

Productivity Commission  
**SUBMISSION COVER SHEET**  
(not for publication)



Australian Government  
Productivity Commission

Please complete and submit this form with your submission to:

Urban Water Inquiry  
Productivity Commission  
LB2 Collins Street East  
MELBOURNE VIC 3165

or

By facsimile (fax) to:  
Carole Gardner (03) 9653 2302  
By email: urbanwater@pc.gov.au

Name:

*Richard J Koerner*

Organisation:

(individuals please write 'self')

*Self*

Position:

*Former external director MWS Advisory  
Board of Treasury/APP/PA*

Street address:

Suburb/City:

Postal address:

Suburb/City:

Email address:

Mobile:

Please note:

*Carole Gardner*  
*Rich Baker*

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Officer: Greg Laverty  
Direct Telephone: (07) 54418200  
Response Address: Nambour Office  
Email: greg.laverty@sunshinecoast.qld.gov.au  
Our Reference: Filenet  
Your Reference

24 February 2009

Mr Richard J Koerner

*Please consider together  
with attachments "A"  
and "J" of Submission #7.*

Dear Mr Koerner

I refer to your letter dated 29 January 2009 and provide the following comments:

1. The shareholder return is based on assets rather than connections. The reasons for the differences between the water businesses are twofold.

Firstly as part of the State Government's water reform program bulk water assets were transferred from Council. There was a substantial difference in the portion of the businesses that were transferred – MWS (4%), Caloundra (11%) and Noosa (20%). The percentage of the asset base left for calculating the return in MWS is obviously much higher than the other two.

Secondly the other Councils returns have been based on much lower rates than that of MWS. The returns for the other Councils range between zero and just over 1%.

2. There are no forward projections for Maroochy Water Services (MWS). MWS along with the other two Council's former businesses is being consolidated into Sunshine Coast Water. Figures for the consolidated business are only available for the next financial year as the responsibility for running water and sewerage operations will no longer be held within Council after 30 June 2010.
3. Related to point 2 the pricing of the combined water and sewerage businesses were consolidated not separately calculated for MWS. However, there were no concerns in relation to MWS pricing levels and returns during the recent due diligence and financial evaluation process by the Queensland Government to determine the compensation payment made for the transfer of bulk water assets.

Yours faithfully



GREG LAVERTY  
EXECUTIVE DIRECTOR FINANCE & BUSINESS

cc Mayor Bob Abbot

Please consider in conjunction with attachment "A" of Submission #7 and notes on page 15 of

grl:mxp

Greg Laverty

(07) 5441 8212

(07) 5441 8036

lavertyg@maroochy.qld.gov.au

AEC's analysis

22 March 2004

Mr Gerald Schmidt  
Queensland Treasury  
GPO Box 611  
BRISBANE QLD 4001

Dear Mr Schmidt

**RE: WATER PRICING COMPLAINT AGAINST MAROOCHY SHIRE COUNCIL**

I refer to your letter of 12 February 2004 (Ref: TRO-03552). I have emailed you a copy of the data request form with comments on each of the areas. I have noted on the form the following attachments, which I have included:

1. Details of donated and subsidised assets
2. Operating, maintenance and administrative costs
3. Analysis of charges by customer grouping
4. Public consultation strategy for changes to waste water pricing methodology
5. Copies of newspaper articles from last week.

While I understand that these articles are clearly not part of your investigation I would like to draw your attention to comments reportedly made by Mr Richard Koerner.

On page two of the first article Mr Koerner claims that overcharging has clearly occurred. He based this on the argument that Council has artificially loaded up it's balance sheet with working capital. I refer you to page 30 of the Prices Oversight report prepared by AEC. Towards the bottom of this page it states that working capital of 5% has been used in the pricing assessment. This equates to \$2.567 million in working capital not up to \$42.2 million as quoted by Mr Koerner. Mr Koerner was present at both presentations by AEC to Council and at Board meetings where this report was discussed. He would be well aware of the calculations of working capital and I am at a loss as to how he could publicly quote information, which is completely incorrect.

Towards the end of the second article, Mr Koerner claims that Council had revalued assets by changing depreciation schedules from 80 years to 150 years.\* Apart from changes to useful lives having no impact on the valuation of assets I draw your attention to pages 5 and 6 of the John Wilson and Partners report that I emailed on Friday 19 March 2004. This is the basis of the asset revaluation and these pages have the useful lives of both water and sewer assets and show again that Mr Koerner's claims are clearly incorrect.

\* In fact the revaluation was based on NPV of future cash flows and MWSAB was never informed of adoption of this approach.

According to my notes from our meeting of 4 March 2004 that covers the action items that I had. If there is anything further you require or question you may have don't hesitate to contact me.

Yours faithfully

GREG LAVERTY  
GROUP MANAGER, FINANCE

CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

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BRISBANE QLD 4001

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## COMPLAINT LODGEMENT FORM

NAME (IN FULL): PETER M. BROWN - PRESIDENT COOLUM BEACH PROGRESS AND RATEPAYERS ASSOC. INC. (CBP&RA). MALE FEMALE

DATE OF BIRTH: 29 APRIL 1937

DO YOU IDENTIFY YOURSELF AS AN ABORIGINAL PERSON OR A TORRES STRAIT ISLANDER?

Yes  No

IF YES, WHAT DO YOU IDENTIFY AS?

DO YOU IDENTIFY YOURSELF AS BEING PART OF ANY OTHER ETHNIC OR CULTURAL GROUP?

Yes  PLEASE SPECIFY:  
No

IS ENGLISH THE LANGUAGE SPOKEN AT YOUR HOME?

Yes  No  PLEASE SPECIFY OTHER LANGUAGE SPOKEN:

CONTACT DETAILS: WHILST OVERSEAS UNTIL 3 JUNE 2006, c/o R.J.KOERNER TREASURER CBP&RA

Address: [REDACTED]

Home telephone: [REDACTED]

Business telephone: [REDACTED]

Mobile telephone:

E-mail address: [REDACTED]

NAME OF PERSON COMPLAINED ABOUT, IF KNOWN: HON. DESLEY BOYLE MINISTER LOCAL GOVERNMENT AND PLANNING, MINISTERS FOR THE QUEENSLAND COMPETITION AUTHORITY (HON. PETER BEATTIE PREMIER, AND HON. ANNA BLIGH TREASURER)

DATE OF INCIDENT: CORRESPONDENCE (REF: TRO - 10952) OF 16 JUNE 2005.

TIME OF INCIDENT:

LOCATION OF INCIDENT: N/A

SUMMARY OF COMPLAINT: (cont. over page if necessary)

**Possible Monopoly Pricing Abuse**

Correspondence exchanged between the CBP&RA, Maroochy Council and responsible State Government entities suggests an ongoing cover-up by Maroochy Council and the Ministers for the Queensland Competition Authority ( Premier and Treasurer) has resulted in pricing abuse by Maroochy Water Services (MWS) costing residents over \$50 million since 1998/99. This is due to water and sewerage charges being set above the ceiling levels permitted by the Local Government Act and Financial Standard.

Potential for monopoly pricing abuse was first raised by the MWS Advisory Board in 2002, and formally communicated to Council in Advisory Board Minutes of the March 2003 meeting. The Advisory Board was later dissolved at short notice in an emergency meeting of Council on 10th December that year.

The CBP&RA petitioned the Department of Local Government for a prices oversight investigation by the Queensland Competition Authority in May 2003. However last June, after some twenty months of deliberations by Queensland Treasury, the Premier and Treasurer declined to refer the matter to this independent statutory body specifically set up under National Competition Policy to investigate such complaints.

Treasury acting as advisors to the Premier and Treasurer (Hon. Peter Beattie MLA) is not an independent agency and cannot be totally objective in examining allegations involving other State Government agencies.

Manipulation of annual profits and regulatory assets of MWS by Council seem to have been accepted without detailed scrutiny by Treasury permitting overcharging practices to continue in 2003/04, 2004/05 and costing Maroochy residents an additional \$.18 million or more.

Council's Budget and forward estimates for 2005/06, 06/07 and 07/08 suggest overcharging will continue. The Queensland Parliamentary Public Accounts Committee, The Department of Local Government and Planning, *not a 600 Financial Standard* and Queensland Audit Office have individually declined to intervene in this matter. Meanwhile monopoly pricing abuse and serious failures in financial governance by both Local and State Government entities continue.

*How Dept. Natural Resources & Mines oversight of MWS The Water Act Total Management Plan's Financial data! Business Plan*

HAVE YOU REPORTED THIS MATTER TO ANY OTHER DEPARTMENT/AGENCY?  YES /  NO

*2002-2005*

IF SO, WHICH DEPARTMENT/AGENCY (SUPPLY CONTACT DETAILS)?

QPS:

Ombudsman:

Other: Queensland Audit Office (J.P.Beh Director of Audit), Chair  
Parliamentary Accounts Committee ( Gary Fenlon M.P.)

WITNESS AND WITNESS CONTACT DETAILS:

Name:

Address:

Contact telephone numbers:

EVIDENTIARY MATTERS:

Have injuries been photographed?

Have medical services been required?

Have statements been made?

OTHER RELEVANT INFORMATION YOU WISH TO PROVIDE:

ENCLOSED BACKGROUND CORRESPONDENCE.

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WHAT IS YOUR EXPECTED OUTCOME?

TIMELY REFERRAL OF THE PRICES OVERSIGHT INVESTIGATION OF MAROOCHY SHIRE COUNCIL TO THE QUEENSLAND COMPETITION AUTHORITY BY THE MINISTERS - QUEENSLAND COMPETITION AUTHORITY (PREMIER AND TREASURER).

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IF APPROPRIATE, DO YOU AGREE TO YOUR COMPLAINT BEING REFERRED TO ANOTHER AGENCY?

YES/  
 NO

OMBUDSMAN

---

  
.....  
SIGNATURE

13/4/2008  
.....  
DATE

CRIME AND MISCONDUCT COMMISSION

PK 21/4/2011

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Brisbane Qld 4001

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Our Reference: MI-06-11317/KMS

19 November 2007

*Please consider as  
an addendum to  
Submission # 84.*

OFFICE OF THE  
Assistant  
Commissioner  
Misconduct

Level 3, Terrica Place  
140 Creek St  
(Cnr Creek and Adelaide)  
Brisbane, Queensland

Mr Peter Brown  
Secretary  
Coolum Residents Association Inc  
PO Box 121  
COOLUM BEACH Q 4573

Dear Brown

**RE: CONCERNS ABOUT THE MAROOCHY SHIRE COUNCIL**

Thank you for your letter of 1 October 2007 in which you raised concerns about the Maroochy Shire Council. The CMC is also in receipt of correspondence from The Hon Alex Somlyay, the Federal Member for Fairfax, about your concerns.

We have carefully considered the information you gave us in your letter and that provided by Mr Somlyay.

As you are aware, the CMC has previously considered the Association's concerns which we understand to be as follows.

- The Maroochy Shire Council has indulged in 'pricing abuse' in relation to water rates within the Maroochy Shire. More particularly, it is alleged that water and sewerage rates are set above the ceiling standard as permitted by the Local Government Act and Financial Standards Act.
- The Association petitioned the Department of Local Government for a prices oversight investigation by the Queensland Competition Authority in May 2003. It is claimed this request made by the Association was not referred by the Premier or the other Ministers to the independent statutory body which is specifically set up under the National Competition Policy to investigate such complaints.
- The decision by the State Government not to refer the Association's concerns to the National Competition Authority was erroneous given it was relying on misleading information provided by the Maroochy Shire Council.

We also understood that the Association has received advice from the State Government that your concerns were not referred to the Queensland Competition Authority because it had been determined that the Maroochy Council has not set the water sewerage rates above the ceiling standard as permitted by the legislation.

We further note that the Queensland Treasury has also advised the Association that its review of Maroochy Water Services' financial performance was completed in early



2007. The CMC has not been advised by Queensland Treasury of any possible official misconduct concerns arising from that review.

As you know, the CMC has jurisdiction to investigate possible 'official misconduct'. I remain of the view that your Association's concerns do not raise a suspicion of official misconduct on the part of the Premier, any Minister or officer of the Maroochy Shire Council.

Should you wish to pursue your concerns, the Association has the option of referring them to the Ombudsman for such action, if any, as the Ombudsman may consider warranted. The Ombudsman also has an obligation to notify the CMC of any suspected official misconduct revealed by any inquiries conducted by his Office.

While I appreciate the Association's concerns, the CMC is unable to take any action.

Yours sincerely



**HELEN COUPER**  
Director  
Complaints Services



Our ref: 2009/01549

16 November 2009

Mr Richard Koerner



Dear Mr Koerner

### **Your complaint against the Sunshine Coast Regional Council**

I refer to your complaint to us about the Sunshine Coast Regional Council's (Council) water and sewerage charges for Maroochy Water Services (MWS).

I have now completed my preliminary inquiries in relation to your complaint with Council and Queensland Treasury (Treasury) and write to advise you of my preliminary views.

### **Background**

MWS was declared a government monopoly business activity under Part 3 of the *Queensland Competition Authority Act 1997* in June 2001.

In late 2001 the former Maroochy Shire Council (MSC) commissioned a review of MWS water and wastewater prices to ensure MWS were setting prices in accordance with legislative and regulatory requirements. MWS water and wastewater prices were frozen at their 2001-02 levels while the study was undertaken. The outcome of the preliminary pricing investigation was presented to MSC and the MWS Advisory Board in March 2003. It highlighted a number of areas that required further study prior to any decisions being made on MWS pricing levels, including an optimisation assessment of water and wastewater assets.

The MWS Advisory Board also made a recommendation in March 2003 that a concern be expressed to MSC that the pricing assumptions in the 2003-04 Business Plan budget had the potential to cause MWS to exceed Queensland Competition Authority (QCA) revenue guidelines. Whether the MWS Advisory Board's recommendation was related to the outcome of MSC's preliminary pricing investigation into MWS is unknown.

In May 2003 the Coolumb Beach Progress and Ratepayers Association wrote to the Minister for Local Government and Planning requesting MWS service charges to be independently investigated by an appropriate state government agency. The concerns expressed included:

- the valuation of MWS's asset base (in particular, sewerage assets and level of working capital)
- high water and sewerage charges in comparison with other councils, and

- a loss of transparency in financial reporting following MSC's decision to dissolve the MWS Advisory Board.

The Coolum Beach Progress and Ratepayers Association's request was forwarded to Treasury in December 2003, and in February 2004 MSC was advised Treasury had made a decision to investigate MWS pricing levels.

MSC had undertaken further work on its own pricing investigation between March 2003 and February 2004, including a revaluation of MWS assets and a review of the rate of return on capital. However, following Treasury's advice it decided to cease work on its pricing investigation until the complaint was resolved. The price freeze at 2001-02 levels was maintained.

Treasury's investigation was completed in mid 2005. It found that MWS's actual rate of return on assets varied between 7.7 to 9.0 per cent over the years 2000-2003 and that this rate of return was not excessive and was within the reasonable range, although at the high end, when compared with a range of reasonable returns of 8.0 to 8.6 per cent.<sup>1</sup>

On the basis of the outcome of Treasury's investigation, in June 2005 the Ministers for the QCA made a decision not to refer the issue of MWS service charges to the QCA but instead recommended that the MSC commission an optimisation study to ascertain whether the MWS asset base needed to be adjusted. In coming to their decision the Ministers noted Treasury's advice that the revaluation of MWS assets in 2003 and the extent of optimisation applied in the analysis was considered fair and reasonable by MSC's external auditors and consistent with accepted regulatory methodology. The Ministers' decision was to remain subject to review.

MSC advised Treasury in May 2006 that the optimisation study would be commenced in June 2006 and expected it to be completed by December 2006. However, in December 2006 MSC advised Treasury that it had decided not to prepare the optimisation study due to anticipated reforms to water arrangements in South East Queensland and limited organisational capacity/resources.

Upon receipt of MSC's advice, Treasury recommended to the Ministers for the QCA to reconsider referring MWS to the QCA for a prices oversight investigation. Given the substantial reforms occurring for local governments and water services across South-East Queensland, in August 2007 the Ministers for the QCA decided not to refer the matter to the QCA on the grounds that MWS's retail operations and charging would be reformed and monitored as part of institutional reforms to water supply in South East Queensland.

MWS was consolidated into Sunshine Coast Water (SCW), a commercial business unit of Council, following the local government amalgamations in March 2008 in which MSC was amalgamated with the former Noosa City and Caloundra City Councils.

As part of the South East Queensland water reforms the State assumed ownership of all bulk water supply, transport and water treatment functions of MWS in early 2008 resulting in Council having to purchase bulk water from the new SEQ Water Grid Manager (a State statutory authority) from 1 July 2008 at a substantially higher price set by the Queensland Water Commission.

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<sup>1</sup> No analysis was made by Treasury of the allegations of a loss of transparency of financial reporting as this was outside the scope of Treasury's analysis.

From 1 July 2010 the following responsibilities will cease to be Council's responsibility and will be placed in the hands of a local government owned retailer which is a separate legal entity from Council:

- sell water supply and sewerage disposal services to Sunshine Coast households and businesses
- purchase treated water from the SEQ Water Grid Manager
- contract and pay the new distribution entity<sup>2</sup> to deliver water to their customers, and
- contract and pay the new distribution entity to collect, treat and dispose of sewerage from their customers.

### **Your complaint**

Your complaint is that Council has failed to perform:

- its statutory prices oversight obligations when setting MWS water and sewerage charges for the 2008-09 financial year and developing forward estimates of MWS water revenue, and
- the optimisation study of MWS recommended by Treasury in 2005.

You allege as a result of the above that MWS service charges are set above the ceiling level limits permitted by the *Local Government Act 1993* and the *Local Government Finance Standard 2005* for commercial business units that are also natural monopoly service providers.

### **Material considered**

In the course of my review of your complaint I have considered your submissions in your correspondence to us, the documents you have provided, and Council's and Treasury's responses to my preliminary inquiries.

### **Council's response**

Council's position is that its water and sewerage prices setting methodology is consistent with legislative requirements and that it is actually undercharging in relation to full cost recovery. Council also considers that the optimisation study is no longer relevant in the context of the current reforms to water supply arrangements in South East Queensland.

Council believes its position is demonstrated by the following:

- Investigations by Treasury over the period 2003-05 found that MWS prices were not excessive with a return on assets at an acceptable level
- Council was not required to undertake any further action in relation to the optimisation study proposed by Treasury following discussions in 2006
- The independent business valuation conducted by the Queensland Government for stage 1 of the water reforms found no basis for overcharging and actually made an upward adjustment to revenues for the valuation process
- QCA's 2008 Retail Price Monitoring Investigation in the South East Queensland Urban Water Sector identified no issues in relation to Council's attribution of increases in water prices.

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<sup>2</sup> The new distribution entity will own all water and sewerage distribution infrastructure and be a separate legal entity from Council whose shares are owned by Council and the Moreton Bay Regional Council.

### *Water and sewerage charges*

In the period 2001-02 to 2007-08, MWS water consumption charges:

- remained the same from 2001-02 to 2005-06
- increased in 2006-07 to offset negative revenue impacts associated with reduced water demand, and
- increased in 2007-08 by CPI ahead of the bulk water assets takeover by the State Government.

The relevant price increase was 0.87/kL to 0-300kL = \$0.95/kL and >300kL = \$1.30kL.

In the same period, MWS wastewater charges:

- remained the same from 2001-02 to 2003-04
- increased over the period 2004-05 to 2006-07 as a result of the implementation of a new wastewater pricing policy (which reduced the extent of revenue collected from non-residential customers) and to offset negative revenue impacts associated with reduced water demands, and
- increased in 2007-08 by CPI ahead of the bulk water assets takeover by the State Government.

The relevant price increase was \$451.70 to \$494.00.

No price increases during the period 2001-02 to 2007-08 were made to increase revenue. Comparative information of MWS water prices with median South East Queensland prices over these years also shows that MWS water prices were well below average in the region, although MWS wastewater prices were slightly above average.

In the 2008-09 budget Council 'harmonised' the water charging structure from the three previous different charging structures applied by the former councils. Leading into the budget process Council reviewed the revenue levels and anticipated full cost recovery targets to evaluate each former council's full cost recovery position. The assessment indicated that to reach a full cost recovery pricing position consolidated Council water and wastewater revenues needed to be increased by 28 per cent. In relation to the MSC area, the extent of increase was 7 per cent for water and 37 for wastewater. If an optimisation study was undertaken and the asset base reduced by 10 per cent the extent of increases were still 4 per cent for water and 32 per cent for wastewater. This assessment utilised the price path to full cost recovery using asset values based on audited financial information. The increases reflect the fact that despite considerable increases in capital and operating costs, the period in which MWS water and wastewater prices were frozen resulted in MWS revenues not being able to keep pace with the level of full cost recovery and they therefore declined considerably in real terms.

Council also took into account the impact of the South East Queensland water reform process when setting prices for 2008-09. As part of the compulsory acquisition of bulk water assets of Council (including MWS) an independent valuation of the assets of the water business was undertaken by the State Government. This was used to determine compensation to be paid to Council as well as the basis for Council's future shareholding in the distribution business and future retail water prices across South East Queensland. In order to ensure that prices were consistent with this methodology, Council adopted price increases for water and wastewater on the basis of recovering:

- the increase in bulk water charges from the State Government
- the increase in operating costs incurred as a result of cost inflation

- any additional capital investment made in infrastructure required to service the region.

The extensive due diligence process associated with the State Government acquisition of bulk water assets did not identify any concerns regarding MWS pricing levels relative to full cost recovery. In fact, an upwards adjustment was made to utility charge revenues in the business valuation process by the State Government to reflect the negative impact on business profitability (relative to full cost) of the pricing investigation undertaken between 2003-05 and Council's freezing of prices for a considerable period while the investigation was being undertaken.

The shareholder return on capital for the former councils' water businesses is reported in Council's 2008-09 Financial Statements as:

- CalAqua - \$1,809,000
- Noosa Water Services - \$1,810,000
- MWS - \$20,000,000.

The reasons for this are twofold. First, the shareholder return is based on assets not connections and the amount of bulk water assets transferred from Council to the State Government for each area was different (MWS was 4 per cent, CalAqua was 11 per cent, and Noosa Water Services was 20 per cent) resulting in the percentage for calculating the asset base for MWS being higher than the other two. Second, prior to the amalgamation Noosa Water Services and CalAqua had a much lower rate of return than MWS of between zero and 1 per cent.

#### *Optimisation study*

Following Treasury's request in June 2005 Council undertook network analysis for water supply and system capacity evaluations for certain wastewater catchments and additional studies into the appropriateness of internal service charges and other matters. Communication also continued between Council and Treasury regarding certain pricing principles during this time.

Detailed terms of reference were developed by Council and sent to selected tenderers in September 2006. The terms of reference required careful consideration by Council given that no regulatory precedent had been set by the QCA. The QCA indicated to Council it was unable to review or 'sign off' on the terms of reference due to a potential conflict of interest should it be requested to undertake the study. A successful tenderer was selected by Council in October 2006 at a cost in excess of \$100,000.

However, the process was then halted due to the South East Queensland water reforms takeover of bulk water assets from Council by the State Government and transfer of Council's remaining water assets to a new entity. Council met with Treasury in December 2006 to discuss the issue and the outcome of the meeting was that Treasury would advise Council in writing of whether an optimisation study was still required. Council followed up with Treasury in early 2007 and was informed that the Treasurer was still considering the matter. It has received no correspondence from Treasury regarding the matter since.

Council considers there would be no benefit to the community if the optimisation study was undertaken now given the South East Queensland water reforms.

## Treasury response

### *Water and sewerage charges*

Treasury has not taken any further monitoring or review of MWS's water and wastewater charges since it recommended the optimisation study in June 2005. It does not have access to sufficient information to provide an opinion on the 2008-09 charges. Further, with the amalgamation of MWS into Council, water and sewerage charges for 2008-09 would be considered for Council, not the historic local government areas with the larger region.

In July 2008, the QCA undertook a study of the prices of the 10 amalgamated South East Queensland local government water businesses supplied with bulk water by the SEQ Water Grid Manager. The scope of the QCA's investigation was restricted to reconciling retail charges to the increased cost of bulk water only, specifically:

- the extent to which increases in retail water prices were attributed by local governments to increases in bulk water grid costs, and
- whether the attributed increases went beyond that required to recover the increase in bulk water grid costs.

The results of the QCA's investigation were publicised in *Final Report Retail Price Monitoring on the SEQ Urban Water Sector Sunshine Coast Regional Council* (QCA Final Report).

The QCA Final Report indicated that while there was only a 2 per cent change in the bulk water price from 2007-08 to 2008-09 (\$683/ML to \$700/ML) residential water bills for households consuming 250kL per annum in the MSC area increased 18 per cent (\$390 to \$460). Based on Queensland Water Commission data the QCA's opinion was that bulk water increase for Council would have added \$9 to the 2008-09 water price. Council disputed the QCA's assessment and argued that the significant increase in its bulk water price (beyond that estimated by the Queensland Water Commission<sup>3</sup>), combined with inflation impacts, fall in water consumption, and the impact of the Maroochy price freeze, justified an even greater increase in water prices than those adopted by Council. Council also said that the Queensland Water Commission's bulk water price estimate of 2007-08 was not reflective of Council's actual cost/price and that comparisons could not be made between the residential water bills of Council and the three previous councils due to the adoption of uniform pricing by Council.

The findings of the QCA's Final Report were:

1. Council had made a number of statements in relation to increased costs resulting from the water reform process but had not attributed any specific portion of the increase to the retail water price to the increase in the bulk water price in its official budget documentation of media releases.
2. The QCA was unable to assess whether the attributed increase to retail water prices went beyond those required to recover the increase in bulk water prices as Council did not make a clear and unambiguous attribution of the specific portion of the retail water price increase to the increase in the bulk water price.

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<sup>3</sup> The Queensland Water Commission's estimate of the 2007-08 bulk water price was \$683/ML where Council considered that the bulk water price was closer to \$575/ML.

### *Optimisation study*

Treasury's strong view is that an optimisation study of MWS no longer remains a relevant factor for Council and would not provide value in the current water reform process for South East Queensland.

In 2007, Treasury engaged KPMG to conduct a whole-of-supply-chain asset valuation based on a discounted cash flow methodology. This valuation was used to establish the value attributable to bulk assets designated for transfer to the new State-owned bulk water authorities. The asset valuation and regulated asset bases for the to-be-created distribution and retail entities is likely to be based on the KPMG valuation model, although this matter is still being discussed.

Previous advice from the Queensland Water Commission and Treasury to the Council of Mayors – South East Queensland has been to caution that it would not be in the public interest for a wide-spread revaluation of existing assets, which do not provide any additional service potential for consumers, to be the basis for a material price increase. Council of Mayors – South East Queensland has also been advised that the State Government will take a strong view that owners of existing water supply assets should not be taking actions that will result in substantial price shock for consumers, given the unavoidable price impact associated with the infrastructure under construction to respond to the Millennium Drought and secure the future supply necessary to provide for the region's growth.

### **Discussion**

#### *Water and sewerage charges*

Your concerns about the MWS service charges for the 2008-09 year are based on what you claim to be manipulation of the value of the MWS regulatory asset base and an excessive shareholder return on capital. You have alleged that Council has not followed the correct method in calculating the regulatory asset base – in particular, that it has not deducted debt allowing Council to double recover on what is a financing element of operating costs. You have also alleged the regulatory asset base data provided by Council to Treasury in 2004 was inflated and created a false picture of the shareholder return on capital (which was in reality much larger because of the actual smaller value of the regulatory asset base) and that the Treasury study is therefore flawed and cannot be relied upon.

Subsequent to your original complaint, you have also requested us to investigate Council's 2009-10 water prices as the budget papers indicate the return of the regulatory capital base for SCW will amount to \$26.5M – an increase on the \$24M total in the 2008-09 budget – whereas you estimate the permissible return is around \$10M. You have further suggested we should reconsider our decision not to investigate the Coolum Resident's Association's earlier complaint to us (reference no 2007/12552) relating to water prices for MWS for previous years as special circumstances prevented you from bringing that complaint within time.

After consideration of your submissions and Council's and Treasury's responses to this issue, my preliminary view is that there is insufficient evidence on which I could form an opinion that Council's actions in relation to its calculation of the regulatory asset base of MWS, and the affect of this calculation on water and wastewater service charges for 2008-09, are unlawful, unreasonable, unfair or otherwise wrong. My reasons for this are as follows.



1. Council's revaluation of MWS assets in 2003 was the result of its own internal pricing investigation undertaken to ensure that Council was complying with its legislative requirements.
2. The 2003 revaluation of MWS assets and the extent of optimisation applied in the analysis was considered fair and reasonable by Council's external auditors and consistent with accepted regulatory methodology.
3. MSC has requested advice from Treasury on the appropriate Weighted Average Cost of Capital to use for its business units, including MWS, in June 2003, July 2005 and July 2007.
4. Treasury's pricing investigation of MWS concluded that MWS was not earning an excessive rate of return and that the rate was within the reasonable range, albeit at the high end.
5. The due diligence process associated with the State Government acquisition of bulk water assets of MWS carried out by KPMG did not identify any concerns with MWS pricing levels relative to full cost recovery.
6. Water and wastewater prices were frozen by MSC at 2001-02 levels until 2004-05 for wastewater and 2006-07 for water and Council has provided reasons for the increases in the prices other than to increase revenue.
7. The water and wastewater prices for the 2008-09 year were attributed by Council to its assessment of full cost recovery for each former council area using asset values based on audited financial information and its consideration of the impact of the South East Queensland Water reforms.

On the basis of the above, I do not propose to investigate your allegation that Council has not performed its prices oversight obligations with respect to the 2008-09 or 2009-10 years under section 23(1)(f) of the *Ombudsman Act 2001* as I consider that any investigation is unnecessary or unjustifiable.

I also do not consider from my review of the material that any new information exhibiting special circumstances has been provided that would make me reconsider my previous decision not to investigate the issues raised in the Coolum Residents Association's previous complaint because it was out of time under section 20(1)(c) of the *Ombudsman Act 2001*.

#### *Optimisation study*

Our inquiries revealed that Council took significant steps in relation to the preparation for the optimisation study following Treasury's request in June 2005 but that discussions between MSC and Treasury in December 2006 resulted in no further action being taken. The internal Treasury review in relation to MWS scheduled to be undertaken following the optimisation study did not occur as a result of the optimisation study not being completed.

I am satisfied from the information provided by Council and Treasury that this is what occurred. I do not consider that there is any evidence to support your allegation that the optimisation study was performed but not released due to the findings being contrary to those desired by Council and Treasury, or that the 2007 internal Treasury study was completed. Due to the adoption of the tender process by Council (which terms of reference I have viewed), it is also clear that the optimisation study was not outsourced to Cardno MBK like previous optimisation studies, as you have suggested.

Council and Treasury have indicated that the optimisation study would no longer be of any value as:

- The assets of MWS are now being used differently as a result of the local government reform process
- The bulk water assets of MWS have been independently valued by KPMG as part of the State Government acquisition process and are no longer owned by Council
- MWS's remaining assets will be transferred to the new distribution entity by 1 July 2010 and the valuation used for these assets is likely to be based on the KPMG valuation model
- It would not be in the public interest for a revaluation of existing assets as it would not provide any additional service potential for consumers in light of the current South East Queensland water reform process.

My preliminary view is that Council's and Treasury's assessment of this issue is correct and that there would be no value in Council performing the optimisation study at this time. I do not propose to investigate this aspect of your complaint under section 23(1)(f) of the *Ombudsman Act 2001* as I consider that an investigation is unnecessary or unjustifiable.

### **Conclusion**

I invite you to make further submissions in relation to my preliminary views to assist our further consideration of your complaint. I will decide how we will proceed in light of any further submissions. If you do not make any further submissions within a reasonable time I will proceed to close the file.

If you have any queries, please contact Investigator Scott Edwards on (07) 3005 7000 or [ombudmsman@ombudsman.qld.gov.au](mailto:ombudmsman@ombudsman.qld.gov.au).

Yours faithfully



Craig Allen  
Assistant Ombudsman  
Local Government & Infrastructure Team



Our ref: 2009/01549

10 February 2010

Mr Richard Koerner



Dear Mr Koerner

### **Your complaint against the Sunshine Coast Regional Council**

I refer to your complaint to us about Sunshine Coast Regional Council's (Council) water and sewerage charges for Maroochy Water Services (MWS) and Sunshine Coast Water (SCW).

I also refer to your letters and emails to us of 24 November 2009, 16 and 21 December 2009 and 12 and 27 January 2010, and your telephone conversation with Investigator Scott Edwards on 19 November 2009.

### **Your further submissions**

You have raised the following matters in response to my letter of 16 November 2009 which set out my preliminary views in relation to your complaint:

1. In your opinion it is difficult for us to obtain an independent opinion in relation to the matters raised by your complaint from Council and Queensland Treasury (Treasury) as they are defending the position they have taken.
2. Mr Sean Andrews of the Queensland Competition Authority (QCA) is willing to provide assistance to us with our investigation of your complaint.
3. The findings of the AEC Group study 'Review of MWS Pricing Levels' presented to the MWS Advisory Board in February 2003 refute a number of statements attributed to Council and Treasury in my letter of 16 November 2009. Critical findings of the study were also ignored by Treasury in its preparation of estimates of MWS regulatory capital in its pricing investigation.
4. The advice of Rex W Sun Chartered Accountants dated 31 August 2005 highlights dangers in MWS water and sewerage infrastructure valuation methodologies arising from the use by MWS of consulting engineers such as John Wilson & Partners having an ongoing relationship with Maroochy Shire Council (MSC).
5. It is your understanding that the KPMG study relating to the State Government's acquisition of bulk water assets of MWS accepted without independent verification that all South East Queensland pricing levels were below ceilings set by provisions of the *Local Government Act 1993* and *Local Government Finance Standard 2005* and

employed an estimate of Maroochy Shire Council's cost of capital to calculate a value of the Regulated Asset Base.

6. The increases in MWS asset values from 2006-07 to 2007-March 2008 shown in your benchmarking studies (which you submitted to Council on 2 March 2009) appear directly counter to the advice of the Queensland Water Commission and Treasury to the Council of Mayors – South East Queensland that it would not be in the public interest for a widespread revaluation of existing assets to be the basis for a material price increase.

You have also said in your further correspondence to us that:

- the amalgamation of MSC and MWS into the Sunshine Coast Regional Council has failed to remedy your and the Coolum Residents Association's monopoly pricing abuse complaints
- the amalgamation of additional natural monopoly services into the new integrated distribution and retail entity for the Sunshine Coast Regional Council and Moreton Bay Regional Council (Unitywater) will result in further losses of transparency and exacerbate MWS' breaches of the *Local Government Act 1993* and *Local Government Finance Standard 2005*.

The affect of the amalgamation of MSC into SCW is considered in my letter of 16 November 2009 and in my response below. I do not intend to undertake any analysis of the affect of the amalgamation of SCW into Unitywater at this time. It is a matter of speculation as to the affect of this until it has occurred.

## Decision

Following consideration of your further submissions, in all the circumstances, I have made a decision to confirm my preliminary views in relation to your complaint.

The substantive reasons for my decision are set out in my letter to you of 16 November 2009. The reasons for my decision in response to your further submissions are set out below (following the numbering above).

1. We placed your claims to Council and Treasury. I agree that the explanations given by Council and Treasury in relation to the issues in your complaint are in accordance with the position they have taken. However, I do not consider that this means that the positions of Council and Treasury should not be considered, or accepted by us in preference to the position you have put forward.
2. We contacted Sean Andrews of the QCA. Mr Andrews informed us that although he may be able to assist us with our preliminary inquiries, the QCA would not be able to commit any resources for any analysis of MWS pricing in the absence of a Ministerial direction for a monopoly prices oversight under Part 3 of the *Queensland Competition Authority Act 1997*. He further noted that for the QCA to be able to assist us we would have to make a formal request to the QCA and it would have to make a decision whether or not to refer the matter to Treasury and the Ministers.

The matter for the QCA's involvement in any investigation by us is firstly in the hands of the QCA and, ultimately, the Ministers. The Ministers declined to refer the matters raised by your complaint to the QCA in both 2005 and 2007. Further, in the context of the current South East Queensland water reforms, I consider there would be limited value in the QCA undertaking an analysis of MWS or SCW pricing due to introduction of the new retail and distribution entity from 1 July 2010. I therefore do not intend to

approach the QCA or the Ministers in relation to the QCA assisting us with any investigation of your complaint.

3. I have not viewed the AEC Group report. As you suggest, it is possible that the report may have reached different conclusions than Council and Treasury have indicated in their responses to us. However, I do not consider that it is possible to say that just because Council and Treasury came to particular conclusions that may have been different to those reached in the AEC Group report that they did not have regard to its content.

From my review of the documentation, I consider the AEC Group report was considered by Council and Treasury as part of its pricing investigations of MWS. Indeed, parts of it were referred to by Greg Laverty of Council in his letter to Gerald Schmidt of Treasury of 22 March 2004 to refute claims you had reportedly made in relation to the calculation of working capital of MWS. I therefore do not intend to consider this matter any further.

4. Rex W Sun's advice concludes that, prima facie, it is more likely than not that the correct accounting treatment was applied to the 2002-03 asset revaluation of MWS and that such a significant transaction would be expected to have been scrutinized by the auditors. I consider this supports Council's statements to us that the asset revaluation was consistent with accepted regulatory methodology and considered fair and reasonable by Council's external auditors.

The advice also says that notwithstanding the correct accounting treatment being applied, there is scope to manipulate the historical and ongoing asset values (and therefore the actual return on assets) in the timing and methods of valuation applied. It highlights Council's 2003 and 2004 Notes to Annual Reports that state the current valuation is by internal expertise with assistance from various consulting engineers that have been used consistently over a period of time and have an ongoing relationship with MWS and recommends that further information in respect of historical and ongoing methodologies be obtained in order to conclude that proper and consistent valuation methods have been applied.

I do not find in the advice a statement to the effect that there are dangers in MWS's valuation methodologies from using consulting engineers with which MSC has an ongoing relationship as you suggest. Rather, I consider the advice shows that expert external assistance was provided to MWS with the valuation methodologies. In my opinion, this is an appropriate step to take for conducting such a valuation. I do not consider the fact that the consulting engineers may have an ongoing relationship with MSC is something that is cause for concern.

5. It is my understanding that KPMG conducted an independent whole-of-supply-chain valuation of water assets of the South East Queensland water businesses after an extensive due diligence process, and that this valuation was used to establish the value attributable to bulk assets designated for transfer to the new State-owned bulk water authorities. While it is possible that KPMG may have used an estimate of MSC's cost of capital to calculate a value of the Regulated Asset Base, I consider if KPMG had any concerns in relation to the valuation methodology used for such calculations that it would have been brought to the attention of Treasury by KPMG in their study.
6. The advice of the Queensland Water Commission and Treasury to the Council of Mayors – South East Queensland that it would not be in the public interest for a wide-spread revaluation of existing assets to be the basis for a material price increase was provided to us by Treasury in its comments on the usefulness of an optimisation study

being performed in the current climate. While I appreciate your benchmarking studies show an increase in asset values of MWS for the relevant period, Council has advised that water and wastewater charges were increased in 2006-07 to offset negative revenue impacts associated with reduced water demand and a result of the implementation of a new wastewater policy, and in 2007-2008 were increased by CPI ahead of the bulk water asset takeover by the State Government. Consequently, I do not consider that an investigation into the increase in asset values shown in your benchmarking studies is justifiable.

### **Conclusion**

After consideration of your further submissions, in all the circumstances, I have made a decision to confirm my preliminary views in relation to your complaint.

We will therefore not be undertaking any further investigation of your complaint, or the previous complaint of the Coolum Residents Association. Accordingly, the file will be closed.

Thank you for bringing this matter to our attention.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ca' followed by a long, sweeping horizontal line.

Craig Allen  
Assistant Ombudsman  
Local Government & Infrastructure Team



Our ref: 2010/02940

17 November 2010

Dr Richard Koerner  
[REDACTED]

Dear Dr Koerner

I refer to your letter dated 22 February 2010, in response to a letter dated 10 February 2010 from Mr Craig Allen, Assistant Ombudsman, Local Government and Infrastructure Team.

You had made a complaint to this Office about the water and sewerage charges imposed by the Sunshine Coast Regional Council (the Council) in respect of services provided by Maroochy Water Services (MWS) and Sunshine Coast Water (SCW). Mr Allen wrote to you to inform you of his preliminary views in respect of your complaint in a letter dated 16 November 2009. You responded by way of letters and emails to this Office dated 24 November 2009, 16 December 2009, 21 December 2009, 12 January 2010 and 27 January 2010. In his letter dated 10 February 2010, Mr Allen advised that this Office would not further investigate your complaint, or a previous complaint raising similar issues lodged by the Coolum Residents Association.

In your letter dated 22 February 2010, you request reconsideration of Mr Allen's decision and cite a number of grounds as the basis for your request.

### **Conduct of Review**

Under our *Procedure for Review of Complaints 2008* (the Procedure), a person is entitled to a review by an officer at a level equal to or more senior than the original decision-maker. I am an officer no less senior than Mr Allen.

While since your initial review request you have corresponded with Mr Forbes Smith, as Mr Smith is now Acting Ombudsman he has delegated to me the responsibility for considering your review request.

Consistent with our Procedure, the focus of a review is on the "*process, decision and explanation*" of the original decision-maker.

Before turning to your complaints, it is important to note that under the *Ombudsman Act 2001* no person or body can direct the Ombudsman as to how investigations should be conducted or whether particular complaints should or should not be investigated. Decisions about whether investigation of a complaint is justified are made by the Ombudsman and delegated officers, such as Mr Allen.

## Your original complaint

Your original complaint raised two issues which were identified in Mr Allen's letter dated 16 November 2009:

Your complaint is that Council has failed to perform:

- its statutory prices oversight obligations when setting MWS water and sewerage charges for the 2008-09 financial year and developing forward estimates of MWS water revenue, and
- the optimisation study of MWS recommended by Treasury in 2005.

You allege as a result of the above that MWS service charges are set above the ceiling level limits permitted by the *Local Government Act 1993* and the *Local Government Finance Standard 2005* for commercial business units that are also natural monopoly service providers.

You do not appear to have taken issue with this summation of your complaint.

I note that Mr Allen records in his letter dated 16 November 2009, that:

Subsequent to your original complaint, you have also requested us to investigate Council's 2009-10 water prices as the budget papers indicate the return of the regulatory capital base for SCW will amount to \$26.5M – an increase on the \$24M total in the 2008-09 budget – whereas you estimate the permissible return is around \$10M. You have further suggested we should reconsider our decision not to investigate the Coolum Resident's Association's earlier complaint to us (reference no 2007/12552) relating to water prices for MWS for previous years as special circumstances prevented you from bringing that complaint within time.

Mr Allen described the enquiries he had undertaken in assessing your complaint including the substance of the advice obtained from the Council and Queensland Treasury (Treasury).

Mr Allen advised you, in respect of the first issue, that:

After consideration of your submissions and Council's and Treasury's responses to this issue, my preliminary view is that there is insufficient evidence on which I could form an opinion that Council's actions in relation to its calculation of the regulatory asset base of MWS, and the affect of this calculation on water and wastewater service charges for 2008-09, are unlawful, unreasonable, unfair or otherwise wrong. My reasons for this are as follows.

Mr Allen identified seven reasons based on the evidence and information gathered during the course of his enquiries, which I need not repeat here.

Mr Allen went on to conclude that;

On the basis of the above, I do not propose to investigate your allegation that Council has not performed its prices oversight obligations with respect to the 2008-09 or 2009-10 years under section 23(1)(f) of the *Ombudsman Act 2001* as I consider that any investigation is unnecessary or unjustifiable.

I also do not consider from my review of the material that any new information exhibiting special circumstances has been provided that would make me reconsider my previous decision not to investigate the issues raised in the Coolum Residents Association's previous complaint because it was out of time under section 20(1)(c) of the *Ombudsman Act 2001*.



With respect to the second issue, concerning the conduct of an optimisation study recommended by Treasury in 2005, Mr Allen advised you of the information he had obtained concerning the steps taken to progress the conduct of the optimisation study and the circumstances in which it was decided not to proceed with the study. Mr Allen detailed the reasons why the Council and Treasury had advised that the optimisation study would no longer be of value. He concluded:

My preliminary view is that Council's and Treasury's assessment of this issue is correct and that there would be no value in Council performing the optimisation study at this time. I do not propose to investigate this aspect of your complaint under section 23(1)(f) of the *Ombudsman Act 2001* as I consider that an investigation is unnecessary or unjustifiable.

Mr Allen invited you to make further submissions in response to his preliminary views which, as noted above, you took the opportunity to do in a number of subsequent communications.

In his letter dated 10 February 2010, Mr Allen, summarised the matters raised by you in those submissions. Mr Allen advised you that after considering your further submissions he had decided to confirm his preliminary views in relation to your complaint. Mr Allen referred you to the reasons provided in his letter dated 16 November 2009. In addition, Mr Allen provided you further reasons for his decision which responded to your submissions in relation to his preliminary view.

### **Your review request**

In your letter dated 22 February 2010, requesting reconsideration of Mr Allen's decision, you raise the following arguments in favour of "*undertaking a thorough investigation of conflicting evidence from Maroochy Council, Queensland Treasury (Treasury) and the Queensland Crime and Misconduct Commission (CMC)*":

- the previous decision of the Ombudsman not to investigate a complaint by the Coolum Residents Association (CRA) [formerly the Coolum Beach Progress and Ratepayer's Association], communicated by letter dated 8 August 2008, was based on a flawed interpretation of the meaning of "review"
- it is unreasonable and incorrect for the Ombudsman to accept Council's advice about its prices oversight obligation without independent expert advice in relation to the calculations necessary to perform prices oversight monitoring
- it is unreasonable and incorrect for the Ombudsman not to "*go beyond*" the Treasury analysis of 25 September 2004
- the Ombudsman has not properly appreciated regulatory pricing principles, and therefore has not appreciated that Maroochy Water Services' (MWS) service charges have in fact been in excess of legitimate cost recovery ceilings, and in particular, all service price increases discussed on page 4 of the letter date 16 November 2009 were improper
- the Ombudsman has accepted Treasury advice given to the Ministers Queensland Competition Authority (QCA) in relation to actual returns on regulatory capital to MWS, which advice was flawed due to incorrect values of the regulatory capital base used in Treasury calculations
- the Ombudsman has failed to investigate the reasoning for the changed Treasury recommendation to the Ministers QCA in December 2006, despite the possibility that this arose from Maroochy Shire Council (MSC) providing misleading regulatory asset information to Treasury

- contradictory return on regulatory capital information relating to Noosa Water Services was not properly investigated, for example by consulting with the appropriate Council officer, and the issue of conflicting estimates has not been resolved
- financial transparency relating to service charges by MWS has been eroded from 2002-2003 onwards, and this prevents the performance of best practice and meaningful benchmarking
- your concerns about artificial manipulation of MWS assets date back to 2003, including that the cash component of working capital for the entire Council was progressively moved onto the balance sheet of MWS over the period 1998-1999 through to 2002-2003, and that no explanation has been provided for the downward revision of the MWS working capital component of assets
- the Ombudsmans' decision not to investigate is unreasonable and incorrect given the "*history of financial asset manipulation together with a culture of concealment demonstrated by the senior management of Maroochy Council*" and their subsequent refusal to conduct an optimisation study

In addition, you seek clarification in relation to a footnote on page 2 of Mr Allen's letter dated 16 November 2009. With respect to that request, I have perused Mr Allen's letter and note the text in the body of the letter refers to the outcome of a Treasury investigation completed in mid-2005. The note states:

<sup>1</sup> No analysis was made by Treasury of the allegations of a loss of transparency of financial reporting as this was outside the scope of Treasury's analysis.

Treasury initially conducted an analysis in 2004, the outcome of which was communicated to the CRA by the Ministers QCA in a letter dated 25 September 2004. In your letter dated 22 February 2010 you quote from that letter "*your concern that there is a decreased level of transparency in MWS's financial reporting ... was outside the scope of Treasury's analysis to investigate*". It is evident that following further correspondence from CRA Treasury's investigation was re-opened. Subsequent to Treasury completing its re-opened investigation in mid-2005, the Hon Terry Mackenroth, Acting Premier and Minister for Trade, wrote to CRA by letter dated 16 June 2005, to advise the outcome. I note that letter states in part:

The Coolum Beach Progress and Ratepayer's Association's letter dated 6 October 2004 expressed concerns about the 30 June 2003 revaluation of Maroochy Water Services' assets and the extent of optimisation applied in the analysis. Treasury advises the revaluation was considered fair and reasonable by Maroochy Shire Council's external auditors and it is consistent with accepted regulatory methodology ... Treasury's investigation indicates Maroochy Water Services' rate of return is within the reasonable range, although at the high end, and there is scope for an optimisation to ascertain whether the asset base needs to be adjusted. Therefore, we have decided not to refer the matter to the Queensland Competition Authority.

It is evident that the footnote refers to the Treasury investigation which commenced in 2004, was concluded by September 2004, re-opened after CRA's correspondence in October 2004 and then was ultimately completed in or about May 2005. I trust this provides the clarification you require.

### **Material considered**

In undertaking my review, I have considered:

- the material supplied in your original complaint dated 30 January 2009 and subsequent communications
- the material obtained in the course of the investigation of your complaint, including from the Council and Treasury
- letter dated 28 May 2008 to Mr Peter Brown, Secretary Coolum Residents Association (CRA), in relation to the complaint to this Office by CRA about water pricing by MWS
- letter to you dated 16 November 2009 from Mr Allen communicating his preliminary view
- your submissions in response to Mr Allen's preliminary view communicated in letters and emails dated 24 November 2009, 16 December 2009, 21 December 2009, 12 January 2010 and 27 January 2010
- letter to you dated 10 February 2010 from Mr Allen communicating his decision
- the material provided in your letter dated 22 February 2010 and subsequent communications, dated 9 April 2010, 25 April 2010, 2 May 2010, 24 May 2010, 26 May 2010, 25 July 2010, 2 August 2010, 17 August 2010, 24 August 2010, 27 August 2010, 31 August 2010, 8 October 2010, 13 October 2010 and 3 November 2010, along with associated attachments.

In view of the comprehensive material available to me, including the material you have provided, I did not consider it necessary to contact you for further information prior to completing my review.

### **The Ombudsman Act**

Before discussing my decision in respect of this review, I wish to draw your attention to relevant sections of the *Ombudsman Act 2001* (the Act), and in particular, those sections relied upon by Mr Allen in making his decision in respect of your complaint.

Section 49(2) of the Act provides some assistance in defining the sort of maladministration or to put it another way, administrative error, which might be investigated by this Office; namely, that the administrative action:

- (a) was taken contrary to law; or
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory; or
- (c) was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or
- (d) was taken—
  - (i) for an improper purpose; or
  - (ii) on irrelevant grounds; or
  - (iii) having regard to irrelevant considerations; or
- (e) was an action for which reasons should have been given, but were not given; or
- (f) was based wholly or partly on a mistake of law or fact; or
- or
- (g) was wrong.

However, there are limitations on the investigative powers of the Ombudsman, including provisions which define which agencies and entities are outside the jurisdiction of the Ombudsman, and which specify what amounts to an “administrative action” that the Ombudsman can review. Relevantly, section 16(1)(a) states that the Ombudsman must not question the merits of “a decision, including a policy decision made by a Minister or Cabinet”.

Further, section 7(2) stipulates that an operational action of the Crime and Misconduct Commission is not an administrative action that the Ombudsman may investigate.

Section 23 of the Act describes the circumstances in which the Ombudsman may refuse to investigate a complaint. Section 23(1)(f) provides that the Ombudsman may refuse to investigate a complaint if the Ombudsman considers that “in the circumstances, the

*investigation, or the continuance of the investigation, of the action complained of is unnecessary or unjustifiable*". As no further guidance is provided under the Act as to the meaning of "unnecessary or unjustifiable" this Office has developed procedures which detail the matters to be considered when assessing a complaint. A primary consideration is whether the complaint involves a "reasonable suspicion of serious maladministration" or a "reasonable suspicion of maladministration and involves issues of public interest/concern".

Section 20(1)(c) requires that a complaint must be made within 1 year of the complainant first having notice of the decision or action complained of, unless special circumstances exist. This Office considers a number of factors when deciding whether to exercise the discretion to investigate a complaint "out of time", including the investigative resources required, the period of time which has elapsed since the complainant first had notice of the action or decision which is the subject of complaint, and whether any practical outcome can be achieved from pursuing an investigation.

I should also clarify that the Ombudsman has no power to direct any agency to take any particular action. The Ombudsman may make recommendations to redress the effect of a decision or action on an individual or to achieve a systemic improvement. In practice, agencies invariably accept and implement our recommendations.

### **Review Decision**

After reviewing the process followed in investigating your complaint I am satisfied that appropriate steps were taken to gather information and evidence to enable a proper assessment of your complaint. It is also evident that Mr Allen took into account the information and documents you provided. Mr Allen provided you with a preliminary view outlining his assessment of your complaint, and afforded you an opportunity to make submissions in response to his preliminary view prior to finalising his assessment.

I consider it was open to Mr Allen to reach the decisions he made in relation to your complaints, and that in doing so he correctly applied the Act. In my opinion, Mr Allen provided clear and comprehensive explanations and reasons for his decisions.

On that basis, I affirm the decisions of Mr Allen that investigation of your complaints about the Council's performance of its prices oversight obligations and failure to complete the optimisation study of MWS was unnecessary or unjustifiable in accordance with section 23(1)(f) of the Act. I also affirm Mr Allen's decision to decline to accept your complaint concerning the issues raised in the CRA's previous complaint, which was initially refused on the basis that it was out of time under section 20(1)(c), as I concur with Mr Allen that no special circumstances had been raised which would justify exercising the discretion to investigate.

### **Reasons**

In reaching my review decision I have considered your arguments in favour of further investigation. However, I am not satisfied that further investigation is justified for the reasons discussed below.

For the purposes of clarity, I confirm that in accordance with section 7(2) of the Act, the Ombudsman can not investigate operational actions of the Crime and Misconduct Commission. Therefore, the Ombudsman is unable to review whether there was *"conflicting evidence from ... the Queensland Crime and Misconduct Commission (CMC)"*.

In your email to this Office dated 27 January 2010, you discussed various communications in relation to an *"internal review of MWS financial performance by Treasury"*, that was

foreshadowed in 2006 and your interpretation of those communications. I note you state that “...If this interpretation is correct, I agree with the Ombudsman’s preliminary view set out on page 9 that there is no value in Council performing another optimisation study of MWS at this time”. While your letter dated 22 February 2010 cites the failure to undertake an optimisation study as evidence of “financial asset manipulation” by the Council, you have not specifically addressed that aspect of Mr Allen’s decision in your review request.

Therefore, I have concluded that you accept Mr Allen’s decision that investigation of your complaint about the failure of Council to undertake the optimisation study recommended by Treasury in 2005 was unnecessary or unjustified in accordance with section 23(1)(f).

In my assessment, the bulk of the arguments you have raised in support of your review request (as summarised above), amount to a restatement of the arguments and information you raised in relation to your original complaint. I am not satisfied that any of the additional information or documents you provided were persuasive in supporting your argument for further investigation or overturning Mr Allen’s decision that investigation was not justified.

In particular, I make the following observations in relation to the arguments you raised in your letter dated 22 February 2010.

Mr Allen’s letter to CRA dated 8 August 2008 was a decision to decline to investigate the complaints raised by CRA on a number of specific grounds, including principally that the issues complained of were decisions made by Minister which the Ombudsman could not review (section 16(1)(a)) or that the issues raised were out of time (section 20(1)(c)). On my reading, I am unable to conclude that these decisions hinged on an interpretation of the word “review”, flawed or otherwise.

Mr Allen explained, in his letter dated 10 February 2010, the extent of the assistance Mr Sean Andrews of the Queensland Competition Authority (QCA) was in a position to provide, which was very limited. Mr Allen did not “refuse to seek independent expert advice”, and did rely on various sources of information in reaching his decision, which were identified in his letters dated 16 November 2009 and 10 February 2010.

I consider it was reasonable to rely on the information obtained by Treasury, which is the government body with specific expertise in economic and financial policy and advice, although this was not the only source of information or evidence.

I acknowledge that this Office does not have technical accounting or econometric expertise in the area of regulatory pricing principles. It is not the role of this Office to undertake a technical evaluation of the methodologies used by the Council in relation to financial reporting, calculating the regulatory asset base or determining levels of cost recovery. Nor are we in a position to undertake a comparative analysis of the impact of those methodologies in terms of service charges, or their suitability against other alternate methodologies. Rather, it is the role of this Office to review administrative actions and decisions and to form an opinion as to whether the decisions or actions are fair, reasonable, lawful and explained with sufficient reasons.

While you argue that the service price increases identified in the letter dated 16 November 2010 were “improper”, Mr Allen communicated the information obtained about the reasons for those increases. In particular, in relation to 2008-2009, the rationale for the price increases, bearing in mind the imminent compulsory acquisition of the Council’s bulk water assets was explained. I note that in his reasons for decision Mr Allen advised that:

4. Treasury’s pricing investigation of MWS concluded that MWS was not earning an excessive rate of return and that the rate was within the reasonable range, albeit at the high end.

5. The due diligence process associated with the State Government acquisition of bulk water assets of MWS carried out by KPMG did not identify any concerns with MWS pricing levels relative to full cost recovery.

You have not, in my opinion, provided any new evidence to refute the information relied upon by Mr Allen in reaching his decision.

In relation to those issues you raise about the accuracy and transparency of financial reporting of MWS and the Council, the financial reports were subject to external audit oversight. I note that in your letter dated 2 November 2010 to the Urban Water Inquiry, Productivity Commission, a copy of which you provided to this Office, you state:

Failure of the Queensland Audit Office (QAO) to qualify their independent audit reports of these councils in years of significant revaluations of water and sewerage non-current assets has been a disservice to the public good ... As highlighted in February 2004 ... QAO was notified of concerns regarding the absence of an audit qualification in the 2002/03 Annual Report of Maroochy Council arising from losses of financial reporting transparency and an unwarranted asset revaluation adjustment ... QAO asserts that accounting treatment of revalued assets used in the 2002/03 Annual Report is correct ... As a consequence of these failures in governance by the QAO, Queensland Treasury and DLG&P flawed determinations of the capital recovery component of water and sewerage charges are embedded in retail service charges throughout South East Queensland.

Queensland Audit Office, Treasury and the Queensland Competition Authority were the appropriate bodies with the relevant expertise to review the issues raised in your complaints. The fact that you do not agree with their conclusions does not in my view amount to evidence of maladministration that would justify further investigation of your complaint by this Office.

In any event, in relation to MWS, it ceased to exist as a separate entity in March 2008, following the amalgamation of the Maroochy Shire Council with Noosa Shire and Caloundra City to form the Sunshine Coast Regional Council, at which time Sunshine Coast Water was established. In turn, Sunshine Coast Water ceased to exist following the structural reforms which lead to the creation of Unitywater.

Even if there had been evidence that would have warranted further investigation at the time Mr Allen formed his preliminary view and final decision in relation to your complaint, as a result of the significant restructuring of the provision of water supply and ownership of water assets subsequently implemented in South East Queensland I am not convinced that there would now be any justification for further investigation.

Any recommendations that might have been made if evidence of maladministration had been identified (and I am not suggesting that it would have), would have now been effectively obsolete. In that regard, I note the advice provided by Ms Sharon Humphreys, Principal Advisor to the Treasurer and Minister for Employment and Economic Development, in her letter dated 26 July 2010:

In March 2010, the Honourable Stephen Robertson MP, Minister for Natural Resources, Mines and Energy and Minister for Trade determined that the distribution valuations would form the regulatory asset bases for the distributor-retailers and be used for regulatory pricing purposes. This means that from 1 July 2010, the written-down value of assets will no longer be used as the basis for setting or measuring returns for water and wastewater prices ... for the next three years, the QCA will monitor water and wastewater prices charged by Unitywater ... As part of its price monitoring assessment, QCA will undertake prudency and efficiency reviews of proposed new capital expenditure ... the Government will shortly direct the QCA to recommend a regulatory framework and key regulatory pricing principles for this

purpose. As part of its review, the QCA will undertake an open consultation process, providing all interested stakeholders with an opportunity to express their views.

In the circumstances, no useful purpose would be served by further investigation of the issues raised in your complaints by this Office.

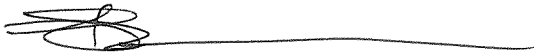
I can only suggest that you participate in the consultation process to be undertaken by the QCA in due course, and provide feedback about the issues of concern to you.

### **Conclusion**

I have undertaken a review in accordance with our Procedure. The Procedure provides for 'one review' only. As I have affirmed Mr Allen's decision our file has been closed and no further action will be taken or further correspondence on these issues responded to.

While I appreciate that this was not the outcome you hoped to achieve I thank you for raising these issues with us.

Yours faithfully



Louise Rosemann  
Assistant Ombudsman  
Assessment and Resolution Team

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Our Reference: MI-06-1131 / KMS

8 August 2006

OFFICE OF THE  
Assistant  
Commissioner  
Misconduct

[REDACTED]  
Mr Peter Brown  
C/- R J Koerner  
Treasurer  
Coolum Beach Progress & Ratepayers  
Association Inc  
[REDACTED]  
[REDACTED]

Level 3, Terrica Place  
140 Creek St  
(Cnr Creek and Adelaide)  
Brisbane, Queensland

Dear Mr Brown

**RE: YOUR CONCERNS**

I refer to previous correspondence in relation to concerns raised on behalf of the Coolum Beach Progress and Ratepayers Association Incorporated about the conduct of the Premier, the Minister for Local Government and the Treasurer.

I also refer to Mr Koerner's telephone conversations with Acting Principal Complaints Officer Keily Smith on 12 July 2006.


Your concerns about the water and sewerage rates set by Maroochy Council have been further considered given that, in fact, no referral of them has been made to the Queensland Competition Authority.

It is understood that you have received advice from the State Government that your concerns would not be referred to the Queensland Competition Authority because it had been determined that the Maroochy Council has not set the water and sewerage rates above the ceiling standard as permitted by the *Local Government Act 1993*. It is further understood that Queensland Treasury is, however, still considering your concerns due to the information relied on in arriving at that decision.

It is considered the advice provided to you in the Crime and Misconduct Commission's (CMC) letter dated 7 June 2006, that your concerns do not raise a suspicion of official misconduct on the part of the Premier, the Minister for Local Government or the Treasurer, remain appropriate.

As previously advised, it would seem that you still have the option of referring your concerns to the Ombudsman for such action, if any, as the Ombudsman may consider warranted.

Yours sincerely

  
**HELEN COUPER**  
Director  
Complaints Services



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Our Reference: MI-06-1131 / KMS

19 November 2007

OFFICE OF THE  
**Assistant  
Commissioner  
Misconduct**

[REDACTED]

Mr Peter Brown  
Secretary  
Coolum Residents Association Inc  
PO Box 121  
COOLUM BEACH Q 4573

Level 3, Terrica Place  
140 Creek St  
(Cnr Creek and Adelaide)  
Brisbane, Queensland

Dear Brown

**RE: CONCERNS ABOUT THE MAROOCHY SHIRE COUNCIL**

Thank you for your letter of 1 October 2007 in which you raised concerns about the Maroochy Shire Council. The CMC is also in receipt of correspondence from The Hon Alex Somlyay, the Federal Member for Fairfax, about your concerns.

We have carefully considered the information you gave us in your letter and that provided by Mr Somlyay.

As you are aware, the CMC has previously considered the Association's concerns which we understand to be as follows.

- The Maroochy Shire Council has indulged in 'pricing abuse' in relation to water rates within the Maroochy Shire. More particularly, it is alleged that water and sewerage rates are set above the ceiling standard as permitted by the Local Government Act and Financial Standards Act.
- The Association petitioned the Department of Local Government for a prices oversight investigation by the Queensland Competition Authority in May 2003. It is claimed this request made by the Association was not referred by the Premier or the other Ministers to the independent statutory body which is specifically set up under the National Competition Policy to investigate such complaints.
- The decision by the State Government not to refer the Association's concerns to the National Competition Authority was erroneous given it was relying on misleading information provided by the Maroochy Shire Council.

We also understood that the Association has received advice from the State Government that your concerns were not referred to the Queensland Competition Authority because it had been determined that the Maroochy Council has not set the water sewerage rates above the ceiling standard as permitted by the legislation.

We further note that the Queensland Treasury has also advised the Association that its review of Maroochy Water Services' financial performance was completed in early

2007. The CMC has not been advised by Queensland Treasury of any possible official misconduct concerns arising from that review.

As you know, the CMC has jurisdiction to investigate possible 'official misconduct'. I remain of the view that your Association's concerns do not raise a suspicion of official misconduct on the part of the Premier, any Minister or officer of the Maroochy Shire Council.

Should you wish to pursue your concerns, the Association has the option of referring them to the Ombudsman for such action, if any, as the Ombudsman may consider warranted. The Ombudsman also has an obligation to notify the CMC of any suspected official misconduct revealed by any inquiries conducted by his Office.

While I appreciate the Association's concerns, the CMC is unable to take any action.

Yours sincerely

A handwritten signature in black ink, appearing to read 'HELEN COUPER', written over a thin horizontal line.

**HELEN COUPER**  
Director  
Complaints Services



Office of the  
Auditor-General of Queensland

Your ref:

Our ref:

04-4573

Mr P Dajcz (07) 3405 1196

30 April 2004

Mr P Brown  
PO Box 121  
COOLUM BEACH QLD 4573

Dear Mr Brown

Thank you for your letter of 26 February 2004 detailing reporting concerns in respect of the Maroochy Shire Council.

The matters raised will be considered by my officers during the audit of the 2003-04 financial statements. With respect to your concerns about the unqualified audit opinion, I would like to advise that the audit opinion provided by external audit on the financial statements is intended to ensure that the statements are materially correct and compliant with prescribed requirements. My Audit Manager will further consult with the contract auditor on this matter.

In relation to your concerns regarding transparency, comparability and compliance in financial reporting, my officers regularly consult with the Department of Local Government, Planning, Sport and Recreation. Your comments will be considered for discussion at those meetings.

I note your concerns regarding the attendance by my contract auditor at Council Audit Committees. Audit attendance is only as an observer, and is a valuable part of the corporate governance process. The importance of this communication between external audit and Audit Committees is clearly stated in the Audit Committee Guidelines published by Queensland Treasury.

In relation to the issues referred in respect of Maroochy Water Services, it is advised that Dr Koerner is meeting with my officers on 7 May 2004 to provide further information to QAO.

Thank you for drawing these matters to my attention.

Yours sincerely

L J SCANLAN  
Auditor-General of Queensland

CRIME AND MISCONDUCT COMMISSION

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Brisbane Qld 4001

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Our Reference: MI-06-1131 / MGD  
Contact Officer: Mark Docwra

"CC"



12 December 2007

Mr Peter Brown  
Secretary  
Coolum Residents Association  
PO Box 121  
**COOLUM BEACH QLD 4573**

Dear Mr Brown

**RE: YOUR CONCERNS**

Thank you for your letter of 4 December 2007 regarding alleged official misconduct by the State Government and Maroochy Shire Council (Council) for not referring concerns about Maroochy Water Services (MWS) monopoly pricing to the Queensland Competition Authority (QCA).

The Crime and Misconduct Commission (CMC) decided not to take any action regarding the matter. You have requested that decision be reviewed under our Charter of Client Service. I have undertaken that review.

I have considered the file information.

The CMC received the original complaint on 18 April 2006.

The complaint essentially alleged that MWS imposed water and sewerage charges above ceiling levels permitted under the Local Government Act and Local Government Finance Standard.

It was further alleged that there had been an ongoing cover up by the Council and the then Premier, then Treasurer and then Minister for Local Government and Planning, for not referring the matter to the QCA.

The Director, Complaints Services advised you by letters dated 7 June and 8 August 2006 and 19 November 2007 that the CMC did not intend to take any action and noted you could refer the matter to the Ombudsman.

The file information indicates that the then Minister for the QCA, Mr Terry Mackenroth MP, wrote to you by letter dated 16 June 2005 advising that the QCA could not investigate MWS's pricing behaviour unless the Premier and Treasurer (the responsible ministers at the time) exercised their discretion and referred the matter to the QCA.

Mr Mackenroth further advised you of the reasons why the matter had not been referred to the QCA. Namely, that Treasury had been advised that the Council's external auditors considered the 30 June 2003 revaluation of MWS assets was fair and reasonable and consistent with accepted regulatory methodology. Further, Treasury's investigations indicated that MWS's rate of return was within the reasonable range — albeit at the high end.

While you have suggested that the Council and the MSW may have provided Treasury with misleading information, the information available to us does not reasonably raise a suspicion of misconduct in that regard.

Accordingly, I am satisfied that the decision to not take further action was appropriate in all the circumstances.

While we acknowledge that this matter remains of concern to you, we are simply unable to assist you further.

Yours sincerely

A handwritten signature in cursive script, appearing to read "R. Needham".

**ROBERT NEEDHAM**  
Chairperson



Queensland  
Government

MINISTERS FOR

QUEENSLAND COMPETITION AUTHORITY

Our Reference: TRO-10952

16 JUN 2005

Mr P Brown  
President  
Coolum Beach Progress and Ratepayers Association  
PO Box 121  
COOLUM BEACH QLD 4573

Dear Mr Brown

We refer to your request to refer the pricing practices of Maroochy Shire Council's water and sewerage business, Maroochy Water Services, to the Queensland Competition Authority, under section 23 of the *Queensland Competition Authority Act 1997*, for investigation under the State's monopoly prices oversight regime.

The declaration of Maroochy Water Services as a government monopoly business activity occurred by gazettal, rather than by regulation. Therefore, the entity's pricing behaviour is not automatically investigated by the Queensland Competition Authority. Rather, there is a second step of referral to the Authority which is at the discretion of the Premier and Treasurer, as responsible Ministers for the Queensland Competition Authority.

The Coolum Beach Progress and Ratepayers Association's letter dated 6 October 2004 expressed concerns about the 30 June 2003 revaluation of Maroochy Water Services' assets and the extent of optimisation applied in the analysis. Treasury advises the revaluation was considered fair and reasonable by Maroochy Shire Council's external auditors and it is consistent with accepted regulatory methodology.

The Hon. Peter D Beattie BA, LLB, MP, Premier and  
Minister for Trade

Level 15 Executive Building  
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Premier, Treasurer and Minister for Sport

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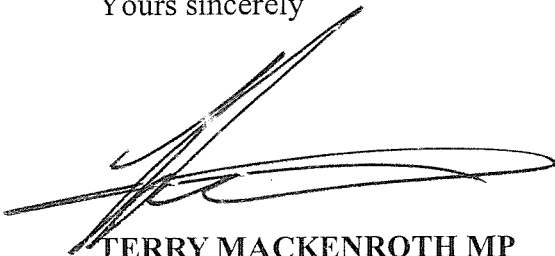
The Queensland Competition Authority's 'Statement of Regulatory Pricing Principles' requires the asset values to be increased annually in line with inflation. The accounting values reported in Maroochy Shire Council's financial statements did not reflect an annual inflation indexation. Therefore, the accounting value of the asset base is significantly lower than the value of the regulatory asset base over the years reviewed. The revaluation adjusts the accounting value of the assets to appropriately reflect the value which should be used for pricing purposes.

Treasury's investigation indicates Maroochy Water Services' rate of return is within the reasonable range, although at the high end, and there is scope for an optimisation to ascertain whether the asset base needs to be adjusted. Therefore, we have decided not to refer the matter to the Queensland Competition Authority.

However, we have recommended Maroochy Shire Council commission an optimisation study and our decision will remain subject to review. We will continue to monitor Maroochy Water Services' prices to gauge whether a reassessment of our decision is warranted.

Thank you for your assistance provided in support of this assessment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Mackenroth', with a long horizontal flourish extending to the right.

**TERRY MACKENROTH MP  
ACTING PREMIER AND MINISTER FOR TRADE  
DEPUTY PREMIER, TREASURER AND MINISTER FOR SPORT**