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Bathurst Business Chamber
19 February 2009


their business SDF. Council received replies to this request and proceeded to review each property's SDF and where appropriate make the required change.

Council wrote to over 300 landowners who were affected by these proposed changes. Council received replies from 19 landowners and then proceeded to review each of these requests and make any necessary adjustments that were required.

- 5) Council has since 2004 used this method to charge customers for the use of the sewerage assets.
- 6) Each year Council invites submissions from its ratepayers and customers on any aspect of items contained within the Management Plan including the method of charging for sewer as well as the SDF charge contained in the Revenue Policy section of the Management Plan.
- 7) This Issue has been raised many times by a member of the Bathurst Business Chamber, and again I would like to reiterate that it was Council's decision to adopt the method they did. That is, the Council determined the access charge on the basis of the square of sewer connection size times the discharge factor.
- 8) As Council has adopted its method of charging then the option you refer to regarding the peak load in equivalent tenements (ET) is not available to Council's customers at the present time. However, as pointed out in item (6) each and every ratepayer has the right to make a submission on the Management Plan including the method of charging for sewer charges.
- 9) Council will invite and consider all submissions made in determining its Management Plan and Revenue Policy for the 2009/10 period.

I trust this explains Council's position in relation to sewer access charges.

Yours faithfully



Paul Toole
MAYOR OF BATHURST

President: Tammy Middleton



Secretary: Chas McPhail

March 5, 2009

Mr. Ray Carter
Carter Bros. Engineering P/L
3 Toronto St
Bathurst NSW 2795

Dear Ray

Re: Sewer Access Charges

As you are aware, at your request we have recently written to Bathurst Regional Council on this subject requesting some clarification in relation to an excerpt from the Chief Financial Officers Report to the Council Meeting 21/07/04 at page 19 posing the following questions:

1. Is the option mentioned in the excerpt from the report (i.e. for businesses to provide for Council's consideration, an expert report to establish the peak load in equivalent tenements (ET's) their operations place on the sewerage system and be charged accordingly) available to businesses?

And

2. If so, will Council advise businesses that this option is available to them?

We have now received a reply from the Mayor of Bathurst Regional Council, Paul Toole which I have attached for your reference. You will note that the response from Council states at (8):

"...the option you refer to regarding the peak load in equivalent tenements (ET) is not available to Council's customers at the present time. However, as pointed out in item (6) each and every ratepayer has the right to make a submission on the Management Plan including the method of charging for sewer charges"

I trust that this response clarifies Councils' position at this time in relation to the questions we have raised. The correspondence also indicates that Council will invite and consider all submissions made in determining its Management Plan and Revenue Policy for the 2009/10 period.

Yours sincerely

A handwritten signature in black ink, appearing to read "P. Sargent".

Peter Sargent
Immediate Past President

25 March 2009

Mr R Carter
Director
Carter Bros Engineering Pty Ltd
3 Toronto Street
BATHURST NSW 2795

Dear Mr Carter

Sewer Access Charges

I refer to your letter received by Council on 3 March 2009 regarding Sewer Access Charges.

The following information is supplied for your attention.

1. Council resolved to use the method it currently uses, i.e. the Sewer Discharge Factor method, as it considers this method the most suitable and equitable method.
2. Council will consider both methods of charging for sewer charges when it considers its Management Plan for 2009/10.
3. Council has designed its sewer system to allow for the maximum potential sewerage discharge into the Sewerage Works.
4. Council has considered the use of seals on meters previously and did not agree to implement this process.
5. Council will consider this method of charging for sewer charges when it considers its Management Plan for 2009/10.

Yours faithfully



P Toole
MAYOR OF BATHURST

20 March 2009

Mr R Carter
Director
Cambrune Pty Ltd
233 College Road
BATHURST NSW 2795

Dear Mr Carter

Sewer Access Charge

Reference is made to your letter dated 10 March 2009 advising Council of your option in respect to Sewer Access Charges.

As previously advised, Council's present position is to charge sewer user customers by the sewer access method and not the peak load Equivalent Tenement method.

You are further advised that Council will review its method of charges for sewer services when it considers it's 2009/2010 Management Plan in May/June of this year.

Yours faithfully

Paul Toole

P Toole
MAYOR OF BATHURST

233 College Rd
Bathurst 2795

1/04/09
Mayor Paul Toole
Bathurst Regional Council

Dear Paul

In response to your letter dated 25 March 2009 (copy attached)

First, could you please attend to the request in my letter of 10/02/09 to downsize the meter at 16 Vale Rd.

I refer to the points numbered in your letter numbered 1- 5

1 If you feel that the current manner in which Council applies the Sewer Access Charge the “most suitable and equitable method” you have , incredulously , taken no account whatsoever of the study on the 16 Vale Rd property that I presented. As far as Council dismissing my study is concerned , Council is way out of line. The method by which Council charges the Sewer Access charge is allowable only as per your very recent letter dated 19 February 2009 “In the absence of such a report” as I have presented to you for my 16 Vale Rd property.

How can you conceivably consider that the method Council uses is “suitable and equitable” where applied to me the ratepayer when I have demonstrated an overcharge of almost 400% !

Please explain to whom you consider the charge suitable !! It is certainly not suitable to me the ratepayer !! By any definition, the method you claim to be “suitable” could only genuinely be considered revenue gouging , for an overcharge of 400% can hardly be considered “equitable” !! Council is culpable in this regard because this has been known by Council since the inception of Fair User Pays. (see newspaper headline W.Adv. 1 July 2004.)

I insist you give proper place and consideration to the report that I have submitted or explain why it is dismissed contrary to Councils own policy.

2 Thank you for letting me know that Council will consider the methods of charging the Sewer Access Charge. Could you please keep me informed as to how this will be happening.

Will submissions be taken ? If so when ?

Will the Sewer Access Charge be made to reflect the actual load that is placed on the sewer system as per the Fair User Pays Guidelines issued by the NSW Govt ?

Does Council have its Management Plan overseen by any independent or State body ? If so by whom ?

3 This really is a nebulous statement Paul ! Yours is the only Council in NSW that makes such a claim in order to justify a 400% overcharge. Of course the sewer system is designed to take the maximum load for any given subdivision or suburb that it services! This claim is no doubt unique because what you are saying here infers in addition to that piece of common sense that Bathurst Regional Council has since day one for its sewer system, allowed in addition to this, for every hose reel in town to be turned on and squirted (simultaneously I might add) down the sewer system ! And to achieve this achieve this don't forget this exercise has to take place at 7-8am to catch peak load time! Really Paul ! **This** is what you are saying here !! Do you understand the enormity of this statement , let alone the logistics of such a far fetched illogical contention !! That is some "potential" , as you say. I say this contention needs to be tested. Unreal Paul ! Never in any venue could you explain how this could woven into a user pays Sewer charge.

4 Paul , with all due respect, what you speak here is absolute piffel. Indeed !! Council has considered putting "seals on the meters"!! ?? If you have "considered" this, then you are absolutely correct in "not agreeing to impliment this process" for assessing a sewer load. It would have been a world first , causing wry amusement in the engineering world. Thank goodness Council did not do this as it has no doubt saved Council from untold embarrassment where it could have been seen to have no understanding whatsoever of engineering matters ! But then again, perhaps it explains great understanding in matters of revenue gouging.

5 Could you please clarify the method that Council is to consider for the Management Plan for 2009/10

I have highlighted the questions I have in this letter in the copy attached. Could you please ensure they are answered.

Yours faithfully



Ray Carter

Mobile Phone 0407 258882

9 April 2009

Mr Ray Carter
233 College Road
BATHURST NSW 2795

Dear Ray

I refer to your letter of 1 April 2009 requesting Council to continue investigations of the downsizing of the meter at 16 Vale Road Bathurst.

Council has commenced action to have your inquiry investigated to determine the correct size of the meter at 16 Vale Road. Council will advise you of the outcome of this investigation.

In response to the five points raised by you, I wish to advise the following:

1. Council has an adopted method of charging for sewer charges based on the Sewer Discharge Factor Method (SDF Method). This method is considered by Council as the most suitable and equitable method to Council's ratepayers.
2. Council will consider its management plan during April/May of this year. The Management Plan, including the Council's Revenue Policy will be placed on public exhibition on Monday, 20 April 2009 and ratepayers/customers can make a written submission on any aspect of matters contained within the plan by 4.00 pm on Tuesday, 19 May 2009. This includes water and sewer charges.

Council's Management Plan is overseen by Council's ratepayers and the Management Plan is forwarded to the Department of Local Government for their information.

3. There has been no overcharge of sewer charges made to your property. Charges have been levied in accordance with Council's Management Plan which has been adopted by Council.
4. In respect to the sealing of meters, this matter was previously raised by you and, at the time, Council rejected this method.
5. Council will use its normal method of advertising its Management Plan. Submissions from interested parties are invited and will be considered by Council prior to the adoption of the 2009/10 Management Plan, which will be at the June 2009 Council Meeting.

Yours faithfully



Paul Toole
MAYOR OF BATHURST



Civic Centre
Cnr Russell & William Sts
Private Mail Bag 17
Bathurst NSW 2795

Telephone 02 6333 6111
Facsimile 02 6331 7211
council@bathurst.nsw.gov.au
www.bathurstregion.com.au

18 June 2009

Mr Ray Carter
3 Toronto Street
BATHURST NSW 2795

Dear Mr Carter

Submission to Draft 2009/2010 Management Plan

I refer to your submission to the Draft Management Plan dated 19 May 2009.

Council, at its meeting held on 17 June 2009, considered a report detailing the methods available for the charging of sewer charges. This report detailed the Sewerage Discharge Factor method (SDF) and the Equivalent Tenement (ET) method.

On this occasion Council resolved not to amend its practice of charging for sewerage charges.

Council thanks you for your time and effort made in making your submission.

Yours faithfully

R Roach
DIRECTOR
CORPORATE SERVICES & FINANCE

(d) **Change to Sewer Access Pricing**

Recommendation: That Council not amend its Management Plan for 2009/2010 in respect of the submission received from Mr **Carter**.

Report: Council has received a submission from Mr R **Carter** (**attachment 3**) to change the already adopted best practice system in regard to non residential sewer access charges. This is a further submission to the Management Plan as his previous submission that was considered by Council at its meeting 15 April 2009 was not successful.

Council currently charges an access fee based on the size of the installed meter at a property, using the same methodology that applies to the water fund. When the system was introduced, Council agreed to downsize meters at no cost to the ratepayer upon presentation of a certificate from a hydraulic engineer.



Mr **Carter's** proposed system is based on nominal meter access charges to compensate for premises where the water meter is oversized for the purpose of firefighting. The alternate method proposed is based on Equivalent Tenements (ET's) and bases the access charges on the peak load that the discharger places on the sewerage system. Such dischargers therefore have the option of providing to Council an expert report to establish the peak load that their operations place on the sewerage system.

The access charge that Council has adopted reflects the actual access that a property has to the system. Accordingly, it is recommended to continue the existing method for the user pays sewerage charges.

Financial Implications

Adoption of a new charging structure would require recalculation of the entire sewerage user pays system using the new methodology. Council's operating margins in the sewerage system are minimal and a loss in revenue from Mr **Carter's** property would require the deficit to be recovered from the rest of the community.

(e) **Gilmour Street and Sydney Road Medium Island Landscaping**

Recommendation: That Council not amend its Management Plan for 2009/2010 in respect of the request by Mr Cassidy.

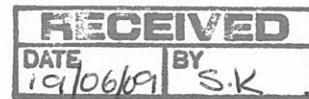
Report: Council has received a request from Mr Bob Cassidy to reconsider an item that is currently below the line (refer to **attachment 4**). As Council is aware the budget this year has been extremely difficult to keep in surplus and some previously planned projects have been moved "below the line" as funds are not available. These projects can be brought forward into later years when the economic climate has recovered.

Financial Implications

The amount included below the line is \$7,500.

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18 June 2009



Mr G Martin MP
 Member for Bathurst
 140 William Street
 BATHURST NSW 2795

Dear Mr Martin

2009/2010 Management Plan

Council has received a submission from Mr Ray Carter in relation to Council's method of charging for sewer connection.

Councillors were advised of the methods available for the charging of sewer charges being the Sewerage Discharge Factor method (SDF) and the Equivalent Tenement (ET) method.

Council, at its meeting held on 17 June 2009, considered the SDF and ET methods and on this occasion resolved not to amend its practice of charging for sewerage charges.

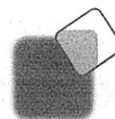
Yours faithfully



R Roach
DIRECTOR
CORPORATE SERVICES & FINANCE

Attachment 7
p1 of 3

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NSW Ombudsman

Our reference: C/2009/4530
Contact: Ms Veronica Brogden
Telephone ☎: 02 9286 0933

Level 24 580 George Street
Sydney NSW 2000
Phone 02 9286 1000
Fax 02 9283 2911
Tollfree 1800 451 524
TTY 02 9264 8050
Web www.ombo.nsw.gov.au
ABN 76 325 886 267

30 June 2009

Mr Ray Carter
3 Toronto Street
BATHURST NSW 2795

Dear Mr Carter

Your complaint about Bathurst Regional Council (the Council)

I refer to a bundle of documents that you forwarded to this office seeking a review of your complaint C/2009/2105. It was inadvertently all filed together however during the course of the review, it has been discovered that a separate complaint was made in relation to the sewer access charges set by Council. This portion of your complaint has been separated, reassessed and allocated to me for a response. I apologise for the initial error in filing this matter; you will receive a separate response relating to your review request, R/2009/68.

There does not appear to be evidence of the type of conduct that would warrant formal investigation by this office. The following information is provided to assist you with understanding the reasons for my decision.

You say that you disagree with the method adopted by the Council because "it was not fair as there was no relationship or fairness involved where Sewer Charges had no comparison that could be described as such between residential and non residential".

The level of rates and charges is an important resource issue for councils which the Ombudsman believes is for councils to decide. The *Local Government Act 1993* requires that before a rate or charge can be made and levied, it must be detailed in a management plan. The Act requires councils to produce annual management plans that set out the estimates of income and expenditure for the coming year as well as the ordinary and special rates and the charges the council proposes to levy.

The draft plans are usually put on public exhibition in May /June each year. The public exhibition is notified in the local newspaper and on the Council's website, and the public has the chance to comment on the draft plan before it is finalised. Council must consider all submissions received on the draft plan, which ensures a reasonable level of accountability by councils to electors in determining the levels of rates and charges. As a ratepayer, you have an opportunity to participate in public debate on this issue each year.

Councils are independent democratically elected bodies accountable to their ratepayers. If the Council adopts policies on rates and charges that you disagree with, you can lobby councillors to change these policies or support candidates for election with more acceptable policies.

Where a Council complies with its statutory obligations and there is no evidence of wrong conduct, the Ombudsman will not tell the Council to use its discretion to set its own fees and charges differently.

For these reasons, this office rarely investigates complaints about the level of rates and charges.

Accordingly, I will take no further action on your complaint.

Yours sincerely



Veronica Brogden
**A/Senior Investigation Officer
for the Ombudsman**

Att. 7 p 3 of 3 ²⁵⁷

3 Toronto St
Bathurst
NSW 2795
9/7/2009

Ms Veronica Brogden
A/Senior Investigating Officer
for the Ombudsman

Dear Ms Brogden

re your ref C/2009/4530 and your letter dated 30 June 2009

I have read your letter of the above date . You said in our phone conversation that you would call me before you made a judgment.

You impress on me that “ The Local Government Act 1993 requires that before a rate or charge can be made or levied , it must be detailed in a management plan”

Councils Management Plan states - “Base sewerage Access charges on the peak load the discharger places on the sewerage system. Such dischargers should therefore have the option of providing for Council's consideration, an experts report to establish the peak load (in equivalent tenements (ETs) their operations put on the sewerage system. **In the absence of such a report**, the Council can determine the access charge on the basis of the square of the service connection size times the discharge factor. This is the method adopted by Council.”

On this invitation Contained in Councils Management Plan I submitted such a report. You have a copy of that report. My report was invited in the Management Plan and clearly precludes Council implementing the charge by the second method as clearly Council acts outside their own Management Plan once my report has been presented.

You have said that Council has to comply with its statutory obligations. Clearly the Councils Management Plan comes under the Local Govt Act 1993 and is a statutory obligation. In that Management Plan I am invited to have the said study done for my property and I have done so. That study that demonstrates the unfairness inherent in the second method of charging has been rejected by Council. Why have I, as a ratepayer, been invited in a document binding under the Local Government Act 1993, to do such a study if it is to be rejected out of hand?

In rejecting the study I had done Council has indeed acted outside their Management Plan required before rates and charges can be levied and therefore the statutory requirements under the Local Govt Act 1993 . I request that you please review this section of your judgment.

Yours sincerely

Ray Carter



0407258882

3 Toronto St
Bathurst 2795

17/07/09

Mayor Paul Toole
Councillors
Bathurst Regional Council

Councillors

in regard to the Director Corporate Services & Finance's Report to the Council Meeting 17/06/2009.

(d) Change to Sewer Access Pricing

item as voted on by Councillors at that meeting.

You should be aware that this item was misrepresented to you in several respects. I have bracketed the sections that have been misrepresented as a) b) and c) and correct these below.

a)- States "Mr Carters proposed system" . The matter I brought to Council is not my "proposed system". The use of "nominal meter access charges" was proposed in 2005 by then Minister Frank Sartor. This method does in fact arrive at the same result as the Equivalent Tenement method allowed for in Councils Management Plan but strenuously denied more recently as an alternative.

b)- The "alternative method proposed", being the use of Equivalent Tenements determined by an experts study is certainly not my proposal either. It is Councils own Management Plan's first option ! What you have been led to believe is that this is what I seek to introduce, when in actual fact Council has simply refused to accept my study ascertaining the Equivalent Tenements for my property at 16 Vale Rd as is my **existing right** under Councils Management Plan. Plain fairness as expected in the Guidelines makes this my right !

c)- Words used in the Guidelines for User Pays Sewer state several times to the effect that " the charge should reflect the load put on the sewer system"

If, as stated here in c) that the charge that Council has adopted "reflects the actual access" , this is newly minted terminology implies that the 3-400% overcharge (ie. up to 87 cents to flush the toilet at the property at which my study was done) is somehow acceptable and reflects "actual access". **Sit and think about that one !**

Please also compare that with what is expected in the Guidelines which say categorically, that the non-residential charge should be relative to the residential one.

Mayor Toole strenuously defended the adherence to both Councils Charter (to fairly apply rates and charges) and Guidelines in defending Councils attention to tenders and rightly so. Please revisit this matter and apply the same conduct to the Sewer Access Charge.

This matter has been disputed by me for over five years now. It was the front page headline of the Western Advocate, which on the day of Councils adoption of these unfair practices heralded "Sewer Stinks". The same still applies !

Five years does not make a matter go away. The stonewalling of the option of using Equivalent Tenements , being option one available to non-residential ratepayers will, by that method , not be made to go away. The fact is I am being personally ripped off by Council for about \$20,000 per annum. There most probably is no prececent anywhere in the country for Council conduct such as this ! Part b being the use of the the full size of the water meter for the charge is demonstably unfair in the reports I have lodged with Council. This was not the only option when these charges were approved initially under the 1993 Local Govt Act.

That I should have to clarify a report put to Council is not good at all.

I would welcome any suggestions as to how to resolve this matter (my phone no and email is below) , but it is you who vote on these issues.

The Local Govt Dept and the Ombudsmans office encourage me to contact my local councillors and so I have.

I request that the matters I raise be dealt with by Council.

Yours faithfully



Ray Carter
Mobile Phone 0407 258882
ray@carterbros.com

Attachments

- report to Council meeting 17/06/2009
- report to Council meeting 21/07/2004
- p6 Best Practice Management