



Lithgow City Council

Scanned



PO Box 323  
Penrith NSW 2751  
1300 622 077  
www.waternsw.com.au  
ABN 21 147 934 787

08 JUL 2015

Ref: D2015/73328

2 July 2015

Doc. No.....  
GDA Ref.....  
Years.....

Mr Roger Bailey  
General Manager  
Lithgow City Council  
PO Box 19  
LITHGOW NSW 2790

Dear Mr Bailey,

**Re: Deed of Settlement and Release - UV Disinfection at Lithgow STPs**

In 2012 Lithgow City Council and the Sydney Catchment Authority entered an agreement (as amended) for operation and maintenance for the UV disinfection equipment at the Lithgow and Wallerawang Sewage Treatment Plants (the Agreement) for 2 years concluding on 29 May 2014. The Agreement included a requirement, in Clause 3.5, for us to seek to negotiate a settlement for the operation and maintenance of the installed UV infrastructure for the life of the asset.

In accordance with Clause 3.5, a settlement amount of \$400,000 (plus GST), and the associated terms, has been agreed. These terms have been included in the attached Deed of Settlement and Release (the Deed).

I have attached two copies of the Deed for your signature. Please sign both copies and keep one for your own records and return the second one to WaterNSW. I would appreciate return of the signed copies as soon as possible to enable us to conclude payment.

I would like to thank you and your officers for the positive approach to this matter and I look forward to our ongoing partnership.

Yours-sincerely,

**DAVID HARRIS**  
Chief Executive Officer

## DEED OF SETTLEMENT AND RELEASE

THIS DEED is made on the 2nd day of July 2015

### Parties

WATER NSW ABN 21 147 934 787 a statutory state owned corporation, constituted pursuant to the State Owned Corporations Act 1989 of level 4, 2-6 Station Street, Penrith NSW 2750 (WaterNSW)

### AND

LITHGOW CITY COUNCIL ABN 59 986092 492 of 180 Mort Street Lithgow NSW 2790 (Council)

### Background

- A. The predecessor of WaterNSW, the Sydney Catchment Authority (SCA) and the Council entered in to an Agreement on 17 February 2011 which required the Council to install, own, operate and maintain UV disinfection units at Lithgow and Wallerawang sewerage treatment plants (STPS) for the purpose of achieving a reduction in the amount of active Cryptosporidium entering receiving waters.
- B. The SCA agreed to provide sufficient funding to the Office of Water from the Country Towns and Sewerage Scheme which enabled Council to be reimbursed for all the capital and administration costs associated with the construction and installation of the UV disinfection units at the STPs.
- C. Council provided a warranty that during the term of the Agreement it would operate, maintain and repair the UV disinfection units so that they would achieve their design purpose and function in accordance with the Operational Environmental Management Plan as submitted by Council and approved by the SCA.
- D. The Agreement required the SCA to reimburse the Council for the documented operational and maintenance costs of the UV disinfection units for a period of two years after the date of the commissioning of the Lithgow and Wallerawang STPs.
- E. On 12<sup>th</sup> March 2013 the Parties entered into an arrangement to provide that the Agreement would continue until 16<sup>th</sup> January 2014 for the UV disinfection unit at Lithgow STP and until 29<sup>th</sup> May 2014 for the UV disinfection unit at Wallerawang STP.
- F. On 25<sup>th</sup> November 2013 the Parties entered into an additional arrangement to extend the Agreement until 29<sup>th</sup> May 2014 for the operation, maintenance and funding of the UV disinfection units at Lithgow and Wallerawang.
- G. A requirement of clause 3.5 of the Agreement is that the Parties must not more than 6 months and not less than three months in good faith enter into negotiations for the purpose of agreeing on the amount of a once and for all lump sum payment to be paid by the SCA to Council for the purpose of the continued operation of the UV disinfection units at Lithgow and Wallerawang STPs.
- H. The arrangement of the 25<sup>th</sup> November 2013 required that the cost of the operation of the UV disinfection unit at the Lithgow STP between the period of 16<sup>th</sup> January and 29<sup>th</sup> May 2014 is to be taken into account in negotiation of the lump sum settlement outlined in clause 3.5.

- I. It is a condition of the Environmental Protection Licences held by the Council for the Lithgow and Wallerawang STP's that the Council is require to utilise operate and maintain the UV disinfection units at Lithgow and Wallerawang STPs
- J. The Parties have reached agreement on the amount of the lump sum payable in accordance with clause 3.5 of the Agreement and now wish to enter into this Deed to finalise the arrangements for the going operation and maintenance of the UV disinfection units at Lithgow and Wallerawang STPs.

## **The Parties Agree**

### **Defined terms and interpretation**

#### **Defined terms**

A term or expression stating with a capital has the following meaning:

- a. Agreement means the agreement entered into between the SCA and Lithgow City on 17 February 2011; as amended 12 March 2013
- b. Parties means WaterNSW and Lithgow City Council;
- c. STPs means sewerage treatment plants.

#### **Interpretation**

The rules of interpretation of this Deed are as follows:

- a. words importing any gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are inserted for convenient reference and have no effect in extending or limiting the language of the provision to which they apply; and
- d. reference to a party includes its statutory successors and permitted assigns

#### **Settlement and Payment**

WaterNSW will pay to the Council an amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) plus GST within 30 days from the date execution of this Deed by the Council in full and final settlement of the SCA's obligation to make the payment referred to in clause 3.5 of the Agreement.

The payment of the amount referred to in clause this is inclusive of any interest which may be payable by WaterNSW on any amount referred to in this Deed.

Council acknowledges and agrees that an amount of \$6803.00 will be deducted from the amount of \$400,000.00 plus GST which represents the costs incurred by the Council and reimbursed by the SCA for the operation and maintenance of the UV disinfection unit at Lithgow STP for the period 16<sup>th</sup> January to 29<sup>th</sup> May 2014 leaving a balance payable to the Council of \$393,197.00 plus GST.

## **Release by Council**

With effect from the date of this Deed and to the maximum extent permitted by law the Council releases and for ever discharges WaterNSW from all claims and demands which are associated with or having connection with the design, construction, operation and maintenance of the UV disinfection units at Lithgow and Wallerawang STP being the subject of a funding agreement between the Parties on 17 February 2011.

## **Covenants by the Council**

The Council covenants that it will:

- i. Operate and maintain the UV disinfection units at the Lithgow and Wallerawang STPs for a period of twenty (20) years which is deemed to have commenced on 1<sup>st</sup> January 2012; and
- ii. Operate and maintain the UV disinfection units in accordance with the manufacturers' instructions to enable the units to meet the licence requirements for the STPs as set by the Environment Protection Authority so that the units effectively disinfect 3Log<sub>10</sub> of Cryptosporidium; and
- iii. Not pursue or make any claims, pursue or otherwise seek support in relation to the ongoing operation and maintenance of the UV disinfection units at Lithgow and Wallerawang STPs.

This Deed does not prevent WaterNSW and Council entering future agreements, separate to the requirements of clause 3.5 of the Agreement, for the mutual benefit of WaterNSW and Council.

## **Confidentiality**

### **Restriction on disclosure**

Each Party agrees not to disclosure, or authorise the disclosure of, or the existence of this Deed, to any other person, except to the extent:

- a. that the other parties to the Deed consent in writing;
- b. necessary to enforce any terms of this Deed; or
- c. pursuant to any statutory requirements as reasonably required for local government use, or to the NSW Parliament or to a Parliamentary committee.

## **General**

### **Authority & Warranties**

Each Party represents and warrants to the other Party that the following statements are true and correct in all material aspects;

- a. it has full legal capacity and power to enter and carry out the covenants and transactions which it contemplates;
- b. holds the necessary authorisation that is necessary to properly execute this Deed; and

c. has the full legal capacity to undertake its business undertaking.

### **Relationship between the Parties**

Nothing contained in this Deed shall constitute the relationship or partnership or joint venture between the Parties.

### **Entire Agreement**

This Deed constitutes the entire agreement between the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No Party is able to rely on an earlier document, or anything said or done by the other Party, before this Deed was executed except as permitted by law.

### **Assignment**

The rights and obligation of each Party under this Deed cannot be assigned, encumbered or dealt without the prior written consent of the Parties.

### **Waiver**

The non-exercise or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

### **Governing law and Jurisdiction**

This Deed is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales or where relevant, the Federal Court of the Commonwealth of Australia.

### **Severance**

If any part of this Deed is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Deed shall not be affected and the Deed will be read as if that part had been deleted.

### **Costs**

Each Party, except as otherwise set out in this Deed must pay their own costs including but not limited to preparing, negotiating and executing the Deed.

### **Variation**

No variation of this Deed will be of any force or effect unless it is in writing and signed by the parties.

### **Further Acts**

Each Party must promptly execute all documents and do all things that the other party reasonably requests to that effect, perfect or complete this Deed and all transactions incidental to it.

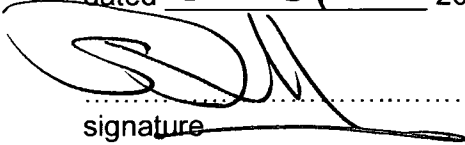
Executed by the Parties as a DEED on the above date

Executed on behalf of Water NSW


by David Harris, in his capacity as

Chief Executive Officer under Power of Attorney

dated 2 July 2015 and registered Book 4683 No. 96.

  
signature

In the presence of

  
signature of Witness

PIONA SMITH  
print name of Witness

The Common Seal of Lithgow City  
Council ABN 59 986 092 492 was affixed  
to this document by ROGER BAILEY  
who by signing warrants  
that he has authority to bind

Affix Common Seal

Lithgow City Council in the presence of

.....  
signature of Witness

.....  
print name of Witness