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24th April 2019

Our Reference: JNT 1904-02

Water and Local Government Department
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop. NSW 1240

Attention: Mr Matthew Edgerton, Executive Director

IPART Proposed Response to Changes to Central Coast Council Stormwater Charges

References:

A. IPART (NSW) Review of Central Coast Council's Water Sewerage and Stormwater Prices dated April 2019.

B. Central Coast Council Water Pricing Submission to IPART dated 7th September 2018.

C. Ginger Gorman (2019), Troll Hunting, Hardie Grant Books (Melbourne)

D. My letter (JNT 1810-03) dated 17th October 2018.

E. Wyong Local Environmental Plan (2013).

F. NSW Department of Primary Industries Factsheet on Responsible Pig Ownership dated August 2018.

I refer to IPART's draft response (Reference A.) to the Central Coast Council's proposal to place a charge for stormwater drainage on properties west of the M1 in the old Wyong area (Reference B.). IPART's 241 page document addresses in detail, concerns and impacts on water usage and sewerage charges. Most of which is logical and has detailed analysis supporting its decisions.

However, I am somewhat bewildered by the response to the stormwater charge. My concerns are based on my reading of the current law and what happens when those in authority disregard the

laws of the land. Read the excellent book recently published by Ginger Gorman called "Troll Hunting" (Reference C.). The question is "how blatant can this be?"

Therefore, in addition to my original response (Reference D.), I wish to address three legal related questions to IPART for their consideration and response:

A. What is the legal authority for a "Stormwater Charge" applied to non-urban land?

I note that Regulation 125A (1) of *Local Government (General) Regulations 2005* 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) defines *"urban land"* as *"land within a city, town or village".* "Within" means inside, not outside.

Under the Wyong LEP (Reference E.) a village is zoned as RU5. Also, the latest edition of the Macquarie Dictionary (6th *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."*

Therefore, by legal definition, a stormwater charge can only be applied to residents and business inside a city, town or village, and as such land zoned as, for example, RU1 or E3 cannot be subjected to such a charge under the current legislation.

If this is a correct interpretation of the English language, then my first question to the IPART Board is:

> *How then does IPART, or for that matter, Central Coast Council consider a Stormwater Management Services charge on properties (irrespective of being residential or business, or non-residential) outside built-up or urban areas as defined by this regulation to be lawful?*

B. What is the legal authority for the "Stormwater Charge" based on Land Area?

Again, I find myself at loss! In applying a basic level of English, I can't seem to find any reference to "land area" in the governing legislation associated with water management.

Section 313 of the Water Management Act and Clause 193 of the Water Management (General) Regulation 2018 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 is very specific. Land use is the principle factor in setting a levy, or alternative, the extent of the drainage connection to the land. Nowhere does it permit a levy or charge based on "land area", or where no drainage services are available.

Further, I have been unable to find any existing or proposed policy or plan indicating what services the Central Coast Council is intending to provide those rural properties outside the urban areas once their charge is applied.

If this is a correct interpretation of the English language used in the regulation, then my question to the IPART Board is:

> *How then does IPART, and for that matter, Central Coast Council consider a Stormwater Management Services charge based on land area when this is not given in the regulation and therefore unlawful?*

C. **Can a "Water Catchment Zone" be a "Water Discharge Zone" at the same time?**

Our farm is currently located in the Yarramalong "Water Catchment Zone" – an important water supply for the Central Coast. We have four pieces of legislation in NSW that govern the management of water supply in the state. They include:

a. *The Local Government (General) Act 1993;*

b. *The Local Government (General) Regulations 2005;*

c. *Environment Planning and Assessment Amendment Act 2017; and*

d. *The Water Management (General) Regulations 2018.*

Together, these determine what we can do with the land we own, our responsibilities and accountabilities, and what charges the authorities can apply.

For example, as highlighted by the Department of Agriculture (Reference F.), Section 124 (18) of the *Local Government Act 1993* prevents the keeping of pigs in sensitive areas such as a "water catchment" zone. Further, Schedule 2 Part 5 of the *Local Government (General) Regulations* 2005 provides the requirements for keeping pigs in other water supply areas (note: not a prohibition). Therefore, if the valley becomes a "water drainage zone" and so allowing the Central Coast Council to apply a water drainage charge, then this prohibition on keeping pigs (even as pets) is in effect removed under the Act, and the conditions given in the regulations would then apply.

Therefore, my last question to the IPART Board is:

Has the IPART Board considered any legal analysis or advice that addresses:

a. *whether a "water catchment zone" can be a "water drainage zone" at the same time; and*

b. *whether they have considered the unintended consequences of this type of situation as part of the original proposal or IPART's draft response?*

I admit that I am not a lawyer. However, I believe that having achieved a PhD-level education in Australia and the UK, that I have a reasonable understanding of the English language. And therefore, my interpretation of the law, as applicable to the proposed stormwater levy, is correct. If so, then how can Central Coast Council, or IPART consider wasting valuable taxpayer's money on proposing and debating such an apparently unlawful charge?

If my assumption here is correct then I am horrified at the seemingly blatant disregard for the laws of our land, and particularly so, when I've been advised by lawyers that to challenge this proposal in court would cost more than its initial cost to the effected ratepayers.

Copies to:

1. Anthony Rush, Director, IPART.
2. Louise Greenaway, Councillor, Central Coast Council.
3. David Harris, State Member for Wyong.