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# **ENVIRONMENT, AGRICULTURE, RESOURCES AND ENERGY COMMITTEE**

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## **Members present:**

Mrs C.E. Sullivan (Chair)  
Mr A.P. Cripps MP  
Mr J.M. Dempsey MP  
Ms D.E. Farmer MP  
Mr P.J. Lawlor MP  
Mr A.C. Powell MP

## **Staff present:**

Mr R. Hansen (Research Director)  
Ms S. McCallan (Principal Research Officer)  
Ms R. Moore (Principal Research Officer)

## **BRIEFING—SOUTH-EAST QUEENSLAND WATER (DISTRIBUTION AND RETAIL RESTRUCTURING) & OTHER LEGISLATION AMENDMENT BILL 2011**

**TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 16 NOVEMBER 2011**

**Brisbane**

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**Committee met at 10.55 am**

**PETERS, Ms Kate, Acting Director, Retail Distribution, Water Reform, Queensland Water Commission**

**WALDMAN, Ms Karen, Chief Executive Officer, Queensland Water Commission**

**CHAIR:** Welcome, ladies. For those of you who were not with us for the first briefing session today, I would like to introduce myself and the other members of the committee. My name is Carryn Sullivan. I am the state member for Pumicestone and the chair of the Environment, Agriculture, Resources and Energy Committee. I introduce Andrew Cripps, our deputy chair and member for Hinchinbrook; Andrew Powell, the member for Glass House; Di Farmer, the member for Bulimba; and Peter Lawlor, the member for Southport. The purpose of the second half of today's meeting is to receive a briefing from you two officers from the Queensland Water Commission on the South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011. The bill was introduced on 11 October 2011 by the Minister for Energy and Water Utilities. It was referred to the committee on 11 October for consideration and report by 5 April 2012. We hope that the briefing today will help everyone here better understand the practical implications of the policy being given effect to by this bill.

The objectives of the bill are to enable the withdrawal of a council water business from its South-East Queensland, or SEQ, distributor-retailer and re-establishment of the water business within direct council operations; apply certain requirements of the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 to these specific council water businesses; apply additional requirements to the continuing SEQ distributor-retailers to provide greater clarity for councils' pricing and decision-making role with respect to their distributor-retailers; provide that the Queensland Competition Authority will have a price monitoring/oversight role of the new council water businesses; and make minor consequential changes. You can also find the links to the bill and the explanatory notes on our website.

Joining us here today from the Water Commission are Karen Waldman, the CEO of the Queensland Water Commission. Those of you who were involved in estimates will remember Karen Waldman. We also have Kate Peters, the Acting Director, Retail Distribution, Water Reform from the Queensland Water Commission. Again, welcome, ladies. Remember that these officers have given their time here today to provide factual information. They are not here to give opinions about the merit or otherwise of the policy behind the bill or alternative approaches. I encourage everyone here to ask questions at the end of the briefing. Any questions about the policy of the government that the bill seeks to implement should be directed to the responsible minister, the Hon. Stephen Robertson MP.

Just a couple of housekeeping announcements. If for any reason we have to evacuate the room today, we will ask you to make your way to the exit at the back of the room and down the stairs to the assembly point and wait for further instructions. The nearest toilets are off the corridor behind you. Before we start, I ask that all mobile phones be switched off or on silent please. I will hand it over to you, Karen Waldman.

**Ms Waldman:** Thank you very much, Madam Chair. Our proposal to introduce this information to the committee is for Kate Peters, who has largely been responsible for the development of the legislation, to provide a short introduction and then we would be open for questions, if that is okay.

**Ms Peters:** Thank you for the opportunity to appear before you and to speak to this bill. We did prepare a report on the bill which was provided to you recently which goes into a lot of detail. I do not propose in this address to go into that level of detail. I am just going to skip across the high points and address key issues. Before I get to the bill, I would like to provide a little bit of context.

The South-East Queensland water sector reforms were delivered in two stages. The first one saw fruition on 1 July 2008 when the bulk entities were established to own South-East Queensland's bulk transport and manufactured water infrastructure and services plus the establishment of the water grid manager to oversee the operations of the water grid and to be the person who buys and sells the bulk water services. The second stage was 1 July 2010 when three distributor-retailers were established which were Allconnex, Unitywater and Queensland Urban Utilities with the role of distributing water, collecting and treating and discharging wastewater, and operating water and wastewater networks. The intention for the distributor-retailers was to deliver on the reform objectives of efficiency gains through economies of scale, improving service delivery to customers, having asset regulation that ensures long-term infrastructure planning to deliver least cost services and to be commercially focused activities that are accountable both to their council owners and to their customers.

Just very briefly, I will outline how distributors have operated and were created. As I said, they were created under the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 which, as all acts seem to have long titles, I will refer to as the DR act. Under that act, the South-East Queensland councils hold participation rights in the distributor-retailers, which is somewhat akin to being a shareholder.

The councils appoint the board members and they have some powers of direction to the distributor-retailer and they are provided with returns or profits, as they are usually described in the media. When the distributor-retailers were created, there were transfer schemes which set out the assets, liabilities, instruments and employees that were transferred from the councils to the distributor-retailers. There is another key document, which is the participation agreements which were entered into between the distributor-retailers and their participating councils. They govern a great deal of the distributor-retailer operations. There are some variations between the agreements that affect each of the three distributor-retailers.

Having given that very brief summary of the reform process, I would like to turn to the bill. The first statement of government policy was on 7 April 2011 in a statement made by the honourable the Premier and Minister for Reconstruction, which announced changes to make South-East Queensland councils responsible for how water is distributed and retailed and how much they charge so that these decisions rest solely with the councils. There were really two arms to what was announced in that statement. The first one was that the distributor-retailers would cap their price increases for residential and small business customers to no more than an increase in CPI. That is to operate until 30 June 2013 and amendments earlier this year delivered on that.

The second part of the statement talked about giving South-East Queensland councils the opportunity to opt out of the distributor-retailers, to re-establish council operated water and wastewater businesses to be operational at 1 July 2012, which is largely the substance of the bill we are talking to today. The participating councils for Unitywater and for Queensland Urban Utilities decided to stay with their distributor-retailer. The Gold Coast decided to withdraw, which led to Logan and Redland councils reversing their original decisions to stay with Allconnex water. So all three councils have agreed to re-establish their water and wastewater businesses by 1 July 2012. As it was the decision of the Gold Coast that led to the proposed dissolution of Allconnex, government policy is that the Gold Coast would be responsible for the costs of the break-up—that is, its own costs and the costs of the two other councils.

The second government statement was on 20 July 2011. It was a statement by the Minister for Energy and Water Utilities that announced that councillors would be permitted to be members of distributor-retailer boards. This was intended to give councils more access to a distributor-retailer's strategic decision-making processes and a better understanding of the day-to-day operational issues and how they impact on customers and the broader communities that are serviced by a distributor-retailer. There is also a range of mostly minor changes.

When we talk about the content of the bill, because this is an amending bill it can be a little bit confusing to follow. I recommend to the committee that there is an attachment at the back of the report that we provided which is a summary of the bill's provisions which you could consider a handy hint to find things. We prepared it when we were consulting with the distributor-retailers and the councils. We found it helpful. So we included it in the report that we provided to the committee.

I would now like to talk to the two main parts of the bill. The bulk of the bill deals with the Allconnex dissolution. The bill provides the legislative framework for the dissolution, some rules as to the process for transferring assets and winding up Allconnex and an arbitration process for disputes. But the focus really is that this is an enabling framework. It is the responsibility of the councils and of Allconnex to identify and agree on the split-up and the transfer of Allconnex's assets, liabilities, instruments and employees to the three councils and to deal with the associated costs.

The main part of the arrangements for dissolving Allconnex and moving everything to the councils is in the new chapter 3A. I will say that there are two terms in the bill that certainly the stakeholders found a little confusing. I will just give a brief explanation of those two. One is 'withdrawing councils'. That is the term for the three participating councils of Allconnex—Gold Coast, Logan and Redland—that are withdrawing. There is another term, 'successor council', and that means whichever combination of those three is the actual successor who receives an asset or a liability.

Turning to the process, the bill provides for a similar mechanism to retransfer Allconnex's assets, liabilities, instruments and staff to the councils as applied in 2010 although, of course, in reverse. There is a couple of key concepts in there. The retransfer scheme is the first one. That will be the document that lists all the matters to transfer to the councils plus any related matters dealing with the wind-up of Allconnex. The bill seeks some mandatory matters that have to be dealt with in that and the parties can then deal with any other matters that they wish to. The process is the councils and Allconnex agree on the content. Then a draft is provided to the minister by 30 April 2012 and the minister does a notification in the *Gazette*. It is not approved; it is just a process to have it become law through notification.

There are some general principles for the retransfer and some default rules in case a retransfer scheme does not deal with a matter. The general principles for the transfer are, as you would expect, if a matter came from a council to Allconnex in 2010, it would go back to that council unless for some reason all the parties agreed to some different arrangement. In relation to land, assets attached to land or matters with a geographic basis such as a custom being on premises, those go back to the successor council where that land is located. That might require some associated agreements if, for instance, there is a sewage treatment plant which goes back to council A. If it is actually collecting and treating waste from council B, you just have an agreement and it is up to the parties to negotiate that.

Where there are matters or assets that have been acquired by Allconnex since 1 July 2010, these are mostly split on the basis of participation rights. The participation rights of the councils are essentially based on what they brought to Allconnex. The split is the Gold Coast 62 per cent, Logan 24 per cent, Redland 14 per cent. There is a great deal of detail of this in the report, so I do not propose to do any more than deal with the general principles and rules.

The other key document is the certification statement. This is the statement that is signed by all the parties—Allconnex and the three councils—saying that net their responsibilities everything belonging to Allconnex is going to be transferred or otherwise dealt with by 30 June 2012. This statement is to be provided to the minister by 30 April with the draft retransfer scheme and then the minister can rely on this in giving notice about the retransfer scheme.

Another key document is the workforce framework. The bill provides a framework for dealing with the employees of Allconnex. I am using 'framework' in two ways here. It provides a legislative structure but the detail will be in the workforce framework. That will have the detailed rules about time frames, terms and coverage about the Allconnex staff and transferring to the councils. This is being developed by a working group with councils and union representatives, with Justice and Attorney-General and the commission in the room. The goal that all parties have agreed to is to have an in-principle agreement by December 2011 at the latest. The framework will come to the minister for approval. There is actually provision in the bill that that can have retrospective effect once it is approved. Of course, it cannot be approved till after the bill becomes law. There are also some retransfer documents. The minister has powers for a limited time to issue notices and directions that might be needed to correct errors or oversights in the retransfer arrangements.

When there are any disputes between the councils, Allconnex or any combination thereof, any of the parties can refer a matter to independent arbitration. The bill provides for the arbitration to occur, but there will be a regulation made that will deal with the actual process. We will be consulting with stakeholders as we develop that.

In relation to withdrawal costs, as I stated earlier, the Gold Coast will pay the costs of the withdrawing councils to disaggregate from Allconnex water and to re-establish council water businesses and also any Allconnex withdrawal costs. However, Allconnex and the other two councils are obliged to take all efforts to mitigate the costs. The bill lists some matters to be included or excluded from withdrawal costs. There is also a power to make a regulation to further refine withdrawal costs. We will be holding workshops with the stakeholders to develop this. Allconnex actually continues in existence after 1 July 2012. It no longer has any water or wastewater functions—they will have moved to the council; all the assets, liabilities and people will have gone to the councils—but Allconnex continues to just do the winding up matters.

Turning to the non-Allconnex matters, these are mainly corrections or minor matters. The key one of these, although minor, is of concern to the community, and that is that there is no privatisation for distributor-retailers. There are two new policy matters allowing councils to be on the distributor-retailer boards and allowing individual councils to give directions to distributor-retailers. Talking to no privatisation, at first this is really a clarification of current provisions to address community misconceptions. It is quite apparent from letters, correspondence, emails, phone calls to the commission and material in the media that many people actually believe the distributor-retailers are either some sort of privatised entity already or they are going to be. So this just very clearly states that only the current participating councils can be participants in a distributor-retailer. This would allow the councils in a distributor-retailer to adjust their participation rights between the two of them should they want to, but they cannot sell it to private interests.

I turn to councillors on boards. I alluded to the minister's statement on 21 July. There was some detail of the proposals in that and some of that detail changed during consultation, essentially, as we worked through what was workable and what was best for the distributor-retailers and the councils. Councillors will be able to be members of boards. This replaces a previous provision that allowed council employees to be on boards. There are limitations on the number of council members and a council board member cannot be a chair. The bill provides some arrangements for term of office, filling vacancies, suspensions, no board remuneration, but some of those rules can be varied in a participation agreement and with all councils agreeing.

One significant change was that the original policy was that the councillor board member would only represent the council interests when acting on the board. This was worked through in a great deal of detail with councils and distributor-retailers and it has moved to a more normal arrangement where a councillor member acting on the board must act in the best interests of the board. That is pretty similar to, for instance, under the old Local Government Act where a councillor would be on a joint local government or some regional body. When you are on the other body, you are acting in the interests of the body. The other key new area is that individual councils will be able to give directions to distributor-retailers. There is an existing power for all councils to agree to give a direction to a distributor-retailer about performing a function. This allows individual councils to give written directions to the distributor-retailers about performing the distributor-retailer function in that council area. Again, it has to be in the public interest and it is only on quite limited matters and it is subject to first consulting with the distributor-retailer and the other councils and being liable for compensation if there is any consequential financial detriment on the distributor-retailer or the other councils.

Turning to consultation on the bill, there was a very tight time line to develop this bill from the announcement in April to getting a bill into the House in October, but we worked very closely with stakeholders. We made all efforts to consult the key stakeholders and take their views into account in developing the bill. We generally got positive feedback from the stakeholders on the consultation approach and the extent to which they were provided with information and their input sought—not that we all agreed on everything all of the time. We ran a series of workshops. All SEQ councils and distributor-retailers were invited and attended. The later workshops tended to be attended by Allconnex and their withdrawn councils. The first workshops were on the proposals on 29 and 31 August and we essentially explained the matters to be dealt with in the bill, provided material and advice about likely legislative amendments, what would be in a retransfer scheme and withdrawal cost principles. We got verbal feedback at the workshops plus we got written stakeholder feedback within a week. I will say that all of the parties were very good about the time line, the fast turnaround and making senior officers available and they are to be congratulated for that.

We held another round of workshops on the draft bill, and there was a series of working drafts of the bills distributed prior to workshops. We had workshops on 21 September and 26 September and we continued to have stakeholders raise minor issues as we finalised the bill leading to minor tweakings here and there. We have since the bill's introduction held workshops dealing specifically with retransfer schemes where we distributed material to participants to help them with understanding all of the things they have to do between now and 1 July 2012 and what will need to be done after that, the time lines for various items and what bill provisions meant. We distributed templates for retransfer schemes and certification statements and some options for restructuring the debt through to QTC, making it plain these were not mandatory. We were providing helpful templates and if they wanted to do something else that was fine. We are planning some further workshops on withdrawal costs and regulations on other matters.

Madam Chair, I have further material on the issues raised in consultation and the outcome of those issues, but I am conscious that I do not want to take up too much committee time talking. They are matters covered in more detail in the report prepared by the commission, but I can give you a summary of consultation issues and outcomes if you would like.

**CHAIR:** Would the committee like that extra information?

**Mr POWELL:** It is in the report and I think that is sufficient, Madam Chair.

**CHAIR:** If it is in the report, we all agree: you do not have to. So are you ready for some questions?

**Ms Peters:** Absolutely.

**Mr POWELL:** Ms Peters, I congratulate you on the approach you have taken to the briefing today, not only in what you have provided and how you have provided it here but also in this report that you have provided. Certainly for those of us where this bill is not part of our portfolio responsibilities, your guide for dummies at the back is very much appreciated. So thank you very much for that. You mentioned that Allconnex will lose its water and wastewater functions from 1 July 2012 but obviously will have business to attend to for a certain period of time, and it has been indicated that it is likely to be wound up between September and December next year. With regard to the costs of maintaining that board for that period, will they also be paid by the Gold Coast City Council?

**Ms Peters:** I would think that they would be part of the withdrawal costs. There is not going to be a great deal involved there. The board continues. The CEO continues and I suspect from talking to the councils that one of the councils will be a host to that operation in terms of dealing with putting together the final books and doing the annual report and dealing with the tax issues.

**Mr POWELL:** I guess I am referring specifically to the ongoing staff costs of the CEO and any board member fees as well.

**Ms Peters:** It has not been clearly covered in the bill, but I would expect so.

**Mr POWELL:** Okay. Can I possibly ask for that to be clarified, if that is okay?

**Ms Peters:** Certainly. I am happy to take that on notice and come back with a detailed answer.

**Mr LAWLOR:** You did mention about the assets and liabilities that go back to the councils that sort of contributed them in the first place. With regard to employees—and I know you said that that is subject to ongoing negotiations which will be finalised in December of this year—is it the objective of the exercise that all employees be retained or will there be retrenchments?

**Ms Peters:** At the beginning of the water reforms the councils, unions and state government agreed on a core set of workforce principles, one of which was labour savings are not and have never been a driver for the reform and there will not be forced redundancies. While the workforce framework is still being negotiated, I would expect that those principles would be applied by that committee and the workforce framework comes to the government for approval—to the minister, who I am sure would consider those principles relevant.

**Mr LAWLOR:** Thanks.

**Ms FARMER:** Thanks, Ms Peters, and I also want to congratulate you on your presentation as well. It was very user friendly, as was your report. I am interested in revisiting the issue of councillors on boards. You have referred to that today and your report refers to concerns that were raised about potential conflicts of interest. I am just interested in exploring a little bit more about how having councillors sitting on boards will improve transparency and accountability and how you will ensure that there are not any conflicts of interest.

**Ms Peters:** The approach with councillors on the boards was quite similar to where councillors are, by virtue of being a council, placed on some other entity, whether it is a regional entity or in my history as a bureaucrat I have been secretary to a number of statutory committees where a councillor would have been nominated by the Local Government Association to be on there. There are some fairly established principles in dealing with conflicts of interest, so I think that is a fairly straightforward answer to the second part of your question. In terms of the first question of the benefit of councillors on boards, as the minister said in his statement, it was seen as a way of closing a gap if you like—that is, having a councillor on the board would bring both council expertise and experience to the role but they would also take back to their council knowledge of distributor-retailer activities, approaches, principles and the broader spectrum of the community and the broader geographic area of distributor-retailer services.

**Mr POWELL:** With regard to your guide at the back, at pages 75 to 79 it refers to CPI capping in that withdrawn councils must CPI cap small customer and small business accounts. Basically what you are achieving there is consistency with the amendments that were made to the bill as you raised in your introductory comments to ensure that Allconnex customers' bills are capped in the same way that those staying with Unitywater and QUU are. Is that correct?

**Ms Peters:** That is perfectly correct—that is, the expectation of the community that they would continue to have increases limited to CPI would be met.

**Mr POWELL:** Thank you.

**CHAIR:** The member for Southport has a question.

**Mr LAWLOR:** Yes. I think you have just touched on the answer, Ms Peters, with the CPI and the caps. Are there other customer protections that the bill provides for those who will be subject to council water-run services, and I am obviously talking about the Gold Coast?

**Ms Peters:** Yes. I think you can refer to the model for the withdrawn councils—one of my staff calls it 'council plus'—which is they generally operate under the rules that apply to local governments under a local government commercialised business unit under the Local Government Act, but there are certain requirements that have been placed on those withdrawn councils to comply with the requirements that are placed on other participants in the SEQ water market. One of the reforms that has come with creating the distributor-retailer is various customer protections—more information on bills for instance, getting rationalisation of dealing with customers in reduced circumstances and their capacity to pay bills, providing for disputes between a distributor-retailer and a council to go to the Energy and Water Ombudsman of Queensland and the water and wastewater customer code, which provides a number of customer protections on which the jurisdiction of the Energy and Water Ombudsman is based. So all of those customer protections are being applied to the customers of the withdrawn councils as they would have applied to them as customers of Allconnex.

**Mr LAWLOR:** Thank you.

**Mr CRIPPS:** Ms Peters, in your information that you provided to the committee you indicated that there is a provision in the bill that we are considering that will prevent the retail entities—that is, the councils in future—from disposing of the water distribution responsibility to a private entity.

**Ms Peters:** That refers to distributor-retailers because the protection is through the participation agreement for a distributor-retailer and the powers of the minister to approve certain changes. So that applies to the distributor-retailers. There are controls under the Local Government Act that prevent a council disposing of certain commercialised business activities, and I can take that on notice and provide you with details of that if you would like.

**Mr CRIPPS:** So the councils will not be able to sell the distributor-retailers once the responsibility for water distribution moves back to them?

**Ms Peters:** The councils, once they have re-established their water business, will be under the Local Government Act and there are controls there that prevent them selling off. I am happy to take that on notice and provide—

**Mr CRIPPS:** Are those provisions a direct transfer of a provision that was in the current act under which Allconnex is established and currently operates?

**Ms Peters:** No. This is a provision that applies to any commercialised business unit of a council under the Local Government Act, and it would have applied to, say, the Gold Coast before Allconnex was created. It would apply to Townsville and their water business. It is a general local government requirement.

**CHAIR:** But if you are happy to provide any further information, we would be very keen to get it.

**Ms Peters:** We are happy to take that on notice.

**Mr POWELL:** Apologies, Ms Peters, we are probably going over some information, but I am just seeking some clarity around the appointment of councillors to the boards now. Is the bill prescriptive in the number of councillors that can be appointed to the board?

**CHAIR:** You mentioned some limitations before, but you did not actually say how many.

**Mr POWELL:** If I can ask three parts to this question: the representations, so how many councillors per board; ask you to confirm that councillors cannot be chairmen; and, again just very clearly, if the bill addresses the payments to a councillor as a board member?

**Ms Peters:** There are some specific requirements that are intended to maintain the balance between the independent members of the board and the councillor members of the board. It is up to the participant councils to decide if they wish to appoint councillors to a board. There is a minimum number of board members, which is five. So, for instance, Unitywater has rather more board members than that, although I cannot remember the number off the top of my head. The provision says that you can have one member per council. So you could not have, in Queensland Urban Utilities, Brisbane providing three members. One council, one member, but there is a maximum of three. So, for Queensland Urban Utilities, which has five participant councils, it can have three members and they need to get together and agree which three. For Unitywater, which has two councils, it can only have two councillor members should it wish to.

Now, the councillor member cannot be chair, I confirm that. With remuneration, what we have done has applied the general rules that apply to local government councillors. They are already provided with remuneration as a councillor under the Local Government Act. When a councillor acts on some other board, some other entity, they do not normally get paid the board fees. The way it operates is if council A sends Joe Brown off to be a member of a distributor-retailer board, the council can say, 'Well, this councillor is taking extra responsibilities and extra duties and should be paid for it'. They would go to the remuneration tribunal which, under the Local Government Act or the City of Brisbane Act, applies and say, 'Just as we pay extra money to the chair of the town planning committee or the deputy mayor, we want to pay X money to this councillor who is undertaking this business', and the remuneration tribunal has various criteria that it applies.

**CHAIR:** I think you will find that most councillors have a car and a petrol card compliments of the ratepayers anyway so the vast majority of the expenses would be already covered. Any further questions?

**Mr POWELL:** Just one more.

**CHAIR:** Member for Glass House has a follow up.

**Mr POWELL:** I am very conscious that I am unable to stray into questions of policy so I will try to frame this appropriately.

**CHAIR:** I would ask you to be very careful and very mindful of that.

**Mr POWELL:** Has consultation occurred with the participating councils of Allconnex regarding the time frames under which this bill is proceeding? The bill is currently before the committee and goes back to the House on 5 April and there is very real potential that there will be an election before then. Have the councils been consulted on the ramifications of that?

**Ms Peters:** I would say that all the participant councils and all the distributor-retailers have been consulted on all aspects of the bill. I am aware that the committee has contacted the councils and advised of the time lines. I have been in receipt of some comments of concern by councils. That is all I can say on the matter.

**CHAIR:** Absolutely, and the timetable is actually not of our making either. Thank you very much. Your report was extremely informative. We very much appreciate your time here today. If there are any other further issues that you think the committee might be interested in we would be more than happy to receive that information. I say on behalf of the committee thank you so very much for giving us your time today. It is very much appreciated. I now declare this meeting of the Environment, Agriculture, Resources and Energy Committee closed.

**Committee adjourned at 11.33 am**