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25 November 2011

State Environment, Agriculture,
Resources And Energy Committee
Queensland Parliamentary Service
Parliament House
Cnr George & Alice Streets
BRISBANE QLD 4000

Dear Sir/Madam


LOGAN CITY COUNCIL SUBMISSION ON THE "SEQ WATER (DISTRIBUTION AND RETAIL RESTRUCTURING) & OTHER LEGISLATION AMENDMENT BILL 2011"

I have attached for your attention Logan City Council's submission to the "SEQ Water (Distribution and Retail Restructuring) & Other Legislation Amendment Bill 2011".

Given Logan City Council, and its community are impacted directly by this Bill, I would appreciate the opportunity to participate in the public hearing to expand upon our points raised directly with your Committee.

If you require clarification on any part of this submission, please contact Council's Water Reform Project Manager, Mr Shane Mansfield on 3412 5909.

Yours faithfully


Shane Mansfield
Water Reform Project Manager
(on behalf of Chris Rose, Chief Executive Officer)

Att:



LOGAN CITY COUNCIL

SUBMISSION ON THE SOUTH-EAST QUEENSLAND WATER (DISTRIBUTION & RETAIL RESTRUCTURING) AND OTHER LEGISLATION AMENDMENT BILL 2011

Section	Matter
<p>Legislative timetable for the assent of the Bill.</p>	<p>The delayed progression of the SEQ Water (Distribution & Retail Restructuring) and Other Legislation Amendment Bill with its proposed assent in April 2012 is of grave concern to Council, our community and to the staff involved.</p> <p>Previous communication received from the State was that the legislation was being passed in November 2011.</p> <p>Council respectfully requests the State Government treat this legislation as urgent and amend its legislative making timetable in an expedient time-frame.</p> <p>The current State Government may not be in a position to enact the proposed legislation. Therefore the current legislation may not be adopted at all, or may be further delayed. Alternatively the current legislation may not be adopted in its current form (noting the requirement to consider public submissions made and the potential impact of the State election in 2012).</p> <p>This results in:</p> <ul style="list-style-type: none"> ▪ Councils being required to commit significant Council resources and ratepayer funds in the absence of legislative certainty for such actions. ▪ Communicating with staff in the absence of legislative certainty. ▪ Significant financial risk to all 3 Councils - The investment of time and money between now and April 2012 may be wasted and/or misdirected. ▪ Significant risk to provisions of essential services given the short time period between April 2012 and 30 June 2012. The Bill's Retransfer Scheme, which affects the transfer of all Allconnex assets, employees, liabilities and instruments to the withdrawn Councils on 30 June 2012, is required to be agreed by 30 April 2012. ▪ Ongoing uncertainty for the staff involved in the water industry. The current draft Retransfer Workforce Framework, which is aligned to the new Bill, requires all Council CEOs to finalise their new water business structures by 1 March 2012 and notify employees transferring into the structures by 15 March 2012. ▪ Further to the preceding point, a further significant risk is the ongoing exodus of Allconnex personnel departing and therefore the service provider requirements not being able to be fulfilled i.e. the provision of critical water and sewerage services.
<p>Chapter 3A, Part 3, Division 1 "Retransfer Scheme", Sub div 2 "Contents", Section 92AU (Accounting for Assets & Liabilities) - Liabilities</p>	<p>This section includes a requirement for a "process" to account for Allconnex's liabilities to the withdrawn Councils. At this point in time the Queensland Water Commission is seeking agreement with the withdrawn Councils and Allconnex. Whilst some assets and liabilities can be determined by geographical area, some cannot or critically were the result of strategic decisions by an organisation with a significantly larger revenue base than the individual three withdrawn Councils. In this respect it is considered the Bill must make a definitive reference to the apportionment of "amalgamated" assets and liabilities that are not specifically referenced in the Bill to be apportioned on the basis of "equity" as per the Participation Agreement in the SEQ Distribution Retailer Authority. An example of this would be QTC debt extinguishment.</p>

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<p>Chapter 3A, Part 3, Division 1 "Retransfer Scheme", Sub div 2 "Contents", Section 92AU (Accounting for Assets & Liabilities) - Assets</p>	<p>The amount of unpaid water use charges in the Gold Coast area of Allconnex is substantially larger than other Councils. In the event such amounts are written off, less funds potentially will be distributed to the three withdrawn Councils at 1 July 2012 via equity as per the Participation Agreement in the SEQ Distribution Retailer Authority. Gold Coast City Council however will be in a position to "recover" such unpaid water use charges via the Bill's Section 92 DP "LGA applies for particular debts Allconnex". In this respect it is considered the Bill must make the accounting treatment for unpaid water use charges as a asset for the respective geographical withdrawn Council and not be written off as an expense.</p>
<p>Chapter 3A, Part 3, Division 2 "Ministerial functions for retransfer", Section 92BD (Retransfer Direction) & Part 4, Division 2 "Default provisions", Section 92BI (Allconnex's other assets and liabilities".</p>	<p>It is a requirement of the Bill at Section 92AR (Requirement to make scheme) that "Before 30 April 2012 Allconnex and all of the withdrawn councils, the parties, must enter into an agreement (the retransfer scheme)...". It is considered that all parties would be aware of any unresolved disagreement prior to 30 April 2012 and therefore the Retransfer scheme not being agreed to. It is further considered that the Section 92BA (Ministerial notice of retransfer) include a provision where there is not compliance with Section 92AZ i.e. no Retransfer Scheme submitted due to disagreement, to ensure the Minister decides and enforces such in the Retransfer Scheme prior to 30 May 2012. It is considered Section 92BI is not flexible enough to enforcing "amount" disagreements as it is prescriptive in terms of "change the successor Council". It is considered such section should also be clarified in this respect.</p>
<p>Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 1 "Preliminary", Section 92BW (What are withdrawal costs)</p>	<p>It is considered the Section 92BW should be clarified to include costs incurred prior to passing of the Bill i.e. since the decision of the Council's to withdraw from Allconnex.</p>
<p>Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 1 "Preliminary", Section 92BW (What are withdrawal costs)</p>	<p>The following items need to be clarified in the Bill under the Section 92BW given their high profile at sections / subsections within the Bill rather than being included in any "regulation" as referenced at subsection 92BW (h). Specifically:</p> <ul style="list-style-type: none"> - subsections (a) and (b) - the costs attributed to effectively discharge the regulatory requirements of a withdrawn Council as a service provider under the State water legislation for the period 1 July 2012 to 30 June 2013. - subsections (c), (d) and (e) - such to be clarified to included the costs in contributing to the development of the Retransfer Workforce Framework and the maintenance of the conditions for employees enshrined in the framework for the life of such. - additional subsection - the costs of Arbitration under Chapter 4, Div 4, Subdivision 3 "Arbitration" of the Bill.
<p>Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 1 "Preliminary", Section 92BW (What are withdrawal costs)</p>	<p>The Bill's reference to a "regulation" under Section 92BW "What are withdrawal costs" is considered imperative to the effectiveness of the section and accordingly the Regulation must be approved at the same date as the passing of the Bill. In the event no Regulation is programmed to support the legislation, the attachment of Regulation inclusions for the withdrawal costs be included as a Schedule in the Act.</p>

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Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 2 "Entitlements", Section 92BY (Allconnex's Costs) & 92CA (Claiming Withdrawal Costs)	These sections are required to be amended to clarify a withdrawn Council may claim on behalf of Allconnex prior to or after the dissolution of Allconnex for the limitations period.
Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 2 "Entitlements", Section 92CA (Claiming Withdrawal Costs)	<p>Logan City Council is desirous to securing "withdrawal costs" in a reasonably early time frame to avoid unnecessary impost on its financial position and to secure assurance for implementing the requirements of the impending Act amendments.</p> <p>The legislation should require that GCCC must either pay the other Withdrawn Council's costs within 20 business days <u>or</u> dispute such with the Withdrawn Council within 20 business days.</p> <p>The section also requires amendment by inclusion of a substantial penalty for Gold Coast City Council for not either:</p> <ul style="list-style-type: none"> • Making a withdrawal cost payment to the Withdrawn Council in the time period prescribed to be 20 business days. • Not disputing the cost claim with the Withdrawn Council by the time period prescribed to be 20 business days.
Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 2 "Entitlements", Section 92CC (Limitation Period)	<p>The section requires to be amended to avoid reliance on a "written contract" which detours from the restricted Arbitration process.</p> <p>Section 92 CC (Limitation Period) is in conflict with Section 92 CG (Conduct of Arbitration) which provides "makes all reasonable endeavours to ensure the arbitration ends before 1 December 2013".</p> <p>Any action by 92 CK (How order enforced) will reasonably extend beyond 1 December 2013 and also costs associated with the Retransfer Workforce Framework.</p> <p>It is considered therefore the limitation period accordingly should be 30 June 2017 as opposed to 30 June 2013 in the impending Act amendment at Section 92cc "Limitation Period".</p>
Chapter 3A, Part 4, Division 4, Sub div 3 "Arbitration" Section 92 CG (Conduct of Arbitration)	This section requires amendment by inclusion of a substantial penalty for a withdrawn Council not participating in the Conduct of Arbitration as per the legislation.
Chapter 3A, Part 4, Div 4 "Withdrawal Costs", Sub div 3 "Arbitration" Section 92 CE (Application of Sub div 3)	Section 92CE requires amendment to require that the Gold Coast City Council must pay all costs of an agreed or appointed arbitrator under Section 92CF.
Chapter 3A, Part 4, Div 4 "Withdrawal Costs", Sub div 3 "Arbitration" Section 92 CK (How order enforced)	<p>Section 92CK requires amendment to allow the respective Minister to enforce Gold Coast City Council to act upon an order within a defined time period of 20 business days.</p> <p>A Supreme Court action will be a time resource and costly process to implement.</p> <p>Alternatively the legislation needs to clearly articulate that all costs for all parties in a Supreme Court action must be paid by the Gold Coast City Council.</p>

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Chapter 3A, Part 5, Provisions for other laws and instruments	<p>The Bill does not recognise the intellectual property of Allconnex currently invested in implementing various requirements of the Water Act, Water Supply Act and the current South-East Water (Distribution & Retail Restructuring) Act 2009 will "disperse" as at 30 June 2012.</p> <p>Allconnex will inherently transfer committed high level, public interest matters to Councils for which it has largely had no control over. Examples include:</p> <ul style="list-style-type: none"> - QCA obligations require Allconnex to submit its proposed charges for 2012/13 for water and wastewater services by 31 March 2012 and final charges by 30 June 2012. Council will then need to submit ongoing price monitoring requirements on prices set by a previous entity from 31 August 2012. This is not realistic and needs a review for the current Bill to include exemption / extensions provisions for the respective Minister for meeting the QCA requirements. - The Net Serv Plan is required to be finalised by 30 June 2013. This date may not be realistic and the Bill needs to acknowledge this by allowing extensions from the Minister for the provision of such.

Regulation inclusions for the withdrawal costs to include as a Schedule in the Act to support Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 1 "Preliminary", Section 92BW (What are withdrawal costs)

1. Dis-establishment activities;

- a. Project coordination/management
- b. Project costs (due diligence, professional fees, etc)
- c. Contract penalty costs of early termination or admin to amend
 - i. Payments related to the cancellation of accommodation and vehicle leases, service contracts or systems support no longer required and not novated to the Distributor-retailer entities
- d. Dissolution expenses
- e. Voluntary redundancy payments to staff
- f. Disposal of assets

2. Establishment of commercial business unit;

- a. category relates to the direct costs and purchases required to make the entities operational by 1 July 2012
- b. Establishing a Corporate structure for the Council water business (eg a General Manager, etc)
- c. Establishing a Regulatory capability for the Council water business (eg a Regulatory and Compliance Unit in Council's Water Business)
 - i. systems required for complaints management and reporting
- d. Professional costs
- e. Software upgrade (eg needed to do billing as the current system is not supported)
 - i. systems modification to accommodate new billing information
- f. Ombudsman Fees
- g. Project coordination/management
- h. Costs of insurance for works (and WIPs) done by AW
- i. Loan implications for WIP/ debt servicing costs
- j. Work required to be done to reintegrate assets and liabilities back into the Council System
- k. Work required to be done by the Council CFO to establish new debt and loan structures
- l. Costs to replace assets (eg plant fleet) that have been disposed of by AW due to economies of scale change to business operations (eg reducing the number of backhoes to increase utilisation rates)
- m. Costs of media/communication plan to inform customers
- n. New branding and associated modification to any systems, etc

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- o. Secondment arrangements between AW and councils as per Workforce Framework
- 3. Retransfer scheme activities;**
- a. category of cost represents the costs incurred in order to affect the transfer of the relevant assets, employees, liabilities and legal instruments from the existing businesses to the new entities
- b. Professional costs
- 4. Consequential or incidental activities;**
- a. Professional costs
- b. Arbitration costs
- c. Interest
- d. Storage of AW corporate records
- e. Salary Maintenance under Workforce Framework, ie. costs of wages (difference between the LCC Certificated Agreement and wage of the transferring employee)
- f. Costs of wages and conditions resulting from changes to employees conditions made by AW (eg paying out the 9 day fortnight)
- g. Allocation of overhead or management costs within councils of operational staff involved in establishing the new water business.
- h. Attendance at project steering committees, participation in working groups or subject matter expert groups etc (internal and external)
- i. Costs associated with the disaggregation of water from AW such as system or process modification
- j. Costs associated with the modification of existing systems to ensure the ongoing provision of services to the water business
- k. Any overhead costs associated with the provision of the above
- l. Cost of a direct cost - asset purchase/increase in budget for software licencing
- m. Major information technology and systems development costs, such as additional phone capabilities
- n. Change management and communication plan development and activities.

Expenses not deemed to be considered withdrawal costs:

- Salary increases to transferring staff as determined by the successor council (LCC CA);
- Anticipated or actual revenue or profits;
- Failure to realise anticipated savings;
- Costs that would ordinarily be incurred as a service provider or local government.