

16 October 2018

Mr Anthony Rush  
Director  
Independent Pricing & Regulatory Tribunal  
Level, 16, 2-24 Rawson Place  
SYDNEY NSW 2000

Dear Mr Rush

**RE: Prices for Central Coast Council from 1st July 2019**

I wish to lodge an objection in respect of storm water drainage charge to be levied upon rural properties in the previous Wyong LGA based upon the following:

- (a) There has been no proper community consultation with rural residents or advertising to inform the affected rural community of the proposed charge.
- (b) It is contended that Central Coast Council do not have authority to make such a charge under the Local Government Act or the Water Management Act.

**(A)**

The first Council notification to the rural community was a telephone call to myself by council communications employee Hayley Swartz at 4.20pm a week prior to the 'Drop in Day' on the Saturday of the long weekend. She rang me to see if there was any way to communicate with the people of the Yarramalong and Dooralong Valleys. She was informed at that late stage it was too late to communicate successfully with residents and being a long weekend and school holidays it was doubtful that a large attendance could be expected.

I was concerned during my conversation with Hayley Swartz that there had been no community consultation. It was in fact, as far as Council was concerned, a 'fait accompli' doing no more than disseminating information on what the community could expect without any prior input from them. It was only by chance and telephone calls at my expense to a number of people that a small number of individuals became aware of this charge and that any objections would have to be made in a short period, at that time two weeks, to IPART.

Central Coast Council has had ample time to publish their new storm water pricing structure and there intention to charge the rural community this fee in the community's local newspaper. **This they did no do.**



I am the publisher of the Rural Grapevine, the major newspaper that services the rural area of Yarramalong and Dooralong. Central Coast Council purchase a full page advertisement in each edition, which they used to communicate various Council matters and events to the rural residents. They also, on a regular basis, purchase additional advertising space to their regular advertisement to disseminate important information. At no time did Council make any inquiries in regards to advertising the storm water and drainage charge or the need to consult with the community about this important issue.

I was in attendance at Council's 'Drop in Day' and found that any attempt to get specific answers to questions was impossible. Answers by Council staff were vague and were no more than double-speak gobbledygook.

IPART must reject Central Council's attempt to levy a fee that has not had mandatory, proper and full consultation with the entire community and only vague discussions with a selected few.

## **(B)**

Central Coast Council's reasoning for charging a storm water and drainage levy on the rural residents of the former Wyong LGA is that the former Gosford Council made such a charge against their rural residents. They said it would be line with what Gosford Council had previously done and that the whole Central Coast area should be declared a drainage area to validate their charge.

### **(i) Local Government**

Council only has the authority to make charges under the Local Government Act or the Water Management Act. The Local Government Act only permits a storm water charge in respect of the provisions of the Local Government (General) Regulation 2005 – Reg.125A.

Regulation 125A (1) provides that – for the purposes of section 496A of the Act a council may make or levy an annual charge for storm water management services only in respect of urban land 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. Therefore, Council has no authority to seek to impose a storm water charge on the rural community under this legislation.

### **(ii) Water Management Act**

#### **Section 313**

Section 313 CLASSIFICATION OF LANDS of the Water Management Act 2000 allows the levying of service charges as follows:

(1) The regulations must specify the factor or factors according to which a water supply authority



may classify land for the purpose of levying service charges.

(2) Without limiting the generality of subsection (1), the regulations may specify that a water supply authority may classify land according to any 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 the water or sewerage services connected to the land.

(3) For the purposes of subsection (2) (c), land is not capable of being used for a purpose if the use of the land for that purpose would be in contravention of:

- (a) the Environmental Planning and Assessment Act 1979 , or
- (b) any environmental planning instrument in force under that Act, or
- (c) any other Act or law relating to the use of land.

I contend that Central Coast Council's proposed storm water levy upon the rural valleys of Yarramalong and Dooralong would be in contravention of Section 313 of the Water Management Act 2000, Clause 3 (c).

The Yarramalong and Dooralong Valleys are a proclaimed water district. They were proclaimed a 'Catchment District' for the Wyong Water Supply on the 20th September 1950, such proclamation still being in force.

I also contend that Section 313 of the Water Management Act 2000, Clause 3 (c) also prevents Central Coast Council from seeking a declaration under said Act by the Minister to declare the water 'Catchment District' a drainage area.

### **(iii) Water Management (General) Regulation 2018**

#### **Clause 193**

It is further contended that Clause 193 (d) 'the nature and extent of any water supply, sewerage or drainage systems connected to, or available for connection to, the land' prohibits Central Coast Council from implementing a storm water charge.

There are no water supply, sewerage or drainage systems connected to, or available for connection to any of the rural lands west of the M1 Motorway, which are within the proclaimed water 'Catchment District'. Nor do residents utilise any of these services in their day-to-day lives

#### **Clause 194**

Basis of levying service charges

(I have only included those sub clauses that apply)

- (1) For the purposes of section 314 of the Act, a water supply authority may levy service



charges according to one or more of the following bases :

- (a) on the basis of the availability of the service (the access component)
- (2) The access component may vary according to any of the following:
  - (c) the cost of providing the service, as assessed by the water supply authority

All other clauses are void under clause 194 because there is no water or drainage service to the rural area.

I contend that Clause 194 further restricts Councils legal right to implement a stormwater and drainage charge.

#### **(iv) Inconsistency**

Central Coast Council contends that their proposal is in line with Hunter and Sydney storm water charges and has used these as a model for their proposed charges.

Sydney Water levies no charge on rural land. Hunter Water Authority levies no charge on rural land. There are thirteen rural properties within Hunter Water Authority's drainage area and they are exempt from storm water charges and drainage charges. Therefore, there is no credence in Central Coast Council's claims.

#### **(v) Misusing Drainage Designation**

As stated in the opening paragraph of this Section (B), **Central Coast Council contends that because the former Gosford Council levied a storm water charge over the whole of their LGA then their a right to extend that levy and have the former Wyong Council rural lands declared a drainage area.**

It is contended that the former Gosford Council had no legal right under the Local Government Act, as previously detailed and including Section 49 of said Act, to implement a storm water and drainage levy upon its rural district.

Scrutiny of the Parliamentary Library has revealed no apparent declaration by the Minister to declare the whole of the former Gosford LGA a drainage area. Therefore, it is contended that the former Gosford Council had no legal right under the Water Management Act to levy a storm water and drainage fee.

This matter has now been brought to the attention of those property owners who have been affected by this charge. It has been recommended that they now seek legal advice and suitable avenues to recover monies previously paid from Central Coast Council.

#### **CONCLUSION**

Central Coast Council has literally '**put the cart before the horse**' and are expecting a levy upon the rural areas to be approved by IPART before there is law in place to allow the imposition



of such a fee. Any approval by IPART of a charge prior to any declaration of a drainage area by the Minister is not only illegal, but would put undue pressure upon the Minister to acquiesce to Council's proposal to declare the water 'Catchment District' a drainage area.

It is impossible for Council to provide those facilities, as required under the Water Management Act, in a water "Catchment District" to the people that live there. Storm water drainage infrastructure would severely impact on the natural water flows on the major water catchment supply for the entire Central Coast Region, without contemplating the cost to the community to implement such a facility.

IPART must reject Central Coast Council's proposal because legislation does not allow for such a charge to be made.

Yours sincerely

A solid black rectangular box used to redact the signature of Alan Hayes OAM.

**Alan Hayes OAM**

