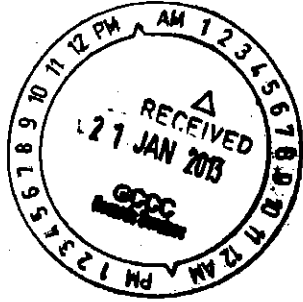




Department of  
**State Development,  
Infrastructure and Planning**



Our ref: DGC12/785

**17 JAN 2013**

Mr Dale Dickson  
Chief Executive Officer  
Gold Coast City Council  
PO Box 5042  
GOLD COAST MC QLD 9729

Dear Mr Dickson

Thank you for your letter of 6 December 2012 covering the provision of two signed copies of the Memorandum of Understanding for the Broadwater Marine Project.

The documents have been executed by the State of Queensland (acting through the Department of State Development, Infrastructure and Planning). Please find enclosed one original document for your records.

The Broadwater Marine Project has the potential to significantly enhance the Gold Coast's reputation as a premier tourist destination, and I look forward to your continued cooperation in delivering the project.

If you require any further information, please contact Mr Paul Toloui-Wallace, Project Manager, Major Projects, Department of State Development, Infrastructure and Planning on 3247 5436 or paul.toloui-wallace@dspdip.qld.gov.au, who will be pleased to assist.

Yours sincerely

David Edwards  
Director-General

Enc



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ABN 25 166 523 889

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The State of Queensland

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Gold Coast City Council

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**Broadwater Marine Project**  
**Memorandum of**  
**Understanding**

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Date

## Parties

State of Queensland (acting through the Department of State Development, Infrastructure and Planning) of 63 George Street, Brisbane, Queensland (the State)

Gold Coast City Council of 135 Bundall Road, Bundall, Queensland (GCCC)

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## Background

- A The Broadwater is an iconic Queensland location which contributes strongly to the city image and prosperity of the Gold Coast.
- B In June 2012, GCCC commenced investigations into a number of preferred locations for a Broadwater Cruise Ship Terminal. During this time, GCCC and the State have also received submissions/briefing from consortia for various development proposals in/on adjacent land to the Broadwater. The proposals vary in their development scale, intensity and composition but seek to take advantage of the unique opportunity to develop in this premier waterfront location.
- C GCCC and the Department of State Development, Infrastructure and Planning have commenced preliminary discussion for a process to facilitate such proposals that may result in positive commercial and legacy outcomes for the State and Council. The intentions for this process were outlined in a Letter of Intent from the Deputy Premier to the Mayor GCCC on 18 October 2012.
- D The State and GCCC have prepared this Memorandum of Understanding (MOU) as the basis for the consideration of the commercial and economic development potential of State land and adjoining waters on and surrounding the Broadwater, including (but not limited to):
- Wavebreak Island
  - The Spit (including parcels of land south of Seaworld)
  - Adjoining waters including the Seaway

## Agreed terms

### PART A – PRELIMINARY MATTERS

#### 1 Introduction

##### 1.1 Definitions

Certain terms used in this MOU appear at **clause 8**.

##### 1.2 Purpose

The purpose of this MOU is to set out the manner in which the State and GCCC will work together to deliver the development of Broadwater Marine Project.

##### 1.3 Key collaboration principles

The parties acknowledge that the following principles will guide their collaboration under this MOU:

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- (a) the State and GCCC both recognise that the key economic driver is an integrated tourism development that results in positive commercial and legacy outcomes for the Gold Coast;
- (b) the State and GCCC both recognise that the process is to achieve a sound market financial return for the development rights and leases of the land owned by the State directly to the State;
- (c) the State and GCCC will consider an innovative strategy to deliver the required mechanisms that support the Broadwater Marine Project to remove the risks of potential development constraints for the land involved;
- (d) to the maximum extent possible, there should be full and timely disclosure to relevant State stakeholders (including State agencies and Ministers) and to GCCC throughout all stages of the project within an appropriate confidentiality framework;
- (e) the parties will use their best endeavours to progress the scope of the Broadwater Marine Project in a timely and efficient manner in accordance with this MOU; and
- (f) the parties wish to create a collaborative relationship which will benefit and enhance the capacity and reputation of both parties, and will assist the private sector in investing in the Gold Coast.

#### **1.4 Optimal outcomes**

- (a) The State and GCCC recognise that it would be desirable for the Broadwater Marine Project to:
  - (i) support the positioning of a cruise ship terminal together with integrated activities such as a casino, hotel, super yacht facility, residential development or other tourism related infrastructure; and
  - (ii) where possible, ensure community concerns are considered in the final negotiation with proponents.
- (b) The State and GCCC wish to encourage innovation in the market's development of and delivery of the Broadwater Marine Project.

## **2 Nature of MOU**

### **2.1 Scope**

This MOU provides:

- (a) at **Part B – Project Participation**:
  - (i) the structure agreed by the State and GCCC for participation by GCCC in:
    - (A) the high level planning and market assessment process for the land parcels and adjoining waterways defined within the Broadwater Marine Project, and
    - (B) procurement of private sector investment to deliver the development of the Broadwater Marine Project; and
  - (ii) a framework within which specific agreements can be developed to allow successful implementation of the Broadwater Marine Project; and

- (b) at **Part C – Funding Contribution**: the contribution of funding by GCCC and the State for the approach to market for the Broadwater Marine Project.

## 2.2 Limitations

- (a) This MOU is limited in its scope to:
  - (i) the Broadwater Marine Project area identified within the Letter of Intent dated 18 October 2012 (and shown in Schedule 2); and
  - (ii) the preliminary EOI and RFDP phases only. It is anticipated that more detailed agreement(s) will be entered into at a later stage and as required.

## 2.3 Term

This MOU commences and becomes effective between the State and GCCC on the date of execution and expires in accordance with **clause 7.5**.

## 2.4 Legal effect

- (a) This MOU is intended to record the understanding reached by the parties as to the matters dealt with in the MOU but is not intended to be legally binding.

# PART B– PROJECT PARTICIPATION

## 3 Agreed structure of Broadwater Marine Project

### 3.1 Delivery Objectives

- (a) The parties acknowledge that the delivery of the Broadwater Marine Project is intended to address the following objectives:
  - (i) **Create Development Opportunities within the Broadwater:** To provide an opportunity for the private sector to work closely with Government to find the right outcome for undeveloped State Government land within the Broadwater.
  - (ii) **New marine and tourism orientated activities:** To provide a distinctive new attractor with destination appeal that may include (but is not limited to) the following land use and activity:
    - (A) cruise ship terminal/s
    - (B) marinas (non-industrial)
    - (C) specialist leisure and entertainment activities
    - (D) casino
    - (E) short term tourist accommodation.
  - (iii) **Support the city's competitiveness:** To provide a development and supporting infrastructure which will improve accessibility to key Broadwater infrastructure, contribute to economic growth and maintain the Gold Coast's competitive advantage as a centre for tourism and emerging high value industries.
  - (iv) **Value for money and affordability:** To deliver government with value for money through a holistic approach to development of the Broadwater land parcels and maintenance of the adjoining waterways.
  - (v) **Collaboration:** To create a collaborative relationship which will benefit and enhance the reputation of the private sector and two levels of

government and which could be expanded through the delivery of further Broadwater activities.

### 3.2 Delivery method

- (a) It is anticipated the approach to market will be undertaken through the State Government tender process by the Department of State Development, Infrastructure and Planning and conducted in two stages:
  - (i) Stage 1 – Expression of Interest; and
  - (ii) Stage 2 – Request for Detailed Proposal.

### 3.3 Milestones

The parties will use their reasonable endeavours to progress an approach to market for the delivery of the Broadwater Marine Project in accordance with the following indicative milestones:

- (i) Strategy and Planning Phase: Mid November 2012
- (ii) EOI Registration & Release: Mid November 2012
- (iii) Shortlist of Proponents: Early 2013
- (iv) Request for Detailed Proposal: Early 2013
- (v) Clarification and Refinement of Proposals: May 2013
- (vi) Selection of Preferred Proponent: Mid 2013
- (vii) Negotiation and Contract: Mid-Late 2013

### 3.4 Governance

- (a) Governance, including the project program, for the Broadwater Marine Project is the responsibility of the State.
- (b) The State will provide the governance structure, leadership and resources for the approach to market for the Broadwater Marine Project and will engage the Project Director to develop the project plan and lead the Integrated Project Team.
- (c) The State will be the final decision maker in matters concerning the EOI, RFDP and any project documentation to be executed with the final preferred Proponent.
- (d) GCCC will provide a central interface team to coordinate and manage the required input and collaboration between the State and GCCC for procurement and administration of the Broadwater Marine Project, including project planning and will form part of the Integrated Project Team.
- (e) The governance structure for procurement of the Broadwater Marine Project is outlined at **schedule 1**.
- (f) The parties acknowledge that any matter arising from this MOU that may have financial or budgetary implications for the State is subject to final approval by the Cabinet Budget Review Committee.

### 3.5 Location

The activities for the Broadwater Marine Project as described in this MOU will be conducted from each of the parties' respective office locations. Interactive workshops and meetings with proponents will be shared between the two office locations, where practicable.

## **4 Participation in the Broadwater Marine Project**

### **4.1 Approach to Market - determining a Preferred Proponent**

- (a) During the approach to market, the State will allow GCCC:
  - (i) Equal representation to the State on the Expressions of Interest evaluation panel (in addition to the involvement of GCCC officers within the Integrated Project Team);
  - (ii) Equal representation to the State on the RFDP evaluation team (in addition to the involvement of GCCC officers within the Integrated Project Team unless otherwise agreed between the State and GCCC);
  - (iii) at all times, timely and regular information and updates on the progress of the approach to market (in accordance with the Confidentiality Framework and Probity Plan) and access to draft documentation.
- (b) GCCC will provide the State with the following:
  - (i) Community consultation services, feedback and identification of GCCC requirements and local issues for inclusion in the EOI and RFDP;
  - (ii) review of and comment on EOI and RFDP documents within the State's reasonable confidentiality conditions and delivery timeframes as notified by the State to GCCC; and
  - (iii) professional representation of GCCC at all times during procurement and in accordance with the State's guidelines and requirements.
- (c) GCCC will not communicate with or discuss with any Proponent aspects of the Broadwater Marine Project or a Proposal unless such communication or discussion:
  - (i) is approved by the State and the Probity Advisor;
  - (ii) takes place in the presence of the Probity Advisor; and
  - (iii) takes place in accordance with the reasonable requirements of the State, which may:
    - (A) include a requirement for a nominee of the State to be present at any discussion; and
    - (B) reflect the confidentiality and process requirements which the State imposes on Proponents from time to time.
- (d) The State will:
  - (i) consult with GCCC on the RFDP documents and take into account any comments made by GCCC prior to the public release of those documents; and
  - (ii) give GCCC a reasonable opportunity to ensure that any terms or provisions in the contractual and technical documentation to be executed with the final preferred Proponent that relate to matters within the GCCC's jurisdiction, satisfy the reasonable requirements of GCCC.



## **4.2 Delivery of Broadwater Marine Project**

- (a) It is intended the Broadwater Marine Project will be delivered by the final preferred Proponent pursuant to an agreement with the State.
- (b) The parties acknowledge it is in the interests of both parties to address specific interface issues associated with the Broadwater Marine Project in:
  - (i) an interface agreement between the State and GCCC, which will apply for the term of the Broadwater Marine Project; and
  - (ii) if required, an interface agreement between GCCC and the final preferred Proponent which will apply for the term of the Broadwater Marine Project.

## **5 Conduct of the parties during their participation**

### **5.1 Conduct of the State**

- (a) In accordance with **clause 3.4**, the State is responsible for and will provide the administrative and procurement services and resources for the Broadwater Marine Project, including engagement of public service staff, consultants and external advisors to assist in the activities described in **clause 4** unless both parties agree that:
  - (i) GCCC are best placed to procure the services and /or provide resources for elements of the Broadwater Marine Project; and
  - (ii) GCCC can provide better value for money to both parties in procuring services and resources.
- (b) The State will use best endeavours to disclose, in a timely manner, all relevant information and data relating to Broadwater Marine Project, to GCCC and its Councillors within the Confidentiality Framework and the constraints of any existing confidentiality requirements.
- (c) The parties acknowledge that it is not intended by **clause 5.1(b)** that Cabinet or other internal State documents will be disclosed to GCCC and its Councillors except in accordance with the State's policies (as they exist from time to time) on release of State Cabinet information to the public.

### **5.2 Conduct of GCCC**

- (a) Where GCCC is responsible for administrative and procurement services and resources for the Broadwater Marine Project, activities are to be undertaken efficiently to not cause delay to the Broadwater Marine Project timelines.
- (b) In accordance with **clause 3.4**, GCCC will make staff available for the Integrated Project Team as required.
- (c) GCCC will use best endeavours to disclose, in a timely manner, all relevant information and data relating to the Broadwater Marine Project to the State, the Project Director, Ministers and State Cabinet through the Confidentiality Framework and within the constraints of any existing confidentiality requirements.
- (d) The parties acknowledge that it is not intended by **clause 5.2(c)** that internal confidential GCCC documents would be disclosed to the State, Steering Group, the Project Director, Ministers and State Cabinet.

### **5.3 Communications and media protocol**

- (a) The State and GCCC will take all reasonable steps to ensure that none of their officers or employees:
  - (i) answer any general enquiry from any third party concerning information not already in the public realm in relation to the Broadwater Marine Project; or
  - (ii) respond to a request for meetings or briefings with officers or elected members of the State or GCCC in relation to the Broadwater Marine Project,without first referring the matter to the Project Director.
- (b) The State and GCCC will take all reasonable steps to ensure that no person answers media enquiries in relation to the Broadwater Marine Project, or acts as spokesperson for or in relation to the Broadwater Marine Project, unless specifically authorised to do so by the State's Minister for the Department of State Development, Infrastructure and Planning (or by his or her authorised delegate).
- (c) The State and GCCC will, wherever possible:
  - (i) ensure that media releases concerning the Broadwater Marine Project are made jointly by the State's Minister for the Department of State Development, Infrastructure and Planning and the Mayor of the Gold Coast City Council; and
  - (ii) keep each other informed of any media enquiries about or in relation to the Broadwater Marine Project.
- (d) The State will:
  - (i) use reasonable endeavours to consult with GCCC with respect to any media releases proposed to be made by the State concerning the Broadwater Marine Project; and
  - (ii) take all reasonable steps to provide GCCC with the opportunity to be a party to any media releases made by the State concerning the Broadwater Marine Project.

## **PART C – FUNDING**

### **6 Contribution of funding**

#### **6.1 Broad Principles**

Funding will be dealt with in a separate agreement based on the following broad principles:

- (a) Any financial return for the development rights and sale or lease of State land belongs solely to the State;
- (b) The State will reimburse GCCC from the financial return for costs incurred after the date of this MOU to support the market opportunity;
- (c) The State will, however, reimburse the GCCC the costs of engaging the Probity Advisor and the costs of the Navigational Assessment even if the costs were incurred prior to the date of this MOU;

- (d) The State will not reimburse the GCCC for internal administrative and management costs incurred;
- (e) If for any reason the approach to market fails to result in the execution of a contract between the State and the preferred Proponent for the delivery of the Broadwater Marine Project, the total Costs incurred after the date of this MOU (and including those Costs referred to in Clause 6.1(c)) but before the termination of the MOU under clause 7.5 are to be equally divided between both parties, excluding Internal Administrative and Management Costs to be borne by each party;
- (f) The State acknowledges and accepts that Council relies on the understanding set out in clauses 3.2, 4.1, 4.2 and 6.1(c) and (e) in progressing the Project.

## PART D – GENERAL

### 7 General

#### 7.1 Dispute resolution

- (a) In the first instance, the State and GCCC will bring the disputed matter (**Matter**) before the Project Director who will use best endeavours to provide a resolution.
- (b) If the Project Director cannot resolve the Matter to the reasonable satisfaction of both the State and GCCC, the State and GCCC will escalate the Matter to:
  - (i) the Project Steering Committee; and
  - (ii) if the Project Steering Committee cannot resolve the Matter to the reasonable satisfaction of the State and GCCC, the Director General of the Department of State Development, Infrastructure and Planning and the Chief Executive Officer of GCCC.

#### 7.2 Intellectual property

- (a) As between the State and GCCC, the State will own all intellectual property developed exclusively by, for or on behalf of the State for the Broadwater Marine Project with a licence, upon terms satisfactory to GCCC and the State, to be granted to GCCC to use such intellectual property in relation to the Broadwater Marine Project.
- (b) The State will own all intellectual property developed jointly by the State and GCCC for the Broadwater Marine Project with a licence, upon terms satisfactory to GCCC and the State, to be granted to GCCC to use such intellectual property in relation to the Broadwater Marine Project.
- (c) As between the State and GCCC, GCCC will own all intellectual property developed exclusively by GCCC for the Broadwater Marine Project with a licence, upon terms satisfactory to GCCC and the State, to be granted to the State to use such intellectual property in relation to the Broadwater Marine Project.
- (d) The State and GCCC will not use intellectual property developed jointly by the State and GCCC for the Broadwater Marine Project for:
  - (i) commercial purposes (other than Broadwater Marine Project); or

- (ii) provision to a third party for commercial purposes ,  
except with the prior agreement of the other party.

### 7.3 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this MOU:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

#### The State

Name: David Edwards, Director-General  
Address: PO Box 15009, City East, 4002  
Email: david.edwards@dsdip.qld.gov.au

#### GCCC

Name: Dale Dickson, CEO  
Address: PO Box 5042 GCMC  
Queensland 9729  
Email: ddickson@goldcoast.qld.gov.au

### 7.4 No agency

- (a) GCCC is not, by virtue of this MOU, the agent or representative of the State.
- (b) GCCC will ensure that its officers, elected members, contractors, consultants and agents conduct themselves in all dealings with others in a manner which does not infer that GCCC is the agent or representative of the State in relation to the Broadwater Marine Project.
- (c) The State is not, by virtue of this MOU, the agent or representative of GCCC.
- (d) The State will ensure that its officers, elected members, contractors, consultants and agents conduct themselves in dealings with others in a manner which does not infer that the State is the agent or representative of GCCC in relation to the Broadwater Marine Project.
- (e) This **clause 7.4** is additional to and does not limit any other provision of this MOU.

### 7.5 Termination

- (a) Subject to **clause 7.5(b)** and unless otherwise agreed between the parties, this MOU will terminate 60 days after an agreement between the State and the preferred Proponent for the delivery of the Broadwater Marine Project commences.
- (b) Either party may, at any time and by written notice to the other party, withdraw from and terminate this MOU if:
  - (i) the other party fails to comply with an understanding set out in this document and the failure is not capable of being cured;
  - (ii) the parties enter into a further agreement in relation to the administration of the Broadwater Marine Project which is expressly provided to supersede this MOU in its entirety; or

- (iii) the approach to market or delivery of the Broadwater Marine Project is terminated by the State for any reason.
- (c) Termination of this MOU will not be taken to affect the operation of any other agreement between the State and GCCC in relation to the Broadwater Marine Project.

## 8 Definitions and interpretation

### 8.1 Definitions

The following definitions apply unless the context requires otherwise:

**Broadwater Marine Project** means the project to be jointly undertaken by the State and GCCC to consider the commercial and economic development potential of State land and adjoining waters on and surrounding the Broadwater, including (but not limited to):

- Wavebreak Island
- The Spit (including parcels of land south of Seaworld)
- adjoining waters including the seaway,

and, where the context permits, includes that land and adjoining waters.

**Confidentiality Framework** means the protocols as they exist from time to time between the State and GCCC in relation to the release of confidential information and other related matters for Broadwater Marine Project.

**Costs** means costs, expenses and charges, including those incurred in connection with advisors.

**Integrated Project Team** is the group of persons comprised of embedded employees of:

- (a) the State;
- (b) GCCC; and
- (c) contractors and consultants engaged by the State,

who are responsible for progression of the procurement of Broadwater Marine Project in accordance with this MOU and under the direction of the Project Director.

**Internal administrative and management costs** means the Costs incurred separately by each Party in relation to the EOI and RFDP phases of the Broadwater Marine Project, whether before or after the date of this MOU, and include but are not limited to:

- (a) survey Costs;
- (b) valuation Costs;
- (c) consultants' fees;
- (d) legal Costs;
- (e) travel expenses;
- (f) the State's and GCCC's administration Costs and other Costs associated with Project activities undertaken by dedicated staff and contractors, including salaries and on-costs such as superannuation;

unless otherwise agreed between the Parties.

**MOU** means this document and includes all schedules to this document.

**Navigational Assessment** means the navigation simulation of the Broadwater to be carried out by GCCC.

**Project Executive Group** means the steering group responsible for overseeing governance of the Broadwater Marine Project, monitoring project performance, steering the direction in order to meet project outcomes, and resolving and escalating issues.

**Probity Advisor** means BDO Kendalls, Zoran Radosevic. Phone no 07 32375789.

**Probity Plan** means the plan prepared by the Probity Advisor in relation to the probity and competitiveness of the activities described in **clauses 4 and 5** as updated from time to time.

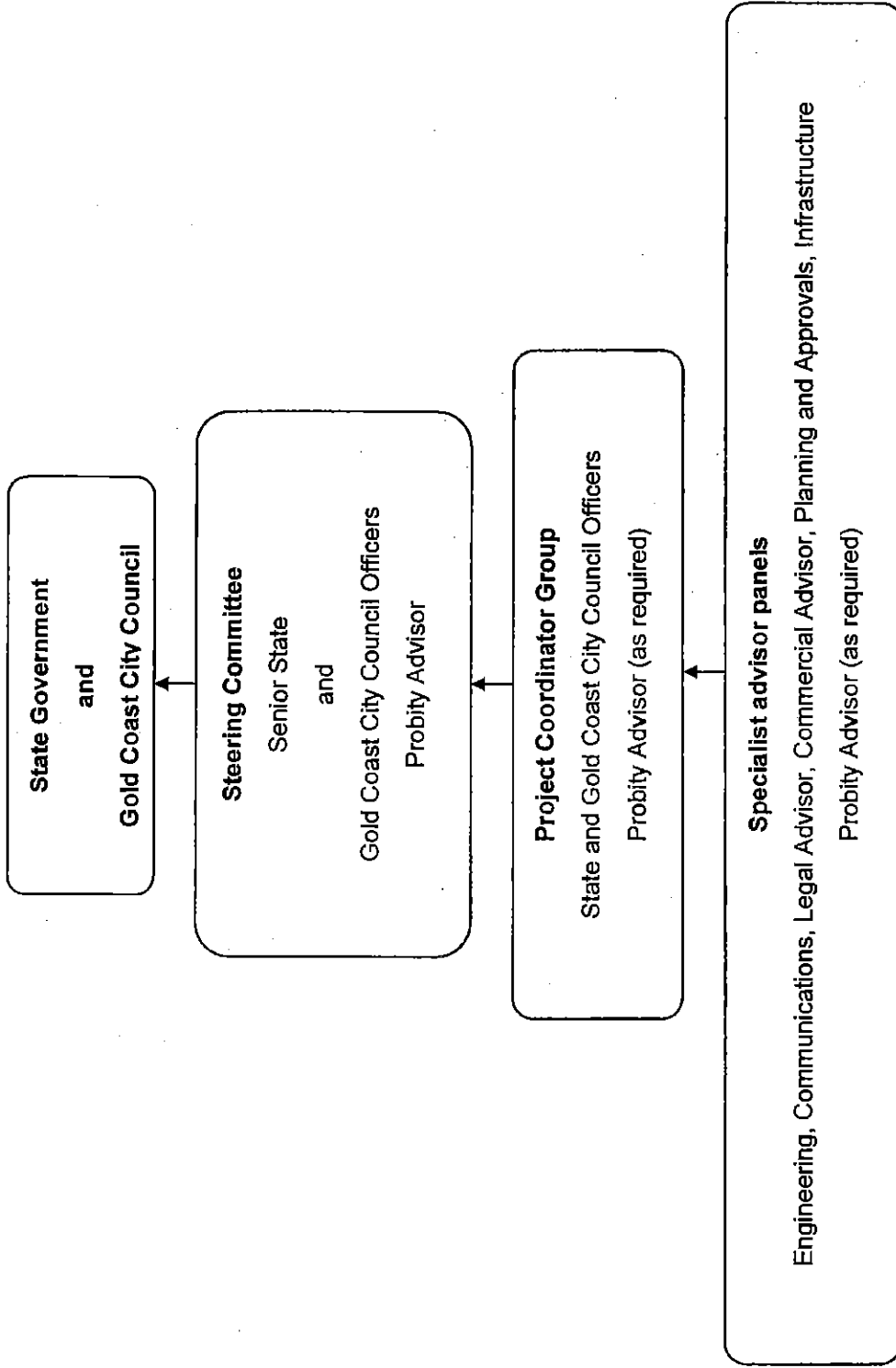
**Project Director** means the State's officer accountable for the delivery of the project outcomes for the Broadwater Marine Project.

**Proponent** means the consortia bidding to undertake the Broadwater Marine Project (and where the context permits, includes the entities who are members of those consortia).

**Proposal** means the one or more proposals submitted by Proponents in response to the RFDP for the Broadwater Marine Project.

**Request for Detailed Proposals, or RFDP**, means the documents (including the draft contractual documentation and draft technical requirements) to be issued to the Proponents by the State.

# Schedule 1: Governance structure

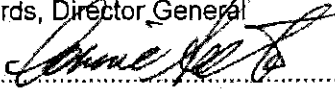




## Schedule 2



SIGNED for and on behalf of State of  
Queensland (acting through the  
Department of State Development,  
Infrastructure & Planning) by David  
Edwards, Director General



Name of witness



Name of witness (print)



(Signature)

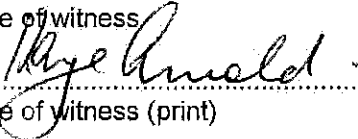
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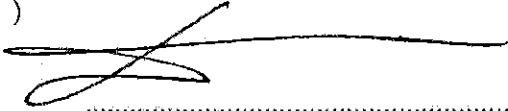
SIGNED for and on behalf of Gold  
Coast City Council by Dale Dickson,  
Chief Executive Officer

KAYE LORETTA ARNOLD

Name of witness



Name of witness (print)



(Signature)

10 / 12 / 12

(Date)



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I certify that the document has in no way been altered or changed

Chloe Davis \_\_\_\_\_ (Name)

[Signature] \_\_\_\_\_ (Signature)

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