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17 October 2018

Anthony Rush  
IPART  
Level 15  
15-24 Rawson Place  
Sydney 2000

Dear Sir

Prices for Central Coast Council from 1 July 2019

My submission to this review is concerned with the proposal to levy a service charge for the alleged provision of drainage services either available to, or used by, my property at [REDACTED] and other property in the Yarramalong Valley.

## **SUMMARY**

**In the absence of a declared drainage area there is no power for a review of the Council proposal by IPART**

**The classification of land by the Council is not in accordance with the Act and Regulation.**

**There is no basis for levying a drainage service charge as proposed.**

There are a number of issues that concern IPART's jurisdiction to undertake this aspect of the review and the authority of Central Coast Council ( the Council ) to levy a "stormwater drainage charge" on my property and other property in the Yarramalong Valley.

## **NO DECLARED DRAINAGE AREA**

The Council acknowledges that my property and the Yarramalong Valley is not part of any drainage area declared by the Minister under Section 308 of the Water Management Act 2000 ( the Act ). The Council further acknowledges that unless and until such a declaration is made, if it ever

is, no drainage service charge can be levied on my property and the balance of the Yarramalong Valley.

The exercise on which IPART has embarked, to review the price at which a levy can be made when such a levy is legally impossible, in my submission is beyond IPART's power and authority. Sections 310 and 311 of the Act make it clear, beyond argument, that a drainage service charge can only be levied on land within a declared drainage area. IPART, in my submission, has no authority to embark on an hypothetical exercise reviewing charges that cannot be levied.

The Council should first establish why, having regard to the Act, the Yarramalong Valley should be part of a declared drainage area and convince the Minister as to the propriety of a declaration under Section 308 of the Act. The issue of what land is appropriately included in a drainage area is at large, in the absence of any criteria in the Act and the Water Management (General ) Regulation 2018 (the Regulation ). The Minister may well take the view that land that has been proclaimed a Water Catchment Area for the Central Coast Water Supply should not be included in a drainage area.

To pursue the exercise on which IPART has embarked, before any declaration of a relevant drainage area, might be seen as an attempt by the Council to fetter the Minister's discretion under Section 308 of the Act with the consequence that the whole exercise is rendered invalid.

## **CLASSIFICATION OF LAND ISSUES**

Land may be classified for the purpose of levying service charges according to one or more of the four factors detailed in Regulation 193.

### **Residential and Non-residential**

The Council has arbitrarily divided properties into the classifications of Residential and Non-residential.

The selection of Residential has been made by reference to whether or not the particular property is rated under the Local Government Act 1993 for the residential rate. All other properties have been classified as Non-residential.

In the rural areas of the Council, primarily west of the M1 Motorway, property is rated as residential if it is not rated as farmland. There are strict criteria to be satisfied before a property is rated as farmland. Many properties are used as farms, with a dwelling on site, even though the particular property does not qualify for the farmland rate. This classification by the Council into Residential and Non-residential is completely arbitrary and bears no relationship to actual use.

The division of properties by the Council into Residential and Non-residential does not relate to:-

- the purpose for which the land is being used;
- the intensity with which the land is being used for a purpose;
- the purposes for which the land is capable of being used;
- the nature and extent of any drainage systems connected to, or available for connection to, the land.

As to the fourth of those factors, it is noted that there are no drainage systems connected to, or available for connection to, my land and the other properties in the Yarramalong Valley. I do not consider that Wyong Creek, which forms my northern boundary and predates European settlement, amounts to a drainage system for the purposes of the Act.

The Council's simplistic classification of properties is not in accordance with the Act. The Council's whole proposal for the levy of a drainage service charge fails at this point.

### **Non-residential Properties**

Council has further classified Non-residential properties by the undefined concept of "low impact" and by area into five sub-categories.

It might be said that "low impact" relates to the intensity with which the land is being used, the second factor in Section 193. However, absent any specified criteria it may also relate to how much hard stand is on the property and generating run off, which may bear no relationship to the intensity of use.

The classification into "Small", "Medium", "Large" and "Very Large", even though areas are nominated, does not reflect any of the factors in Regulation 193. A small property may be used intensively and a very

large property may be barely used at all. Size does not necessarily reflect the purpose of the use, nor the purposes for which the property is capable of being used. Size certainly does not reflect the availability of drainage systems.

No part of the classification system proposed by the Council accords with the requirements of the Act and this needs to be completely revisited. In saying this I do not accept that there is any proper basis for the levying of a drainage service charge on my property under Regulation 194, which I will now address.

## **THE BASIS OF LEVYING SERVICE CHARGES**

Section 314 of the Act states that the Regulation must specify the basis, or bases, according to which a service charge may be levied.

Regulation 194 sets out the bases for the levy of a service charge in some detail. It is fundamental that a service charge may only be levied on the basis of availability of a service or on the basis of the usage of a service. These are referred to the **access component** and the **usage component** (emphasis in the Regulation). The components may vary according to various specified criteria.

Both components require the availability of a service, the **access component** states this and there can be no usage for the **usage component** without the availability of a service.

There is no definition of drainage service in either the Act or the Regulation. Drainage work is defined in the Act and may give some guidance as to what amounts to a drainage service.

Drainage work means relevantly "a work ( such as a pump, pipe or channel) for the purpose of draining water from land, including a reticulated system of such works, and includes all associated pipes, sluices, sluiceways, valves, metering equipment and other equipment....".

My property is bounded on the north by Wyong Creek. This is a natural watercourse, the existence of which predates European settlement. Wyong Creek cannot be described as a drainage service or a drainage work. Downstream of my property, at some point, Wyong Creek becomes

known as Wyong River. Wyong River flows generally eastward to Tuggerah Lake. There is a channel to Tuggerah Lake from the ocean at The Entrance. Water from Wyong Creek ultimately discharges through that channel to the Pacific Ocean.

Downstream of my property, on Wyong River, the only work affecting the flow, apart from the pumps for the Central Coast Water Supply at Mardi, is a weir downstream of those pumps. The purpose of the weir is to stop the downstream brackish water mixing with the upstream water that is essential for the water supply. These are works for water supply purposes not drainage.

There is no drainage service, in the relevant sense, available to or used by my property. The same applies to the other properties in the Yarramalong Valley.

In the absence of a drainage service available to my property there is no basis upon which a drainage service charge can be levied on my property. The other properties in the Yarramalong Valley are in the same position.

The whole of the Council's proposal for a drainage service charge is fundamentally flawed. The Council's approach displays a lack of understanding of the Act and the Regulation. IPART should return the submission to the Council and suggest that, after obtaining competent legal advice about the Act and the Regulation, Council re-assess the charges to be levied under the Act.

I note that the proposal for IPART to determine prices for a four year period appear to conflict with Section 315 of the Act that requires an annual determination of charges by the Council.

I understand that IPART will be holding a public hearing in November. Please advise the time, date and location of the hearing and what needs to be done to register to speak.

Yours faithfully

Warwick O'Rourke BA LLB

