

## **Fitzroy River to Capricorn Coast Water Supply Pipeline & Reservoirs**

**Location:** Rockhampton to Yeppoon  
**Client:** Rockhampton Regional Council  
**Contact:** Mr. Brett Taylor  
Ph: (07) 4936 8508, 0437 017 340

**Designer:** Cardno (Rockhampton)

**Project Manager:** Mr. John Bailey

**Project Summary:** Construction of Gravity and Rising Mains including;

- 24130m of 600mm PN35 RRJ DICL pipe and fittings;
- 8574m of 750mm PN35 RRJ DICL pipe and fittings;
- Construction of air valve/ scour valve arrangements;
- Construction of hydrant and take off point arrangements;
- Construction of air valve and section valve pits;
- Open Excavation of Roads; and
- Trench Construction through hard rock.

**Completion Date:** 17 July 2009



**BRIEF:**

FITZROY RIVER TO CAPRICORN COAST WATER SUPPLY PIPELINE AND  
RESERVOIRS CONTRACT No.LSC002/07/08

This project was jointly funded by the Federal, State & Local Governments.

A Contract to build the majority of this Project was let in February 2008.

The project is complete and in operation.

In accordance with the Contract, the Contractor gave the Council a Bank Guarantee for \$750,000.00 dollars as security and retention for the due and proper performance of the Contract. This Bank Guarantee should have been returned to the Contractor 12 months after Practical Completion.

The Bank Guarantee has not been returned and also the Contractor's final Payment Claim in the value of \$5,690,348.53 (excl GST) has also not been assessed or paid.

It has been reported through all levels of Government that this project has been completed;

- The Australian Federal Government (Commonwealth Government);  
Department of Sustainability, Environment, Water, Population and Communities;
- The State Government;  
Department of Environment and Resource Management;
- The Local Government;  
Rockhampton Regional Council and its Subsidiary Fitzroy River Water;

Furthermore, Rockhampton Regional Council Officers have received an award for the successful completion of the project. The Mayor and CEO have also reported in the Councils 2009-2010 annual report that the project has been completed.

Internally, the Rockhampton Regional Council has accepted that the project is complete and has even reported such in their Water Committee Meetings; specifically those held on 17 November 2009 and 15 September 2010.

DERM must have relied upon confirmation from Rockhampton Regional Council as they also reported that the pipeline was completed in their November 2009 report, no doubt a funding milestone was represented as having been achieved.

The Rockhampton Regional Council reported on 13<sup>th</sup> April 2011 that all works were completed for this project and it had been successfully commissioned. This would suggest that all State and Federal funding has been received by Rockhampton Regional Council. This funding would have been released upon advice from Council to the State and Federal stakeholders that all parts of the project have been completed and reached practical completion.

Although the completion of the project and specifically the pipeline component is well documented through various government publications, the Rockhampton Regional Council in complete contradiction and unashamedly, refuses to acknowledge to Bailey Civil Contractors that the Contract has in fact been complete and has reached Practical Completion.

It should be understood that the Contractor has exhausted all avenues available to him under the Contract to resolve this issue and living in the electorate of the Premier has even requested assistance from the Premiers Department – all to no avail. Due to the reluctance of Rockhampton Regional Council to discuss the issue, the Contractor has been forced to seek a remedy in Court at ridiculous cost to both the Contractor and the Rockhampton Regional Council electorate.

**So which is correct?**

**Either**

1. **The Contractor is not finished and Practical completion has not been reached**, whereby the public and the funding stakeholders are being misled and there is a strong probability that Rockhampton Regional Council has ~~W Rong~~ acquired the State and Federal funding for completion of this project.

If this is the case then the government should step in and order the return of the Contractor's Bank Guarantee without any further delay and assessment of the final Payment Claim. This must then be followed by an immediate CMC investigation into the conduct of the Council over its handling of the contract administration and its apparent misappropriation of grant funding.

**Or**

2. **The Contractor is finished as the government publications suggest**, whereby the Council is illegally withholding the release of the Contractors \$750,000.00 Bank Guarantee purely to frustrate and antagonise the Contractor while abusing and exploiting the unsuspecting Rockhampton Regional Council rate payers with a costly and unnecessary Supreme Court proceeding.

If this is the case then the government may have already stepped in and is condoning the Council's actions. Should this come to light then there must be an immediate investigation by the CMC into the conduct of Rockhampton Regional Council and the State Government with their victimisation of this Contractor and the exploitation of Rockhampton Regional Ratepayers.

Further, there must be a return of the Contractor's Bank Guarantee without delay and an assessment of the final Payment Claim immediately followed by an investigation into the conduct of the Council over its handling of the contract administration and its apparent misappropriation of grant funding.

Either way, it is not a good look for a State and a Local Government recovering from crisis, requesting assistance and trying to develop working opportunities on one hand whilst shafting the community and business with the other.

How many other Contractors are currently in a similar predicament with Government Funded projects or worse, have been forced into financial ruin because of a Government that talks about having jobs in the pipeline but is actually destroying jobs in pipelines.

ROCKHAMPTON  
REGIONAL COUNCIL  
CONFIRMATION THAT  
PROJECT IS  
PRACTICALLY  
COMPLETE



# **WATER COMMITTEE**

## **MINUTES**

**17 November 2009  
12.01PM**

A formal request has been made of Underground Asset Services Pty Ltd to provide proof of the work completed by submission of the DVD showing the relining work and CCTV footage of inspection completed by Friday 30 October 2009, so that a termination payment can be made and this contract finalised.

#### South Sewage Treatment Plant Electrical Upgrade

The switchboard component change over is progressing well with completion forecast for mid November.

#### Jardine Park Switchboard Replacement

The new switchboard has arrived on site with the change over expected to be completed by the end of November.

#### Rockhampton to Yeppoon Pipeline

Construction and testing was completed on 3 October 2009 by Bailey Civil Contractors. Practical completion will be issued for this part of the project works. The contractor has demobilised.

#### *Boundary Reservoir construction*

Construction is in progress with the base and the first wall section constructed. The second wall section will be poured Friday 30 October, then another three sections on a fortnightly cycle, completing the wall prior to the Christmas break weather permitting.

#### *Ibis Avenue No2 Pump Station Civil Works*

Work progressing for the pump station building. Piping is being laid from the reservoir to the pump station. Cut-in to the Yaamba Reservoir is planned for late October and continuing into November.

#### *Ibis Avenue No2 Pump Station Electrical and Mechanical*

The pumps and motors have arrived on site. The switchboards have been manufactured and are currently being fitted out. Construction of the switch room is expected to start within two weeks.

#### Treatment of blue-green algae

The blue green algae season in the Fitzroy River barrage impoundment has continued throughout October. The Glenmore Water Treatment Plant is continuing to remove all blue green algae from the raw untreated water to produce a high quality treated water.

#### Emu Park Sewerage Treatment Plant

FRW have engaged AECOM to prepare a technical specification for a Design & Construct Tender for the renewal of the Emu Park Sewerage Treatment Plant. FRW intend to advertise the Tender in January 2010.

#### Fluoridation

Progress on the project to implement fluoridation at Glenmore Water Treatment Plant remains solid, with construction of the shed to house the dosing system almost complete. Installation of the fluoride dosing system is scheduled to commence in early November. At this stage the project is still on track for completion by 31 December 2009.

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**STATE GOVERNMENT  
CONFIRMATION THAT  
PROJECT IS  
PRACTICALLY  
COMPLETE**



**Statewide Water Policy**  
**Quarterly Project Progress Report**  
**November 2009**

<b>Project:</b>	<b>Yeppoon Pipeline – Construction Project</b>
<b>Proponent:</b>	Rockhampton Regional Council
<b>Key stakeholders:</b>	Department of Infrastructure and Planning, Department of Environment and Resource Management (DERM), Commonwealth Government, Rockhampton Regional Council, affected landholders, Native Title owners and claimants, community and potential future water users.
<b>Location:</b>	From the Yaamba Road Reservoir in Rockhampton to a pump station and new reservoir at the Boundary site and from there into the Taranganba Reservoir in Yeppoon.
<b>Project parameters:</b>	The pipeline will be capable of transporting up to 15,000 megalitres per annum. The project involves construction of approximately 33 kilometres of pipeline, one reservoir, one pump station and associated infrastructure.

**Project scope**

Rockhampton Regional Council is responsible for the construction of the 33 kilometre water pipeline to supply water to urban users on the Capricorn Coast. Construction of the pipeline will also have significant environmental benefits as it will remove the need to extract water supplies from the Sandy Creek coastal dune system in the future.

**Project status**

<b>Target completion date (construction)</b>	<b>March 2010</b>
<ul style="list-style-type: none"><li>• The Yeppoon Pipeline was identified in the Central Queensland Regional Water Supply Strategy, released in December 2006, as an option for supplying water to the Capricorn Coast.</li><li>• In July 2006, it was announced that the project would be jointly funded by the Queensland Government (\$16.5 million), the Commonwealth Government (\$16.5 million) under the Water Smart Initiative program, and the then Livingstone Shire Council (all remaining funding requirements). In August 2006, as part of the Statewide Water Policy, the Queensland Government increased its funding commitment to \$20 million.</li><li>• Construction of the pipeline commenced in early February 2008. Wet weather and flooding in Central Queensland initially delayed the contractor. Successful pressure testing of the pipeline was completed on 3 October 2009 allowing practical completion to be awarded for that part of the overall project.</li><li>• Pipe deliveries are complete as are the deliveries of valves, fittings and instruments. All of the under bores have been installed, pressure tested and grouted into the enveloping tube following the final full pressure test carried out as part of the main pipeline contractors works.</li><li>• The revised design for the high lift pumps to be installed at the Ibis Avenue site (formally named Yaamba Road) is completed. The construction contract was awarded to a local contractor JCQ Project Builders Pty Ltd in mid March 2009. An additional tender was awarded to JCQ in August 2009 for the construction of the pump station civil works. The pumps and motors have been tested and supplied to site. Construction of the pipeline from the Yaamba reservoir to the new pump station site is in progress. Earthworks for the pump station are completed with civil works in progress. Ergon Energy is presently preparing the construction schedule for the power supply to the pump station via a dedicated</li></ul>	

transformer.

- Construction of the new Boundary Reservoir is in progress with the base and the first of five wall sections completed. The remaining four wall sections will be completed prior to the Christmas break. The reservoir will achieve practical completion by March 2010.
- The Rockhampton Regional Council construction team is presently laying pipe up to the Taranganba reservoir. Final approval to open-excavate the marine sensitive Ross Creek in Yeppoon is in progress with DERM approval (with conditions) received and Queensland Primary Industries and Fisheries approval granted by 5 November 2009. Works in the area commenced in the last week of November 2009.
- A single tender for the construction of the Yeppoon West Valve Facility and the Taranganba Reservoir closed in July 2009. The valve facility, which was previously a pump station, will enable the Yeppoon water system and the Rockhampton water system to be mixed in any required ratio to supply the Capricorn Coast consumers. Delivery of materials and fittings is progressing with all goods scheduled on site by the end of October 2009. Construction works commenced in November 2009.
- The project is now expected to be partially commissioned by the end of the first quarter of 2010. This will result in the new pipeline supplying the Taranganba reservoir via a temporary connection to its existing inlet network. A larger inlet structure to the reservoir will need to be constructed to cope with the increased water supply from Rockhampton. The tie in of the new pipeline via the new larger inlet network will be deferred until May 2010 to avoid disrupting supply to consumers over the summer months. The water supply will not be useable upon completion of the contractor's section of the pipeline, as the reservoir, pump station, valving facility and tie in to the existing Taranganba reservoir will not be completed before April 2010.

#### Budget

<b>Estimated total project cost:</b>	\$50 million
<b>State government commitment</b>	\$20 million (Statewide Water Policy)
<b>Budget 2009/2010:</b>	Total forecast budget for the financial year 2009/2010 is \$17.5 million.

#### Communications and community consultation activities

- Extensive public consultation was undertaken in the development of the Central Queensland Regional Water Supply Strategy.
- The then Livingstone Shire Council undertook a public consultation program for the project, with public meetings held in May 2007.

FEDERAL  
GOVERNMENT  
CONFIRMATION THAT  
PROJECT IS  
PRACTICALLY  
COMPLETE



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## Environmentally smart and sustainable water supply for the Capricorn Coast

### Rockhampton to Yeppoon, Queensland

**Total funding:** \$49.4 million with \$16.467 million from the Australian Government, \$20 million from the Queensland Government and \$12.933 million from Rockhampton Regional Council.

#### About the project

The project is an excellent example of balancing water for environmental and consumptive uses in line with the National Water Initiative. A 43 km pipeline has been constructed from the Fitzroy River Barrage in Rockhampton to Yeppoon. Water is drawn from the Fitzroy River for urban users on the Capricorn Coast. Water will no longer be drawn from Sandy Creek.

With the rapid growth being experienced on the Capricorn Coast securing water supplies was considered critical for the sustainability of the region. As well as improving the security of local water supplies this pipeline project will benefit the environment by assisting in preserving the high conservation values of Sandy Creek in the Byfield area.

The source of flow for Sandy Creek is from large sand dunes located in Byfield National Park. The filtering effect of these sand dunes, over a time period of many years, provides high quality water that supports unique aquatic ecosystems in the relatively undisturbed stream environment. The water from Sandy Creek eventually flows to the Ramsar wetland site of Conio Bay.

#### Project benefits

The project will assist in:

- returning the existing 7400 megalitre/annum extraction license for Sandy Creek to be replaced with a 4000 megalitre/annum entitlement from the Fitzroy River
- protecting the high conservation values of the Sandy Creek catchment
- providing a secure water supply for the growing Capricorn Coast region
- diversifying water supply to Yeppoon and the surrounding area.

The project advances the National Water Initiative objectives of protecting surface water systems of high conservation value and providing healthy, safe and reliable urban water supplies.

A ceremony to mark the completion of the pipeline was held in Yeppoon on 24 July 2010.

Water Smart Australia projects are funded by the Australian Government's [Water for the Future](#) initiative.

Type keywords here



[Subscribe to the Water Matters newsletter](#)

For up-to-date information about the Water for the Future initiative.

#### WSA projects

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**ROCKHAMPTON  
REGIONAL COUNCIL  
PERSONAL INVITATION  
FOR Mr JOHN BAILEY  
TO THE OFFICIAL  
OPENING OF THE  
COMPLETED PROJECT**

## Robyn Cook

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**From:** Megan McCosker [Megan.McCosker@rrc.qld.gov.au]  
**Posted At:** Tuesday, 22 June 2010 3:26 PM  
**Conversation:** Official Invitation - Rockhampton to Yeppoon Pipeline 24 July 2010  
**Posted To:** Info  
**Subject:** Official Invitation - Rockhampton to Yeppoon Pipeline 24 July 2010

Dear John Bailey

His Worship the Mayor, Councillor Brad Carter cordially invites you to the official opening of the Rockhampton to Yeppoon Pipeline.

The official invitation is attached.

Kind Regards

**Megan McCosker**  
Admin Officer | The Office of the Corporate Regulator  
Rockhampton Regional Council  
Ph: 07 4936 8514 | Fax: 1300 22 55 79  
E-mail: [Megan.McCosker@rrc.qld.gov.au](mailto:Megan.McCosker@rrc.qld.gov.au)  
Address: PO Box 1860, Rockhampton Q 4700 | Web: [www.rockhamptonregion.qld.gov.au](http://www.rockhamptonregion.qld.gov.au)

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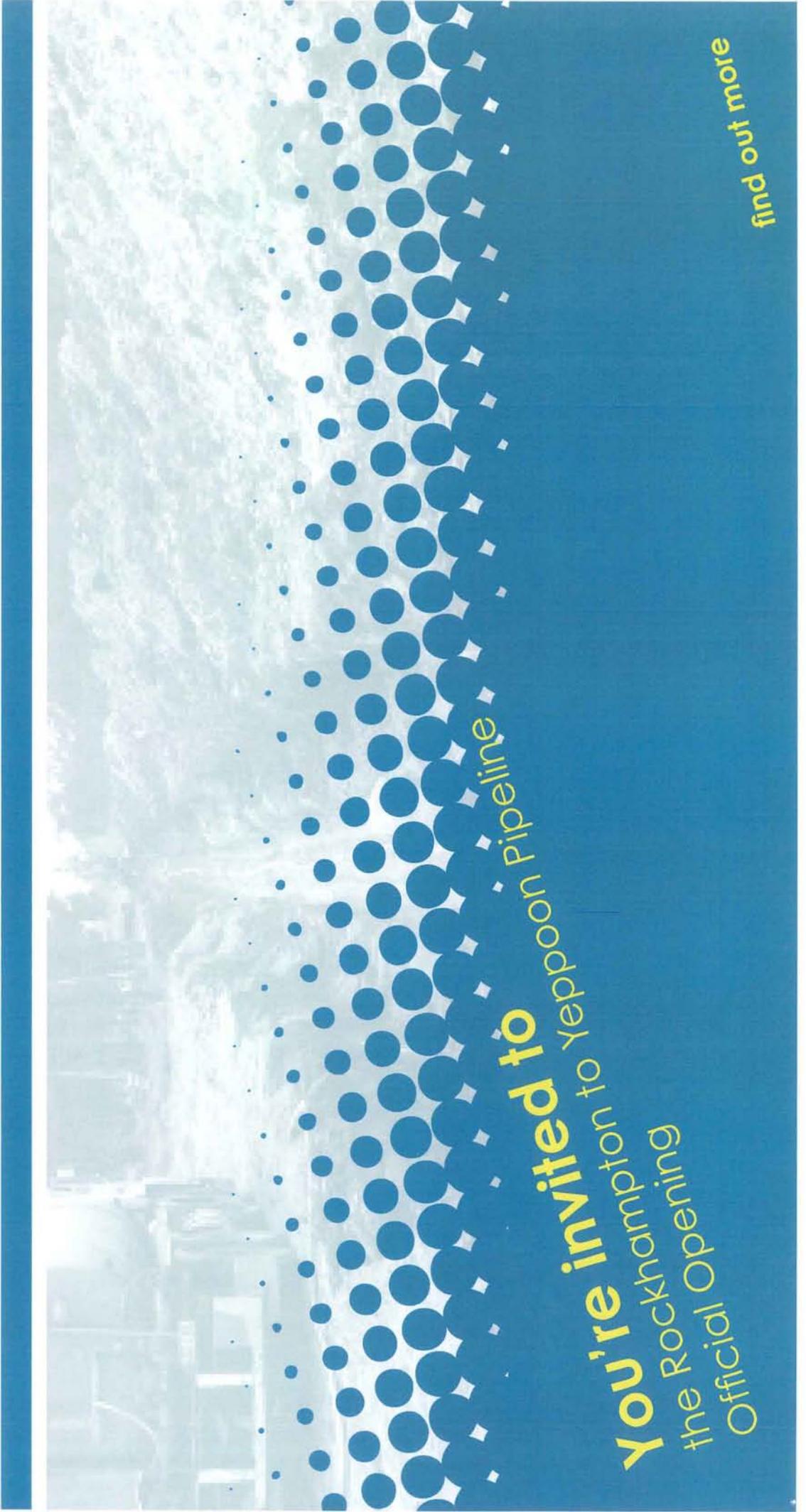
Rockhampton Region - an award winning Region - working towards the vision of becoming the most liveable community in the world!

Rockhampton Region received a bronze award at the prestigious International Awards for Liveable Communities (LivCom Awards), Rockhampton was named Queensland's Tidiest Town 2009 and Yeppoon Main Beach was named Queensland's Cleanest Beach 2009.

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**You're invited to** the Rockhampton to Yeppoon Pipeline  
Official Opening

find out more

**You're invited...**

A secure water supply for the coastal communities of Central Queensland's Rockhampton Region is now a reality with the completion of the Rockhampton to Yeppoon water supply pipeline and associated infrastructure.

Jointly funded by the Australian Government's Water Smart Australia program, the Queensland State Government and Rockhampton

Regional Council, the pipeline project showcases what can be achieved for regional communities with the collaboration of all levels of government.

Rockhampton Regional Council is committed to investing in reliable and long term water supply, at the best value, for the people of the Region – please join us to celebrate this event.



Australian Government  
Water Smart Australia



Queensland Government

when is it?



**Rockhampton to Yeppoon Pipeline**  
Official Opening

His Worship, the Mayor, Cr Brad Carter invites,

John Bailey

To the official opening of the  
Rockhampton to Yeppoon Pipeline.

To be held at the Yeppoon Beachfront,  
Anzac Parade, Yeppoon  
**24 July 2010 at 10am**

To be followed by lunch  
at Manta's on the Beach  
105 Matthew Flinders Drive, Yeppoon.

Community celebrations will  
commence at 8am.

rsvp by **Monday 12 July 2010**  
07 4936 8777  
Megan.McCosker@rrc.qld.gov.au

about the event

**ROCKHAMPTON  
REGIONAL COUNCIL  
DENIALS**

**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 229 of 2010  
2290

Plaintiff: BAILEY CIVIL CONTRACTORS PTY LTD ACN 091 244 227  
AND  
Defendant: ROCKHAMPTON REGIONAL COUNCIL

Amended pursuant to the Order of Justice  
Boddice dated 6 April 2011.  
Date: 19 April 2011  
Signed: *McCullough*



**FURTHER AMENDED DEFENCE OF THE DEFENDANT**

The Defendant relies on the following facts in defence of the claim:

The Defendant relies on the following facts in defence of the relief sought in the Statement of Claim:

19 APR 2011<sup>1</sup>

The Defendant admits the allegations contained in the following paragraphs (but not the particulars in respect of the following paragraphs): 1, 2, 3, 4, 5(a), 5(f), 6, 7, 8, 9, 10, 11, 13, 14(a), 14(b), 14(c), 15, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 33, 41, 42, 43, 47, 49(a), 49(b), 49(c), 50(a), 50(b), 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 71(a), 71(b), 75, 81, 90.

**The Pre-Contractual Dealings between the Plaintiff and the Defendant**

2 As to paragraph 5 of the Statement of Claim, the Defendant:

(a) As to paragraph 5(b):

(i) Says that clause 7.2 of the Request for EOI stated:

*'Council's current preference is that the Contract or Contracts will be lump sum contracts based on a risk modified version of AS2124-1992.'*

**Defence and Counterclaim of the Defendant**  
Filed on behalf of the Defendant  
Form 18 R.176

**McCullough Robertson Lawyers**  
Level 11 Central Plaza Two 66 Eagle Street  
BRISBANE QLD 4000  
Phone: (07) 3233 8888 Fax: (07) 3229 9949  
GPO Box 1855, BRISBANE QLD 4001  
Ref: WGM:JLM:153375-00062

- (b) Admits that each of the formal instrument of agreement, the General Conditions of contract and the technical specifications contained clauses with the numbers and descriptions pleaded in paragraph 22(a), (b) and (c) of the Statement of Claim;
  - (c) Says otherwise that the matters pleaded in paragraph 22 are embarrassing and irrelevant in that no material allegations are made therein in respect of the many clauses to which reference is made.
- 10 As to paragraph 23 of the Statement of Claim, the Defendant denies the allegations in paragraphs 23(a) and (b) as a matter of law.

### **Practical Completion, Wrongful Deduction of Liquidated Damages and Retention of Security**

- 11 As to paragraph 32 of the Statement of Claim, the Defendant denies the allegation contained therein by reason of the following:
- (a) By clause 2 of the General Conditions, 'Practical Completion' is defined relevantly to have occurred when:
    - '(a) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed.'*
    - (i) By section 4.3 of the Technical Specifications, hydrostatic pressure testing of water mains by the Plaintiff was such a test;
    - (ia) By section 4.3.1 of the Technical Specifications, the Plaintiff was required to prepare a test plan (the Test Plan) for the testing of the water mains for the approval of the superintendent, which detailed the sections of the main to be tested and the maximum and minimum pressures in each pipe section.
    - (iab) By section 4.3.1 of the Technical Specifications, testing was required to be carried out in accordance with AS-2566.2;

(iac) By clause 4.3.3, the test pressure would be 2100 kPa "unless noted otherwise on the drawings":

(iad) The Test Plan was a drawing, serial number R1008-10-10, being a "schematic layout plan and testing strategy" prepared by Cardno for the Plaintiff:

(iae) The Test Plan noted the required test pressures as follows:

<u>Test Section</u>	<u>Test Pressure</u>
<u>LH</u>	<u>1900</u>
<u>HI</u>	<u>1900</u>
<u>HJ</u>	<u>1900</u>
<u>MK</u>	<u>1900</u>
<u>HM</u>	<u>1900</u>
<u>HG</u>	<u>1893</u>
<u>GE</u>	<u>2040</u>
<u>FE</u>	<u>2100</u>
<u>DE</u>	<u>1909</u>
<u>AB</u>	<u>2100</u>
<u>CB</u>	<u>1805</u>

(iaf) Testing in accordance with the Test plan, the Technical Specifications and AS-2566.2 required testing of sections AB, CB, DE, FE, GF, HG, HM, MK, HI, HJ, and LH.

(ii) At 17 July 2009, hydrostatic pressure testing of water mains under section 4.3 of the Technical Specifications had not been carried out ~~and passed;~~ in accordance with the Test Plan, in that:

(I) The Plaintiff tested the pipeline section CH208/CH10185 (Section AC) rather than the sections between CH208/CH4500 (Section AB) and CH4500/CH10185 (Section BC);

- (II) The Plaintiff tested the pipeline section CH9310/Yeppoon West Valve Facility (Section FH) rather than the sections between CH9310/CH17685 (Section FG) and CH17685/Yeppoon West Valve Facility (Section GH);
- (III) Further and alternatively, the Plaintiff did not test to the pressures specified in the Test Plan.
- (iii) Since that date, no further hydrostatic pressure testing of the water mains under section 4.3 of the Technical Specifications has been carried out;
- (iv) In the premises Practical Completion has not been reached;
- (b) Further and alternatively, by clause 2 of the General Conditions, 'Practical Completion' is relevantly defined as occurring when:
  - (a) the Works are complete except for minor omissions and minor defects -
    - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose.'
  - (i) At least prior to 17 July 2009 there were leaks in the pipeline;
  - (ii) Such leaks prevented the Works from being reasonably capable of being used for their intended purpose;
  - (iii) In the premises Practical Completion had not been reached;

12 As to paragraph 34 of the Statement of Claim the Defendant does not admit the allegation contained therein. The Defendant has made reasonable inquiries in the time allowed to deliver this Defence and remains uncertain as to the truth or otherwise of the allegations.

13 As to paragraph 35 of the Statement of Claim, the Defendant:

- (a) Denies the allegation contained therein for the reason pleaded in paragraph 11 herein;
- (b) Says further and alternatively, that as a matter of law the Superintendent cannot breach the Contract by failing to certify the Work as having reached Practical

Completion as at 17 July 2009 because the Superintendent is not a party to the Contract.

- 14 As to paragraph 36 of the Statement of Claim, the Defendant:
- (a) Does not admit the allegation contained therein. The Defendant has made reasonable inquiries in the time allowed to deliver this Defence and remains uncertain as to the truth or otherwise of the allegations;
  - (b) Says further and alternatively, that as a matter of law the Superintendent cannot breach the Contract by failing to allow further extensions of time for Practical Completion totalling no less than 18 calendar days because the Superintendent is not a party to the Contract.
- 15 As to paragraph 37 of the Statement of Claim, the Defendant:
- (a) Denies paragraph 37(i) for the reasons pleaded in paragraph 11 herein;
  - (b) Does not admit the allegation contained in paragraph 37(ii). The Defendant has made reasonable inquiries in the time allowed to deliver this Defence and remains uncertain as to the truth or otherwise of the allegations.
- 16 As to paragraph 38 of the Statement of Claim, the Defendant:
- (a) Does not admit the allegation contained in paragraph 38(a). The Defendant has made reasonable inquiries in the time allowed to deliver this Defence and remains uncertain as to the truth or otherwise of the allegations;
  - (b) Denies paragraph 38(b) for the reasons pleaded in paragraph 11 herein.
- 17 As to paragraph 39 of the Statement of Claim, the Defendant:
- (a) Says that, Clause 46 of the General Conditions states:

46.1 Communication of claims

Except where the requirements for a claim are prescribed elsewhere in the Contract, and only to the extent that such requirements are prescribed, the Principal shall not be liable upon any claim unless the Contractor has compiled