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MINUTES forming ENCLOSURE to

MRMCS07/007

TO: THE PREMIER FOR CABINET TO NOTE


RE: WATERWORKS (POMANDA ISLAND TEMPORARY WEIR) AMENDMENT BILL 2007

1. PROPOSAL

That Cabinet:

- 1.1. Note and discuss the draft *Waterworks (Pomanda Island Temporary Weir) Amendment Bill 2007 (Attachment 1)* which may be necessary to facilitate the construction and removal of a temporary weir across the River Murray at Pomanda Island, 10 kilometres downstream of Wellington.

2. BACKGROUND

- 2.1. The Murray-Darling Basin, including the River Murray in South Australia, is currently experiencing the worst drought period on record. Inflows to the Murray-Darling Basin are extremely low and coupled with the extremely low storages in the Mount Lofty Ranges reservoirs there is a real risk in 2007-08 that there will be limited water available for urban and other uses.
- 2.2. The current River Murray water resource situation will require some difficult decisions to be made and measures to be implemented in extremely short timeframes, including the possibility of constructing a temporary weir 10 kilometres downstream of Wellington, at Pomanda Island.
- 2.3. On Monday, 29 January 2007 Cabinet was advised of the Minister for the River Murray's intention to shorten the Cabinet Submission process for the drafting and introduction to Parliament of the draft *River Murray Drought Bill 2007*.
- 2.4. Parliamentary Counsel drafted the *River Murray Drought Bill 2007*. Key Ministers involved considered the draft Bill and discussed options for the best approach to deal with emergency measures that may be required in the worst-case scenario where River Murray water supply to Metropolitan Adelaide and country areas would be at serious risk, i.e. the inability to supply an essential service. 10 Legal professional privilege

- 2.5. As a result of the discussions and legal advice, subsequent legislation was drafted – the attached draft *Waterworks (Pomanda Island Temporary Weir) Amendment Bill 2007*.

3. DISCUSSION

3.1. The draft *Waterworks (Pomanda Island Temporary Weir) Amendment Bill 2007* provides for the:

- 3.1.1. amendment of section 33A of the *Waterworks Act 1932* to give SA Water power to lessen or discontinue supply on the basis of water quality; and to enable SA Water, in certain circumstances and on publication of a notice, to supply non-potable water, and to provide SA Water with immunity from liability in respect of such supply.
- 3.1.2. addition of a schedule to the *Waterworks Act 1932* (Schedule 2) providing for the construction and removal of a temporary weir at Pomanda Island, 10 kilometres downstream of Wellington. In summary, Schedule 2 provides for the following.

3.2. **Construction and removal of a temporary weir at Pomanda Island**

- 3.2.1. The Minister is empowered to construct a weir in the River Murray watercourse at Pomanda Island, 10 kilometres downstream of Wellington and must ultimately remove the weir.
- 3.2.2. The weir must be constructed in two stages: commencement, and operation/completion. Work on the completion (or closure) stage of the weir would only commence if under minimum inflow conditions the Murray-Darling Basin Commission issues a prediction that, at some time within the following 8 months, the average water level in the Lower Lakes will be -1.2m AHD or lower.
- 3.2.3. The weir must be constructed so as to be capable of being removed. Work to remove the weir must commence at a time to be determined by the Minister. In making that determination, the Minister must have regard for:
 - predicted lake levels for the following 12 months;
 - predicted inflows from the River Murray into SA for the following 12 months; and
 - the aggregate volume of water stored in the four major Murray-Darling Basin Commission storages.
- 3.2.4. The weir must be completely removed as soon as practicable following a determination by the Minister and this would involve staged removal based on the above triggers.
- 3.2.5. For the purposes of constructing and removing the weir, the Minister may construct and remove any works and undertake any measures as the Minister thinks fit.

3.3. **Related powers**

- 3.3.1. To enable the Minister to undertake necessary works and measures to construct and remove the weir, the Minister may exercise the following

related powers to:

- enter onto, and temporarily occupy, land for specified purposes;
- acquire land by agreement or in accordance with the *Land Acquisition Act 1969* (with the power to abridge the usual notice periods);
- obtain extractive minerals by agreement with a mine operator or otherwise at the direction of the Minister, but in either event for market value and with immunity provided to the mine operator against any resulting third party action (eg for breach of contract);
- suspend by-laws; and
- close roads.

3.4. Immunity

- 3.4.1. No liability will attach to the Crown for any adverse effects to property or water rights resulting from act or omission undertaken in furtherance of a function or power under Schedule 2.

3.5. Interaction with other Acts

- 3.5.1. Given the nature of the emergency, the Act will suspend or vary the operation of a limited number of other relevant Acts in order to truncate, speed up or avoid the need for compliance with the usual approval processes under that legislation.
- 3.5.2. However, if action proposed by the Minister in respect of such works would be directly inconsistent with one of those Acts, then the Minister must consult with the Minister responsible for administration of that Act. If agreement cannot be reached on the matter, the Minister may not proceed without the approval of the Governor. This mechanism is designed to ensure a whole of government approach.

3.6. Development Act

- 3.6.1. The weir will proceed on the basis that it is a temporary work by the Crown, required in an emergency situation to maintain essential public services, and therefore no application for approval is required under s.49 of the *Development Act 1993* or any other provision of that Act and no notice to a council is required.

3.7. Consultation

- 3.7.1. While all of the issues to be addressed by special legislation have been discussed by Chief Executives at the Water Security Task Force, at this stage there has been no formal consultation with agencies on this particular draft Bill. The Bill has been jointly prepared by the Department of Water, Land and Biodiversity Conservation and SA Water in consultation with key Ministers.

4. **SUMMARY**

- 4.1. That Cabinet note and discuss the draft *Waterworks (Pomanda Island Temporary Weir) Amendment Bill 2007 (Attachment 1)* which may be necessary to facilitate the construction and removal of a temporary weir across the River Murray at Pomanda Island, 10 kilometres downstream of Wellington.

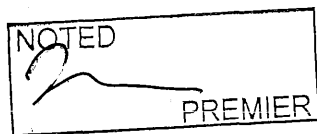


Karlene Maywald
MINISTER FOR RIVER MURRAY
MINISTER FOR WATER SECURITY

26 February 2007

In Cabinet

26 FEB 2007



Draft bill prepared by Parliamentary Counsel

11 pages removed

Exempt clause 10(1) – legal professional privilege