

# **Waterwise Councils**

## Co-branding deed

Department of Environment and Resource Management  
GPO Box 2454  
Brisbane Qld 4001

# WATERWISE COUNCILS CO-BRANDING DEED

**THIS DEED** is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**BETWEEN:** **THE STATE OF QUEENSLAND** as represented by the Department of Environment and Resource Management ("the State")

**AND:** **THE COUNCIL SHOWN IN ITEM 1 OF SCHEDULE 1** ("the Council")

## BACKGROUND

- A.** The Waterwise Queensland Program was established by the Queensland Government in 1992 through the then Water Resources Commission.
- B.** Since its inception, various State Government agencies have been responsible for the Waterwise Queensland Program including the Environmental Protection Agency and the Department of Natural Resources and Water, and the Department of Environment and Resource Management.
- C.** During the time the Environmental Protection Agency was responsible for the Waterwise Queensland Program, a new Waterwise Councils Program was developed allowing all Queensland Local Councils to register with the Agency as a Waterwise Council.
- D.** The aim of the Waterwise Councils Program was to allow Councils to access the Waterwise design files and Waterwise toolbox materials in promoting their own local water education activities.
- E.** The Department has now developed a new suite of materials to assist Councils in providing water education activities.
- F.** The Parties wish to co-brand Waterwise Material with the Council Logo, the Waterwise Brand and the State Logo.
- G.** The Council agrees to accept this arrangement in co-branding Waterwise Material with the State for promoting the Waterwise Councils Program.
- H.** The Parties wish to record the terms and conditions of their agreement.

**IT IS AGREED:**

## **1. INTERPRETATION**

1.1 Where commencing with a capital letter and unless the context otherwise requires:

<b>Deed</b>	<b>means the clauses contained in this document and the attached Schedules;</b>
Commencement Date	means the date shown in Schedule 1, Item 3;
Council	means the local council as shown in Schedule 1, Item 1;
Council Logo	means the corporate identity belonging to the Council as per Attachment 1
Council Material	means artworks or resources owned by the Council in supporting local council water education activities and includes “existing” or “new” material;
Contact Officer	means the officers for both of the Parties as nominated in Schedule 1, Item 2; or any other substituted officer notified by a Party to the other Party in writing.
Department	means the Department of Environment and Resource Management (DERM) and any successor to that Department;
Intellectual Property	means all proprietary rights in relation to Information including copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
Parties	means the State and the Council and “Party” means either of them as the context requires;
State	means the State of Queensland as represented by the Department
State Logo	means the corporate identity belonging to the Queensland Government as shown in Schedule 1, Item 5;
Waterwise Brand	means the Waterwise namestyle as shown in Schedule 1, Item 4;
Waterwise Material	means material created for the Waterwise Queensland Program by the State and includes “existing” or “new” material;
Waterwise Councils Program	means the Program allowing local Councils to access Waterwise Materials in promoting sound water management and water use efficiencies in local water education activities, and to co-brand selected Waterwise Material.
Waterwise Queensland Program	means the Program promoting the responsible use of water and water awareness in the State of Queensland

- 1.2 A reference herein to the singular shall include the plural and vice versa, each reference to gender refers to all other genders, and each reference to a person shall include reference to a body corporate or other legal entity recognised by law.
- 1.3 Headings used in this Deed are for convenience and ease of reference only, are not part of this Deed and shall not be relevant to or affect the meaning or interpretation of this Deed.
- 1.4 Reference to statutes, regulations, ordinances or by-laws shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

## **2. DEED**

- 2.1 Council agrees to use Waterwise Materials for the purpose of supporting and promoting local council water education activities only.
- 2.2 Council will not publish/produce the Waterwise Brand or any Waterwise Material without the prior approval of the Department.
- 2.3 Council agrees that it acquires no rights to the Waterwise Queensland Program, State Logo, Waterwise Brand, or Waterwise Material arising from this Deed.
- 2.4 The State agrees that it acquires no rights to the Council Logo arising from this Deed.
- 2.5 Council agrees to provide feedback to the Department in relation to the Waterwise Councils Program.

## **3. DURATION OF DEED**

- 3.1 This Deed will commence on the Commencement Date and will continue until terminated by either Party pursuant to clause 10 (Termination).

## **4. CO-BRANDING OF WATERWISE MATERIAL**

- 4.1 Where the Council wishes to co-brand the Waterwise Material with the Council logo in promoting its own water education activities it shall apply in writing to the Department. The Department shall notify the Council in writing of its approval or otherwise to the Council's application.
- 4.2 Council must not modify any Waterwise Material, the State Logo or the Waterwise Brand in any way without the prior written approval of the Department .
- 4.3 Any new content provided by the Council for inclusion in Waterwise Materials will only be incorporated with the Waterwise Councils Program where acceptable to the Department.

- 4.4 The Council will provide its Council Logo to the Department in accordance with the Logo Specifications requirement in clause 6 for inclusion on Waterwise Material.

## **5. GENERAL CONDITIONS**

- 5.1 The Council must notify the Department in writing at least 14 days prior to any communication, publication or distribution of any new products or materials created for the Waterwise Councils Program (including but not limited to Waterwise Material or Council Material) displaying the State Logo or Waterwise Brand.

- 5.2 All Waterwise Material produced by the Council and approved by the Department must include the State Logo in addition to the Waterwise Brand.

Exemptions from this requirement will only be granted in limited circumstances for example, due to space restrictions. Council will need to contact the Department on a case-by-case basis when seeking such an exemption.

- 5.3 This Deed does not affect the Intellectual Property rights of the Council in the existing Council Material or of the State in the existing Waterwise Material.

- 5.4 The State will grant to the Council a royalty-free, non-exclusive, non-transferable licence to use, reproduce and incorporate such Waterwise Material, in its approved form, in carrying out Council's ongoing water education activities directly related to the Waterwise Councils Program.

## **6. LOGO SPECIFICATIONS**

- 6.1 Council Logo artwork is to be supplied to the Department as vector art. Only the following file formats will be acceptable by the Department:

6.1.1 EPS format (.eps);

6.1.2 Adobe Illustrator format (.ai); or

6.1.3 Freehand format (.fh).

- 6.2 Where this is not possible, the Department will accept TIFF (.tif) files with a minimum resolution of 300 dpi at finished size.

## **7. NO AGENCY**

- 7.1 Nothing in this Deed shall be deemed to constitute the Council as an agent or employee of the State and the Council shall not have any authority to incur and shall not incur any obligation or make or purport to make any representation on behalf of the State except with the express written approval of the Department.

## **8. WARRANTY**

- 8.1 The Department warrants that it has full right, power and authority to grant to the Council all rights, including rights to use any intellectual property, that are conferred upon the Council under this Deed.
- 8.2 The Council warrants that it has full right, power and authority to grant to the State all rights, including rights to use any intellectual property, that are conferred upon the State under this Deed.

## **9. CONFLICT OF INTEREST**

- 9.1 The Council warrants that, to the best of its knowledge, it does not, and is not likely to have any conflict of interest in the performance of this Deed. If a conflict or risk of conflict of interest arises, (without limitation, because of work undertaken for any person other than the State), the Council will immediately give notice of the conflict of interest, or the risk of it, to the Department.
- 9.2 The Council will take all reasonable measures to ensure that its employees, agents and subcontractors do not engage in any activity or obtain any interest that is in conflict with providing the services under this Deed to the State fairly and independently. The Council will immediately give notice of any conflict of interest relating to the activities or interests of any of its employees, agents, or subcontractors to the Department.
- 9.3 If the Department is given notice of a conflict of interest pursuant to clause 9.1 or 9.2, the Department may proceed in accordance with clause 10 to terminate this Deed.

## **10. TERMINATION**

- 10.1 Either Party may terminate this Deed by giving 30 calendar days written notice of termination to the other Party.
- 10.2 Notwithstanding sub-clause 1, the Department may give immediate notice of termination if the Council is in breach of any of its obligations under this Deed.
- 10.3 Subject to clause 5.3, upon termination of this Deed, all rights granted by either Party to the other Party shall cease.

## **11. COMPLIANCE WITH LAWS**

- 11.1 The Council will comply with the requirements of all Acts of the parliaments of the Commonwealth and the State of Queensland and with the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such Act or Ordinance and with the lawful requirements of public, local and other authorities in any way affecting or applicable to this Deed.

## **12. INDEMNITY**

- 12.1 The Council indemnifies and will at all times keep the State its employees and agents indemnified against all damages, costs, expenses, loss or damage which they may incur or sustain including any breach of any third party's Intellectual Property rights and all actions, proceedings, claims and demands whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of:

12.1.1 the water education activities performed by or on behalf of the Council;

12.1.2 any negligence or other wrongful act or omission of the Council, employees, or any other persons for whose acts or omissions the Council is vicariously liable;

12.1.3 any negligence or other wrongful act or omission of the Council's visitors, invitees or licensees;

12.1.4 any breach of this Deed by the Council.

- 12.2 The Council's liability under this clause must be reduced to the extent to which any action, proceeding, claim or demand arises out of any negligence or other wrongful act or omission of the State or its employees or agents.

## **13. GOVERNING LAW**

- 13.1 This Deed will be governed by and construed in accordance with the laws of the State of Queensland and the parties submit to the jurisdiction of the courts of that State.

## **14. VARIATION**

- 14.1 Any variation of this Deed must be made in writing and signed by both of the Parties.

## **15. DISPUTE RESOLUTION**

- 15.1 The Parties agree that any dispute arising during the course of this Deed is dealt with by a process of escalation through each Party's respective management hierarchy.

## **16. ASSIGNMENT**

- 16.1 Neither this Deed nor any rights granted hereunder may be transferred or assigned in any manner whatsoever by the Council.

## **17. ENTIRE DEED AND VARIATION**

- 17.1 This Deed constitutes the entire agreement between the Parties and supersedes all communications, negotiations arrangements and agreements either oral or written between the Parties with respect to the subject matter referred to in this Deed.

## **18. MORAL RIGHTS**

- 18.1 The Council must observe the Moral Rights of any individuals in the Council Material at the time of co-branding of Waterwise Material and Council Material.

- 18.2 If the Council, or any person acting on behalf of the Council, is an individual, the Council consents, and must ensure any individual acting on behalf of the Council consents, to the following acts or omissions of the Department in the exercise of the rights granted under this Deed that might otherwise infringe the Council's or individual's Moral Rights:

18.2.1 being attributed as author of any part of the Council Material incorporated into the Waterwise Material in a form and manner acceptable to the Department.

- 18.3 The Council warrants it has:

18.3.1 observed the Moral Rights of any individuals in any part of the Council content incorporated into in the Waterwise Material, as at the time of supply of any part of the Council content to the Department; and

18.3.2 obtained all the consents, permissions and assignments required to enable the Department to exercise in full, without cost or impediment to the Department, the rights granted under this clause.

18.4 The Council must indemnify and at all times keep the State indemnified against any action, claim, suit, demand or liability (including to pay compensation, damages, costs or expenses for infringement of any individual's Moral Rights) arising from:

18.4.1 the Council's failure to perform its obligations under this clause; or

18.4.2 the Department's exercise of the rights granted under this clause.

## **19. CONTACT OFFICERS**

19.1 The Parties agree to appoint Contact Officers. The Contact Officer for each Party is authorised to act for that Party in relation to this Deed and is the first point of contact for the other Party in relation to any disputes arising under this Deed.

19.2 The details of each party's Contact Officer as at the Commencement Date are set out in Schedule 1 Item 2.

19.3 If a Party wishes to change their Contact Officer, that Party will notify the other Party in writing the details of the new Contact Officer within five working days of the change.

## **20. NOTICES**

20.1 Applications or notices under this Deed must be in writing and may be delivered by prepaid postage, certified mail, hand, e-mail or facsimile transmission to the parties at the addresses specified in Schedule 1, Item 6 or other addresses notified by one Party to the other.

20.2 Notices are deemed to be given:

20.2.1 two (2) days after deposit in the mail with postage prepaid;

20.2.2 immediately on delivery by hand; or

20.2.3 if sent by e-mail or facsimile transmission, immediately on apparently successful transmission of the entire notice being noted by the sender's computer/transmitter, unless sent on a public holiday in Queensland, a Saturday or Sunday or after 5.00pm on any other day ("a week day"), in which case the notice is deemed to be given at 9.00am on the next week day.

20.3 If notice is given by either e-mail or facsimile, the original document must be sent by post the same day the transmission is sent.



# SCHEDULE 1

## ITEM 1 – Council (Background and Clause 1.1)

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[Insert the full legal name of the Council]

## ITEM 2 – Contact Officer (Clause 19)

### Council

The Council appoints: \_\_\_\_\_  
(Insert the name of the Council officer who will be the main point of contact.)

Contact: Telephone number: \_\_\_\_\_  
Facsimile number: \_\_\_\_\_  
Email address: \_\_\_\_\_

### State

The Department appoints: **Elissa Robinson**  
(Insert the name of the Departmental officer who will be the main point of contact.)

Contact: Telephone number: 07 3247 4478  
Facsimile number: 07 3224 7887  
Email address: Elissa.robinson@derm.qld.gov.au

## ITEM 3 – Commencement Date (Clause 3)

The Date of Commencement is \_\_\_\_\_ [Insert the date]

## ITEM 4 – Waterwise Brand (Clause 1.1)

**waterwise**  
queensland

## ITEM 5 – State Logo (Clause 1.1)



**ITEM 6 - Addresses for notices (Clause 20)**

**Council**

All notices for the Council are to be addressed as follows -

(Project Officer's name) \_\_\_\_\_  
(Position) \_\_\_\_\_  
(Firm/Group name if applicable) \_\_\_\_\_  
(Council's name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**State**

All notices for the Principal are to be addressed as follows -

(Project Officer's name) **Elissa Robinson**  
(Position) Senior Project Officer  
Office of the Water Supply Regulator  
Environment and Resource Management  
(Address) GPO Box 2454  
Brisbane Q 4001