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17<sup>th</sup> October 2018  
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Water and Local Government Department  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
Haymarket Post Shop. NSW 1240

Attention: Mr Matthew Edgerton, Executive Director

## Proposed Changes to Central Coast Council Stormwater Charges

### References:

- A. Central Coast Council Water Pricing Submission to IPART dated 7<sup>th</sup> September 2018.
- B. Facebook Entry on “Yarramalong Valleyer’s” dated 2<sup>nd</sup> October 2018.
- C. Wyong Local Environmental Plan (2013).
- D. Central Coast Council Engagement Framework (Approved Version) dated 24<sup>th</sup> January 2017.
- E. Central Coast Council Press Release regarding the proposed water charges dated 8<sup>th</sup> October 2018.
- F. Letter to Mr Gary Payne, NSW Department of Local Government dated 25<sup>th</sup> August 2011.
- G. NSW Local Government (General) Regulation 2005 – Reg.125A.
- H. IPART Fact Sheet on “Wyong Shire Council Water and Sewerage Prices, 2013-17” dated 14<sup>th</sup> May 2013.
- I. NSW Local Government Act (1993), Sections 496, 501 and 608.
- J. Water Management (General) Regulation 2018, Clause 193.
- K. Hunter Water’s Pricing Submission dated 31<sup>st</sup> August 2018.

I refer to the Central Coast Council's (Council) proposal to place a charge for stormwater drainage on properties west of the M1 (Reference A.). I also attended in person, the Council "Open Session" at Alison House on Saturday, 29<sup>th</sup> September 2018. It was this meeting that has caused me to write this rather lengthy letter to you and the other addressees. In short, it was unstructured, unprofessional, uninformative, and in the end, left me with the impression we (ratepayers) were being coerced into accepting a predetermined position without consideration or concern.

Firstly, let me state that I am in full support of government taking greater responsibility in helping manage our community water resources. Particularly, when those resources are at risk of potential damage, such as with the case of the Korean coal mine (Wallarah 2 Coal Mine) under Jilliby Creek and the Wyong River currently under consideration by the Federal Government.

However, I'm not in support of the community paying for something without a clear understanding of the legal authority, what actual services are to be provided and the appropriate accountabilities being put in place to assure their delivery. This then, is an issue concerning "Corporate Governance".

One Council representative has indicated that they are targeting organisations such as Westfield, and by inference, they (Council) believe that they are not necessarily paying enough (Reference B.). It's interesting to see that these types of organisations are not located west of the M1. So, has Council actually thought through the risks and unintended consequences that their proposal has, particularly to small rural acreage properties? Nothing is mentioned in the submission.

Alternatively, as those attending the "Open Session" were reminded, there has been, and by Council's recent actions (e.g., ABC, 16<sup>th</sup> October 2018), remains, a view in some parts of Council that suggests people west of the M1 are "the rich and famous from Sydney". That may have been true in the past, but not anymore. Particularly so now, as we experience a growing influx of people chasing cheaper accommodation rather than having a commitment to or interest in agriculture.

Also, Council's proposal would seem to be in direct conflict with the stated objectives for properties zoned as Rural or Environmental, under the Local Environmental Plan (Reference C.), and particularly so for our zoning of RU1 Primary Production and E3 Environmental Management.

The following are my specific issues:

1. **Lack of due process, integrity and respect - Governance.** In its submission to IPART (Reference A.), Council stated (see page 173) that it had consulted extensively with the community on a vision for the Central Coast, and that water, sewerage and stormwater drainage services were pivotal to this vision. Worse, was the statement by one of the Council representatives present at the "Open Session" that Council had written to us as residents in April of this year about this change. It became abundantly clear during the various conversations at the "Open Session" and since, that none of those in the Yarramalong or Dooralong Valleys, being impacted by the changes, had been consulted, given notice, or had received the stated letter.

This seems to be in direct conflict with the Council's stated "Principles of Engagement Framework" (Reference D.). So, why would I or anyone expect us to, support the Council's proposal?

Then on 8th October, I received a copy of the Council press release (Reference E.) stating:

*"The proposed changes to the stormwater drainage charges would see a decrease in the charge for **all residential properties** [my emphasis] and most businesses. However, the way businesses were charged in the two former local government areas was completely different and the alignment of prices will result in some businesses paying more for their stormwater drainage services."*

This statement is inaccurate and misleading, and is not what the Council submission to IPART states. **All** Wyong area properties west of the M1, whether residential or not, will have a new charge imposed for stormwater drainage – not a reduction.

2. **Lack of timely consultation.** Whether deliberate or not, the first I heard about this issue was when some considerate person published the notice on the window at the local shop at the beginning of the week regarding the "Open Session". Posting notices in a shop window, on Facebook or on the Council website is not considered adequate notice. As ratepayers, Council has our addresses and, as demonstrated in this past week it can send us mail addressed correctly on issues such as the sewerage management plans. It also has the opportunity to include such notices in its quarterly ratepayer newsletter, which by the way, it didn't. So, why wouldn't it tell us when it involves a significant new charge?
3. **Legal Basis for the Additional Levy.** In August 2011, Wyong Shire Council attempted to introduce a Stormwater Management charge (Reference F.). However, this levy was challenged at the time on the basis that it was in direct contravention of the associated Regulations (Reference G.). To make this clear, I quote:

Regulation 125A (1) provides that:

*"for the purposes of section 496A of the Act a council may make or levy an annual charge for stormwater management services **only in respect of urban land** [my emphasis] that is categorised for rating purposes as residential or business."*

Regulation 125A (5) provides that:

In this clause "urban land" means "land within a city, town or village".

Under the Wyong LEP (Reference C.) a village is zoned as RU5. Also, the latest edition of the Macquarie Dictionary (6<sup>th</sup> ed., 2013) defines a "**Village**" as "(1) a small assemblage of houses in a country district, larger than a hamlet and smaller than a town; (2) the inhabitants collectively; (3) a group of small, sometimes fashionable and exclusive shops, servicing a suburb."

This request went no further, as evidenced by IPART's 2013 determination (Reference H.). Since then, there has been no change to these sections of the Regulation, or the relevant sections of the Act (Reference I.). Also, "non-Residential" is not a term used anywhere in the legislation, nor has our rural property been rezoned as "RU5 Village". So, on what legal basis is Council now using, to try again, to introduce this additional charge on rural properties?

This then raises an obvious question, "On what legal basis did the then Gosford Council

impose the charge in their jurisdiction in 2013?” This sounds like a potential class action in the making.

4. **A Water Charge Based on Area – Is this logical, fair or legal?** Section 313 of the Water Management Act and Clause 193 of the Water Management (General) Regulation 2018 (Reference J.) states specifically:

*“For the purposes of Section 313 of the Act, a water supply authority may classify land for the purpose of levying service charges according to one or more of the following factors:*

- (a) the purpose for which the land is actually being used,*
- (b) the intensity with which the land is being used for that purpose,*
- (c) the purposes for which the land is capable of being used,*
- (d) the nature and extent of any water supply, sewerage or drainage systems connected to, or available for connection to, the land.”*

The regulation specifies land use as the principle factor in setting a levy, or the extent of the drainage connection. Nowhere does it permit a levy or charge based on “land area”.

To give a working example. Take the Westfield block in Tuggerah (per Reference B.). This is approximately 17 ha and obviously, Council has to service their customers with potable water and manage all the water coming off the property through the local sewerage and stormwater infrastructure. The Council reports an average annual rainfall on the coast of about 1,330 mms. That’s the equivalent of about 220 mega-litres (ML) of water falling on the Tuggerah site, or 0.6% of Council’s Wyong River water extraction licence. Council currently charge their customers on the metered water used, not the water coming off the site. Obviously, rainwater falling on the property is additional to that metered. Therefore, having a stormwater charge for that situation is entirely logical, to offset the costs of providing the services to manage such large quantities of water.

In contrast, our farm is 34 ha (double the size) located in a “declared water catchment zone” has an average annual rainfall of 1,060 mms of rain, or 360 ML of water. That roughly equates to 1.0% of Council’s water extraction licence, and all but 0.3 ML goes into the general river system. Compared to the Tuggerah site, here we have to invest in the infrastructure to collect, hold, distribute and clean potable water for our own use (that’s the 0.3 ML). However, the rainwater that falls on our property feeds into the Wyong River system through the natural environmental watercourses (land, gullies and creeks). This river water in turn becomes available for Council to collect, store and use in the potable water supply it provides to its customers. Council does not provide us with any water-related infrastructure support currently, nor will it into the foreseeable future.

So shouldn’t Council be paying us for that water?

5. **Additional Charges for No Additional Services.** On page 7, of Council’s submission (Reference A.), it states:

*“Council has proposed changes to the way the stormwater drainage charges are implemented. Under this proposal, all rateable properties will pay for stormwater drainage, as the whole community benefits from stormwater drainage infrastructure.”*



Yet, nowhere in the documentation does it state what additional services (or in fact, what services) will be provided for these additional charges to us. It talks about plans for properties east of the M1 where they provide stormwater drainage infrastructure, but not the delivery of services to those in the rural areas. One of the Council representatives present at the "Open Session" talked about cleaning culverts, drains, and repairing flood damage. Council are already doing this on the country roads, and this is paid for through its roads funding. And, by the way, we (the farm) receive greater mutual support and care from WaterNSW and the Local Land Services than we have ever experienced from Council. So, are Council going to pay the cost of repairing the damage to any of our 5 culverts? The repair bill from the last flood was in excess of \$900.00 for just one culvert.

In the Press Release (Reference E.), Council goes further, beyond what's said in the submission, and says that I would benefit by them providing ... *"the stormwater drainage network in protecting public and private property from flooding"*.

Anyone experiencing a 7-8 metre flood covering our property, would understand that this is a physical impossibility. To give a benchmark, easily obtainable from WaterNSW, during the 23-24<sup>th</sup> February 2013 flood, the quantity of water passing over our property in any one hour was between 220 and 414 ML/hr for the two days, or a total of 15,236 ML in the 48 hour period. Coincidentally, that's equivalent to 1 to 2 times the amount coming off the Westfield site in their average year. Or, in that flood, 70 times the annual volume coming off the Westfield site. Is Council realistically intending to divert this water off our property? Absolutely and total unbelievable that they could even suggest they could do so. So, why charge us for it?

Or alternatively, Council might start taking some responsibility for the management of "notifiable weeds" and "weeds of national significance" that are spread through the road and natural waterways (stormwater) corridors which they say they are responsible for. Currently, this is a significantly higher cost in economic and environmental terms to rural properties on the Central Coast than the proposed stormwater rates.

The irony of this proposal is that Council, in effect, want us to pay to manage the water coming across our land, which then, in turn, helps meet its potable water needs, yet not actually provide any water, sewerage, stormwater or drainage infrastructure support in return. But then, what services could they provide given the Wyong River forms our northern and eastern boundaries, which pre-dates European settlement and the other boundaries are zoned as environmental hinterland.

Where is the value on our investment in Council?

6. **Lack of Consideration in these Times of Drought.** As one of the actual small acreage farmers left in the Valley, I can give two real live and current examples.
  - a. First, up until last Christmas we were paying \$150/ton for "cattle" grade hay. We are now paying over \$1,200/ton. That is a 7-fold increase.
  - b. Second, our chook feed has increased in price by 39% in this last month.

Now, Council wants us to pay potentially up to \$5,500 dollars a year extra on our rates (that's a potential a 98% increase, if the farm is classed as non-residential), with no services promised. And this, is on top of the 9% average annual increase in property rates since we've have been here.

We are already paying a significant rate bill (\$5,740), and are now questioning what real benefit we obtain from that; other than roads; which, by the way, are partly funded through higher levels of government. We even get charged a separate amount for the "wheelie bin". But, at least that is legal and we get a "wheelie bin" service (Reference I.).

Also, Council currently charge us an annual fee for us to manage our own sewerage systems. In the 8 years I have been here, we have had one inspection by Council, and that inspection was nowhere near the same level of quality, value or competence given by the organisation who we have contracted to inspect and maintain our sewerage system. As advised by Council, this charge purports to be for inspecting our sewerage management system by the Council water department. I note that under Section 608 (7) of the Act (Reference I.), that if a funded inspection is not undertaken, then it is to be refunded. This has never occurred, suggesting one should start claiming the refund.

It is also interesting to read the Hunter Water submission (Reference K.). Council have used this as part of their justification for adjusting the charges. For us to be paying an additional amount to assist in defraying the cost would be highly unethical. It amounts to "double dipping". Why? Because we simply have no means of accessing that water, other than by purchasing and transporting it in bulk from a Council water supply at an already inflated cost. As stated above, we have to develop and maintain the infrastructure for ourselves at significant cost.

It's also a sorry state of affairs when rural folk are paying rates significantly higher for a small acreage block in the country with no drainage infrastructure support, than an equivalently (or higher) valued property in parts of Sydney or Melbourne. Let alone, having a 2% (if residential) to 98% (if a farm) increase, on top of the average 9% annual increase in property rates. To give a size of this extortion, since 2013, Australia's CPI has been around 2% per annum only.

If IPART approves this charge, will it ensure that Council contributes to flood mitigation on our property, cleaning out the fallen trees, poisonous weeds and old tyres coming down the river, unblocking the 5 culverts on our property and put in place a commitment to provide our property with stormwater drainage? We currently do all this with some help from WaterNSW and the Local Lands Services.

In summary, I can only recommend to IPART, that it reconsider any submission by the Central Coast Council and reject it, unless:

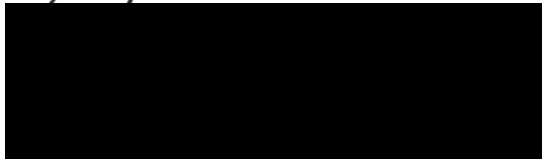
- It has a clear and unambiguous legal basis;
- It has clearly stated the additional and actual services linked to any additional costs;
- It is ethical, factual and makes logical sense;
- It aligns with existing regulations, plans and services;
- It is communicated directly to those impacted by the proposal, and in a timely manner; and

- It demonstrates fair and reasonable consideration of the responses of those submitting comments on the proposal.

Therefore, a simple statement in response to the submission would be “Rejected!”

As a postscript, I notice that Council admit to holding \$90 million in unspent funds which were collected for the purpose of operational and capital works by the former council (Reference A., page 15). Why have these funds not been redistributed back to ratepayers as would be the normal practice?

Yours kindly,



Dr R. J. Stacy PhD, MSc, MErg, FSIA, CPE, MAICD



#### Copies to:

1. Anthony Rush, Director, IPART.
2. Jane Smith, Mayor, Central Coast Council.
3. Louise Greenaway, Councillor, Central Coast Council.
4. David Harris, State Member for Wyong.
5. Gabrielle Upton, State Minister for Local Government.
6. Niall Blair, State Minister for Regional Water.
7. Emma McBride, Federal Member for Dobell.
8. Lucy Wicks, Federal Member for Robertson.