



**PREMIER AND CABINET**  
**Division of Local Government**

**Local Infrastructure Renewal Scheme (“LIRS”)  
Funding Agreement for Kyogle Water Supply  
Augmentation**

**Between**

**Kyogle Council**

**and**

**The Chief Executive, Division of Local Government,  
Department of Premier and Cabinet, for and on behalf  
of the Crown in right of the State of NSW**



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**Between:**

1. **Kyogle Council as described in Attachment A (Council) and;**
2. **The Chief Executive, Division of Local Government, Department of Premier and Cabinet, for and on behalf of the Crown in right of the State of New South Wales ("LIRS Administrator") ABN 34 945 244 274, Levels 1 and 2, 5 O'Keefe Avenue, Nowra NSW 2541 (LIRS Administrator)**

**Background**

The Local Infrastructure Renewal Scheme ("LIRS") has been established by the NSW Government to provide interest subsidies in order to encourage local councils found to have legitimate infrastructure backlogs to borrow funding in order to meet those backlogs.

The Council has submitted an application to the LIRS Administrator for an interest subsidy under the LIRS. The documents that comprise this application are identified in Attachment A.

The LIRS Administrator has approved the Council's application for an interest subsidy on the terms of this Agreement.

**The parties agree:**

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**1 Definitions and interpretation****1.1 Definitions**

**Agreement** means this LIRS funding agreement including the Attachments and any documents incorporated in this agreement by reference.

**Application** means Council's application to the LIRS Administrator for an interest subsidy under the LIRS, the documents comprising which form part of this Agreement and are referenced in Attachment A.

**Approved Purpose** means the approved purpose for the LIRS Subsidy as described in Attachment A.

**Authorisation** includes:

- (a) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from by or with a governmental agency; or
- (b) any consent or authorisation regarded as given by a governmental agency due to the expiration of the period specified by a statute within which the governmental agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute;

**Business Day** means for all other purposes, a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday.

**Coordinator Infrastructure** means the officer of DLG described as such in Attachment A or his/her delegate.

**DLG** means Division of Local Government, Department of Premier and Cabinet.

**Dollars, A\$ and \$** means the lawful currency of the Commonwealth of Australia.

**Event of Default** means any event specified as such in this Agreement.

**Final Acquittal** means a final acquittal of the LIRS Subsidy that meets the requirements for such listed in Attachment C.

**Final Report** means a final report for the Project that meets the requirements for such as listed in Attachment C.

**GST** means the goods and services tax levied under *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* or any successor Act.

**GST Law** means A New Tax System (Goods and Services Tax) Act 1999, or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made under such Acts.

**Lender** means the third party provider of the Loan to Council, the interest payments in respect of which are to be subsidised by the LIRS Subsidy under this Agreement.

**LIRS** means the Local Infrastructure Renewal Scheme.

**LIRS Administrator** means the Chief Executive of the DLG or his/her delegate, for and on behalf of the Crown in right of the State of New South Wales.

**LIRS Subsidy** means the amount described as such in Attachment A.

**LIRS Subsidy Instalment Claim** means a claim by Council to the LIRS Administrator for payment of an instalment of the LIRS Subsidy, in the prescribed form of Attachment B.

**LIRS Subsidy Instalment Period** means the six month period immediately prior to a LIRS Subsidy Instalment Claim in respect of which Council claims an instalment of the LIRS Subsidy.

**Loan** means the loan to be taken out by Council to fund the Project.

**Loan Agreement** means the executed loan agreement between Council and its third party lender in respect of the Loan, a copy of which is to be provided by Council to the LIRS Administrator in accordance with this Agreement.

**Penultimate Lender Term Sheet** means the proposed term sheet last submitted by Council to the LIRS Administrator before execution of this Agreement, which forms part of this Agreement and is referenced in Attachment A.

**Progress Report** means a progress report that meets the requirements for such as listed in Attachment C.

**Project** means Council's infrastructure project as described in the Application, in relation to which it seeks the LIRS Subsidy.

**Project Commencement** means:

- (a) Council has completed all pre-construction engineering and design, has received all necessary licences and permits, has engaged all contractors and ordered all equipment and supplies reasonably necessary so that physical construction of the Project may begin; and

(b) physical construction of the Project has begun.

**Project Completion** means the Project is complete except for unknown defects and includes the issue of all regulatory certificates required for the occupation and use of the infrastructure that comprises the Project.

**Special Conditions** means any additional conditions applicable to this Agreement, set out in Attachment A.

**Tax** means:

(a) any tax, including the GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or

(b) any income, stamp or transaction duty, tax or charge,

which is assessed, levied, imposed or collected by any governmental agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.

**Tax Invoice** means an invoice that complies with the requirements for a tax invoice under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Term** means the term of this Agreement as described in Attachment A.

## 1.2 Interpretation

In this Agreement, headings and boldings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) words importing a gender include any gender;

(c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;

(d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;

(e) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(e) implies that performance of part of an obligation constitutes performance of the obligation;

(f) a reference to a clause, party, attachment, or schedule is a reference to a clause of, and a party, attachment and schedule to, this Agreement and a reference to this Agreement includes any attachment and schedule;

(g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;

(h) a reference to a party to any document includes that party's successors and permitted assigns;

(i) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;

- (j) a reference to legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it.
- (k) a term or expression starting with a capital letter which is defined in:
  - (1) this clause 1 (Definitions and Interpretation) has the meaning given to it in this clause 1.
  - (2) the GST Law but is not defined in this Agreement has the same meaning as in the GST Law.

### **1.3 Business Day**

Unless otherwise specified in this Agreement, where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

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## **2 Term**

Unless earlier terminated in accordance with its terms, this Agreement is for the Term.

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## **3 General obligations of Council**

### **3.1 Loan Agreement**

- (a) Council must use best endeavours to execute a Loan Agreement for the total amount of borrowing stated in, and otherwise substantially in the terms of, the Penultimate Lender Term Sheet (or otherwise on such varied terms as are first approved by the LIRS Administrator).
- (b) The Loan must be for a maximum term of 10 years and must not extend past 30 June 2025.
- (c) The LIRS Administrator or the State of New South Wales is not liable for, and does not guarantee, any part of Council's obligations under or in relation to the Loan Agreement.

### **3.2 Use of Loan**

- (a) Subject to this clause, Council must only use the Loan (including any interest earned on the Loan) to fund the Project.
- (b) Council must not apply the Loan towards costs of administration, travel, licensing, salaries or other activities or recurrent costs that are the responsibility of Council. However, a maximum of 10% of the Loan may be spent on specialist advice or design and permit costs (eg, engineering or planning) in relation to the Project.

### **3.3 Conduct of Project**

- (a) Subject to this clause, unless otherwise agreed, Council must achieve Project Commencement within 12 months of execution of this Agreement.

- (b) If Council is unable to achieve Project Commencement within 12 months of execution of this Agreement, Council must, at least five (5) Business Days before the expiry of that period, notify the LIRS Administrator of that fact and provide documentation to:
  - (i) demonstrate due cause for the delay;
  - (ii) provide evidence that Council is taking specific measures to remedy the delay and details of such measures; and
  - (iii) submit an amended detailed project delivery schedule to the satisfaction of the LIRS Administrator.
- (c) Any agreed extension by the LIRS Administrator of the period to achieve Project Commencement will be for a maximum further period of 6 months.
- (c) In no case will a Council be permitted to delay Project Commencement for longer than 18 months after execution of this Agreement.
- (d) Unless otherwise agreed, Council must carry out the Project substantially in accordance with its Application, including the projected Project delivery schedule described therein.
- (e) Council must promptly advise the LIRS Administrator of any significant change (including any delay that exceeds three (3) months) in the projected Project delivery schedule as supplied with its Application.

### **3.4 Compliance with law**

- (a) Council must comply with all legislative and regulatory requirements that may apply in relation to the Project, including obtaining all necessary approvals, licences and permissions.
- (b) Council must comply with any applicable NSW Government policy requirements in relation to the Project, including DLG Circular to Councils 10/34.

### **3.5 Use of LIRS Subsidy for Approved Purpose**

Council must use the LIRS Subsidy only for the Approved Purpose.

### **3.6 Monitoring of Agreement**

- (a) Council acknowledges that the LIRS Administrator may maintain regular contact with Council to monitor the performance of this Agreement, the Loan Agreement and the Project and agrees to co-operate with the LIRS Administrator in the performance of this role.
- (b) The LIRS Administrator may at any time request information from Council in connection with this Agreement, the Loan Agreement or the Project and Council must supply any such information promptly upon request.

### **3.7 Reports**

- (a) Council must prepare and submit to the LIRS Administrator:
  - (1) Progress Reports at the times stated and otherwise in accordance with the requirements specified in Attachment C;
  - (2) A Final Report at the time stated and otherwise in accordance with the requirements specified in Attachment C;

- (3) A Final Acquittal at the time stated and otherwise in accordance with the requirements specified in Attachment C;
- (4) If requested, copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project; and
- (5) Any other written reports as may be reasonably required by the LIRS Administrator from time to time by written notice to Council.

### **3.8 Independent verification of LIRS financial outcomes in any given application round**

Council must promptly, at its own cost, provide all assistance and information reasonably required by the LIRS Administrator or its auditor for the purpose of enabling the LIRS Administrator to compile and have audited an aggregate statement of expenditure which pertains to aggregate financial outcomes for all Councils funded in any one LIRS round of applications.

### **3.9 Records**

- (a) Council must ensure that all legally required financial and operational records and registers (including all reports generated under this Agreement) are kept and maintained while carrying out the Project.
- (b) Council must retain the records, registers and reports referred to throughout the Term and for seven (7) years after the expiry or termination, of this Agreement.

### **3.10 Inspection**

Council agrees that the LIRS Administrator may visit the site of the Project at any reasonable time, upon giving Council reasonable notice.

### **3.11 Audit**

- (a) An audit of any aspect of the Project or Council's compliance with this Agreement may be conducted at any time by the LIRS Administrator.
- (b) Council must co-operate fully with an audit, including:
  - (i) Granting the person conducting the audit reasonable access to the site of the Project, Council's premises, Council's records and materials relevant to the Project and the performance of this Agreement;
  - (ii) Permitting the person conducting the audit to inspect and make copies of Council's records and all materials relevant to the Project and the performance of this Agreement;
  - (iii) Making available on request, at no additional cost to the person conducting the audit, reasonable facilities to enable a legible reproduction to be created of Council's records and materials stored on a medium other than in writing;
  - (iv) The LIRS Administrator must give Council reasonable notice of its requirements in relation to an audit and use its reasonable endeavours to minimise disruption and interference to Council's performance of its obligation under this Agreement arising from an audit;
  - (v) Except where otherwise determined by the LIRS Administrator, Council is responsible for its own costs of participating in an audit;

- (vi) Council must promptly take any reasonable action required by the Loan Administrator to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project of Council's performance of this Agreement;
- (vii) Council is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.

### **3.12 Promotion of LIRS and communication of outcomes**

- (a) Council is encouraged to acknowledge support from the NSW Local Infrastructure Renewal Scheme in promotional materials or any public statements about the Project.
- (a) Council agrees to publicly communicate the outcomes of the Project.
- (b) Council authorises the LIRS Administrator and the State of New South Wales to use information Council supplies to the LIRS Administrator in its Application or pursuant to this Agreement for promotional purposes, including:
  - (1) Council's Name;
  - (2) the aggregate amount of the Loan, Project cost and LIRS Subsidy;
  - (3) the title and description of the Project;
  - (4) any photographs of the Project supplied by Council;subject to any confidentiality restriction which has been requested by Council and agreed to by the LIRS Administrator.

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## **4 LIRS Subsidy**

### **4.1 Amount**

- (a) Subject to clause 9 (GST), the LIRS Subsidy is the maximum amount of funding available under this Agreement and will not be increased for any reason.
- (b) Subject to paragraph (a), each instalment of the LIRS Subsidy the subject of a LIRS Subsidy Instalment Claim is to be calculated as an amount that represents:
  - (i) subject to subparagraph (ii), an amount equivalent to the interest that would be payable under the Loan Agreement during the applicable LIRS Subsidy Instalment Period if calculated at an assumed rate of interest of 3% (which amount, in the event of any dispute between the parties, is to be finally determined by the LIRS Administrator); or
  - (ii) if the interest paid by Council under the Loan Agreement during the applicable LIRS Subsidy Instalment Period is charged at a rate of less than 3%, the interest paid by Council during that period.

### **4.2 When paid**

- (a) Subject to this Agreement, the LIRS Administrator Lender agrees to pay the LIRS Subsidy to Council in six monthly instalments, called for in May and November and paid in June and December each year following receipt of the required documentation and invoice, until the total LIRS Subsidy is paid or until the date



that falls ten (10) years from the date of commencement of the loan but no later than 30 June 2025.

- (b) Subject to this Agreement, the LIRS Administrator will pay the first instalment of the LIRS Subsidy to Council at the above-stated intervals, within 30 days of receipt of the following from Council:
- (i) A LIRS Subsidy Instalment Claim for the first LIRS Subsidy Instalment Period.
  - (ii) a Tax Invoice for the instalment of LIRS Subsidy claimed.
  - (iii) Evidence satisfactory to the LIRS Administrator that Council has obtained all relevant approvals in relation to the incurring of the Loan and entry into the Loan Agreement.
  - (iv) A copy of the Loan Agreement, duly executed by both parties.
  - (v) A copy of the final lender term sheet for the Loan, certified by the Lender and signed by a duly authorised Council officer, which includes at a minimum the following information:
    - (A) the amount of the Loan.
    - (B) the start and end dates of the Loan.
    - (C) the annual interest rate on the Loan.
    - (D) the frequency of interest and principal repayments by Council.
    - (E) type of loan and method of repayment (eg, credit foncier loan; fixed rate or variable rate; whether loan will be repaid in equal instalments of principal and interest; whether loan will entail a bullet repayment of outstanding principal at end of maturity or whether principal repayments will be spread over life of the loan).
    - (F) security provided by Council for the Loan.
    - (G) events of default and recourse of the Lender and Council (such as termination payments) should such events occur.
  - (vi) The latest available estimates of the cost of the Project and sources of financing.
  - (vii) Bank statements for the first LIRS Subsidy Instalment Period evidencing all interest paid by Council on the Loan during that period.
  - (viii) A Progress Report for the first LIRS Subsidy Instalment Period.
  - (ix) Any other information reasonably required by the LIRS Administrator.
- (c) Subject to this Agreement, the LIRS Administrator will pay each subsequent instalment of the LIRS Subsidy to Council within 30 days of receipt of the following from Council:
- (i) A LIRS Subsidy Instalment Claim for the applicable LIRS Subsidy Instalment Period.
  - (ii) a Tax Invoice for the instalment of LIRS Subsidy claimed.
  - (iii) Bank statements for the applicable LIRS Subsidy Instalment Period evidencing all interest paid by Council on the Loan during that period.

- (iv) A Progress Report (or Final Report, if applicable) for the applicable LIRS Subsidy Instalment Period.
- (v) Any other information reasonably required by the LIRS Administrator.

#### 4.3 Prepayment of interest on Loan

- (a) Unless otherwise agreed by the LIRS Administrator, prepayment of interest by Council on its Loan will not entitle it to make an early LIRS Subsidy Instalment Claim.
- (b) Any variation to the times for payment of instalments of the LIRS Subsidy as stated in this clause is at the sole discretion of the LIRS Administrator.

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## 5 Representations and warranties

### 5.1 Representations and warranties

Council represents and warrants that:

- (a) **registration:** it is a local council established under *Local Government Act 1993 (NSW)*;
- (b) **authority:** it has full power and authority to enter into and perform its obligations under this Agreement;
- (c) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (d) **binding obligations:** this Agreement constitutes its legal, valid and binding obligations;
- (e) **other sources of funding:**
  - (1) as at the date of this Agreement, Council has disclosed to the LIRS Administrator all other sources of funding from third parties for the Project;
  - (2) if Council secures additional sources of funding for the Project after the date of this Agreement, it will notify this in writing to the LIRS Administrator.

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## 6 Events of Default and Termination

### 6.1 Notices to the LIRS Administrator

Council must give notice to the LIRS Administrator as soon as it becomes aware of any Event of Default occurring.

### 6.2 Events of Default

It is an Event of Default if, whether or not it is within the control of Council:

- (a) **Loan Agreement substantially differs from Penultimate Lender Term Sheet:** The Loan Agreement is for a loan amount other than that stated in, or otherwise substantially different in its terms from those advised in, the Penultimate Lender Term Sheet and that variation has not been approved by the LIRS Administrator.

- (b) **LIRS Subsidy not used for Approved Purpose:** Council does not use the LIRS Subsidy for the Approved Purpose.
- (c) **Project does not commence by due date:** Council fails to achieve Project Commencement by the due date specified in this Agreement or by any extended date otherwise agreed in accordance with this Agreement;
- (d) **Major Project delay:** The Project, or any major milestone in the Project, is delayed for a period in excess of three (3) years beyond the date for Project Completion or for achievement of the relevant Project milestone, as stated in the Project delivery schedule provided with the Application.
- (e) **Default under Loan Agreement:** Council fails to pay when due any amount due under the Loan Agreement or otherwise defaults under the Loan Agreement.
- (f) **Default under other loan agreement:** Council fails to pay when due any amount due under another loan agreement entered into by Council to fund the Project or otherwise defaults under any such loan agreement.
- (g) **Termination of other LIRS funding agreement in respect of joint Project:** another LIRS funding agreement in place in respect of the Project (if the Project is jointly conducted with another council that receives an interest subsidy under such agreement for the Project) is terminated for default by the council that is party to that agreement.
- (h) **Non-remediable breach of Agreement:** Council fails to perform or observe any other undertaking or obligation in this Agreement and that failure is not, in the opinion of the LIRS Administrator, capable of remedy;
- (i) **Failure to fix remediable breach of Agreement:** Council fails to perform or observe any other obligation in this Agreement and that failure is, in the opinion of the LIRS Administrator, capable of remedy but Council does not remedy the failure within the period specified, after receipt by Council of a notice from the LIRS Administrator specifying the failure and requiring its remedy within the period specified in the notice;
- (j) **Authorisations:** Council fails to obtain any Authorisation necessary to enable Council to comply with its obligations under this Agreement or any such Authorisation ceases to be in full force and effect;
- (k) **Misrepresentation:** any warranty, representation or statement by Council is or becomes false, misleading or incorrect when made or regarded as made by Council under this Agreement;
- (l) **Insolvency:** Council becomes insolvent;
- (l) **Project no longer viable:** The LIRS Administrator is satisfied, acting reasonably, that the Project is no longer viable.

### 6.3 Consequences of Event of Default

- (a) Upon the occurrence of an Event of Default the LIRS Administrator may, at its sole discretion, by written notice to Council:
  - (i) suspend this Agreement, including payments of the LIRS Subsidy, until the default giving rise to the suspension is resolved to the satisfaction of the LIRS Administrator or the LIRS Administrator elects to terminate this Agreement, whichever occurs sooner; or

- (ii) terminate this Agreement.
- (b) To avoid doubt, the exercise by the LIRS Administrator of any right to suspend this Agreement is without prejudice to the LIRS Administrator's right to terminate this Agreement in accordance with its terms.

#### **6.4 Consequences of Termination for Default**

- (a) If this Agreement is terminated on either of the following grounds, Council must repay the amount of the LIRS Subsidy that has been paid to it prior to termination:
  - (i) Termination for failure by Council to achieve Project Commencement by the due date specified in this Agreement or by any extended date otherwise agreed in accordance with this Agreement.
  - (ii) Termination for failure by Council to use the LIRS Subsidy for the Approved Purpose, where that failure was not caused by a reason beyond Council's control.

#### **6.5 Termination by Agreement**

The parties may agree to terminate this Agreement at any time on such terms as may be agreed.

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## **7 Indemnity**

- (a) Council indemnifies the Crown in right of the State of New South Wales, including the LIRS Administrator and its officers, employees and agents (those indemnified), against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which those indemnified pay, suffer, incur or are liable for, in respect of any of the following:
  - (i) the occurrence of any Event of Default;
  - (ii) the LIRS Administrator exercising its powers consequent upon or arising out of the occurrence of any Event of Default.
- (b) Any amount payable to those indemnified under this indemnity is payable on demand.
- (c) The indemnities contained in this Agreement are continuing obligations of Council, separate and independent from the other obligations of Council and survive the termination of this Agreement.
- (d) It is not necessary for those indemnified to incur or make payment before enforcing a right of indemnity conferred by this Agreement.

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## **8 Insurance**

- (a) Council must (at its expense) during the continuance of this Agreement and for a period of three (3) years after its expiration or termination, take out and maintain with a reputable insurance company the following insurance policies:
  - (i) broad form public liability insurance (that includes public liability and product liability insurance) in the amount not less than \$20 million dollars in respect of each and every occurrence and unlimited in the aggregate;

- (ii) workers' compensation insurance in accordance with applicable legislation in respect of the employees of Council; and
  - (iii) if applicable, a professional liability policy of insurance in the amount not less than \$10 million dollars.
- (b) Council must, on request, produce satisfactory evidence to the LIRS Administrator that the insurance requirements of this clause have been effected and are current.

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## 9 GST

- (a) Unless otherwise stated, any consideration in this Agreement (including any consideration given by the Council for the LIRS Subsidy) is exclusive of GST.
- (b) If a supply made under or in connection with this Agreement is a Taxable Supply the party making that supply (in this cl. 9, Supplier) may, subject to issuing a Tax Invoice, recover from the recipient of that supply (in this cl. 9, Recipient) an amount equal to the GST payable by the Supplier in respect of that supply (in this cl. 9, GST Amount).
- (c) The GST Amount is payable at the same time and in the same manner as any monetary consideration for the Supply to which the GST Amount relates but no later than the end of the tax period to which the relevant taxable supply is attributable under the GST Law.
- (d) Subject to this clause, Council warrants that at the time any supply is made under this Agreement on which GST is imposed, that Council is or will be registered under the GST Law.
- (e) Subject to this clause, any invoice rendered by Council in connection with a supply under this Agreement which seeks to recover an amount of GST payable must conform to the requirements for a Tax Invoice.
- (f) If an Adjustment Event occurs in relation to a Taxable Supply under or in connection with this Agreement that gives rise to an Adjustment, then:
  - (1) the Supplier must give an Adjustment Note to the Recipient immediately upon becoming aware of the Adjustment; and
  - (2) the GST amount payable in respect of that supply will be adjusted accordingly and the Supplier (in the case of a decreased GST Amount) will provide a corresponding refund of the GST Amount to, or (in the case of an increased GST Amount) will be entitled to receive the amount of that variation from, the Recipient, as appropriate.
- (g) If an Adjustment Event occurs in relation to a Taxable Supply under or in connection with this Agreement that does not give rise to an Adjustment, for example because it occurs in the same tax period in respect of which the GST on the Taxable Supply or the input tax credit on the acquisition is attributable, the Supplier must:
  - (1) cancel any incorrect invoice issued to the Recipient and issue a correct one; and
  - (2) if the Recipient has already paid the incorrect invoice, the Supplier (in the case of a decreased GST Amount) will provide a corresponding refund of the GST Amount to, or (in the case of an increased GST Amount) will be

entitled to receive the amount of that variation in the GST Amount from, the Recipient, as appropriate.

- (h) Notwithstanding any other provision of this Agreement:
  - (1) any GST Amount payable by the Recipient to the Supplier under this clause 9 will be limited to the amount of an input tax credit to which the Recipient is entitled in respect of the relevant supply which the Recipient acquires; and
  - (2) if the Commissioner of Taxation or a court determines that a supply made under or in connection with this Agreement in respect of which the Recipient has paid the Supplier a GST Amount is not a Taxable Supply then the Supplier will refund the Recipient that amount."

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## 10 General

### 10.1 Coordinator Infrastructure

- (a) Subject to paragraph (b), the LIRS Administrator may authorise the Coordinator Infrastructure to perform any of the LIRS Administrator's functions under this Agreement.
- (b) The Coordinator Infrastructure is not authorised to agree variations to this Agreement that relate to the amount of the LIRS Subsidy or events of default.

### 10.2 Assignment by Council

Council must not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the LIRS Administrator.

### 10.3 Assignment by LIRS Administrator

The LIRS Administrator may at any time assign any of its rights or transfer by novation any of its rights and obligations under this Agreement to any other NSW government agency without consent of Council.

### 10.4 Notices

- (a) Any notice or other communication between the parties under this Agreement must be addressed to the recipient party at the address stated for that party in Attachment A, unless otherwise specified by notice in writing from the recipient party.
- (b) Any notice or other communication under this Agreement:
  - (i) where Council is the sender, must be signed by a duly authorised officer of Council;
  - (ii) is regarded as being given by the sender and received by the addressee:
    - (A) if by delivery in person, when delivered to the addressee;
    - (B) if by post, on delivery to the address; or
    - (C) if by facsimile transmission, whether or not legibly received, when received by the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and

- (iii) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (c) In this clause, a reference to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent, or employee of the addressee.

#### **10.5 Governing law and jurisdiction**

This Agreement is governed by the laws in force in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales, and the courts of appeal from those courts.

#### **10.6 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this Agreement or any power which is prohibited by any law is ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable does not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

#### **10.7 Waivers**

- (a) Waiver of any right arising from a breach of this Agreement or of any power arising upon default under this Agreement or upon the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this Agreement or the occurrence of an Event of Default; or
  - (2) a power created or arising upon default under this Agreement or upon the occurrence of an Event of Default,does not result in a waiver of that right or power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a breach of this Agreement or on a default under this Agreement or on the occurrence of an Event of Default as constituting a waiver of that right or power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or power by that other party.
- (e) This clause may not itself be waived except by writing.

#### **10.8 Dispute Resolution**

The parties agree that any dispute arising under this Agreement will be dealt with as follows:

- (a) A party claiming that a dispute has arisen must give written notice of the dispute to the other party;
- (b) The parties will seek to resolve the dispute;
- (c) If the dispute is unresolved within a fourteen (14) day period (or within such further period as the parties agree in writing) then the dispute will be referred to the Australian Commercial Dispute Centre (ACDC) for mediation;
- (d) The mediation is to be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved;
- (e) If the dispute isn't settled within 28 days (or such longer period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for resolution of the dispute;
- (f) The parties must continue performing their obligations under this Agreement while the dispute is being resolved, to the extent practicable to do so;
- (g) A party must attempt to settle any dispute in relation to this Agreement in accordance with this clause (Dispute Resolution) before resorting to court proceedings or other dispute resolution process;
- (h) Nothing in this clause (Dispute Resolution) prevents either party from seeking interlocutory relief or the LIRS Administrator exercising its rights to suspend or terminate this Agreement.

#### **10.9 Relationship**

- (a) Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the parties.
- (b) All work performed by Council and all contracts made by Council to secure the Loan and to carry out the Project must be performed and made by Council as principal and not as agent for the LIRS Administrator. In all dealings in relation to the Project and the Loan Agreement Council must act solely on Council's own account.

#### **10.10 Variation**

A variation of any term of this Agreement must be in writing and signed by the parties.

#### **10.11 Taxes, duties and charges**

Other than as specified in this Agreement, taxes, duties and charges imposed or levied in connection with this Agreement will be borne by Council.

#### **10.12 Counterparts**

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.



### **10.13 Survival**

Any clause of this Agreement that by its nature should survive termination or expiry of this Agreement shall survive such termination or expiry including, without limitation, the following:

- (a) clause 3 (General obligations of Council);
- (b) clause 5 (Representations and warranties);
- (c) clause 6.4 (Consequences of Termination);
- (d) clause 7 (Indemnity); and
- (e) clause 8 (Insurance).

**Executed as an agreement:**

**Signed by** )  
Ross Woodward, Chief Executive of the )  
Division of Local Government, Department of )  
Premier and Cabinet, for and on behalf of the )  
Crow in right of the State of New South )  
Wales on [date] )

in the presence of: )

*L Ewens*

Signature of witness

*Lindsay Ewens*

Name of witness (please print)

*Ross Woodward 13/8/13*

Signature of Ross Woodward

**The Common Seal of the Kyogle Council** was )  
affixed in our presence )  
on [date] )  
in pursuance of a resolution of the Council )  
authorising the seal to be affixed passed on [date]. )

\_\_\_\_\_  
Mayor/Councillor

\_\_\_\_\_  
Name of signatory (please print)

\_\_\_\_\_  
General Manager/Councillor

\_\_\_\_\_  
Name of signatory (please print)

## Attachment A: Agreement Details

LIRS Administrator: Postal Address: Attention: Facsimile:	Ross Woodward Locked Bag 3015, Nowra NSW 2541 Daniela Heubusch (02) 4428 4199
Coordinator Infrastructure: Telephone: Email:	Daniela Heubusch 02 4428 4133 <a href="mailto:daniela.heubusch@dlg.nsw.gov.au">daniela.heubusch@dlg.nsw.gov.au</a>
Council: Postal Address: Attention: Email:	Kyogle Council PO Box 11, KYOGLE NSW 2474
Term:	Commencement date: Date of last execution of this Agreement by both parties. Expiry date: The date of expiry of the Loan Agreement.
Application:	Council's application for the LIRS Subsidy, including:  a) all documents submitted by Council in support of its application; b) any DLG requests for clarification of the application; and c) any responses by Council to such requests;  submitted (if a Council document) to DLG before 16 July 2012 and identified by DLG by the following Project ID number and Project Name:  Project ID Number: <b>LIRS2 - fA104890</b> Project Name: <b>Kyogle Water Supply Augmentation</b>  (In the event of dispute, the LIRS Administrator shall finally determine the documents that comprise the Application.)
Total LIRS Subsidy (upper limit over the term of the loan)	<b>\$345,109</b> (GST exclusive)
Approved Purpose	The off-setting of Council's interest costs on the Loan for the project named above.
Penultimate Lender Term Sheet:	The lender term sheet last submitted by Council before execution of this Agreement, which forms the basis for calculation of the LIRS Subsidy and which is identified by DLG under the above Project ID Number. (Again, in the event of dispute, the LIRS Administrator shall finally determine the document identified as the Penultimate Lender Term Sheet.)
Special Conditions:	NIL

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## Attachment B: Form of 6-monthly LIRS Subsidy Instalment Claim

To: The Coordinator Infrastructure, Division of Local Government

Dear Sir/Madam

**LIRS Funding Agreement dated [insert date] (“the Agreement”)**

Council gives notice pursuant to clause 4 of the Agreement that Council wishes to claim an instalment of the LIRS Subsidy.

The instalment of the LIRS Subsidy now claimed is: [identify if first, second, third etc instalment as well as whether it is the June or December claim for xxxx year]

The total amount of the LIRS Subsidy claimed to date (inclusive of this claim) is:	[insert amount] excl. GST
Amount for this claim is:	[insert amount] excl. GST

Council confirms that:

- (a) all Loan payments have been made in accordance with the Loan Agreement to the date of this claim.
- (b) this claim is accompanied by the supporting documentation required by clause 4 of the Agreement.

Terms defined in the Agreement have the same meaning when used in this LIRS Subsidy Instalment Claim.

Signed for and on behalf of

[insert name of Council] Council

By its General Manager

.....  
Signature of General Manager

.....  
Name of General Manager (please print)

.....  
Date

## Attachment C: Reports

<p>Progress report</p>	<p>Each Progress Report to be signed by Council's General Manager and to include the following:</p> <ol style="list-style-type: none"> <li>1. Project identification details:  Council name:  Project ID Number:  Total Project cost:  Total value of Loan:  Total LIRS Subsidy:</li> <li>2. Project status:  [One paragraph summary]</li> <li>3. Tickbox:  On Track/Minor Delays/Major Delays (3 months plus)/Minor Change in Scope/Major Change in Scope/Completed.  [NB. Above categories are to be measured referable to the Project scope and timetable advised with Council's Application.]</li> <li>4. If Major Delays/Major Change in Scope, give reasons and outline potential impact on timing and payments of LIRS Subsidy.</li> <li>5. Project expenditure to date: (\$)</li> <li>6. Project construction to date (%)</li> <li>7. Comments</li> <li>8. Completed Website Report including photos in the form required at Attachment D for publication on the DLG website.</li> <li>9. Any further information requested by LIRS Administrator.</li> </ol> <p>Each Progress Report to be accompanied by:</p> <ol style="list-style-type: none"> <li>1. Bank statements showing relevant Loan repayments made to date (principal and/or interest).</li> <li>2. Certification by General Manager that expenditure of LIRS Subsidy by Council to date is for the Approved Purpose and that expenditure of the Loan by Council to date is for the purpose of the Project.</li> <li>3. A LIRS Subsidy Instalment Claim Form.</li> </ol>	<p>Each progress report to be submitted to the LIRS Administrator with each claim for an instalment of the LIRS Subsidy, commencing with the claim for the 2nd instalment, for the term of the Agreement.</p>
<p>Final report</p>	<p>Final report to be signed by Council's General Manager and to include the following:</p>	<p>A final report to be submitted to the</p>

	<ol style="list-style-type: none"> <li>1. Satisfactory evidence of Project Completion.</li> <li>2. Completed Website Report in the form required at Attachment D for publication on the DLG website.</li> <li>3. Commencement date of operation of the infrastructure/asset.</li> <li>4. Any further information requested by LIRS Administrator.</li> </ol> <p>Final Report to be accompanied by:</p> <ol style="list-style-type: none"> <li>1. Bank statements showing relevant Loan repayments made to date (principal and/or interest).</li> <li>2. Certification by General Manager that expenditure of LIRS Subsidy by Council to date is for the Approved Purpose and that expenditure of the Loan by Council to date is for the purpose of the Project.</li> </ol>	<p>LIRS Administrator within 10 Business Days of Project Completion.</p>
<p>Final acquittal</p>	<p>Final acquittal of LIRS Subsidy being:</p> <ol style="list-style-type: none"> <li>1. A Final Statement of Expenditure that includes: <ol style="list-style-type: none"> <li>a) the total amount spent on the Project;</li> <li>b) the total amount of borrowing incurred in respect of the Project;</li> <li>c) the total interest expense paid by Council, and</li> <li>d) the total amount of the LIRS Subsidy received by Council.</li> </ol> </li> <li>2. An acquittal certificate signed by the General Manager, the responsible accounting officer and an independent auditor that: <ol style="list-style-type: none"> <li>a) The auditor has audited the Final Statement of Expenditure and confirms that it is in accordance with the relevant proper accounts and records.</li> <li>b) The LIRS Subsidy has been expended for the Approved Purpose.</li> <li>c) The Loan has been expended for the purpose of the Project.</li> <li>d) All Loan payments have been made by Council in accordance with the Loan Agreement and the Loan is fully discharged.</li> <li>e) Project Completion has been reached.</li> </ol> </li> </ol>	<p>A final acquittal to be submitted to the LIRS Administrator within 10 Business Days of the final Loan repayment.</p>



