Authority.
- d) The Register of Participation Rights shall be evidence of the Participants and the Participation Rights in the Authority.

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## **6. Participant Decisions**

- a) The Participants will consult with each other and endeavour to reach agreement on any decision that may be taken by a Special Majority of the Participants.
- b) Where unanimous agreement is not reached, then a decision taken by a Special Majority of the Participants will be sufficient.

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## **7. Internal Management**

### **7.1 Board Membership**

The Board for the Authority is to consist of five Independent Members. For clarity, the Board for the Authority must not consist of any members who are not Independent Members.

### **7.2 Appointment of Board Members**

Subject to section 33(3) of the Restructuring Act, a Board Member may be appointed by a Special Majority of the Participants signing a document stating that they are in favour of the appointment of the Board Member.

### **7.3 Removal of Board Members**

Subject to the Restructuring Act, a Board Member may be removed from the Board by a Special Majority of the Participants signing a document stating that they are in favour of the removal of any Board Member.

### **7.4 Term of Office**

- a) Subject to the Restructuring Act each Board Member may hold office for the period commencing on the date of their appointment and ending on a date that is between 3 and 5 years from the date of their appointment, unless earlier removed under clause 7.3.
- b) This clause 7.4 does not apply to the Term for any councillor-members. The Term for a councillor-member is set out in the Restructuring Act.

### **7.5 Retirement of Board Members**

- a) A Board Member who has completed his or her Term must retire from office.

- b) Subject to clause 7.5(c), a Board member who retires at the completion of his or her Term is eligible for reappointment as a Board Member with effect from that date.
- c) No person may serve more than 10 consecutive years as a Board Member, unless agreed by all Participants.

## **7.6 Termination of office**

A person ceases to be a Board Member if the person:

- a) Fails to attend Board meetings for a continuous period of three months without the consent of the Board;
- b) Resigns by notice in writing to the Authority;
- c) Is removed from office in accordance with clause 7.3;
- d) Becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health;
- e) Is disqualified from managing a corporation, pursuant to the Corporations Act; or
- f) Becomes someone who, under section 36 of the Restructuring Act, can not be appointed as a Board Member.

## **7.7 Remuneration of Board Members**

The Board may, with the agreement of a Special Majority of the Participants, pay or provide to Board Members fees in an amount or value determined by the Board.

## **7.8 Secretary**

The Board may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to any agreement between the Authority and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

## **7.9 Indemnity and insurance**

- a) To the extent permitted by law, the Authority must indemnify each Board Member against a Liability of that person and the Legal Costs of that person.
- b) To the extent permitted by law, the indemnity pursuant to clause 7.9(a):
  - i. is enforceable without the Board Member having first to incur any expense or make any payment; and
  - ii. is a continuing obligation and is enforceable by the Board Member even though the Board Member may have ceased to be a Board Member of the Authority.
- c) The Authority may:
  - i. enter into, or agree to enter into; or
  - ii. pay, or agree to pay, a premium for,

a contract insuring a Board Member against a Liability of that person and the Legal Costs of that person provided that such contract does not insure a Board Member against a Liability arising out of conduct involving a wilful breach of duty in relation to the Authority.

- d) To the extent permitted by law, the Authority may enter into an agreement or deed with a Board Member, pursuant to which the Authority must do all or any of the following:
  - i. keep books of the Authority and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - ii. indemnify that person against any Liability and Legal Costs of that person;
  - iii. make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
  - iv. keep that person insured in respect of any act or omission by that person while a Board Member of the Authority, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## **7.10 General powers**

A power of the Board can only be exercised by:

- a) a resolution passed at a meeting of the Board held in accordance with Part 4 Division 2 of the Restructuring Act and this agreement; or
- b) a resolution passed by signing a document in accordance with section 40(6) of the Restructuring Act; or
- c) in accordance with a delegation of the power in accordance with section 53 of the Restructuring Act.

## **7.11 Execution of documents**

- a) A person may execute a document if the Board authorises the person to execute the document.
- b) Notwithstanding section 52 of the Restructuring Act, the Chief Executive Officer or Chairman of the Board may only execute a document if authorised to do so by the Board.
- c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Authority, and receipts for money paid to the Authority, must be signed, drawn, accepted, endorsed or otherwise executed.

## **7.12 Attorney or agent**

- a) The Board may appoint any person to be attorney or agent of the Authority for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Authority, the Board may revoke or vary that appointment at any time, with or without cause.

### 7.13 Notice of Board meetings

- a) Notice of a Board meeting must be given to each Board Member (except a Board Member on leave of absence approved by the Board). Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- b) A Board Member may waive notice of a Board meeting by giving notice to that effect to the Authority in person or by post or by telephone, fax or other electronic means.
- c) A person who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.
- d) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Authority accidentally does not give notice of the meeting to a person.

### 7.14 Disclosure of interests

- a) Where a member of the Board (**the interested member**):
  - i. has an interest in an issue being considered or about to be considered by the Board; and
  - ii. the interest could conflict with the proper performance of the Member's duties about the consideration of the issue;

then after the relevant facts come to the interested member's knowledge, the Member must disclose the nature of the interest to the Board meeting.

- b) Unless the Board otherwise directs, the interested member must not—
  - i. be present when the Board considers the issue; or
  - ii. take part in a decision of the Board about the issue.
- c) The interested member must not be present when the Board is considering whether to give a direction under clause 7.14(b).
- d) If there is another person who must under clause 7.14(a) also disclose an interest in the issue, the other person must not
  - i. be present when the Board is considering whether to give a direction under clause 7.14(b) about the interested member; or
  - ii. take part in making the decision about giving the direction.
- e) If:
  - i. because of clause 7.14, a Board Member is not present at a Board meeting for considering or deciding an issue or for considering or deciding whether to give a direction under clause 7.14(b); and
  - ii. there would be a quorum if the Member were present;

the remaining Members present are a quorum of the Board for considering or deciding the issue or for considering or deciding whether to give the direction at the meeting.

- f) If there are no Members who may remain present for considering or deciding an issue, the distributor-retailer's participants may, by each signing consent to a proposed resolution, consider and decide the issue.
- g) A disclosure under clause 7.14 must be recorded in the Board's minutes.

### **7.15 Quorum of the Board**

- a) Until otherwise determined by the Board, a quorum for a Board meeting is three Board Members entitled to vote on a resolution that may be proposed at that meeting.
- b) A quorum for a Board meeting must be present at all times during the meeting.
- c) Subject to section 40 of the Restructuring Act, each individual present is counted towards a quorum as a Board Member.

### **7.16 Chairman of the Board**

- a) A Special Majority of the Participants may appoint a Board Member as chairman of the Board by signing a document stating that they are in favour of the appointment of the Board member as chairman for any period it resolves, or if no period is specified, until that person ceases to be a Board Member. A Special Majority of the Participants may remove the chairman of the Board at any time.
- b) Subject to clause 7.16(c), the chairman of the Board must chair each Board meeting.
- c) If at a Board meeting the chairman of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting, the Board Members present must elect one of their number to chair that meeting or part of the meeting.
- d) A person does not cease to be a chairman of the Board if that person retires as a Board Member at a meeting of Members and is re elected as a Board Member at that meeting (or any adjournment of that meeting).

### **7.17 Valid proceedings**

An act at any Board meeting or a committee of the Board or an act of any person acting as a Board Member is not invalidated by:

- a) a defect in the appointment or continuance in office of a person as a Board Member, a member of the committee or of the person so acting; or
- b) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.

### **7.18 Prohibition on Financial Benefits to Related Parties**

The Authority must not give a Financial Benefit to a Related Party of the Authority unless:

- a) a Special Majority of the Participants approve in writing of the giving of the Financial Benefit; or

- b) the giving of the Financial Benefit is on terms no more favourable to the Related Party of the Authority than would be reasonable in the circumstances if the Authority and the Related Party were dealing at arm's length; or
- c) the giving of the Financial Benefit is remuneration to a Board Member under clause 7.7;
- d) the giving of the Financial Benefit is an indemnity, payment in respect of Legal Costs or insurance premium payable by the Authority in accordance with clause 7.9; or
- e) the Financial Benefit is given to the Related Party in their capacity as a Participant and the giving of the benefit does not discriminate unfairly against the other Participants.

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## **8. Corporate Planning**

### **8.1 Statement of Obligations**

- a) A Special Majority of the Participants may give the Authority a Statement of Obligations.
- b) A Special Majority of the Participants may review the Statement of Obligations every five years after it has been given to the Authority and notify the Authority by 30 May in the Review Year of any changes the Participants wish to make to the Statement of Obligations resulting from the review.
- c) A document amended in accordance with sub-clause 8.1(b) will be the Statement of Obligations for the purposes of this agreement.

### **8.2 Corporate Strategic Plan**

- a) The Authority must prepare a plan about the future direction, goals and priorities of the Authority (**Corporate Strategic Plan**).
- b) The Corporate Strategic Plan must be consistent with, and have due regard for, the matters contained in the Statement of Obligations.
- c) The Corporate Strategic Plan must include the Authority's:
  - i. vision;
  - ii. strategic priorities;
  - iii. strategies; and
  - iv. financial forecast,for a period of at least five years from the date of the Corporate Strategic Plan.
- d) The Corporate Strategic Plan must;
  - i. specify the expected outcomes of the strategies; and
  - ii. describe the operating environment.

- e) The Corporate Strategic Plan must be approved by the Board.
- f) The Authority must give a copy of the Corporate Strategic Plan to each Participant no later than 15 business days after the Board has approved it.

### **8.3 Water Netserv Plan**

- a) The Authority must have a **Water Netserv Plan** that is prepared and reviewed in accordance with the Restructuring Act.
- b) The Authority must give a copy of the Water Netserv Plan to each Participant no later than 15 business days after the Board has approved it.

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## **9. Reporting to Participants**

### **9.1 Provision of Information to Participants**

- a) Each year, the Authority will provide the Participants with the following:
  - i. a copy of the audited consolidated financial statements of the Authority within 15 business days of receipt from the Auditor-General;
  - ii. an annual report within 15 business days after the day on which the annual report is tabled by the Minister in the Legislative Assembly;
  - iii. a copy of the semi-annual unaudited consolidated financial statements of the Authority within 15 business days of approval by the Board (and in any event, within 45 days of the end of December each year);
  - iv. a half yearly report by 31 March each year, or such longer period as may be agreed by the Participants.
- b) The annual report and half yearly report must contain such information that the Participants require to make an informed assessment of:
  - i. the operations of the Authority and its subsidiary entities (if any); and
  - ii. the financial performance of the Authority and its subsidiary entities, including information about—
    - A. profits and losses; and
    - B. assets and liabilities; and
    - C. the prospects of the Authority and its subsidiary entities.
- c) The annual report must be prepared in accordance with the *Financial Accountability Act 2009*.

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## **10. Participation Return**

### **10.1 Determination**

- a) The Board may approve the payment of a Participation Return and fix the amount and time for payment of a Participation Return.



- b) During the period from 15 March to 15 April in each financial year the Authority must give to the Participants:
  - i. An estimate of the Authority's net profit for the financial year; and
  - ii. The amount of the Participation Return to be paid for the financial year, including the amount payable for different Participation Rights.
- c) The amount of the Participation Return must not be more than the amount of the estimated net profit given to the Participants under subsection 10.1(b)(i).
- d) Interest is not payable on a Participation Return.
- e) The Authority does not incur a debt merely by fixing the amount or time for payment of a Participation Return. The debt arises only when the time fixed for payment arrives and the decision to pay the Participation Return may be revoked at any time before then.

## **10.2 Returns to be paid out of profits**

- a) A Participation Return may only be paid out of net profits of the Authority.
- b) Participation Returns will be paid in accordance with the Participation Return Policy.

## **10.3 Entitlements to Participation Returns**

- a) A Participation Return must be paid to the Participant whose name appears in the Register of Participation Rights as the holder of that Participation Right as at the time the Board has fixed for that purpose, or if no such time is fixed, on the date on which the Participation Return is paid.
- b) If a transfer of Participation Rights occurs after the time determined for entitlements to a return on that Participation Right but before the Participation Return is paid, the person transferring that Participation Right is entitled to that Participation Return.

## **10.4 Payment Method**

The Authority may pay an entity entitled to an amount payable in respect of a Participation Right (including a Participation Return) by any of the following means, in the Board's discretion, at the sole risk of the person so entitled:

- a) crediting an account nominated in writing by that entity and acceptable to the Board;
- b) cheque made payable to bearer, to the entity entitled to the amount or any other entity the entitled entity directs in writing and who is acceptable to the Board; or
- c) any other manner as the Board resolves.

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## **11. Tax Equivalents**

### **11.1 Entitlements to Participation Returns**

- a) Tax Equivalents in proportion to Participation Rights must be paid to the Participant whose name appears in the Register of Participation Rights as the holder of that Participation Right as at the last day of the period for which the return is lodged by the Authority in accordance with the Tax Equivalents Manual.
- b) If a transfer of Participation Rights occurs after the time determined for entitlements to a return on that Participation Right but before the Participation Return is paid, the person transferring that Participation Right is entitled to that Participation Return.

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## **12. Obligations of the Parties**

### **12.1 Good faith**

Each party to this agreement must act in good faith in its dealings with the other parties in connection with matters dealt with under this agreement or the Restructuring Act and must unless specified to the contrary in this agreement:

- a) be reasonable and honest;
- b) do all things required by the Restructuring Act, this agreement and by any contract, agreement or document related to Restructuring Act or this agreement (**Document**);
- c) not unlawfully impede or restrict the performance by any party of its obligations under any Document; and
- d) not unlawfully impede or restrict the exercise by any party of its rights under any Document.

### **12.2 No fetter on statutory obligations**

Nothing in this agreement shall fetter or restrict a party from exercising a statutory or regulatory duty, power or discretion granted to, or expressly imposed upon or conferred on that party.

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## **13. Notices**

### **13.1 Notices to Participants**

The Authority may give Notice to Participants by any of the following means in the Board's discretion:

- a) delivering it to that Participant or person;
- b) delivering it or sending it by post to the address nominated by a Participant;
- c) sending it to the fax number or electronic address (if any) nominated by that Participant for that purpose; or
- d) notifying that Participant of the notice's availability by an electronic means nominated by the Participant for that purpose.

## **13.2 Notice to Board Members**

The Authority may give Notice to a Board Member by:

- a) delivering it to that person;
- b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- c) sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- d) any other means agreed between the Authority and that person.

## **13.3 Notice to the Authority**

A person may give Notice to the Authority by:

- a) delivering it or sending it by post to the main business office of the Authority;
- b) delivering it or sending it by post to a place nominated by the Authority for that purpose;
- c) sending it to the fax number at the main business office of the Authority nominated by the Authority for that purpose;
- d) sending it to the electronic address (if any) nominated by the Authority for that purpose,

## **13.4 Time of service**

- a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- b) A Notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Authority or a Board Member, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- c) A Notice given in accordance with clause 13.1(d) is taken to be given on the day after the date on which the Participant is notified that the Notice is available.
- d) A certificate by a Board Member or Secretary to the effect that a Notice by the Authority has been given in accordance with this agreement is conclusive evidence of that fact.

## **13.5 Notice requirements**

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- a) the classes of, and circumstances in which, Notices may be sent;
- b) verification (whether by encryption code or otherwise); and
- c) the circumstances in which, and the time when, the Notice is taken to be given.

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**14. Auditor****14.1 Auditor General**

The Auditor-General of Queensland will be the auditor of the Authority.

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**15. Mediation**

**15.1** If any dispute, controversy or claim shall arise out of or in respect of this agreement or the performance breach or validity thereof, the parties shall refer same to mediation administered by such person or organisation as the parties may determine by agreement or, failing agreement by the leading Queensland dispute resolution centre as nominated by the Queensland Law Society.

**15.2** The mediation of any dispute, controversy or claim referred to in Clause 15.1 shall be conducted at Queensland or at such other place as the parties may agree.

**15.3** The mediation shall be held in accordance with the rules laid down by the mediator.

**15.4** Once the mediation has commenced, no party shall commence proceedings in any Court in respect of a matter touching or concerning the subject matter of the mediation unless it has first given written notice to the other parties that it has abandoned the mediation.

**15.5** Any document prepared for or in anticipation of or statements, admissions or concessions made by or behalf of the parties during the mediation proceedings shall, without prejudice to the rights of the respective parties, be inadmissible in any proceedings in any Court.

# STATEMENT OF OBLIGATIONS

## 2014-2019

<b>1. PART 1 - PRELIMINARY .....</b>	<b>2</b>
1.1 Commencement and Term .....	2
1.2 Authorising Provision .....	2
1.3 Purpose .....	2
1.4 Interpretation .....	2
<b>2. PART 2 - GENERAL .....</b>	<b>2</b>
2.1 Guiding Principles .....	2
<b>3. PART 3 - WATER NETSERV PLAN .....</b>	<b>3</b>
3.1 Preparation and Delivery of a Water Netserv Plan .....	3
3.2 Procedural Requirements .....	3
<b>4. PART 4 - GOVERNANCE AND RISK MANAGEMENT .....</b>	<b>3</b>
4.1 Board Performance .....	3
4.2 Customer and Community Engagement .....	3
4.3 The Authority must: .....	3
4.4 Consulting with Councils .....	3
4.5 Consulting with Agencies .....	4
4.6 Managing Risks and Performance .....	4
4.7 Responding to Incidents and Emergencies .....	4
4.8 Managing Assets .....	4
<b>5. PART 5 - SUSTAINABILITY AND SERVICE DELIVERY .....</b>	<b>4</b>
5.1 Sustainable Water Management .....	4
5.2 Reticulated Water Supply to Unserviced Urban and Rural Areas .....	5
5.3 Sewerage Services to Unsewered Urban and Rural Areas .....	5
5.4 Sewerage Connections to Properties .....	5
5.5 Trade Waste .....	5
5.6 Business and Business Growth .....	6
5.7 Research and Knowledge .....	6
<b>6. PART 6 - ENVIRONMENTAL MANAGEMENT .....</b>	<b>6</b>
6.1 Environmental Management System .....	6
6.2 River and Bay Health .....	6
<b>7. PART 7 - COMPLIANCE .....</b>	<b>6</b>
7.1 Complying with Obligations .....	6
<b>8. SCHEDULE A - DEFINITIONS .....</b>	<b>7</b>

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## **1. PART 1 – PRELIMINARY**

### **1.1 Commencement and Term**

1.1 This Statement of Obligations:

- a) Commences on 1 January 2014 and operates until it is revoked;
- b) May be reviewed every five years, in accordance with the Participation Agreement.

### **1.2 Authorising Provision**

1.2.1 This Statement of Obligations is issued by the Participating Local Governments in accordance with the Participation Agreement.

### **1.3 Purpose**

1.3.1 The purpose of this Statement of Obligations is to impose obligations on the Northern SEQ Distribution-Retailer Authority's corporate strategic planning process.

### **1.4 Interpretation**

1.4.1 Definitions of the terms contained in this Statement of Obligations are included in Schedule A **attached**.

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## **2. PART 2 – GENERAL**

### **2.1 Guiding Principles**

2.1.1 When planning for the delivery of core services the Authority must recognise the serviced region's desire to be Australia's most sustainable region. Accordingly, the Authority is to balance the competing demands of a triple bottom line outcome. The triple bottom line approach is to ensure business as well as environmental, ecological and social sustainability needs are addressed. This is to include:

- a) The adoption of an objective mechanism for the assessment of all core projects, which demonstrates a balanced approach to ensure sustainability.
- b) Alignment with the serviced region's councils' land use or town plans' objectives, in the context of a whole of water cycle approach.
- c) Adaptability and agility to embrace innovations to achieve optimal sustainability objectives.
- d) Maintenance of a knowledgeable and skilled workforce able to judge triple bottom line outcomes, including value for money and technical suitability – the Authority is to be a smart client.
- e) Adoption of leading (industry benchmarked) asset management practices that reflect a triple bottom line risk framework, which incorporates a need for efficiency, optimisation of current assets and a defined link to future needs.
- f) Provision of affordable water and sewerage services through the adoption of continual improvement and innovation plans.

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### **3. PART 3 – WATER NETSERV PLAN**

#### **3.1 Preparation and Delivery of a Water Netserv Plan**

3.1.1 The Authority has developed a Water Netserv Plan in accordance with the South-East Queensland (Distribution and Retail Restructuring) Act 2009.

3.1.2 The Water Netserv Plan, includes:

- a) Outcomes to be delivered with respect to:
  - i. Desired Standards of Service;
  - ii. Meeting future demands on Authority services;
- b) A description of how the Authority proposes to deliver those outcomes;
- c) A schedule of the charges for each of the services.

#### **3.2 Procedural Requirements**

3.2.1 The Authority must maintain the Water Netserv Plan in accordance with regulatory obligations, including any consultation requirements.

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### **4. PART 4 – GOVERNANCE AND RISK MANAGEMENT**

#### **4.1 Board Performance**

4.1.1 The Authority must annually review and report to the Participants on the performance of the Board of the Authority.

#### **4.2 Customer and Community Engagement**

4.2.1 The Authority must develop and implement open and transparent processes to engage its customers and the community in its planning, infrastructure procurement and operational processes to ensure, among other matters, that the services it provides reflect the needs and expectations of both customers and the community. This is to reflect the adopted sustainability approach.

#### **4.3 The Authority must:**

- a) Make available to the public, information about the water supply, sewerage and recycled water services it provides; and
- b) Make available to the public, information about water conservation and the efficient and responsible use of water.

#### **4.4 Consulting with Councils**

4.4.1 The Authority must consult with the Participating Local Governments;

- a) About Council planning scheme issues in general and advise on optimal sustainable ways to meet water and sewerage service requirements.
- b) In the development of Total Water Cycle Management Plans under the Environmental Protection Policy (Water) 2009.

## **4.5 Consulting with Agencies**

- 4.5.1 The Authority must consult with relevant Agencies:
- a) About strategies to service growth in customer demand for water and sewage services;
  - b) When considering operational changes that impact or may impact on the activities carried out by these Agencies;
  - c) when devising and implementing innovation and research programs on matters of common interest.

## **4.6 Managing Risks and Performance**

- 4.6.1 The Authority must maintain an appropriate system of risk management in accordance with the current Australian Standard to ensure that risks to the Authority, its people, assets and services are identified, assessed, prioritised and managed.
- 4.6.2 The Authority must maintain its financial risk management framework and associated systems, as documented in its Board approved financial management practice manual.

## **4.7 Responding to Incidents and Emergencies**

- 4.7.1 The Authority must maintain its Emergency Response Plan and resolve any material inconsistencies with comparable plans of the Participating Local Governments.
- 4.7.2 The Authority must undertake such periodic training and exercises as may be necessary to ensure that the Emergency Response Plan can – where necessary - be implemented effectively by both Authority and associated organisations.

## **4.8 Managing Assets**

- 4.8.1 The Authority has developed and implemented plans, systems and processes to manage its assets in ways which:
- a) Maintain the levels and standards of service specified in the Water Netserv Plan;
  - b) Minimise the overall whole-of-life costs of assets.
  - c) Minimise detrimental social, economic or environmental effects of managing its assets.
- 4.8.2 The Authority must maintain a comprehensive database of all relevant asset information, including information on the condition and performance of its assets.

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# **5. PART 5 – SUSTAINABILITY AND SERVICE DELIVERY**

## **5.1 Sustainable Water Management**

- 5.1.1 In performing its functions, exercising its powers and carrying out its duties, the Authority must apply sustainable management principles, including:
- a) The need to ensure that water is conserved and properly managed for sustainable use and for the benefit of present and future generations;



- b) The need to encourage and facilitate community involvement in the making and implementation of arrangements relating to the use, conservation and management of water;
- c) The need to integrate both long-term and short-term economic, environmental, social and equitable considerations; and
- d) The need for the conservation of biological diversity and ecological integrity to be a fundamental consideration.
- e) The evaluation of alternative water sources.

5.1.2 To implement sustainable water management the Authority must develop programs and systems for:

- a) Managing everyday environmental impacts from system operations;
- b) Maintaining and restoring natural assets;
- c) The efficient and effective management of demand for water;
- d) The efficient and effective management of energy demands associated with the provision of water and sewerage services;
- e) Reducing leakage and minimising other losses of water to a best practice, as identified by the Water Services Association of Australia;
- f) Identifying opportunities, in conjunction with the Participating Local Governments, through Total Water Cycle Planning under the EPP (Water), to substitute potable supplies with water from alternative sources when economically practicable;

5.1.3 Programs developed by the Authority are to be included in its Water Netserv Plan.

## **5.2 Reticulated Water Supply to Unserviced Urban and Rural Areas**

5.2.1 The Authority must have a policy for providing reticulated water services to unserviced and rural areas.

## **5.3 Sewerage Services to Unsewered Urban and Rural Areas**

5.3.1 The Authority must have a policy for providing sewerage services to unsewered and rural areas.

## **5.4 Sewerage Connections to Properties**

5.4.1 The Authority must take all reasonable steps to ensure that a property provided with a sewerage service is connected to the Authority sewerage works, unless the owner of a property can demonstrate that sewage and any accompany transporting water can be sustainably reused on site in accordance with State or other legislation or regulations.

## **5.5 Trade Waste**

5.5.1 The Authority must develop policies and practices to manage trade waste.

## **5.6 Business and Business Growth**

- 5.6.1 The Authority is to increase its value through continuous business development and in doing so improve the return to the Participants.
- 5.6.2 The Authority is to develop a robust quality framework and deliver transparent performance accountability.
- 5.6.3 The Authority is to uphold the prescribed standards of service published in its Customer Charter.

## **5.7 Research and Knowledge**

- 5.7.1 The Authority must:
- a) Identify the Authority's research needs;
  - b) Prioritise the research needs identified;
  - c) Develop collaborative relationships and seek opportunities to cooperate on research requirements; and
  - d) Identify how the Authority proposes to meet its research needs.

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## **6. PART 6 - ENVIRONMENTAL MANAGEMENT**

### **6.1 Environmental Management System**

- 6.1.1 The Authority must maintain its Environmental Management System in accordance with the current Australian Standard.

### **6.2 River and Bay Health**

- 6.2.1 The Authority must sustainably manage the impact of its activities on the aquatic environment. This shall include:
- a) Contribute towards the cost of environmental monitoring in waterways subject to effluent release from the Authority's sewage treatment plants;
  - b) When implementing a major augmentation on a sewage treatment plant with an effluent release to a waterway; the Authority must ensure that it consults with the Participating Local Governments to develop Sustainability Principles to be used in deriving augmentation outcomes.

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## **7. PART 7 – COMPLIANCE**

### **7.1 Complying with Obligations**

- 7.1.1 The Authority must monitor compliance with its obligations under this Statement of Obligations.

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## 8. SCHEDULE A- DEFINITIONS

The following definitions apply:

“**Authority**” means the Northern SEQ Distribution-Retail Authority, trading as Unitywater.

“**Desired Standards of Service**” means the performance standards applicable to the water and sewerage services provided to customers within the water and sewerage scheme area.

“**Prescribed Services**” means the water, sewerage and other services provided by the Authority in respect of which the Queensland Competition Authority has the power to regulate prices.

“**Agencies**” include the Department of Energy and Water Supply, the Department of Environment and Heritage Protection, Department of State Development, Infrastructure and Planning and other state government agencies with regulatory responsibility or control over activities conducted by the Authority.

“**Sewage Treatment Plant (STP) Sustainability Principles**” means a set of guiding principles, which the Authority, in consultation with the serviced area council, will utilise in developing scope, objectives and outcomes for a proposed STP augmentation. The principles are to be agreed during the consultation period.

“**Total Water Cycle Management Plan**” means the Total Water Cycle Management plan of a participating local government, under the Environmental Protection (Water) Policy 2009.

“**Water Netserv Plan**” means the Water Netserv Plan required under the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009.

## Regulated Asset Base Principles

In this schedule, Transferred Assets means any assets which form part of a transfer scheme for a Participating Local Government excluding any assets that have been disposed of prior to 30 June 2010.

- A. The Regulated Asset Base must be calculated in accordance with the following formula:

$$RAB = \text{InitialRAB} + CE - RD - D + I$$

where:

RAB = Regulated Asset Base;

InitialRAB = each Participating Local Government's initial regulated asset base as at 1 July 2008 as advised by the Minister;

CE = costs attributable to capital expenditure by the Participating Local Government for the period from 1 July 2008 to 30 June 2010 for any Transferred Assets which were not included in the InitialRAB;

RD = the aggregate of:

- a) the amounts recorded in the Participating Local Government's financial statements for the period from 1 July 2008 to 30 June 2010 for depreciation of the Transferred Assets; and
- b) the amounts calculated as depreciation for the assets acquired as a result of capital expenditure from the date of acquisition of the asset;

D = the aggregate of the amounts attributable in the InitialRAB to assets which have been disposed of in the period between 1 July 2008 and 30 June 2010; and

I = the amount calculated in accordance with the following formula:

$$I = TA \times CPI\%$$

where:

I = indexation amount;

TA = Transferred Assets; and

CPI = the average Consumer Price Index for the period from 1 July 2008 to 30 June 2010.

- B. In assessing actual and prudent capital expenditure (including information technology systems) the Authority must accept as prudent:

- a) actual capital expenditure for water and wastewater included in a Participating Local Government's financial accounts for the period 1 July 2008 to 30 June 2010;
- b) contributed, donated and gifted assets at the value determined by the Chief Executive Officer acting in good faith; and

- c) allowable establishment costs as advised by the Minister.
- C. In assessing depreciation for regulatory purpose, the Authority must take into account for the period 1 July 2008 to 30 June 2010 the apportionment of each Participating Local Government's distribution valuations to individual assets and evidence that regulatory depreciation on physical assets has been calculated using existing useful lives attaching to individual assets.
- D. In assessing indexation, the Authority is to take account of the latest available Australian Bureau of Statistics Consumer Price Index (all groups, Brisbane); however for the period 1 July 2009 to 30 June 2010 the 2009-10 Queensland State Budget inflation forecast may, at the discretion of the Chief Executive Officer, be used.

**REGISTER OF PARTICIPATION RIGHTS**

**Northern SEQ Distributor-Retailer Authority**  
**(maintained by the Board pursuant to section 5.7 of the Participation Agreement)**

**NAME** MORETON BAY REGIONAL COUNCIL  
**ADDRESS** 222 Gympie Road, Strathpine, Queensland  
**RIGHTS HELD** Expressed as a percentage of total issued Participation Rights: 58.24%

DATE	ISSUE OR TRANSFER	NO OF PARTICIPATION RIGHTS	PARTICIPATION RIGHTS ACQ'D	PARTICIPATION RIGHTS TRF'D	BALANCE HELD	VALUE CONTRIBUTED FOR PARTICIPATION RIGHTS
01.07.10	ISSUE	1,519,255,968	1,519,255,968	-	1,519,255,968	\$835,590,783

**NAME** SUNSHINE COAST REGIONAL COUNCIL  
**ADDRESS** Corner of Bury Street and Currie Street, Nambour, Queensland  
**RIGHTS HELD** Expressed as a percentage of total issued Participation Rights: 37.51%

DATE	ISSUE OR TRANSFER	NO OF PARTICIPATION RIGHTS	PARTICIPATION RIGHTS ACQ'D	PARTICIPATION RIGHTS TRF'D	BALANCE HELD	VALUE CONTRIBUTED FOR PARTICIPATION RIGHTS
01.07.10	ISSUE	1,089,438,169	1,089,438,169	-	1,089,438,169	\$599,190,993
01.01.14	TRANSFER	1,089,438,169	-	110,869,501	978,568,668	\$538,212,768

**NAME** NOOSA SHIRE COUNCIL  
**ADDRESS** Level 3, 9 Pelican Street, Tewantin, Queensland  
**RIGHTS HELD** Expressed as a percentage of total issued Participation Rights: 4.25%

DATE	ISSUE OR TRANSFER	NO OF PARTICIPATION RIGHTS	PARTICIPATION RIGHTS ACQ'D	PARTICIPATION RIGHTS TRF'D	BALANCE HELD	VALUE CONTRIBUTED FOR PARTICIPATION RIGHTS
01.01.14	TRANSFER	110,869,501	110,869,501	-	110,869,501	\$60,978,225