

2011 POTPOURRI

A presentation to the 2011
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by

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An Overview

- South Burnett Regional Council -v- Tarong
- Recent and proposed legislation
 - Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011
 - Waste Reduction and Recycling Bill 2011
 - Stock Route Network Management Bill 2011
 - Local Government Electoral Act 2011

South Burnett Regional Council – v- Tarong

- Decision delivered on 7 April 2011
- Application for judicial review seeking declarations that Council’s general rating decisions, so far as Tarong’s power station was concerned, “were so unreasonable that no reasonable person could have exercised the power in that manner

South Burnett Regional Council – v- Tarong (continued)



South Burnett Regional Council – v- Tarong (continued)

Year	Total rates charged	Total employees	Valuation
2007	\$4,383 (\$0.02 per dollar of valuation)	375	\$215,000
2008	\$375,000 (\$1.74 per dollar of valuation)	425	\$215,000
2009	\$399,824 (\$1.86 per dollar of valuation)	503	\$215,000
2010	\$430,000 (\$0.14 per dollar of valuation)	518	\$3,100,000

South Burnett Regional Council – v- Tarong (continued)

Contested issues

- can the amount of a “rate” be more than 100% of unimproved value;
- was the increase of over 8000% in the amount of the rate (initially in 2007/08) so unreasonable as to be an unlawful decision; and
- was it unlawful for the Council to have informed itself, at least corporately, about the level of rates being imposed by other local governments on similar power station facilities as a part of the process of formulating its rating decisions.
- by taking into account Tarong Energy’s use of the land for substantial income generating enterprise did the Council make an levy the rates on the basis of Tarong’s “*capacity to pay*” the rates as found in the *Xstrata* Decision.

South Burnett Regional Council – v- Tarong (continued)

Conclusions

1. a rate may exceed the unimproved value of the land
2. taking into account the particular income producing use of lands categorised by reference to their use, when setting the differential general rate for that category, does not equate to taking into account a rate payers personal “*capacity to pay*” or “*wealth*”, in the sense found in the *Xstrata* decision
3. although further information may have been available to a Council when deciding the amount to be set for individual categories, Courts will primarily look to the Council’s budget documents including the revenue policy and revenue statement, to assess the basis for that decision
4. Courts will proceed with caution when reviewing decisions of a Council as to how to apportion the total revenue burden across all categories for the purposes of making and levying differential general rates – they should be very reluctant to interfere

South Burnett Regional Council – v- Tarong (continued)

Conclusions (continued)

5. The inherent nature of the differential rating system is to “*discriminate*” in allocating an overall rating burden across a body of rate payers. A legal challenge based on the premise that a body of ratepayers who own land in one category have been “singled out” for differential treatment should fail if it goes no further, because that is exactly what differential rating entitles a Council to do

South Burnett Regional Council – v- Tarong (continued)

Conclusions (continued)



Recent and proposed legislation

- Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011
 - Passed by State parliament in June 2011
 - Amended the Sustainable Planning Act 2009 (“SPA”) by empowering the State, via a “State planning regulatory provision” to prescribe a charge for trunk infrastructure
 - Draft State planning regulatory provision (adopted charges) notified with effect from 1 July 2011
 - A Council’s charge for trunk infrastructure can be no more than the amount prescribed by the SPRP

Recent and proposed legislation

- Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011 (continued)
 - Note the impact of transitional provisions inserted into SPA, particularly section 880(3)
 - Development approvals issued on or before 30 June 2011, including those that were the subject of a negotiated decision notice process or P & E Court appeal, will be liable for payment of infrastructure charges in accordance with the charging regime that existed on that date.

Recent and proposed legislation

- Waste Reduction and Recycling Bill 2011
 - Introduced into Parliament on 3 August 2011
 - Operators of levyable waste disposal sites will be required to pay the State the waste levy on the levyable waste delivered – section 36
 - Operators of levyable waste disposal sites are entitled to pass on to their customers (by way of, for example, raising their gate fee) the additional costs associated with paying the State waste levy –section 40

Recent and proposed legislation

- Waste Reduction and Recycling Bill 2011 (continued)
 - A levyable waste disposal site is a waste facility (including a Council controlled waste facility) that receives levyable waste where at least some of that waste is subsequently disposed of as landfill at that facility – section 26
 - Intention is that, via regulation, the levy be imposed on commercial waste and not domestic waste (or certain types of other waste generated by a Council e.g. sewage)

Recent and proposed legislation

- Stock Route Network Management Bill 2011
 - Introduced into State parliament on Wednesday (i.e. 7 September 2011)
 - “The main purpose of this Act is to regulate the management and use of the stock route network and public (stock access) land.” – section 3
 - “The bill replaces the legislative framework for stock route management established under chapter 3 of the Land Protection (Pest and Stock Route Management) Act 2002 separating it from the pest management provisions in that act.” – Hon RG Nolan, Minister for Natural Resources, Hansard, 7 September 2011, page 2858

Recent and proposed legislation

- Stock Route Network Management Bill 2011 (continued)
 - Land Protection (Pest and Stock Route Management) Act 2002 to be amended and renamed as Land Protection (Pest Management) Act 2002
 - All provisions dealing with stock routes and stock route management will be deleted
 - Ultimately, the Land Protection (Pest Management) Act 2002 will be repealed and replaced by the “Biosecurity Act”
 - Exposure draft of Biosecurity Bill 2011 recently circulated for stakeholder comment

Recent and proposed legislation

- Local Government Electoral Act 2011
- Introduced into State parliament on 16 June 2011, passed through all stages on 25 August 2011, assented to (i.e. commenced) on 1 September 2011
- Electoral Commission is to conduct local government elections – section 8
- CEO can still be appointed as the returning officer for the election “if the chief executive officer is the only person with experience conducting elections who is reasonably available to be appointed as the returning officer, the chief executive officer may be appointed as the returning officer if the officer is not a member of a political party.” – section 9

Recent and proposed legislation

- Local Government Electoral Act 2011 (continued)
 - Electoral funding and financial disclosure – to be enforced by the Electoral Commission – Part 6
 - However, Council CEOs will still be provided with copies of the lodged returns of successful candidates (see section 117(4) and 118(5))

Recent and proposed legislation

- Local Government Electoral Act 2011 – Amendments to City of Brisbane Act (section 180 (11) and (12) and Local Government Act (section 177 (11) and (12)) – Public record – complaints against councillors

(11) The chief executive officer must keep a record of—

- (a) all written complaints received by the chief executive officer; and
- (b) the outcome of each written complaint, including any disciplinary action or other action that was taken in relation to the complaint.

Recent and proposed legislation

- Local Government Electoral Act 2011 – Amendments to City of Brisbane Act (section 180 (11) and (12) and Local Government Act (section 177 (11) and (12)) – Public record – complaints against councillors

(12) The chief executive officer must ensure that the public may inspect the part of the record that relates to outcomes of written complaints —

~~—(a) at the local government’s public office; or~~

~~—(b) on the local government’s website.~~

(a) at the council’s public office; or

(b) on the council’s website.

Recent and proposed legislation

- Local Government Electoral Act 2011 – Amendments to City of Brisbane Act (section 175) and Local Government Act (section 173) – dealing with conflicts of interest
 - (1) This section applies if a matter is to be discussed at a meeting of a local government, or any of its committees, and a councillor at the meeting—
 - (a) has a conflict of interest in the matter (the *real conflict of interest*); or
 - (b) could reasonably be taken to have a conflict of interest in the matter (the *perceived conflict of interest*).
 - (2) A *conflict of interest is a conflict between*—
 - (a) a councillor’s personal interests; and
 - (b) the public interest;that might lead to a decision that is contrary to the public interest.
 - (3) The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.

Recent and proposed legislation

- Local Government Electoral Act 2011 – Amendments to City of Brisbane Act (section 175) and Local Government Act (section 173) – dealing with conflicts of interest
 - (4) Without limiting subsection (3), the councillor must inform the meeting of—
 - (a) the councillor’s personal interests in the matter; and
 - (b) if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.
 - (5) Subsection (6) applies if a quorum at the meeting can not be formed because the councillor proposes to exclude himself or herself from the meeting to comply with subsection (3).
 - (6) The councillor does not contravene subsection (3) by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the councillor, together with any other required number of councillors, forms a quorum for the meeting.

Recent and proposed legislation

- Local Government Electoral Act 2011 – Amendments to City of Brisbane Act (section 175) and Local Government Act (section 173) – dealing with conflicts of interest
- (7) The following must be recorded in the minutes of the meeting, and on the local government’s website—
- (a) the name of the councillor who has the real or perceived conflict of interest
 - (b) the nature of the personal interest, as described by the councillor;
 - (c) how the councillor dealt with the real or perceived conflict of interest;
 - (d) if the councillor voted on the matter—how the councillor voted on the matter;
 - (e) how the majority of persons who were entitled to vote at the meeting voted on the matter.
- (8) For subsection (2), a councillor who is nominated by a local government to be a member of a board of a corporation or other association does not have a personal interest merely because of the nomination or subsequent appointment as the member.

Recent and proposed legislation

- Local Government Electoral Act 2011 – Amendments to City of Brisbane Act (section 175) and Local Government Act (section 173) – dealing with conflicts of interest

(9) To remove any doubt, it is declared that nonparticipation in the meeting is not the only way the councillor may appropriately deal with the real or perceived conflict of interest in a transparent and accountable way.

Recent and proposed legislation

- Local Government Electoral Act 2011 – Amendments to City of Brisbane Act and Local Government Act – Caretaker period arrangements

Inserted into the City of Brisbane Act 2010 (“COBA”) and Local Government Act 2009 (“LGA”) respectively as sections 92A of COBA and 90A of LGA (Caretaker period), 92B of COBA and 90B of LGA (Prohibition on major policy decision during caretaker period), 92C of COBA and 90C of LGA (Invalidity of major policy decision during caretaker period without approval) and 92D of COBA 90D of LGA (Prohibition on election material in caretaker period)

Recent and proposed legislation

- Local Government Electoral Act 2011 – Amendments to City of Brisbane Act and Local Government Act – Caretaker period arrangements

Section 92D (COBA)/90D (LGA) - Prohibition on election material in caretaker period

- (1) A local government must not, during a caretaker period for the local government, publish or distribute election material.
- (2) *Election material* is anything able to, or intended to—
 - (a) influence an elector about voting at an election; or
 - (b) affect the result of an election.

2011 Potpourri

Do we have time for questions or comments?

