



Report of the Queensland Ombudsman

Ownership Transfer Fee

Investigation into the Brisbane City Council's fee for recording a change of property ownership in its land record

December 2013

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Dictionary

Acronym or word	Explanation
CEO	Brisbane City Council's Chief Executive Officer
the CLC	Brisbane City Council's Chief Legal Counsel
the COBA	<i>City of Brisbane Act 2010</i>
council	Brisbane City Council
Mr Hinson QC	Legal counsel engaged by this Office to advise on the issues for investigation
OTF	ownership transfer fee
the regulation	<i>City of Brisbane Regulation 2012</i>

Executive summary

This report outlines the findings of an investigation into the lawfulness of the amount charged by Brisbane City Council (council) for its Ownership Transfer Fee (OTF). The OTF is imposed on new property owners pursuant to s.99 of the *City of Brisbane Act 2010* for the purpose of 'recording a change of ownership of land' in council's land record. The OTF for this financial year is \$177.

The investigation found that the amount of the OTF was not properly fixed by council in accordance with legislation for the financial years 2011-12, 2012-13 and 2013-14. I have therefore recommended that the portion of the OTF which was not fixed in accordance with the legislation be refunded for the relevant financial years.

The investigation was conducted as a result of a complaint to this Office from a new property owner who alleged that council had been unable to demonstrate how the OTF meets the requirements of s.99(4) of the *City of Brisbane Act 2010* (COBA). This provision provides that, as the OTF is a 'cost-recovery fee,' it must not be more than the cost to council of taking the action for which the fee is charged. Pursuant to s.99, that action is 'recording a change of ownership of land.'

The Council's Chief Executive Officer (CEO) was provided with an opportunity to comment on a proposed report provided on 20 September 2013. In his response dated 29 November 2013 the CEO did not accept the opinions and recommendations as detailed in the proposed report, except a general opinion which related to the proper interpretation of s.99 of the COBA. However, he advised that as from 1 July 2014 the OTF will cease to be imposed under s.99 of the COBA and will be replaced with a 'change of ownership service charge' under s.242 of the COBA. My opinions and recommendations remain unchanged from the proposed report provided to the CEO.

The investigation involved a review of:

- the relevant legislation (see Chapter 2)
- the documents provided by council to explain the process it uses to calculate the OTF amount (see Chapter 3) and
- the descriptions provided by council of activities included in the cost of the OTF (see Chapters 4 and 5).

I was assisted in this regard by legal advice provided to council by council's Chief Legal Counsel and legal advice provided to this Office by Mr Mark Hinson QC relating to the issues in this investigation.

The central issue in this investigation was the nature of the costs lawfully involved in council recording a change of ownership of land (see Chapter 4) pursuant to s.99 of the COBA. In council's view, the activity of recording a change of ownership of land included a wide range of billing and governance activities which I consider are activities *consequential* upon the act of recording a change of ownership. Legal advice provided to both council and this Office does not support the inclusion of such consequential costs in the calculation of the OTF. Rather, the legal advice indicated that only activities involved in recording a change of ownership can be included in the calculation of the OTF, and nothing more.

In light of this legal advice, I evaluated the activities included by council in the calculation of the OTF (see Chapter 5). In my opinion, the OTF amount is more than may lawfully be recovered by council to the extent that it includes the costs of activities consequential to recording a change of ownership. In some cases the descriptions of the activities were too limited to make definitive determinations about whether those activities were properly included in the OTF amount. Therefore, it now falls on council to recalculate the OTF for the three relevant financial years and refund the difference to relevant property owners.

Councils across Queensland charge different amounts for their ownership transfer fees under identical provisions to the COBA.¹ Therefore the issues raised in this report are applicable to all councils.

¹ Section 97, Local Government Act 2009.

Opinions and recommendations

Opinions

I form the following opinions:²

Opinion 1

The head of power under s.99 of the COBA authorises the fixing of a fee to recover the costs of *recording a change of ownership*, not costs of activities *consequential* to taking that action.

Opinion 2

The OTF of \$165 fixed by the council for the financial year 2011-12 and subsequent fees set for 2012-13 and 2013-14 exceeded the cost of recording a change of ownership of land in the land record because the cost components used by the council went beyond the scope of s.99(4) of the COBA. The OTF was therefore unlawfully imposed and constitutes administrative action which was contrary to law under s.49(2)(a) and unreasonable under s.49(2)(b) of the *Ombudsman Act 2001*.

Opinion 3

Council failed to adequately and meaningfully respond to the complainant on how the OTF was a true reflection of the cost to council of recording a change of ownership of land.

Recommendations

I make the following recommendations:³

Recommendation 1

Council:

- (a) recalculate the OTF for 2011-12, 2012-13 and 2013-14 in accordance with the proper interpretation of the scope of s.99 of the COBA outlined in this report by excluding costs of activities consequential upon recording a change of ownership of land (the newly calculated fee) and
- (b) refund to the owners of land who were charged the OTF, the amount imposed less the newly calculated fee for the financial years 2011-12, 2012-13 and 2013-14.

Recommendation 2

Council write to the complainant setting out the basis for determining the amount of the newly calculated OTF for 2011-12 for recording the change of ownership of the land in the complainant's name.

² For the purposes of Part 6, Division 1 of the *Ombudsman Act 2001*.

³ Under s.50 of the *Ombudsman Act*.

Chapter 1: Introduction

1.1 Background

This report considers whether the Brisbane City Council (council) has correctly calculated the amount of its property ownership transfer fee (OTF) which is imposed by council on new property owners for recording a change of property ownership in council's land record.

The OTF is a 'cost-recovery fee' fixed under s.99 of the City of Brisbane Act 2010 (COBA) for the purpose of 'recording a change of ownership of land'. Under the COBA a cost-recovery fee 'must not be more than the cost to council of taking the action for which the fee is charged'.⁴ In this case, the relevant action is council 'recording a change of ownership of land'.⁵

A new property owner raised a complaint with this Office alleging:

- the OTF charged by council during the 2011-12 financial year was excessive, and
- that council's response to the complainant failed to demonstrate that the OTF charged was a true reflection of the actual cost to council of recording a change in ownership of land in its land record.

Council's OTF was fixed by council resolution at:

- \$165 for the 2011-12 financial year
- \$173 for the 2012-13 financial year
- \$177 for the 2013-14 financial year.

The issue for investigation is whether the OTF amount imposed on new property owners for the three relevant financial years was properly fixed in accordance with s.99 of the COBA. The central contention considered in this report is the scope of activities involved in 'recording a change of ownership of land' which council can lawfully include in the calculation of the OTF as a cost-recovery fee under s.99 of the COBA.

This Office previously investigated the amount of council's OTF in the late 1990s, when the fee was set at \$200 under previous legislation.⁶ The dealings between this Office and council were discontinued when council decided, in 2004, to fix its OTF at \$60.

What is the OTF?

The State Titles Registry records changes in title (land ownership) and charges a fee. The OTF is a separate charge, beyond the State Titles Registry fee, imposed by council on new property owners for recording a change of property ownership details in council's land record.

Changes in land ownership details⁷ are provided by the State Titles Registry in electronic format to all councils in Queensland. Councils use the data provided to update ownership (land) records, by recording the name and address of the new owner for the relevant land.

1.2 Issues for investigation

The principal issue for investigation is whether council has correctly calculated the OTF.

As part of the investigation,⁸ this Office considered the following issues:

- the legislative basis for the OTF (Chapter 2)
- the process council used to calculate the OTF (Chapter 3)
- the types of costs that can lawfully be included in the calculation of the OTF as a cost-recovery fee for the purpose of 'recording a change of ownership of land' (Chapter 4)
- the costs council includes in its calculation of the OTF (Chapter 5)

4 Under s.99(4) of the COBA.

5 Under s.99(2)(b) of the COBA.

6 The past investigation related to the OTF as then fixed under the previous legislation, s.59(1)(f) of the repealed *City of Brisbane Act 1924* which dealt with 'general charges'. Section 59 of the 1924 Act was repealed in 2003 and replaced with s.1071A of the *Local Government Act 1993* relating to 'regulatory fees'.

7 The information provided by the Titles Registry under this process is the data in Form 1 and Form 24 lodged in the Titles Registry for the registration of a change of ownership of land under the *Land Titles Act 1994*. The information includes, among other things, information as to the new owner's postal address (if different from the physical address of the land in question), the date the new owner takes possession of the land and the sale price.

8 Conducted under s.24(a) of the Ombudsman Act.

- whether the OTF was lawfully fixed (Chapter 5)
- the council's response to the findings in the proposed report (Chapter 6).

1.3 Jurisdiction

The Ombudsman is an officer of the Parliament empowered to deal with complaints about the administrative actions of Queensland government departments, public authorities and local governments.

Under the *Ombudsman Act 2001*, I have authority to:

- investigate maladministration by public sector agencies in response to complaints or on my own initiative
- make recommendations to an agency being investigated about ways of rectifying the effects of its maladministration and improving its practices and procedures
- consider the administrative practices of agencies generally and make recommendations, or provide information or other assistance to improve practices and procedures.

If I consider that an agency's actions were unlawful, unreasonable, unfair or otherwise wrong, I may provide a report to the principal officer of the agency. In the report, I may make recommendations to rectify the effect of the maladministration identified or to improve the agency's policies, practices or procedures with a view to minimising the prospect of similar problems occurring.

If appropriate, I may also publish the report with the approval of the Speaker of the Legislative Assembly.

1.4 Investigation methodology

The investigation involved review and analysis of relevant legislation and a wide range of documents provided by council in relation to the basis on which council calculated its OTF for the financial year 2011-12. The council confirmed that it calculated the OTF on the same basis for the next two financial years.⁹ However, council's CEO advised in his response to the proposed report (see further Chapter 6) that from 1 July 2014 the OTF will be replaced with a 'change of ownership service charge' under a different provision of the COBA and its amount determined as part of the 2014 budget process.

During the course of the investigation, I obtained:

- legal advice from Mr Mark Hinson QC (Mr Hinson) about the legal basis of the calculation of the OTF (extract attached in **Appendix A**)
- a copy of internal legal advice from council's Chief Legal Counsel (CLC) in relation to the same issue (extracted at section 4.2 of this report)
- council's response to my proposed opinions and recommendations.

I took those advices and council's response into account in forming my opinions and recommendations.

1.5 Council's response to this report

Council's CEO was given an opportunity to comment on a proposed (draft) report and did not accept the majority of the proposed opinions and recommendations. In particular, while council's CEO does not dispute my interpretation of s.99 of the COBA, he did not agree with the reasoning regarding what costs can and cannot be included in the calculation of the OTF.

The CEO's response is summarised in Chapter 6 of this report.

⁹ Email dated 30 July 2013 from the Acting Executive Officer of the Chief Executive's Office at council to this Office which confirmed: '... the basis for calculation of the Ownership Transfer Fee charged in 2012-13 and 2013-14 has remained the same as in 2011-12. Of course the associated costs have increased over this period.'

Chapter 2: The legislative basis for the Ownership Transfer Fee (OTF)

This chapter outlines the legislative basis for the establishment and calculation of the OTF as a cost-recovery fee.

The legislation relevant to this investigation is s.99 of the COBA and the *City of Brisbane Regulation 2012* (the regulation).

2.1 Council's obligation to record changes of ownership in land

The regulation obliges a new owner of land to give council notice of a change of ownership of the land within 30 days of the change.¹⁰ The new owner can comply with this obligation by providing the State Registrar of Titles a form for the change of ownership and the instrument of transfer of the land.¹¹

The State Titles Registry provides all councils in Queensland with changes in land ownership details in electronic format on a regular basis. The regulation requires that upon receipt of the change of ownership details¹² from the Registrar of Titles, council must record the details of the new owner of the land in council's land records.¹³

2.2 OTF is a 'cost-recovery fee' under s.99

The COBA provides that council may, by resolution, fix a 'cost-recovery fee' (s.99(1)) for the purpose of 'recording a change of ownership of land' (s.99(2)(b)). Under s.99(4) of the COBA, a cost-recovery fee must not be more than the cost to council of taking the action for which the fee is charged.

City of Brisbane Act 2010

99 Cost-recovery fees

- (1) The council may, under a local law or a resolution, fix a cost-recovery fee.
- (2) A cost-recovery fee is a fee for—
 - (a) an application for the issue or renewal of a licence, permit, registration or other approval under a local government related law (an application fee); or
 - (b) recording a change of ownership of land; or
 - (c) giving information kept under a local government related law; or
 - (d) seizing property or animals under a local government related law; or
 - (e) the performance of another responsibility imposed on the council under the Building Act or the Plumbing and Drainage Act.
- (3) A local law or resolution for subsection (2)(d) or (e) must state—
 - (a) the person liable to pay the cost-recovery fee; and
 - (b) the time within which the fee must be paid.
- (4) A cost-recovery fee must not be more than the cost to the council of taking the action for which the fee is charged.
- (5) ...
- (6) ...
- (7) ...
- (8) The council may fix a cost-recovery fee by resolution even if the fee had previously been fixed by a local law.

[My underlining]

Council fixed the OTF by resolutions adopting council budgets for each of the financial years 2011-12, 2012-13

¹⁰ Section 152(2) of the regulation.

¹¹ Section 153(3) of the regulation.

¹² The information provided by the Titles Registry under this process is the data in Form 1 and Form 24 lodged in the Titles Registry for the registration of a change of ownership of land under the *Land Titles Act 1994*. The information includes, among other things, information as to the new owner's postal address (if different from the physical address of the land in question), the date the new owner takes possession of the land, and the sale price.

¹³ Section 154 of the regulation.

and 2013-14. Council's Register of Cost-Recovery Fees¹⁴ identifies s.99(2)(b) as the source of power under which the OTF was fixed for those financial years.

Therefore, it is common ground between council and this Office that:

- the OTF is a cost-recovery fee under s.99 of the COBA
- the OTF is fixed for the purpose of 'recording a change of ownership of land' under s.99(2)(b) of the COBA.

2.3 Ownership details required for the 'land record'

The act of 'recording a change of ownership of land' necessarily involves updating certain aspects of council's land record. The regulation requires that council's CEO must ensure council's 'land record' is up-to-date.¹⁵ The land record is used to identify who is responsible for paying rates or charges for particular land.¹⁶ The regulation outlines the information relating to each parcel of land that must be included in the land record, including the name and postal address of the owner of the land.¹⁷

City of Brisbane Regulation 2012

146 Land record to be kept

(1) The council must keep a land record.

(2) A *land record* contains the following information for each parcel of rateable land in its area—

- (a) the name and postal address of the owner of the land;
- (b) a description of the land, including its location and size;
- (c) its value and the day of effect of the relevant valuation under the Land Valuation Act;
- (d) information about rates or charges for the land, including about the following—
 - (i) the type and amounts of rates or charges levied on the land;
 - (ii) if differential general rates are levied—the rating category of the land;
 - (iii) the date of each levy and the due date for payment;
 - (iv) the period for which the rates or charges are levied;
 - (v) the financial year to which the rates or charges apply;
 - (vi) concessions granted or discounts given for payment of rates or charges;
 - (vii) payment of rates or charges by instalments;
 - (viii) any overdue rates or charges, accrued interest on overdue rates or charges and the interest rate applying to overdue rates or charges;
 - (ix) the date when rates or charges are paid;

(e) any other information that the council considers appropriate.

[My underlining]

Therefore, the activity of 'recording a change of ownership of land' under s.99(2)(b) of the COBA necessarily entails recording the following details in the council's land record:

- the new owner's name and address (for the service of notices under the COBA and other legislation administered by council)
- the effective date of the change of ownership, namely the date the new owner takes possession of the land under the relevant contract of sale.¹⁸

¹⁴ Kept pursuant to s.100(1) of the COBA. Email dated 2 September 2013 from council to this Office enclosing Register of Cost Recovery Fees as it relates to the OTF for the financial years 2011-12, 2012-13 and 2013-14.

¹⁵ Section 148(1) of the regulation. Council's land records are established and maintained under s.146 of the regulation.

¹⁶ Section 145(2) of the regulation.

¹⁷ Section 146(2)(a) of the regulation.

¹⁸ Paragraph 9 of Mr Hinson QC's advice to the Ombudsman dated 23 August 2013 (**Appendix A**).

Chapter 3: How was the OTF fixed?

During the investigation, council provided this Office with a range of documents to explain how the OTF was fixed. This chapter outlines the process council followed.

The document provided by council titled 'Attachment C' (**Appendix B**) identifies council's process for calculating the OTF for the 2011-12 financial year, which is described by council as 'full absorption costing.' This process appears to involve estimating a proportion of its total costs of revenue management activities and supporting activities attributable to recording changes of ownership.¹⁹

Appendix B indicates that for the 2011-12 financial year, council's OTF was calculated by:

- identifying council's total costs for 'revenue management activities' and 'supporting activities' for the financial year
- then, identifying the percentage of those costs council considers relevant to the calculation of the OTF. The relevant percentages are identified under the heading 'proportional OTF cost'
- finally, dividing the total costs of activities relating to the OTF (the 'total proportional OTF cost') of \$4,224,424 by the estimated volume of ownership transfers to be processed that year (25,000) to arrive at a single transaction cost of \$168.98. The actual OTF for 2011-12 was fixed at \$165.

In summary, this process can be represented by the following table based on information provided by council:²⁰

Total proportional OTF cost	\$4,224,424
Estimated number of property transfers	25,000
Average fee cost	\$168.98
Fee fixed	\$165
Estimated total revenue	\$4,125,000

The estimated total revenue from the OTF for the financial year 2011-12 was therefore \$4,125,000.²¹

A second document provided by council titled 'Attachment F' (see **Appendix C**) contains a more detailed schedule of activities relating to the OTF provided to this Office to explain why council believes the OTF was properly fixed (discussed in Chapter 4).

¹⁹ Paragraph 15 of Mark Hinson QC's advice to the Ombudsman dated 23 August 2013.

²⁰ Letter from council to this Office dated 9 April 2013.

²¹ However, Attachment D in council's letter to this Office dated 9 April 2013, described as 'Record that identifies the number of ownership transfers since 2006/07 to current including 2012/13 forecast, and the overall revenue from this source' states that the 'Total estimated number of OTF during 2011-2012' (that is, the estimated number of property transfers) was '22752' and the 'Total estimated OTF for 2011-2012' (that is, estimated total revenue) was '\$3,754,039.77'; while the 'Total estimated number of OTF during 2012-2013' was '23,000' and the 'Total estimated OTF for 2012-2013' was '\$3,979,000.00'.

Chapter 4: What types of costs can be included in the calculation of the OTF?

This chapter considers the types of costs which can lawfully be included in the calculation of the OTF. As established in Chapter 2, the OTF is a cost-recovery fee fixed under s.99 of the COBA for the purpose of recording a change of ownership of land. Therefore, council may include in the calculation of the OTF only the costs of activities involved in recording a change of ownership of land in council's land record.

Council has designated a wide range of activities as comprising those involved in recording a change of ownership of land in council's land record. However, legal advice provided to both council and this Office indicates that only the costs of a narrower range of activities can be lawfully included in the calculation of the OTF.

4.1 Council's view of activities relevant to calculating the OTF

Council set out descriptions of the activities it includes in the calculation of the OTF in council documents titled 'Attachment C' (**Appendix B**) and 'Attachment F' (**Appendix C**).

These two documents revealed that council calculates the OTF with reference to the cost of a wide range of billing and governance activities which council maintains comprise the activity of 'recording a change of ownership of land' in council's land record. These activities are reviewed in detail in Chapter 5.

The CEO explained council's interpretation of the scope of activities in his covering letter²² providing documents to this Office:

I trust this information clarifies that Council's full costs of recording ownership change is **far more than merely keying data into a computer system. Rather ownership changes affect a myriad of systems and processes across land registry, customer management, rating, billing, receipting and collection to ensure ratepayers are correctly charged by Council.**

Further, Council believes its **full absorption costing** approach most accurately represents the true cost to ratepayers of delivering this service.

[Emphasis added]

Some examples of the wide range of activities council maintains comprise, wholly or partly, the action of 'recording a change of ownership of land' are listed in 'Attachment F' (**Appendix C**) and include:

4. Team discussions on more complex ownership change issues. Example: Resumption of part of the land by a government department or agency such as Department of Transport and Main Roads.
5. Assessing the rate account to determine what the appropriate rating category to apply is based on the land and its current use following the pending or actual ownership change. Example: A property may change from owner-occupied to non-owner occupied or possibly commercial depending on the nature of the new owners and the land use.
6. Properties may need to be physically inspected to confirm its current use following a change of ownership. Example: Where a Rates Assessor wishes to investigate an anomaly with the ownership and land use that could affect the property's rating.
8. Applying the relevant State and Council charges to the rate account including fire service levy and waste management charge. Example: Fire service and waste management levies may vary if the land use has altered as a result of ownership change.
12. Evaluating applications for rates exemptions, remissions and/or objections. Example: Examples include general rate exemptions, category objections, not-for-profit remission, owner-occupier remission and multi-residential (single family) applications.
15. Producing and distributing an amended bill to the new owner where the rating category and/or charges have varied. Example: Property has changed from owner occupied to non-owner occupied residence.

²² Dated 9 April 2013.

4.2 Recent legal advice on activities relevant to calculating the OTF

Recent legal opinions provided to council and this Office do not support council's interpretation of the scope of activities involved in 'recording a change of ownership of land' in council's land record.

4.2.1 Recent legal advice to this Office

As noted above, I sought the advice of Mr Mark Hinson QC (see the relevant portions set out in **Appendix A**) regarding the activities included by council when costing the OTF.

Mr Hinson advised that in his view, the scope of activities involved in 'recording a change in ownership in land' under s.99(2)(b) of the COBA was narrow.²³ The scope does not include activities *consequential* upon recording a change of ownership or related or associated activities.²⁴

Rather, the activity of recording a change of ownership in land includes whatever change is necessary in council's land record to record the name of the new owner in place of the name of the previous owner. Relevantly, Mr Hinson stated:

The scope of the s.99(2)(b) activity is narrow in my opinion. The language used is precise and clear — the relevant activity is recording a change of ownership of land. That means, in my opinion, making whatever change is necessary in the Council's land record to record the name of the new owner in place of the name of the previous owner.²⁵

To the extent that the fee charged by the Council is a fee for activities other than the recording of a change of ownership of land, it falls outside the scope of s.99.²⁶

Mr Hinson advised further that council has a discretion about whether it charges a cost-recovery fee for recording a change of ownership of land, and where it does so, it is limited to fixing a fee for the activity of recording a change of ownership and cannot fix a cost-recovery fee for related or associated activities, which may be recovered through the general rate.²⁷ He stated:

The council is not required to fix a cost-recovery fee for recording a change of ownership of land. It has a **discretion** to do so. If it did not charge such a fee, the cost of recording changes of ownership would simply be part of the cost of maintaining a land record and revenue management systems which would be funded out of general rate revenue. To the extent that the Council has fixed a cost-recovery fee, it is limited to fixing a fee for the activity of recording a change of ownership and **cannot fix a cost-recovery fee for related or associated activities**. The cost of those related or associated activities may be recovered through the general rate.²⁸

[My emphasis]

Mr Hinson noted that, by s.99 of the COBA authorising the fixing of a cost-recovery fee 'for' an activity, it denotes a more direct relationship than the language found in previous legislation related to the fixing of an OTF.²⁹ Further, Mr Hinson differentiated the OTF from other fees in two cases under legislation with wider and more general language than s.99 of the COBA and noted that:

The council's approach, described as **full absorption costing, might be justified if s.99 used wider and more general language** such as the statutory provisions considered in Epic Energy and Airservices Australia. But s.99 is much narrower and specific in its terms. As explained earlier in paragraph 28 the action to be costed and for which a fee may be fixed is the action of making whatever change is necessary in the Council's land record to record the name of the new owner in place of the name of the previous owner.³⁰

[My emphasis]

23 Paragraph 28 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

24 Paragraphs 29, 32, 33, 34 and 37 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

25 Paragraph 28 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

26 Paragraph 30 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

27 Paragraphs 32, 33, 34 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

28 Paragraph 32 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

29 Paragraph 29 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

30 Paragraph 47 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

4.2.2 Recent legal advice to council

During the investigation, council provided this Office with legal advice it obtained in response to the complaint. The legal opinion dated 3 December 2012 was prepared by council's Chief Legal Counsel (CLC). Like Mr Hinson, the CLC took a strict view on the interpretation of s.99 of the COBA. The CLC advised that the OTF amount should not include costs for actions ancillary to recording a change of ownership of land and furthermore that the OTF should relate to the direct cost of council officers' time to update council's Ownership Register and nothing more.

The CLC indicated in his advice to council's officers that:

... the OTF can be no more than the cost of "recording a change of ownership." ...

Of necessity, the time and costs to Council of simply updating its records from one owner to another cannot be significant. ...

In theory there should only be the time and resources of one officer to simply update the database (which is the view taken by [the complainant]).

The CLC also advised that the relevant statutory provisions:

... required the (OTF) to be set for the costs of "recording change of ownership" only which **expressly rejected charging for ancillary actions to the record of change ...**

Accordingly you need to be able to show that the average cost to Council of recording changes of ownership **relate to the direct cost of Council Officers' time to update the Council Ownership Register and nothing more.**

Despite the CLC's advice, council maintains its calculation of the OTF, which includes the cost of a wide range of billing and governance activities, is correctly fixed in accordance with s.99 of the COBA.

I have carefully considered the CLC's advice to council and agree with his conclusion, that is, the s.99 COBA head of power does not provide for charges ancillary to the recording of a change of ownership.

4.3 Opinion

I form the following opinion:

Opinion 1

The head of power under s.99 of the COBA authorises the fixing of a fee to recover the costs of recording a change of ownership, not costs of activities consequential to taking that action.

I consider the above opinion is the starting point for considering whether council's OTF was lawfully fixed.

Chapter 5: Was the OTF lawfully fixed?

The purpose of this chapter is to evaluate the lawfulness of the various costs included by council in its calculation of the OTF based on the legal advice provided to this Office. However, due to the lack of detail provided by council in the descriptions of the activities included in the calculation of the OTF, the analysis in this chapter serves as a general guide rather than a definitive statement about what costs can lawfully be included in the OTF.

5.1 Criteria for evaluating whether an activity can be included in the calculation of the OTF

The criteria

The legal advice provided to this Office indicates that under s.99 of the COBA activities which are consequential to, related or associated with 'recording a change of ownership of land,' are not costs which can lawfully be included in the calculation of the OTF.

Council provided two documents, Attachment C (**Appendix B**) and Attachment F (**Appendix C**) that describe the activities (the cost of which are partly or wholly) included in the calculation of the OTF. These activities are evaluated below to determine whether they are activities which satisfy the requirements of s.99(2)(b) of the COBA. Upon evaluation of the activities outlined in Appendix B and Appendix C against the above criteria, Mr Hinson concluded that council had included some costs in its calculation of the OTF for the 2011-12 financial year which do not fall within the scope of the s.99(4) power requiring the fee to be not more than the cost of taking the action for which the OTF is charged.

5.2 Issues with descriptions of activities in Appendix B

The document titled 'Attachment C' (**Appendix B**) contains four spread sheets which identify council's process for calculating the OTF for the 2011-12 financial year.

Mr Hinson notes in respect of Appendix B that '(t)here is opacity and a lack of detail in the spread sheet which makes it difficult to identify what costs are involved in recording a change of ownership of land.'³¹ I agree with Mr Hinson's assessment.

My understanding is that the OTF calculation in Appendix B is informed by the more detailed schedule of activities listed by council in Appendix C. However the relationship between these documents is not clear.

Despite the limitations on analysis of Appendix B for the purpose of this report, I note the observations made by Mr Hinson in his advice, particularly in relation to the 34 activities outlined in the fourth spreadsheet of Appendix B titled *Revenue Management Activity Based Costing Model 2011/12*.³² He noted two activities are identified by council as being 'wholly attributable' to an OTF task:

- 'CLD ownership maintenance' (921 hours over three months)
- 'Ownership transfer fee' (128 hours over three months)³³

In respect of the 'CLD ownership maintenance' activity Mr Hinson notes:

CLD is, I understand, a reference to Core Land Database, which is in effect the Council's electronic land record. The above two activities account for a total of 1049 hours over the 3 month period.³⁴

In my view, the cost of the activity 'CLD ownership maintenance' would likely be properly included in the calculation of the OTF to the extent that it is for recording the change of ownership information in the land record as required by the regulation, that is, the new owner's name and address and the effective date of ownership (see 2.3 of this report).

It is unclear what actions fall within the second activity titled 'Ownership transfer fee' which as noted above, was identified as being 'wholly attributable' to an OTF task and taking '128 hours over three months' in the spreadsheet titled *Revenue Management Activity Based Costing Model 2011/12* in Appendix B. It may be that the actions comprising the activity titled 'Ownership transfer fee' are the activities listed in Appendix C. However, due

31 Paragraph 15 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

32 See Appendix B, p.42.

33 See paragraph 17 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

34 Quoted from paragraph 18 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

to the lack of information available about the nature of the activity titled 'Ownership transfer fee' I am unable to determine whether the cost of this activity is properly included in the OTF.

After reviewing the remaining 32 activities of the 34 activities listed on the spreadsheet titled *Revenue Management Based Costing Model 2011/12* in Appendix B, Mr Hinson concluded '(i)t is difficult to see how these activities, save for the change of address activity, have any real relationship with the activity of recording a change of ownership of land.'³⁵

While it is difficult to draw conclusions about the costs outlined in Appendix B provided by council, Appendix C provides more details about the activities that council includes in the calculation of the OTF.

5.3 Evaluation of council activities described in Appendix C

As noted earlier, the second document provided by council titled '*Attachment F: BCC Change of Ownership Activities*' (**Appendix C**) is a more detailed schedule of activities relating to the OTF provided to this Office to help explain why council believes the OTF was properly fixed. To this end, council listed 25 'Rating Activities' and nine 'Supporting Activities' in the schedule in Appendix C. The schedule in Appendix C provided by council has been adapted for this report with an extra column titled 'QO Comment' and 'Comment' with this Office's evaluation of each of the activities. The adapted schedule in Appendix C was also provided to Mr Hinson to assist his advice to this Office.

Some but not all of the 'Ratings activities' and 'Supporting activities' listed in the schedule in Appendix C can be related to the activities described in Appendix B. The precise relationship between the information provided by council in Appendix B and C remains unclear and was not clarified by council's CEO in his response to the proposed report.³⁶

5.3.1 Evaluation of the 25 'Rating Activities'

Council provided an explanation with the list of 25 'Rating Activities' in Appendix C:

The change of ownership of land is a significant event in Council's rating process and is the catalyst for a myriad of activities that ensures ratepayers are correctly rated and informed.

Council is typically notified of a change of ownership through a daily data file received from the Queensland Department of Natural Resources and Mines (DNRM). Council also monitors requests for solicitor's requisitions and rates searches as early notification of pending ownership changes. This enables Council to complete some of the ownership changes activities ahead of time facilitating timelier billing of the new customer.

Once notified, Council officers perform a range of activities ...³⁷

After reviewing the 25 Rating Activities in Attachment F (**Appendix C**) which included this Office's assessment of each of those activities in the column titled 'QO Comment', Mr Hinson confirmed this Office's assessment of those activities.³⁸

That assessment was that on the information before me, there were two 'Rating Activities' which were wholly properly included in full in the calculation of the OTF, these are:

'Rating Activities'

Wholly properly included in the OTF

2. Updating the ownership information on the land record to reflect the details provided by DNRM in Core Land. Officer manually updates the land record in Core Land.
3. Creating or updating the customer's billing address, which may differ from the property address in Council's Revenue Information Management System (RIMS).

In my view, a further three 'Rating Activities' could properly be partly included in the calculation of the OTF because

³⁵ Quoted from paragraph 19 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

³⁶ Letter from council's CEO to this Office dated 29 November 2013.

³⁷ See Appendix C, p.43

³⁸ Paragraph 50 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

they are partly for the activity of recording a change of ownership of land, these are:

Partly properly included in the OTF

4. Team discussions on more complex ownership change issues. Resumption of part of the land by a government department or agency such as Department of Transport and Main Roads.
23. Maintain quality and control of ownership change processing through continuous monitoring, reporting and review of exceptions in ownership change events.
24. Council officers undertake training to record ownership changes and perform related activities to ensure the rate account is correctly updated.

Therefore, the percentage of the cost of these three activities that is for recording a change of ownership of land could be included in the calculation of the OTF. To the extent that these three Rating Activities partly relate to activities that are consequential upon the recording of a change of ownership of land, I consider that the identified activities are not lawfully included in the calculation of the council's OTF.

5.3.2 Evaluation of the nine 'Supporting Activities'

Council provided the following explanation with the list of nine 'Supporting Activities' in Appendix C.³⁹

Council's full costs absorption approach captures the proportionate share of overheads necessary to support and enable to [sic] delivery of rating services including changes of ownership.

The proportion of these supporting activity costs relevant to ownership change functions is determined through the use of the Activity Based Costing data gathered in the Revenue Management work area.

The nine Supporting Activities can be described as indirect costs/corporate overheads. On the information available, it is possible that a percentage of the costs for each of those corporate overheads could be included in the calculation of the OTF, to the extent that those activities are undertaken for recording a change of ownership of land. However, the cost of any corporate activities that are consequential upon the recording of a change of ownership should not be included in the calculation of the OTF.

After reviewing the nine Supporting Activities described in Attachment F (**Appendix C**) which included this Office's assessment of each of those activities in the column titled 'Comment,' Mr Hinson confirmed this Office's assessment of those activities.⁴⁰

As noted in the column titled 'Comment' in Appendix C, on the information before me, of the nine 'Supporting Activities' only six of those activities (listed below) could be properly partly included in the calculation of the OTF:

'Supporting activities'

Partly properly included in the OTF

1. Information and Communications Technology (ICT). Provision of computer workstations, corporate and desktop applications, voice and data networks, server and storage infrastructure and ICT operations and support activities.
2. Rent. Office space, fixtures, fittings and related facilities charges including utilities and cleaning.
3. Accounting. Financial and managerial accounting of corporate revenue including rates and OTF.
4. Financial Services Manager's Office. Oversight and management of the Financial Services Section of within the Support Services Centre of Council, of which the Revenue Management function is part of.
5. Support Service Centre Executive Manager's Office. Oversight and management of the Support Services Centre of Council, of which the Financial Services section is part of.
9. Other Areas. (d) Corporate Human Resources – HR and industrial relations support to Revenue Management, and (e) Employee and Reporting Services – recruitment and WHS support to Revenue Management.

³⁹ See Appendix C, p.49.

⁴⁰ Paragraph 51 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

Therefore, the percentage of the cost of these six 'Supporting Activities', that is for recording a change of ownership of land, could be included in the calculation of the OTF. To the extent that these 'Supporting Activities' partly relate to activities that are *consequential* upon the recording of a change of ownership of land, I consider that the identified activities are not lawfully included in the calculation of the council's OTF.

5.3.3 Activities consequential upon 'recording a change of ownership of land'

As noted in the column 'Ombudsman's Comment' in Attachment F (**Appendix C**) the remaining 20 'Rating Activities' and three 'Supporting Activities' relate entirely to activities *consequential* upon the recording of a change of ownership of land and reflect general governance activities associated with the rating and billing processes of the council. In line with my Opinion 1, these are costs that, based on the information before me, should not be included in the calculation of the OTF. Therefore, it follows that the OTF for the financial year 2011-12 was not properly fixed in accordance with s.99 of the COBA.

Some examples of these 'consequential' activities include:

'Rating Activities'

1. Checking and updating the land and corridor information on the land record in Council's Core Land application.
5. Assessing the rate account to determine what the appropriate rating category to apply is based on the land and its current use following the pending or actual ownership change.
8. Applying the relevant State and Council charges to the rate account including fire service levy and waste management charge.

'Supporting activities'

7. Lord Mayor's Administration Office - Handling Lord Mayoral correspondence regarding ownership changes and the OTF.
8. Corporate Finance - Policy setting, budgeting and financial planning for revenue including the OTF. Financial reporting of OTF as part Council revenue. Monitoring the financial performance of the OTF and evaluating impacts on Council's overall revenue position.

The council activities listed in Appendix C which cannot be said to be properly included in the calculation of the OTF are noted as such in the column titled 'Ombudsman's Comment' or 'Comment.'

5.4 Opinions and recommendations

Having regard to the types of activities that council included in the calculation of the OTF, I form the following opinion:

Opinion 2

The OTF of \$165 fixed by the council for the financial year 2011-12 and subsequent fees set for 2012-13 and 2013-14 exceeded the cost of recording a change of ownership of land in the land record because the cost components used by the council went beyond the scope of s.99(4) of the COBA. The OTF was therefore unlawfully imposed and constitutes administrative action which was contrary to law under s.49(2)(a) and unreasonable under s.49(2)(b) of the *Ombudsman Act 2001*.

As the advice of Mr Hinson indicates the amount of council's OTF is not set in accordance with s.99 of the COBA, I consider the council should make refunds to owners of land who were charged the OTF in 2011-12, and each year since. I presently consider that as council was entitled to fix a fee for recording a change of ownership, council is entitled to retain a portion of the costs incurred, properly relating to taking the action for which the fee may lawfully be charged. The refund I consider is appropriate is the difference in the amount charged and the newly calculated fee for each year.

I make the following recommendation:

Recommendation 1

Council:

- (a) recalculate the OTF for 2011-12, 2012-13 and 2013-14 in accordance with a proper interpretation of the scope of s.99 of the COBA outlined in this report by excluding costs of activities *consequential* upon recording a change of ownership of land (the newly calculated fee) and
- (b) refund to the owners of land who were charged the OTF, the amount imposed less the newly calculated fee for the financial years 2011-12, 2012-13 and 2013-14.

In respect of council's failure to adequately advise the complainant of the basis for its OTF, and given my current view as to the validity of the fee imposed, I form the following opinion and make the following recommendation:

Opinion 3

Council failed to adequately and meaningfully respond to the complainant on how the OTF was a true reflection of the cost to council of recording a change of ownership of land.

Recommendation 2

Council write to the complainant setting out the basis for determining the amount of the newly calculated OTF for 2011-12 for recording the change of ownership of the land in the complainant's name.

Chapter 6: CEO's response to proposed report

Council's CEO was provided with an opportunity to comment on a proposed (draft) report. In his response dated 29 November 2013, the CEO did not accept the opinions and recommendations in the proposed report, except proposed Opinion 1. While the CEO did not dispute this Office's interpretation of the COBA (as set out in proposed Opinion 1), he did not agree with this Office's reasoning regarding what costs can and cannot be included in the calculation of the OTF (as set out in Chapters 4 and 5 of this report). As such, the CEO stated that he believes that council has calculated the current OTF in accordance with a proper interpretation of s.99 of the COBA and therefore sees no need to recalculate it or refund any part of it as recommended or at all.

By way of justification of these views, the CEO noted that council 'has previously provided a detailed legal justification of the costs included in the calculation of the OTF under s.99(4) of the COBA.' Council later clarified⁴¹ that this was a reference to the 'detailed costings already provided to your office as part of your information requests.' I understand that the CEO was referring to the following documents, all of which were considered by this Office as part of the investigation:

- correspondence relating to the complaint made to this Office
- the spread sheets and other supporting documents provided by council, a number of which were included in this report (see **Appendix B and C** of this report) and
- the CLC's advice (described in 4.2.2 of this report).

Further, the CEO stated that council has already provided detailed responses to the original complainant and therefore does not accept that it has failed to adequately and meaningfully respond to the complainant (see Opinion 3).

Despite the CEO's response, he advised that as from 1 July 2014 the OTF will cease to be imposed under s.99 of the COBA and will be replaced with a 'change of ownership service charge' under s.242 of the COBA in an amount determined as part of the 2014 budget process. In his advice to this Office, Mr Hinson noted that s.242(3)(c) of the COBA provides that council has the 'power to charge for a service or facility other than a service or facility for which a cost-recovery fee may be fixed, where it is necessary or convenient for performing the Council's responsibilities to make such a charge.'

⁴²Mr Hinson went on to state that:

It is clear, in my opinion, that the matters for which there is a power under s.99 to fix a cost-recovery fee cannot be the subject of a charge under s.242(3)(c).⁴³

As noted above, all of the legal justification provided by council for its position has been considered in detail throughout the investigation. Given the CEO did not provide any new information to support the response to the opinions and recommendations in the proposed report, my opinions and recommendations remain unchanged. In my view, the CEO's indication that council will introduce a new fee under another head of power from 1 July 2014 does not support the proposition advanced by the CEO that the calculation of the OTF over the relevant three years was lawful.

⁴¹ Email from the Office of the CEO to the Ombudsman dated 3 December 2013

⁴² Paragraph 25 of Mr Hinson's advice to the Ombudsman dated 23 August 2013

⁴³ Paragraph 26 of Mr Hinson's advice to the Ombudsman dated 23 August 2013.

Chapter 7: Conclusion

This investigation considered whether council had lawfully fixed the amount of its OTF imposed on new property owners for the purpose of recording a change of ownership of land pursuant to s.99(2)(b) of the COBA.

As the OTF is a 'cost-recovery fee' under s.99(4) of the COBA, the amount of the OTF must reflect the cost of the activity of recording a change of ownership of land and nothing more.

The investigation found that council has included in the calculation of its OTF for the financial year 2011-12 the cost of a range of activities which cannot properly be included in the OTF under s.99(2)(b) of the COBA. Therefore, I have recommended that the portion of the costs making up the OTF which fall outside those costs allowed by s.99 of the COBA be refunded to the property owners on whom the OTF was imposed.

Given council has advised that it fixed the OTF for the financial years 2012-13 and 2013-14 on the same basis, I have made the same recommendation in respect of those financial years.

Appendix A – Legal advice from Mark Hinson QC


MARK HINSON QC

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23 August 2013

Office of the Queensland Ombudsman,
Level 17,
53 Albert Street,
BRISBANE 4000

Your Ref: 

RE: SECTION 99(2)(b) OF THE CITY OF BRISBANE ACT 2010

MEMORANDUM OF ADVICE

1. The Office of the Queensland Ombudsman is investigating a complaint about the amount of the ownership transfer fee charged by Brisbane City Council.
2. I am briefed to answer the following five questions relating to the investigation:-
 - (a) Does s.99 of the *City of Brisbane Act* or any other statutory provision provide the necessary head of power for the Council to make and charge an ownership transfer fee to recoup the costs outlined in the Chief Executive Officer's letter to this Office dated 9 April 2013?
 - (b) If the only available head of power is s.99 of the *City of Brisbane Act*, could it be said that because of the cost components that were used by BCC in compiling the quantum of the fee of \$165 for the 2011/2012 financial year that the fee is not one authorised by s.99 and therefore has been unlawfully imposed by the Council?
 - (c) If yes to question 2, which of the cost components should not have been included in the calculation of the ownership transfer fee and why?

Not relevant to this report

Not relevant to this report

Legislative Framework

3. Section 99 of the *City of Brisbane Act* ("the CBA") provides as follows:-

"99 Cost-recovery fees

- (1) The council may, under a local law or a resolution, fix a cost-recovery fee.*
- (2) A cost-recovery fee is a fee for-*
 - (a) an application for the issue or renewal of a licence, permit, registration or other approval under a local government related law (an application fee); or*
 - (b) recording a change of ownership of land; or*
 - (c) giving information kept under a local government related law; or*
 - (d) seizing property or animals under a local government related law; or*
 - (e) the performance of another responsibility imposed on the council under the Building Act or the Plumbing and Drainage Act.*
- (3) A local law or resolution for subsection (2)(d) or (e) must state-*
 - (a) the person liable to pay the cost-recovery fee; and*
 - (b) the time within which the fee must be paid.*
- (4) A cost-recovery fee must not be more than the cost to the council of taking the action for which the fee is charged.*
- (5) However, an application fee may also include a tax –*
 - (a) in the circumstances and for a purpose prescribed under a regulation; and*
 - (b) if the council decides, by resolution, that the purpose of the tax benefits Brisbane.*
- (6) The local law or resolution that fixes an application fee that includes a tax must state the amount, and the purpose, of the tax.*
- (7) If an application fee that includes a tax is payable in relation to land, the tax applies only in relation to land that is rateable land.*
- (8) The council may fix a cost-recovery fee by resolution even if the fee had previously been fixed by a local law."*

4. Section 100 of the CBA requires the Council to keep a register of its cost-recovery fees which must state the paragraph of s.99(2) under which the cost-recovery fee is fixed.

5. For each financial year the Council is required to prepare and adopt a budget which is required to include, amongst other things, a statement of income and expenditure stating fees and charges and other specified categories of income and expenditure, and a revenue statement: see ss. 160(1)(b)(iii), (2)(b) and (3) of the *City of Brisbane*

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Regulation 2012 ("the CBR"). Section 164(1)(c) of the CBR requires the revenue statement to state the criteria used to decide the amount of any cost-recovery fee.

6. Section 153(2) of the CBR obliges the new owner of land to give the Council notice of the change of owner of the land within 30 days after the change. Failure to comply is an offence for which the maximum penalty is 5 penalty units. Section 153(3) allows the new owner to comply with s.153(2) by giving to the Registrar of Titles a combined form for the change of owner of the land containing required information and the instrument of transfer of the land. Section 154 obliges the Council, upon receipt of a change of owner notice and absent reason to believe that the notice is false, to record the details of the new owner in the land record.
7. The land record is required to be kept by the Council and to contain specified information including the name of the owner, for each parcel of rateable land in Brisbane: see s.146 of the CBR. The Council's chief executive officer is required to ensure that the particulars contained in the land record are amended whenever necessary to ensure the land record is kept up to date: s.148(1) of the CBR. The significance of that obligation is explained by s.145(2) which provides that the land record is used to identify who is responsible for paying rates or charges for land, and by s.149 which provides for the evidential effect of information in the land record for proceedings in which the liability for rates or charges is relevant.
8. Sections 148(2) and (3) of the CBR should also be noted. They provide for an information notice to be given by the Council's chief executive officer to a ratepayer where an amendment of the land record changes the rates or charges that are or may be levied on the land, and for the ratepayer to have the amendment reviewed by QCAT. There is a more general right under s.150 for any person dissatisfied with an amendment of a land record to apply to QCAT for a review of the amendment.
9. The legislative scheme described above, so far as it relates to a fee for recording a change of ownership of land under s.99(2)(b), has the following relevant features:-
 - (a) the subject matter of the fee is recording a change of ownership of land;
 - (b) the fee must not be more than the cost to the Council of taking the action for which the fee is charged, that action being recording a change of ownership of land;
 - (c) the Council is obliged to keep a land record which is to include, for each parcel of rateable land, the name and address of the owner of the land;
 - (d) when the ownership of land changes, the new owner is obliged to give the Council notice of the change of owner;
 - (e) upon receipt of such a notice the Council is to record the details of the new owner in the land record.

10. In practice, the Council receives information about changes in land ownership in electronic form on a regular basis from the State Department in which the *Land Title Act 1994* and the *Land Valuation Act 2010* are administered. The *Land Valuation Act* provides for the keeping and amendment of valuation rolls for each local government area, the provision of valuation rolls to a local government, and in s.245 for a combined form to be given to the Valuer-General upon a change of ownership of land containing the information required under local government legislation such as the CBR. On my understanding the valuation roll is the base document from which a local government's land record is compiled.

The Council's Letter of 9 April 2013

11. This letter was sent in response to a letter dated 11 March 2013 requesting certain documents for the purpose of the Ombudsman's investigation.

12. The letter attached a number of documents and concluded by saying:

"I trust this information clarifies that Council's full costs of recording ownership change is far more than merely keying data into a computer system. Rather ownership changes affect a myriad of systems and processes across land registry, customer management, rating, billing, receipting and collection to ensure ratepayers are correctly charged by Council.

Further, Council believes its full absorption costing approach most accurately represents the true cost to ratepayers of delivering this service."

13. One of the documents, Attachment C, is a spreadsheet explaining how the fee of \$165.00 for the 2011-2012 financial year was established. It involves three steps:-
 - (a) identifying the cost of undertaking various activities described as "revenue management activities" and "supporting activities";
 - (b) allocating a variable percentage of different categories of those costs to what is called the "proportional OTF cost";
 - (c) dividing the proportional OTF cost of \$4,224,424 by the estimated volume of ownership transfers to be processed (25,000) to arrive at a single transaction cost of \$168.98.
14. The spreadsheet contains no explanations of the variable percentages applied to different activities, and the descriptions of those activities are vague. For example, the percentages range from 1 percent to 100 percent. The "supporting activities" include descriptions such as "overhead costs-accounting", "corporate finance" and "other BCC areas", the last of which includes activities such as "marketing and communications", "general admin", "corporate HR" and "Org Services Divisional Mgr".

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15. There is opacity and a lack of detail in the spreadsheet which makes it difficult to identify what costs are involved in recording a change of ownership of land. The Council's approach, described as full absorption costing, is to estimate a proportion of its total costs of revenue management activities and supporting activities attributable to recording changes of ownership, rather than calculating the actual cost of recoding those changes.
16. Part of Attachment C is a page entitled "Rev Mgt ABC" and "Revenue Management Activity Based Costing Model 2011/12". It apparently calculates the hours spent on various activities over a 3 month period and allocates a proportion of those hours to what are described as OTF tasks. There is no explanation in Attachment C of the relationship between the hours devoted to particular activities and the labour costs identified elsewhere in the Attachment.
17. The "Rev Mgt ABC" sheet identifies two activities as being wholly attributable to an OTF task, described as:-
 - (a) CLD ownership maintenance; and
 - (b) ownership transfer fee.
18. CLD is, I understand, a reference to Core Land Database, which is in effect the Council's electronic land record. The above two activities account for a total of 1049 hours over the 3 month period. A further 3154 hours are identified as being part of the time spent on other activities which are attributed to what are described as OTF tasks. They include, for example:-
 - (a) 117 out of 2332 hours (5 per cent) for "debt management rates";
 - (b) 76 out of 1519 hours (5 per cent) for "receipting";
 - (c) 27 out of 268 hours(10 per cent) for "account maintenance";
 - (d) 19 out of 373 hours (5 per cent) for "assessing-plans";
 - (e) 38 out of 381 hours (10 per cent) for "bill production and distribution";
 - (f) 356 hours out of 593 hours (60 per cent) for "change of address";
 - (g) 175 hours out of 874 hours(20 per cent) for "correspondence management";
 - (h) 774 out of 3,782 hours (20 per cent) for "debt management";
 - (i) 61 out of 613 hours (10 per cent) for "inspections – general";
 - (j) 29 out of 295 hours (10 per cent) for "meeting – rates processing – m`gt related";
 - (k) 205 out of 684 hours (30 per cent) for "owner occupier";
 - (l) 21 out of 212 hours (10 per cent) for "pensioners – application processing";

- (m) 28 hours out of 278 hours (10 per cent) for “quality and control”;
 - (n) 414 hours out of 591 hours (70 per cent) for “returned mail”;
 - (o) 72 out of 717 hours (10 per cent) for “revenue reconciliation”;
 - (p) 62 hours out of 620 hours (10 per cent) for “training – rates related”;
 - (q) 99 out of 986 hours (10 per cent) for “waste amendments”.
19. It is difficult to see how these activities, save for the change of address activity, have any real relationship with the activity of recording a change of ownership of land.
20. The documents provided by the Council also include Attachment F, a schedule of 25 activities described as “Rating Activities” and 9 activities described as “Supporting Activities”. Some but not all of those activities can be related to the activities in the document entitled “Rev Mgt ABC”.
21. Under the heading “Rating Activities”, Attachment F contains the following explanation:

“The change of ownership of land is a significant event in Council’s rating process and is the catalyst for myriad activities that ensures ratepayers are correctly rated and informed.

Council is typically notified of a change of ownership through a daily data file received from the Queensland Department of Natural Resources and Mines (DNRM). Council also monitors requests for solicitors’ requisitions and rates searches as early notification of pending ownership changes. This enables Council to complete some of the ownership change activities ahead of time facilitating timelier billing of the new customer.

Once notified, Council Officers perform a range of activities including:

...”

22. Under the heading “Supporting Activities”, Attachment F contains the following explanation:

“Supporting Activities

Council’s full absorption cost approach captures the proportionate share of overheads necessary to support and enable to delivery of rating services including changes of ownership.

The proportion of these supporting activity costs relevant to ownership change functions is determined through the use of Activity Based Costing data gathered in the Revenue Management work area.”

23. Because Attachment F provides the most detailed description of the activities undertaken by the Council once notified of a change of ownership it provides the best point of reference for answering the questions asked of me.

First Question

24. The Council has expressly relied on s.99(2)(b) of the CBA in its 2011-2012 and 2012-2013 budget documents as the source of power to fix the ownership transfer fee. I assume that the register of cost-recovery fees required to be kept under s.100 identifies s.99(2)(b) as the provision under which the ownership transfer fee is fixed, consistently with the budget documents.
25. The Council has other sources of revenue available to it. They relevantly include the four types of rates and charges described in s.94 of the CBA and charges made in exercise of the s.242(3)(c) power to charge for a service or facility other than a service or facility for which a cost-recovery fee may be fixed, where it is necessary or convenient for performing the Council's responsibilities to make such a charge.
26. It is clear, in my opinion, that the matters for which there is power under s.99 to fix a cost-recovery fee cannot be the subject of a charge under s.242(3)(c).
27. That leads to the question of what is the scope of the activity described as "recording a change of ownership of land", because while that activity may only be the subject of a s.99 cost-recovery fee and cannot be the subject of a s.242(3)(c) charge, an activity associated with or related to the activity of recording a change or ownership of land, could potentially be the subject of a s.242(3)(c) charge.
28. The scope of the s.99(2)(b) activity is narrow in my opinion. The language used is precise and clear – the relevant activity is recording a change of ownership of land. That means, in my opinion, making whatever change is necessary in the Council's land record to record the name of the new owner in place of the name of the previous owner.
29. Section 99 authorises the fixing of a cost-recovery fee "for" that activity. Previously, s.59(1)(f) of the *City of Brisbane Act 1924* authorised the Council to fix a charge "in relation to" recording a change of ownership. The word "for" connotes a closer and more direct relationship between subject and object than the expression "in relation to". A fee "in relation to" recording a change of ownership of land arguably extends to and includes a fee for activities consequential upon recording a change of ownership, because such consequential activities relate to the principal activity. But a fee "for" recording a change of ownership of land is limited to a fee for that activity, and does not extend to a fee for something in relation to that activity.
30. To the extent that the fee charged by the Council is a fee for activities other than the recording of a change of ownership of land, it falls outside the scope of s.99 but potentially falls within the scope of s.242(3)(c). It also potentially falls within the scope of the Council's rating powers.
31. General rates are levied for services, facilities and activities supplied or undertaken for the benefit of the community generally rather than a particular person: see s.94(2) of the

CBA. The cost of maintaining the Council's land record, including the cost of amending it when necessary as occasion requires (eg. upon a change of ownership) is a service undertaken for the benefit of the community generally, and could be paid for out of general rate revenue. It benefits the community because, together with the Council's revenue management systems, it ensures that the Council receives the revenue to which it is entitled to provide the services upon which the revenue is to be spent as set out in the budget.

32. The council is not required to fix a cost-recovery fee for recording a change of ownership of land. It has a discretion to do so. If it did not charge such a fee, the cost of recording changes of ownership would simply be part of the cost of maintaining a land record and revenue management systems which would be funded out of general rate revenue. To the extent that the Council has fixed a cost-recovery fee, it is limited to fixing a fee for the activity of recording a change of ownership of land and cannot fix a cost-recovery fee for related or associated activities. The cost of those related or associated activities may be recovered through the general rate.
33. They may also potentially be recovered through a separate rate or charge. Those costs could not be the subject of a special rate or charge as described in s.94(3) of the CBA because they are not for a service, facility or activity that has a special association with particular land on one of the specified grounds. Nor could they be the subject of a utility charge as described in s.94(4). Separate rates and charges are described in s.94(5) as being for any other service, facility or activity i.e. a service, facility or activity other than one for which a general rate, special rate or charge or utility charge could be levied. Given that the activities in question need to be undertaken as a consequence of a change of ownership of land, it could be argued that they are supplied or undertaken for the benefit of particular persons rather than the general community and so are more appropriately the subject of a separate rate or charge rather than being included in a general rate, reflecting the user pays principle espoused in the Council's revenue policy.
34. In summary, the Council has a discretion to fix a cost-recovery fee for recording a change of ownership of land. If it fixes such a fee, its only power to do is in s.99 of the CBA, and such a fee is limited to a fee for recording a change of ownership and nothing more, which fee must not be more than the cost to the Council of taking the action of recording the change of ownership. Any related or associated activities and the cost of those activities may be recouped through general rates, a separate rate or charge or a s.242(3)(c) charge. The cost of recording a change of ownership, if the Council does not fix a cost-recovery fee under s.99 for that activity, may also be recouped through general rates or a separate rate or charge but not under s.242(3)(c).
35. The Council has not purported to act, in fixing an ownership transfer fee, otherwise than under s.99. The budget has been prepared on that basis. The costs of \$4,224,424

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sought to be recouped by the fee have not been included in the costs which were considered in setting the level of general rates or in considering whether to levy a separate rate or charge. In other words, while the Council may have had power other than under s.99 to recover the costs set out in the attachments to the letter of 9 April 2013, it did not exercise those powers and only exercised its power under s.99.

36. In those circumstances, I would answer the first question by saying that while the Council had power to recoup the costs referred to in the attachments to the letter of 9 April 2013 through its rating powers, s.99 and s.242(3)(c), it only exercised the s.99 power and the lawfulness of the ownership transfer fee it fixed falls to be determined by reference only to s.99.

Second and Third Question

37. Section 99(4) limits the amount of a cost-recovery fee to an amount no more than the cost to the Council of taking the action for which the fee is charged. My opinion is that the relevant action is that described in s.99(2)(b) as “recording a change of ownership of land”, and that a fee “for” that action does not extend to and include charging for related or associated actions.
38. Two cases offer an instructive comparison with the present case in identifying what may be taken into account in fixing the amount of the ownership transfer fee.
39. In *Epic Energy (WA) Nominees Pty Ltd v Western Australian Independent Gas Pipeline Regulator* (2003) 27 WAR 515 the legislation was held to authorise full cost recovery in setting fees and charges. The Act authorised regulations to be made making provision “for and in relation to the imposition of fees and charges in connection with any matter, including in connection with the performance of the functions of the Regulator”. The Act also provided that if it was inappropriate to prescribe a fee or charge in connection with the performance of a particular function, the regulations may provide the method of calculating the fee or charge, including calculation according to the cost of performing that function.
40. McKechnie J held that the last mentioned provision gave a clear indication of permitting full cost recovery, provided the costs were of a type reasonably necessary or convenient for performing a function. There is no discussion in the case of the particular functions for which charges were made, although one charge was imposed in connection with the performance of the Regulator’s functions under Par 6 of the Act, which covered the entirety of the Regulator’s function.
41. This case supports the proposition that under s.99(4) the council may recover the full cost to it of taking the relevant action provided such costs are reasonably necessary or convenient for taking that action.

42. In *Airservices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133 the legislation authorised the fixing of a charge “for a service or facility provided by the Authority” or “in respect of a matter specified in the regulations, being a matter in relation to which expenses are incurred by the Authority” (s.66), and provided that the amount of a charge shall be reasonably related to the expenses incurred or to be incurred by the Authority in relation to the matters to which the charge relates (s.67). Charges were fixed for air traffic services and rescue and fire fighting services on a network basis rather than on the basis of the actual cost of providing particular services for individual aircraft or at particular aerodromes to particular users of services.
43. The High court upheld the validity of the charges on the basis that the relationship described in s.67, that a charge be reasonably related to the expenses incurred in relation to the service or facility, was a relationship between the charge and expenses incurred with respect to the provision generally of the service or facility, and not a relationship between the charge and the cost of the particular service or facility provided to a particular user.
44. As Gleeson CJ and Kirby J observed at 173 [76] the dispute centred around the level of particularity or generality at which the relevant service or facility for which a charge is imposed was to be identified. The Court said that charging for services on a network basis rather than a particular user basis was justified. Gleeson CJ and Kirby J explained at 175 [81]:-

“[81] *The legislation imposed on the CAA the responsibility of providing a network of services and facilities, and, in empowering it to impose charges, it should be taken to have empowered the CAA to approach the identification of the matters to which the charges related on a network basis. The legislation did not require that particular charges for particular services be viewed in isolation from the integrated character of the network of which, necessarily, particular services are part. In the nature of the services provided by the CAA, most of which are relevant or essential to the safety of civil aviation, it is artificial to isolate a particular service, to a particular carrier, at a particular airport, and treat it as disconnected from services provided throughout the network. Whatever might be possible in the provision of other public services, the nature of civil aviation demands integration of services for their safety and effectiveness.*”

45. Gaudron J (with whom Hayne J agreed) said at 185 [116]-[117]:-

“[116] *Had s 67 of the Act required that a charge be reasonably related to the cost of providing a particular service to a particular user, there would be much to commend the view that s 67 imposed a single test for, in that event, a charge which bore that relationship to the service provided would not amount to taxation. And that construction would be reinforced by those provisions of the Act which appear to have been influenced by the “user pays” concept. However, the relationship which s 67 postulated is not a reasonable relationship*

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between the amount of the charge and the cost of a particular service rendered to a particular user, but between the amount of the charge and "the expenses incurred or to be incurred...in relation to the matters to which the charge relates".

[117] *"Matters" is a word of complete generality. And s 67 left it to the authority to determine at what level of generality it might specify the matters in relation to which charges were determined. They might, for example, be flight services and facilities generally; they might be services or facilities of a particular kind or services and facilities provided in particular areas or at particular locations. Indeed, they might even be the particular services provided to particular users at particular times and places. But they need not be. All that s 67 required was that, once the Authority determined the matters to which the charges would relate, there should be a reasonable relationship between the rate of charge and the expenses incurred or to be incurred in relation to those matters."*

46. Section 99 of the CBA does not afford the Council the freedom of choice afforded the Civil Aviation Authority under the legislation considered in *Airservices Australia*. Section 99(2)(b) states the subject of the cost recovery fee in precise terms and not in general terms such as "service" or "facility" with some discretion as to specifying a service or facility in wide or narrow terms. Section 99 (4) limits the amount of a fee to no more than the cost of taking the "action". The cost of taking the action is a narrower and more precise concept than the s.67 concept of an amount reasonably related to the expenses incurred in relation to the matter (service or facility).
47. The Council's approach, described as full absorption costing, might be justified if s.99 used wider and more general language such as that in the statutory provisions considered in *Epic Energy* and *Airservices Australia*. But s.99 is much narrower and specific in its terms. As explained earlier in paragraph 28 the action to be costed and for which a fee may be fixed is the action of making whatever change is necessary in the Council's land record to record the name of the new owner in place of the name of the previous owner.
48. As already noted, the description of the activities for which costs have been given and for which hours of staff time have been allocated are generic rather than specific and offer little opportunity for precise analysis. The more detailed description of activities in Attachment F affords greater scope for a reasoned answer to the second and third questions.
49. I am assisted in this regard by the Ombudsman's assessment of which of those activities are considered to be those the cost of which may properly be included in calculating the amount of the ownership transfer fee. That assessment appears in the column headed "QO Comment" or "Comment" in Appendix B to the Ombudsman's proposed report.
50. There are 25 rating activities in Attachment F, a copy of which is attached to this advice. I agree with the assessment relating to each activity as set out in Attachment F.

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51. There are 9 supporting activities in Attachment F. I also agree with the assessment relating to each activity as set out in Attachment F.
52. I would answer the second and third question by saying:-
- (a) the cost components used by the Council in fixing the fee at \$165 for the 2011-2012 financial year include costs which do not fall within the s.99(4) description of the cost to the Council of taking the action of recording a change of ownership of land;
 - (b) for that reason it can be said that the fee is not authorised by s.99 and has been unlawfully imposed by the Council;
 - (c) it is not possible, by reference to Attachment C, to identify with any confidence which costs in that attachment or which tasks for which hours have been given should not have been included in the calculation of the ownership transfer fee, because the information in Attachment C is not sufficiently detailed to allow that to be done;
 - (d) for the somewhat more detailed description of activities in Attachment F, the cost components which should not have been included in the calculation of the ownership transfer fee are those identified as such in Appendix B to the Ombudsman's proposed report.

Not relevant to this report

Not relevant to this report

- 13 -

Not relevant to this report



Not relevant to this report

- 14 -

Not relevant to this report



Not relevant to this report

- 15 -



Summary of Conclusions

73. For the foregoing reasons my answers to the five questions are:-

- (a) s.99 of the CBA provides the only head of power to make and charge an ownership transfer fee for the recording of a change of ownership of land, but for related or associated activities the Council may recoup the cost of those activities through general rates, a separate rate or charge or under s.242(3)(c).
- (b) the cost components used by the Council in fixing the fee at \$165 in the 2011-2012 financial year went beyond the scope of s.99(4) and that fee was not authorised by s.99 and was unlawfully imposed;
- (c) the cost components which should not have been included are those identified as such in Appendix B to the Ombudsman's proposed report;



With compliments,

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M D HINSON QC

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Appendix B – 'Attachment C' provided by council

BCC OWNERSHIP TRANSFER FEE		OTF Summary		ATTACHMENT 'D'
COST RECOVERY COMPONENTS SUMMARY 2011/12				
REVENUE MANAGEMENT ACTIVITIES	Total Cost 2011/12	Proportional OTF Cost 2011/12	Proportion	Comments (Refer also Attachment "F" for explanations)
Labour inc. oncosts	\$ 6,781,753	\$ 968,207	14.3%	Refer Rev Mgt worksheet
Materials and services	\$ 5,162,209	\$ 736,990	14.3%	Refer Rev Mgt worksheet
Corporate ICT costs	\$ 8,048,899	\$ 952,412	11.8%	Refer Rev Mgt worksheet
Corporate office facility costs	\$ 1,308,092	\$ 119,549	9.1%	Refer Rev Mgt worksheet
Sub-total	\$ 21,300,953	\$ 2,777,158		
SUPPORTING ACTIVITIES				
Overhead costs - Accounting	\$ 2,210,636	\$ 349,180	15.8%	Refer Support Costs worksheet
Overhead costs - Management	\$ 259,601	\$ 41,005	15.8%	Refer Support Costs worksheet
Corporate Finance	\$ 9,723,030	\$ 194,461	2.0%	Estimate based on professional judgement as no ABC available.
Other BCC areas	\$ 67,692,327	\$ 676,923	1.0%	Estimate based on professional judgement as no ABC available.
Contact Centre	\$ 173,218	\$ 173,218	100.0%	Based on Contact Centre call analysis
Lord Mayor's Admin Office	\$ 12,480	\$ 12,480	100.0%	Based on LM correspondence review results
Sub-total	\$ 80,071,292	\$ 1,447,267		
TOTAL COST (FULL ABSORPTION)	\$ 4,224,424			
Total estimated OTF volumes 2011/12		25,000		
OTF estimate 2011/12	\$ 168.98			
Actual OTF 2011/12	\$ 165.00			

ATTACHMENT "C"

Rev Mgt Costs

BCC OWNERSHIP TRANSFER FEE

REVENUE MANAGEMENT ACTIVITY COSTS 2011/12

	Original Budget 2011/12	Rev Mgt Share 2011/12	OTF Proportion 2011/12
Labour			
- Rates	\$ 4,564,641	\$	\$ 929,224
- Accounts Receivable	\$ 1,565,020	\$	\$ 38,983
- Other	\$ 652,092	\$	\$ -
Sub-Total	\$ 6,781,753	\$	\$ 968,206.66

Materials and Services

- Rates	\$ 3,474,564	\$	\$ 707,317
- Accounts Receivable	\$ 1,191,279	\$	\$ 29,673
- Other	\$ 496,366	\$	\$ -
Sub-Total	\$ 5,162,209.00	\$	\$ 736,990

Corporate ICT cost

- Corporate ICT	\$ 4,157,899	\$ 701,692	\$ 160,322
- RIMS operational support	\$ 1,891,000	\$ 1,891,000	\$ 384,951
- RIMS depreciation	\$ 2,000,000	\$ 2,000,000	\$ 407,140
Sub-Total	\$ 8,048,899	\$	\$ 952,412

Corporate office facilities cost

	\$ 1,308,092	\$ 523,237	\$ 119,549
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	FTE #	FTE %	OTF ABC %
Rates	70.00	67.3%	20.36%
Accounts Receivable	24.00	23.1%	2.49%
Fees & Charges	9.00	8.7%	-
Manager's Office	1.00	1.0%	-
Total	104.00	100.0%	

Refer Rev Mgt ABC worksheet

Refer Rev Mgt ABC worksheet

	Work Stations	W/S % of SSC	W/S % of GSQ2
Rates	70.00	12.6%	29.8%
Accounts Receivable	24.00	4.3%	10.2%
Fees & Charges	9.00	1.6%	3.8%
Manager's Office	1.00	0.2%	0.4%
Total Rev Mgt	104.00		
Total SSC workstations	557.00		
Total GSQ Level 2 workstations	235.00		

ATTACHMENT "C"

Support Costs

BCC OWNERSHIP TRANSFER FEE

SUPPORT ACTIVITY COSTS 2011/12

	Original Budget 2011/12	Rev Mgt Share 2011/12	OTF Proportion 2011/12
Accounting	\$ 4,656,447		
- Rates	\$ 1,646,219	\$ 335,121	
- Accounts Receivable	\$ 564,418	\$ 14,059	
- Other		\$ -	
Sub-Total	\$ 4,656,447	\$ 2,210,636	\$ 349,179.64
Management			
- Rates	\$ 546,818.21	\$ 193,320	\$ 39,354
- Accounts Receivable		\$ 66,281	\$ 1,651
- Other		\$ -	\$ -
Sub-Total	\$ 546,818.21	\$ 259,600.57	\$ 41,005.04
Corporate Finance			
	\$ 9,723,030		\$ 194,461
Other Areas			
- OFG Services Divisional Migr	\$ 2,462,532		\$ 24,625
- BCLP	\$ 5,078,931		\$ 50,789
- CEO's Office	\$ 4,753,697		\$ 47,537
- Corporate HR	\$ 22,136,956		\$ 221,370
- Employee & Reporting Services	\$ 17,712,532		\$ 177,125
- General Admin	\$ 9,322,428		\$ 93,224
- Marketing & Communications	\$ 6,225,251		\$ 62,253
Sub-total	\$ 67,692,327.00		\$ 676,923.27

	FTE #	FTE %	OTF ABC %
Rates	70.00	35.4%	20.36%
Accounts Receivable	24.00	12.1%	2.49%
Fees & Charges	9.00	4.5%	-
Manager's Office	1.00	0.5%	-
Total - Fin Services	198.00		
Total - SSC	618.00		

BCC OWNERSHIP TRANSFER FEE

REVENUE MANAGEMENT ACTIVITY BASED COSTING MODEL 2011/12

SERVICES	January	February	March	Grand Total	100% Attributable	Proportional Attributable
Administration (Accounts Receivable/Fees and Charges)						
Administration and Management - SSC	486	773	561	1821		0 Non-chargeable
Accounts Receivable						
Billing	313	173	276	762		
Credit Applications	7	23	14	44		
Debt Management Rates	602	905	825	2332		117 5% Attributable
Debt Management Sundry	582	1006	1012	2601		
Petty Cash	41	65	65	171		
Receipting	484	525	510	1519		76 5% Attributable
Recovery of Library Items & Fees	134	119	80	333		
Write-offs	6	9	16	32		2 5% Attributable
Total Hours for AR	2655	3600	3360	9615		194
Total Hours for OTF tasks				194		
Total Proportion of TLC for AR (chargeable hours only)				2.48%		
Rates Management						
Account maintenance	77	108	83	268		27 10% Attributable
Annual DERM Revaluation - Sys Preparation			17	17		
Assessing - Plans		154	219	373		19 5% Attributable
Assessing - Maintenance		135	238	373		19 5% Attributable
Assessing - Plans	220	68		288		14 5% Attributable
Assessing - Slips	194	391	155	741		37 5% Attributable
Assessing - Strata	57	3		61		3 5% Attributable
Bill Production and Distribution	126	110	145	381		38 10% Attributable
Change Of Address	196	196	201	593		356 60% Attributable
CLD Land & Corridor Maintenance	121	118	201	441		44 10% Attributable
CLD Ownership Maintenance	243	377	301	921	921	100% Attributable
Commercial Relationships			3	3		
Correspondence Management	254	298	323	874		175 20% Attributable
Credit Card Surcharge	8		0	9		
Customer Communication - Verbal	152	189	111	452		90 20% Attributable
Customer Communication - Written	59	85	58	202		40 20% Attributable
Dart Reports	4	5	5	15		
Debt Management	1232	1095	1544	3872		774 20% Attributable
DERM Reval Reconciliations Follow-up			131	131		
Direct Debit	117	133	121	372		56 15% Attributable
Fire Services Levy	1		1	2		0 5% Attributable
Gen Rate Exemption, Cat Objection, NFP, Own-Occ MUD	7	21	33	52		3 5% Attributable
General Admin	668	702	616	1986		Non-chargeable
General Admin - HR/ Staff Mgt	98	129	108	334		Non-chargeable
General Admin - Budget - Rates Process	53	81	53	187		19 10% Attributable
Inspections - General	221	208	184	613		61 10% Attributable
Levying	0			0		
Meeting - other than Rates Processing	8	83	85	127		0 Non-chargeable
Meeting - Rates Processing - M'gt related	40	113	141	295		29 10% Attributable
Meeting - Rates Processing -Others	36	142	68	246		0 Non-chargeable
New Application	74	73	59	207		
One Bill Group	22	36	44	102		
One Off Special Projects (Funded Projects)	66	42	7	115		
Owner Occupier	179	268	237	684		205 30% Attributable
Ownership Transfer Fee	25	48	55	128	128	100% Attributable
Pensioners - Application processing	66	80	66	212		21 10% Attributable
Pensioners - Crossmatch	21	33	22	76		8 10% Attributable
Policy & Proc's - General	16	7	6	28		3 10% Attributable
Privacy	2	2	1	6		
Quality and Control	106	95	77	278		28 10% Attributable
Receipting - Process Costs	72	110	76	258		
Reporting	224	192	245	661		66 10% Attributable
Returned Mail	196	223	171	591		414 70% Attributable
Revenue Reconciliation	220	163	334	717		72 10% Attributable
RIMS Customer Maintenance	689	886	910	2486		373 15% Attributable
Special Projects (Unfunded Rates Projects)	318	319	185	822		
Support CLD			2	2		
Support RIMS		1	5	6		
Tag Runs	49	52	24	125		
Training - non rates related	14	233	116	363		Non-chargeable
Training - rates related	124	241	255	620		62 10% Attributable
Waste Amendments	344	355	287	986		99 10% Attributable
Total for Rates	7,024	8,404	8,281	23,701	1,049	3,154
Total Hours for OTF tasks				4,203		
Total Proportion of TLC for Rates (chargeable hrs only)				20.36%		

Appendix C: 'Attachment F' provided by council amended to include column with Queensland Ombudsman comment ('QO comment', 'Comment')

BCC CHANGE OF OWNERSHIP ACTIVITIES – ' Attachment F'

Rating Activities

The change of ownership of land is a significant event in Council's rating process and is the catalyst for myriad activities that ensures ratepayers are correctly rated and informed.

Council is typically notified of a change of ownership through a daily data file received from the Queensland Department of Natural Resources and Mines (DNRM). Council also monitors requests for solicitors' requisitions and rates searches as early notification of pending ownership changes. This enables Council to complete some of the ownership change activities ahead of time facilitating timelier billing of the new customer.

Once notified, Council Officers perform a range of activities including:

Activity	Example	Reference	QO Comment
1. Checking and updating the land and corridor information on the land record in Council's Core Land application.	A change in ownership has resulted from a subdivision or reconfiguration of land	<ul style="list-style-type: none"> • CLD Part Sale • CLD Reassessment • Corridor Maintenance • CLD Plan Sealed and Registered 	<i>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</i>
2. Updating the ownership information on the land record to reflect the details provided by DNRM in Core Land.	Officer manually updates the land record in Core Land.	<ul style="list-style-type: none"> • CLD Part Sale • CLD Reassessment • Corridor Maintenance • Property Transfers • Property Ownership • Customer Maintenance • Inspections 	Directly relates to the activity of recording a change of ownership of land. The cost of this activity may properly be included in the calculation of the OTF.
3. Creating or updating the customer's billing address, which may differ from the property address in Council's Revenue Information Management System (RIMS).	Investor purchases a property and asks for the rates correspondence to be sent to his residence, property manager or PO box.	<ul style="list-style-type: none"> • Property Transfers • Property Ownership • Property Transfer Suspension • Owner-Occupier • Account Exception • Returned Mail 	Indirectly relates to activity of recording a change of ownership of land. As noted in the proposed report, recording the change of ownership under s. 99 of the COBA necessarily entails recording the new owner's address for the service of notices under COBA (pursuant to r146 of the City of Brisbane Regulation 2012). <i>The cost of this activity may properly be included in the calculation of the OTF.</i>

Activity	Example	Reference	QO Comment
<p>4. Team discussions on more complex ownership change issues</p>	<p>Resumption of part of the land by a government department or agency such as Department of Transport and Main Roads.</p>	<ul style="list-style-type: none"> • Property Transfers • Property Ownership • Property Transfer Suspension • Pensioner Life Tennant 	<p>Indirectly relates to activity of recording a change of ownership of <u>land only</u> to the extent that team discussions on the ownership of <u>particular land</u> have a bearing on the owner recorded when there is a change in ownership of land (such as supervisor/operator problems solving discussions).</p> <p>A percentage of the cost of this activity which relates to the team discussions that have a bearing on the information recorded in the change of particular ownership information may properly be included in the calculation of the OTF.</p>
<p>5. Assessing the rate account to determine what the appropriate rating category to apply is based on the land and its current use following the pending or actual ownership change.</p>	<p>A property may change from owner-occupied to non-owner occupied or possibly commercial depending on the nature of the new owners and the land use.</p>	<ul style="list-style-type: none"> • Property Transfers • Property Ownership • Property Transfer Suspension • Amalgamations • Building Plans • General Rate Exemptions • Part Sale and Multiple Lot Splits • Standard Plans • Refund Parent Account in Credit 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council.</p> <p>These are costs that should <u>not</u> be included in the calculation of the OTF.</p>
<p>6. Properties may need to be physically inspected to confirm its current use following a change of ownership.</p>	<p>Where a Rates Assessor wishes to investigate an anomaly with the ownership and land use that could affect the property's rating.</p>	<ul style="list-style-type: none"> • Inspections – Account Maintenance 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</p>

Activity	Example	Reference	QO Comment
7. Consult and interpret legislation and/or Council policies including City of Brisbane Act and Regulations, budget resolution, revenue and rating policies, City Plan and local laws to determine the appropriate treatment of the rate account.	Ownership has changed to a State or Federal Government authority where payment in lieu of rates needs to be agreed.	<ul style="list-style-type: none"> • Account Exception Report • Amalgamations • Building Plans • Category Override for Vacant Land • General Rates Exemptions • Inspections - Account Maintenance • Part Sale and Multiple Lot Splits • Refunds - Parent Account in Credit • Standard Plans • Leases 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.
8. Applying the relevant State and Council charges to the rate account including fire service levy and waste management charge.	Fire service and waste management levies may vary if the land use has altered as a result of ownership change.	<ul style="list-style-type: none"> • As above 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.
9. Apply the OTF onto the rate account.	OTF must be manually applied to each rate account or may be adjusted depending on the type and share of ownership and sale price	<ul style="list-style-type: none"> • Ownership Transfer Fee • Property Transfer 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.
10. Evaluate applications for exemption from the OTF.	Exemptions are permissible for first homeowners and financial hardship.	<ul style="list-style-type: none"> • Ownership Transfer Fee. 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.
11. Adding, amending or removing the customer's direct debit and BPAY View information where applicable.	Includes removing previous owner's direct debit and BPAY View instructions and adding new owner's instructions.	<ul style="list-style-type: none"> • Billing BPAY View • Authority Role • BPAY View Deactivation • Bulk Billing Groups • Customer Maintenance • Direct Debit • Property Transfers 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.

Activity	Example	Reference	QO Comment
<p>12. Evaluating applications for rates exemptions, remissions and/or objections.</p>	<p>Examples include general rate exemptions, category objections, not-for-profit remission, owner-occupier remission and multi-residential (single family) applications.</p>	<ul style="list-style-type: none"> • General Rates Exemptions • Property Transfer Suspension • Owner Occupier 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</p>
<p>13. Evaluating pensioner applications for new pensioners changing ownership or cross-match existing pensioners to the Centrelink database and resolve any issues</p>	<p>Council may need to contact the new owner to clarify pensioner details or provide assistance with the application. This particularly applies to notification of deceased customers</p>	<ul style="list-style-type: none"> • Pension Remission Eligibility • Pensioner – Cross-match • Pensioner - Remission Continuation • Property Ownership 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</p>
<p>14. Updating the rate account for the correct rates and charges in RIMS.</p>	<p>Updating the rate account following the outcomes of the above investigations.</p>	<ul style="list-style-type: none"> • Property Transfers • Property Ownership • Property Transfer Suspension • Account Exception Report • Inspections • Assessing work instructions 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</p>
<p>15. Producing and distributing an amended bill to the new owner where the rating category and/or charges have varied.</p>	<p>Property has changed from owner occupied to non-owner occupied residence.</p>	<ul style="list-style-type: none"> • Owner Occupier • Early notification 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</p>
<p>16. Managing verbal and written correspondence with ratepayers regarding ownership changes and the OTF.</p>	<p>Responding to enquiries of any nature related to a change of ownership.</p>	<ul style="list-style-type: none"> • All Rates work instructions • Budget resolution • Rating and revenue policies 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</p>

Activity	Example	Reference	QO Comment
17. Reviewing returned rates mail and evaluate impact on the corresponding rate account.	A majority of returned mail items related to changes in ownership and investigations may be needed to locate the former owner for debt recovery action.	<ul style="list-style-type: none"> Returned Mail 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.
18. Liaising and advising Corporate Finance and Council's Administration on ownership transfers to inform the budget development process.	Annual revenue forecasting depends greatly on the anticipated growth in Council's ratepayer base. Historical ownership changes must be analysed to inform these forecasts	<ul style="list-style-type: none"> Budget resolution Rating and revenue policies 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.
19. Reporting on ownership transfers and the OTF as part of corporate month end financial reporting	Actual versus budget reporting and trend analysis to Corporate Finance including specifically on the OTF.	<ul style="list-style-type: none"> Monthly Rates Revenue 'Flash' Report 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.
20. Evaluate impacts on existing debtors as a result of an ownership change and ensure any outstanding charges are promptly settled.	Ownership change occurs before land clearing charges are applied to the rate account and Council believes it is unreasonable to pursue the new owner.	<ul style="list-style-type: none"> Debt Management Debt Management – Accounts Receivable 	Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.
21. Correct any issues with rates receipting.	A former owner neglects to update their saved BPAY reference following a change of ownership and has paid the wrong rate account.	<ul style="list-style-type: none"> Billing BPAY View Payment Dishonours Unmatched Cash 	Appears to relate to activities consequential upon the recording of a change of ownership and reflects general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.

Activity	Example	Reference	QO Comment
<p>22. Evaluating debt write-offs following changes of ownership, specifically whether it remain feasible and economical to pursue the debtor.</p>	<p>Ownership change occurs before land clearing charges are applied to the rate account and Council believes it is unreasonable to pursue the new owner.</p>	<ul style="list-style-type: none"> • Write Offs - Financial (Debt side of process) 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</p>
<p>23. Maintain quality and control of ownership change processing through continuous monitoring, reporting and review of exceptions in ownership change events.</p>	<p>Rates Management conducts periodic random audits of ownership change events as part of its ISO-9001 quality certification program. This is supplemented by annual internal and external audit reviews.</p>	<ul style="list-style-type: none"> • Account Exception Report • Category Override for Vacant Land • Property Transfer Event • Owner Occupier • Suspensions 	<p>Indirectly relates to activity of recording a change of ownership of land to the extent that the quality and control of the ownership change process is maintained. The cost of this activity may properly be included in the calculation of the OTF.</p> <p>Review and reporting of exceptions to ownership change events are activities consequential upon the recording an ownership change and should not be included in the calculation of the OTF.</p>
<p>24. Council officers undertake training to record ownership changes and perform related activities to ensure the rate account is correctly updated.</p>	<p>Council officers learn procedures including reviewing properties marked as 'Ownership Change Pending' every 14 days to ensure ownership changes are processed in a timely manner.</p>	<ul style="list-style-type: none"> • All Rates work instructions • Budget resolution • Rating and revenue policies 	<p>Indirectly relates to activity of recording a change of ownership of land but <u>only</u> to the extent that council officers undertake training on the discrete activity of recording ownership changes, not for example, reviewing properties where a change is pending (see example). The cost of the training activity, to the extent that it relates to the discrete activity of making an ownership change upon notification from the titles office, may properly be included in the calculation of the OTF.</p> <p>Ensuring the rate account is correctly updated is an activity consequential to recording the ownership change and should <u>not</u> be included in the calculation of the OTF.</p>
<p>25. Council officers need to undertake a title search or ownership investigation on pension applications relating to properties held as "tenant in common"</p>	<p>A pensioner applies for rate remission on a property held in three names. Council needs to determine the customers tenancy type and share to correctly apply rate remission</p>	<ul style="list-style-type: none"> • Pensioner Remission Policy • Pensioner Tenants • Pensioner work instruction 	<p>Appears to relate to activities consequential upon the recording of a change of ownership and reflect general governance activities associated with the rating and billing processes of the council. These are costs that should <u>not</u> be included in the calculation of the OTF.</p>

Supporting Activities

Council's full absorption cost approach captures the proportionate share of overheads necessary to support and enable to delivery of rating services including changes of ownership.

The proportion of these supporting activity costs relevant to ownership change functions is determined through the use of Activity Based Costing data gathered in the Revenue Management work area.

Activity	Example	Reference	Comment
1. Information and Communications Technology (ICT)	Provision of computer workstations, corporate and desktop applications, voice and data networks, server and storage infrastructure and ICT operations and support activities.	<ul style="list-style-type: none"> Council budget Council financial system (IFBIS) 	<p>Indirect cost/ corporate overhead.The percentage of the cost of this activity that relates to recording a change of ownership of land could be included in the calculation of the OTF.</p> <p>However, the cost of any corporate overheads that relate to activities that are consequential upon the recording of a change of ownership and the costs should not be included in the calculation of the OTF.</p>
2. Rent	Office space, fixtures, fittings and related facilities charges including utilities and cleaning.	<ul style="list-style-type: none"> As above 	<p>Indirect cost for the function. The percentage of the cost of this activity that relates to recording a change of ownership of land could be included in the calculation of the OTF.</p>
3. Accounting	Financial and managerial accounting of corporate revenue including rates and OTF.	<ul style="list-style-type: none"> As above 	<p>Indirect cost/ corporate overhead. The percentage of the cost of this activity that relates to recording a change of ownership of land could be included in the calculation of the OTF.</p>
4. Financial Services Manager's Office	Oversight and management of the Financial Services Section of within the Support Services Centre of Council, of which the Revenue Management function is part of.	<ul style="list-style-type: none"> As above 	<p>Indirect cost/ corporate overhead. The percentage of the cost of this activity that relates to recording a change of ownership of land could be included in the calculation of the OTF.</p>
5. Support Service Centre Executive Manager's Office	Oversight and management of the Support Services Centre of Council, of which the Financial Services section is part of.	<ul style="list-style-type: none"> As above 	<p>Indirect cost/ corporate overhead. The percentage of the cost of this activity that relates to recording a change of ownership of land could be included in the calculation of the OTF.</p>
6. Contact Centre	Handling customer calls and email correspondence regarding ownership changes and the OTF.	<ul style="list-style-type: none"> Internal analysis of call costs between Jan to March 2012 	<p>This activity is prior to or consequential on the recording of a change of ownership. The costs of these activities should <u>not</u> be included in the calculation of the OTF.</p>
7. Lord Mayor's Administration Office	Handling Lord Mayoral correspondence regarding ownership changes and the OTF.	<ul style="list-style-type: none"> Lord Mayor's Correspondence review (date) 	<p>This activity is prior or consequential to recording a change of ownership. The costs of these activities should <u>not</u> be included in the calculation of the OTF.</p>

Activity	Example	Reference	Comment
8. Corporate Finance	Policy setting, budgeting and financial planning for revenue including the OTF. Financial reporting of OTF as part Council revenue. Monitoring the financial performance of the OTF and evaluating impacts on Council's overall revenue position.	<ul style="list-style-type: none"> Council budget Council financial system (IFBIS) 	This activity is consequential on the recording of a change of ownership. The costs of these activities should <u>not</u> be included in the calculation of the OFT.
9. Other Areas	<p>a) Divisional Manager's Office – handling Lord Mayoral and general correspondence and issues regarding rates arising from ownership transfers and OTF.</p> <p>b) Brisbane City Legal Practice – provision of legal advice on rating matters arising from ownership change and OTF.</p> <p>c) CEO's Office – handling general correspondence from ratepayers and others regarding rating impacts from ownership changes and the OTF.</p> <p>d) Corporate Human Resources – HR and industrial relations support to Revenue Management.</p> <p>e) Employee and Reporting Services – recruitment and WHS support to Revenue Management.</p> <p>f) General Administration – administrative support to Revenue Management including correspondence management, document control and filing.</p> <p>g) Corporate Communications – support with Lord Mayoral and general correspondence and communications with ratepayers.</p>	<ul style="list-style-type: none"> As above 	<p>Activities a, b, c, f and g are activities which relate to rates and are consequential on the recording of a change of ownership. The costs of these activities should <u>not</u> be included in the calculation of the OFT.</p> <p>Activities e and d are indirect costs/corporate overheads of a type referred to in section 4.2 of the proposed report and relate to the activity of recording a change in ownership. The percentage of the cost of activities e and d that relates to recording a change in ownership could be included in the calculation of the OFT.</p>