

703 GOVERNANCE OF ROXBY DOWNS (Paul Holloway) - NOTED

Not relevant





703
CABINET NOTE

CN MMRD 07/006

TO: THE PREMIER FOR CABINET TO NOTE

RE: GOVERNANCE OF ROXBY DOWNS

1. PROPOSAL

For Cabinet to note that:

- 1.1 Appropriate and extensive controls are in place to ensure that local government performance in Roxby Downs is of a high standard.
- 1.2 The Department of Primary Industries and Resources (PIRSA) and BHP Billiton have initiated an external consultancy to audit the financial performance of the Roxby Downs Council, with a view to demonstrating that the Council deficit is properly managed.
- 1.3 In order to properly inform the Indenture negotiations between the State and BHP Billiton, PIRSA is currently scoping out separate bodies of work related to the present and future operations of local government in Roxby Downs. The work is likely to be the subject of a separate consultancy, and is expected to include a review of the following:
 - the boundaries of the Roxby Downs Council and its relationship with nearby unincorporated areas;
 - the governance arrangements for the Roxby Downs Council; and
 - the management of the release of land for development within Roxby Downs.

2. BACKGROUND

2.1 Indenture Arrangements

2.1.1 The Indenture

The Roxby Downs Council operates in a complex legal environment. It must comply with the *Local Government Act 1999* [the **LG Act**] and also with the relevant parts of the *Roxby Downs (Indenture Ratification) Act 1982* [the Indenture]. The Indenture creates the legislative framework for the operation of the Olympic Dam Mine and includes a number of provisions for the establishment and ongoing management of the supporting township. This legal agreement between the State and BHP Billiton requires each party to meet certain obligations many of which impinge on the town's operation. Future expansion proposals for Olympic Dam and Roxby Downs, and concomitant changes to the Indenture, which are currently being negotiated, will further impact on the operations of the Council.

2.1.2 Special arrangements for Local Government

The Roxby Downs Council was originally established under section 12 of the Indenture to manage the municipality and township in accordance with the provisions of the then *Local Government Act 1934* and as modified by other provisions under the Indenture.

Under the Indenture, the Minister responsible for the conduct of the Council is the Minister for Mineral Resources Development. The Indenture requires the Minister to appoint an Administrator to perform the role of the Council. Section 12(3) of the Indenture specifies that the "The Administrator shall have the powers, functions and duties of a municipal council in relation to the municipality and, subject to directions of the Minister, shall exercise and discharge those powers, functions and duties in such manner as he thinks fit", but with various limitations and constraints as imposed by the Indenture.

These include the following:

- Changes to the Indenture and hence governance arrangements can only occur if both BHP Billiton and the State Government agree. [Clause 56 of the Indenture].
- Those parts of the LG Act relating to the requirement for elected members do not apply. [Part 3 of the Ratification Act].
- Apart from the normal local government functions Council also acts as the electricity and water distribution authority. These are operated as separate internal business units (Roxby Power and Roxby Water) within Council's consolidated operation.
- The State Government and BHP Billiton are required to approve the Council budget and fund any annual municipal deficit. [Clause 29(3)(b) of the Indenture].
- Any Crown land held in licence by BHP Billiton is not subject to rates. This includes developed crown land such as the Olympic Dam Industrial Estate and is a significant inequity. [Clause 29(1) of the Indenture].
- The Indenture requires that BHP Billiton must approve of any general rate proposed to be levied by Council. [Clause 29(3)(a) of the Indenture].

The 2005/06 average residential rate including garbage charge was \$1,143 per annum, a 10% increase on the rate for 2004/05.

- Roxby Downs purchases its water from BHP Billiton who desalinate water obtained from the Great Artesian Basin and supply potable water to Council for distribution at a rate as set down in the Indenture.

Currently BHP Billiton charges the Council \$1.10 per kilolitre, well under the \$1.30 currently permitted. Water supply charges are currently \$36.25 per access unit per quarter and between \$1.00 and \$3.20 per kilolitre. Current annual sewerage charges are \$408 per property unit.

- Roxby Water's operations for the provision of water and sewerage services are permitted to make a profit which may be returned to its Municipal operations. Operations are separate from SA Water but Council is required to fund, construct and maintain infrastructure to the standards that would normally apply to SA Water.

- BHP Billiton owns 256 kV and 132 kV lines that transmit energy from the national grid at Port Augusta to Olympic Dam where a 33 kV line serves the Roxby Downs Township. Council operates its Roxby Power operations in accordance with a retail and distribution license issued by the Essential Services Commission of SA. The Indenture requires BHP Billiton to sell power to Council at a price that will allow Council to run neither at a profit nor a loss, make reasonable financial provisions to meet the costs of maintenance and replacement of future plant and equipment and to charge electricity tariffs that must not exceed the equivalent Adelaide electricity tariffs by more than 10%.

Currently electricity charges are in general slightly less than Adelaide default tariffs.

The Administrator is an Officer of the Crown but the municipality pays all costs associated with his appointment.

Historically BHP Billiton has built the town's infrastructure, which is then handed over to Council to operate and manage whilst the State provided a specified level of public facilities. The Indenture also requires the State to maintain its own facilities.

The land within the municipality was originally Crown land, transferred by the State at no cost to BHPB and dedicated for town development purposes. All developments (roads, infrastructure and land) have historically been constructed by BHP Billiton under the Indenture but with development costs recovered from the sale of freehold titles at prices as agreed by the Minister.

2.1.3 Compliance with Local Government Act

The revision of the *Local Government Act 1934* to the *Local Government Act 1999* has significantly increased the roles, functions and responsibilities of the Council well beyond those envisaged when the Indenture was drafted in 1982. These increased requirements for Council compliance with the LG Act have resulted in increased operating costs without the opportunity for significant additional revenue raising.

2.2 **The Administrator**

2.2.1 History

An Administrator has been appointed for the Roxby Downs Council, in accordance with the provisions of the Indenture, since inception of the Council in 1986. The original administrator, Mr John Brazel, served well from 1986 until 1998.

It has been recognised for some time that the role of Administrator is a politically difficult one. In a typical Council, constituted entirely under the Local Government Act, there is an aspect of separation of powers.

- The elected Council members set overall directions and policy, and are answerable to the electorate and, to an extent, the State Government.
- The Council Executive (through the CEO) is responsible for implementing policy, and answers to the elected Council.
- Typically, the functions of Electricity Authority and Water/Sewer Authority are entirely separate from the Council.

In contrast, the Roxby Downs Administrator has a substantially wider range of responsibilities to deliver services, but does not have access to sufficient mechanisms to raise revenues to fully satisfy essential budgetary needs. The Administrator is responsible for setting policy, implementing it, administering the power and water authorities, setting rates and charges, budgeting, accounting, making and enforcing by-laws etc, while being responsible to two masters under the Indenture - the State and BHPB.

2.2.2 Contract and performance agreement

The Administrator is an officer of the Crown, employed under a formal employment contract executed by the Minister for Mineral Resources Development, the Minister responsible for the Indenture. The Contract includes a detailed performance agreement setting out what is expected of the Administrator.

2.2.3 Performance to date

The current Administrator Bill Boehm commenced in June 1999 following a wide-ranging recruitment process. For 8 years Mr Boehm has successfully carried out all the functions, roles and responsibilities of a local government body under the Local Government Act. These responsibilities include those of a local government elected body as well as those of a local government executive body.

In addition, the Administrator also manages the operations of Roxby Power and Roxby Water, the authorities which supply power, water and sewer services to the Roxby Downs community. As well as all the other duties and responsibilities, Mr Boehm was given a strong brief by BHPB and the State to improve communication and foster community spirit within the township.

During the past 8 years, with implementation of the new LG Act, the operations of Council have become broader to now include economic development, community development and cultural development functions as core business operations. Council also undertakes agency work for the Northern Region Development Board, Centrelink and Services SA in relation to licensing and registration. These changes in emphasis were backed by external reviews with the full knowledge and funding support of the Indenture partners.

Some initiatives undertaken during the past seven years have included:

- a \$3.3 million redevelopment and expanded operation of the Roxby Downs Cultural and Leisure Precinct, substantially underpinned by a special grant from BHPB.
- major swimming pool upgrade including installation of water play features and solar heating.
- construction of a new skate park and upgrade of associated amenities.
- improved communication with initial development of a council newsletter that was the forerunner to *The Monitor*, the successful free weekly community newspaper.
- completion of a community wide plan with endorsement of the community.

In consultation with the community, major policy changes have also been introduced in relation to rating and the charging for water (user pays stepped tariffs) and sewerage (property unit charging).

Regionally the Council is well represented with the Administrator being a current board member on the Regional Communities Consultative Council, Northern Region Development Board, Flinders Region Area Consultative Committee, Port Augusta Regional Health Board, Provincial Cities Association, and the Local Government Association.

The Australian Government Minister for Local Government presented the Roxby Downs Council with a Highly Commended Award in the Community Business Partnerships Section of the 2006 National Awards for Local Government in relation to Councils partnership with The Monitor – Your Community Newspaper.

The Roxby Downs community was also well represented in the SA Great Awards in November 2006. The Monitor Community Newspaper received a Small Business Award; Tina Foster of ROXFM Community Radio received a Community Individual Award; and the Arid Recovery Project received a Science and Environment Award.

Operationally whilst the Administrator is solely responsible for carrying out functions and duties of Council, oversight and governance are provided in a variety of ways. These include the following:

- Council is required to perform all the governance functions of a normal local government with the Administrator's performance required to be assessed in relation to these aspects. Required documents, policies and procedures are also externally audited. An Annual Report is also provided to Parliament.
- Council's financial operations are audited externally with at least two (2) on site visits and oversight remotely on a regular, at least monthly basis. Audit pertains to annual financial statements which thus far have always been approved without qualification. The auditor also approves of the municipal deficit calculation which is required to be paid equally by BHP Billiton and the State Government. Operational improvements such as internal controls are from time to time suggested and the Council makes changes to put these improvements in place.
- For practicable purposes the operations of Council are carried out by splitting functions into three (3) discrete entities; namely, Municipal Operations, (traditional local government services), Roxby Power, (electricity supply) and Roxby Water (water and sewerage services). Apportionment of costs to each is independently and externally audited.
- PIRSA is kept regularly informed of developments both directly and by way of the local newspaper, *the Monitor*. The Administrator meets with representatives of PIRSA, generally on a monthly basis. Regular briefing documents are regularly provided to the Department and, where appropriate, to BHP Billiton.
- In September 2004 the Administrator provided a large report to the State Government on the operations of Council and the community under the Indenture. The 2004 Shaping our Future Report, although now slightly out of date in some respects, addresses complex issues and is being used as a briefing document to inform consideration for the current proposed expansion.

- PIRSA is required to approve Council's budget on an annual basis and as such has detailed knowledge not only of the operational requirements but also strategic direction. As such all of the budget decisions are by implication endorsed by the State Government and BHP Billiton. Historically budget results have always been in accordance with those approved.
- The Government has encouraged the Council to maintain a strong rating effort. This has been undertaken with water, sewerage and local government rates increasing by around 10% per annum over a number of years. Electricity prices have been retained around the average Adelaide increases during this period.
- Due to its remoteness Roxby Downs operates in a high cost environment. Recent labour increase across the Board will be a significant impediment to Council as Council operates all of its external functions by external contract where prices and labour skills are significantly affected by what is offered by BHP Billiton. Foreshadowed 85% increases in external labour for water, sewerage and electricity contactors are cases in point.

3. DISCUSSION

The position of Administrator is politically a difficult one to perform as all decisions are legally made and enacted by one recognisable individual who must take the brunt of any criticism.

A number of measures exist to ensure that the performance of the Administrator is appropriate. Some substantial bodies of work are also in progress to further assure Government that governance of Roxby Downs is adequate and to inform Government in ensuring that appropriate and relevant local government arrangements are in place for the future.

3.1 Existing Measures

The Administrator regularly consults with a range of expert practitioners from State and Local Government sources and, where appropriate, BHP Billiton.

3.1.1 Oversight by PIRSA and BHP Billiton

The Indenture parties (PIRSA, on behalf of the State Government, and BHP Billiton) maintain an appropriate level of oversight over the Council's operation. Both parties are responsible for funding half the approved deficit each year, so have a keen interest in ensuring the Council is run efficiently and the deficit is kept to an acceptable level.

In addition, given the Indenture has been committed to the Minister for Mineral Resources Development, PIRSA maintains oversight on the activities and performance of the Council in order to effectively advise the Minister on matters arising under the Indenture.

3.1.2 Sources of legal advice to underpin decisions

Due to the complex legal environment it operates in, the Council frequently obtains expert legal advice on a whole range of matters, on which to base its decisions. The Council gets legal advice from Wallmans Lawyers on local government matters and from Norman Waterhouse Lawyers on commercial matters. Both legal firms are highly esteemed in their respective fields of expertise.

The Council undertakes thorough project reviews before making final decisions or allocating budget expenditures.

3.1.3 Strategic Local Government Relationships

The Council maintains close working relationships with a number of other Councils within South Australia. It has formed a strategic relationship with the Salisbury Council on matters such as asset management and long-term planning. The Council sources its development planning expertise from the Whyalla Council.

3.1.4 Independent Audit

The Council is required to have a full independent audit of its financials each year. Dean Newbery and Partners has performed that role for a number of years.

The Council's financial statements are generally supported by the Auditors without qualification. The Auditors do however regularly make suggestions for improvement. The Council usually adopts such recommendations fully.

3.2 **Work in Progress**

3.2.1 Joint PIRSA/BHPB Review of Financial Performance

In agreement with BHPB, PIRSA has recently engaged a consultant, expert in local government matters, to provide an independent view with regard to the financial performance (including the level of deficit funding) and legislative compliance of the Council. Mr John Comrie of JAC Comrie Pty Ltd, has been selected. Mr Comrie has extensive relevant expertise, having been an elected councillor, as head of the Local Government Association of SA, and in recent years as the Executive Director of the South Australian Government's Office for State/Local Government Relations. A key focus of this consultancy is forecasting and options for management of the Council deficit. The Service Brief for the consultancy is attached (Attachment 1).

3.2.2 Council Reference Group

As recommended by the consultant, a Reference Group is being constituted to provide oversight to the Administrator. Terms of Reference are in preparation but will include:

- Strategic advice
- Budget review
- Administrative review
- Government/BHPB liaison

The group will include representatives from the BHPB Indenture negotiation team, PIRSA, Office for State/Local Government Relations and BHP Billiton, along with a legal expert in local government operations.

3.2.3 Separate Government Reviews to Inform Indenture Negotiations

In order to properly inform the on-going Indenture negotiations between the State and BHP Billiton, PIRSA is currently scoping out further bodies of work related to the current and future operations of local government in Roxby Downs.

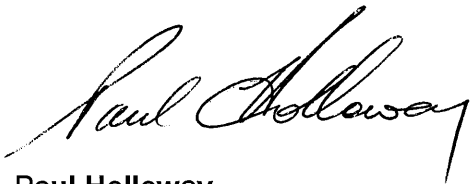
These will include analyses of issues such as:

- Relationship between Roxby Downs Council and nearby unincorporated areas;
- Review of Council Governance arrangements; and
- Review of land development arrangements.

4. RECOMMENDATIONS

It is recommended that Cabinet notes:

- 4.1 That appropriate and extensive controls are in place to ensure that local government performance in Roxby Downs is of a high standard.
- 4.2 That PIRSA and BHP Billiton have initiated an external consultancy to audit the financial performance of the Roxby Downs Council, with a view to demonstrating that the Council deficit is properly managed.
- 4.3 That, in order to properly inform the Indenture negotiations between the State and BHP Billiton, PIRSA is currently scoping out separate bodies of work related to the present and future operations of local government in Roxby Downs. The work is likely to be the subject of a separate consultancy, and is expected to include a review of the following:
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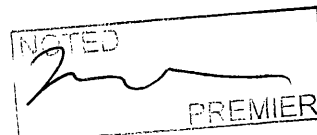
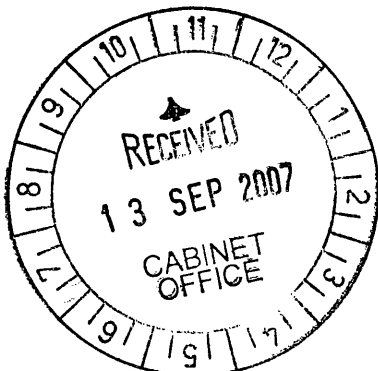


Paul Holloway
Leader of the Government in the Legislative Council
Minister for Police
Minister for Mineral Resources Development
Minister for Urban Development and Planning

Date: 12/9/2007

In Cabinet

17 SEP 2007



SERVICE BRIEF

CONSULTANCY TO REVIEW FINANCIAL AND GOVERNANCE ASPECTS OF OPERATIONS OF THE ROXBY DOWNS COUNCIL

The partners in the Olympic Dam Indenture, BHP Billiton and the Department of Primary Industries and Resources (PIRSA), seek to appoint a consultant to undertake the following scope of works.

1. PROJECT SCOPE

It is required that the consultant performs the following tasks:

- Analyse and report on the conformance of the Roxby Downs Council with the requirements of the **Local Government Act 1999**, as modified by the *Roxby Downs (Indenture Ratification) Act 1982*.
- Review the financial and business practices of the **Council**. The financial analysis is to include:
 - Accounting, record keeping and auditing practices
 - Benchmarking against characteristics of other relevant **SA Councils**
 - Revenue raising effectiveness
 - Arrangements for asset management, depreciation and capital replacement.
 - Borrowing capacity and initiatives
 - Operation of major businesses (Roxby Power and Roxby Water).
- Conduct a structural analysis of the **Council**, including:
 - Roles and functions
 - Services provided (range and level) and other initiatives,
 - Staffing levels
- The work will involve a visit to Roxby Downs and Olympic Dam to interview relevant Council and BHPB staff.

2. PRINCIPAL DOCUMENTS INFORMING CONSULTANCY

- i.) Council Annual Report 2005/06
- ii.) Audited **Financial Statements** 2005/06, 2004/05
- iii.) Roxby Downs **Community Plan** – latest version
- iv.) Roxby Downs **Strategic Plan** – latest version
- v.) *Roxby Downs (Indenture Ratification) Act 1982* (selected sections)

3. TIMEFRAME AND DELIVERABLES

It is proposed that this consultancy will commence in April 2007. The consultant will be required to produce the following deliverables:

- Draft Report - 4 weeks from commencement.
- Final Report - 2 weeks after formal feedback on draft report.