



Queensland

Local Government Legislation Amendment Regulation (No. 2) 2013

Explanatory Notes for SL 2013 No. 16

made under the

City of Brisbane Act 2010

Local Government Act 2009

General outline

Short title

Local Government Legislation Amendment Regulation (No. 2) 2013.

Authorising law

Section 252 of the *City of Brisbane Act 2010*

Section 270 of the *Local Government Act 2009*.

Policy objectives and the reasons for them

The policy objectives of the Regulation are to wind-up the Wide Bay Water Corporation (the Corporation), and to clarify the order for the disposal of the proceeds of the sale of land for overdue rates and charges.

Achievement of policy objectives

The policy objectives are achieved by amending the *Local Government Regulation 2012 (LGR)* to provide for the wind-up of the Corporation and

amending the *City of Brisbane Regulation 2012* (CBR) and the LGR to clarify the order for the disposal of the proceeds of the sale of land for overdue rates and charges.

Wide Bay Water Corporation

The Corporation was established in 2001 as a significant business entity of the former Hervey Bay Council, now Fraser Coast Regional Council (FCRC). The Corporation was also declared in 2001 as a local government owned corporation under the repealed *Local Government Act 1993*. In November 2012, FCRC resolved to wind-up the Corporation and transfer the Corporation's operations to FCRC.

The proposed Regulation provides for the wind-up of the Corporation, for FCRC to be the legal successor of the Corporation and to transfer assets, liabilities and certain instruments including contracts, licenses, approvals and permits from the Corporation to FCRC.

The proposed Regulation also provides for a gazette notice to prospectively nominate the transfer date to ensure that all necessary contracts, permits, approvals and any other instruments are in place at the beginning of the transfer day.

Application of the proceeds of the sale of land

Under the repealed *City of Brisbane (Finance, Plans and Reporting) Regulation 2010* section 77 and the *Local Government (Finance, Plans and Reporting) Regulation 2010* section 79, councils were required, following the sale of land for overdue rates and charges, to use the proceeds of the sale of land in a certain order, including paying the expenses of the sale, for example, body corporate fees and land taxes owing on the day of sale.

The proposed Regulation clarifies in the CBR and the LGR that following the sale of land for overdue rates and charges, councils must use the proceeds of the sale, in a certain order which includes paying land taxes owing on the day of the sale and body corporate fees.

Consistency with policy objectives of authorising law

The proposed Regulation is consistent with the policy objectives of the *City of Brisbane Act 2010* and the *Local Government Act 2009*.

Benefits and costs of implementation

Not applicable.

Consistency with fundamental legislative principles

The proposed Regulation has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA), and is consistent with these provisions.

However, the Regulation's proposal to transfer contracts, licenses, approvals and permits of the Corporation to FCRC may be interpreted as a departure from the LSA, section 4(5)(c), that is, subordinate legislation should contain only matter appropriate to that level of legislation. The proposed Regulation could raise a potential FLP issue about the appropriateness of the subject matter to the level of legislation.

However, in response to that potential FLP issue, the proposed Regulation's transitional provisions are intended to transfer only those contracts, licenses, approvals and permits from the Corporation to FCRC that are not subject to a prescribed transfer process under an Act. The transfer provisions are not intended to override a specific transfer process that is prescribed by an Act. Accordingly, it is not intended that the Regulation operate in such a manner as to depart from the LSA.

The Corporation and FCRC have advised the Department of Local Government, Community Recovery and Resilience that they are proposing to take the necessary action to transfer any licences, approvals or permits that are subject to a prescribed transfer process. To ensure that all necessary contracts, permits, approvals and any other instruments are in place at the beginning of the transfer day, the proposed Regulation provides for a gazette notice to prospectively nominate the transfer day.

Consultation

The Local Government Association of Queensland, Brisbane City Council, Wide Bay Water Corporation, Fraser Coast Regional Council, the Department of Premier and Cabinet, the Department of Justice and Attorney-General, Queensland Treasury and Trade (including Queensland Treasury Corporation), the Department of Energy and Water Supply, and the Department of Natural Resources and Mines have been consulted. There is support for the proposed Regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Local Government, Community Recovery and Resilience.

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