

Item 8.3.3 Mandatory Delegation of Distributor-Retailer Planning and Development Functions

Attachment 1 Delegation by the Northern SEQ Distributor Retailer Authority Unitywater, 'Mandatory Delegation of Distributor-Retailer Planning and Development Functions'

Mandatory Delegation of Distributor-Retailer Planning and Development Functions

INSTRUMENT OF DELEGATION

South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Delegation by the Northern SEQ Distributer Retailer Authority (Unitywater) to Moreton Bay Regional Council, Sunshine Coast Regional Council, and Noosa Shire Council.

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1. Background

A. The Distributor-Retailer was established by statute on 1 July 2010, and it delegated its Functions to the Delegates under an earlier Delegation.

B. The Water Supply Services Legislation Amendment Act 2014 brings to an end to the Functions, subject to transitional arrangements to manage the shift to the new 'Utility Model' regime.

C. The Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014, section 47A amended the DR Act to provide that certain delegations made before the commencement of the Amendment Act 2014 continue to apply.

D. The purpose of this Instrument is to continue the Delegation of the Functions, to remove restrictions in earlier Delegations that could have limited the effect of the Delegation and to harmonise this Instrument with the Amendment Acts 2014.

2. Definitions and interpretation

2.1 Definitions

In this Instrument:

"DR Act" means the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

"Amendment Acts 2014" means the Water Supply Services Legislation Amendment Act 2014 and the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014.

"Connections Policy" means the Distributor-Retailer's Interim Connections Policy or Connections Policy under the DR Act.

"Delegate" means severally (but not jointly) each of the:

- (a) Moreton Bay Regional Council;
- (b) Sunshine Coast Regional Council; and
- (c) Noosa Shire Council.

"Delegation" means the delegation conferred on the Delegate by the Distributor-Retailer.

"Distributor-Retailer" means the Northern SEQ Distributor Retailer Authority –Unitywater.

"Functions" means:

- (a) the functions of the Distributor-Retailer as concurrence agency for a development application; and
- (b) the functions of the Distributor-Retailer under chapter 9, part 7A, division 4 of the Sustainable Planning Act 2009.

"Instrument" means this Instrument of Delegation.

"Practice Note" means the Practice Note for the coordination of development activities between Unitywater and Participating Councils.

"SLA Schedule" means the Schedule for Land Use Planning, Development Assessment and Infrastructure Charges entered into between the Distributor-Retailer and each Delegate for the purpose of implementing the delegated assessment model.

2.2 Interpretation

In this Instrument:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) a reference to an Act includes its delegated legislation and a reference to an Act or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (c) if a provision in an Act, after the date of this Instrument, is renumbered by consolidation, amendment, re-enactment or replacement, then a reference in this Instrument to a particular provision of the Act will be read as a reference to the provision of the Act as so renumbered;
 - (d) a reference to a paragraph, clause or schedule is a reference to a paragraph, clause or schedule of or to this Instrument, and a reference to this Instrument includes all schedules;
 - (e) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (f) "includes" in any form is not a word of limitation.

3. Authority

- 3.1 The Distributor-Retailer performs the Functions under the Sustainable Planning Act 2009.
- 3.2 Section 53(5) of the DR Act requires the Distributor-Retailer to delegate the Functions to the Delegate.
- 3.3 The Delegate is a local government under the Local Government Act 2009.

4. Delegation

- 4.1 Pursuant to s.53(5) of the DR Act and by this Instrument, the Distributor-Retailer now delegates to the Delegate:
 - (a) the duty of undertaking the Functions for its local government area; and
 - (b) the powers of the Distributor-Retailer under the Act and under the Sustainable Planning Act 2009 to undertake the Functions for its local government area.
- 4.2 This Delegation is subject to the conditions in clause 5.
- 4.3 This Delegation includes authorisation for the Delegate to execute and deliver any document that is required by law or reasonably requested by any person in connection with the undertaking of the Functions, as the lawful delegate of the Distributor-Retailer.
- 4.4 This Delegation consists of the six (6) pages of this Instrument. No other written material forms part of this Delegation.

5. Conditions

- 5.1 The Delegate, when performing the Functions delegated under this Instrument, must:
- (a) consult with and seek the advice and recommendations of the Distributor-Retailer (including conditions for inclusion in development approvals) in accordance with the applicable laws and policies, including the SLA Schedule, the Distributor-Retailer's Connections Policy and the Practice Note, in force at the time;
 - (b) where consultation has occurred under paragraph (a), take full account of and endeavour to apply the requirements and conditions that the Distributor-Retailer recommends for attachment to a development approval relating to a water service or wastewater service or to water infrastructure of the Distributor-Retailer;
 - (c) perform the delegated functions and exercise the delegated powers solely for the purpose of carrying out the Functions; and
 - (d) give the Distributor-Retailer a copy of each compliance permit, compliance certificate and development approval granted by the Delegate under this Instrument;
 - (e) comply with all laws. If any law conflicts with this Instrument, the law will prevail to the extent of any inconsistency.

6. Notices

Each communication (including each report, proposal, program, notice, consent, approval, request and demand) under or in connection with this Instrument:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified from time to time):

The Northern SEQ Distributer Retailer Authority:

Name:	Unitywater
Address:	PO Box 953 Caboolture Qld 4510
For the attention of:	The Chief Executive Officer

The Delegate:

Name:	Moreton Bay Regional Council
Address:	PO Box 159 Caboolture Qld 4510
For the attention of:	Senior Manager Development Services
Fax No:	(07) 3480 6331

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Name: Sunshine Coast Regional Council
 Address: Locked Bag 72
 Sunshine Coast Mail Centre Qld 4560
 For the attention of: The Chief Executive Officer
 Fax No: (07) 5475 7277

Name: Noosa Shire Council
 Address: 9 Pelican Street
 Tewantin Qld 4565
 For the attention of: The Chief Executive Officer
 Fax No: (07) 5329 6501

- (c) must be signed;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 6(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post) on the third day after the date of posting; and
 - (ii) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in the location of the Delegate set out above).


DATED this 30 day of June 2014.

x 

 Signature

CHIEF EXECUTIVE OFFICER

 Designation

In the presence of
 x 

 Signature

x Jane S Nunt

 Full Name of Witness