

Domestic waste management charges - Discussion Paper

Submission date: 19 October 2020, 10:26PM

Receipt number: 87

Related form version: 5

Question	Response
Feedback and Submission Form	
Industry	Local Government
Review	Review of domestic waste management service charges
Document Reference	c1e253a1-4210-41d3-97de-3be8f315fce7
<p>1. Are there concerns with the prices councils charge for domestic waste management services? Why/why not?</p>	<p>Yes. Please see attached submission. Tweed Shire Council is:</p> <ul style="list-style-type: none"> a) Refusing to provide a domestic waste management service to collect and dispose of the domestic waste from my residentially rated property (where waste collection vehicles can access the property and where there is a dwelling on the property) and as a result I must pay higher commercial charges (through my Owners Corporation levies) for the collection and disposal of domestic waste generated from my property. b) Continuing to impose an annual charge in my rates notice of \$69.80 which is labeled "DOMESTIC WASTE ADMIN CHARGE", notwithstanding the Council's refusal to provide a domestic waste management service to my property. c) Requiring me to pay (though my Owners Corporation levies) for the waste collection and disposal costs of domestic and commercial waste generated by other Owners Corporations. This means it is up to my Owners Corporation to try to collect monies from the other Owners Corporations for the waste management services provided by Council to collect and dispose of the domestic and commercial waste generated on those other properties.

<p>2. If there are concerns, how should IPART respond? For example, if IPART was to regulate or provide greater oversight of these charges, what approach would be the most appropriate? Why?</p>	<p>Please see attached submission. Councils should be regulated so that:</p> <p>a) Councils are under an obligation to provide domestic waste management services for domestic waste generated by residentially rated properties where waste collection vehicles can access the property and where there is a dwelling on the property.</p> <p>b) Councils are prohibited from imposing any domestic waste management charges on ratepayers in circumstances where a Council refuses to provide such services to those ratepayers.</p> <p>c) Councils should not be permitted to charge one entity for waste management services provided by Councils in relation to waste generated by other separate legal entities.</p>
<p>3. Would an online centralised database of all NSW councils' domestic waste charges allowing councils and ratepayers to compare charges across comparable councils for equivalent services (eg, kerbside collection), and/or a set of principles to guide councils in pricing domestic waste charges, be helpful? Why/why not?</p>	<p>Yes</p>
<p>4. Do you have any other comments on councils' domestic waste management charges?</p>	<p>Please see attached submission</p>
<p>5. Which Council do your comments relate to?</p>	<p>Tweed Shire Council</p>
<p>Your submission for this review:</p>	<p>Please see attached submission</p>
<p>If you have attachments you would like to include with your submission, please attach them below.</p>	<p>20201019 C Elliot IPART submission.pdf</p>
<p>Your Details</p>	
<p>Are you an individual or organisation?</p>	<p>Individual</p>
<p>If you would like your submission or your name to remain confidential please indicate below.</p>	<p>Publish - my submission and name can be published (not contact details or email address) on the IPART website</p>
<p>First Name</p>	<p>Claire</p>
<p>Last Name</p>	<p>Elliot</p>
<p>Organisation Name</p>	<p></p>
<p>Position</p>	<p></p>
<p>Email</p>	<p>[REDACTED]</p>
<p>IPART's Submission Policy</p>	<p>I have read & accept IPART's Submission Policy</p>

Review of Domestic Waste Management Charges
Independent Pricing and Regulatory Tribunal
PO Box K35 Haymarket Post Shop
Sydney NSW 1240

Dear IPART Members

Submission to IPART Review of Domestic Waste Management Charges

1. I am an owner of a strata title apartment located in the Tweed Shire at [REDACTED]. There are 166 lots in my Owners Corporation Strata Plan 76024 (SP 76024), comprising 165 apartments and a Caretaker's lot, which includes a function centre.
2. My apartment is rated by the Tweed Shire Council (the Council) as a residential property. The Ministerial consent for DA 477-11-2003¹ approved the development as a tourist resort. I understand the property is within an SP3 tourist zone.
3. I have three concerns that I wish to raise in this submission, which I outline below.

Concern 1: Council refusal to provide a domestic waste management service to collect domestic waste from my residentially rated property

4. It is my understanding that NSW Councils normally provide domestic waste services to all residentially rated properties, provided that waste collection vehicles can access the property and there is a dwelling on the property.
5. However, a domestic waste management service is not provided to my property, despite the fact that my property is rated as residential, waste collection vehicles can access the property, and there is a dwelling on the property.

Background

6. The Council wrote to me in 2015 advising that a domestic waste management service was being provided to my property. The Council stated:

Legal obligations

Under Section 496 of the Local Government Act, all Councils are required to charge annual domestic waste management charges (including garbage and recycling collection) for every parcel of rateable land in which waste management services can be provided.

Your individual unit is a rateable property for which Council can provide garbage and recycling services, and accordingly we will need to charge the minimum domestic waste management charge outlined in Table 1 of the, FAQ sheet.

7. The Council advised that from 1 July 2016 an annual collection service charge of approximately \$171.20 would be added to my rates notice. The Council sent me another letter in 2017 confirming that each residential property in SP 76024 will be charged approximately \$177 in their rates notices for domestic waste collection and disposal, maintenance of the compactor and admin costs. This seemed fair to me, but this annual charge never appeared on my rates notice and I heard nothing further from the Council.
8. However, I understand from my Owners Corporation that the Council later changed its position and now insists that a domestic waste service is **not** available to collect domestic waste from my property. Consequently, domestic waste from my property must be collected and disposed of by a commercial service provided to my Owners Corporation at higher charges, including GST. Council did not write to me as a ratepayer to inform me of their change of mind or the reasons for their change of mind.

¹ http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7200

9. I understand that the Council is now charging my Owners Corporation a fee under section 608 of the LG Act for the collection of domestic waste from my property.
10. I raised my concern with the Council in an email dated 10 August 2020. I requested the Council to explain why the waste service provided to my property is no longer considered by the Council to be a domestic waste management service and why the domestic waste collection charge was not applied to my rates notice.
11. The Council replied by an email dated 28 September 2020, stating:

"The service for your property has been determined as a non-domestic service because your DA says it is, and the service is provided to a mixed development with commercial waste going into the service. The design for the service was submitted during your DA process as the service that would be provided to the property and the property was conditioned to provide that service in your approval."
12. I examined DA 477-11-2003 for the property and its accompanying documents² In particular, I examined the report dated November 20013 by Eppell Olsen & Partners on Parking Loading/Servicing Matters. The report does not require or recommend that the waste collection service be non-domestic in nature. I was unable to locate in the DA documents any requirement that the waste service to my apartment must be a non-domestic service. In fact, the Council has earlier acknowledged that *"The development consent is silent on how and by whom the waste would be collected from the receptacle"*³.
13. By email dated 3 October 2020 I asked the NSW Department of Planning, Industry and Development whether DA 477-11-2003 requires the waste service for my property to be a non-domestic service. A Senior Planner explained to me by phone that while the DA deals with the storage of waste, it does not deal with the servicing of waste. By email dated 7 October 2020, the Senior Planner stated that the matter of Council's waste services charge is a matter for the Council. I am unable to locate any provision in the *Local Government Act 1993* that requires the waste service to my residentially rated property to be a non-domestic service.
14. In addition, the Council's email dated 28 September 2020 refers to the development as being a *"mixed development"*. However, the Ministerial consent for DA 477-11-2003 was as a tourist resort. Pursuant to the Ministerial Consent, the development is required to be carried out in accordance with the definition of tourist resort contained in *Tweed Local Environmental Plan 2000*, namely *"a largely self-contained holiday destination establishment which provides--(a) tourist accommodation, and (b) on-site facilities to satisfy all, or substantially all, of the recreational, entertainment, dining and other holiday needs of its resident tourists"*. Planning Certificate number 149C14/3131 under section 149 of the *Environmental Planning and Assessment Act 1979*, issued on 28 October 2014, states my property is within an SP3 tourist zone. There is no mention in the Certificate of my property being in a B4 mixed use zone.
15. If the Council is denying the provision of a domestic waste management services to tourist resorts in the Tweed Shire, there would be a lot of affected ratepayers missing out on a domestic waste management service, as the Tweed Shire is a popular tourist destination for both domestic and international visitors.

Section 496(1) of the Local Government Act 1993

16. Section 496(1) of the *Local Government Act 1993* imposes an obligation on Councils to make and levy an annual charge for domestic waste management services where such a service is available:

"A council must make and levy an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available."
17. However, the Council believes that while this provision imposes an obligation to charge for a domestic waste service, it does not impose an obligation to provide a domestic waste service. Council stated:

*"The obligation is to charge, not to provide the service"*⁴

² http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7200

³ Tweed Shire Council letter to SP 76024 dated 5 November 2019

⁴ Tweed Shire Council letter to Strata Plan 76024 dated 16 June 2016

“Council has no obligation to provide a waste management service. There is nothing in the LG Act that requires Council to provide such a service⁵”

18. The result of the Council’s refusal to provide a domestic waste management service to collect and dispose of the domestic waste from my property is that I must pay higher commercial charges that also attract GST (through my Owners Corporation levies) for the collection and disposal of domestic waste generated from my property.
19. Legislators may not have envisaged that a Council would refuse to provide a domestic waste management service for domestic waste generated by residentially rated properties where waste collection vehicles can access the property and where there is a dwelling on the property, thereby resulting in ratepayers paying higher commercial charges for the collection and disposal of their domestic waste.

Outcome sought

20. I believe the legislation should be amended to make it clear that Councils are under an obligation to provide domestic waste management services for domestic waste generated by residentially rated properties where waste collection vehicles can access the property and where there is a dwelling on the property.

Concern 2: Council imposition of a domestic waste admin charge on my property

21. I believe that Councils should not impose an admin charge for a domestic waste management service in circumstances where Councils refuse to provide a domestic waste management service.
22. As stated above, as a result of Council’s refusal to provide a domestic waste service to my property, the domestic waste from my property must be collected and disposed of by a commercial service provided to my Owners Corporation at higher charges, that also attract GST. I understand the Council is now charging my Owners Corporation a fee under section 608 of the LG Act for the collection of domestic waste from my property.
23. However, notwithstanding the above, the Council continues to impose an annual charge in my rates notice of \$69.80 which is labeled "DOMESTIC WASTE ADMIN CHARGE".
24. I raised this concern with the Council in an email dated 10 August 2020 and requested that the annual Domestic Waste Admin Charge be removed from my rates notice.
25. The Council responded by an email dated 28 September 2020 outlining the ways in which the funds raised by this charge are used and stating *"These costs are divided evenly across all domestic properties"*. Unfortunately, the Council response failed to address my concern.
26. I believe that Councils should not impose an admin charge for a domestic waste management service on my property for the following reasons:
 - a) The Council refuses to provide a domestic waste management service to collect domestic waste from my property. The domestic waste from my property must therefore be collected at higher commercial rates, and GST is also applicable.
 - b) The Council website⁶ makes it clear that properties that are serviced by a commercial waste service pay a management cost in their commercial waste charges:

“Waste management administration charge

Applies to residential and farmland properties that receive a waste service. (The charge does not apply to business rated properties.)

Commercial waste charges are higher than residential charges and include a management cost. Commercial waste is subject to GST. Commercial customers can engage waste services from providers other than Council's waste contractor”

⁵ Tweed Shire Council letter to Strata Plan 76024 dated 5 November 2019

⁶ <https://www.tweed.nsw.gov.au/Rates/ChargesExplained>

Accordingly, it appears the Council may be "double dipping" by collecting two admin/management charges for waste services for my property comprising:

- an admin charge for a domestic waste service that Council refuses to provide; and
- a management charge that is included in commercial waste charges that I pay through my Owners Corporation levies.

- c) It seems to me that section 496 of the *Local Government Act 1993* does not authorise the Council to impose an annual domestic waste management admin charge on my property as a domestic waste management service is currently not available for my property, due to the Council's refusal to make such a service available.
- d) It also seems to me that section 501 of the *Local Government Act 1993* does not authorise the Council to impose an annual domestic waste admin charge on my property because the section excludes charges for domestic waste management services.
- e) Charging an admin fee for a service that Council refuses to provide does not pass the "*fair crack of the whip*" test. I consider this to be a fee for no service.

27. It appears the Council is charging this fee for no service to either subsidise other ratepayers who receive a domestic waste management service, or to subsidise other areas of Council's operations, thereby undermining the rate pegging process. I do not consider that either of these approaches is fair or appropriate.

Section 496(1) of the *Local Government Act 1993*

28. Section 496(1) of the *Local Government Act 1993* imposes an obligation on Councils to impose an annual charge for domestic waste management services where such a service is available:

"A council must make and levy an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available."

29. However, no domestic waste management service is available for my property, as the Council refuses to provide it.
30. Legislators may not have envisaged that a Council would impose an annual domestic waste management admin charge on residentially rated properties while refusing to provide a domestic waste management service to those properties.

Outcome sought

31. I believe the legislation should be amended to make it clear that Councils are prohibited from imposing any domestic waste management charges on ratepayers in circumstances where a Council refuses to provide such services to those ratepayers.

Concern 3: Council charging SP 76024 for waste generated on other properties

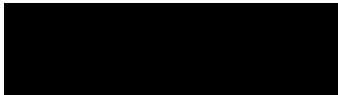
32. The Council is requiring me to pay (though my Owners Corporation levies) for the waste collection and disposal costs of domestic and commercial waste generated by other Owners Corporations, namely the Bale Owners Corporation Strata Plan 76023 and the Retail Owners Corporation Strata Plan 77925. This is because those other entities deposit their waste into my Owners Corporation waste compactor.
33. This means that it is up to my Owners Corporation to try to collect monies from the other Owners Corporations for the waste management services provided by the Council to collect and dispose of the domestic and commercial waste generated on those other properties. The other Owners Corporations have not contributed to waste costs for an extended period, meaning my Owners Corporations levies are higher as my levies have to pay for the waste costs of other Owners Corporations.
34. The Council asserts it cannot charge the other Owners Corporations because it does not know how much waste is generated by those Owners Corporations. This is despite the fact that the Council has provided estimates, based on Council's extensive experience, of the waste generated by each of the entities depositing waste into the receptacle.

35. I cannot understand how this charging practice by the Council could be regarded as fair and reasonable. Just because the other Owners Corporations do not have waste receptacles and use the SP 76024 waste receptacle does not, in my view, justify the Council charging my Owners Corporation for the waste generated by these other legal entities.
36. This evidences a failure of the user pays system under which there is incentive for users of waste services to minimize waste generation and the demand on landfill facilities.
37. In my view, this Council charging practice alone demonstrates that the regulation of charging for waste management services by Councils is in urgent need of reform.

Outcome sought

38. Councils should not be permitted to charge one entity for waste management services provided by Councils in relation to waste generated by other separate legal entities.
39. Thank you for the opportunity to make this submission. Please contact me should you require any further information.

Yours sincerely

A solid black rectangular box used to redact the signature of Claire Elliot.

Claire Elliot