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Regulatory Policy  
Department of Treasury & Finance  
GPO Box 1045  
Adelaide SA 5001

Via email [regulatorypolicy@sa.gov.au](mailto:regulatorypolicy@sa.gov.au)

**Re Discussion Paper – Access to Water and Sewerage Infrastructure  
Brief Submission**

I refer to your recent Discussion Paper regarding potential changes to the operating regime in relation to access to water and sewerage infrastructure and seeking Council's comments.

As a small relatively under resourced local government the complex nature of potential changes needs an industry wide approach and I understand that the Local Government Association of South Australia will be lodging a sector wide submission.

However, I would like to bring to the Departments attention several significant aspects in relation to the provision of water and sewerage facilities and services by Council in Roxby Downs. Importantly pursuant to Section 7(2) of the Roxby Downs (Indenture Ratification) Act 1982, where there is any inconsistency with any Act or Law the Indenture shall prevail. This means that to the extent the Water Industry Act gives rise to inconsistencies with the provisions of the Indenture, particularly in relation to water charging and access requirements, the provisions of the Indenture will override any application of the Water Industry Act or any other Act.

Accordingly it is submitted that Roxby Downs Municipality should be except from any changes that may arise through this review.

In this regard I enclose an extract from Council's Roxby Water Submission to The Essential Services Commission of South Australia which highlights a number of salient points which dictate a different approach from that which would apply to other commercial water and sewerage operators and which go far beyond what the Commonwealth Government ever envisaged for a purpose built town which has unique legislative and operating arrangements.

Should you have any queries then please contact me to discuss

Yours sincerely

**Bill Boehm  
Administrator**

Enc Extract Submission to ESCOSA – Water & Sewerage Regulation - August 2012  
cc Paul Heithersay (DMITRE)

## Extract

### Roxby Water's Submission to ESCOSA Water & Sewerage Regulation August 2012

## 4 LEGISLATIVE CONSIDERATIONS

### 4.1. Overview

The Indenture provides Council with the power to operate to operate Council's water and sewerage functions.

Importantly pursuant to Section 7(2) of the Act, where there is any inconsistency with any Act or Law the Indenture shall prevail. This means that to the extent the Water Industry Act gives rise to inconsistencies with the provisions of the Indenture, particularly in relation to water charging requirements, the provisions of the Indenture will override the application of the Water Industry Act.

In 2011 the Act and Indenture, under which the Municipal Council of Roxby Downs operates, was amended to facilitate the expansion of BHP Billiton's (BHPB) Olympic Dam mine to become the world's largest open cut mine. Whilst commencement of this project has been deferred it is likely that either the variation date for commencement of the 2011 amended Indenture will be extended or at some time a new Indenture with new provisions renegotiated. As a result variations to the current requirements are likely.

Of fundamental significance is that monitoring of compliance with the provisions of the Indenture and any compliance are to a large extent the sole prerogative of BHP Billiton and the State Government. Whilst Council is affected and must follow this legislation, if there are any matters that are not complied with, particularly those that affect the operation of Council, then Council is powerless to intervene. It can only raise the matter with the respective Indenture Partners and influence. It has no legal recourse.

### 4.2. Specific Provisions

Most of the considerations relevant to the role of the Commission are contained within Clause 13 of the Indenture, entitled '*Joint Venturers Water Requirements*'.

A summary of some of the relevant provisions include the following:

*13(2) Potable Water Storage Facilities are the responsibility of the joint venturers.*

*13(3)-(6) Provides options for water to be sourced from SA Water's system*

*13(18) Water Charges - Details the applicable methodology whereby the Joint Venturers to pay the State where they have obtained water from SA Waters' distribution system*

Not applicable as BHP Billiton have sourced potable water direct from the Great Artesian Basin

*13(20) Establishes the Distribution Authority for the distribution of potable water, recycling and operation of water and sewerage facilities within the township*

Council is the Distribution Authority for this purpose and operates its water and sewerage services as a separate business entity under the Roxby Water banner.

*13(21) The relevant Joint Venturers shall supply or cause to be supplied potable and non-potable water to the Distribution Authority on the following terms and conditions:—*

*(a) quantity of water to be "the base quantity") at the same unit rate as that calculated pursuant to sub-clause (18) of this Clause.*

The current price is set at \$1.10 per kl. This is less than that required under sub clause 18 which is approximately \$1.32 per kl. The 2011 amendment to the Indenture uses this amount as a future base calculation.

- (b) *the base quantity shall be the quantity of potable and non-potable water which is agreed by the Joint Venturers and the Minister to be sufficient to meet the residential, industrial, local government, commercial, community and recreational needs of the township appropriate to a level of production at the minesite of 150 000 tonnes per year of contained copper in saleable Product and associated by-products calculated with reference to a reasonable usage allowance per head of population (being a minimum allowance of 650 litres of potable water per head of population per day plus a reasonably sufficient quantity of potable and non-potable water for public and community parks, gardens and recreational uses)*

As indicated under section 3.2 Council is well under this amount. The 2011 amendment to the Indenture reduces the capped consumption amount 550 litre per head per day but increase the applicable township size to be equivalent to 1.5 million tonnes of copper saleable product.

- (c) *Indicates requirements to cover of the situation in the event that the Joint Venturers or any of them supply or cause to be supplied water to the Distribution Authority in excess of the base quantity (which it is hereby expressly agreed the Joint Venturers shall not be under any obligation to do)*

Situation has never arisen

- (d) *Indicates requirements in the event that the relevant Joint Venturers provide or cause to be provided the base quantity or any water in excess thereof to the Distribution Authority from more than one source*

Situation has never arisen

- (e) *Indicates the requirements for the Distribution Authority to be invoiced quarterly and oiliness provisions for payments to variation in the bill*

Council is invoiced monthly

- (f) *Indicates the requirement for water consumers and sewerage facility users within the town who are employees of or are employed or retained by the Joint Venturers to be given continuity of supply*

Situation has never arisen

- 13(22) *The charges (including stepped charges) to be levied for the supply of potable water and the provision of sewerage services shall be determined by the Distribution Authority, provided that the charges to be levied shall be such that each consumer shall be entitled to a quantity of water to be agreed by the Joint Venturers and the Minister at a price not exceeding the rate payable by the relevant Joint Venturers or an associated company pursuant to sub-clause (18) of this Clause plus 30% (or such other percentage as may be agreed (failure to so agree shall not be subject to arbitration) between the Distribution Authority and the Joint Venturers) of such rate and the Distribution Authority may operate at a profit and shall not operate, as far as is reasonably practicable, at a loss, provided, however, that nothing in this sub-clause shall be construed as preventing the Distribution Authority from making reasonable financial provision to meet the costs of future maintenance or replacement. Any profit earned or derived by the Distribution Authority from the charges (including stepped charges) levied on consumers for the supply of potable water and the provision of sewerage services shall be paid to the municipality within thirty days of the profit for the relevant financial year of the Distribution Authority being determined in accordance with consistently applied accounting standards and principles generally accepted in Australia. Any moneys paid to the municipality as profit pursuant to this subclause shall be revenue of the municipality for the financial year in which any such moneys are paid and shall only be used for proper purposes of the municipality in accordance with this Indenture.*

This clause overrides the application of the Water Industry Act. It provides Council with the power to make a profit from its Water & Sewerage operations. In 2011/12 the profit amounted to \$750k. This equates to 3.1% written down value of assets well with a notional cap of 6% that we understand applies to SA Water. Application of a 30% cap on base quantity charges has never been applied.

In light of the application of this clause, the Council remains legally responsible for determining water prices, notwithstanding any determination made by the Commission.

- 13(22A) *The Distribution Authority shall, as far as is reasonably practicable, encourage its consumers to observe and implement sound water conservation principles and practices and generally to use water resources efficiently.*

This carried out by Council. Adopted pricing methodology also provides significant incentives

- 13(23) *(The obligations of the relevant Joint Venturers to construct the Storage Facilities pursuant to sub-clause (2) of this Clause and to deliver the base quantity to the Distribution Authority pursuant to sub-clause (19) of this Clause shall, in respect of the base quantity, be limited to ensuring the supply of such requirements as are appropriate to the scale of the Joint Venturers' operations from time to time with a maximum obligation appropriate to a level of production at the minesite of 350 000 tonnes per annum of contained copper in saleable Product, saleable Non-minesite Product and associated by-products.*

Water storage facilities are BHP Billiton's responsibility. The 2011 amendment to the Indenture increases the applicable township size to be equivalent to 1.5 million tonnes of copper saleable product.

- 13(24) *All of the potable water supply and sewerage facilities constructed within the township or for township purposes are to be constructed and maintained to standards normally adopted by the Engineering and Water Supply Department and the quality of the water supplied for township purposes shall be to standards reasonably acceptable to the South Australian Health Commission.*

BHP Billiton and Council comply with water requirements as determined by the South Australian Health Commission. As far as practicable, Council operates its water and sewerage operations in accordance with SA Water standards / practices. In addition we currently operate our billing side of operations to meet SA Water practices as well as mirroring, where possible, our operational requirements for the retail operations of electricity as licensed by ESCOSA. The potential lack of clear legislative clarity in relation to our operations is a potential opportunity that could form part of a future license.

- 13(25) *Except where expressly necessary for the purpose of implementing the provisions of this Clause 13, the provisions of the Water Resources Act shall apply to all work undertaken pursuant to this Clause.*

#### **4.3. Olympic Dam**

The Olympic Dam Township, located approximately 10km north of the town is located within the Roxby Council Municipality adjacent to BHP Billiton's mine lease. It consists of a major Heavy Industrial Estate and Contractors Camp located on crown land under the care and control of BHP Billiton plus several freehold commercial and industrial properties and Olympic Dam Airport.

BHP Billiton provides all of the electrical, water and sewerage services to this locality. Council is unaware of the exact nature of their arrangements or if it will be subject to the proposed licence regime.

Council however considers that from a consistency perspective that it should, at the very least, have pricing and compliance aspects that mirror Council's. In this regard if BHP Billiton were willing to consent, Council would be prepared explore opportunities for a more active involvement. Eg meter reading and billing services.

#### **4.4. Licence Implications**

Based on relevant overriding legislative considerations, it is submitted that any Licence issued to Council by the Commission must meet and not conflict with the relevant provisions contained within the Indenture. Consequently, Council's advice is that licence provisions should be restricted to overall customer billing and financial reporting requirements.

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