

09 November 2012

State Development, Infrastructure and Industry Committee  
Parliament House  
George Street Brisbane Qld 4000

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Dear Sir/Madam

### **ECONOMIC DEVELOPMENT BILL 2012**

Thank you for the opportunity to provide a submission on the *Economic Development Bill 2012* ("the Bill").

As you will be aware, the Central SEQ Distributor-Retailer Authority, trading as Queensland Urban Utilities (QUU), is a statutory authority established as a "Distributor-Retailer" pursuant to the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* (Qld) ("DR Act").

As such, QUU's core responsibility is the provision of essential water and wastewater services in the geographic area of its five participating local governments which are:

- Brisbane City Council;
- Ipswich City Council;
- Lockyer Valley Regional Council
- Scenic Rim Regional Council; and
- Somerset Regional Council.

Supporting delivering of these functions and the needs of a changing community and business environment requires significant operational and strategic planning measures, which in turn, have a substantial cost impact on the overall operations of QUU. This ultimately impacts upon the "price" that the end consumer pays for essential water and wastewater services.

QUU recognises that the Bill's initiative is to facilitate economic development in the interests of the community to reduce significant complexities in the development industry and improve development outcomes.

Despite it being QUU's sole responsibility for planning, constructing and maintaining QUU's water and wastewater networks within QUU's geographic service areas (and, on

the basis QUU now receives the water and wastewater component of infrastructure charges for developments), QUU has not been afforded an adequate or reasonable opportunity to:

- consider the effect of the Bill on QUU's master planning and other business operations in light of QUU's current regulatory framework, its strategic corporate plan, its approved capital works program or other master planning objectives; and
- consult appropriately and provide substantive input to the State regarding QUU's involvement in the development of planning and infrastructure assumptions and processes.

QUU would welcome the opportunity to provide ongoing stakeholder consultation feedback in relation to the Bill and the practical planning issues as engagement will assist QUU:

- in performing its functions as a distributor-retailer effectively; and
- in accommodating and being responsive to the growing demand for cost effective water and wastewater services in QUU's geographic area when developing its water Netserv Plan (with objectives of the Netserv Plan being the planning of infrastructure to deliver safe, reliable and secure water and wastewater services to the community in a cost effective manner).

There are significant practical, legal and financial implications which enactment of the Bill will create for QUU. Briefly, I have outlined some of QUU's concerns based on our very preliminary reading of the Bill. Our concerns largely assume that QUU will be a "public sector entity" by definition.

#### Functions of the MEDQ

In addition to providing for the transfer of the planning powers from the South Bank Corporation to Brisbane City Council, QUU recognises that the Bill intends to create the Minister for Economic Development Queensland ("MEDQ") and that all assets and liabilities of the ULDA will become assets and liabilities of the MDEQ. At no stage has QUU provided any considered input on the State initiatives in the Bill or participated in formal consultation discussions with the ULDA.

The Bill states that the main function of MDEQ is to give effect to the main purpose of the Bill, being to facilitate economic development, and development for community purposes, in the State. The terms "economic development" or "community purposes" are not adequately defined in the Bill or the Explanatory Notes.

#### Consultation

Clause 13(3) of the Bill states that in planning for, or developing land in, priority development areas, MEDQ must consult with each relevant local government. However clause 13 does not require consultation with other public sector entities such as QUU as a Distributor-Retailer under the DR Act. Mandatory consultation provisions should be extended to Distributor- Retailers as controller of the water and wastewater network.



QUU's participating local governments have been delegated QUU's concurrence agency and other planning powers under the *Sustainable Planning Act 2009* ("SPA") pursuant to section 53 of the DR Act until 1 July 2013 under the interim development assessment model under IDAS following the State's earlier water reform with the creation of QUU as a Distributor-Retailer on transfer of water and wastewater businesses of its participating local governments on 1 July 2010. From 1 July 2013, the State intended that a new "utility model" of assessment will commence operation outside SPA and IDAS. Under the utility model, separate applications will be required - one to the local government for assessment of the proposed development, and one to the distributor-retailer to consider connection of the proposed development to water and wastewater services.

#### Payment of amounts from the Economic Development Fund

Clause 27 of the Bill outlines the circumstances in which a payment of an amount from the Fund may be made, including transferring an amount to a local government under section 127(1)(b), being a stated amount for providing or maintaining infrastructure relating to stated land in a priority development area owned by MEDQ.

Clause 27 of the Bill fails to provide for a payment of an amount to a public sector entity (i.e. QUU as a public sector entity or otherwise) other than a local government for the purpose of providing or maintaining infrastructure in a priority development area.

#### Infrastructure agreements and Charges

Clause 121 of the Bill provides that where an infrastructure agreement applies to land in a priority development area and the land ceases to be in a priority development area:

- (a) the superseding public sector entity for the land is taken to be a party to the agreement in place of the MEDQ; and
- (b) the rights and responsibilities of MEDQ under the agreement become the rights and responsibilities of the superseding public sector entity.

Whilst clause 121 provides certainty for an applicant for a development approval in entering into an infrastructure agreement, the proposed clause would result in the public sector entity (which we assume is QUU as water and wastewater service provider in the local geographic area) assuming the rights and responsibilities of the MEDQ under an infrastructure agreement.

Without QUU's appropriate involvement, consultation and approval recognition, this will lead to a significant financial burden for QUU. It is foreseeable QUU risks becoming liable for development and maintenance obligations which would not be funded or identified in the QUU's budget, long term financial corporate plan or capital works program.

Clause 122 recognises that the MEDQ is to consult with a superseding public sector entity (i.e. we assume to be QUU) about the terms of a proposed infrastructure agreement before entering into an infrastructure agreement.

However, such consultation must be carried out in a meaningful way in order to limit the QUU's (as the superseding public sector entity) financial and other legal liability in respect of the infrastructure agreement.

Under recovering on infrastructure charges will result in the deferment of a significant number of QUU's water and sewerage capital projects with a severe impact on growth. Therefore, it follows that QUU's current financial approved capital works program for 2012/2013 and going forward may have to be revised to remove these additional infrastructure requirements for new development in other regions of QUU's geographic area.

Direction to provide or maintain

Clause 128 of the Bill provides that the MEDQ may give a written direction to a government entity to provide or maintain stated infrastructure in, or relating to, a stated priority development area, if the MEDQ is satisfied the provision or the maintenance of the infrastructure is necessary for the proper and orderly planning, development and management of the priority development area.

The Bill does not provide for any consultation to be carried out by the MEDQ with the government entity prior to issuing a written direction under clause 128 of the Bill. The failure to consult prior to giving a direction is inconsistent with principles of procedural fairness and natural justice. Furthermore, giving a written direction to provide or maintain infrastructure may result in a significant financial burden imposed on a government entity (if that government entity is QUU) that is directed to provide the infrastructure.

Further, given the complexities surrounding the relationship of QUU and its shareholding participating local government and QUU's legal obligations for delivering water and wastewater services in its geographic area following the recent water reform, QUU considers the department's lack of consultation with QUU may have been the department's oversight.

We are happy to elaborate on these comments if required.

We are looking forward to engaging in future consultations with the State and the MDEQ regarding these initiatives, with a view to ensuring cost effective essential services can be delivered to meet the demands of development within our local geographic area.

If any further clarification is required, please contact me on (07) 3403 3279.

Yours sincerely



**PAUL BELZ**  
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Queensland Urban Utilities