

Our Ref: C/2009/4530 and R/2009/117

Mr Ray Carter
3 Toronto Street
BATHURST NSW 2795

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ABN 76 325 886 267

Dear Mr Carter

Your complaint about Bathurst Regional Council (the council)

I have received your letter of 9 July 2009 in which you request a review of this office's decision not to investigate your complaint. Your complaint is that the method council adopted for calculating sewerage charges is unfair.

Ms Veronica Brogden, Acting Senior Investigation Officer, dealt with your original complaint and wrote to you on 30 June 2009 explaining the reasons for her decision to decline your complaint.

First of all I note your reference to a telephone conversation with Ms Brogden in which you say you were told she would call you before she made a judgement. A review of our files indicates that Ms Brogden had not spoken to you. You spoke to Ms Margo Barton, Senior Investigation Officer, who was initially asked to review your earlier complaint to this office about s94 contribution charges by council. As you would know from Ms Brogden's letter of 30 June, the more recent complaint about the sewerage charges was inadvertently filed on the s94 contribution charges review file. When we discovered the error we separated the two matters and Ms Brogden responded to the sewerage issues only. When Ms Barton spoke to you she did not know there was a new unrelated complaint among the material you faxed her. I again apologise for this and the resultant delay in responding to the sewerage charges complaint.

Ms Sanya Silver, Senior Investigation Officer was reallocated the review of the s94 contributions from Ms Barton. Ms Silver called you on 7 July to discuss your review request and advised you of the reasons why we could not assist you with the s94 contributions complaint. You accepted her decision at the time.

The purpose of this letter is to advise you of the outcome of your review request in relation to the sewerage charges only.

How do we conduct a review?

When the Ombudsman receives a letter disagreeing with a decision made by his staff he assures himself the matter was dealt with properly by having another officer conduct a review of the complaint. They advise him whether the original decision should be confirmed or changed. The staff member reviews the complaint and takes into account any new information. He then reviews the matter and decides whether we should change our decision or confirm the original one.

In your case, Ms Sanya Silver, Senior Investigation Officer, completed the review of Ms Brogden's decision.

The outcome of the review

After receiving Ms Silver's advice and reviewing the file myself, in the absence of the Ombudsman I have decided to confirm Mr Brogden's decision on your complaint for the same reasons contained in her letter of 30 June.

The Ombudsman can generally investigate the **administrative** conduct of New South Wales government departments, agencies and local councils where there is evidence of wrong conduct.

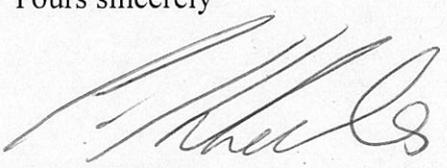
The Ombudsman can only make recommendations after formally investigating a matter and finding there has been wrong conduct. Even then, the Ombudsman cannot force agencies to act on any recommendations made in the report of the investigation.

I note your comment that in rejecting the study about sewerage charges you had done (as part of your submission to council's Draft Management Plan) council has acted outside the statutory requirements under the *Local Government Act 1993*.

Council does not have to accept or act on arguments made in submissions. Its obligation is to consider them along with the other matters it takes into account before making a final decision. From the information you have provided it is clear that council has considered your submission and study but decided not to adopt it. Decisions such as this are made with the benefit of expert knowledge and the mere fact that you disagree with council on the best method for the calculation of sewerage charges is not in itself evidence of wrong conduct that would warrant investigation by this office. In the absence of evidence of wrong administrative conduct it is not appropriate for the Ombudsman to advocate for any particular point of view.

I acknowledge you may be unhappy with my decision, but note that as a result of the review I will take no further action on this matter. I should also advise you that it is the practice of this office to give complainants who object to a decision only one review of their case. For this reason any correspondence we receive about the issues already reviewed is read and filed but not responded to unless in our opinion it raises issues that warrant our further involvement.

Yours sincerely



Chris Wheeler
A/Ombudsman

15/7/09

3 Toronto St
Bathurst 2795

17/07/09

Ms Veronica Brogden
A/Senior Investigating Officer
for the Ombudsman

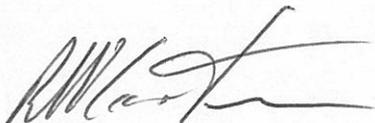
Dear Ms Brogden

I have read again your letter of 30 June 2009 in relation to C/2009/4530 and thank you for your attention.

You say that there does not appear to be evidence of the type of conduct that would warrant a formal investigation by your office. Council contends that the second option using the full size of water meters is the only method available for use when in fact the first (and fair as per State Govt Guidelines) option precludes that method. Surely this constitutes misconduct under Councils own management plan required under a statutory Act. Couple this with the continuous misrepresentation of the matter made to Councillors (see the attached as an example) and evidenced by the ripoff of my own property by the charge and I think there really is a case for Council to answer.

Yours faithfully

Ray Carter
Mobile Phone 0407 258882
ray@carterbros.com



Attachments

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



New South Wales

Minister Phillip Costa MP

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Minister for Water
Minister for Regional Development

MSO09/2941
W09/2341

Mr Gerard Martin MP
Member for Bathurst
PO Box 712
BATHURST NSW 2795

23/12/09

Gerard,
Dear Mr Martin

Thank you for your letter of 13 October 2009 (your reference: CB:09) on behalf of Mr Ray Carter regarding the sewerage access charge for his non-residential property at 16 Vale Road, South Bathurst.

Best practice pricing involves access charges and usage charges for non-residential sewerage bills. The *Best-Practice Management of Water Supply and Sewerage Guidelines, 2007* (page 9 - copy attached) indicate that the access charge is to be based on the capacity requirements that the customer's loads place on the sewerage system. Such capacity requirements are based on the peak load that the discharger can place on the sewerage system.

Use of a report from a hydraulic consultant that establishes the peak load in terms of equivalent tenements is considered satisfactory, providing the report determines the peak load that the discharger can place on the sewerage system.

However, I understand that the report prepared by Mr Carter's consultant calculates the average load (not the peak load) from this property as equivalent to a 20mm connection, and recommends downsizing the connection from 40mm to 25mm, which would be required in the future when the building is extended.

As the report prepared by Mr Carter's consultant has not addressed the issue appropriately, Bathurst Council has assessed the connection and has proposed downsizing of the connection to 32mm, which will reduce the sewerage access charge by 36%. I accept Council's action as satisfactory and I consider that no further action is warranted on this matter.

Yours sincerely

The Hon. Phillip Costa MP
Minister for Water
Minister for Regional Development

17 DEC 2009

Encl.



New South Wales

Minister Phillip Costa MP

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Minister for Water
Minister for Regional Development

MSO 09/2199, MSO 09/2037, MSO09/2454
W09/2001, 09/1928, W09/2121

Mr Ray Carter
233 College Road
BATHURST NSW 2795

Dear Mr Carter

I refer to your letters of 23 July 2009, 6 August 2009 and 28 August 2009 regarding the sewerage access charge for your non-residential property at 16 Vale Road, South Bathurst.

I am advised that Bathurst Regional Council has had two-part tariffs involving access charges and usage charges in place for water supply and non-residential sewerage services since July 2004. Such tariffs substantially comply with the *Best-Practice Management of Water Supply and Sewerage Guidelines*.

As indicated in my letter of 14 July 2009, Council significantly increased its water supply usage charges in the 2009/10 financial year. The new usage charges reflect the long-run marginal cost of the water supply. Similarly, Council is proposing to move to appropriate sewer usage charges for the 2010/11 financial year in order to provide a better pricing signal for non-residential customers.

I understand that the water service connection size of your Vale Road property is 40mm and your consultant's report has calculated the average sewerage load from this property as equivalent to a 20mm connection. However, the relevant consideration in determining the sewerage access charge is the peak load which may be placed on the sewerage system through the water service connection. I am advised that in response to your request, Bathurst Council has indicated it will be reducing the connection size to 32mm, which will reduce the sewerage access charge by 36%.

Accordingly, Bathurst Council's calculation of the sewerage access charge on the basis of the water service connection size is appropriate.

I have sent a copy of this response to Mr Gerard Martin MP, Member for Bathurst, who has made representations on your behalf.

Yours sincerely

The Hon. Phillip Costa MP
Minister for Water
Minister for Regional Development

23 SEP 2009



NSW Government

Department of Water & Energy

*Best-Practice Management of
Water Supply and Sewerage*

Guidelines

August 2007





LWUs may therefore establish a revenue fluctuation reserve of up to 10% of turnover. LWUs can draw on this reserve to assist them to cope with wet years or drought water restrictions where water sales are lower than predicted. Dry years will result in a corresponding increase in demand and revenue.

For guidance in developing and implementing best-practice pricing tariffs refer to Appendix B.

b) Sewerage Pricing

Best-practice sewerage pricing involves a uniform annual sewerage bill for residential customers. For non-residential customers an appropriate sewer usage charge is required for the estimated volume discharged to the sewerage system, together with an access charge based on the capacity requirements that their loads place on the system relative to residential customers.

For guidance in developing and implementing best-practice pricing tariffs refer to Appendix B.

c) Liquid Trade Waste Pricing, Policy & Approvals

Best-practice liquid trade waste pricing requires appropriate annual trade waste fees and re-inspection fees for all liquid trade waste dischargers. These fees are in addition to the non-residential sewerage bill.

The LWU must also levy an appropriate trade waste usage charge for trade waste dischargers with prescribed pre-treatment¹⁰, and appropriate excess mass charges for large trade waste dischargers (> about 20 kL/d) and for dischargers of industrial waste.

As noted in Appendix B on page 53, any large increases in liquid trade waste fees and charges may be phased-in over a period of up to 3 years.

The *Liquid Trade Waste Management Guidelines*, March 2005 provide guidance for LWUs on developing an appropriate trade waste policy and assessing, approving, monitoring, pricing and enforcing compliance for liquid trade waste dischargers to the sewerage system.

In order to properly manage dischargers of liquid trade waste to the sewerage system and to protect sewerage system assets and the environment, LWUs must adopt a Liquid Trade Waste Policy in accordance with the *Liquid Trade Waste Management Guidelines*. As noted on page 42 of the Guidelines, DWE consent is required for an LWU's trade waste policy. In addition, LWUs must issue a trade waste approval to each trade waste discharger connected to the sewerage system, and must annually inspect the premises of each discharger.

d) Developer Charges

Developer charges are up-front charges levied to recover part of the infrastructure costs incurred in servicing new development or changes to existing development. Developer charges provide a source of funding for infrastructure and provide signals to the community regarding the cost of urban development.

In essence, where the costs of serving new urban development are in excess of the current and expected costs of servicing existing customers, then the additional

¹⁰ Prescribed pre-treatment comprises the equipment shown in Table 7 of *Liquid Trade Waste Management Guidelines*, March 2005, or any pre-treatment facilities deemed appropriate by the LWU.

28/8/2009
 233 COLLEGE Rd.
 BATHURST 2795.

Mr Phillip Costa
 Minister for Water and Reg. Development.
 NSW Govt.

Attn. Thomas.
 Natalie Holz. Admin Officer.

Thank you for your letter forwarded by Gerard Martin (your ref MS009/2292).

I must say that in the five plus years that I have been pursuing this matter Gerard Martin has been a great support to myself and others who have communicated and met with him. However the matter is still unresolved and my business (Decentralise assisted in 1978) has been willfully overcharged on Sewer Access by Bathurst Council.

I argued the unfairness since 1 July 2004, demonstrated 400% overcharge, had study done as advised by Minister Sartor proving that, discovered that ETs should have been available (but never advertised), in 2007, told if ETs were indeed used then indeed Council would find another method of raising my rates, endured having the Chamber of Commerce told the same, have seen reports to Council different to that in saying that it was the residential

rate that would have to rise if ETs were
 used, watched Councillors and Chamber of
 Commerce members take in this duplicity,
 met with Minister David Campbell who
 advised that we should take Council to Court
 charging them with mal-administration",
 saw the hydraulics engineer who did the 1st
 hydraulics study as advised by Minister
 Sartor intimidated by Council reminder to
 him that he keep in mind that Council
 furnished him with work, (memo documented) watched
 Council change facts and make out ETs
 as an option does not exist, argued
 with Administrator in 2004 as to the
 unfairness inherent in the Council's method
 while both she and me were oblivious to
 the availability of the ET option,
 saw letters sent by both Ministers Campbell
 and Sartor where Council has advised them
 that they would "consider" fairer means
 to charge having no intention to follow
 through whatsoever as demonstrated in
 their non action, heard Council say that
 the fudgings were just that and that
 Council has its own method, met with

Council financial manager and engineers where I was told that the use of the "nominal size had merit" and would be considered, discovered that "considered" as far as Council is concerned is simply that and contains no substance other to put me off the scent and placate NSW foot ministers; as evidenced in their non action over my continued argument that 3-400% overcharging was unfair, have been told by Council that their method of charging is done because they must adhere to the new Best Practice guidelines and had to endorse the fact that to them this apparently justifies 3-400% overcharging and the guidelines stating the charge should reflect the load put on the sewer all the while never advising publicly the availability of the ET option which indeed precludes the method used by Council, seen the study done by me for my property at 16 Vale Rd ignored and in fact the existence of this study has not even been acknowledged, seen the study (2009) done for my property demonstrate a 3-400% overcharge and indicate that this method indeed calculates an end result that is for all intents and purposes the same

as the use of Nominal sizing for water meters as was advocated by Minister Sartor in 2004, watched as Council staff convince the councillors that they act under the Best Practice guidelines 2004 while now being told that Best Practice will be introduced in 2010, have become very cynical and disillusioned as Council ignore the fact that just for the one property that has had a hydraulics study done demonstrating that it costs 87c to flush the one toilet and urinal swept under the carpet, observe that Council has relied on non disclosure, ~~and~~ misinformation and manipulation to impose a charge that gouges similarly. The 800 non-res ratepayer of Bathurst, advised Council that the water meter at 16 Vale Rd should be downsized as per their policies as shown in the hydraulics report and had to remind them of this several times but while they promised to do so and even named a date they didn't bother, then in my new rate notice now continue to charge for the oversized water meter watched as Council accepts the report (attached)

that depicts falsely that ETs and the implementation of that method or indeed the use of the Nominal Size for water meters (which would come to the same results) (but as you would recognise, have no imposed cost) as ETs is my, "Mr Carters" method, endorsed these methods that quite successfully have turned Councillors against my voice for justice, spoke to one of the most able Councillors after this who had accepted that it was my "new idea" to have ETs used, accepted that while the mayor used to agree with me on the unfairness of the situation now has more concern for his vote base and its deterioration if the residential rate were to rise, accepted the same from the deputy mayor who understands the inherent unfairness implicitly but saw fit to cover Council by asking how long I had been in business and had I been totally ethical in that time, argued for 3½ yrs or so that the use of the nominal size

should be used (before I discovered that
 the ET option is supposed to be available)
 and so did not ask for any of our
 oversize meters to be downsized (knowing
 this was unnecessary cost where nominal
 sizing is used) secure or so I thought in the
 possession of 3 letters from Council and one
 from Minister Campbell that oversize meter
 charges in my case would be refunded
 back dated to 1 July 04, had to endure
 Council deliberately trying to confuse the
 downsizing issue with the charge not being
 relative to the load on the sewer so I
 had 8 meters downsized, wrote to Council
 asking for the refund to have it refused,
 was told that the Council letters were
 "illegal" and they did not know where
 Minister Campbell got his information,
 had to argue from memory 6 months or
 more that this refund was my due but (\$3,600)
 only received it when a new mayor was
 elected (2 days after) and unknown to him
 as I latter assessed, become disillusioned
 as the black and white case I presented
 to the NSW Ombudsman, being my right

to have the hydraulics engineer study accepted by Council as being no evidence of mal-practice which to my mind is incredible. The option to have the load put on the sewer assessed in ET, is the only fair balance in Council's method of Charging the Sewer Access charge. There is no doubt it was always meant to be an impost that would not be followed up by the non residential ratepayer and never to be properly advertised, however it is my right and is not a political issue as Council staff have made it out to be to me and others. It is an administrative issue and should be treated as such. Having cost my companies as much as \$100,000 over the last 5 yrs.

Thank you again for your attention
I look forward to your reply and resolution of this matter being available to meet as requested.

yours sincerely
Ray Carter.

8/10/2009.
233 College Rd.
Bathurst 2795

Mr Howard Martin MP.
Bathurst.

Dear Gerard.

re. BMC's sewer access charge. and reply attached from Minister the Hon. Philip Costa.

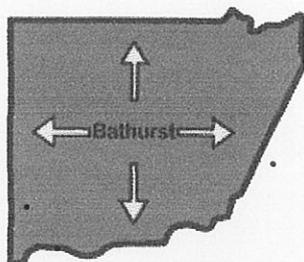
The matter of Bathurst Regional Council not accepting the Report on Equivalent Tenements for my property at 16 Vale Rd has not yet been addressed.

I fully understand the issue of the downsizing of meters and thank Minister Costa for apparently having Council address that matter.

However the larger issue of Council not having advised or advertised the option of having Equivalent Tenements assessed, remains and appears not to have been addressed, seeing that Council have not taken into account the Heath report.

Therefore I very specifically request that the NSW Govt direct Council to accept and properly ~~that~~ take into account the study done by Heath Consulting for my property at Vale Rd. as the downsizing of the meter still leaves the charge calculated on the full size of the meter creating an overcharge that is still approx. 100% or more

regards
Ray Carter.



Central Demolition & Asbestos Pty. Ltd.

A.B.N. 64 108 255 796

283 Russell Street,
Bathurst NSW 2795

Friable Asbestos Lic. No. 200950AS1

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Key Personnel Contact:

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Derek Homer: 0410 487 902

16th October 2009

Mr Gerard Martin, MP
Ground Floor State Office Block
140 William Street
BATHURST NSW 2795

Dear Gerard,

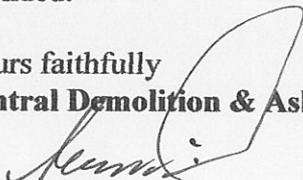
Thank you for the time you afforded me and others at our meeting on Friday last and for hearing out my concerns in regard to Bathurst Regional Council's overcharging in respect of the Sewer Access Charge to my properties.

As I said at the meeting I have a property where Council charge me on the unrelated water meter size instead of the load my usage places on the Councils sewer system.

This issue has been raised with Council over the years and the charge, which seems to me to bear no relationship with the real use of the sewer system for my property, continues to cause genuine hardship for my company and, as explained to you, has inhibited the employment growth of my company.

As the State Government is in reality the body in control of the charges levied by Council I sincerely hope you will be able to assist me in compelling Council to levy the charge fairly and in the manner intended.

Yours faithfully
Central Demolition & Asbestos Pty Ltd.


Larry Newis
Director