

Dr P J Boxall, Chair  
IPART Tribunal

## IPART – REVIEW OF CENTRAL COAST WATER PRICING – DRAFT REPORT

We live on an approximately 16 hectare property in Jilliby that has rates nominated as Residential and has a land classification of Rural RU1 Primary Production. We currently are unable to connect to Council's Water and Sewage Services as they do not reach our property so have rainwater tanks and a septic system (for which we pay an annual On site Sewage Management – Domestic fee – what this actually covers is unclear and the cost is inconsistent with other councils), we are not charged any fee for stormwater services (I don't believe we actually receive any). I am still uncertain as to what if any costs we would be up for in the future.

I may be a bit thick but I can find no clear explanation of how the categories have been determined as Residential, Farmland or Non Residential (Business and Mining) that are listed as the categories for the purposes of the proposed prices and why the land zoning does not appear to be considered in the categorisation as I consider that the zoning will have an impact on the potential use of water and amount of sewage and stormwater.

In the Draft Report Clauses 1.2 and 1.4 state that for most customers prices will fall and then goes on to state that prices will only rise for some Non Residential Customers. I don't believe these statements are correct as if the proposed stormwater charges are applied to the rural areas west of the M1 in the former Wyong shire which currently are not charged and appear to be being classified as either Residential or Farmland then the costs will be an increase in prices especially for those customers that don't have water or sewage services supplied by Council. While it is possible to argue that as we are not customers because we currently receive no such services from Council, IPART in its proposed pricing also nominates that if there is no water or sewage connection that the price will be Zero and thus implies that these properties are considered as customers (ie that all rate payers are customers).

I am unable to source a clear legal definition of what constitutes "stormwater" or "stormwater services" but believe that a common sense definition would be that stormwater would be any run-off from a property following a rainfall event and that stormwater services would be any service to manage and control this stormwater such that the run-off does not cause damage or flooding on neighbouring property or at least is minimised.

I note that in section 6 of the Draft Report mention is made that IPART requested and was provided with details of the stormwater services that Council believe it provides to areas west of the M1 in the former Wyong shire. I have requested full details of the information provided but have not received any further information to that provided in the Draft Report, I question whether in fact Council has in fact spent money on stormwater infrastructure in the area west of the M1.

Section 9.4.2 of the Draft Report discusses Farmland, rural properties and stormwater charges but again fails to clearly define the differences in what constitutes farmland, residential, rural and rural residential land and I believe creates further confusion by not being consistent in its use of terminology. It also contains the statement "We consider the impermeable surfaces for farmland properties are comparable to a standard house" which I would suggest is incorrect and that most farmland or rural residential properties would have a significantly lower percentage of impermeable surfaces than a standard house block.

In the NSW LGA 1993 No 30 the following definitions are made:

**drain** means a drain for the carrying off of waters other than sewage.

**flooded**, in relation to land, means inundated by waters derived from the runoff of rainfall on land.

**road** includes:

(a) highway, street, lane, pathway, footpath, cycleway, thoroughfare, bridge, culvert, causeway, road-ferry, ford, crossing, by-pass and trackway, whether temporary or permanent, and

(b) any part of a road and any part of any thing referred to in paragraph (a), and

(c) any thing forming part of a road or any thing forming part of any thing referred to in paragraph (a).

**stormwater drainage work** means the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal, flushing, cleansing or clearing of any stormwater drain communicating or intended to communicate, directly or indirectly, with any stormwater channel of a council.

**stormwater management service** means a service to manage the quantity or quality, or both, of stormwater that flows off land, and includes a service to manage the re-use of stormwater for any purpose.

In Council's submission to IPART dated 7 September 2018 in section 1.3 it provided the following statements:

"Stormwater drainage charges, as regulated by IPART, allows Council to recover the costs of providing trunk drainage such as stormwater pipes and pits, open channels, culverts, levees and detention basins – infrastructure that all members of the community benefit from.

Road infrastructure, such as kerb and guttering is not included in this."

I believe that there is conflict between these two sources of definition and suggest that the definition in the LGA is the legal definition that should apply (ie that a culvert is part of a road and not part of stormwater infrastructure).

While I don't dispute that Council has spent monies on Roads in the area west of the M1, I am at a loss to know where any money would have been spent on stormwater infrastructure in accordance with the definition above. There are no Council supplied stormwater drainage drains, pipeworks or channels in the rural areas west of the M1, all the drainage systems (excluding that associated with roads which is excluded from the definition of stormwater infrastructure) in these areas is either natural gullies or farm dams and swales which have been put in place by the individual landholders.

I believe that in most urban areas the house guttering diverts rainfall in to a stormwater system provided by councils that takes the water from the guttering and runoff from the impermeable land away from the neighbourhood via a system of drains and channels to either a system of sedimentation ponds or direct into the natural waterways and logically there is a cost to council to provide this. In the rural areas to the west of the M1 in the former Wyong shire I can find no evidence that Council provides a similar system.

The NSW LGA 1993 No 30 Chapter 15 Part 1 defines what rates, fees and charges can be made and the following clause is included:

**496A Making and levying of annual charges for stormwater management services**

(1) A council may, in accordance with the regulations, make and levy an annual charge for the provision of stormwater management services for each parcel of rateable land for which the service is available.

(2) Subsection (1) does not authorise or permit a council to make or levy an annual charge for the provision of stormwater management services for rateable land that is:

(a) owned by the Crown, and

(b) held under a lease for private purposes granted under the *Housing Act 2001* or the *Aboriginal Housing Act 1998*.

[Note: Section 555 (1) (a) provides that land owned by the Crown is not rateable land unless it is held under a lease for a private purpose.]

Note that this specifically states "for which the service is available" and again I would suggest that no stormwater management services are provided and thus are not available to the area west of the M1 in the former Wyong shire and thus no charge can be made.

In the Water Management Act 2000 No 92 Division 6 Finance the following clauses have bearing:

**308 Orders for purpose of service charges**

- (1) The Governor may, by order published in the Gazette, declare any land described in the order to be a development area for the purposes of this Part.
- (2) The Minister may, by order published in the Gazette, declare any land described in the order to be a drainage area, floodplain or river management area for the purposes of this Part.
- (3) The Minister may, by order published in the Gazette, declare any industry specified in the order to be a special industry for the purposes of this Part.
- (4) The Minister may, by order published in the Gazette, declare a period of 12 months to be the charging year for a water supply authority.

**311 Land in respect of which a water supply authority may levy service charges**

- (3) A water supply authority may only levy drainage service charges on land that is within a drainage area.

It is noted that the area west of the M1 in the former Wyong shire is not a declared drainage area and it is accepted that drainage services and stormwater services are to be taken as one and the same in the Central Coast Council area although I would suggest it would be possible to argue that they are different. Therefore there is currently no legal basis on which to impose stormwater service charges on the area west of the M1 in the former Wyong shire.

In Box 9.1 of the Draft Report IPART notes that "The key cost drivers for stormwater services are peak stormwater flows, total volume of water and pollutants." this suggest to me that IPART believes that a role of a stormwater system is to control pollution and stop its spread to neighbouring properties and I would thoroughly agree. I believe that this is further reinforcement of the fact that Council does not provide stormwater services to the area west of the M1 in the former Wyong shire. There is no Council supplied infrastructure that limits pollution flow between properties and in fact the road infrastructure causes pollution from both the road and properties at a higher elevation to mine to flow onto my property. Where in any urban area does the stormwater system divert run-off and pollution onto a land owner's property by design (I would suggest that this only occurs due to excessive or over flow in storm incidents). I find it ridiculous that I should be asked to pay for an alleged stormwater system that by design diverts run off and pollutants on to my land which I then have to manage at my own cost (Is Council going to provide me with funds to manage the stormwater it diverts on to my land?).

I sum up by reiterating that it is currently not legal to charge for stormwater management services in the area west of the M1 in the former Wyong shire and even if this area is at some time in the future a declared drainage area that as the Council has not provided stormwater management services (as opposed to road works) in the area it is still not legal to charge for them.

In section 9.6 of the Draft Report, IPART raises the issue of whether stormwater services should be funded through general rates and to some extent I see merit in this if it is clearly something that is considered for the public good in the same way as roads are funded. It does however raise an issue on the land valuation and its relationship to the size of the land and how this is considered in determining the ordinary rate to be charged by Council. If I own an urban block of say 1,000 sq m which has a value of \$500,000 should I pay the same rates if I were to own a rural residential block of 16 hectares which has a value of \$500,000 or a farmland block of 16 hectares which has a value of \$500,000 (particularly if the rates are to include an allowance for stormwater services). I consider that the rates should be different for these scenarios but have no idea what the relative rates currently are. The situation that currently occurs with Council's road infrastructure diverting stormwater and pollution directly on to my property would still need to be addressed in any assessment.

Regards

  
Wayne McCauley