



roxbywater
a division of roxby council

**Submission to the
Essential Services Commission of South Australia**

**DRAFT PRICE DETERMINATION
AND
CUSTOMER PROTECTION FRAMEWORK**

March 2013

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INTRODUCTION

in February 2013 the Essential Services Commission as independent economic regulator of the South Australian water industry under the *Water Industry Act 2012* released a report relating to a Draft Price Determination for Intermediate and Minor retailers of Water and Sewerage Services seeking input from relevant stakeholders.

Council has undertaken a fairly brief review of the Commissions draft proposals and also comments relating to the initial stakeholder consultation, and provides the following feedback

AUGUST 2012 SUBMISSION

Much of the detail relating to the situation peculiar to Roxby Downs is detailed within Council's earlier comprehensive submission in August 2012 which we refer to. Some of the more salient points relating to the Commissions draft determination have already made and are again highlighted as per the following extracts.

Executive Summary

"Application of requirements to licence Roxby Council for the provision of Council's water and sewerage obligations under the *Water Industry Act 2012* by the Essential Services Commission (the Commission) will involve complex legislative and operational issues which will impact on the precise role the Commission takes.

Primarily this is due to the provisions of the *Roxby Downs (Indenture Ratification) Act 1982* (the Act), which is an overriding piece of legislation which could render aspects proposed by the Commission to be inconsistent with the provisions of the Indenture, particularly in relation to the Commission's powers relevant to pricing determination where such inconsistency occurs the Indenture will prevail.

It is also, however, heavily impacted by the unique role and function of the Council, its obligations to the community, Councils financial constraints due to the State Government's management of its funding obligations to Council under the Indenture and uncertainty in relation to the expansion of the Olympic Dam Mine and Town which, as recently as 22 August 2012, was deferred.

As a result it is the Councils demonstrated view that the Commissions role in the area of Price Monitoring, if any, be restricted to overseeing the level and justification of Council's policy approach to its obligations generally. Already Council is arguably well advanced in meeting National Water Initiative (NWI) pricing principles; even though it is arguable whether they are applicable to local government generally and Roxby Downs in particular.

Roxby Council is supportive of the Commissions current role in relation to regulating Councils Electricity operations believes that it can complement the Commissions new role under the Water Industry Act.

However, Council believes that it is essential that as outlined in the submission the Commission is able to tailor Retail Licence conditions that suit Council's unique operational requirements.

Following recent constructive discussions about such licence conditions with Senior Commission staff, Council believes that this productive partnership approach will make it possible to achieve a 1 January 2013 start date for a licence."

Price Regulation Discussion Paper

6.2 Pricing Order

"Council notes the Commission's powers to issue pricing orders for compliance. It is considered essential that decisions accord with not only the practical realities of operation in Roxby Downs but also accord with the provisions contained in the Indenture as, if there is any inconsistency the Indenture prevails.

For instance a relevant issue for the Commission to address is the fact that any application of National Water Initiative (NWI) pricing principles to Roxby Water are unlikely to be applied to BHP Billiton under the provisions of the Indenture. Strict adherence would seem a bit pointless."

6.3 Nature of Services

“Roxby Downs Council was previously listed as providing a Community Waste Management System. As previously indicated this is incorrect. Council provides a full sewerage service with a current a lagoon type treatment.”

6.4 Existing Pricing Principles & 6.5 Proposed Pricing Principles

“Council's, current pricing regimes, which are not subject to determination by the Commission by virtue of clause 13 of the Indenture”. (refer to balance of submission for further information)

Draft Retail Code

7.1.3 Legislative Power for Debt Recovery

“For the majority of occasions Council is ultimately able to recover water and sewerage debts from property owners through the property conveying system. When application is made for a section 7 certificate under the *Land and Business (Sale and Conveyancing) Act 1994* Council is required under 187 of the *Local Government Act 1999* to provide a certificate of liabilities as to the applicable rates and charges owed in relation to the property. This includes outstanding rates as well as any outstanding water and sewerage charges.

In Roxby Downs, water and sewerage charges are adopted under the provisions of the Indenture but conveyancers have ensured that these charges are adjusted at property settlement and then paid to Council. Further, pursuant to section 144(2) of the LG Act any amount recoverable by Council under the Indenture for the provision of water/sewerage services that relates to rateable land may be recovered as if it were a rate declared on the relevant property.

Legislative power for debt recovery this is obtained in reliance upon the following:

- Section 177 of the *Local Government 1999* which specifies that outstanding rates remain a charge on the property.;
- *Water Industry Act 2012*. Schedule 2—Related amendments, repeals and transitional provisions relating to Part 8 - Amendment of *South Australian Water Corporation Act 1994* as indicated 18C specifies that outstanding water and sewerage will, until payment, be and remain a first charge on the land in relation to which the relevant services have been provided.

7.1.4 Interest on Late Payments

Pursuant to section 181 of the LG Act, Councils have legislative power to levy fines and interest where a rate instalment is not paid by the due date. If any rates are not paid on or before the date on which they become due, they will be regarded as being in arrears, and

- a fine of 2 per cent of the amount of the payment due will be added to the arrears. and
- upon the expiration of each month from that day, interest of the “prescribed percentage” of the total amount in arrears (including the amount of any previous unpaid fine and interest) will be added to the debt. For the 2011/12 financial year this prescribed rate was 0.7708% per month and is based on the following calculation

(Cash advance debenture rate for the financial year +3%)/12)

When a Council receives a payment in respect of overdue rates, the LG Act requires the money to be applied the money to be applied as follows:

- First to satisfy any costs awarded in connection with court proceedings;
- Second to satisfy any interest costs;
- Third in payment of any fines imposed;
- Fourth in payment of rates, in chronological order (starting with the oldest account first).

For Local Government generally who levy water and sewerage charges as a “Prescribed Service” pursuant to section 155 of the Act this practice is supported

Like other utility authorities, Council incurs administrative expenses in preparing water accounts as well as loss of revenue associated in terms of trade, in this case approximately four months from the initial provision of the service.

As such Council is unable to apply such a cost and only able to levy a late payment fee per account on a non discriminatory basis on the foundation that all customers are treated equally and that additional administrative costs are incurred. This approach does not however relate to the size of the customer's account.

This is clearly inequitable and based on experience many customers regularly default at obvious detriment to those that pay on time.

Council is of the strong view that this anomaly should be addressed. It will greatly assist in debt control and rewards responsible behavior and Council requests that the Commission to review this aspect and if it is of the view that legislative support of this practice is not currently available then request that this be authorised as a condition of any Water Licence issued to Council by the Commission.

ECONOMIC REGULATION OF AND INTERMEDIATE AND MINOR RETAILERS

The following comments are provided in relation to the Commissions February 2013 Paper and Appendix A Draft Price Determination for Intermediate and Minor Retailers

Current Pricing and Governance Practices

As a general comment it appears that many of the discussions and proposed provisions do not or may not apply to Local Government due to existing legislative controls. It is therefore suggested that this aspect be addressed and made clear in any final determinations of the Commission.

Under section 2.1 The commission indicated that it did not receive any feedback specifically addressing current pricing practices for drinking water services, for either private or Local Council service providers.

Council is not sure whether or submission was missed but certainly Roxby Water did address this issue as an explanation to our operating practice which went through an extensive review and implementation phase some years ago.

Section 3 reviews the application of NWI Pricing Principles. As indicated below and as per previous submissions the relevancy of these to Local Government and Roxby Council is questioned. Comments relating to the potential reduction in Community Service Obligation are noted but it should be noted that this situation currently applies to the SA Water. So long as it's identified there should be no issue as that should remain a decision of the particular Local Government entity. Application of sewerage is more problematical.

Council notes and concurs with the Commission that retention of the Property Unit Code for the pricing of sewerage is supported.

Council notes the Commissions Comments relating to "Ring Fencing" and again highlights that Roxby Council has always ensured that its utility operations are managed on a discrete business unit basis.

It is also understood that proposed industry protection codes relate only where protection provisions are not covered in the Local Government Act. Council would like clarification relating to this aspect although as electricity retailers we are already addressing this matter. Hardship policies in the Local Government Act would seem to be a case in point.

Comments relating to Retail Code provisions are handled in detail later. However, the Commission acknowledges that for Local Government any charges are recoverable as a charge on the property and as such many of the provisions that apply to commercial retailers will not apply to Local Government.

Appendix A

Purpose and Application

The Commission indicates that this determination binds the regulated service provider (*unless a provider of retail services is by law not required to be bound by this determination*)

As previously indicated the provisions of the Indenture have overriding jurisdiction such that some if not all of the proposed provisions may not be relevant or enforceable

Pricing Principles

Page vi of the Commission Report indicates inter alia that *the "proposed pricing framework is a light handed form of price regulation where the regulated business is responsible for identifying its costs and developing its prices taking into*

account pricing principles (National Water Initiative (NWI) Pricing Principles) as determined by the Commission to the "extent that those principles are relevant"

The import key point above in bold italics is clear in that more the majority of local government and Roxby Downs in particular the majority of NWI principles as foreshowed as being applicable to intermediate retailers such as Roxby Council are simply not relevant.

This has been previously indicated and amply illustrated as follows.

1 Principles for the recovery of capital expenditure

Background

1. Capital expenditure constitutes the major proportion of costs recovered through water charges. Capital expenditure includes expenditure: for replacement of existing assets; and to expand the stock of assets to meet increases in demand, meet required service standards, and any increases in regulatory obligations.

The proportion of capital to operating expenditure varies. In relation to Council, given the relatively young age of asset essentially this is not so.

2. These principles apply only to capital expenditure incurred to provide water services They do not cover capital expenditure incurred to provide wastewater services or stormwater services

Concur

3. The COAG pricing principles, upon which the NWI pricing principles are based provide for the use of a renewals annuity to fund future asset refurbishment/replacement (lower bound pricing), and a return of and on capital to reflect the cost of asset consumption and cost of capital (upper bound pricing). The COAG pricing principles are provided at Appendix A.

Question the applicability for Local Government

4. The Expert Group that played a role in developing the COAG pricing principles made a number of recommendations in their paper on asset valuation and cost recovery, including
 - a) the adoption of the deprival value methodology for asset valuation for charging purposes;
 - b) that, as far as practicable, provision be made in charging arrangements for the loss of service delivery capacity on the basis of full replacement cost;
 - c) to the extent that it is not practicable to charge on this basis, that, as a minimum, provision be made in charging arrangements for the preservation of the ongoing service delivery capacity based on the infrastructure annuity approach where users desire that the service delivery capacity in the assets continue.

Question the applicability for Local Government. Roxby Downs attempts to deliver a return on written down value of assets which for seems to be a practical approach

Approaches to providing for capital investment

5. The two main approaches used to calculate the revenue requirement for capital investments are:
 - a) the annuity approach; and
 - b) the Regulated Asset Base (RAB), or building blocks approach.

As per 4

6. The annuity approach forecasts asset replacement and growth costs over a fixed period and converts these to a future annualised charge. The annuity approach is commonly applied to provide the cash requirements needed to renew non-financial assets over a medium to long-term time period.

As per 4

2 Principles for urban water tariffs

Background

1. These principles are developed for a situation where there are large monopoly water providers and an absence of water trading and associated competitive pressures to bring about efficient levels of cost recovery and associated tariff structures.

Roxby Council is not a “large” monopoly water provider.

2. When water is traded as a commodity, the value (price) of water is set in the market, determined by the consumers' willingness to pay. The willingness of water users to pay for water is determined either by the profitability of the output derived from its use, whether agricultural or industrial, or from the value derived from household use, or by the value derived from its environmental use.

The water price is not set by the market. In Roxby Downs its set under the provisions of the Indenture.

3. For a range of reasons, the operation of water trading in an urban context is limited, and in some cases, is likely to remain so due to physical limitations. When water cannot be traded, the water service availability and usage charges determine the cost of water to users. Throughout the principles the term 'service availability charge' is used to describe the access/connection/fixed charge and 'water usage charge' to describe the variable charge.

Concur

4. As urban water markets become subject to greater contestability it is likely that competitive pressures will have a greater role in determining water charges.

Roxby Water cannot under the provisions of the Indenture, and nor should it become contestable

5. These principles apply only to charges levied to provide water services to urban users. They do not apply to charges levied to provide wastewater services or stormwater services.

Concur

Approaches to setting urban water tariffs

6. Charging structures adopted by urban water businesses generally comprised a service availability charge and a water usage charge, with the service availability charge determined as the residual component to be recovered to meet the revenue requirement after the revenue from water usage charges has been estimated. The usage component of the charge is generally set with reference to the long run marginal cost of supply, and may comprise of more than one tier (often referred to as an 'inclining block tariff').

No real comment

7. Water charges in the urban water sector may be differentiated by supply nodes (nodal based pricing) or may be uniform across a supply network or geographical area ('postage stamp' based pricing). A nodal pricing approach identifies the cost of service delivery to individual customers, or groups of customers, within a given geographical area or supply node.

No real comment

8. Water charges may also include up-front developer charges – to signal the infrastructure cost of servicing new developments or additions/changes to existing developments. Stormwater services refer to the stormwater transportation network as distinct from stormwater reuse as a water supply option.

Concur but in Roxby Downs this is complicated by provisions within the Indenture.

Principle 1: Cost recovery

9. Water businesses should be moving to recover efficient costs consistent with the National Water Initiative (NWI) definition of the upper revenue bound: 'to avoid monopoly rents, a water business should not recover more than the operational, maintenance and administrative costs, externalities, taxes or tax equivalent regimes, provision for the cost of asset consumption and cost of capital, the latter being calculated using a Weighted Average Cost of Capital (WACC)'ⁱ.

Notes:

- i. Application of this principle would be in the context of commitments to full cost recovery in accordance with paragraph 66 of the NWI.

Questions applicability for Local Government. Roxby Downs attempts to deliver a return on written down value of assets which for seems to be a practical approach

Principle 2: Tariff structures

10. Two-part tariffs (comprising a service availability charge and a water usage charge) should be used to recover the revenue requirement from retail residential and non-residential and bulk customers i,ii

Notes:

- i. Unless this is demonstrated to not be cost effective.
ii. This does not preclude charging for peak capacity.

Concur. Council already does so.

The Commission also states that it is *an important objective is to ensure that water and sewerage retailers (including smaller regional operations) are achieving full cost recovery of the efficient costs of providing water and sewerage services*

As indicated in Council's previous submission Council is already achieving as a prime aim full cost recovery and openly provides a commercial return to our Municipal operation, a situation that we suspect does not apply universally within local government.

Appendix 1- Definitions

In the Glossary of Terms to the Draft Price Determination and Consumer Protection Framework definition of Indenture is described. However, this has not been translated into Appendix 1 – Definitions.

Water Retail Code – Intermediate Retailers

As a general point the retail is intended to cover a private retailer, much like the retailing of electricity. However, in Local Government this aspect is not applicable. It is therefore suggested that the retail code that applies to Local Government be significantly altered as a “local government version” to reflect the significant differences.

Meanwhile Council’s comments relating to Draft Code are indicated as follows:

1.2 Scope

Include reference to Roxby Downs (Indenture Ratification) Act 1982.

1.3 Application

Council only provides a service to the owner of the property where the meter and connected reticulation is owned and managed by Council. In a Community Title or joint meter situation the relevant body corporate is the applicable owner. This situation has not been an issue in the past. It is neither practical nor appropriate for this situation to alter unless Council so deems. There is also no distinction between residential and non residential customers

1.8 Definitions

In the Glossary of Terms to the Draft Price Determination and Consumer Protection Framework definition of Indenture is described. However, this has not been translated into the definitions

Non Residential Customer and Residential Customer Definition should be removed. In Local Government its a property based service to the owner of the property or Community Title Corporation and encompass all customers with no distinction between residential, business and non residential.

Acceptable Identification Definition should also be removed as its not applicable.

Customer Sale Contract should be removed as its a prescribed service for local government

2 Customer Charter

Council has no objections to a Customer Charter that is consistently applied across both of Council’s utility operations so long as it recognises local circumstances and is determined by Council to be consistent with our Local Government responsibilities.

3 Enquiries Complaints and Dispute Resolution

It is suggested that a specific Local Government standard be developed

7 Customer Hardship Policies

Section 182 of the LG Act provides opportunity for the postponement or remission of rates. This is relevant where section 155 of the LG Act is relied upon to levy water charges. Council’s obligations under its current electricity licence only require Council to advise the customer of the location where relevant financial counselling services are available. Council is of the view that these provisions are sufficient.

From local experience it is extremely rare (perhaps 1-2 times in the past 13 years) that this aspect has ever been requested in relation to electricity. On each occasion no formal request was forthcoming.

The instance of Council installing water restriction devices is also extremely rare and only instituted as a last resort. Inclusion of fees for the charging of interest for late payments will also reduce the likelihood of this being required.

This proviso should be dramatically reduced / eliminated.

8 Provision of Retail Services

For Local Government the obligation to supply a retail service is as a result of providing a prescribed service under the provisions of the Local Government Act. For Roxby Downs the provisions are further amended by the provisions of the Indenture.

Accordingly this provision should be amended to reflect this.

9 Application for Provision of Retail Services

This section is either not required for Local Government or should be substantially amended to reflect comments as outlined in 8 above.

10 Customer Sale Contracts

This section is either not required for Local Government or should be substantially amended to reflect comments as outlined in 8 above.

12 Termination of Retail Services

This section should be substantially amended to reflect comments as outlined in 8 above and to reflect common practice. Provisions for Final Meter Readings may be retained as this will be an advantage to owners of tenanted premises, not so much for Council recovering the bill but to potentially protect both the tenant and landlord. When a property is sold however, a final meter reading is usually undertaken to determine the final applicable payment which remains as a charge on the property until paid.

15 Billing

This section should be amended in a restively minor way to reflect comments as outlined in 8 above. Some specific issues identified include the following:

- 15.2.3(j) If this means that a free call number 1300 is required then this will mean potential major cost and is unworkable locally. Council already has an afterhours emergency number for all of Councils operations (municipal, water and electricity). It is well understood by the community and operates effectively. Council's current electricity licence arrangements do not require such an arrangement nor does information relating to rates. This should be deleted
- 15.2.3(l) Council reads water and electricity meters quarterly but the actual date varies and currently it is not possible to rectify this although it may change in the future

20 Payments

Council requests the ability to charge interest on late payments. In reality locally residential not non residential customers are more likely to default. It is therefore requested that this provision apply to all customers.

This section should be substantially amended to reflect comments as outlined in 8 above and to reflect common practice. Provisions of debt recovery are essentially under the provisions of the Local Government Act. The provisions as currently stated are not applicable.

21 Payment Difficulties

This section should be substantially amended to reflect comments as outlined in 8 above and to reflect common practice. Council's obligations under its current electricity licence only require Council to advise the customer of the location where relevant financial counselling services are available. From experience this has rarely been taken up

25 Force Majeure

It is noted that some of the proposed provisions relating to Force Majeure, may need to have a detailed legislative oversight lest they be deemed to conflict with the provisions of the Indenture.

25 Appointment of Operator

It is noted that some of the proposed provisions relating to Appointment of Operator and other aspects may need to have a detailed legislative oversight lest they be deemed to conflict with the provisions of the Indenture.

Other

Shared Meters

Council only provides a service to the owner of the property where the meter and connected reticulation is owned and managed by Council. In a Community Title or joint meter situation the relevant body corporate is the applicable owner. This situation has not been an issue in the past. It is neither practical nor appropriate for this situation to alter unless Council so deems.

FURTHER INFORMATION

Council suggests that given the complex nature of the operations of Council and the unique circumstances brought about by Councils unique role, function, operating environment and legislative controls that detailed discussion be undertaken with respect to the Commissions approach at the earliest opportunity.

For further information or clarification please contact the Roxby Council Administrator Bill Boehm at the Council Office Richardson Place Roxby Downs SA 5725. Phone 08 8671 0010 or email bill.boehm@roxbycouncil.com.au.

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